

SUBSIDIARY LEGISLATION**Rules under section 75 (3) of the Constitution in respect of appeals
under section 29 of the Act-****THE LAND ACQUISITION (APPEALS
TO THE HIGH COURT) RULES**

L.N. 111/1970,
L.N. 20/1971.

PART I - PRELIMINARY

1. These Rules may be cited as the Land Acquisition (Appeals to the High Court) Rules.
Citation.

2. (1) In these Rules, unless the context otherwise requires-

"the Act" means the Land Acquisition Act;

"appeal" means an appeal to the Court brought pursuant to the provisions of section 29 of the Act;

"appropriate registry" has the meaning accorded by rule 6;

"decision in question" means (as the case may be) the determination by the Commissioner of the interest or right of the appellant in or over the land the subject of proceedings under the Act, the award by the Commissioner of compensation under section 10 of the Act, the payment of compensation under section 5, 23 or 26 of the Act, or the offer of compensation under section 25 of the Act, being the subject of an appeal;

"interested person" means a person (other than an appellant or the Commissioner) who claims or is stated to be liable to be interested in or adversely affected by the result of an appeal;

"notice of intention to appear" has the meaning accorded by rule 7 (1);

"person" includes a public body for the purposes of which land is acquired within the meaning of section 29 (2) of the Act;
Interpretation

"register" means a register of appeals to be maintained pursuant to the provisions of rule 5;

"registrar" means the registrar, a deputy registrar or a district registrar of the High Court;

"registry" means the Central Office of the High Court in Nairobi or a district registry of the Court.

(2)
Subject to paragraph (1) the words and expressions defined in the Act shall have the meanings thereby assigned to them.

PART II - INSTITUTION

3.
(1) Every appeal shall be preferred in the form of

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memorandum of appeal presented in duplicate to the registrar; and both the original and the duplicate memorandum shall be signed by the appellant or his advocate and there shall be annexed thereto a true copy of the notification (if any) given to the appellant by the Commissioner informing him of the decision in question.

(2) The memorandum shall state concisely in paragraphs numbered consecutively-

- (a) the name, description and postal address in Kenya of the appellant, together with the name and postal address of the advocate (if any) who is representing him in the appeal;
- (b) the date, reference or identification number and other short particulars of the decision in question, together with the land reference number or other details of the land the subject of that decision sufficient to enable the land to be identified;
- (c) short particulars of any special facts upon which the appellant will seek to rely at the hearing of the appeal;
- (d) the question or questions upon which the appellant seeks the decision of the Court;
- (e) the grounds upon which the appellant intends to rely in support of the appeal;

Memorandum of appeal.

- (f) whether the appellant intends to adduce at the hearing expert evidence as to a question of valuation; and
- (g) the name and address of any other person likely to be interested in or adversely affected by the appeal so far as known to the appellant with short details of the way in which that person may be interested or affected.

(3) There shall be annexed to the memorandum an affidavit of the appellant or his advocate verifying the special facts set out therein in support of the appeal.

(4) In the memorandum the Commissioner shall in the first instance be named as respondent to the appeal, but every other person who considers that he is or may be interested in or adversely affected by the results of the appeal may apply to the Court to be added as an additional respondent, and the Court may direct that he be so added.

(5)
Where the decision in question appears to affect adversely more persons than one any one or more of those persons may appeal from the decision, and where two or more of those persons join together in preferring an appeal the provisions of these Rules shall have effect *mutatis mutandis* in relation to each appellant.

(6)
Every memorandum of appeal and verifying affidavit shall be in the form set out in the Schedule with such variations as

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may be necessary.

(7) The postal address of the appellant or of his advocate to be stated in the memorandum as required by paragraph (2) shall, unless and until a change thereof shall have been notified to the registrar in writing, constitute the address of the appellant for the purpose of the service of notices and for all other purposes relative to the appeal.

4. A memorandum of appeal shall be presented to the registrar within thirty days from the date upon which notification in writing (if any) of the decision in question was served upon the appellant, but the Court may in any case in the interests of justice and for sufficient reason to be recorded extend the time for presentation whether or not the time prescribed by this rule has already expired.

Presentation of memorandum of appeal.

5. (1) There shall be maintained in each High Court civil registry a book to be known as the "Register of High Court Appeals under Section 29 of the Land Acquisition Act" in which there shall be entered by the registrar particulars of every appeal preferred to the Court at that registry.
Register of appeals

(2) Upon being presented with a memorandum of appeal which appears to him to comply with the provisions of these Rules the registrar shall forthwith-

- (a) endorse on the original and duplicate of the memorandum the date of presentation and the number of the appeal as recorded in the register;
- (b) enter in the register particulars of the appeal as required by the form of the register, each appeal to be numbered consecutively in order of presentation during the calendar year;
- (c) forward to the Commissioner the duplicate copy of the memorandum when endorsed as provided by subparagraph (a);
- (d) forward to the appellant and to his advocate (if any) an acknowledgement of the receipt of the memorandum, together with particulars of the number accorded to the appeal in the register;
- (e) send to every person (other than the appellant and the Commissioner) who is stated in the memorandum as likely to be interested in or adversely affected by the appeal notice of the presentation of the memorandum and of the time within which

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esire to appear and be heard on the hearing of the appeal as provided by rule 7.

6. (1) The Commissioner shall within twenty-one days of the receipt by him of a duplicate memorandum of appeal cause to be served on the registrar at the registry from which the memorandum has been received (in these Rules referred to as "the appropriate registry") and on the appellant a notice of receipt and of his agreement or disagreement in whole or in part (as the case may be) with the contents of the memorandum.

Commi-ssioner to serve notice

(2) In the event of the Commissioner omitting so to cause notice to be served on the registrar of his disagreement (if any) with the contents he shall be deemed to have accepted them as correct.

7. (1) Every interested person (whether mentioned in the memorandum or not) who desires to appear and be heard on the hearing of an appeal shall give to the registrar at the appropriate registry a notice to that effect (in these Rules called a "notice of intention to appear") within fourteen days or such longer period as the registrar having regard to the circumstances of the case may fix:

Provided that the Court may in any case for reasons to be recorded permit an interested person who has omitted to give notice to be heard notwithstanding the absence of a notice.

(2) A person giving notice of intention to appear under this rule shall state in the notice short particulars of the following matters-

- (a) whether he has been notified that an appeal has been presented to the High Court, and, if so, by whom and on what date he was so notified;
- (b) the manner in which he may be interested in or adversely affected by the appeal or in which for any other reason he claims to be entitled to be heard on the appeal;
- (c) whether he intends to appear alone or jointly with some other person;

(d) whether he v
Interested
persons may
appear.

(e) the order or

(f) whether he i

(g) an address w

(3)

The
registrar
shall, on
being
requested so
to do by any
person who
has given
notice of
intention to
appear,
supply to
that person
without
delay a
copy of the
memorandu
m of appeal
and of any
relevant
notice of
intention to
appear
received by
the registrar
from any
other
person.

8.

When in the
opinion of
the registrar
all
necessary

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parties have been served with copies of the proceedings as required the registrar shall by notice inform all parties that the appeal is ready to be set down for hearing and shall invite them to appear before him on a day and time to be named by him in the notice (not being less than ten days from the date of service of the notice) to fix the hearing date; and on that day the registrar in the presence of such of the parties (or of their advocates) as may present themselves shall fix the hearing date and shall forthwith notify all the parties in writing of the date so fixed.

Setting appeal down for hearing.

9. (1) Every appeal unless otherwise directed shall be heard and determined by one judge; but the Chief Justice may direct that an appeal be heard and determined by a court consisting of three judges, in which event, should there be a division of opinion, the decision of the majority shall prevail.

(2) Interlocutory applications may be heard and determined by a single judge sitting in Chambers and shall be brought before him by means of a summons for that purpose.

Number of judges.

PART III - GENERAL

10. Every notice required by these Rules to be given may be served in any of the modes of service mentioned in section 33 of the Act.

Services of notices.

11. (1) No fee shall be chargeable on the presentation of a memorandum of appeal and verifying affidavit or of a notice of intention to appear or in respect of the furnishing by the registrar of copies thereof to any person entitled to them under these Rules, but the registrar shall be entitled to recover from Commissioner or from such other party to the proceedings as the Court may direct, the expenses

incurred by the registry in the preparation of copies of other documents and in the service of notices in the matter.

(2) Subject to the provisions of paragraph (1) the fees specified in the Schedule to Part IX of the High Court (Practice and Procedure) Rules in respect of civil matters shall where appropriate be payable to the registrar in regard to the matters specified therein.

Cap. 8, Sub. Leg.

12.

(1) The costs of any person other than the Commissioner of or in relation to an appeal shall be in the discretion of the Court and costs awarded by the Court shall in the absence of agreement be taxed in accordance with the provisions of the Advocates (Remuneration) Order relative to appeals from a subordinate court so far as they may be appropriate. Costs.

Cap. 16,
Sub. Leg.

(2)

The Court

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may, if it is satisfied that an appeal is clearly frivolous or that its presentation constituted an abuse of the process of the Court, direct that the costs and expenses of the Commissioner incurred in the matter shall when taxed be paid in whole or in part by the appellant or, of more than one, by some one or more of them.

13. Subject to the provisions of these Rules, and so far as they do not apply, the provisions of the Civil Procedure Act and of rules made thereunder and the practice of the Court in relation thereto shall have application to proceedings under these Rules.

Application of Civil Procedure Act and rules thereunder. Cap. 21.

14. These Rules shall not apply to-

(a) proceedings touching the legality of the taking of possession or of the acquisition of any property, interest or right within the meaning of section 75 (2) (a) of the Constitution; or

(b) proceedings for the purpose of obtaining prompt payment of compensation under section 75 (2) (b) of the Constitution; or

Limit of application of Rules.

(c) proceedings for the determination by the Court of questions submitted to it by the Commissioner pursuant to the provisions of section 28 (1) of the Act.

SCHEDULE (rr 3 (6), 7)

FROM 1

MEMORANDUM OF APPEAL

In the High Court of Kenya at

Land Acquisition Act Appeal No.of 19.....

between

A.B.

Appellant

and

The Commissioner of Lands

Respondent

MEMORANDUM OF APPEAL PREFERRED PURSUANT TO THE PROVISIONS OF THE LAND ACQUISITION (APPEALS TO THE HIGH COURT) RULES

Pursuant to the provisions of the above-mentioned Rules, I, *(name in full, description and postal address)*, the appellant herein, hereby appeal against the under-mentioned decision upon the grounds set out below.

1.

Decision *(give short particulars stating whether the decision in question is-*

(i) *a determination*

(ii) *an award of*

(iii) *a payment of*

(iv) *an offer of compensation*

2.

Land *(give short description of the land,*

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stating the province, district, municipality or township in which it is situated, together with its land reference number or other identifying number).

3. The appellant will rely upon the following special facts in support of the appeal: *(set out)*.

4. The question for the determination of the Court is *(set out)*.

5. The appellant will rely in support of the appeal upon the following grounds: *(set out)*.

6. It is intended *(or not intended)** to adduce expert evidence as to a question of valuation.

7. The names and addresses of the only other persons who may be interested in or adversely affected by the result of the appeal, so far as is known to the appellant, are *(set out in numbered sub-paragraphs)*.

8. *(Set out the name and address of the advocate (if any) representing the appellant):*

Dated this day of 19....

.....
(Signature of appellant or his advocate).

*Strike out as appropriate.

FORM 2

AFFIDAVIT OF VERIFICATION

I, *(name in full)*, the appellant herein, hereby state that I have read the foregoing memorandum of appeal and that the special facts set out in paragraph 3 thereof are true and accurate to the best of my knowledge, information and belief.

Sworn etc..

This memorandum and affidavit are presented by *(state whether by the appellant in person or by his advocate)*.

FROM 3

NOTICE OF INTENTION TO APPEAR ON THE HEARING OF THE APPEAL

To
the
Registrar of
the High
Court of
Kenya at
.....

TA
KE
NOTICE
that
pursuant to
the
provisions
of rule 7 of
the Land
Acquisition
(Appeals to
the High
Court)
Rules, I, the
under-
mentioned,
intend to
appear at
the hearing
of this
appeal and I
submit the
following
particulars:

(1)
*(Set out the
name,
postal
address and
description
of person
giving the
notice).*

(2)
The manner

in which I may be interested in or affected by the appeal and the grounds upon which I claim to be entitled to be heard are as follows: (*set out*).

(3) I intend to appear at the hearing (*state whether alone or jointly with some other person or persons, giving the names, addresses and descriptions of those persons*).

*(4) I wish to be supplied by you free of charge with a copy of the memorandum of appeal and of any relevant notice of intention to appear received or to be received by you from any other person.

(5) The order which I will submit should be made on the appeal is that (*set out desired order*) on the ground that (*set out*).

(6) I intend (*or do not intend*)* to adduce expert evidence as to a question of valuation.

(7) Documents may be served upon me in this matter at (*state an address within Kenya*).

Dated this day of 19.....

.....
(*Signature of person giving the notice*).

*Strike out as appropriate.
