

How to Convert Public land to Private Land in Kenya.

Insights from the Land (Conversion of Land) Rules, 2017

Issue 1

The conversion of public land to private ownership is a matter of legal and societal significance, demanding strict adherence to established legal procedures to ensure that resulting title documents are beyond reproach. Generally, public land is land owned and managed by the government for the benefit of the public. The land may be managed for multiple uses such as recreation, mineral extraction, national forests, national parks, and other protected areas. In the Supreme Court decision in **Dina Management Limited v. County Government of Mombasa & 5 others**, the Court examined the origins of the contested parcel and concluded that the transfer from public to private lands was tainted by procedural irregularities, rendering the title invalid.

Against this legal backdrop, the **Land (Conversion of Land) Rules, 2017, [Legal Notice 282/2017]** provide a clear and binding roadmap for the lawful conversion of public land to private ownership. These rules serve not only to prevent misuse and unlawful allocation of public assets, but also to provide clarity and confidence for both Kenyan citizens and foreign investors seeking to engage in land acquisition.

We therefore present a comprehensive overview of the steps for converting public land into private ownership in Kenya.



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Step 1: Identification of Land

The national or county government may, on its own motion or upon a request, identify the land and notify the National Land Commission (NLC), of its intention to convert the land from one category to another pursuant to section 9 of the Land Act. This notification is accompanied with a base map showing the location of the land.

Step 2: Consideration by the National Land Commission (NLC)

The NLC will evaluate the notification to ensure that:

- The land is classified as public land at the time of the intended conversion.
- The intended use aligns with land use planning regulations.
- The land is not part of an ecologically sensitive area.
- The conversion adheres to all relevant legal provisions.
- The land is not controlled land.

The Land Act defines ***controlled land*** means to mean land in Kenya which is—

- within a zone of twenty-five kilometres from the inland national boundary of Kenya;
- within the first and second row from high water mark of the Indian Ocean;
- any other land as may be declared controlled land under any law or statute.

In the Event of a Substantial Transaction, the matter must be referred to:

- The National Assembly (for land under national government jurisdiction).
- The County Assembly (for land under county government jurisdiction).

The NLC can only proceed with the allocation after receiving approval from the relevant assembly.

A substantial transaction refers to any transfer, lease, or licensing of land to a local or foreign investor—either independently or as part of a joint venture—aimed at facilitating agricultural and other approved developments that provide direct economic benefits to Kenya. Such a transaction must contribute to national development through:

- Enhancing food security by integrating technology transfer, fostering innovation, boosting productivity, and ensuring that a designated portion of the produce is sold in local markets.
- Developing infrastructure that offers tangible benefits to the public.



- Establishing strong backward and forward linkages with other industries to stimulate economic growth.
- Generating significant foreign exchange through import substitution and export activities.
- Promoting sustainable agriculture and responsible forest management to address climate change concerns.
- Ensuring adherence to Kenyan laws with no waiver of the country's legal rights, reinforcing the principle that all agreements must prioritize Kenya's national interests

If the conversion is not classified as a substantial transaction, the NLC must conduct public participation.

Step 3: Public Consultation

If the conversion is not classified as a substantial transaction, the NLC must conduct public participation by:

- Placing a notice in at least two national newspapers and one county-wide newspaper.
- Posting a public notice at county and sub-county offices, wards, and other strategic locations.
- Broadcasting the announcement via radio in both official and local languages.
- Announcing the conversion in public gatherings such as barazas and places of worship.

The notice must provide details such as:

- Description of the land under consideration.

- Nature of the conversion and the intended recipient(s) of the land.
- Date, time, and venue of public consultations.
- A 15-day period for public comments and objections.

Step 4: Review of Public Opinion

After receiving feedback from the public, the NLC will:

- Analyze and assess the general public opinion on the conversion.
- Consider any other legal factors affecting the land conversion.
- Determine whether the conversion should be approved based on public input and legal compliance.

Step 5: Approval and Allocation

If the NLC approves the conversion, the land is officially allocated, and the details are recorded in the land register.

Step 6: Geo-referencing and Surveying

Before the conversion is finalized, the NLC requires the national or county government to:

- Plan and survey the land.
- Geo-reference the land for accurate mapping.
- Provide essential services to the land where necessary.

Once these steps are completed, the land conversion process is considered finalized, and the new owner can take full possession under private tenure.

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