

SPECIAL ISSUE

**CLERK
NAIROBI CITY
COUNTY ASSEMBLY
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**NAIROBI CITY COUNTY ASSEMBLY
OFFICE OF THE CLERK
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BILLS FIRST READING**

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KENYA GAZETTE SUPPLEMENT

NAIROBI CITY COUNTY BILLS, 2017

NAIROBI, 2nd May, 2017

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**THE NAIROBI CITY COUNTY EVICTIONS,
RESETTLEMENT AND DEMOLITIONS BILL, 2017**

A Bill for

**AN ACT of the County Assembly of Nairobi City to
provide for procedures for evictions,
demolitions and resettlement and for matters
incidental and related thereto**

ENACTED by the County assembly of Nairobi City as
follows—

PART I – PRELIMINARY

1. This Act may be cited as the Nairobi City County
Evictions, Resettlement and Demolitions Act, 2017.

Citation.

2. In this Act unless the context otherwise requires—

Interpretation.

“affected person” means—

- (a) a person who has been permanently displaced from their land or premises;
- (b) a family which does not own any land but a member of such family may be working and living in the affected area for at least five years prior to the eviction, whose primary source of livelihood stand affected by the eviction;
- (c) persons whose primary source of livelihood for at least five years prior to the eviction is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fishermen and boatmen and such livelihood that may be affected due to an eviction.

“County” means Nairobi City County;

"Authorised Officer" means a Nairobi City County Officer responsible for matters relating to lands and resettlement

‘Executive Committee Member’ means the Executive Committee Member responsible for matters relating to Lands;

“displaced person” means a person who has been forced to leave his habitual residence as a result of armed conflict, situations of generalized violence or natural or human made disaster;

‘premises’ means any land, building, hut or part of

a hut or building and includes-

- (a) the garden, grounds or out- houses if any, appurtenant to such building or hut or part of the building or hut;
- (b) any fittings affixed to such building or hut or part of a building or hut for the beneficial enjoyment thereof

“settlement” means conferment on a displaced person of any permanent right in, or title to, any land under this Act, whether such right of title be propriety, occupancy, tenancy or of any other kind; and

“unauthorized occupant” means any person who continues to occupy private or public premises without the authority of the owner of the premises or land and it includes any person who continues to occupy such premises or land after the authority under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

3. This Act shall apply with respect to land in the County. Application.

4. The object of this Act is to set out appropriate procedures for eviction, demolitions and resettlement in the County. Objectives.

5. The implementation of this Act shall be guided by the following principles— Guiding principles.

- (a) protection from arbitrary evictions’
- (b) protection and enforcement of fundamental freedoms and rights; and
- (c) the right to fair administrative action.

6. A person shall not enter or occupy any premises or land except as allowed by the law. General prohibition

PART II — EVICTIONS

7. An eviction or demolition may be done, where- Conditions for evictions or demolitions.

- (a) the premises or land poses a danger to a person or members of the public such as railroad tracks, garbage dumps, riverbanks, shorelines, water ways and public places such as sidewalks, roads, parks, playgrounds;
- (b) the land has been set aside for a public utility;
- (c) the Government or County intends to undertake

an infrastructure project; or

(d) there is a court order for eviction or demolition.

8. (1) The owner of private land shall not evict any unauthorized occupant without a court order.

Evictions from private land.

(2) The owner of private land shall, prior to filing a suit for eviction, give written notice of at least three months prior to the date of the intended eviction to the unauthorized occupant.

(3) A notice under sub-section (2) shall be posted in a conspicuous place within the land or premises or delivered to the unauthorized occupant.

(3) The notice shall state the reason for the eviction and shall give the unauthorized occupant at least fourteen days to vacate the land or premises.

(4) Where a notice is given and the unauthorized occupant does not vacate the premises or land, the owner may file a case in the High Court, seeking eviction orders.

9. (1) The owner of private premises or land may apply for temporary removal of an unauthorized occupant of the premises or land pending the hearing and determination of the case, if—

Application for temporary eviction.

(a) there is real and imminent danger of substantial injury or damage to any person or property if the unauthorized occupant is not forthwith evicted from the premises or land;

(b) the likely hardship to the owner or any other affected person if any order for eviction is not granted, exceeds the likely hardship to the unauthorized occupant against whom the order is sought, if an order for eviction is granted; and

(c) there is no other effective remedy available.

10. (1) In the case of an eviction by the County, the County Executive Committee Member shall before sanctioning such an eviction, ascertain whether the eviction meets the conditions set out under section 7.

Eviction notice from public land.

(2) The County Executive Committee Member shall cause any decision relating to an eviction from public land to be published in the County and Kenya Gazette, and at least two newspapers of nationwide circulation, at least three months prior to the eviction.

(3) An eviction shall be conducted—

- (a) during regular working hours
- (b) on Monday to Friday; and
- (c) during good weather .

11. An authorised Officer or the owner of private premises or land shall remove or cause to be removed or disposed of by public auction, any unclaimed property that is left behind after a person is evicted.

Disposal of property left unauthorized occupants.

(2) If the property is sold, the proceeds of the sale shall, after deducting the expenses of the sale and the amount, if any, due to the Government or the owner of the private premises or land, on account of arrears or rent, damages or costs, be paid to the evicted person.

(3) Subject to subsection (3) where an authorised officer or the owner of the private premises or land is unable to decide as to the person to whom the balance of the amount is payable or as to the apportionment of the same, the authorised officer or the owner of the private premises or land may refer the dispute to the High Court.

PART III—DEMOLITION

12.(1) A person or entity shall not erect, place or raise any building or movable or immovable structure or fixture.

Power to remove unauthorized constructions, structures

(2) Where any building, structure or fixture has been created, placed or raised on any public premises or land without authority, an authorised officer may-

- (a) serve the person erecting the building, structure or fixture, a notice requiring such person to show cause why the building, structure or fixture should not be removed; or
- (b) by order issued by a competent court, remove or cause to be removed without notice, such structure, fixture , goods, cattle or other animals, as the case may be, from the public premises or land and recover the cost of such removal from the person as all arrears of land revenue.

13. (1) Where the erection of any building or execution of any work has commenced on or has been completed on any public premises or land without authority, the authorised officer shall apply to court for an order directing that such erection or work to be demolished by the person at whose instance the erection or work has began or is being carried on or has been completed, within such period as may be specified in the order.

Demolition of unauthorized structures.

(2) The court shall not issue an order for demolition of any structure unless the person concerned has been served with at least seven days notice to show cause why such order should not be made.

(3) The authorised officer shall cause a demolition notice to be affixed in a conspicuous part of the public premises or land.

(4) Where a building has been demolished, the authorised officer may, by order, require the concerned person to pay the expenses of such demolition in the manner specified in the order.

(5) An application to court under this section shall be made by filing an affidavit before a competent court.

14. An authorised officer may at any time make an order directing the sealing of such erection of or work on any public premises or land, for the purposes of enforcing this Act or for preventing any dispute as to the nature and extent of such erection or work.

Sealing unauthorized construction.

15. In carrying out a demolition, the County Government shall—

Conditions for demolition.

- (a) provide proper identification for all persons undertaking in the demolition;
- (b) ensure that the demolition is done during regular working hours, from Monday to Friday and during good weather; and
- (c) ensure that no heavy equipment is used except for structures that are permanent and made of concrete material.

PART IV — RESETTLEMENT

16. (1) This Part shall apply to resettlement of persons displaced—

Application of Part.

- (a) due to eviction from public land;
- (b) due to an act of God or war

17. (1) The Executive Committee Member shall cause to be undertaken resettlement planning to facilitate the resettlement of persons evicted from public land or persons who have been displaced as a result of internal strife or acts of war.

Conditions for resettlement.

(2) The County Executive Committee Member shall ensure that adequate consultations on the matter of settlement is undertaken with the duly designated

representatives of the families to be resettled and the affected communities in the area where they are to be relocated.

18. Where the return of displaced persons is possible, the Executive Committee Member shall— Return and restitution.

- (a) establish conditions and provide means, including financial measures for voluntary return in safety, security and dignity to homes or place of habitual residence;
- (b) facilitate the reintegration of returned persons and exert efforts to ensure full participation of affected persons in the planning and management of the return process.

19. Whenever the County Government intends to resettle affected persons, the Executive Committee Member shall cause to be undertaken an environmental and social impact assessment in the affected area in accordance with the Environment Management and Coordination Act. Environmental and Social Impact Assessment.
No 8 of 1999

20. (1) The Executive Committee Member shall, based on the Environmental and Social Impact Assessment Report, prepare a plan for the resettlement of the affected persons in consultation with the representatives of the affected persons. Preparation of resettlement plan.

(2) The resettlement plan shall include—

- (c) particulars of the resettlement entitlements of the displaced persons;
- (d) details of the public amenities and infrastructural facilities which are to be provided in the resettlement area;
- (e) the time limit for implementing the resettlement plan;

(3) The Executive Committee Member shall cause the resettlement plan to be published in at least two daily newspapers of nationwide circulation.

(4) The resettlement plan shall contain the following particulars—

- (a) the names of the affected persons;
- (b) the extent of land to be acquired;
- (c) a list of vulnerable affected persons;
- (d) a list of occupiers if any;

- (e) a list of benefits and packages which are to be provided to the affected families;
- (f) details of the extend of land available in the resettlement area for resettling and for allotment of land to the affected families;
- (g) details of the amenities and infrastructural facilities which are to be provided for resettlement;
- (h) the time schedule for shifting and resettling the displaced persons in the resettlement area; and
- (i) such other particulars as the may relevant in the resettlement plan.

21. The Executive Committee Member may, by notice in the gazette, declare any area as a resettlement area for the purpose of resettlement of the affected persons.

Declaration of
resettlement areas
and resettlement

22. The Executive Committee Member may constitute a committee under the chairmanship of the County Land Board to oversee the development and implementation of the resettlement plan in the manner prescribed.

Committee for
resettlement.

23. (1) The Executive Committee Member, in consultation with the Committee shall cause the affected people to be resettled in the resettlement area at the appointed time.

Resettlement.

(2) The Executive Committee Member shall ensure that resettlement occurs in a just and equitable manner and in accordance with the resettlement plan.

24. Each affected family shall get a one-time financial assistance of such amount as the Executive Committee Member may prescribe subject to a minimum of fifty thousand shillings as transportation cost for shifting of the family, building materials, belongings and cattle.

Transportation costs.

25. The Executive Committee Member in consultation with the Committee may consider and in addition to resettlement provide other benefits to the affected persons.

Other benefits.

26. An affected person shall have the option to take a lump sum amount in lieu of any benefit offered by the Executive Committee Member.

Money in lieu of
benefits.

27. (1) The Executive Committee Member shall, where those affected by the eviction are unable to provide for themselves, take all appropriate measures to ensure that adequate alternative accommodation resettlement or access

Resettlement
measures.

to productive land is available.

(2) The Executive Committee Member shall ensure that the rights of all persons, groups and communities to resettlement which includes the right to alternative land or accommodation which is safe, accessible, affordable and habitable.

(3) The Executive Committee Member shall ensure that the resettlement is only carried out in the public interest, or where the safety, health or enjoyment of human rights demand, that particular persons, groups and communities are subjected to resettlement.

(4) The Executive Committee Member shall ensure that in the context of any case of resettlement the following criteria shall be adhered to-

- (a) the rights of women, children and other vulnerable groups are recognized in any resettlement measure;
- (b) no affected persons, groups or communities shall suffer detriment as far as their human rights are concerned;
- (c) affected persons, groups or communities provide their full and informed consent as regards the relocation sites;
- (d) the resettlement process shall be carried out in full consultation and participation with the affected persons, groups and communities; and
- (e) resettlement should take into account in particular all alternate plans proposed by the affected persons, groups or communities.

PART V – MISCELLANEOUS

28. The Executive Committee Member shall ensure that the affected persons are consulted and that there is full disclosure of information on the evictions, demolitions and resettlement

Public participation.

29. The affected persons shall have a right to the relevant information, full consultations and participation throughout the entire eviction and resettlement process.

Right to information.

30. (1) The County Land Board, in consultation with the relevant stakeholders, shall actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long- term consequences of evictions,

Monitoring and reporting.

including forced eviction.

(2) The County Land Board shall ensure that the monitoring reports and findings under sub-section (1) are available to the public and concerned parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

31. (1) The Executive Committee Member may make regulations for the better carrying out of the provisions of this Act.

Power to make regulations.

(2) In particular, and without generality, the regulations shall provide for all or any of the following matters-

- (a) the manner and time for conducting surveys on the affected persons;
- (b) the manner of preparing the resettlement plan;
- (c) the procedures to be followed by the committee established under section 22 of this Act;
- (d) any other matter that is required or may be specified under this Act

32. (1) A person, who in connection with a requirement or direction under this Act, willfully provides information or produces any document that is false or misleading commits an offence and shall be liable on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

Offences and penalties.

(2) A person who obstructs a person in or otherwise interferes with the performance of functions under this Act or commits an offence and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred thousand shillings.

33. A person who commits an offence under this Act for which there is no other penalty specifically provided for shall be liable, upon conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred thousand shillings or to both such fine and imprisonment.

General Penalty.

34. Any written law, in force immediately before the coming into force of this Act, relating to eviction and resettlement shall have effect subject to modifications as may be necessary to give effect to this Act, and where the provisions of any such law conflict with the provisions of this Act, the provisions of this Act shall prevail.

Existing laws and rights.

MEMORANDUM OF OBJECTS AND REASONS

The principle object of this Act is to set out the appropriate procedures for eviction, demolitions and resettlement in the County.

Part I of the Bill provides for preliminary matters and also defines the scope of application for the Act.

Part II of the Bill sets out procedures on evictions from private land and public land and the conditions for conducting evictions.

Part III of the Bill sets out provisions on demolitions.

Part IV of the Bill sets out the procedures for and conditions for resettlement of displaced persons.

Part V set out miscellaneous matters including offences and penalties and the regulations making powers.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the estimates.

NELSON MASIGA,
Member of the County Assembly.