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# Procedure for Extension and Renewal of Leases in Kenya

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The extension and Renewal of Leases is governed by the Land (Extension and Renewal of Leases) Rules, 2017. The rules also provide for the manner and timelines within which a landowner is to be notified of impending expiration. Extension refers to prolonging the duration of the lease from the original given time and is done during the subsistence of the lease, while renewal refers to grant of a new lease on the same parcel of land upon the expiry of a previous lease. In this case, the government is the lessor while the landowner is the lessee.

## EXTENSION

### 1 Application

A lessee can apply for extension at any time before expiry of a lease. The application is made to the National land Commission through the office of the Commission in the respective county by submitting Form LA 22.

### 2 Review

Once the Commission receives the application, it is required to forward it to the Cabinet Secretary where the land is leased by the National Government. Where the county government is the lessor, the application is forwarded to the County Executive Committee Member in responsible for land in the respective county government. Once the cabinet secretary or County Executive Committee Member receives the application, he reviews the application on behalf of the national or county government, respectively. The application is to be reviewed within ninety days of receipt. Upon review, the extension is either approved for a specified term with conditions or declined with reasons.



### 3 Factors Considered

In order to determine whether to grant or decline to grant an extension, the Cabinet Secretary or the County Executive Committee Member for land considers the following:

- a) In the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director: This is to ascertain whether the company is a citizen or a non-citizen and therefore determine the duration of the extension.
- b) The clearance certificates relating to all land rates and rents from the relevant authority. This is to ascertain whether there are any monies owed to the government by the applicant and whether the applicant qualifies for an extension.
- c) Information relating to any existing encumbrances on the title of the land. This is meant to disclose all information of persons with interest in the property.
- d) Evidence that the lessee has complied with the terms and conditions of the existing lease to the satisfaction of the lessor; This is to determine the lessee's previous conduct and ensure that a lessee seeking extension is not likely to breach the terms of the lease if it is extended.

- e) Where the application for extension is by a non-citizen, the unexpired term and the term of extension sought to ensure that they do not cumulatively exceed ninety-nine years: This is meant to ensure that the extension complies with the law barring foreigners from owning a lease for more than 99 years.

### 4 Communication of the Decision

Once the factors above have been considered, the decision to grant or decline an extension is communicated to the Commission for implementation.

### 5 The Commission Stage

Where approval of extension of the lease is granted, the Commission requires performance of certain requirements by the Applicant/ Lessee. These include having the land revalued in order to determine the land rent and other requisite fees, payable and having the land re-surveyed and georeferenced, where applicable The Commission also prepares a lease for the extended period, stating the terms and conditions of the extension. The Commission then has the lease signed and forwarded to the Registrar for registration and the noting of the extended term in the register.



Where the extension of lease is not granted by the national or county government, the National Land Commission is required to communicate the decision to the lessee within seven days of receipt of the decision and advise the lessee of the right of appeal.

**Note** that the Commission does not require a lessee to surrender the unexpired term of an existing lease as a condition for the grant of an extension of a lease. The grant of an extension of lease does not extinguish the unexpired term and only takes effect from the last day of the unexpired term.

## NOTIFICATION OF APPROACHING EXPIRATION OF THE LEASE

### 1 The Notification

The National Land Commission is required to notify the lessee within five years before the expiry of a lease of the impending expiration. The notification is done by registered post and any other means provided under the regulations. A copy of the notification is also forwarded to the Cabinet Secretary or County Executive Committee Member responsible for land in the relevant county government. The notification should indicate the date of expiry of the leasehold tenure; inform the lessee of his preemptive right to apply for the extension of the lease and to whom to make the application.

### 2 Failure to Respond to Notice

If the lessee does not respond to the notification within one year from the date of service, the Commission is required to publish the notification in two newspapers of nationwide circulation and require the lessee to respond within six months from the date of the publication. If the lessee does not respond to the newspaper publication, the Commission will then undertake a physical verification of the land to establish the status of the land. If upon verification the Commission establishes that the lessee is in occupation of the land, the Commission is required to advise the lessee on the need to apply for renewal and the consequences of failing to apply for the renewal. The service of a notification by the Commission does not prevent the lessee from seeking an extension of lease.

## RENEWAL

### 1 Application

A lessee can apply for renewal of a lease to the National Land Commission. The application is made through the office of the Commission in the respective county, in Form LA 23.

## 2 Review

Once the application is received, it is forwarded to the Cabinet Secretary or County Executive Committee Member responsible for land in the county government for consideration within seven days of receipt.

## 3 Factors for Consideration

In order to determine whether to grant or decline a renewal, the national government or county government considers the following:

- a) In the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director;
- b) Clearance certificates from the relevant authority in relation to all land rates and rents;
- c) Evidence that the lessee has complied with the terms and conditions of the existing lease to the satisfaction of the lessor.

## 4 Approval

The national government or county government shall within ninety days of receipt of the application under regulation either approve the renewal of lease for a specified term with such terms and conditions as may be specified ; or not approve the renewal of the lease and give the reasons thereof.

## 5 Commission Stage

The decision for approval or decline of renewal is then forwarded to the Commission for implementation. Where approval of renewal of the lease is granted, the Commission requires the lessee to have the land revalued to determine the payable land rent and other requisite fees, to have the land re-surveyed and georeferenced and issue a new letter of allotment in Form LA 5 as well as a new lease. Where the renewal of lease is not granted by the national or county government, the Commission is required to communicate the decision to the applicant within seven days of receipt of the decision and advise the applicant of the right of appeal

### RIGHT OF APPEAL

A lessee who is aggrieved by the decision not to extend or renew a lease has the right to appeal within thirty days, of receipt of the decision. The appeal is made to the Commission through its office in the respective county. Within thirty days of receipt of the appeal, it is referred to an *ad hoc* Independent appeals Committee which hears and determines the appeal within sixty days. Its decision is binding and any party dissatisfied with the decision may appeal to the court.