



LAWS OF KENYA

**LOCAL AUTHORITIES (RECOVERY
OF POSSESSION OF PROPERTY) ACT**

CHAPTER 273

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CHAPTER 273

**LOCAL AUTHORITIES (RECOVERY
OF POSSESSION OF PROPERTY) ACT**

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CHAPTER 273**LOCAL AUTHORITIES (RECOVERY
OF POSSESSION OF PROPERTY) ACT***[Date of assent: 7th April, 1951.]**[Date of commencement: 7th April, 1951.]***An Act of Parliament to facilitate the recovery of possession of immovable property belonging to local authorities after the lawful termination of tenancy**

[Act No. 4 of 1951, Act No. 32 of 1952, Act No. 15 of 1961, L.N. 256/1963, L.N. 2/1964, L.N. 365/1964, Act No. 21 of 1966.]

1. Short title

This Act may be cited as the Local Authorities (Recovery of Possession of Property) Act.

2. Interpretation

In this Act—

“**local authority**” *deleted by L.N. 256/1963; Sch.;*

“**magistrate**” means a magistrate holding a subordinate court of the first or second class for the district or place within which the premises the recovery of which is sought are situated;

“**premises**” means any land, house or other corporeal hereditament.

[Act No. 15 of 1961, Sch., L.N. 256/1983.]

3. Recovery of possession of property

Notwithstanding anything to the contrary in any Act or law, when the term or interest of the tenant of premises held by him from a local authority at will or for a term not exceeding three years, either with or without being liable to the payment of rent, has expired or has been legally determined by a notice to quit or otherwise, and the tenant or (if the tenant does not actually occupy the premises or only occupies a part thereof) any person by whom the premises or any part thereof are actually occupied neglects or refuses to quit and deliver up possession of the premises or part thereof, as the case may be, the local authority may make a complaint in writing on oath before a magistrate.

4. Summons to tenant

(1) Upon receiving a complaint, the magistrate shall issue a summons to the tenant or occupier neglecting or refusing to quit and deliver up possession requiring him to appear at a time and place specified in the summons and to show cause why possession of the premises or part thereof should not be given to the local authority under this Act.

(2) The summons may be served either personally or by leaving it with some person apparently residing at the place of abode of the tenant or occupier or, if the tenant or occupier cannot be found and either his place of abode is not

known or admission thereto cannot be obtained for serving the summons, the attachment of the summons to the premises held over shall be deemed to be good service upon the tenant or occupier.

5. Procedure for recovery of possession

If the tenant or occupier fails to appear at the time and place specified in the summons or to show reasonable cause why possession of the premises should not be given under this Act and still refuses or neglects to quit and deliver up possession of the premises, or such part thereof of which he is then in possession to the local authority, the local authority may give to the magistrate proof—

- (a) of the letting of such premises and of the expiry or other determination of the tenancy and of the holding over;
- (b) where the title of the local authority has accrued since the letting of the premises, of the right by which the local authority claims possession; and
- (c) of the service of the summons and of the continued neglect or refusal of the tenant or occupier to quit and deliver up possession of the premises,

and the magistrate may issue a warrant under his hand to the police officers of the district or place within which the premises are situated ordering them within a period to be named therein, which shall not be less than fourteen nor more than twenty-one clear days from the date of the warrant, to enter, with such assistance as may be authorized by the warrant and by force if necessary, into the premises and give possession to the local authority.

6. Trespass by local authority and stay of execution of warrant

(1) If the local authority to which a warrant granted under section 5 is granted had not at the time of the granting thereof lawful right to possession of the premises or of the part thereof so held over, the obtaining of the warrant shall, whether or not entry has been made under or by virtue of the warrant, be a trespass against the tenant or other occupier of the premises.

(2) If the person against whom any such trespass has been committed enters into a bond with two sureties, to be approved by the magistrate in such sum as to the magistrate may seem reasonable having regard to the value of the premises and the probable costs of an action for trespass, to sue without delay the local authority by whom the warrant was obtained and to pay the costs of such action if judgment is given for the defendant or if the plaintiff discontinues and does not prosecute the action or is non-suited therein, then execution of the warrant shall be suspended until judgment has been given in the action for trespass, and if a verdict is given in favour of the plaintiff the verdict shall supersede the warrant.

(3) A bond mentioned in subsection (2) shall be given to the local authority at the cost of that local authority and shall be approved by the magistrate, who shall indicate his approval by signing his name on the bond, and if the bond is forfeited or if, upon the trial of the action for securing the trial of which the bond was given, the judge or magistrate by whom it is tried does not endorse upon the record of

the case that the condition of the bond has been fulfilled, the local authority to which the bond was given may bring an action and recover thereon:

Provided that the court before which the last-mentioned action is brought may make an order giving such relief to the parties to the bond as the Justice of the case may require, and any such order shall have the effect of a defeasance to the bond.

7. Action against local authority for irregularity in obtaining possession

Where the local authority at the time of applying for a warrant had lawful right to the possession of the premises or of the part thereof so held over, neither the local authority nor any person acting on its behalf shall be deemed to be a trespasser by reason merely of an irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but any party aggrieved may bring an action for the irregularity or informality, in which the damage alleged to be sustained thereby shall be specially pleaded, and may recover full satisfaction for that damage with the costs of the suit:

Provided that, if the special damage so pleaded is not proved, the defendant shall be entitled to a verdict and if the special damage is proved but is assessed at a sum not exceeding twenty shillings the plaintiff shall recover no more costs than damages, unless the judge or magistrate before whom the trial is held certifies on the record that in his opinion full costs ought to be allowed.

8. Forms

- (1) A complaint under section 3 shall be in Form A in the Schedule.
- (2) A summons under section 4 shall be in Form B in the Schedule.
- (3) A warrant under section 5 shall be in Form C in the Schedule.

9. Protection of magistrates and police officers

No action or prosecution shall lie against the magistrate by whom a warrant is issued or against a police officer by whom the warrant is executed in respect of the issuing or executing of the warrant respectively by reason that the local authority on whose application it was granted had no lawful right to the possession of the premises in respect of the recovery of which the warrant was issued.

10. Magistrate may order payment of rent due, award damages and payment of costs

The magistrate may, at the time of and in addition to the granting of a warrant under section 5, order the defendant to pay—

- (a) any rent due and unpaid;
- (b) such sum by way of damages for his neglect or refusal to quit and deliver up possession as the magistrate thinks fit, but not exceeding an amount equal to three months' rent of the premises;
- (c) the costs of the proceedings.

*Local Authorities (recovery
of Possession of Property)*

11. Warrants not to be executed on a Sunday or public holiday

A warrant under section 5 shall not be executed on a Sunday or a public holiday, nor on any day except between the hours of eight o'clock in the morning and four o'clock in the afternoon.

SCHEDULE

FORM A (s. 8(1))
[Act No. 32 of 1952, Sch., L.N. 365/1964, Sch., Act No. 21 of 1966, Second Sch.]

COMPLAINT

The complaint of
acting on behalf of
a local authority within the meaning of the Local Authorities (Recovery of Possession of Property) Act, made and taken on oath before me,
a magistrate of a subordinate court of the class having jurisdiction within the limits of the Province/District, who saith—

1. That certain premises situated at
in the District in the Province
were let to of
at a rent of on the day of 20
And are at present occupied by [occupier] of
[address]
2. That the said tenancy expired [or was determined by notice to quit given by the said]
[local authority]]
[or]

(Here insert any other cause for which tenancy determined.)

- on the day of 20 and/or the said occupancy was terminated by notice given by the said
[local authority] on the day of 20
3. That the said [local authority] is entitled to possession of the said premises.
4. That the said refuses [or neglects] to quit and deliver up possession of the said premises and still detains the same.

And the said [local authority] therefore prays that the said may be called upon to shew cause why he [they] should not quit and deliver up possession of the said premises and answer to this complaint according to law.

*Local Authorities (recovery
of Possession of Property)*

SCHEDULE, FORM A—*continued*

Taken and sworn before me at this day of ,
20

.....
Magistrate

FORM B (s. 8(2))
[Act No. 32 of 1952, Sch., L.N. 365/1964, Sch., Act No. 21 of 1966, Second Sch.]

SUMMONS

To

Whereas complaint has been made before me—

1. That you are the
tenant [*or occupier*] of premises situate at
in the District in the Province.
2. That the said tenancy expired [*or was determined by notice to quit given by ...*
..... [*local authority*]]
[*or*]

(*Here insert any other cause for which tenancy determined.*)

and/or the said occupancy was terminated by notice given by the said
[*local authority*] or [*here insert any other cause for which tenancy*
terminated.]

3. That the said [*local authority*]
is entitled to possession of the said premises.
4. That you refuse [*or neglect*] to quit and deliver up possession of the said
premises and still detain the same.
You are hereby required to appear in person at the Class
Magistrate's Court at on the day of ,
20 to show cause why possession of the said premises should not
be given to the said
..... [*local authority*].

If you fail to appear at the time and place specified in this summons
possession may be given to the said
[*local authority*] in default of your appearance.

.....
Magistrate

*Local Authorities (recovery
of Possession of Property)*

SCHEDULE—continued

FORM C

(s. 8(3))

[Act No. 32 of 1952, Sch.]

WARRANT

Whereas it has been proved to my satisfaction that the term or interest of
in
premises held by him from/ premises occupied by him and owned by ,
a local authority within the meaning of the Local Authorities (Recovery of
Possession of Property) Act, has expired [or has been legally determined], and
the said
without just cause neglects or refuses to quit and deliver up possession of the
said premises:

Now therefore I
a magistrate of a magistrate's court of the class do authorize
and command you, on any day between the day of ,
20 , and the day of , 20 ,
(other than a Sunday or a public holiday), between the hours of eight o'clock in
the morning and four o'clock in the afternoon to enter, by force if necessary, and
with or without the assistance of any agent of the said local authority or any
other person or persons whom you may think requisite to call to your assistance,
into and upon the said premises, and to eject therefrom any person and deliver
up to the aforesaid local authority or its agent full and peaceable possession.

Given under my hand this day of , 20

.....
Magistrate

To and all other police officers
for the District of
