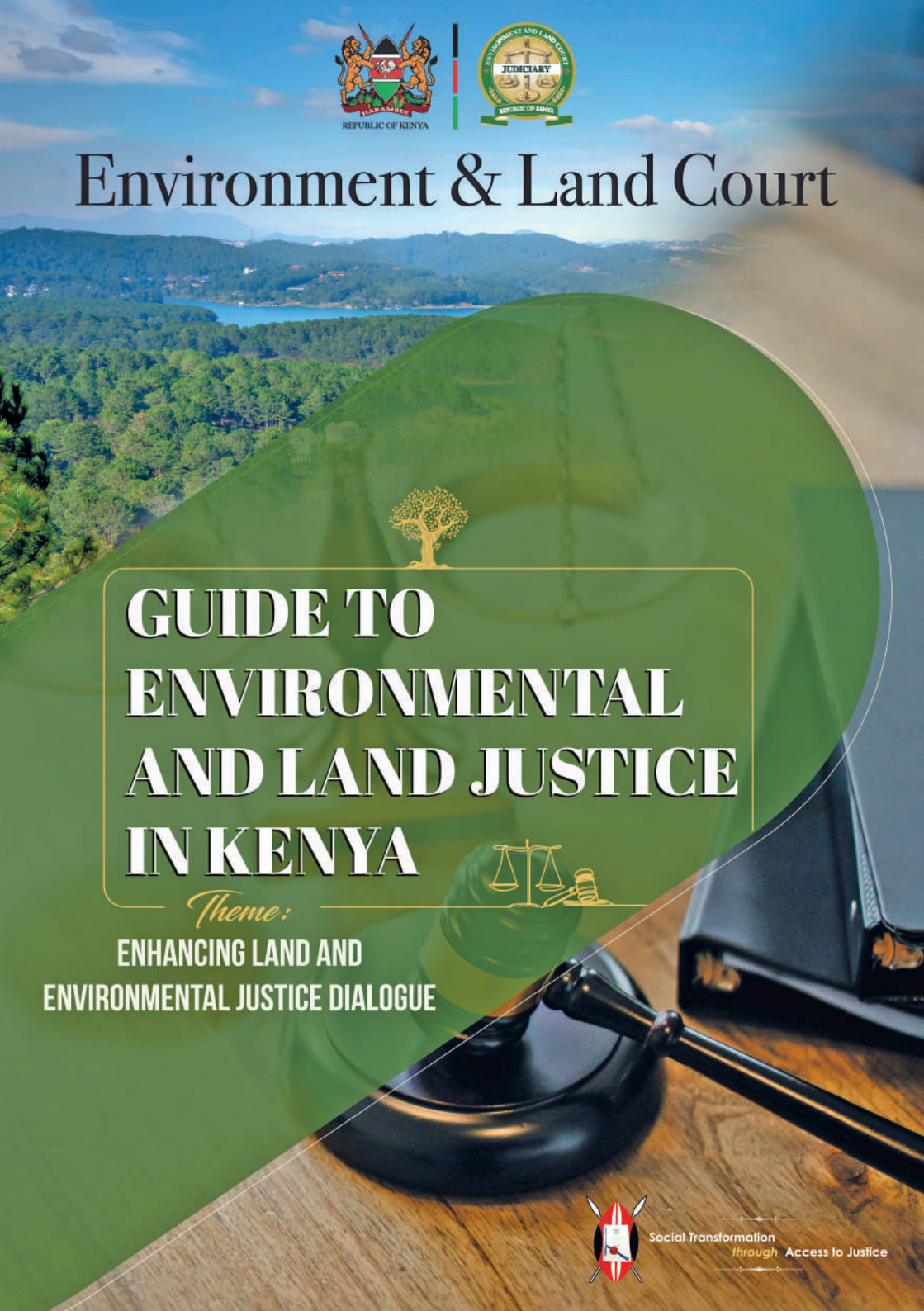




Environment & Land Court



GUIDE TO ENVIRONMENTAL AND LAND JUSTICE IN KENYA

Theme:

ENHANCING LAND AND
ENVIRONMENTAL JUSTICE DIALOGUE



Social Transformation
through Access to Justice

Vision:

**A court of excellence in
the delivery of environmental
and land justice.**

Mission:

**To resolve environment and
land disputes fairly and expeditiously
for peaceful co-existence
and sustainable development.**

A. INTRODUCTION

The Environment and Land Court

1. The Environment and Land Court of Kenya is established to exclusively determine disputes dealing with environment and the use, occupation of and title to land. The court is guided by the Environment and Land Court Act in carrying out its role and duty.
2. The Court has 53 judges stationed across 39 courts countrywide in the following stations: Milimani, Mombasa, Machakos, Bungoma, Malindi, Kisumu, Murang'a, Kerugoya, Embu, Nyeri, Meru, Kitale, Kericho, Nakuru, Kakamega, Eldoret, Kisii, Busia, Makueni, Narok, Kajiado, Migori, Garissa, Chuka, Nyandarua, Thika, Kapsabet, Kwale, Kitui, Nyamira, Siaya, Kilgoris, Vihiga, Narok and Laikipia, Kwale, Isiolo, Homa Bay Nanyuki, Voi and Naivasha. Sub-registries: Garissa, Chuka, Vihiga, Nyandarua Kabarnet and Lodwar.

3. The Court also supervises tribunals and sub-ordinate Courts such as the Rent Restriction Tribunal, Business Premises Rent Tribunal and Magistrate Courts among others.

B. ADMINISTRATIVE OFFICES OF THE ENVIRONMENT AND LAND COURT

The Office of the Presiding Judge of the Environment and Land Court

4. The Court is led by a Presiding Judge who is elected by Environment and Land Court Judges and serves a non-renewable five-year term.

Hon. Justice
Oscar Angote,
MBS was elected
and inaugurated
as the Presiding
Judge of the
Environment and
Land Court in
2022.



The Office of the Registrar of the Environment and Land Court

5. The Registrar of the Environment and Land Court, Hon. Rose Makungu is responsible for the daily administration and the management of the Court. She is supported by Deputy Registrars who are stationed in each Court.



Hon. Rose Makungu

Registrar, Environment and Land Court

C. ADMINISTRATIVE DIVISIONS OF THE COURT

6. The Environment and Planning Division and the Land Division of the Environment and Land Court were established on January 26th 2023 and operationalised on July 1st 2023. The Divisions were formally launched at the Annual Environment and Land Court Judges Conference on July 31st, 2023.

7. The Environment and Planning Division handles disputes concerning the environment and environmental rights including climate change, environment planning, developmental planning, environmental protection, conservation, pollution control, natural resource management, and sustainable development while the Land Division handles land disputes such as property rights, ownership, boundary disputes, trespass, adverse possession etc.

8. In Nairobi the Land Division is led by Hon. Lady Justice Lucy Mbugua while the Environment and Planning Division is led by Hon. Lady Justice Anne Omollo.



Hon. Lady Justice Lucy Mbugua
Presiding Judge, Land Division Milimani



Hon. Lady Justice Anne Omollo
Presiding Judge, Environment and Planning Division Milimani

D. ENVIRONMENT AND LAND COURT WORKING GROUPS

9. The Environment and Land Court adopted the strategy of establishing sector-specific working groups to address long-pending cases. The Working Groups bring together key actors in the land, environment justice sector, with the objective of identifying the core challenges facing dispute resolution and proposing lasting remedies.

10. The working groups established at the ELC are the Land Justice Working Group, the Environment and Planning Working Group and the Alternative Justice Systems Working Group.

11. As of April, 2024, the Nairobi Land Justice Working Group was launched by the Chief Justice on 5th February 2024 while the Nairobi Environment and Planning Working Group shall hold its official launch on 4th June 2024 by the Chief Justice. The Alternative Justice Systems is a work in progress lead by the National Steering Committee on Implementation of Alternative. Justice Policy.



Chief Justice Martha Koome, CS Lands, Public Works, Housing and Urban Development Alice Wahome, Justice Lucy Mbugua and other guests during the commissioning of the Nairobi Land Justice Working Group.

E. COURT USERS COMMITTEE AND BAR-BENCH COMMITTEE

12. In line with Article 159(1) of the Constitution of Kenya 2010 and Section 35 of the Judicial Service Act No.1 of 2011 the Court Users Committees is a platform that brings together actors and users in the justice sector in order to enhance public participation, stakeholder engagement, develop public understanding of court operations, and promote effective justice sector partnerships; for a coordinated, efficient, effective and consultative approach in the administration of justice.
13. The Bar (Advocates) and Bench (Judges) play an important role in the administration of justice. The judges administer the law with the assistance of the lawyers. The lawyers are the officers of the court. The Bar Bench Committees therefore ensures a consultative approach towards resolution of challenges in the administration of justice are addressed.

F. ALTERNATIVE DISPUTE RESOLUTION

14. Under article 159 of the Constitution, it is provided that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall all be promoted as long as they do not contravene the Bill of Rights and are not repugnant to justice or inconsistent with the Constitution or any written law. The Court has therefore embraced:

Court Annexed Mediation - The Court on its own motion and parties themselves may refer cases which are brought to court for litigation to mediation for possible settlement. If successful Mediation Agreements are adopted as an Order of the Court.

Alternative Justice System

Alternative systems aim to provide different forms to dispute resolution mechanism, including traditional approaches, as long as they do not violate the law.

The approach taken in Kenya's alternative justice system policy is flexible and citizen-focused, aiming to address existing justice gaps and meet the needs of the people.

G. HOW TO FILE A CASE AT THE ENVIRONMENT AND LAND COURT

15. The Chief Justice launched e-filing in all courts nationwide and directed that no court should print pleadings and documents from July 1, 2024 as such all Environment and Land Cases are to be filed online through the e-filing portal: <https://efiling.court.go.ke>. Parties are no able to virtually peruse the file including pleadings and orders issued under certificate and download the daily cause list.

1: Filing

During registration of matters, parties shall present either of the following pleadings: Complaint, Judicial Review Application, Miscellaneous Application, Originating Summons, Petition and Memorandum of Appeal. A

party may seek any of the following reliefs: interim or permanent preservation orders including injunctions, prerogative orders, award of damages, compensation, specific performance, restitution, declarations, eviction and/ or costs. A case shall be registered as an Environment and Planning Case or Land Case. This will be determined by the nature of the cause of action and the reliefs sought.

2. Pay Court Fees

The requisite court fees for pleadings is provided through the online filing portal which provides an invoice and payment is done either via mpesa or through the bank.

3. Issuance and Service of Summons

Summons to enter appearance shall be issued and service undertaken in line with Order 5 of the Civil Procedure Rules, 2010. Litigants and advocates shall be notified of the new dates as and when issued by the court. The service of court summons and other court processes will be effected electronically or physically, where applicable.

H. HOW HEARINGS ARE CONDUCTED

All matters are mentioned virtually by the Judges and Judicial Officers while hearings for the main suit depending on circumstances of each may be conducted virtually and/or in open court.

The Court links are shared on the daily cause list at no costs. Any member of the public can seek assistance through the Customer Care Desks at the Registry.



FAQs

I. FREQUENTLY ASKED QUESTIONS

Q: What Cases does the ELC handle?

A: The Environment and Land Court Act handles cases related to environmental planning and protection, land use planning, title, boundaries, natural resources, compulsory land acquisition, land administration, and contracts.

Q: What are the common land disputes that come before the ELC?

A: Common land disputes are in respect to ownership to land. These are cases on adverse possession, double allocation of title, disputes concerning land bought from land buying companies, renewal of government leases etc.

Q: What is a Title Deed?

A: A title deed is an official, legal document which has information about the person who owns property or a piece of land.

There are two types of deeds that one can use to title their property.

- **Freehold Land Title:** A person or organization has ownership of the property for the rest of their lives.
- **Leasehold Land Title:** A type of land ownership in which a property is leased from a freeholder. Owners need to pay to extend the lease which is not obvious that they will grant it.



Q: What is a Letter of allotment?

A: It is a formal document issued by a government authority or a landowner to confirm the allocation of a piece of land to a person or a company. It usually includes important details about the property including its location, size and plot number.

Q: What are the key things to look for when buying land in Kenya?

A: Find out the proposed user of the property whether it is the relevant authorities if the land sits next to a major road or highway, an airport, a river, a national park or reserve, forest, historical site etc. to find out from the authority if the land is theirs or not.

Also inquire from the National and County Governments whether the land in question is available for use, registered and suitable for the purpose for which you want to buy it. Meet the Seller in person and conduct a survey to ascertain your boundary. Finally, Investigate the title e.g. conduct a search at the relevant land registry.

Q: What is adverse possession?

A: This is where a trespasser to land can claim a property after being in occupation for more than 12 years.

Q: How can I prove that I bought land from a land-buying company?

A: A person who seeks to prove that they acquired title procedurally through a land buying company should present a share certificate in the name from the land-buying company; receipts of payments made to the company; the ballot through which they were allocated a plot and a clearance certificate from the company to the Land Registrar informing them that the holder of these documents is the rightful proprietor of the land.

Q: What are the common environment and planning disputes that are filed before the Environment and Land Court?

A: They include cases on pollution and damage to the environment, issuance of planning licenses by relevant authorities and management of natural resources.

Q: Who can a file case on the environment?

A: Any person can file a case at the Environment and Land Case.

Q: Where do I report a noisy construction that is generating noise/ dust or a factory that is generating noise or bad odours in the neighbourhood?

A: To the county government and the National Environment Management Authority (NEMA).

Q: Where do I file a case about development permissions?

A: To the County Executive Committee Member in charge of Land and Environment.

Q: Where do I appeal against a decision or license issued by the National Environment and Management Authority?

A: To the National Environment Tribunal

Contact us

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Environment and Land Court

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Annexures

GAZETTED COURT FEES

Pleadings	Court Fees
<p><u>Liquidated claim</u></p> <ul style="list-style-type: none"> • Plaint or Originating summons or counterclaim • Verifying affidavit • Summons • List of witnesses • List of documents • Statements • Documents • Reply to defence or counterclaim 	Assessed according to the second schedule and subject to minimum of Kes 2000 to maximum Kes 71,000
<p><u>Unliquidated claim</u></p> <ul style="list-style-type: none"> • Plaint or counter claim or originating summons, • verifying affidavit, • summons • List of witnesses • List of documents • Statements • Documents • Reply to defence or counterclaim 	Kes 2000
Memo of appearance	Kes 100
<p>Defence</p> <ul style="list-style-type: none"> • Statement of defence • List of witnesses • List of documents 	Kes 500
<p>Any type of application</p> <ul style="list-style-type: none"> • Application • Affidavits • Orders • Annexures for the first one hundred pages • Application for execution • Warrant of attachment • Warrant of sale • Notice to show cause • Warrant of arrest 	Kes 1500

Pleadings	Court Fees
Response to application <ul style="list-style-type: none"> • Replying affidavits • Submissions • Grounds of opposition • List of authorities • Annexures first 100 pages 	Kes 750
Notice of appeal against judgment or ruling	Kes 450
Registration of arbitration awards <ul style="list-style-type: none"> • Application or letter • Affidavit • Certified copy of the arbitration award • Decree or order 	Kes 10,100
Application under certificate of urgency <ul style="list-style-type: none"> • Certificate of urgency • Affidavits • Applications • Orders • Annexure first 100 pages 	Kes 2250
Substantive notice of motion <ul style="list-style-type: none"> • Statements • Application • Affidavits • Annexure • order 	Kes 10,575
Bill of costs <ul style="list-style-type: none"> • Bill • Certificate of taxation • Bundle of documents 	Kes 500
Response to bill of cost <ul style="list-style-type: none"> • Replying affidavit • Notice of preliminary objection • Grounds of opposition • submissions 	Kes 300

Pleadings	Court Fees
Court collection fees <ul style="list-style-type: none">• Application for execution• Legal deposits	Kes 1500
Any appeal from subordinate courts and tribunals <ul style="list-style-type: none">• Notice of appeal• Memorandum of appeal• Records of appeal	Kes 1550

