



1.0 INTRODUCTION

The Land Control Act was enacted in 1967 with its cardinal objective being control of transactions relating to agricultural land. The Act is yet to be repealed as it was currently revised in 2012 but unfortunately the revision left crucial and current changes brought about by the Constitution. **(Example: devolution)** The act was put in place to ensure food security and land productivity by ensuring that agricultural land is not sub divided into tiny unproductive units. A board established under the Act is tasked with vetting the importance and viability of any dealing in agricultural land that leads to sub division.

The overriding objective of the Act is arguably intertwined with the policy in the Swynnerton plan of 1953. The Plan was instituted to guide intensified agricultural development in the reserve by encouraging individualization of tenure and to provide security of tenure through an indefeasible title. The assumption was that natives would be encouraged to invest their labour profits in the development of their farms. The plan was formulated to ensure registration, consolidation and adjudication of land to fundamentally raise productivity. Adjudication involved ascertaining individual or group rights amounting to ownership over land while consolidation involved merging of fragments into single economic units. Registration on the other hand entailed the entry of established rights into the land register and the issuing of a title.

This paper thus gives a brief summary of the Land Control Act. It also provides a critical appraisal of the Act and proposes practical proposed amendments to ensure the Act is in consonance with other laws especially the Constitution.

2.0 THE SUMMARY OF THE LAND CONTROL ACT

ARRANGEMENT OF CLAUSE	Provides the summary of the Act in title format.
PART I	Provides for the definition of terms used in the Act for ease in interpreting the content.
PART II	Provides the powers of the Minister to gazette other areas as he deems fit that should fall under controlled transactions. Also that the Minister may make further divisions of controlled areas.
PART III	Provides that the establishment of the Land Control Board by Minister. It is to be made known via gazette notice. The Board is formulated in each controlled area.
PART IV	<p>Provides instances where the Act is applicable;</p> <ul style="list-style-type: none"> • Disposition of agricultural land, division of agricultural land to be held in separate titles and trust in agricultural land. • Transmission by will or intestacy that results to division of the land into separate titles. <p>Provides instance where the Act is not applicable.</p> <ul style="list-style-type: none"> • Transmission by will or intestacy. • Government or Settlement and Trustees • Trust land where county council is a party. <p>Void transactions will result to recovery of consideration paid.</p>
PART V	<p>Provides for the process of consent application to the Land Control Board 6 months from the making of the agreement. Extension of the period is to be applied to the High Court.</p> <p>The act further provides for instances when the consent will be allowed or ought to be refused or is to be refused.</p>

PART VI and PART VII	Provides for other institutional structure other than the Land Control Board that help in the implementation of the Act. They include; <ul style="list-style-type: none"> • Provincial Land Control Appeals Board. • Central Land Control Appeals Board.
PART VIII	Provides for the requirements for administering and managing the different institutions established in the Act.
PART IX and PART X	Provides further procedures that help in implementation of controlled transactions in controlled areas. They include; <ul style="list-style-type: none"> • Form of appeal ought to be done in writing. • Documents will not be registered without the consent. • Issuance of false statements is an offence. • Void transactions. • Prohibition of land transactions by the President via gazette notice. • Exemption by the President via gazette notice. • Regulations made by the Minister for ease in implementation of the Act. • Applications under Legal Notice 457/1963 • Amendment of laws.
SCHEDULES	1 st Schedule provides for the persons who will be appointed and seat in the different boards established by the Act. 2 nd Schedule provides for the Amendments done in relation to the Act.

2.1 CONTENT SUMMARY OF THE LAND CONTROL ACT

a) **Definition & Establishment**- the Minister for Land is bestowed with powers to establish the Land Control Board via notice in the gazette for every land control area. Determination of a land control area is also in the purview of the minister. The land control areas are divided into divisions each with a board. The board is established under Section 5 of the Act.

b) **Dealings** - The Board is empowered to vet all transactions touching land agricultural areas (Defined under Section 2 of the Act). The transactions are listed under section 6 of the Land Control Act. They include:

- the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;
- the division of any such agricultural land into two or more parcels to be held under separate titles; and
- Trust agricultural land.

Dealings in controlled areas without consent from the Land Control Board are deemed as void. If any valuable/consideration is paid during such a void transaction, it may be recoverable by the person who paid it from the person who it was paid to. Any person found guilty of the offence of dealing in agricultural land without a consent is liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months, or to both.

This is evidence in the case of **Githu vs Katibi[1990] KLR** that held as follows;

- ✓ An agreement for the sale of agricultural land is a controlled transaction and therefore caught by section 6 (1) of the Land Control Act. (Cap 302)
- ✓ Under the provisions of section 9(2) of the act, such an agreement shall become void unless the Land Control Board for the land control area where the land is situated has given the necessary statutory consent.
- ✓ As there was no application for consent made to the relevant Land Control Board, the respondent had no legal interest capable of registration under the Registration of Titles Act. (Cap 281)

The court of appeal underpinned the importance of the consent when it noted that; In the decision of **Njamunyu Case**, the court of appeal at holding No. 2 & 3 said,

“Land Control Board consent does not make an agreement for sale of land binding. The agreement is only binding between the parties who make it although it is not enforceable until consent is obtained. Specific performance cannot be claimed in respect of a dealing which becomes void and only recovery of the consideration paid under the agreement is allowed under Section 7 of the Land Control Act.” (Underline mine for emphasis)

In as much as the Land Control Board deals with agricultural Land, there are instances where it does not apply. They include;

- the transmission of land by virtue of the will or intestacy of a deceased person, unless that transmission would result in the division of the land into two or more parcels to be held under separate titles; or
- A transaction to which the Government or the Settlement Fund Trustees or (in respect of Trust land) a county council is a party.

c) **Consent Application**- The application is made in a prescribed form to the appropriate Land Control Board (Division where the land in question is located) before the transaction or within six months of the making of an agreement. The application must be in writing, or drawn up in the form of a legal document. The High Court may with sufficient reason extend the period after the expiry of the six months. The land control board shall either give or refuse its consent and its decision shall be final and conclusive and shall not be questioned in any court. Where an application for the consent of a land control board has been refused, then the agreement for a controlled transaction shall become void. In case of dissatisfaction with the board's decision, an aggrieved party may file an appeal with the appeals board within 30 days from the date of receipt of the decision. (Section 16 of the Act)

d) **Granting or Refusal of Consent**- The granting or refusal of consent is dependent on the effect which the grant or refusal of consent is likely to have on the natural resource development of the land concerned or on the maintenance or improvement of standards of good husbandry within the land control area;

Consents generally **ought** to be refused where;

- The person to whom the land is to be disposed of—
 - is unlikely to farm the land well or to develop it adequately; or
 - is unlikely to be able to use the land profitably for the intended purpose owing to its nature; or
 - already has sufficient agricultural land; or
- The person to whom the share is to be disposed of—
 - already has sufficient shares in a private company or cooperative society owning agricultural land; or

- would, by acquiring the share, be likely to bring about the transfer of the control of the company or society from one person to another and the transfer would be likely to lower the standards of good husbandry on the land; or
- the terms and conditions of the transaction including the price to be paid are markedly unfair or disadvantageous to one of the parties to the transaction; or
- in the case of the division of land into two or more parcels, the division would be likely to reduce the productivity of the land;

Consent **is to be** refused in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not—

- a citizen of Kenya; or
- a private company or co-operative society all of whose members are citizens of Kenya; or
- group representatives incorporated under the Land (Group Representatives) Act, 1968 (Cap. 287); or
- A state corporation within the meaning of the State Corporation Act, 1986 (Cap. 446).

e) **Appeals- Provincial Land Control Appeals Board**- In consultation with the Provincial Commissioner of a particular province, (Now defunct) the Minister is mandated to establish a land control area for each province. The Provincial Land Control Appeals Board shall come in where the Land Control Board refuses to grant consent and the applicant feels aggrieved with the decision. As noted earlier, an appeal should be lodged within 30 days of the land control board's decision is delivered or posted to the applicant. The Provincial Land Control Appeal's Board shall in its absolute discretion, hear and determine all appeals made to it and its decision shall be final and conclusive and shall not be questioned in any court.

Central Land Control Appeals Board- The Central Land Control Appeals Board is established under the schedule of the Land Control Act. The Commissioner of Lands is the secretary of the Central Land Control Appeals Board. The Commissioner shall attend their meetings and speak but may not vote. Once an appeal to the Provincial Land Control Appeals Board has been dismissed, one may make an application to the Central Land Control Appeals Board within 30 days of the copy of the board's

decision. The Central Land Control Appeals Board shall in its absolute discretion, hear and determine all appeals made and the decision shall be final and conclusive and not be questioned in any court.

f) **Miscellaneous**- Just like any other institution, the Board established under the Land Control Act has various guidelines and protections to facilitate its efficient operations; These includes

- **Board members tenure.** Board members may hold office for a prescribed period. If not, then according to the terms of appointment. The appointment may be terminated by the minister at any time or by resignation notice to the minister.
- **The meeting procedure.** If chairman of the board is absent, then members present shall elect one of them to preside. On appeals, where the total number of members of the board is even number, it shall be one-half of that number, and where the total number is an uneven number it shall be one-half of the even numbers which is greater than the uneven number by one. Quorum of central board shall be three and if there is equality of votes on any matter before a board, the chair shall have a casting and original vote.
- **The decision making process.** All decisions shall be in writing in the prescribed manner, in detailed including the reasons for refusal or dismissal and shall be signed by or on behalf of the chairman. A copy of the decision shall in every case be delivered or sent by post to the applicant and, in the case of an appeal, to the board whose decision is appealed against.
- The **power of attendance** is that the applicant or appellant may have to attend the hearing and adduce evidence. A board may appoint a representative to visit and report of the land in question. Failure to attend without reasonable excuse shall be guilty of an offence and liable to a fine not exceeding five hundred shillings.
- The **power to inspect** land by a board and any person authorized in writing by a board may at reasonable time after giving at least 48 hour notice, and on production of his authority to any person reasonably requiring it, enter upon and inspect any land for the purpose of carrying out the functions of the board.
- A person knowingly making **false statements** shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or both.

- Acts of **fraud and or furtherance of void transactions** shall subject one to being guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or both.
- The president may by notice in the Gazette **prohibit or exempt** any controlled transaction as he may think fit.
- The Minister may make **regulations** for purposes of implementation of this Act on a without prejudice basis.

3.0 THE CONSTITUTION OF KENYA

3.1 Legal Framework

Although all sovereign power belongs to the people, it shall be exercised only in accordance with the Constitution. This is under article 1 of the Constitution thus validating the supremacy of the Constitution. The Constitution is termed as the supreme law of the Republic of Kenya and confirms that all persons and state organs are bound to it. Therefore all inconsistency shall be termed as void.

The Bill of Rights under chapter four expressly maintains and recognizes the rights and fundamental freedoms in the Constitution and those not in the Constitution but are conferred by law except to the extent that they are not inconsistent with the Constitution. In partaking on safeguarding land interests, the Constitution has set down principles that are to guide in the implementation of land transactions. The Constitution has further appreciated the regulation mechanisms set up to help in securing land rights. The Constitution of Kenya recognizes the right to own land and classifies this right to own land in three categories dependant on the type of land being owned. The classifications are as hereunder;

- Public Land.
- Community Land.
- Private Land.

The Constitution has safeguarded the interests of all persons by establishing principles that guide all persons who are undertaking land transactions. This has been incorporated in Article 60. In as much as the right to own a parcel of land is recognized by the Constitution, article 66 provides that this right ought to be regulated. The said article states that the State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality,

public health, or land use planning. It also recognizes the fact that Parliament shall enact legislation ensuring that investments in property benefit local communities and their economies.

The regulation of this right to own land and the guidelines to the Parliament to enact legislation has been conferred in the Constitution. This is under article 24 that provides for limitation of the right to own property. Article 24 provides guidelines to the limitation of any right to the extent of the limitation being reasonable and justifiable as a result to which no right is infringed. The factors to be considered are;

- The nature of the right or fundamental freedom;
- The importance of the purpose of the limitation;
- The nature and extent of the limitation;
- The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

The Land Control Act is recognized as per Article 66 as one of the legislation passed by parliament to limit the right to own land, specifically agricultural land. The need of article 24 and the Land Control Act is to safeguard the interest of agricultural land at both the social, economic and political level thus ensuring that the said land is not divided into several small portions that cannot be managed to the optimum productivity and exploitation of the natural resources. It also helps to ensure that agricultural land is managed well by those who own it thus natural resources are not misused. The Constitution thus seems to have an efficient legal framework to recognize the use of the Land Control Act.

3.2 Structural Framework

In terms of the institutional framework, the Constitution has introduced devolution which has sadly not been incorporated in the Land Control Act. Devolution has been introduced under article 174 where the importance and role of devolution are clearly spelt out. It is foolhardy that the Land Control Board is incorporated in the provincial level and not county level because we have no provinces according to the current Constitution. Although the 6th Schedule, section 7 seems to remedy the situation, (providing that when interpreting any legislation enacted before promulgation of the Constitution, it should be

done with the necessary alterations and adaptations to make it Consistent with the Constitution.) it still doesn't solve everything. For instance, arguably, the land Control board may be taken to be the County Land Management board. What of the Provincial appeals board? There is obviously a lacuna. There is a great need to review all legislation specifically the Land Control Act.

There is need to have an institutional framework to efficiently list the titles and roles of all persons working at the county level in the Land Control Board. The other loophole is on the Provisional Board that has been established based on the provinces yet the supreme Law, the Constitution does not recognize the provinces. On the other hand, at the National level, the Central Land Control Board has been well captured in the Act but the loophole is that it is based in one area that is Nairobi hence accessing the said office may prove to be difficult for the marginalized Kenyan.

4.0 LAND ACTS 2012

The Land Control Act is a controlling cardinal Act that deals with pre conditions for disposition of Agricultural land. It ought to be noted that during the review of the Land Acts 2012, the devolved governance theory was incorporated and several organs including the County Land Registrars were formulated yet the said organ has not been incorporated in the Land Control Board and or even formulation of a linking Board.

This therefore shows that the Land Control Act is yet to evolve and the only relation of it to the Land Acts 2012 is the need to acquire the said consent on controlled transactions (agricultural land). Law makers have failed in their relation of the Land Control Act to the new organs formulated under the Land Acts 2012 hence changing the ownership and registration of agricultural land is extremely limited. The Land Control Act has clearly stipulates under section 20 that the registrar shall refuse to register an instrument effecting a controlled transaction unless he is satisfied that any consent to be obtained as per the Land Control Act has been given or that no consent is required.

On the other hand the Land Registration Act although it has not expressly mentioned the Land Control Act, section 39 provides the Registrar shall not register an instrument effecting a transaction unless satisfied that any consent required to be obtained in respect of the transaction has been given by the relevant County Land Management Board on the use of the land, or that no consent is required.

5.0 CONCLUSION AND RECOMMENDATION

5.1 challenges

• Definition-

The fact that the Constitution and the new Land laws only recognize the devolved governance whereas the Land Control Act recognizes municipality and provinces even in establishing of the Land Control Board. This makes it unclear for one to know where the municipality starts, falls and ends. It is also difficult to relate the Land Control Act with the Land Acts as the roles and functions are for the municipal council and not for the county governance.

It is broad to only include the definition within the municipality yet there can be agricultural land within the municipality

• Circulation-

The Central Land Control Appeals Board we have concluded that the Central Land Control Appeals Board has been well captured in the Land Control Board but the challenge is that the organ has only been implemented in Nairobi. It may be difficult to have the Central Board in all counties hence the Land Control Board may borrow and implement the Court of Appeal directives of circulating in different areas. The Central Land Control Appeals Board may therefore circulate all around the counties not just because of an appeal but also to monitor and evaluate the other Land Control Boards both at the initial board and the appeals board.

• Devolution-

County Government this is as per the Constitution of Kenya that has introduced the use of the County Government. The Land Control Act has introduced the board both at the initial and appeal's level as per the provincial description. This has not incorporated the devolution being fought for by the Constitution hence integrating the idea of devolution may be a challenge.

5.2 Proposed Amendments

PROPOSED AMENDMENTS	
Preamble	<ul style="list-style-type: none">• The preamble should include the objectives and reasons of securing the transactions in agricultural land, example; productivity e.t.c as provided for under Article 66 of the Constitution. Where there in Minister replace it with the Cabinet Secretary in line with the new Constitutional order.

Part I

- **Section 2-** Agricultural land should be defined for what it is not what it is not.
- The Act should embrace the devolved system not only in the definition but also in the structures of control incorporated in the Act. E.g. no county council, no province.
- The meaning of "board" should encompass the all the boards established under the Act.
- The definition of land should be as per Article 260 of the Constitution to ensure uniformity of definitions in all regimes of land. Multiplicity of definitions of land before consolidation of land Laws in the new Land Acts brought lots of confusion.
- Mortgages are now charges as per the Land Registration Act hence the term mortgage would be replaced with charge. The Act may also adopt the Land Registration Act 2012's definition of a charge.
- The definition of registrar-The meaning of registrar as per the Land Registration Act may be adopted. The Land registration Act being the registration statute, its imperative that the meaning of registrar from the Act is better for certainty. Registrar of shares may be replaced with Company's Registrar as the task of maintaining a register of shares as per the companies Act is the Companies registrar.
- Premised on the importance of the Act in maintaining land productivity and food security, it may be important for the Act to have an objective and application's clause to ensure certainty and ease of administration. For instance, it should be clear that the Act applies to private and community land.
- There should be a supremacy clause in case of conflict in law. The supremacy clause will dispel doubt in case of conflict with any other legislation. Of course with a supremacy clause, the provisions of the Land Control Act shall always prevail except where the Act itself provides for an exception.

Part II

- The title to Section 3 ought to be '**Application of the Act**'.
- In as much the Cabinet Secretary is to gazette the control areas, this Act should state the general areas of application. In case there is need for additional areas of application, the Cabinet Secretary may gazette the areas. Again, for certainty purpose. It is also arguable whether this function should be for the cabinet secretary or the National Land Commission.

• **Section 4**-should embrace devolution as the new administrative units in the establishment of the divisions. May adopt the system division as established under the Land Registration Act section 6.

Part III

Section 5-should be amended and provide the following;

- Establishment of the board under the devolved system. Provide for functions, powers, filling of vacancy, vacation of office, operations of the Board (election of chairman, quorum e.t.c), procedures of appointment and professional qualification of the board members.
- There should be a representative from the ministry of agriculture, (sub county agricultural officer), physical planner, and surveyor e.t.c. to provide expert opinion before any consent is granted. The objectives of the Act will be realized well where experts are involved.
- The appointment of board members should be consistent with the Constitutional 1/3 gender rule.

Part IV

• **Section 6 (1)**-the term mortgages should be replaced with charges as the Land Registration Act has done away with mortgages. Disposition should include all dispositions affecting land as provided and defined under the Land Registration Act. The list in the Land Registration Act is more expansive.

• **Section 6(3)**-should be amended and replace the word '**section**' with the **Act**. It only makes sense that whole Act should not apply to those uncontrolled transactions.

The areas where the Act does not apply to should come on the limitation clause.

Part V

• We recommend the title to part V to read 'Application for Consent'. The title, 'Granting Consent' may be interpreted, wrongly to mean after application, consent **must** be granted.

• **Section 8 (1)**- application of extension of time ought to be before a court of competent jurisdiction. This is because subordinate courts are mandated by the Chief Justice Practice rules to hear land matters where the value is within their pecuniary jurisdiction.

• **Section 8(2)**- The provision that the decision of the board is final is wrong as it is trite law that the court jurisdiction cannot be ousted. For instance you cannot bar an aggrieved party for judicial review where the board is for instance biased.

• **Section 9** -the Land Control Board should be guided by the principles and values in article 60 of the Constitution in determining an application for consent.

	<ul style="list-style-type: none"> • Section 9- should be divided into three sections; the procedure and grounds for granting consent, the grounds for refusal and void agreements. • Section 9 (c)- The Constitution allows foreigners to own leasehold interests of 99 years. The provision of refusing non-citizens from owning land may therefore be deemed unconstitutional. However, there ought to be a scrutiny as to the underlying principle behind disallowing foreigners from owning agricultural land.
Part VI &	Section 10- may be amended and include the following;
Part VII	<ul style="list-style-type: none"> • The recommendations applicable to the Land control board aboard directly apply to the two appeals board. • Section 12 (3)-The commissioner of Land being present and allowed to speak at the deliberations of the central appeals board, though not allowed to vote may still influence the decision of the board. • Section 13 (2)-Again, the Act cannot purport to oust the court's jurisdiction For instance you cannot bar an aggrieved party for judicial review where the board is for instance biased. Same goes to section 11 (2).
Part VIII	<ul style="list-style-type: none"> • There is no need of this provision if the same has been dealt with in the different parts that have established the boards. This is because the different institutions cannot be managed the same way yet this part is purports of such a scenario. • Section 18- should specify the inspection time that is between 6am- 6pm.
Part IX	<ul style="list-style-type: none"> • Section 21 and 22- need to be revised as the term and fine of such offences are recommended to be very low. • The provision on prohibition and exemption section 23 and 24 ought to be in the same part with establishment of controlled areas in agricultural land. • Section 23 and 24-should be amended by deletion of the president done and replaced with Cabinet Secretary.
Part X	<ul style="list-style-type: none"> • The heading should be amended to 'Savings and Transitional clauses'.
Schedule	<ul style="list-style-type: none"> • Depending on the amendments the Schedule will definitely require changes.

5.3 Arguments Regarding the Land Control Act Being Repealed

To begin with, there is absolutely no express provision in any of the new Land Acts repealing the Land Control Act. The argument by many is that the County Land Management Boards established under the NLC Act is to replace the Land Control Boards. This is based on the assumption that the two bodies are similar in functions and structure. Unfortunately on the same level the Land Control Board has not been efficient with its functioning. There are gaps and weaknesses within the act as well as corruption making it very difficult to effectively implement the act thus leading to poor agricultural practices in the counties which has adversely affected farm sizes and agricultural productivity. Therefore the replacement of the Land Control Board by the County Land Management Board may be a good idea as it reduces the number of boards to be established. On the other hand, the Land Control Act has not been repealed making the land control board a valid institution. It is quite a dicey situation.

The need to have the board's consent is a control to ensure effective utilization of agricultural land. In as much as there is need to have one institution that deals with land, there is also a greater need to have a specific body dealing with agricultural land considering the role Agriculture plays in our economy. The principle behind control is protection of agricultural land in ensuring maintenance or improvement of standards of good husbandry and protection of land owners and their families from transaction that are unfair or disadvantageous. As a result, the great emphasis on social and economic effects that controlled transactions is likely to have on the productivity of the land or on the land owners and their families. The arguments underlie the importance of maintaining the land control boards.

On the flip side, there are arguments for the abolition of the land control boards. In terms of **structure**, there is the issue of devolved governance that is the sub-counties, counties and national. The Constitutional dispensation anticipates that anybody established under any law ought to be in consonance with the devolved units. The CLMB is a structure at the county level hence incorporates the devolved system of governance. The Constitution advocates for a devolved government. The assumption is that since the powers to grant consent at the National Level is in the NLC, then the CLMBs come in at the county level and the sub-county. However, as stated earlier, there is no express provision stating as much hence open to speculation.

The National Land Commission Act establishes the county land management board (CLMB). To begin with, section 18(1) clearly stipulates that the county land management boards are established for a specific purpose; that is managing public land thus making it unbelievable that the board's mandate can change impliedly without any express provision. It ought to be noted that the Land Control Act deals with all categories of land including private agricultural land. Practically, the objective of control of land use specifically agricultural land can only be effective under the Land Control Act. The CLMB's may only be effective when it comes to private or community land.

The Land Registration Act under Section 39 mentions CLMBs. It stipulates that the registrar cannot register any instrument disposing an interest in land if a pre requisite consent is on land use from the CLMB is not obtained. The Act is clear that the consent required is only to the extent of land use. The dicey question would be, does the consent for "land use" include "change of user?" Stemming from the dicey situation, it may be argued that the consent of the Land control board on change of user regarding agricultural land may still be relevant just like the consent of the chief railway engineer when dealing with land adjoining a railway line. Again, the Act provides that the registrar may register an instrument without the consent of the CLMB if that consent is not required. Arguably, there are situations where the consent of the CLMB may not be required but that of other bodies may be required. More strongly, a keen read of Section 39 does not limit the County Land Management Board to the one anticipated in the NLC Act only. It talks of "...the relevant County Land Management Board." Impliedly, there are several boards each tasked with a different function. Though the Land Control Act doesn't embrace the devolved system of governance to sustain an argument that the LCB is one of the County Land Management Boards anticipated, the Constitutional transition clause may be the remedy. The sixth schedule... stipulates that any Act enacted before promulgation of the Constitution should be construed and interpreted with the necessary modifications and alterations to give effect to the Constitution. Automatically, a District Land Control Board would definitely transform to a CLMB. The challenge to this school of thought may be how to categorize for instance a provincial board.

The argument that the Land Control Act will repeal the Land control Act fails the basic function test. For instance, there is absolutely no provision in the Community Land Bills that tackles specifically the body granting and consents required when dealing with any agricultural Land. The Community Land Act to

be enacted will only deal with Community land but not any other category of land save for where another category is converted to community land.

The Land Regulations by 30th April 2014 which are yet to be passed, have gone further and bestowed powers provided to the CLMB's under section 18 of the NLC Act to the commissioner. Although the commissioners are to work in consultation with the county, we believe that there is need for clarity to whom is the application supposed to go to. Are the CLMBs supposed to receive the application of public land and the commissioner as provided under the Land Regulations supposed to receive applications from community and private land? Our argument is based on the fact that the Land Regulations are to clearly define the Land Acts 2012 so as to help the Acts work efficiently. The Land Regulations are to bring clarity on the functions of the CLMB but unfortunately none of the regulations provides that they are to give consent on transactions on agricultural land not even on the public land.

It has expound on allocation, divisions, change of user, building planning, consent to transfer, sublease or charge but specifically provided for public land and that the application is to be to the commissioner and not the CLMBs. The section under the Land Regulations that has clearly bestowed powers to the CLMB is for appointment of auction officers. The phrase 'allocation' under section 38 of the Land Regulations is on public land. The Land Regulation thus does not clearly bring out the functions of the CLMBs and specifically on the type of consent the boards can give.

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