



Legal Alert | May 12, 2022

THE NATIONAL LAND COMMISSION AMENDMENT BILL, 2022

Introduction

The National Land Commission (Amendment) Bill, 2022 (the “Bill”) seeks to amend sections 14 and 15 of the National Land Commission Act (the “Act”). Section 14 of the Act gave the Commission the mandate to review grants or dispositions of public land to establish their propriety or legality within 5 years from the date of commencement of the Act. It also allowed the Commission to petition the Parliament for extension of the five-year period. Section 15(3) of the Act sets out the criteria for admission of a historical injustice claim by the Commission one of which was that the claim must be brought within 5 years from the date of commencement of the Act. The mandate of the Commission to address historical land injustices is limited to a period of 10 years from the date of commencement of the Act.

Rationale of the Bill

The Act’s commencement date was May 02, 2012. The period of 5 years within which the claims on disposition of public land were to be brought and addressed by the Commission lapsed on May 01, 2017. The Commission also no longer has mandate to process claims on historical land injustices; this lapsed on May 01, 2022, ten years from the date of commencement of the Act. The Commission did not petition Parliament for extension of the statutory timeframe nor take opportunity of the revision of land laws in 2016 to have this timeframe extended.

The Bill therefore seeks to remove these time limits. It is important to note that whereas the Act came into force in 2012, the National Land Commission (Review of Grants and Dispositions of Public Land) Regulations, 2017 were gazetted in May 2017 and the National Land Commission (Investigation of Historical Land Injustices) Regulations to operationalise the Act in October, 2017 after the deadline to submit the claims had passed.

This investigative and resolution mandate given to the Commission relating to the propriety and legality of title was expected to lead to resolution of the issues published

in the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (the “Ndungu Report”). As at the end of 2020, the Commission received 15,513 complaints, investigated 5,773 and determined and gazetted 4,088 of them. The Commission also received a total of 693 claims on historical land injustices and resolved 126 claims. Since the Commission no longer has mandate to process these claims, this means that there will be no redress for outstanding claims that are yet to be investigated and processed.

Conclusion

The Bill is a private members bill. It may have been ideal that any request for extension is made by the NLC to ensure the objectives of the Act are met and the extension, not in vain. It not only removes the checks and balances such as the time limits and the requirement for parliamentary approval but also prejudices the principles of certainty of laws and regulations and the sanctity of title, key indicators in determining the ease of doing business and a country’s ranking as an ideal investment destination. Our view is that the provisions of the Act giving the NLC an oversight mandate over grants of public land including renewal and extension of leases provides adequate measure to ensure any impropriety is detected prior to any disposition of public land, protecting the integrity of the land titling system through early detection of any malpractices. The Bill would therefore have been best placed to:

- provide saving provisions for the matters still under investigation. This will insulate any decisions by the NLC on those matters from court challenges; and
- seek an extension of time for admission of historical injustice claims by the NLC so that the 10-year period contemplated in the Act runs from 2017 when the regulations were published.

The Bill has been introduced to the National Assembly. We will track the progress of the Bill and share updates in subsequent alerts.

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