Training Manual for Training of Trainers on

Legal Aspects of Agriculture and Food Systems in Kenya.

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Amka Africa Justice Initiative

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A unique feature of the manual is the integration of practical case studies and role plays.

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BACKGROUND

i. Gender Perspectives in Agriculture and Food systems in Kenya

Farming livelihoods in small-scale agriculture in Kenya is permeated by gendered divisions of rights and responsibilities expressed in power asymmetries in access to land, capital and labour. Gender relations shape how agricultural products are produced, and how foods are acquired and consumed, which impacts sustainable land use, food security and nutrition. Although accurate data on labour input in agriculture disaggregated by gender is hard to come by, there is consensus that women play a crucial role in agriculture and food (agrifood) systems contributing significantly to agricultural production, processing and marketing. In this regard, the Food and Agriculture Organisation (FAO) records that in sub-Saharan Africa, 66% of women's employment is in agri-food systems compared with 60% of men.[1] Further, according to the International Labour Organization, women account for approximately 75% of the agricultural labour force in Kenya.[2] Similarly, the Kenya Institute for Public Policy Research and Analysis Special Paper No. 29 of 2019 indicates women are the majority in food crop production at 28% while men major in cash crop production at 34 per cent.[3]

Gender inequalities in agriculture are illustrated by extreme disparities in landownership and tenure, with statistics showing only about 13% of Kenyan women who own agricultural land have a title deed with their name on it (majority titles are in joint ownership with men) and only about 3% own land in their own right.[4] Deeply entrenched gender norms, stereotypes, cultural-social norms and a weak negotiating position disadvantage women's agency in decision and policy making processes. For instance, it is estimated that over 65% of Kenyan land is registered as community land.[5] However, women are minimally represented in institutions (both formal and informal) that make decisions on the use of the community land at local level.[6]

Due to discriminatory gender norms and low levels of education in rural areas, women seldom know their rights to family land, making it easy for men (brothers and spouses) to dispose of family land without consulting them. The situation is exacerbated by the prohibitive costs and logistical complexities of access to justice through courts. While informal/ traditional justice mechanisms are comparably accessible, the officers (chiefs and elders) are often ignorant of the law, hence the systems are mostly heavily influenced by patriarchal social-cultural biases against women. Consequently, land disinheritance by family members (in-laws and siblings) in cahoots with traditional leaders and neighbours strip women of productive resources and livelihoods.[7]

Women who engage in agriculture outside the household level face the same social dynamics. For instance, women earn 18.4 percent less than men with the majority being employed as casual workers in lower-paying jobs.[8] Harassment and violence at the workplace from supervisors and colleagues predominantly affects women. A 2023 expose by BBC on sexual harassment in Kenyan tea farms is a good example of the invisibility of the harassment of women working in agriculture.[9]

1 Food and Agriculture Organisation of the United Nations 'The Status of Women in Agrifood Systems <https://openknowledge.fao.org/server/api/core/bitstreams/cf566816-e3c6-42a3-be37-77f86e4050cf/content#:~:text=In%20sub%2DSaharan%20Africa%2C%2066,are%20in%20the%20labour%20force> accessed 13 March 2025

2 Evelyne Kihiu and Bonface Munene 'Women's Access to Agricultural Finance in Kenya' (KIPPRA Policy Brief No. 03/2020-2021) <https://repository.kippra.or.ke/server/api/core/bitstreams/08e84182-84a5-4c29-a324-823dd8459387/content> accessed 23 June 2025

3 Ministry of Agriculture and Livestock Development 'Agricultural Soil Management Policy 2023' <https://kilimo.go.ke/wp-content/uploads/2024/10/Agricultural-Soil-Management-Policy-2023.pdf > accessed 13 March 2025

4 Kenya National Bureau of Statistics 'Demographic and Health Survey' (2022) 78 <https://dhsprogram.com/pubs/pdf/PR143/PR143.pdf> accessed 13 March 2025

5 Land tenure where communities hold, use and transact lands under their customary norms, and whose lands remain un-surveyed and untitled. Jarso Mokku 'The Unjust Valuation of Pastoralists' Land in Kenya' *The Elephant* (2 October 2021) <https://www.theelephant.info/analysis/2021/10/02/the-unjust-valuation-of-pastoralists-land-in-kenya/#:~:text=Kenya's%20constitution%20classifies%20all%20land,the%20northern%20drylands%20of%20Kenya.> accessed 13 March 2025

6 Moraa Obiria 'Women's Role on Land Committees Reduced to Decoration' *Daily Nation* (15 April 2024) <https://nation.africa/kenya/news/gender/women-s-role-on-land-committees-reduced-to-decoration--4590966> accessed 13 May 2025

7 Kaori Izumi 'Gender-based Violence and Property Grabbing in Africa: a Denial of Women's Liberty and Security' 15 (2007) *Gender & Development* 12 <https://www.tandfonline.com/doi/epdf/10.1080/13552070601178823?needAccess=true> accessed 13 March 2025

8 Food and Agriculture Organisation of the United Nations (n 1)

9 BBC News 'True Cost of Our Tea: Sexual Abuse on Kenyan Tea Farms Revealed' (20 February 2023) <https://www.bbc.com/news/uk-64662056> accessed 13 March 2025

Further, the majority of women who lease land for agribusiness lack capacity to engage in legally binding leasehold agreements and are susceptible to losing their investments to unscrupulous landowners. Lack of information on legal processes worsens such discrimination as oftentimes the lease terms are oral and unregistered. The normalisation of gender-based violence and other norms affecting women's livelihoods in agrifood systems remains a big problem.

Ownership of productive resources such as land enables access to credit as the resources are used as credit collateral. Membership in agricultural productivity related groups such as cooperative societies and contract farming schemes is also based on resource ownership. As such, few women receive income derived from the sale of agricultural products, only 6% of women use land as a collateral when seeking agricultural credit.[10] In this regard FAO indicates that women earn 82 cents for every dollar earned by men.[11] Women on the other hand put in unpaid labour in the agri-food processes with little say in income distribution and use of production resources. For these reasons, household conflicts and disputes are at peak during the payment season in tea growing areas among others.[12]

Adverse effects of climate change also fuel socio-cultural disputes in Kenya. Disasters such as drought, COVID-19 pandemic continue to increase the gap between women's and men's food insecurity and resilience, with a significantly higher impact among rural women. The increased climate change tension engenders tension and conflicts. The phenomenon is exacerbated by the onset of commercial carbon credit projects that are established on communally owned land. A case in point is the conflict on the Northern Kenya Rangelands Carbon Project estimated to be the world's largest soil-carbon plan established on 4.7 million acres of land communally owned by pastoralist groups.[13]

Scientific evidence confirms that access to justice, legal empowerment and gender equality are significant conditions for sustainable development and has a positive impact on agricultural production and food security, hence the need for this manual.

ii. Why this Manual and Methodology

Although there exist training materials on land rights, this manual provides a comprehensive overview of legal aspects that have a wider bearing on agrifood systems. The Manual presents a unique and golden opportunity to refocus and expand our understanding and efforts on addressing agrifood legal challenges on and beyond land ownership. As evidenced by the data discussed above, gender inequality remains a concern to the agrifood transformation mission. As such, this manual offers a practical opportunity for stakeholders to appreciate and address various legal issues of agrifood systems. The manual will empower trainees with knowledge and skills to address identified challenges and enable them to promote favourable policy and gender inclusive leadership. The manual is a wholesome legal information document for paralegal training.

iii. Training Objectives

The purpose of this handbook is to equip stakeholders, especially women and youth with the legal knowledge, skills, and tools to enable them effectively to participate in transforming agri-food systems in Kenya. The manual is designed in a practical and interactive manner to support both the trainer and the trainee while reducing legal information into simpler terms. It is also an excellent reference guide post-training.

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10 Kenya Institute for Public Policy Research and Analysis (KIPPRA) 'Women's Access to Agricultural Finance in Kenya: Baseline Report 2019' *SP No.29/2019* xi <https://kippra.or.ke/wp-content/uploads/2021/02/Women-Access-to-Agricultural_compressed.pdf> accessed 23 June 2025

11 Food and Agriculture Organisation of the United Nations (n 1)

12 To understand this phenomenon, see Aggrey Omboki & Geoffrey Rono 'Agony for Wives of Tea Farmers as Bonuses Arrive' *Daily Nation* (22 October 2016) <https://nation.africa/kenya/counties/agony-for-wives-of-tea-farmers-as-bonuses-arrive-319532> accessed 14 March 2025

13 The community challenged the unlawful establishment of wildlife conservancies on unregistered community land without consent and public participation. The Court found that the conservancies were illegally established, and the county government and ministry of land violated their constitutional mandate by failing to facilitate the registration of the community land. Osman & 164 others (Suing on Their Behalf and Behalf of Residents of Merti Sub-County, Chari, and Cherab Wards in Isiolo County) v Northern Rangelands Trust & 8 others (Petition E006 of 2021) [2025] KEELC 99 (KLR) (24 January 2025)

More specifically, this training manual will:

- Provide the trainees with a proper understanding of the legal framework and processes relating to agrifood systems.
- Empower trainers to educate stakeholders in their communities.
- Provide a sustainable, long-term use guide on legal information in agri-food systems.
- Provide a unified approach in training, ensuring all trainees receive the same information, regardless of the trainer or training session.

iv. Structure of the Manual

The handbook is divided into 14 modules. Module one is an introduction to law and human rights. Module 2 covers land law and explains classifications of land ownership and the different ways through which one can acquire land. Module 3 focuses on marriage laws and explains types of marriages in Kenya, the process of registration, dissolution of marriage and distribution of matrimonial property. Module 4 contains information on succession laws including the process of inheritance intestate (where there is no will) and testate (where there is a will). Module 5 covers labour laws including the rights of an employee, termination of employment, work injuries and occupational safety and dispute resolution. Module 6 addresses sexual harassment, while module 7 describes Intellectual Property (IP) rights recognized and protected in Kenya and how to register agricultural invention IPs. Module 8 provides information on how to claim compensation when wildlife causes death, personal injury and damage to crops or livestock. Module 9 discusses climate smart agriculture with a focus on carbon credits. It explains what carbon credits are, how farmers can earn from carbon credits, understand and negotiate carbon credit agreements fairly. Module 10 highlights types of co-operative societies, how to register them, amend and create society by-laws. Module 11 guides on financing explaining the different ways through which one can obtain funding for agrifood projects. Module 12 explains the different business models recognized in Kenya. Module 13 explains both formal and informal dispute resolution mechanisms. Module 14 concludes the handbook with a guide on participatory law-making.

v. Guide to Trainers

- **Preparation is paramount, study the manual and internalise the lessons***:* To understand and meet the training objectives for each model, study the manual and use it to prepare your own training notes/ PowerPoint slides. Incorporate humour, practical examples from the community life, and recent media reports on the issues
- **Contextualize the lessons based on the trainees' realities and expectations***:* An effective trainer should establish the expectations and realities of the trainees so as to contextualize the lesson/s. This helps to make the lessons practical and interactive, thus maximizing the learning outcomes. This participant-centred approach involves a practical orientation of the trainees that will assist them to relate the concepts learnt with the ongoings around them.
- **Understand your trainees***:* Do a background search on the trainees' social-cultural, economic, political aspects. This is especially necessary if the trainees are a homogenous group. Such trainee groups require appropriate practical examples that respect the values and beliefs of the trainees. During the training, familiarise yourself with basic demographic information about each participant. Such background information would make it easier for the trainer to contextualize and pitch the lessons on modern slavery effectively. Such details may include the name, age, marital status, and occupation.
- **Participatory training***:* During the training, engage the trainees extensively. Ask them open-ended questions at the start of each sub-topic. Allow the trainees to interject for clarifications and or ask questions at any stage of the lesson, including during and after every session.

- **Reserve time for practical case studies***:* Effective adult learning relies heavily on experiential learning including visual objects and physical activities. Therefore, the trainer should reserve adequate time for case studies and suggested videos and activities. The trainer may also conduct role plays to put the trainees in the position of the subjects and characters of the training for better understanding and decision-making.
- **Appreciate feedback***:* Provide space for feedback at the end of each subtopic or at the end of a module. Allow trainees to express themselves freely i.e. to state what stood out for them during the lesson, key learning points or takeaways, and what did not work for them.
- **Consult if in doubt or for clarity:** We have tried to simplify complex legal terms and processes but if you develop doubts about the meaning of something or feel the need for deeper understanding of a concept during the preparation of the lessons, do not hesitate to consult your peers, Amka Africa Justice Initiative or any other lawyer. Always remember no one person knows everything.
- **Be humble!** Like any learning, adult learning presents many learning opportunities for trainers. Be humble, accept to learn.

vi. Training Methods

We recognise the effectiveness of experiential learning and knowledge sharing in adult learning. This manual discourages monologue lecturers and instead, recommends learner-centred training methods across all the modules. Question and answer sessions guided by the facilitator are good for brainstorming and generating a range of ideas. Through group work activities, trainees can explore concepts in more detail. Role plays give trainees a chance to joyfully practise and demonstrate what they have learnt. In summary, the learning methods recommended for training include: -

	Formal Presentations/Facilitation,
	Discussions And Sharing Of Experiences,
	Group Activities, Presentations, And Discussions,
	Videos/ Youtube Clips,
	Brainstorming,
	Case Studies,
	Role Plays,
	Games,
	Quizzes,
	Take Homes (Recommended Movies And Books)

1. MODULE ONE: INTRODUCTION TO LAW

1.0. Learning Objectives

At the end of this module trainees will be able to: -

a. Define the sources of law in Kenya.

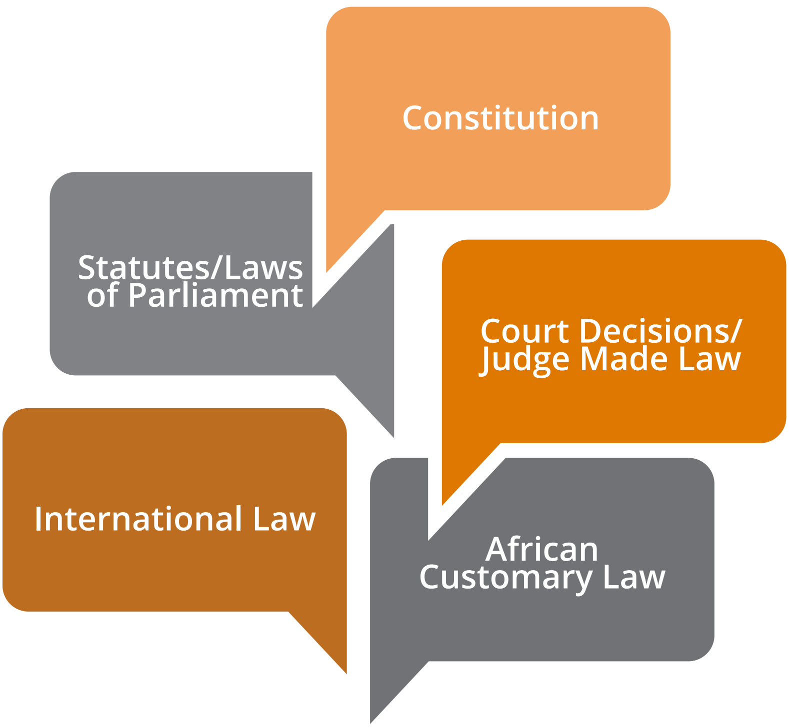
b. Define human rights.

c. Appreciate the human rights provided for in the Constitution of Kenya

1.1. Introduction to Law

Generally, law is any set of rules that guide the conduct of individuals/groups in a given set up and is enforced by those in authority.

1.2. Sources of Law in Kenya



- The Constitution is the most fundamental law of the country. All other sources of law must align with the constitution. (Article 2 of the Constitution).

- Statutes are the laws passed by Parliament, the National Assembly, the Senate and County

Assemblies. For instance, the Marriage Act, that addresses issues of marriage and divorce.

- African customary law is applicable in civil disputes only where one or more of the parties to the dispute is subject to it or affected by it. Even in civil disputes, customary laws are applicable only to the extent that they are not inconsistent with the Constitution or statute law. For instance, while some customs allow female circumcision, they are prohibited from practising it because it is against human dignity protected by the Constitution and the statute, Prohibition of Female Genital Mutilation Act, 2011.

- Court decisions are judge made law derived from judgments made by superior courts, that is High court, Court of Appeal and Supreme Court. The decision of the highest court is bidding on lower courts. For instance, the High Court and Court of Appeal follows the judgments of the Supreme Court, while the High Court follows the judgements of the Court of Appeal and the magistrates court follows the judgements of the High Court.

- International law comprises treaties or conventions signed (ratified) by Kenya. Article 2 (5,6) of the Constitution.

1.3. Human Rights

Human rights are entitlements which belong to all human beings as a consequence of being human. Therefore, human rights are those standards without which people cannot live with dignity. Human rights are the same for all human beings regardless of sex, gender, race, religion, political or other opinion, national or social origin or other status.

Human rights are:

- Universal-they are enjoyed by all people, all the time, all rights, everywhere, forever.
- Inalienable-they cannot be taken away by anyone.
- Indivisible- all rights are equally important and cannot be separated into parts.
- Interdependent-they are interrelated; the realisation of one right contributes to the realization of another.

Human Rights in the Constitution of Kenya

Article	Right/Freedom Protected
Article 22	*Everyone's right to file a case in court on behalf of the public i.e. environmental and community/public land issues*
Article 26	*Right to life*
Article 27	*Equality of all persons and freedom from discrimination*
Article 28	*Inherent human dignity*
Article 29	*The right to freedom and security of the person*
Article 30	*Right not to be held in slavery, servitude / perform forced labour*
Article 31	*Right to privacy*
Article 32	*The right to freedom of conscience, religion, thought, belief*
Article 33	*The right to freedom of expression*
Article 34	*Freedom of the media.*
Article 35	*The right to Access to information*
Article 36	*The right to freedom of association*
Article 37	*The right to assembly, demonstration, picketing and petition*
Article 38	*Political rights (vote, form or join political party)*

Article 39	*The right to freedom of movement*
Article 40	*Right to property (Land, intellectual property)*
Article 41	*The right to fair labour practices*
Article 42	*The right to a clean and healthy environment*
Article 43	*Economic and social rights; health, housing, food, clean and safe water, social security and education*
Article 44	*The right to use the language, and to participate in the cultural life*
Article 45	*The right to family: right to marry a person of the opposite sex*
Article 46	*Consumer rights*
Article 47	*The right to fair administrative action*
Article 48	*The right to access to justice*
Article 49	*Rights of arrested persons*
Article 50	*Right to fair hearing*
Article 51	*Rights of persons detained, held in custody or imprisoned*
Article 53	*Rights of children*
Article 54	*Rights persons with disabilities*
Article 55	*Rights of the youths*
Article 56	*The rights of minorities and marginalised groups*
Article 57	*Rights of older persons*

Article 27: Equality and Freedom from Discrimination

Article 27 guarantees all persons equality before the law, and equal protection of the law. It also prohibits any discrimination under the law on the grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. *For instance, courts have said that denying daughters inheritance on the basis of their gender is a violation of this right*.

Article 28: Right to human dignity

This right means that every person is inherently valuable and deserves respect regardless of their background or circumstances. This is the foundation of all other human rights. *For instance, courts have held that insisting on wife inheritance as a precondition for a woman to deceased husband's land is a violation of their human dignity.*

Article 40: Right to property

This is the right to own property either individually or in association with others of any description and in any part of Kenya. This does not extend to public land which is owned by the government. Communities have rights to communally owned land and even the government cannot take it away without compensation.

For instance, the African Commission found that the government's actions of destroying the natural habitat and evicting Endoroi people from their ancestral land for development violated their right to property.

Article 42: Right to a clean and healthy environment

This is the right to clean air, safe climate, safe and sufficient water, healthy and sustainable food, non-toxic environments for living and healthy biodiversity and ecosystems. *For instance, companies and individuals that establish industries that emit chemicals into the air or into the land and water violate this right.*

Article 47: Right to fair administrative action

Everyone is entitled to decisions and actions by government or public bodies that are expeditious, efficient, lawful, reasonable and procedurally fair. *For example, this right is violated when a chief makes a decision that promotes cultural practices that disinherit women such as refusing to issue the women (chief's) letters for filing a succession case, and or agreeing with elders to use customary law instead of the Constitution and the Law of Succession*.

2. MODULE TWO: LAND RIGHTS

2.0. Learning Objectives

At the end of this module trainees will be able to: -

a.) Classify land ownership

b.) Understand registration of community land

c.) Specify the different ways one can acquire agricultural land

d.) Understand contract farming

e.) Appreciate the process of subdivision of agricultural land

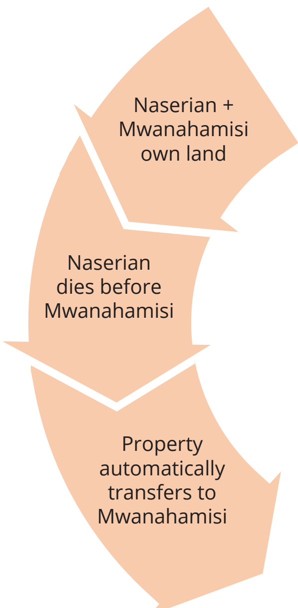
2.1. Land Laws

Land laws govern the ways through which individuals can own, possess and transfer interests in land to each other. Land laws in Kenya comprise of; the Constitution of Kenya 2010, Land Act CAP 280, Land Registration Act CAP 300, Crops Act CAP 318, Community Land Act CAP 287, Law of Contract Act CAP 23, Land Control Act CAP 302, National Land Commission Act CAP 281 and Limitation of Actions Act CAP 22.

2.2. Classification of Land Ownership

a.) Private Land

This is where land is owned by individuals either in person or through corporate bodies like companies. Land can be owned either by one person or in association with others. Co-ownership is where land is owned by two or more persons. This form of ownership can exist in two forms: -



i.) Joint Tenancy

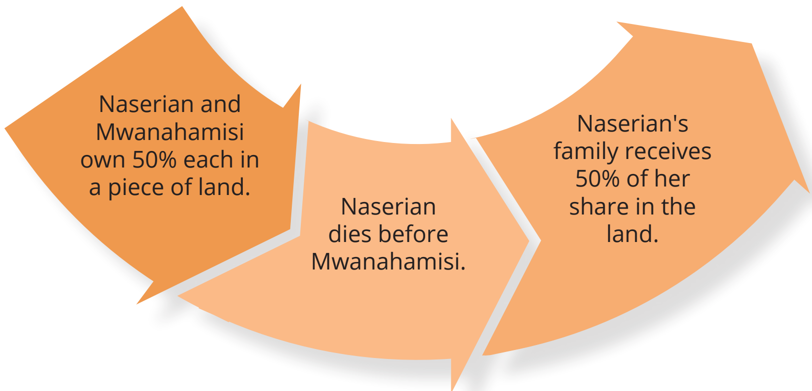
This is where two or more persons own land (one title deed) together and have an undivided or unseparated interest in land. The rights of the owners to the land are considered one and indivisible. Upon the death of either of the owners, the land is automatically transferred to the surviving owner through the doctrine of survivorship. Property owned through joint tenancy cannot be passed down to heirs in a will.

For example, if Naserian and Mwanahamisi own a piece of land as joint tenants, both the husband and wife have equal and indivisible right to the land. If Naserian dies before Mwanahamisi, then the land automatically becomes the property of Mwanahamisi due to the doctrine of survivorship. The relatives of Naserian will not have any right to inherit Naserian's interests in the land. While Joint tenancy is advisable for married couples, it is discouraged in business relationships.

ii.) Tenancy in Common

This is where two or more people own land (one title deed) in a manner that each person holds an individual, undivided interest in the property and each of them has the right to transfer their respective interests. Here, although they are jointly registered in one title deed, it is possible to separate each owners' rights to the property. As a result, the principle of survivorship does not apply in the event of the death of either of the owners.

For instance, in the earlier example of Naserian and Mwanahamisi, when Naserian dies ahead of Mwanahamisi, her interests in the land would not become the property of Mwanahamisi. Naserian's heirs have a right to claim her interest in the land.



b.) Public Land

This is land which belongs to the public and is held by the government on behalf of the public. Examples include: all minerals, forests, all roads, all rivers and lakes.

c.) Community Land

Community land is regulated by the Community Land Act. This is land which is owned by communities on the basis of their ethnicity, culture or similar community of interests. Examples include community forests such as the Mau Forest as owned by the Ogiek community and ancestral lands and lands traditionally owned by hunter-gatherer communities. It is estimated that 65% of Kenyan land is community land.

2.3. Management of Community Lands

Community land is owned by all members of the community. It is registered and managed through the community land management committees. A management committee is formed through election by members of a particular community. The members are elected during the process leading to registration of the community land. Unregistered community land is held by the County Government in trust of the community.

The procedure for registration of community land is as follows: -

Members of the community inform the registrar of their intention to register their community land.

The community land registrar is supposed to call a meeting for all members of the community. A meeting of all members of the community is known as the community assembly.

During the meeting of the community assembly, the members elect members of the community land management committee. The minimum number of members that can be elected is 7 whereas the maximum number is supposed to be 15 members. The rule that not more than 2/3 of the members of the management committee should be applied in ensuring that both genders are well represented. (Article 27 (8) Constitution).

Once they are elected, the members of the community land management committee are required to do the following: -

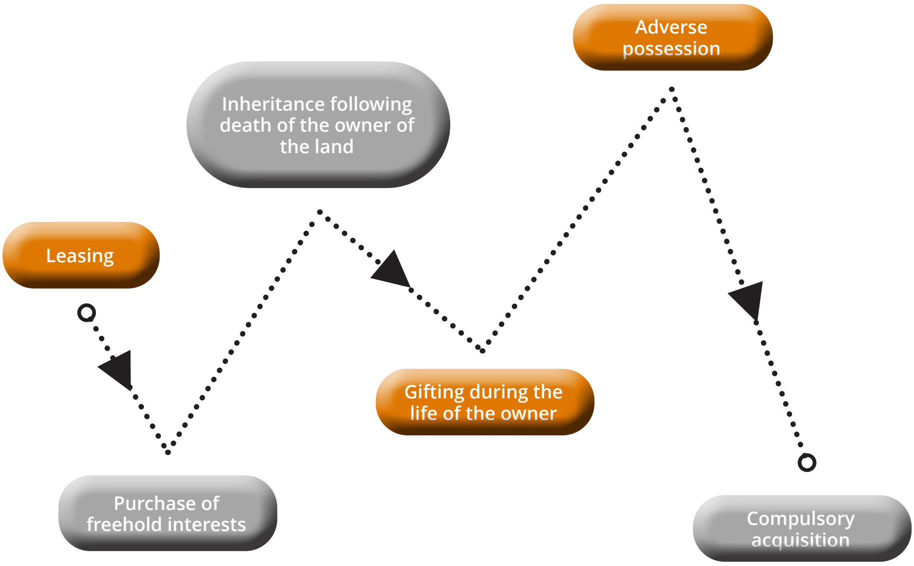
a) come up with the name of the community;

b) Submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

The registrar then registers the community land after verifying the information shared by the community land management committee is accurate.

After registration of the community land, the registrar issues a certificate of title as evidence of registration and proprietorship.

2.4. Ways of Acquiring Land in Kenya



i. Leaseholds (From Government)

Leasehold is a system of land ownership where the government leases land to Kenyan residents often for a period of 99 years. The holders of the land are required to pay annual land rates or rent for the leaseholds. Leasehold is governed by the Land Act (2012) and the Land Registration Act (2012), which provides details on the procedures for lease agreements and their registration. All the land in cities and towns (plots and homes) are registered under this system.

One is required to apply for renewal of the lease upon expiry. While the holder of a leasehold has the first right upon expiry, it is the duty of the lease holder to apply for renewal of the lease before the expiry otherwise the land reverts back to the government which is at liberty to allocate the land to someone else. This means that even if a leaseholder continues to occupy the land and pay rent or rates after the lease expires, they do not automatically have the right to continued possession or renewal.

In the case of Harcharan Singh Sehmi & Another v Tarabana Company Limited & 5 Others (Petition No. E033 of 2023) the Supreme Court emphasised that: before expiry of a lease, the leaseholder must formally apply for renewal and registration and that maintaining accurate records of communications with the authorities on the renewal process and continued payment of land rates/rent after expiry of the leasehold does not guarantee ownership; upon expiry of the lease, the land reverts back to the government.

ii. Agricultural Land Leasing (From Private Land owners)

Leasing is where the landowner (lessor) grants a tenant (lessee) the right to use their land for a specific period of time in exchange of regular rent payments. The following is important when leasing land: -

a. **Agreement in writing**- it is important to have the agreement reduced into writing.

b. **Due diligence**- the tenant should investigate and thoroughly check the land's size and ownership through the documents and professional surveyors.

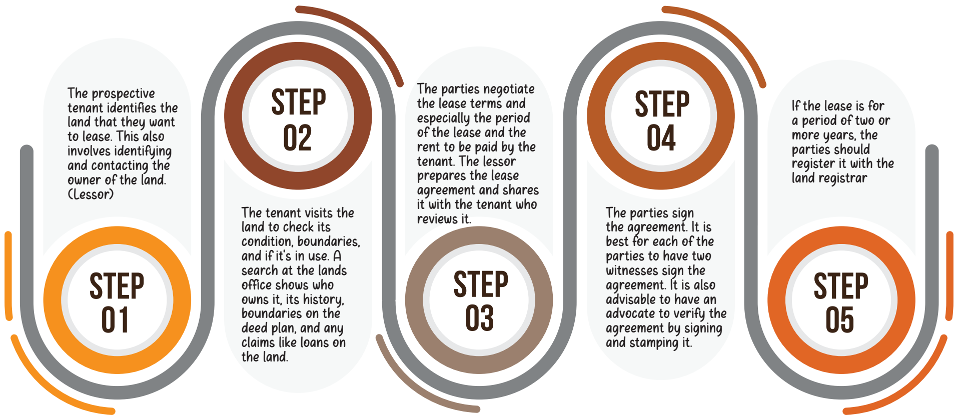
c. **Rent**- parties should agree on how much rent is payable and included in the agreement.

d. **Period of payment**- parties should agree on the periods over which the rent would be payable ex; monthly, seasonally, quarterly or annually.

e. **Period of the lease**- parties should agree on the start and end dates for the lease agreement.

f. **Witnesses**- the lease agreement should be witnessed by a lawyer/advocate/ commissioner of oaths, or 2 independent witnesses.

g. **Registration-** any lease for a period 2 years or more should be registered with the nearest lands registry.



iii. Purchase of Agricultural Land (Freehold)

This where a buyer (purchaser) acquires complete and full ownership of land by paying the seller (vendor) who legally transfers the ownership. It is important to note the following when purchasing agricultural land: -

a. **Agreement in writing**- it is important to have the agreement reduced into writing.

b. **Due diligence**- the buyer should investigate and thoroughly check the land's size and ownership.

c. **Consent**- the seller must obtain the land control board's consent to sell the land. In case the property is matrimonial, the spouse's consent must also be obtained.

d. **Purchase price**- parties should agree on the purchase price.

e. **Period of payment**- parties should agree on the period when the buyer should complete paying the purchase price. This is known as the completion period. This also determines when the seller is going to hand over the title and transfer documents to the buyer.

f. **Witnesses**- the lease agreement should be witnessed by a lawyer/advocate/ commissioner of oaths and or 2 independent witnesses.

g. **Transfer**- both parties must sign the transfer to enable the title to be processed in the name of the buyer.

Agricultural Land Purchase Process

1 *The prospective buyer identifies the land that they want to buy. This also involves identifying and contacting the owner of the land (sellor)*

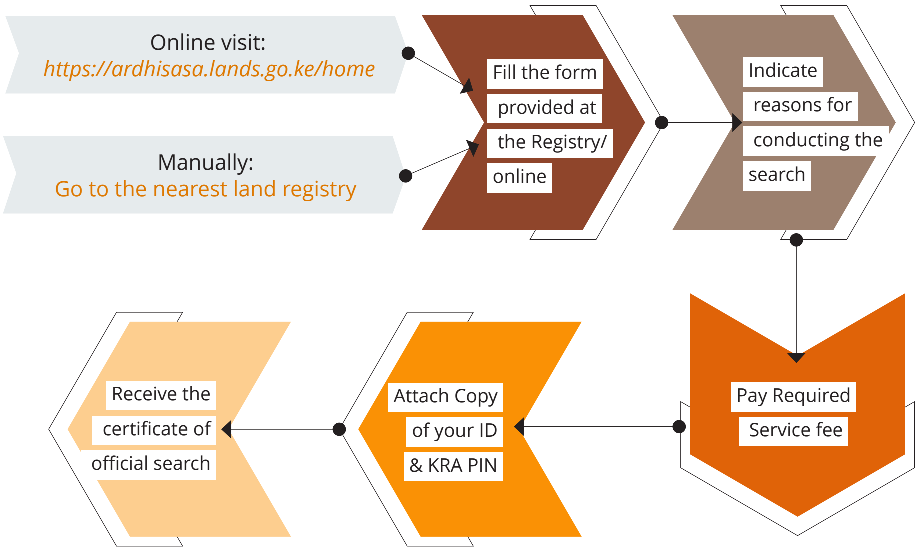
2 *The buyer conducts due diligence by visiting the land and conducting a search at the lands registry. The visit enables the buyer to establish the physical status of the land; boundaries and whether the land is already occupied by another or in use. The official search enables the buyer identify the owner of the land, the boundaries on the deed plan, the history of the land and whether there are other interest such as charges registered on the land.*

3 *The seller/parties obtain the necessary consents; land control board consent and spousal consent. Note: failure obtain these consents can nullify the transaction*

4 *The parties negotiate the purchase terms and especially the purchase price and completion period. The seller prepares the sale agreement and shares it with the buyer who reviews it. Once the parties agree they sign the agreement. At this point, the buyer can pay 10% of the purchase price. It is best for each party to have two witnesses and own advocate. Advocates also signs the agreement to verify the parties' signatures.*

5 *Once the buyer completes payment, the seller hands over completiuon documents to the buyer for transfer and registration. These include; the original title deed, the land rates and rent clearance certificate, signed transfer, land control board consent, marriage certificate, written spousal consent, seller's copy of national identity card and passport photographs. The buyer then uses these documents to register the transfer and obtain the Title Deed in their name. Before the Title Deed is processed the buyer pays stamp duty.*

How to Conduct an Official Search



Note: *A certificate of official search reveals: the size of the land, name of the owner, when the land was registered in the owner's name, the previous owners, whether the land has been used as security for a loan, the value of the loan and the bank which provided the loan, and whether there is any caution or caveat placed on the land.*

iv. Adverse Possession

Adverse possession happens where one gains title to land by occupying the land without opposition by the titled owner for a period of 12 years. The justification for this is that since the owner of the land has failed to protect his/her land against the adverse possessor who has taken possession for 12 years, the adverse possessor is therefore recognised as the owner.

The adverse possessor must apply to the court for orders to grant them title to the property by proving that they occupied the land openly (for the entire world to see) continuously without interruption for a period of 12 years.

v. Compulsory Acquisition

This is where the government acquires land from a private owner for public purposes such as to construct a railway or road. Compulsory acquisition entails; pre-inquiry, inquiry, post-inquiry, possession and vesting.

Compulsory Acquisition

1

1. The government body (eg the Kenyan Urban Roads Authority) seeking to acquire the land submits a request to the National Land Commission.
2. NLC holds a verification meeting with the acquiring body. The body reveals the affected parcels of land, their owners and the Resettlement Action Plan.
3. The NLC publishes a notice of intent to acquire the land in question in the Kenya Gazette and delivers a copy of the notice to the land registrar and persons having an interest in the land.

2

1. 30 days after the notice of intent, the NLC sets a date of inquiry. It serves a notice to all affected persons.
2. The persons affected deliver their written claims to the NLC before the date of the inquiry.
3. The NLC holds a hearing whereby they listen to all the concerns of the persons affected.

3

1. NLC makes a decision on the compensation to be given to each of the people affected.
2. In some cases, NLC may agree that a person receives an alternative piece of land instead of monetary compensation.
3. Once the persons affected accept the award, NLC promptly pays the interested persons. If there is a dispute, NLC puts the money into a special compensation account.

4

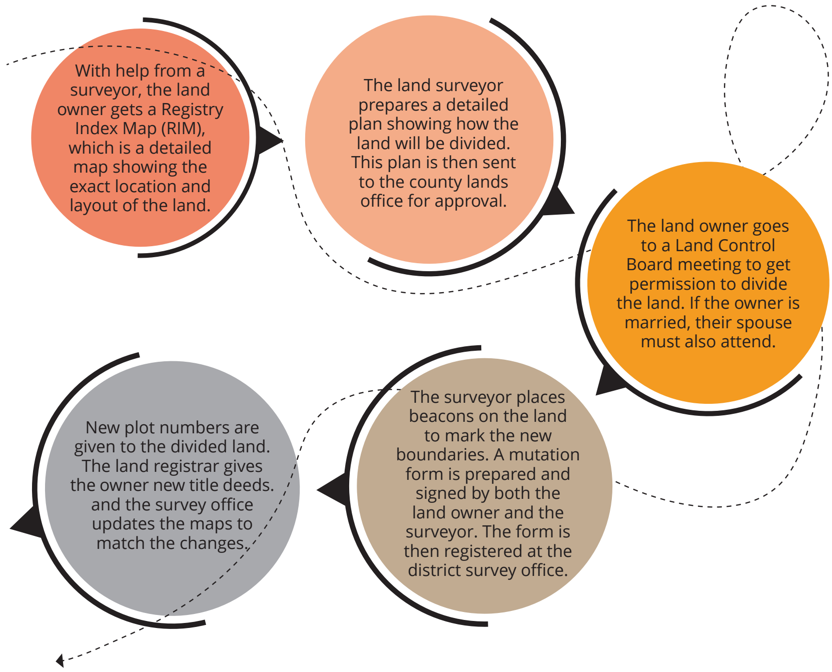
1. NLC notifies the persons affected of the date of possession. The government body that was acquiring the property then take: possession. NLC informs the registrar when possession has been taken.
2. The registered owners of the land deliver the title documents to the registrar so that changes can be made accordingly.
3. Any disputes arising should be referred to the Land Acquisition Tribunal. Appeals from the Tribunal should be filed at the Environment and Land Court.

vi. Acquiring Land as a Gift

This is where the landowner (donor) gives the land to another person (donee) freely i.e. they do not pay a purchase price. For example, parents can gift their children land and then register it in the children's name when the parent is alive. A gift of land must be made in writing, signed by the donor and ownership must be transferred through registration with the land registrar.

2.5. Subdivision of Agricultural Land

This is the process of dividing land into two or more parcels. This may be for purposes of inheritance, resale or easy development. The process of subdividing land is as follows: -



2.6. Contract Farming

Contract farming is regulated by the Crops Act and the Crops (Food Crops) (Amendment) Regulations, 2024. It is where a farmer enters into an agreement with a buyer who may be a growers' association, a large-scale grower, a marketing agent, an exporter, an importer, a processor and or a transporter; to produce and supply certain agricultural products at a later date and a certain price. The buyer participates in deciding how, where and when a product is produced and harvested. The farmer commits to provide a specific commodity in quantities and quality standards which are determined by the purchaser, while the buyer commits to support the farmer's production and to purchase the commodity.[14]

14 Aminou Arouna, Jeffrey D. Michler, Jourdain C. Lokossou, "Contract farming and rural transformation: Evidence from a field experiment in Benin", in *Journal of Development Economics*, Volume 151, June 2021.

Basic elements of an agreement for contract farming

It is important to have agreements on contract farming reduced into writing. The farmer must review and understand the terms of the contract before signing. This enables the farmer to protect their interests where a dispute arises such as on the income payable to the farmer and yield produced. The terms of the contract may include the following: -

The quantity of the produce to be supplied the buyer, and what happens if there is a higher or lower yield of the crop.	*The quality of the produce to be supplied. The company's specific requirements on inputs or practices to be applied.*	*The amount of income the company is committed to pay the farmer, and whether and how that would be affected by changes in the market, higher or lower yield of produce.*
Who bears the risk when there is natural disaster beyond the farmer's control such as disease epidemics, drought, floods among others.	*What happen in the event of non-performance. For instance, what happens if the buyer fails to pay the farmer as agreed, or what happens if the farmer fails to follow the practices agreed upon.*	*When and how the parties can terminate the contract before its conclusion, and the consequences.*
The disputes resolution to be resolved? Will agricultural extesnion officers be involved? Will the matter go directly to court?		

Note: *Rule 5 of the Crops (Food Crops) (Amendment) Regulations, 2024 requires the grower (farmer) and the buyer (growers' association, a large-scale grower, a marketing agent, an exporter, an importer, a processor, a transporter) to enter into a written agreement detailing the above elements. The buyer is also required to register the agreement (for contract faming) with the Agriculture and Food Authority and the County Executive Committee Member in charge of matters relating to agriculture within a specific county. In Rule 6, it is mandatory for the buyer (listed above) to register with the Agriculture and Food Authority. Failure to register is an offence punishable by a fine of five million (5 000,000) shillings, or to imprisonment for a period of three years, or to both.*

To safeguard their interests, it is important that farmers verify the registration status of the buyer before they enter into a contract farming, and thereafter ensure the agreement is registered with the Agriculture and Food Authority and the County Executive Committee Member in charge of agriculture.

Trainees to watch YouTube Video of how Kenyan farmers lost millions in rumex farming scam. https://www.youtube.com/watch?v=Gbj29GDuR3E

2.7. Assessment

Divide the trainees into 4 groups to discuss the following case studies: -

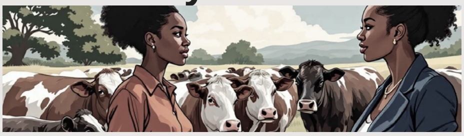
Case Study 1

Naliaka, a 25 years old lady is an agricultural economy graduate from JKUAT university. She has saved Kenya Shillings One Million and would like to invest it by buying agricultural land in her hometown in Kakamega. She has come to you as the paralegal agricultural extension officer to advise her. Advise Naliaka on: -

a. The different classifications of land ownership.

b. The process that she should follow to buy the land.

Case Study 2

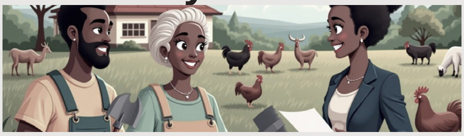


Ava chose to venture into livestock farming after concluding a diploma in business management. She has been keeping 5 Friesian cows on a small 50 by 100 piece of land. Her neighbour Duncan has a similar piece of land but is not using it currently. Ava has heard that her neighbour is looking for someone to lease the land for three years as he will be leaving the country. Ava thinks this is the perfect opportunity to increase her animal feeds and is considering leasing Duncan's for planting Napier grass. Advise Ava on the following: -

a. What land leasing is.

b. The process that she should follow to lease the land.

Case Study 3



Mr and Mrs Mutuma own prime three-acre land in Meru. They have constructed a three-bedroom bungalow, a modern cattle house where they keep 3 dairy cows, a chicken coop for 20 chicken and plant seasonal crops on three-quarter of the land. Neighbouring on their right is public land that is not in use. Recently, they have learnt that the Ministry of Agriculture and Livestock Development would like to construct a satellite campus for the Kenya School of Agriculture on public land. The public land is however not enough, and the ministry would like to compulsorily acquire the neighbouring pieces of land including theirs. Advise the couple on the following: -

a. What is compulsory acquisition?

b. What they should look out for and how they should participate in the process.

Case Study 4

Mwamburi and his wife of 10 years have been living on a 3 acres piece of land which he inherited from his parents. They have constructed a 4-bedroom house and a pigsty where the wife carries out large-scale pig farming. Mwamburi is tired of pig farming and is planning to sell the land and relocate to Mombasa city. His wife is against the land sale and relocation. Mcharo is interested in buying the land and has come to you for advice on the key requirements and processes for buying Mwamburi's land. Advise him.

3. MODULE THREE: MARRIAGE LAWS

3.0. Learning Objectives

At the end of this module trainees will be able to: -

a. Define and understand types of marriages recognised in Kenya.

b. Understand the processes of registration of marriages.

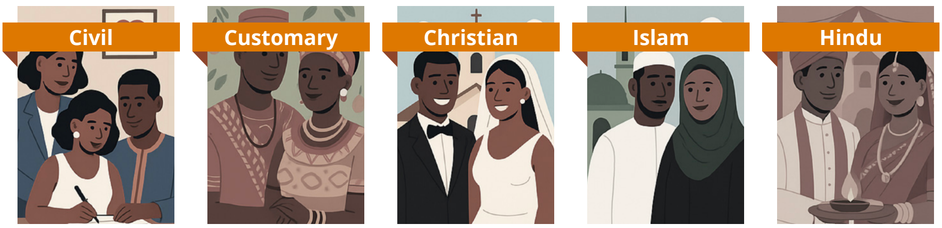
c. Understand dissolution of marriages

d. Appreciate law on division of matrimonial property, especially land

3.1. Types of Marriages in Kenya

Marriage in Kenya is governed by the Marriage Act CAP 150 and Matrimonial Property Act CAP 152. Marriage laws affect how women and men access agricultural land. It is therefore important to understand one's rights before marriage, in marriage and after termination of the marriage.

There are 5 types of marriages in Kenya: -



i. **Civil marriage:** This is performed and recorded before the registrar of marriages at the Attorney General (AG)'s office.

ii. **Hindu marriage:** This is a marriage between persons who profess the Hindu faith at the time of marriage and is performed in accordance with the Hindu religious rituals.

iii. **Christian marriage:** This is a marriage between persons who profess the Christian faith at the time of marriage and is performed in accordance with the rites of a Christian denomination. It is officiated by a religious leader who is authorised to officiate marriages by the registrar of marriages (not just any pastor).

iv. **Islamic marriage:** This is between persons who profess the Islamic faith and performed in accordance with the Islamic marriage rites. It is officiated by an Islamic leader who is authorised to officiate marriages by the registrar of marriages.

v. **Customary marriage:** This is a marriage contracted in accordance with the customs of the parties contracting the marriage.

Monogamous and Polygamous Marriages

- All marriages must be registered with the registrar of marriages located at the Attorney General's office in Sheria house in Nairobi and other offices outside Nairobi.
- Civil, Christian and Hindu marriages are monogamous. If one enters into a Christian, civil or a Hindu marriage, they cannot marry again under any other system, including customary.
- Islamic and customary marriages are potentially polygamous. Potentially because one can decide to marry one woman, but they are also allowed to marry many. Islamic, a maximum of 4 while customary has no limits.
- One can convert a potentially polygamous marriage (Islamic and customary) to a monogamous marriage (civil, Christian, Hindu). However, this is only allowed if one has only one wife, with whom they seek to convert the marriage.
- No mixing between polygamous and monogamous marriage systems. For instance, one cannot marry wife no. 1 under customary marriage and wife no. 2 under civil or Christian marriage. Similarly, one cannot marry wife number 2 under customary law if they have wife number 1 under civil or Christian marriage. If they start with customary, then all marriages must be customary. If they start with civil or Christian, then they cannot marry another unless they first dissolve/terminate the marriage.
- If a person marries when they should not, the law considers them "not having capacity to marry" therefore the second marriage is non-existence (null). For example, if a person married under civil, Christian or Hindu, then, marries a second wife under the same system or customary law, the second marriage is not known by law (the court will find them 'not wife').

3.2. Registration of Marriages

This requirement is particularly important for customary marriages because the other forms of marriage are automatically registered by the person who officiates them i.e. the Pastor, Imam, and Attorney General. Customary marriages, however, are not automatically registered because the persons who officiate them are traditional elders. The registration process is done by visiting any of the regional offices of the Office of the Attorney-General. It can also be done online by logging into your e-citizen platform.

Process of registering a civil marriage

The following documents are required to register a civil marriage: -

i. Original Kenyan National Identification Card or valid Passport or Valid Alien Card for refugees.

> *Remember: one cannot register a valid customary marriage if they are already in a civil or Christian marriage which is not yet dissolved*

ii. Original Birth Certificate.

iii. One coloured passport-size photo for each spouse.

iv. Original Death Certificate (if widow or widower).

v. Original Divorce Decree Absolute (If the partner had been married before and is divorced).

vi. A sworn affidavit to confirm marital status in the event the Divorce Decree or the Death Certificate is more than 2 years old.

vii. Original Kenyan National Identification Card or Valid Passport for the two (2) witnesses

Fill the notice of intention to marry on the e-Citizen platform.

The registrar will publish the notice and await for objections for 21 days. After 21 days, the status of the notice will be indicated on the ecitizen platform.

If no objections are made, book a date to appear before the registrar for an interview and verification of documents. After the interview the parties book a date for solemnization of the marriage.

Appear before the registrar on the marriage date with two witnesses. The marriage will be solemnised at this point and a Certificate issued.

Note: Christian and Hindu marriages follow the same processes as civil, except the last part where the celebration/signing of marriage certificate is officiated by an authorised religious leader

Process of registering a new customary marriage

The following documentation are required to register a customary marriage: -

a. Copy of the National Identity Card or Passport for both spouses.

b. Copy of National Identity Cards of two (2) witnesses who were present at the time of the ceremony.

c. An affidavit detailing the cultural rites conducted and date of the marriage.

d. Letter from the chief confirming that the customary marriage took place.

e. Coloured passport-size photos of both spouses.

Within 3 months of completing the customary rites the couple should notify the registrar by filling the notice of cutomary marriage on e-citizen.

The registrar will display the notice in a prominent place for a period of 14 days inviting any person with an objection to the proposed marriage to raise the same.

After the expiry of 14 days if no objections are filed, the registrar issues an Acknowledgement Certificate. The Certificate will be available on e-citizen.

The couple then fills the application for registration of customary marriage and submits it on e-citizen. The registrar conducts further investigation then issues a Certificate of Customary Marriage.

Process of registering customary marriages celebrated before 2017

This relates to marriages which occurred before 2017 when the registration requirements had not been put in place. The application should be done by one spouse on their e-citizen portal. The documents required are: -

a. National Identity Cards or Passports of the spouses.
b. Passport-size photos.
c. Letter of confirmation from the chief of the area where the marriage took place,

One spouse logs in to their e-citizen portal and fills the application form to register an existing customary marriage.

The spouse books an appointment on e-citizen to appear before the registrar for an interview and to submit the original documents.

If satisfied with the existence of the marriage, the registrar issues the Certificate of Customary Marriage.

3.3. Dissolution of marriage

According to the Marriage Act, a marriage can be dissolved in 2 ways: -

i. Nullification. This can occur where either of the parties lacked the capacity to enter the marriage i.e. were under 18 years of age or are not of sound mind when the ceremony happened. It can also happen where the parties are related by blood and entered into Christian or civil marriage; or where the parties fail to consummate the marriage (have sex) in the first year of marriage.

ii. Divorce. This is termination of a marriage on grounds such as adultery, cruelty, desertion, or life imprisonment of a spouse. The totality of these grounds is referred as 'irretrievable breakdown of a marriage'

Note: *Dissolution of a marriage through nullification or divorce must be done through the court. Separation or ceasing to live together however lengthy is not divorce. One will be considered a wife or husband by law despite the duration of separation.*

3.4. Division of Matrimonial Property upon Dissolution of Marriage

Division of matrimonial property is governed by Article 45 (3) of the Constitution and the Matrimonial Property Act, 2014.

After divorce, division of property (known as matrimonial property) follows. Matrimonial property is property that is acquired by the spouses during the subsistence of the marriage. It does not matter whether the property is acquired by the husband or wife, it is matrimonial property as long as it was acquired during the marriage (section 6 and 14 Matrimonial Property Act).

Section 12 Matrimonial Property Act require all spouses (wife and husband) to obtain the consent from the other before selling of using matrimonial property to take a loan (especially land, houses). It does not matter whether the property is registered in the name of both or one spouse. In other words, if one buys a property without ensuring proper spousal consent is obtained, they may lose their money if the court finds that the property was matrimonial for which spousal consent was mandatory. The case below illustrates the importance of spousal consent:-

Wekesa v Waswa & another (Environment & Land Case 17 of 2017) [202
In this case, Nanjala Wekesa claimed her husband sold their matrimonial land on which their home and family businesses stood without obtaining her spousal consent in violation of Section 12(1) of the Matrimonial Property Act. The court declared the sale agreement null and void (in effective) for lack of spousal consent and stopped those who had bought the land from evicting her.

Property acquired/or inherited by a party before the marriage is not matrimonial property, and therefore not subject to division. However, for inherited property like land, a spouse acquires interest in the property if they develop or contribute to the development of the property (section 9 and 11 (c) Matrimonial Property Act). For instance, a wife is entitled to share in the ancestral land of the husband if they contribute to the building of a permanent house, business premises, agricultural installations and improvements. The same is applicable for a husband who improves wife's inherited property or acquired before marriage

To determine the amount or value of property each party gets, courts consider the contribution of each spouse towards the acquisition or development of the property. Contribution is both financial (money) and non-monetary such as taking care of the home and the children and being emotionally and psychologically supportive to the other spouse (section 7 Matrimonial Property Act).

At dissolution of a polygamous marriage, matrimonial property is divided according to the contribution of each spouse. However, property acquired by the man and first wife before the other wives are married, belongs to her and the husband alone. The law also allows each wife to have property registered in her own name or jointly with the husband separately from the other wives (section 8 Matrimonial Property Act).

3.5. Assessment

Divide the trainees into 2 groups to role play the following case studies.

Case Study 1

Mosagwe met Wambui and married her according to the Abagusii customary rites. Together they adopted 2 children. Thereafter, Mosagwe met Kemunto and married her in a catholic church. Wambui approved of the marriage and even attended the wedding. Mosagwe and Kemunto were blessed with 4 children. Later, Wambui and Mosagwe disagreed and Wambui left the matrimonial home with her children. Angered by her leaving, Mosagwe stopped her from accessing their farm on which Wambui was rearing layer chicken, and gave it to Kemunto. Mosagwe inherited the land from his grandmother and Wambui dug a bore hole, built a perimeter wall, huge chicken coops and other egg farming structures on it.

Wambui has come to you, the agriculture extension officer, for advice: -

a. *Explain to Wambui the four systems of Marriage recognized under the Marriage Act 2014*
b. *Can Wambui successfully challenge the validity of Mosagwe 's marriage to Kemunto?*
c. *Does Wambui have any matrimonial property rights on the farm?*

Case Study 2

Musyimi has been in a customary marriage with Ng'endo for 30 years, and with Achieng for 10 years. Musyimi is a successful exporter of agricultural produce, Ng'endo runs their horticulture farms and Achieng is a housewife, although she sometimes assists Musyimi with the businesses. Musyimi desires to marry a third wife, a beautiful and peaceful village girl he has identified at his local Foot of God Church. He is worried that Ng'endo and Achieng will take away his properties in case they decide to leave him. He heard you are a very knowledgeable paralegal and has come to your office for advice regarding his plans to marry the beautiful young girl. Advise him on: -

a. *How his customary marriages to Ng'endo and Achieng will affect plans to marry the girl at the Foot of God Church.*
b. *The law on division of matrimonial properties upon dissolution of his polygamous marriage to Ng'endo and Achieng?*

4. MODULE FOUR: INHERITANCE LAW

4.0. Learning Objectives

At the end of this module, the trainees should be in a position to: -

i. Define and explain testate and intestate succession.
ii. Describe the rights of dependants in succession
iii. Illustrate the succession process.

4.1. Types of Succession

The law of Succession Act CAP 160 is the law that regulates inheritance of property after the death of a person. There are two types of succession: -

i. Testate succession
ii. Intestate succession

4.1.0.Testate Succession (With a Will)

This is where the deceased person leaves a valid written or oral will dictating how their property is to be inherited. Any person can leave a will as long as they are above 18 years and make the will when they are of sound mind (not very ill till they are unable to understand what they are doing). The maker should have knowledge and approve the contents of the will (if it is drafted by an advocate or another person) such that there is no fraud, coercion or mistake. In the will, the maker (testator or testatrix) appoints an executor who is the person that has the responsibility to manage the testator's property and distribute it as indicated in the will.

An **oral will** is valid only if (section 9):

i. It is made before two or more competent witnesses (adults who are not beneficiaries in the will); and
ii. The maker dies within three (3) months of the date of making the will. Simply put, an oral will is only valid for 3 months.

A **written will** is only valid if (section 11):

i. It is signed by the maker. If the will was signed by another person on behalf of the maker, then this should be done when the maker is present or under his/her directions (evidence must be availed to prove the maker approved, no fraud, coercion or mistake happened).
ii. It must also be signed by at least two competent witnesses who saw the maker signing the will. The 2 witnesses must not be beneficiaries in the will. For instance, a spouse, a child or any other person to whom the testator gives a portion of his property in the will should not sign the will.

A will may be invalidated where: -

- *The maker lacked capacity to make the will.* This is where the maker had either not attained the age of 18 years, was not of sound mind when making the will, lacked the capacity to understand the nature and effect of the will or was not aware of their assets and beneficiaries when they were making the will.

  Sometimes the maker may be too sick/ill to write the will themselves. They may instruct a third party to write the will on their behalf. The third party should read the will to the maker who confirms its contents before signing in the presence of the witnesses. In case of such a scenario, the maker will be found to have had capacity only if it is proven that they were mentally alert enough to give instructions and adopt the will.

- *The will was not properly executed.* This can occur where the will was not properly signed by the maker or two witnesses. Proper execution means that the will must be:
    a. executed in writing (either typed or handwritten),
    b. executed by the maker or someone in the presence of the maker and under their direction,
    c. signed by the maker in the presence of at least two adult witnesses who are not beneficiaries of the will.
- *The maker was under undue influence when they made the will.* This is where the maker was coerced, pressured or manipulated into making a will which does not reflect their true intentions.
- *Where there is misrepresentation or mistake in the will.* Example; where there is misleading information in the will on the maker's assets.

Process of Invalidation of a Will (Section 76)

Once you see a notice in the Kenya Gazette that someone has applied for a grant of probate on the basis of a will you wish to contest, file a case at the High court.

This must be done within 14 days of seeing the notice. The case stops administration of the estate until the dispute is resolved.

The Court then hears your application and makes a decision.

Although the law allows a person to share their property in a will as they wish, the court can order a specific share of the property to be given to a specific dependant who has been left out in a will, (section 26).

Dependant means: the deceased's spouse(s), former spouse(s), the deceased's children including adopted children, stepchildren and grandchildren (who were his primary responsibility just before death or whose parents (his child) had died), the deceased's parents, step-parents and grandparents, and the brothers and sisters of the deceased including half-brothers and half-sisters (section 29).

A will can be revoked (cancelled) as follows: -

i. If the maker destroys it, through tearing, burning or otherwise, showing a clear intention to revoke it.
ii. If the maker writes another will or codicil (an amendment or addition to the existing will).
iii. If the maker marries after making a will, unless it can be proved that it was made in contemplation of the marriage.
iv. If it is known that a will was written but cannot be found after the death of the maker.
v. If the maker does not make reasonable provision for his or her primary dependents, especially his/her spouse and children that he was taking care of before he died, even if he or she was not married to their mother or father.

4.1.1.Intestate Succession (Without a Will)

This is where a deceased person does not leave a will. His/her dependants must apply to court to be appointed as administrators to manage and distribute the estate (property) of the deceased. Any dependant can apply to be administrator, but priority is given to spouse/s and children of the deceased.

4.1.1.0. Monogamous Marriage with a Child or Children (Section 35)

Where the deceased has left one surviving spouse and a child or children, the spouse (husband or wife) is entitled to:

i. The personal and household effects of the deceased. (i.e. clothes, furniture. Does not include land).

ii. A life interest in the other property of the deceased (land included). This means that the spouse will hold the property on behalf of the child/children. They can use but cannot sell or otherwise transfer the property without the consent of the children (if they are adults) or an order of the Court if the children are under 18. Previously, a widow would lose their life interest upon remarrying, but this provision was declared unconstitutional for discriminating against women by the High Court.[15]

Note: *The Court of Appeal has been favouring a distinct share of an estate being given to a surviving spouse rather than subjecting an entire estate to a life interest.[16] However this can only be ordered by the court after looking at the circumstances of the case.*

4.1.1.1. Monogamous marriage without children (Section 36)

Where the deceased has left a surviving spouse without any child or children, the surviving spouse is entitled to: -

a. The personal and household effects of the deceased.

b. The first Kes. 10,000/- out of the remaining property or 20% whichever is greater.

c. A life interest in the remainder. When this life interest determines upon the death of the surviving spouse the property is distributed to other relatives as per the following order of priority; father, mother, brothers or sister, children of the deceased brothers or sisters, half-brothers or half-sisters or children of the deceased half-brothers or half-sisters or other relatives up to the sixth degree.

Question to the trainees: *What are your views about this law that a spouse can only get 20% of the property of the deceased, a life interest, while the actual property (i.e. land) goes to the deceased's relatives?*

4.1.1.2. Polygamous marriages (Section 40)

Where the deceased man was in a polygamous marriage: -

a. His personal and household effects and other property shall be divided equally among the houses according to the number of children in each house but also adding the wife as an additional unit.

b. Where any of the marriages was terminated or the wife deceased, the children will still be considered.

Example:

For instance, Onyango has 3 wives, Akinyi-2 children, Wangare-4 children and Amina- 3 children. Upon his death, all his properties will be put together and divided into equal parts according to the total number of children and wives. That is, 3 wives + 9 Children = 12 parts.

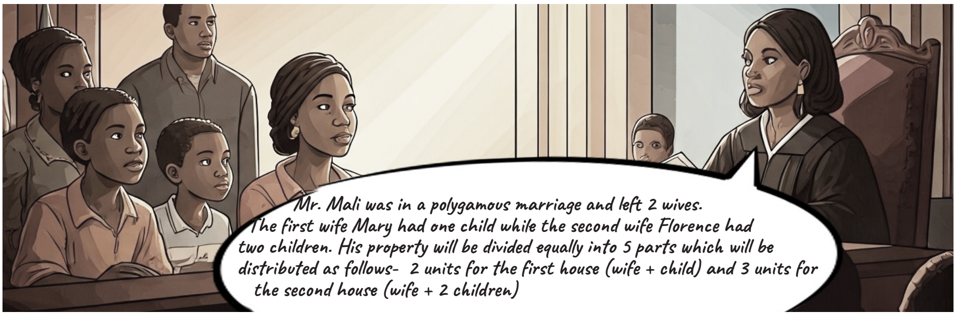
***Note*:**

- *Where there is no will, the spouse/s and children have automatic inheritance rights. On the other hand, there are no automatic inheritance rights for the deceased's parents, stepparents, grandparents, grandchildren, brothers and sisters. They are only entitled to some provision (mostly not substantive properties such as land) if they prove the deceased was maintaining them prior to his or her death.*

15 Ripples International v Attorney General & another; FIDA (Interested Party) (Constitutional Petition E017 of 2021) [2022] KEHC 13210 (KLR) (29 September 2022) (Judgment)

16 Stephen GitongaM'Murithi vs. Faith NgiraMurithi [2015] eKLR

- *In the Law of Succession (section 40) above, all children and wives in a polygamous marriage get equal share of the deceased's property. This is in contrast with some customary laws that divide property according to the wives/houses thereby disadvantaging the house with more children. As we said before, the statute overrides customary law in this case.*



In SC Pet. E035/2023 *Fatuma Athman Abud Faraj -versus- Ruth Faith Mwawasi & 2 others, The Supreme Court was called upon to determine whether the exclusion of children born out of wedlock under Muslim law is compatible with the Constitution in light of Article 24 (4) which allows application of Muslim Law in matters of personal status, marriage, divorce and inheritance for parties who profess the Islamic faith. The Court held that such exclusion is unreasonable and unjustifiable and against the best interests of a child (Article 53) and amounts to discrimination* **(Article 27)**.

4.2. Succession rights of other Women Associated with the Deceased but not Wives in Law

To appreciate this section, revisit the discussion on the 5 types of marriages, the monogamous and polygamous types. The law requires any woman who claims to be a wife to a deceased person must prove that there was a marriage between them. However, it is interesting to note that section 3(5) of the Law of Succession Act allows inheritance if a woman proves that she was in customary marriage with a deceased husband who had had previously contracted a monogamous marriage (civil, Christian or Hindu) either before or after the customary marriage.

Question to the trainees: *What are your views about this provision?*

4.3. Succession rights for children born out of wedlock

All children associated with the deceased are entitled to equal right of inheritance without discrimination. They include: -

i. *Those conceived but not yet born as long as the child is born alive.*
ii. *Children of the deceased born out of wedlock; those whose parents are not married.*
iii. *Adopted children.*
iv. *Stepchildren where the deceased had accepted a child as his own or voluntarily assumed permanent responsibility over the child.*

4.4. The Succession Process

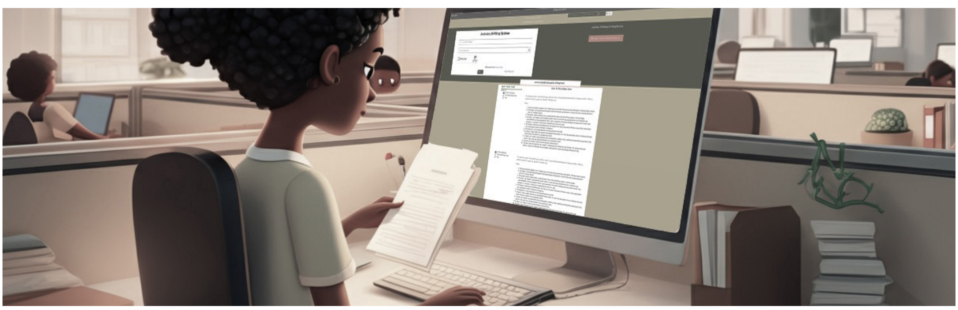
The following information and documentation are required for the succession process: -

a. The application for grant of probate (in testate succession) or grant of letters of administration intestate (in intestate succession).
b. Certified copy of the death certificate.
c. A letter from the local chief listing all the beneficiaries of the estate, their ages and relationship to the deceased.
d. Identity cards of the executor or executrix (in testate succession) or persons petitioning to be appointed as administrators (in intestate succession).
e. Identity cards of the beneficiaries or birth certificates (in case of minors).
f. Proof of ownership of the property of the deceased e.g. title deeds, logbooks, share certificates etc.
g. Original will and two photocopies (in testate succession).
h. Identity cards of all sureties (those who have taken responsibility for what the applicant(s) say(s) (applies only in intestate succession).

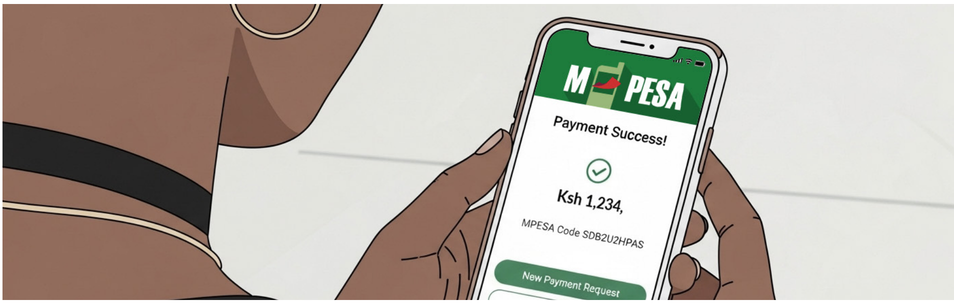
Intestate Succession

The number of persons applying for letters of administration intestate should not exceed four. Where there are children below 18 years, there should be at least two adults applying for letters so that they can hold the property on behalf of the minors until they become adults.

- **Filing:** File all the above documents at the nearest court through the judiciary e-filing portal for approval and assessment of fees. If you cannot access the portal, you can take the documents to the nearest court.



- **Payment:** Once an invoice is generated, pay the court fees and gazettement fees.



- **Gazettement:** The judiciary will publish a notice in the Kenya Gazette for 30 days to allow for objections to be raised. If someone has been left out of the list of beneficiaries, they can make an application to Court at this point to be included.

- **Issuance of Grant:** The Court allocates a date for the applicants to attend court. If there are no objections, the grant of probate (in testate succession) or grant of letters of administration intestate is issued for six months. The executor or administrator does not have the power to distribute the estate at this stage. The grant is to enable them to manage and recover the deceased assets ex; collect rent and sell agricultural produce.

- **Confirmation of Grant:** Upon the lapse of the 6 months, the administrator or executor apply for confirmation of the issued grant. This is to grant them the power to distribute the property ex; transfer the respective shares of agricultural land to the beneficiaries. An application for confirmation of grant is usually accompanied by a consent signed by the beneficiaries on how the deceased's property will be distributed where the parties agree.

- **Completion of administration:** The administrator or executor should finish administration/ distribution of the deceased's property within 6 months of confirmation of the grant. They should then file a report accounting for all the deceased's assets or liabilities.

4.5. Assessment

Encourage the trainees to take up roles in the play

Case Study

Lemaiyan died a polygamous man leaving behind 3 wives all married under Maasai customary law. He left behind 100 acres of land in Kajiado and a livestock herd consisting of 100 cows and 50 goats. The first wife, Mrembo, has 2 boys. She believes that as a first wife and the only one that gave birth to boys she has automatically replaced Lemaiyan as the head of the household. She has the right to control the livestock and the entire land. Nanyoka, the second wife, was blessed with three girls. She insists that these are not old times and that girls and boys have equal rights of inheritance. She believes that her girls have an equal right of inheritance as Mrembo's boys. She is keen on not being left out in the distribution of the estate. The third wife is more educated and younger than the first two wives. She ensured that her customary marriage with Lemaiyan was registered and has a marriage certificate. She therefore believes that the first two wives have no right of inheritance as their marriages were not registered. She did not bear any children with Lemaiyan. However, when she married Lemaiyan, she had a boy who Lemaiyan accepted as his own and took care of. The other wives believe that this boy is not part of the family and cannot inherit.

All the wives are at the chief's office presenting their cases before the chief and the village elders. The chief has been trained by Amka Africa Justice Initiative on the law of succession but the elders are not. Role-play the scenario to a legally sound conclusion of the case.

5. MODULE FIVE: LABOUR LAWS

5.0. Learning Objectives

At the end of this module, the trainees should be in a position to: -

a. Define and explain employee rights.

b. Understand the different circumstances of termination of employment.

c. Illustrate employee entitlements upon termination.

d. Define work injuries and explain the compensation process in case of such injuries.

e. Resolve employment disputes.

5.1. Introduction

This section explores the role of labour laws within the space of agri-food systems. Labour Laws in Kenya include the Employment Act CAP 226, Occupational Safety and Health Act CAP 236A, Labour Relations Act CAP 233, Work Injury Benefits Act CAP 236, and Labour Institutions Act CAP 234. These laws address the relationship between employers and their employees. The aim of the laws is to regulate labour relations to ensure fairness in the employment process and protect workers from exploitation.

5.2. Labour Rights and Obligations

Every individual has a right to work. At the international level, the principal body responsible for formulating rules that govern labour relations and setting standards is the International Labour Organization (ILO). ILO was established in 1919 and has since adopted several codes and conventions on labour relations, the latest one being the ILO Convention to Combat Violence and Harassment at Work, adopted on 21 June 2019.

Article 41 of the Constitution guarantees employees the right to fair labour practices which includes the right to fair remuneration; right to reasonable working conditions; right to form, join or participate in a trade union; right to go on strike. The employers' rights include the right to form, join and participate in activities of the employers' trade unions. Article 27 prohibits employers from discriminating against employees on any of the listed grounds.

5.3. The Rights of an Employee (Article 41 Constitution and Employment Act)

Right to a written contract	A contract for work that will take three or more months should be in writing. After that the court will assume the existence of a contract even if it is not written. (Ss. 7,8,9 & 10 Employment Act)
Payment of wages	Every worker is entitled to wages for work done. (S.17 Employment Act)
Protection from forced labour	Art. 30 Constitution, S.4 Employment Act.
Protection from discrimination	Direct or indirect discrimination during recruitment, training, promotion and termination on grounds including 'race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status.' (Art. 27 Constitution & S. 5 Employment Act)

Right to one rest day in a week (after 7 days)	Right to one rest day in a week (after 7 days)- If a worker works on a rest day, they are entitled to overtime payment (S. 27 Employment Act).
Right to annual leave	Every worker is entitled to a minimum of 21 days leave with full pay every year. Public holidays are not counted as part of the leave. If an employer fails to grant annual leave to an employee, then they must pay the employee for the leave over and above the monthly salary. i.e. the pay would be for 13 months instead of 12. (S.28 Employment Act).
Right to maternity leave	Minimum 3 months with full pay. Maternity leave is separate from annual leave and a female employee is entitled to both. (S. 29 Employment Act)
Right to paternity leave	Right to paternity leave- minimum 2 weeks with full pay (S.29 (8) Employment Act)
Sick leave	An employee who has worked for a minimum of 2 months is entitled to 14 days sick leave per year. The first 7 days with full pay and the subsequent 7 days with half pay (S. 30 Employment Act)
Right to housing allowance or provision of accommodation	Right to housing allowance or provision of accommodation (S. 31 Employment Act)
Right to water	S. 32 Employment Act
Protection from sexual harassment	Protection from sexual harassment- by employers, their agents and co-worker (S.6 Employment Act).

5.4. Termination of Employment

Termination of employment marks the end of an employment relationship between an employer and the employee. This may arise from the action(s) of either the employer or even the employee. The law requires termination of employment to be fair. That is, the employer must have valid reasons for terminating the employment and the process of termination must allow the employee to be heard.

Generally, there are four main ways through which employment may be terminated: -

5.4.0.Resignation by the Employee

This is where an employee resigns. Depending on the nature of the employee's contract, the process of resignation may require varied notice period(s) to be served by the employee before they leave employment. The Employment Act (S. 35 Employment Act) requires the employee to give the employer one (1) month notice. An employee who fails to give the required notice is required to pay the employer the salary payable for the notice period.

5.4.1.Termination by Mutual Agreement

This is where both the employer and employee agree to end the employment and sign a mutual separation agreement. It is advisable for the parties to reduce the terms of separation into a written agreement. Such an agreement usually provides for the date of termination, the money payable to the employee (final settlement) among others.

5.4.2.Automatic Termination

A contract can also be ended automatically upon the occurrence of a certain event. Examples; where the period of employment expires in case periodical employment or where the project one was employed under ends.

5.4.3.Termination by the Employer

An employer can terminate a contract of employment with valid reasons and after following due process. Below are possible reasons provided for under sections 45(2) and 46 of the Employment Act.

5.4.3.0. Requirement for Due Process (S. 41,43 Employment Act)

Where an employer terminates employment on account of any of the grounds listed above. The employer must follow the following procedure: -

1

Notify the employee of the wrong committed and ask them to stop and or remedy the situation that has offended the employer. i.e. lateness to arrive at work.

2

Provide the employee an opportunity and time to make good/ remedy the wrong/ improve performance. For instance, put them under a performance improvement period for a reasonable period like 3 months.

3

If the employee does not improve or make good the wrong, the employer should give the employee a letter (in writing) asking them to explain why the employer should not terminate them on the grounds of failure to improve. The employee should be given a reasonable time to respond to the employer's letter. The letter also communicates a date and a venue for a physical or online disciplinary hearing. The timeline between the date the letter is given and the hearing date should not be unreasonable. i.e. a day after the date of the letter is too short. The material or evidence of the employee's misconduct/ non-performance should be attached to this letter.

4

Disciplinary hearing- the employee has a right to appear with a trade union representative or any other representative in the disciplinary hearing. At the disciplinary hearing, the employee hears the case against them and is given an opportunity to respond. If an employee fails to attend this hearing, an employer is entitled to make a decision without them.

5

The employer makes a decision after the hearing and communicates to the employee in writing. The employee should be provided with an opportunity to apply for review or appeal the decision of the disciplinary committee.

5.4.3.1. Termination by Summary Dismissal (S.44 Employment Act)

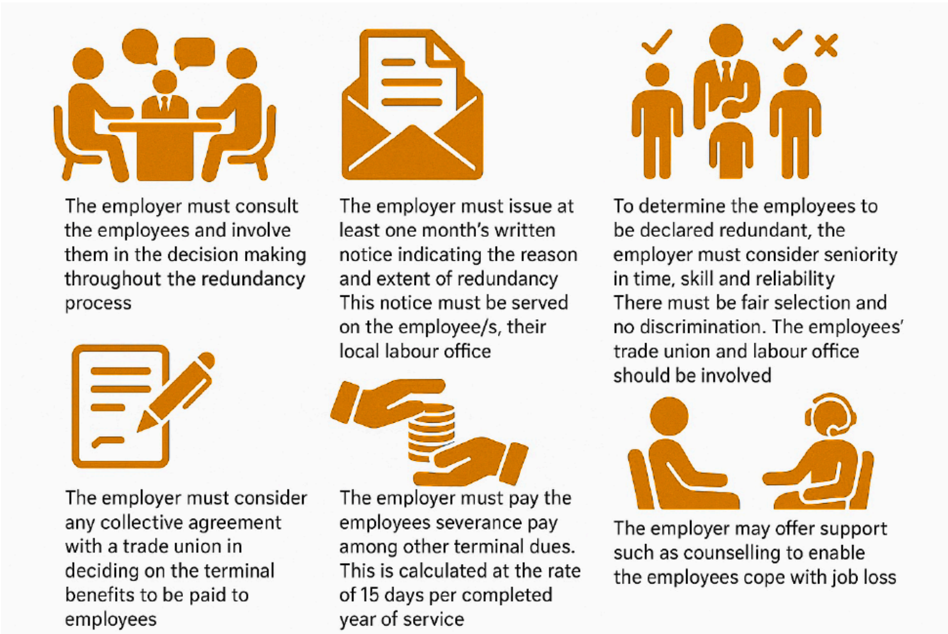
An employer may terminate the employment of an employee who engages in any action which constitutes gross misconduct. This is called summary dismissal. Actions that attract summary dismissal include theft, fraud, violence, showing up to work while drunk or under the influence of drugs, serious insubordination among others. However, the law still requires due process to be followed as stipulated above.

5.4.3.2. Termination Due to Physical Incapacity (S. 41 Employment Act)

Termination for physical incapacity arises from medical grounds. It is necessary for the employer to demonstrate that medical assessments were conducted, and their outcome concluded that the employee is completely incapable of performing their duties. The employer should also give the employee specific notice of the impending termination.

5.4.3.3. Retrenchment or Redundancy Termination (S. 40 Employment Act)

This is where an employer is forced to terminate employment due to; mergers, reduction of staff, economic hardships, a pandemic such as Covid-19 among others. The process to be followed is as follows: -



If an employer cannot prove the validity of the reason/s for termination of employment and/or fails to follow the termination due processes explained above, the termination is termed as unfair, which is illegal (S. 45 Employment Act).

5.4.4. Employee Entitlements upon Termination

This is what an employee is entitled to receive upon termination of their employment.

i.) **Severance Pay (S.40(1g) Employment Act):-** This is payable where an employee has been terminated because of redundancy. (See above) It is calculated at the rate of 15 days per year worked.

ii.) **Service Pay (S.35(5,6) Employment Act):-** This is compensation to be paid to an employee whose employer had not contributed to any pension plan such as the National Social Security Fund (NSSF) on their behalf. It is calculated at the rate of 15 days per year worked

iii.) **Gratuity (S.35(6) Employment Act):-** This is money paid to an employee to appreciate their service. This is completely voluntary and contractual. If it is not provided for in the contract of employment, an employer can choose not to pay.

iv.) **Compensation for Unpaid Leave Days (S.28 Employment Act):-** This is compensation paid for all untaken leave days. The amount payable is calculated based on the employee's daily wages.

v.) **Overtime (S.27 Employment Act):-** This is compensation for the hours worked beyond the normal employee's working hours. It is calculated as double the daily wage.

vi.) **Certificate of Service (S.51 Employment Act):-** This is a certificate issued to confirm an employee's employment history. It must be issued to all employees including those terminated on the basis of gross misconduct.

5.5. Work Injuries and Occupational Safety

Work injuries are injuries sustained by employees or diseases contracted in the course of employment due to the work environment. Example: suffering from a disease after exposure to certain pesticides when working in a farm. Employees' safety and health at work is governed by the Occupational Safety and Health Act CAP 236A and the Work Injury Benefits Act CAP 236.

5.5.0. Obligations of Employers (Occupiers) (S. 6-11 Occupational Safety and Health Act)

The law obligates employers to ensure the safety, health and welfare of employees in their workplaces by: -

- Providing clothing and appliances that protect employees, i.e. protective gloves, footwear, goggles, and coverings.
- Setting up systems and procedures that protect employees. For example, setting up fixed timelines before employees can re-enter greenhouses after spraying pesticides .
- Conducting regular safety audits, risk assessment and informing employees of new risks.
- Providing information and constantly training employees on safety.
- Registering their workplace with the Directorate of Occupational Safety and Health Services (DOSHS).
- Reporting any accidents to the DOSHS not later than 7 days after learning about them.

5.5.1.Duties of Employees

Under S. 13 of the Occupational Safety and Health Act, the employees have a duty to: -

- Follow safety procedures and systems, i.e. wearing the provided protective gear.
- Report to the employer any risks identified in the course of work
- Report any accident or injury that arises in the course of his work to the employer. Such reports should also be made to DOSHS.

An employer is under an obligation to compensate employees for injuries or diseases contracted in the course of or connected to employment. This is usually done through insurance policies that cover for such compensations.

5.5.2.Compensation Procedure for Occupational Injuries and Fatalities

Section 26 of the Work Injury Benefits Act provides for the process of compensation which is as follows: -

A claim for compensation for injuries sustained at the workplace should be lodged at DOSHS within 12 months from the date of the accident, and in case of death, 12 month after the death. In case of death, a spouse, child, parent, sibling or any other relative who depends on the deceased may file this claim.

After receiving the claim, DOSHS obtains information about the accident from the employer or conducts independent investigations.

The employer is expected to compensate the employee by paying to DOSHS within 90 days of the claim being filed.

DOSHS then transmits the compensation to the employee (claimant) within 30 days of receiving the money from the employer.

An employer who fails to compensate an employee commits an offence and is liable for prosecution.

5.6. Labour Disputes Resolution Mechanisms

An employee who has been wronged by an employer through unfair termination (failure to follow due process) and all other employment disputes except those arising from work injuries and/or death, can use the following mechanisms to claim their right: -

Report to the Labour Office near you. The labour officer will summon the employer and attempt to bring the parties together.

Refer the matter to the Magistrate's Court if the employee was earning Kes 80,000 or less per month.

Refer the matter to the Employment and Labour Relations Court where the employee was earning more than Kes. 80,000.

Disputes relating to compensation after injury or death sustained at work or in connection to employment should be resolved as follow: -

Any case relating to work injuries or death should be immediately reported to DOSHS who conducts investigations and makes a decision on compensation.

Any person aggrieved by any decision made by DOSHS should first lodge a written objection with DOSHS.

DOSHS makes a decision on the objection within 14 days .

If the applicant is still aggrieved they can appeal to the Employment and Labour Relations Court within 30 days.

Note: *If DOSHS has already decided on an award but the employer has refused or failed to pay, the applicant should file a suit at the Employment and Labour Relations Court to enforce the award.*

Employment cases must be filed within 3 years of the date of the cause of action. Example; 3 years from the date of unfair termination of employment.

6. MODULE SIX: SEXUAL HARASSMENT

6.0. Learning Objectives

At the end of this module, the trainees should be in a position to: -

a. Define and explain sexual harassment

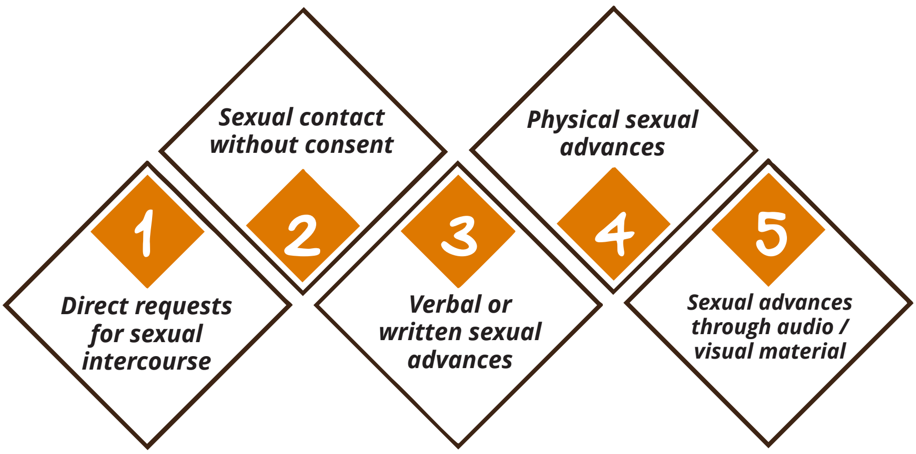
b. Appreciate sexual harassment policy for organisations

c. Report and address sexual harassment cases

6.1. What is Sexual Harassment?

Sexual harassment refers to unwelcome acts of sexual advances, direct or indirect request for sexual favours with actual or implied promise of preferential treatment, or threat of detrimental treatment in employment. It includes the use of language, visual material or physical behaviour of a sexual nature. Sexual harassment at the workplace is prohibited under S.6 of the Employment Act. Sexual harassment at the workplace can come from co-workers, supervisors, customers or clients. Sexual harassment does not necessarily have to be specific about sexual behaviour or directed at a specific person. In this regard, acts such as negative comments about members of a particular sex, such as women as a group, may be construed as a form of sexual harassment. **Sexual harassment is aggravated when the acceptance or rejection of the perpetrator's advances is used to give the victim preferential or detrimental treatment.**

Examples of sexual harassment (S.6 of the Employment Act): -



6.2. Sexual Harassment Policy for Organisations

S.6 (2) of the Employment Act requires employers with more than 20 employees to have a sexual harassment policy. Many organisations with less than 20 employees such as Amka Africa Justice Initiative, have a sexual harassment policy as a good practice. The employer should also make the employees aware of the information in the policy statement. The policy should contain: -

a. The definition of sexual harassment.

b. A statement that the employee is entitled to employment free from sexual harassment.

c. Information on the complaints procedure for reporting and addressing sexual harassment cases

d. A statement bidding the employer to take disciplinary action on reported sexual harassment cases.

6.3. Reporting Procedure for Sexual Harassment

Sexual harassment is both a civil and criminal case. An employer is obligated to investigate and take disciplinary action when sexual harassment allegations are reported. If the employer fails to act, the victim can file a suit at the Employment and Labour Relations Court against the employer for the failure to act. Ideally, an employee should follow the complaints procedure in the employer's sexual harassment policy. In the absence of any such policy, this is common practice: -

A victim of sexual harassment should report to their immediate supervisor.

In case the immediate supervisor is the suspect or fails to act, the victim should report to a higher office such as the human resource office, board of man-agement, chief executive officer among others. It is important to record the complaint in writing for evidence purpose.

If the employer fails to act, the victim should report the matter to the Labour Office. The Labour Officer will summon the employer and attempt to resolve the issue

In the event that the employer still fails to act, the victim should then file a case against the employer at the Employment and Labour Relations Court

At the same time, the victim of sexual harassment can pursue a criminal case against the perpetrator. Sexual harassment is an offence as per S. 23 of the Sexual Offences Act whose punishment is imprisonment for a term of not less than three years and/or a fine of not less than Kenyan Shillings One Hundred Thousand.

To pursue a criminal case the victim should follow the following process: -

Report the incident to the nearest police station. The police will record the incident, take a witness statement and issue an OB.

An investigating officer will conduct investigations. Thereafter an arrest is conducted. Sometimes the suspect can be arrested pending investigations.

The suspect will be charged by the police, and the file will then be forwarded to the Office of the Director of Public Prosecutions (ODPP) who approves the charges.

The suspect will then be arraigned in Court to take plea. The suspect may be granted bail or bond which allows them to be released from police custody while the case is ongoing. The court process proceeds from this point till a judgment is delivered and a sentence issued.

Trainees to watch: -

> *The story of Dorcas, a young woman who sells food to people working on farms and other blue-collar setups.* https://youtu.be/1ImBpxnOoB4?si=UgyHW-zec5Lt7qi4

> *Janet's partner is not happy with her successful career. He gets obsessed with the idea that she has an affair with her supervisor. This has awful consequences for Janet. He sends photos that Janet had shared for his eyes only with her family and beyond. Destroying Janet's reputation. https://youtu.be/ihdgLi7mzVM?si=7nDJvTQKoe5rb495*

Question for trainees: Share your personal observations of the 2 videos. What advice would you give to Dorcus and Janet, individually?

7. MODULE SEVEN: INTELLECTUAL PROPERTY

7.0. Learning Objectives

At the end of this module, the trainees should be in a position to: -

a. Define intellectual property rights.

b. Describe the different types of intellectual property and how to register them.

c. Claim their intellectual property rights.

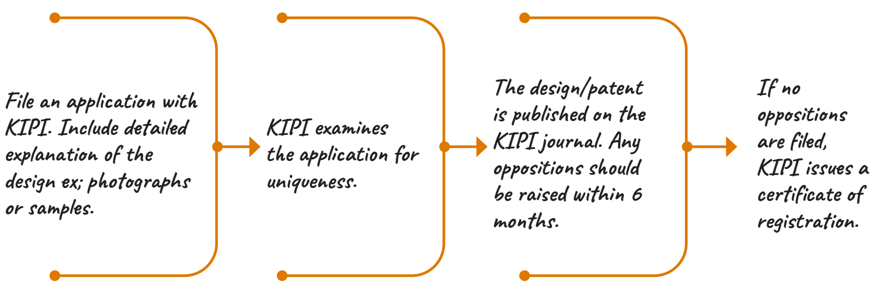
7.1. Types of Intellectual Property

Intellectual property protects a persons' right to their creations, ideas and innovations. Examples of intellectual property rights include traditional knowledge i.e. knowing which plants have what medicinal properties, patents, domain names, industrial design, confidential information, inventions i.e. a food production technology, moral rights, database rights, works of authorship i.e. books, service marks, logos, trademarks, design rights, business or trade names, commercial secrets, and computer software, among many others. Intellectual property in Kenya is regulated by the Intellectual Property Act CAP 509, Copyright Act CAP 130, Trademarks Act CAP 506, Seeds and Plant Varieties Act CAP 326 and international treaties.

7.1.0.Patents (Industrial Property Act)

Patents grant inventors exclusive rights to their inventions, preventing others from making, using, or selling the invention for a limited period, usually 20 years from the filing date. Example, if one invents a new (never been used anywhere in the world) agricultural production machine, or a software that solves a technical problem or discovers a medicinal compound in a plant, they can apply for patent at the Kenya Industrial Property Institute (KIPI).

The process of registering patents is as follows: -



7.1.1. Copyrights (Copyright Act)

Copyrights protect original literary, artistic, and musical works, giving creators the right to control the use and distribution of their creations. Copyrights last for the author's lifetime plus 50 years after their death as per Section 23 of the Copyright Act.

To be protected, copyrights must be registered with the Kenya Copyright Board. Registration is done online through the Kenya National Rights Registry Portal, i.e. https://nrr.copyright.go.ke/. It requires an applicant to create either an individual or corporate account or, where possible, sign in to an existing account in order to proceed with the registration process. The process of registering copyright is as follows: -

Open the Kenya National Rights Registry Portal Page – i.e. nrr.copyright.go.ke.

↓

Create an Account or sign in to your existing account.

Create an account. To create an account, click on the 'Create Account' tab and create either an individual or corporate account, filling in the required information.	*Sign in, if you already have an account.*

↓

Select the 'My Copyrights' tab and proceed to register by selecting the 'Want to Register a New Copyright?' tab, filling in any required information.

↓

When registering, you may also be required to pay a service fee depending on the nature of the work you are seeking its protection.

7.1.2. Trade Marks (Trade Marks Act)

Trademarks safeguard symbols, names, and slogans used to identify goods or services, ensuring consumers can distinguish between different products in the market. Protection duration is usually 10 years, and the trademark protection can be indefinite as long as the mark is used and renewed. Examples: logo for the Kenya Co-operative Creameries (KCC).

To be protected, trademarks must be registered with the registrar of trademarks at KIPI. The registration is as follows: -

Visit KIPI offices and conduct a trademark search by filling a request for search form.	➔	Submit an application for registration and indicate the details and specimen of the mark.	➔	KIPI examines the uniqueness and whether it is similar to other registered marks.	➔	The mark is published on the KIP journal for public inspection for 60 days.	➔	If no oppositions are raised, the mark is registered and a certificate issued.

7.1.3. Trade Secrets

Trade secrets are confidential business information, such as proprietary methods, customer lists, or manufacturing processes, which provide a competitive advantage. Trade secrets have no fixed duration and last as long as the information remains secret. Example, a business's financial information, formulas and recipes, such as Coca cola, KFC chicken. A farmer or a cooperative may have a trade secret on how to make a unique nutritious yoghurt. These are not registered but businesses set up internal measures to protect them like having employees sign non-disclosure agreements.

7.1.4. Industrial Designs (Part XIII. Industrial Property Act)

Industrial designs protect the ornamental or aesthetic aspects of a product, influencing its visual appeal. Industrial design rights usually last for 5 years but one can seek a two-year extension. Examples: The design and shape of the coca cola bottle, some wine/alcohol bottles. To be protected, they must also be registered. The process of registration is similar to that of patents. *See 8.1.0 above.*

7.1.5. Utility Models (Part XII. Industrial Property Act)

Utility models are similar to patents but cover minor and incremental innovations. They provide exclusive rights for a shorter period, usually 10 years, and are sometimes referred to as "lesser patents." An example is: improving a watch design to include new features like calling and recording sleep hours.

Utility models must also be registered with KIPI. The registration process is as follows: -

File application with a detailed description with KIPI. → *KIPI conducts a fornal examination to ensure compliance with the requirements.* → *The model is published for public scrutiny in the KIPI journal.* → *If no objections are raised, it is approved and a certificate of registration issued.*

7.1.6. Plant Breeder's Rights (Part V. Seeds and Plant Varieties Act)

Plant breeder's rights protect new plant varieties, giving breeders exclusive control over the sale and reproduction of these plants. They are protected for 25 years for vines and 20 years for all other plant species. For instance, new seeds with unique features such as drought or pest resistant seeds.

Plant breeder rights must also be registered to be protected. Such registration is conducted with Kenya Plant Health Inspectorate Service (KEPHIS). The process for registration is as follows: -

Prepare and file a detailed application with KEPHIS. → *KEPHIS examines the plant variety's characteristics and conducts field inspections.* → *Upon successful examination, plant breeder's rights are granted.* → *Duration monitoring- the breeder monitor's the variety's commercialization and reports any changes to KEPHIS.*

7.2. Violation of Intellectual Property Rights

This occurs where a third party uses registered intellectual property without permission. Examples of infringement are: -

- Creating a business logo or name that is similar to another brand that confuses buyers into thinking they're buying the original brand.

A good example is the case of ***Weetabix Limited v Manji Food Industries Ltd [2015] KEHC 6072 (KLR).*** Weetabix Limited has registered the trademarks; BANANABIX, MINIBIX, FRUITBIX, CHOCOBIX, WEETABIX, CRUNCHES, OATIBIX, WEETABIX and MINIS which it uses to sell cereal products. Manji Food Industries had just introduced whole grain cereal biscuits into the market and branded it as MULTIBIX. Weetabix argued that the suffix BIX as used jointly with other words had become well known as relating to their products. They stated that the use of the word MULTIBIX automatically misled consumers to think that this was a Weetabix product. The High Court agreed and issued orders restraining Manji from producing, selling or displaying products with the name MULTIBIX.

Source: IPKenya.wordpress

- Using a protected plant variety without permission from the registered breeder.
- Unauthorized copying, distributing or adapting of a copyright material like use of a song in an advertisement without the permission of the copyright owner.
- Unauthorized production, sale or use of the patented technology.

Disputes relating to intellectual property should be resolved as follows: -

- Copyright: Any dispute relating to registration of a copyrights such as KECOBO's refusal to register are to be referred to the Copyright Tribunal within 60 days as per S.21 of the Copyright Act. The Tribunal issues a decision within 30 days. Any appeals from the Tribunal are to be filed at the High Court. Disputes relating to infringement of copyright are to be referred directly to the High Court.

- Patents, Utility Models & Industrial Designs: As per S. 112 of the Industrial Property Act any disputes relating to decisions made by KIPI such as on registration should be appealed to the Industrial Property Tribunal. Appeals from the Tribunal are to be filed at the High Court. Disputes of infringement can also be referred to the Tribunal by virtue of S.106 of the Industrial Property Act.

- Trademarks: All disputes relating to trademarks are to be dealt with by the High Court.
- Trade secrets: Trade secrets disputes are contractual and should be referred to the High Court.
- Plant Breeder Rights: Any dispute relating to registration, cancellation of plant breeder rights are to be heard by the Seed and Plants Tribunal as per S. 29 of the Seeds and Plant Varieties Act. The decision of the Tribunal is to be appealed at the High Court. Cases of infringement may also be filed at the Tribunal especially where there is arbitration agreement granting the Tribunal jurisdiction.

7.3. Assessment

Maryanne opened a small bakery ‘Flavorfu’ in Meru town where she sells sorghum cookies. It’s the first business of its kind in the town although sorghum cookies are sold in other parts of the country. She asked her brother to assist her create a logo which he did: -

Maryanne had already registered the logo and business name as a trademark with KIPI. She has now learnt that another business ‘Flavorfull’ has opened in town and is selling the same cookies. Their logo is as follows: -

Maryanne is worried that the new business could be confusing consumers. What advice would you give her?

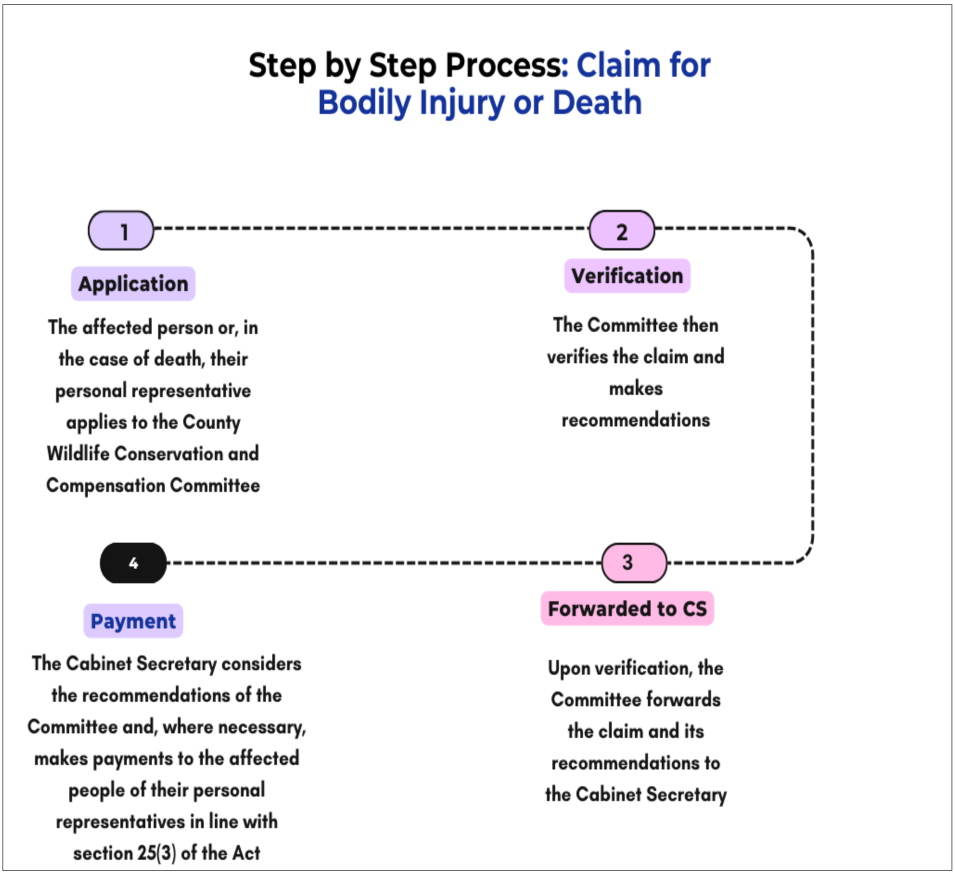
8. MODULE EIGHT: HUMAN-WILDLIFE CONFLICT

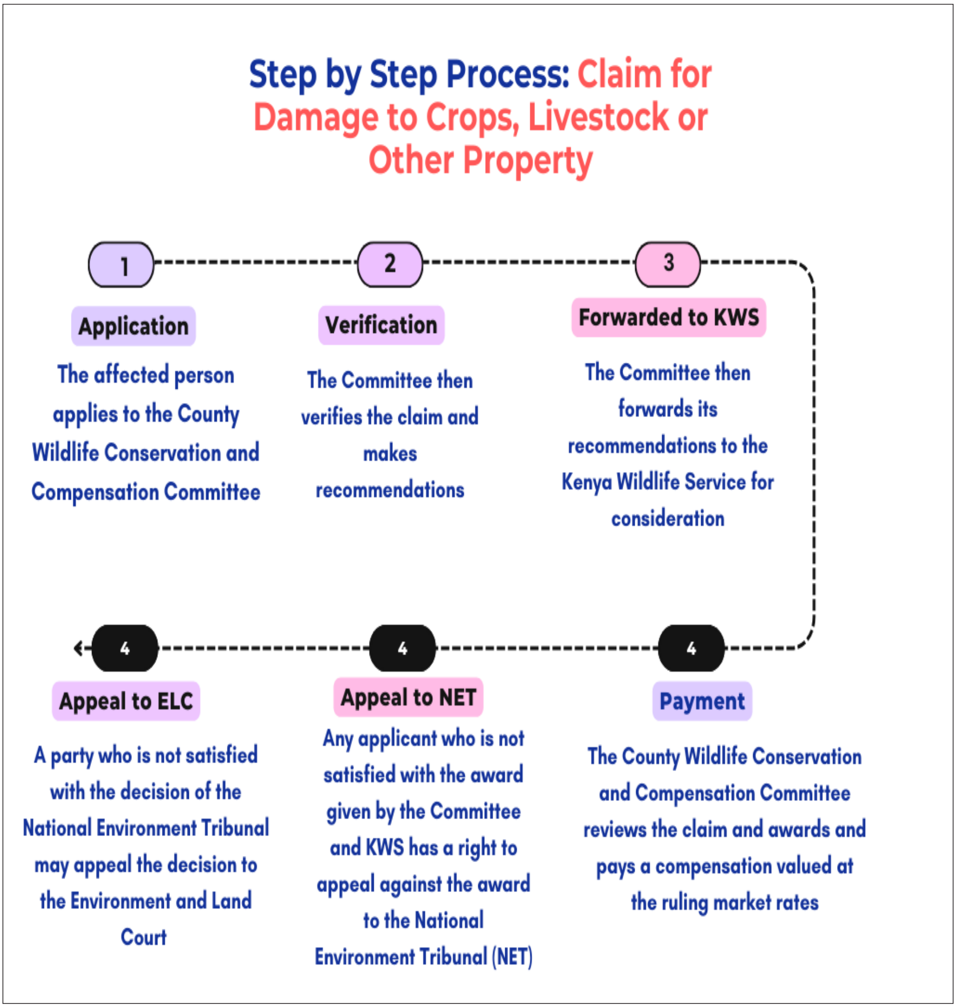
8.0. Learning Objectives

At the end of this module, the trainees should be able to understand legal perspectives of human-wildlife conflict, particularly the process for claiming compensation for bodily injury, death, livestock and crop damage.

8.1. Human-Wildlife Conflicts Compensation Claims

This is where encounters between humans and wildlife lead to negative results such as loss of human or livestock life, injuries or damage to crops. The Wildlife Conservation and Management Act CAP 376 provides for compensation to be provided by the government where wildlife causes damage to humans. Applications for compensation should be filed with the Wildlife Conservation and Compensation Committee in the County where the conflict occurs.





The Compensation Amounts (S.25(3) Wildlife Conservation and Management Act)

- In the case of death, five million shillings.
- In the case of injury occasioning permanent disability, three million shillings.
- In the case of any other injury, a maximum of two million shillings, depending on the extent of injury.
- In the case of damage to property including crops and livestock, according to market rates.

Note: As per *S. 25(5) Wildlife Conservation and Management Act, a farmer will not be compensated where they failed to take reasonable measures to protect their crops and livestock from damage by wildlife or his land practices are incompatible with the ecosystem-based management plan for the area. Ex; planting outside the cultivation zones prescribed by the government.*

9. MODULE NINE: CLIMATE SMART AGRICULTURE AND CARBON CREDITS

9.0. Learning Objectives

At the end of this module, the trainees should be able to: -

a. Define and understand climate smart agriculture and carbon credits.
b. Understand how farmers can earn from carbon credits.
c. Participate in negotiation of carbon credits community development agreements effectively

9.1. Introduction: Why Climate Smart Agriculture? Climate Change

Climate Change is defined as a change in the climate caused by greenhouse gases as a result of human activities around the world. According to the Intergovernmental Panel on Climate Change 2023 report, global greenhouse gas emissions have continued to increase arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and industrial production across regions, between and within countries, and among individuals. Climate change has led to adverse effects that have been felt worldwide including hotter temperatures, severe storms, increased drought, warming and rising ocean, loss of species, food insecurity, health risks, poverty and displacement.

The global community has recognized climate change as a shared concern for all of humanity and has committed to collective action to address it. As a result, an international legal framework has been established to guide and support efforts to combat climate change: -

- **Rio Declaration on Environment and Development 1992-** established 27 principles towards attaining environmental justice especially in regards to the issue of protecting the environment while encouraging social and economic development.
- **United Nations Framework Convention on Climate Change (UNFCCC) 1992**- the first global treaty to explicitly address climate change. The ultimate objective of this Convention is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous human-induced interference with the climate system. This means limiting human activities to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner. It established an annual forum, known as the Conference of the Parties, or COP, for international discussions aimed at stabilizing the concentration of greenhouse gases in the atmosphere. These meetings produced the Kyoto Protocol and the Paris Agreement.
- **The Kyoto Protocol, 2005-** the first legally binding climate treaty. It required developed countries to reduce emissions by an average of 5 percent below 1990 levels, and established a system to monitor countries' progress. But the treaty did not compel developing countries, including major carbon emitters China and India, to take action.
- **Paris Agreement 2015-** builds upon the UNFCCC and is the most significant climate agreement to date. Its central aim is to brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so. It requires all countries to set emissions-reduction pledges. Governments set targets, known as nationally determined contributions (NDCs), with the goals of preventing the global average

temperature from rising 2°C (3.6°F) above preindustrial levels and pursuing efforts to keep it below 1.5°C (2.7°F). It also aims to reach global net-zero emissions, where the amount of greenhouse gases emitted equals, the amount removed from the atmosphere, in the second half of the century.

9.1.0. Kenyan Laws

Kenya has not been left behind in the global efforts towards combating climate change. Besides ratifying the above international conventions, Kenya has formulated a national climate change legal framework. The Climate Change Act provides the framework that regulates enhanced response to climate change and low carbon climate development interventions such as climate smart agriculture and carbon credit projects.

Regulatory Bodies

- **Climate Change Council: (Part II)** The Act establishes a Climate Change Council which ensures; mainstreaming of the climate change function by national and county governments, approves and oversees implementation of the National Climate Change Action Plan, administers the Climate Change Fund, set the targets for the regulation of greenhouse gas emissions, advises national and county governments on climate laws and policies, imposes climate change obligations on private entities and stipulates investigation, monitoring and enforcement powers.
- **Climate Change Directorate: (Section 9)** This is the lead agency of the government on national climate change plans and actions to deliver operational co-ordination. The role of the directorate is to; provide analytical support on climate change to the various sector ministries, agencies and county governments, establish and manage a national registry for appropriate mitigation actions by public and private entities, serve as the national knowledge and information management center for knowledge on climate change, and co-ordinate adherence to the country international obligations, among others.

National Climate Change Action Plan (Section 8, Part III)

The Cabinet Secretary in the Ministry of Environment, Climate Change & Forestry is obligated to formulate a National Climate Change Action Plan to be updated every five years, with implementation review conducted every two years. This is a plan that contains the priority actions that Kenya will embark on to address climate change during a particular period. The plans must contain: -

- Measures to achieve low-carbon climate-resilient development.
- Adaptation and mitigation actions across sectors.
- Measures to mainstream climate change into sector functions.
- Recommendation on policy, legislative and institutional reforms.

Communities can take part in the development of these plans during the mandatory public consultation processes.

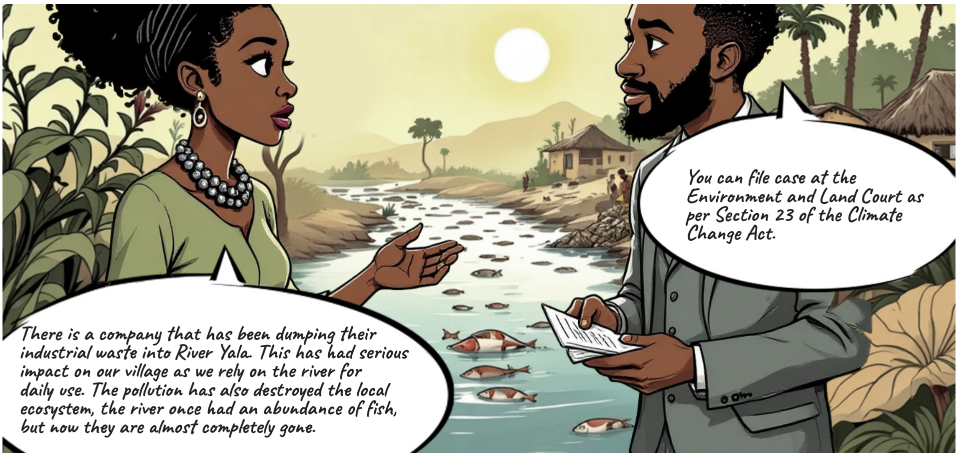
Role of Private & Public Sector (Section 15 & 16)

Both private and public entities are obligated to act in a manner best suited to achieve the successful implementation of the Act and the National Climate Change Action Plan by: -

- Mainstreaming climate change responses into their functions.
- Reporting annually to the Directorate on sectoral greenhouse gas emissions and reduction efforts.
- Designating a climate change coordinator to liaise with the Directorate

The council may require a private entity that is subject to climate change obligations to prepare reports on the status of its performance. The National Environmental and Management Authority (NEMA) monitors, investigates and reports on whether public and private entities are compliant with their climate change duties.

Enforcement Rights (Section 23)
Any person my apply to the Environment and Land Court alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change. A person is not required to demonstrate that they have suffered an injury or loss to bring any such suit.



Regulation of Carbon Markets (Part IVA)
The Act has various provisions that regulate how carbon trading is to be conducted on: -

- The nature of agreements that should govern a carbon trading transaction.
- The conduct of environmental impact assessment in regards to carbon trading projects.
- The social and environmental benefits of the carbon trading transactions.
- The management of the National Carbon Registry by NEMA.

Public Participation & Access to Information (Section 24)
The Act obligates public entities to undertake public awareness and consultations when developing strategies, laws and policies relating to climate change. The council and the directorate shall publish and publicize all important information within their mandate.

Any person may request for information from the council and directorate which can only be declined if: -

- The request is considered unreasonable in the circumstances.
- The information requested is at a deliberative stage within the council or directorate.
- The prescribed fee is not paid.
- The applicant fails to satisfy any confidentiality requirements of the council or directorate.

Regulations

- Under the Act, the Climate Change (Carbon Markets) Regulations 2024 provides a framework for implementation of carbon projects and creates incentives to support greenhouse gases emissions reduction and to meet our Nationally Determined Contribution.
- The Climate Change (Public Participation and Access to Climate Change Information) Regulations 2023 provide a framework for ensuring Kenyans are consulted and access information relating to climate change interventions.

9.2. Introduction: Climate Smart Agriculture and Carbon Credits

According to the World Bank, Climate Smart Agriculture (CSA) refers to a set of agricultural practices and technologies which simultaneously boost productivity, enhance resilience and reduce agriculture greenhouse gas (GHG) emissions.[17] It is agriculture that protects the environment while also increasing productivity. A good example is planting trees alongside crops.

Carbon credits arise from the idea that companies responsible for emitting carbon dioxide (CO2) in the air have to reduce their emissions or pay others to take actions that reduce CO2 in the air such as planting trees. CO2 is a dangerous gas that destroys the earth's atmosphere and is responsible for global climate change and the resulting problems including drought and flooding. Plants (trees) absorb CO2 and release oxygen so planting trees and maintaining savanna grassland is one way of reducing CO2 in the air.

Carbon credits are permits that companies obtain to allow them to release a certain amount of CO2 into the air. One credit is equivalent to one metric ton of the carbon reduced or removed. If a person produces engages in decarbonisation projects such as tree planting and mainlining savanna grasslands to offset emissions then they can sell credits to companies that are polluting more. This system rewards efforts to reduce pollution by turning it into a source of income, while encouraging overall reductions in greenhouse gas emissions. Farmers can also earn this way by incorporating emission reduction strategies in their farming practices by for instance planting trees or preserving grasslands. They contribute to removing CO2 from the air and earn by selling the credits to companies emitting more emissions.

Examples of how farmers can get carbon credits

- Agroforestry – This is farming that combines crops and trees. Some companies approach farmers to plant trees in their land and pay them for the emissions reduced by those trees. This is the most common way farmers earn from carbon credits in Kenya.
- Peatland restoration and management – This is the restoration of damaged or degraded wetlands i.e. swamps to their natural state by either re-wetting the land, managing water levels or growing vegetation to encourage peatland formation.
- Enhancement of organic carbon content on soils – This involves utilizing farming and soil management practices that reduce soil disturbance.
- Nutrient management on cropland and grasslands to enhance soil and water quality.
- Livestock and manure management – This involves implementing improved manure handling, storage and utilization to reduce emissions.

9.3. Legal Protection for Carbon Trading on Community Land

Section 23E of the Climate Change Act CAP 387A requires that anyone who intends to implement a carbon credit project on community land must enter into a community development agreement with the community. This agreement outlines the relationship between the project owner (investor) and the community, the rights and obligations of both parties. Before the signing of the agreement, the project owner must ensure that the community is explained to and fully understands the short-term and long-term implications of the project such as their ability to use the community land for other things. In other words, there must be extensive public participation and involvement of the community in the formulation, planning and implementation of the project. The community must give free and informed consent at the onset of the project. The National and County government are obligated to monitor the negotiation of the community development agreement between the investor and community.

17 World Bank Group 'Climate Smart Agriculture' <https://www.worldbank.org/en/topic/climate-smart-agriculture> accessed 25 June 2025

The community development agreement must include the following provisions: -

- The stakeholders of the project including the project proponents, the impacted communities, the National Government and the county government where the project is being undertaken.
- The annual social contribution of the project's earnings to be managed and disbursed for the benefit of the community. For land-based projects these earnings should be 40% while for non-land-based projects it should be 25%. Land-based projects are those that use community land such as reforestation, afforestation and sustainable farming projects. Non-land-based projects do not use land such as electric-powered vehicles, renewable energy projects, efficient cookstoves, solar lighting among others. The money should be disbursed to the elected community project development committee (CDAC) which in turn manages the fund (according to agreement in the community development agreement) and disburses it to each of the members of the community.
- The manner of engagement with the community.
- The sharing of benefits from the carbon markets and carbon credits between the investors and community.
- The proposed socio-economic development around community priorities.
- The manner of review and amendment of the agreement which shall be at least every 5 years.

An investor seeking to commence a project should follow the following process as per Part V of the Climate Change (Carbon Markets) Regulations 2024: -

- Apply for a letter of no objection from National Environment Management Authority (NEMA)
- Develop a project design document within 12 months of receipt of the letter of objection. It is at this point that the investor seeks approval from the National Government (through the cabinet secretary) and County Government. It is also at this point the investor conducts public participation with the community and negotiates a community development agreement with them. The project design document is then submitted to NEMA for approval. It is also at this point that the community appoints community members to be part of the community development agreement committee which comprises of 9 members; county government representative, national government representative, one community woman representative, two village elders representatives of either gender, two community youth representatives of either gender, one representative of the civil society groups in the area, one community person with disability representative and one representative of the of the project owner.

Note: *Where a project affects more than one community, the investor must enter into different community development agreements with each community. The same applies where a project affects the same community but in different counties.*

- NEMA appoints a project-specific ad hoc committee of not more than 5 members to review the project design documents for implementation. Once approved, the investor may proceed with implementation.
- The investor is expected to submit annual reports to NEMA on the annual progress of the project. The CDAC monitors and evaluates the project from time to time and resolves any grievances arising.

Note: *It is advisable for the community to invite a qualified lawyer to this meeting or seek legal advice before signing a carbon credit community development agreement*

Public participation is key to the validity of the project. There must be rigorous public participation which ensures that the community is well informed, understands the project and their views are considered. A project implemented without proper public participation is unconstitutional.

A good example is the case of ***Osman & 164 others (Suing on Their Behalf and Behalf of Residents of Merti Sub-County, Chari, and Cherab Wards in Isiolo County) v Northern Rangelands Trust & 8 others.***[18] The Petitioners challenged the establishment wildlife conservancies by the Respondents on unregistered community land in Chari and Cherab wards in Merti Sub-County without public participation. The Petitioners had sought to register the community land but were frustrated by the County Government and Ministry of Land. The Court declared that the establishment of the conservancies without public participation was unconstitutional. It also directed the relevant authorities to register the community land.

Note: *Consulting community representatives such as village elders alone is not public participation. Consulting community-based organisations alone is also not public participation. The entire community must be consulted ex through meetings.*

9.3.0. The Roles Members of the Community

Participate in the election of the members of the community project development committee.	*Take part in consultative meetings with the project owner so that your voice can be heard.*	*Be keen on the actual agreement signed between the project owner and the community development committee.*
Be keen on the management and disbursement of funds by the committee.		

It is also essential for the community to be keen on the following issues during public participation and negotiation of the CDA with investors: -

- The nature of the project, the activities to be implemented and obligations of both the community and investor. Is the investor going to provide seedlings while the community plants and nurtures them? What is the size of the land to be used for the project?
- The risks that come with the project. Who bears the loss in case of natural disasters such as drought and floods? Who bears the loss if some seedlings do not mature?
- Benefits sharing: What percentage of the project's earnings will be used for the benefit of the community? Does this percentage adhere to the law on at least 40% for land-based projects and 25% for non-land-based projects? What percentage will be paid to the farmers individually and after how long? What percentage will be used for community development projects such as building schools or a dispensary? How much will be used for administrative expenses relating to the project?

18 (Petition E006 of 2021) [2025] KEELC 99 (KLR) (24 January 2025)

- Period of the project. How long will the project last? Will the agreement be reviewed along the way?
- Environmental and Social Impact. How will the project impact the community? Can the trees to be planted co-exist with crops? Will the project reduce the size of land available for farming? Will the project affect the community's way of living or rights such as reducing the grazing land or extinguishing important cultural sites?
- Monitoring and Evaluation. What will the project review process entail? How often will the project be reviewed?
- Dispute resolution. How will disputes be resolved? What is the procedure to be followed? Usually, the committee forms a grievance resolution sub-committee to resolve any disputes. As per S. 23H of the Climate Change Act, disputes should first be resolved as per the procedure set out in the CDA within 30 days. If it still remains unsolved, it should then be referred to the National Environmental Tribunal.

9.4. Assessment

Case Study
Mazingira Mema, a company committed to reducing carbon emissions, has approached Lola women self-help group seeking to enter into an agreement for the women to engage in agroforestry (plant trees) on the pastoralist's community 100 acres land. The group is expected to plant and care for the trees for Kes 250,000 per year. The project is set to last for 5 years. The company has organized a public participation meeting with the women group to explain the project and sign an agreement.

Role play the meeting. to answer the following questions: -

a. Who else should attend this meeting and why?
b. What questions should the community ask?
c. How should Mazingira Mwema conduct themselves?

10. MODULE TEN: CO-OPERATIVE SOCIETIES

10.0. Learning Objectives

By the end of this module, the trainees should: -

a. Describe the different types of cooperative societies.
b. Explain the process of registering a co-operative society.

10.1. Management of Co-operative Societies

Co-operative societies are operated and managed based on the provisions of the Co-operative Societies Act CAP 490.[19] For a co-operative society to become operational, it has to be registered by the government. The by-laws/Constitution of a society are the laws that guide its internal operations. Co-operative societies are governed by committees. Members of the committee are elected by the members based on the society's constitution.

10.2. Types of Cooperative Societies

There are two major types of cooperative societies, namely, primary and secondary co-operative societies. Primary co-operative societies are the most common and their membership comprises individuals . For instance, a dairy farmers cooperative for marketing and selling their milk. Each farmer applies and joins the cooperative as an individual. Secondary co-operative societies are compound societies whose members are other co-operative societies. For instance, several dairy cooperatives come together to form one society to enable them to market and sell milk.

Forms of Co-operative Societies.

Savings and Credit Cooperative Societies	*These co-operatives are formed to provide financial support to members. They provide different financial services*
Housing Cooperative Societies	*These societies exist to provide access to either land or residential houses to their members. They purchase land, develop it and construct houses or flats and allot these to their members. In addition, some of them also provide loans at low rates of interest to their members to enable them construct their own houses.*
Consumer Co-operative Societies	*These co-operative societies are formed to protect the interest of general consumers. They make consumer goods available at a reasonable price. They buy goods directly from the producers or manufactures and thereby eliminate the middlemen in the process of distribution. This category is one of the most popular co-operatives within agri-food systems sector as members use them as vehicles to improve their capacity to market their products and minimise the harmful operational effect of brokers.*
Agricultural/ Farmers' Co-operative Societies	*These kinds of co-operatives are particularly formed by small-scale farmers who seek to work jointly. Through such joint initiatives, the farmers tend to maximise on their production, hence, enjoy the benefits of large-scale farming.*

19 A new Co-operative Societies Bill was passed by the National Assembly in December 2024. It is currently in the Senate and was read for the first time in February 2025.

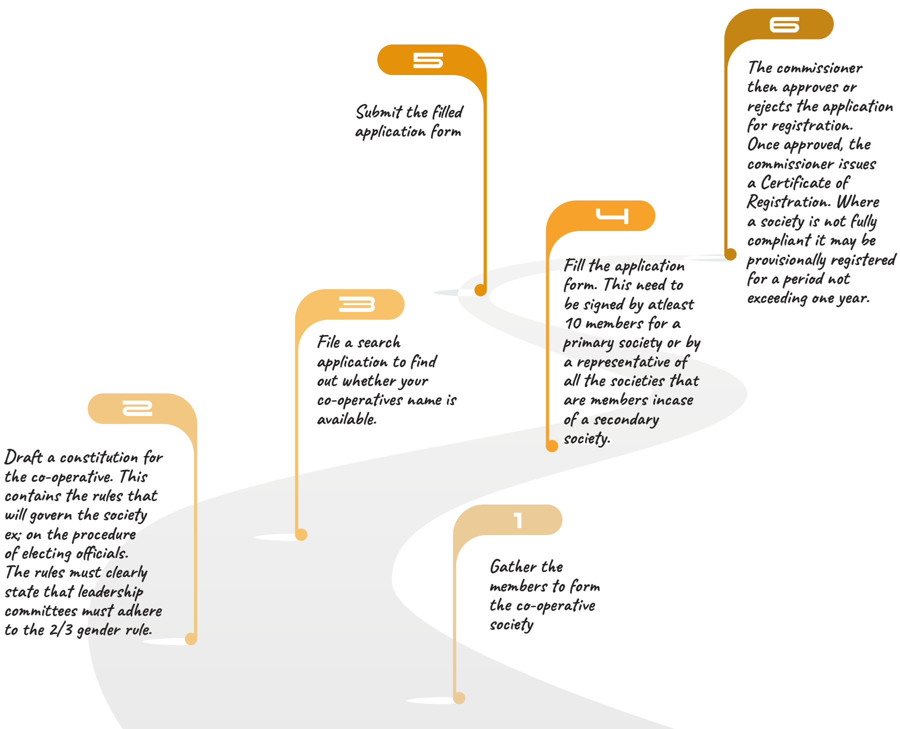
Producer Co-operative Societies	*These societies are formed to protect the interest of small producer by making available items of their need for production like raw materials, tools and equipment, machinery etc. Such societies may be quite useful for agri-food systems towards helping farmers in handling their products like harvested crops, milk, and even meat products so that the same does not go to waste due to post-harvesting losses arising from poor handling by farmers.*
Marketing Co-operative Societies	*These societies are formed by producers and manufacturers who may experience difficulties in selling their products in their market. It is usefully applied in the agri-food system especially in the dairy sector where milk producers use vehicles like the Kenya Co-operative Creameries (KCC) to help to market their milk.*
Investment Co-operative Societies	*This type of co-operatives seeks to assist their members to engage in investment activities. They, for instance, do this by investing members' contributions in prudently identified ventures in order to maximize the return on such investments.*

10.3. Registration of Co-operative Societies

For a society to be registered: -

a. In the case of a primary society, it should consist of at least ten (10) persons.

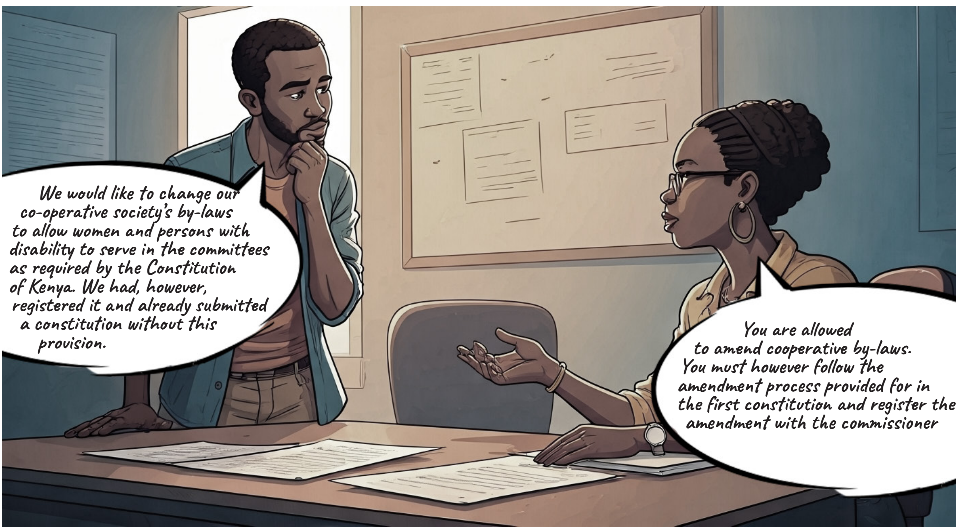
b. In the case of a secondary society, it should consist of at least two or more registered societies.



To obtain and submit the application forms, one should visit the office of the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development which is usually where the county NSSF offices are located.

What to include in a co-operative society's by-laws

- Name of the co-operative society
- Address of the co-operative
- Area of operation.
- The objectives of the society
- Management of the funds.
- The qualification for membership, the terms of admission of members and the mode of admission.
- The withdrawal and expulsion of members and the payment if any, to be made to such members.
- The rights, liabilities and obligation of members ex; the minimum shareholding and produce delivery.
- The manner of raising funds, including the maximum rate of interest on deposits.
- The general meetings, the procedure and quorum of such meetings, power of such meetings and representation and voting at such meetings.
- The appointment, suspension and removal of members of the Committee and officers and the powers and duties of the Committee and officers.
- A rule that not more than 2/3 members of any leadership committee should be of the same gender.
- The period of its financial year.
- The authorization of officers to sign documents on its behalf.
- The settlement of disputes.



11. MODULE ELEVEN: AGRIPRENEUR FINANCING

11.0. Learning Objectives

At the end of this module, the trainees should be able to: -

a. Understand the different types of financing available for agriculture entrepreneurs.
b. Explain charges and the rights of a borrower.
c. Define moveable property security rights.
d. Understand guarantorship.

11.1. Types of Financing

Financing is important for all businesses including those related to agriculture. An agriculture entrepreneur (agripreneur) can obtain different types of financing for their businesses including: -

a. Loans: This is money borrowed which must be paid back often with an additional amount of money (interest). Some loans are to be repaid without any interest such as the Uwezo Fund.

b. Equity financing: This is where the business owner raises capital by selling shares in their business. It is basically selling part of your business in exchange for investment.

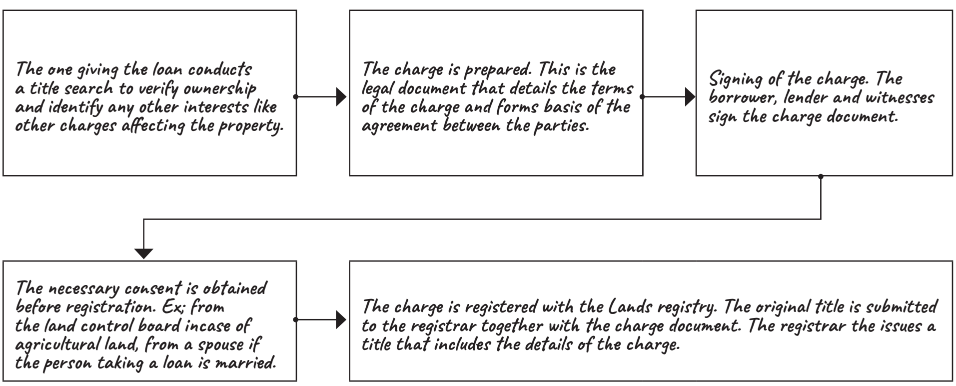
c. Grants: This is where a business owner receives money to support their business which is not usually returned.

11.2. Loans

This is the most common way agripreneur obtain financing for their businesses. Loans can be either secured or unsecured. A secured loan is one that is backed by an asset such that if the borrower fails to pay, the lender can sell the asset to recover the loan. Any kind of asset can secure a loan including land and moveable properties such as cars, livestock, farming equipment among others.

A charge grants a lender legal interest in land to secure a loan. A chargor is the one receiving the loan (borrower) while the chargee is the one giving the loan (lender). The terms of the charge are usually written in the charge document.

11.2.0. Process of charging property



NOTE:

What happens after I finish paying the loan

The charge is removed from the title through a process known as discharge of charge. The process of discharge is as follows: -

a. *The lender prepares and signs a discharge of charge document which states that the borrower has completed paying the loan and that the lender no longer has interest in the property.*
b. *The Discharge of charge is registered with the Lands Registry. The Lands Registry corrects the title by registering the discharge of charge.*

Must I get the consent of my spouse to charge land that is registered in my name alone?

Yes. The law presumes everything obtained by a married person during the marriage as matrimonial property, whether registered in one person's name or jointly. However, one can prove they obtained the property before they married.

Will my land be transferred to the Lender's name after I sign the Charge Document and receive my loan?

No. The Lender has no right to transfer your property to their name. A charge is a security not a transfer.

Can the Lender change the interest rate of the Charge after I have signed the Charge Documents?

Yes, the Lender is allowed to either decrease or increase the interest rate if it was stated in the Charge document that the rate is variable. If the Lender decides to change the rates, a 30-day Notice must be given to the Borrower clearly stating the new rate.

Can the amount secured by my Piece of Land be revised?

Yes. The amount secured can either be increased or decreased by the Lender but a signed memorandum has to be sent to the Borrower before any such changes are made. The same applies to when a change in the term of the charge is made. This Memorandum must be signed and attached to the charge document.

Is it possible to transfer my Charge to someone else?

Yes, it is. A Borrower can request a charge to be transferred to someone else. This person can be anyone with interest in the land or a guarantor for the payment of the amount secured by the charge. This person can also be a creditor(another lender) for the Borrower.

Can the interest and penalties charged be more than the loan amount?

Your interest and penalties should not exceed the principal amount borrowed. Example: A loan of Kes 100,000/- cannot be charged an interest of Kes 200,000/-.

Can I be given another loan by the Lender on the same piece of Land initially charged?

Yes. This is called a further charge and it applies in the same manner as the first charge. Incase, the lender is different, the first lender must consent before the registration of the second charge.

What happens if I fail to pay the loan?

The lender has a right to sell the land and recover the unpaid amount. The lender must however adhere to the following process: -

a.) *The lender can only sell your land if you have failed to pay for more than a month.*

b.) *The lender then issues the borrower with a 90-day rectification notice.*

c.) *If after the 90 days the loan has still not been paid, the lender issues the borrower with a 40-day notice of intention to sell.*

d.) *The lender then instructs a licensed auctioneer to sell the property. The auctioneer issues the borrower with a 45 days' notice. Take note that this notice can be issued at the same time at the notice of intention to sell.*

e.) *The auctioneer later advertises the property for 14 days and then proceeds to sell the property. The recovered money is used to pay; the arrears, any unpaid rates, rent and taxes, all costs related to the sale such as the auctioneer costs, discharge of any other prior charge. The lender must conduct proper valuation of the property and ensure that it is sold for not less than 75% of its market value.*

What can I do if I feel like my land has been sold unfairly or if I want to stop the sale? Where a borrower feels that the sale has been conducted unfairly or that due process has not been followed, they can file a suit in court seeking to stop the process.

11.2.1. Moveable Property as Security

In this new era whereby loans are easily available and offered by other institutions other than banks, moveable property is being used to secure loans. Moveable property includes livestock, farm equipment, cars, electronics, furniture, account savings, shares among others. It is advisable to have the terms of a loan reduced into writing through a security agreement between a borrower and lender which indicates; the names of the parties, describes the secured amount and property (security). This must be signed by both parties.

The Movable Property Security Rights Act 2017 allows the registration of such security agreements online through the e-citizen portal. This helps lenders check if the property has already been used for another loan. To register, an initial notice is filed. If there are changes (e.g., removing a property from the agreement), an amendment notice is filed. When the loan is fully paid or the agreement ends, the lender files a cancellation notice.

Accessing Movable Property Security Rights Registry

What happens if I fail to pay?

The lender has a right to exercise their rights under a security agreement. The Lender must first notify the borrower in writing to pay the money owed. If the borrower does not pay the loan, the lender has a right to; take possession of the property, sue the borrower for any money owed, appoint a receiver of the income of the moveable asset, or lease the moveable asset.

11.2.2. What it means to guarantee a loan

A loan guarantor is someone who agrees to pay a loan if the borrower fails to do so. When a person agrees to guarantee a loan, they enter into an agreement with the Lender called a guarantee. A guarantee must be in writing and signed by the guarantor. A guarantor is entitled to full information about the loan terms i.e. the loan amount, repayment schedule, interest rates and consequences of default before signing a guarantee. Additionally, any changes made to the loan terms must be communicated and consented to by the guarantor. A guarantor's responsibility can be limited to a specific amount or period if this is clearly stated in the guarantee. If there is no limit defined, the guarantor may be responsible for the full unpaid loan amount. A guarantor may also request to be released from the agreement for example where the loan is repaid, or another guarantor takes their place. If the borrower fails to pay, the lender sends a notice to the guarantor and if the loan remains unpaid, the lender can recover the money from the guarantor by for example; deducting the guarantor's SACCO savings, selling the guarantor's property or taking the guarantor to court. If a guarantor ends up paying, they can sue the borrower to get their money back.

The Lender cannot sell the guarantor's property that was not used as security for the loan without an order of the Court.

11.3. Agricultural Insurance

Agricultural insurance is a financial product sold by insurance companies that is meant to protect farmers from unexpected losses that can occur as a result various risks such as natural disasters and pests, and diseases. Agricultural insurance protects the production, transportation and even consumption of agricultural produce. In Kenya, the National Agricultural Policy 2023 lists the following insurance products:-

- Index-based insurance. This type of insurance pays out benefits on the basis of a pre-determined index such as rainfall levels, temperature or soil moisture. In relation to crops it can also be issued in relation to an area's yield i.e the average losses at a regional level.
- Conventional/Commercial Insurance. This insures against all type of perils that could occur on a farm. For crops it insures against drought, excess rains, flooding, hail damage, frost damage, uncontrollable pests and diseases, loss of production inputs,

and fire. It also allows livestock farmers to insure a particular animal against risks such as uncontrollable diseases, calving complications, forceful theft, transit, accidents, emergency slaughter on medical grounds and fire.

Although there is no specific law dedicated to agricultural insurance, this sector is regulated by the Insurance Act, the Crops Act, the Kenya Deposit Insurance Act and the Kenya Re-insurance Corporation Act. The National Agricultural Insurance Policy 2023 (NAIP) provides a comprehensive policy framework on agricultural insurance.

The insurance Act establishes the Insurance Regulatory Authority (IRA) which Licenses insurers, supervises, regulate and control of insurance and re-insurance businesses to protect those who take up insurance policies from exploitation.

11.4. Assessment

Case Study

Cheptoo wants to start producing and selling yoghurt from her dairy farm. She needs Ksh. 1,000,000/- to purchase a processing machine. She has approached Deal Bank for a loan. The bank has asked that she provide collateral to secure this loan. The bank has also asked her to provide one loan guarantor. Cheptoo owns a motor vehicle valued at Kes. 1,000,000/- and agricultural land valued at Kes. 1,500,000/- where she rears cattle. The cattle are valued at Kes 500,000/-. Cheptoo heard that you have attended Amka Africa's trainer of trainers' legal workshop and has come to you for advice on: -

a.) What security she can give the bank as collateral, the process of using security to obtain a loan and the consequences of non-payment.

b.) Who a guarantor is, and what information she can use to convince one of her friends to guarantee the loan.

12. MODULE TWELVE: BUSINESS MODELS

12.0. Learning Objectives

At the end of this module, trainees will be able to:
a.) Define the different business models that are recognized in Kenya.
b.) Understand the registration process of each of these models.

12.1. Types of Businesses

Businesses in Kenya can operate as follows: -
1. Sole Proprietorship
2. Partnership
3. Companies

12.1.0. Sole Proprietorship

This is a business owned by and run by one person. It is the simplest form under which one can operate a business. The business and the owner are considered the same, so there is no difference between the owner's personal and business assets or debts. This type of business is registered as a business name under the Registration of Business Names Act, Cap 499.

Advantages
- Quicker to set up & register.
- The registration procedure is cheaper.
- Minimal formal and legal compliance requirements to operate the business.
- Requires a small amount of capital to set up.
- All profits go to the owner.
- The owner has absolute control of the business operations.
- It is simple to change the legal structure later if circumstances change. i.e. It is easy to dissolve the sole proprietorship and form another business type.

12.1.1. Partnership

A partnership is a business where two or more persons come together to carry on business with a view of making profit. The partners execute a Partnership Deed which is the legal document that spells out the terms and conditions of the partnership and relationship amongst themselves.

There are three types of partnerships:
- **General Partnerships:** There is no difference between the partners and the business. All partners have equal authority and are fully responsible for the business's debts. These are not usually registered.
- **Limited Partnerships:** A limited Partnership is under the Partnerships Act, 2012. Its main characteristic is that there is at least one General Partner and one Limited Partner. The General Partner has an unlimited liability; they are fully responsible for the business's debts. The Limited partner is only responsible up to the amount of money they invested in the business.

- **Limited Liability Partnerships:** These partnerships combine the elements of a company and a partnership. Once registered, they become a separate legal entity from the owners. This means the business can own property, sue, or be sued on its own. The partners' liability is limited to their share in the business. They are regulated by the Limited Liability Partnership Act CAP 30.

Advantages

- Fewer legal obligations compared to a company.
- Wider capital base as there are more partners compared to a sole proprietor.
- Easier to dissolve than a company.
- Separate legal personality as for Limited Liability Partnerships.

12.1.2. Company

A company is a voluntary association of persons, whether individuals, corporates or other associations who have come together for purposes of carrying on business. Companies have a separate legal personality from the owners which means that they can buy property in their own name, take debts in their own name, sue and be sued and be responsible for their liabilities.

The following companies are recognized in Kenya:

- **Company limited by shares:** The liability of its members is limited to any amount (if any) unpaid on the shares held by members. Such companies can be public or private. A private company is held under private ownership and is made up of a maximum of 50 members. The company's constitution limits their right to transfer shares. The shares of a public company are freely offered to the public.
- **Company limited by guarantee:** The liability of its members is limited to the amount that members undertake to contribute to the assets of the company in the event of its dissolution.
- **Unlimited company:** This is a company that has no limit on the liability of its members. This means that should the company fail financially, the shareholders will be called upon to use their own money or property to pay the company's debts.

Advantages of a Company

- The ability to build credit and raise capital.
- A company has the capacity to sue and be sued in its own name.
- The company can purchase and hold assets in its own name.
- The assets of the owners are protected unless in the case of an unlimited company.
- Perpetual life of a company; it survives its owners. It does not die when the owners die or otherwise leave the company.
- Ownership is transferable.

Registration of businesses is conducted on the ecitizen portal. Click on brs.go.ke then log in to your ecitizen account. Click on companies' registry services and proceed to register based on the business type.

12.2. Sectoral Business Permits & Licenses in Food Systems’

Besides registration, certain businesses might require specific permits depending on its nature. It is best to consult a lawyer to advise you on the applicable business permits and licenses. Some of the permits include: -

- Dairy Business Licence- dairy business operators must obtain this licence from the county government where they operate as per Regulation 9 of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulations 2021.
- Dairy Regulatory Permits- a person who wishes to engage in a dairy business must also obtain a regulatory permit from the Kenya Dairy Board as per Regulation 14 of the Dairy Industry (Registration, Licensing, Cess and Levy) Regulations 2021. These permits depend on the business’s operations and include;
  - a.) A milk bar regulatory permit,
  - b.) A mini dairy regulatory permit,
  - c.) A dairy produce dispenser regulatory permit,
  - d.) A cottage industry regulatory permit,
  - e.) A cooling plant regulatory permit
  - f.) A dairy processor regulatory permit.

- Coffee buyer’s licence- issued by the Agriculture and Food Authority to businesses that buy clean coffee for export, local sale or value addition. It is provided for under Regulation 10(2) of the Crops (Coffee) (General) Regulations 2019.
- Coffee Grower’s milling licence- applies to businesses that pulp, mill or roast their own coffee. It is issued by the county government. It is provided for under Regulation 10 of the Crops (Coffee) Regulations 2019.
- Tea Manufacturing Licence- applies to businesses intending to manufacture tea. They must obtain this license from the Agriculture and Food Authority as per Regulation 9 of the Crops (Tea Industry) Regulations 2020.

13. MODULE THIRTEEN: DISPUTE RESOLUTION MECHANISMS AND INSTITUTIONS

13.0. Learning Objectives

At the end of this module the trainees should be in a position to: -

a. Distinguish formal (court) and informal dispute resolution mechanisms.

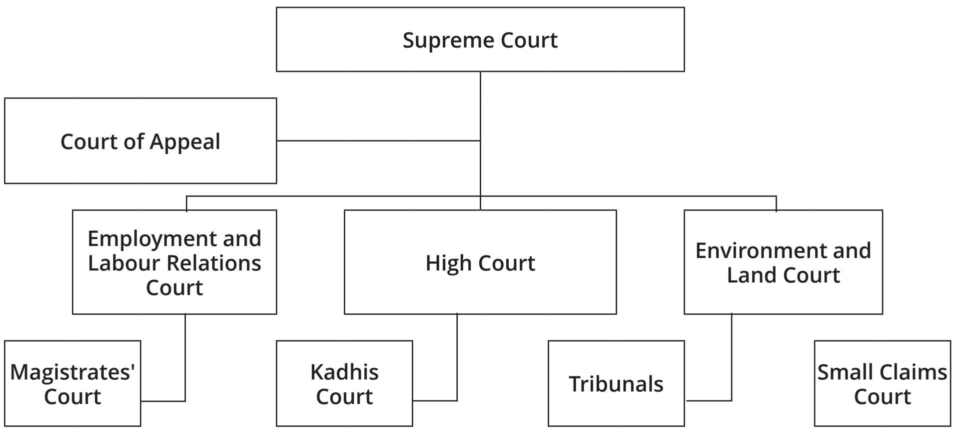
b. Explain and use both formal and informal dispute resolution mechanisms.

13.1. Introduction: Dispute Resolution

Dispute resolution is the process of resolving conflicts. Disputes can be resolved through the court system (formal) or alternative dispute resolution (non-formal means).

13.1.0. Formal Dispute Resolution

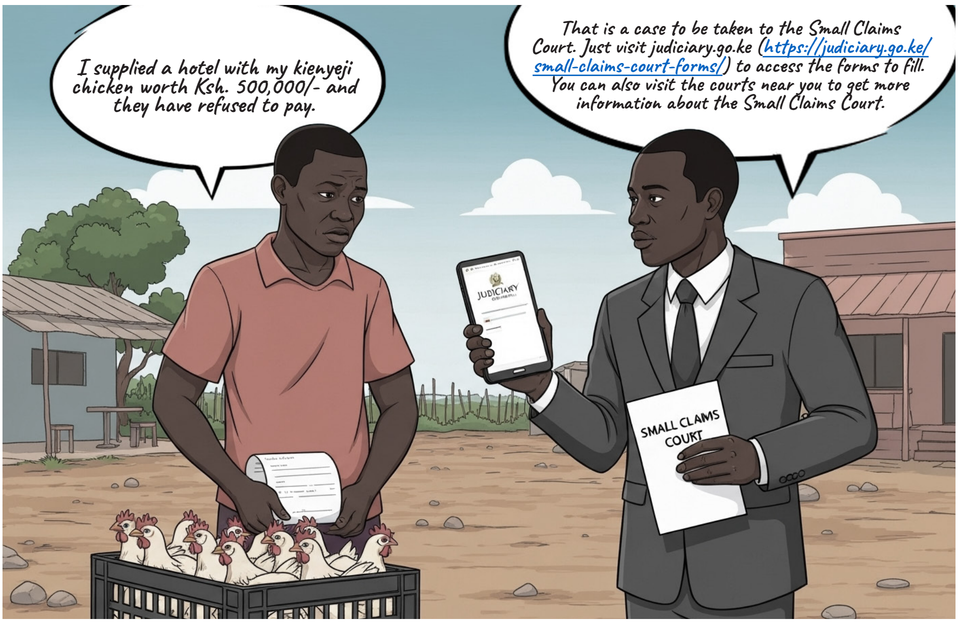
Article 162 of the Constitution of Kenya 2010 establishes a court system consisting of four hierarchical levels as follows: -



- **The Supreme Court**- is the highest court in Kenya. It handles appeals from the Court of Appeal on cases of public interest only; appeals on election petitions; and disputes concerning presidential elections.
- **Court of Appeal**- is the second highest court. It only handles appeals which come from the High Court, Environment and Land Court and the Employment and Labour Relations Court.
- **High Court, Environment and Land Court and the Employment and Labour Relations Court**- is the third tier of the court system. The Environment and Land Court hears disputes relating to the environment, use and occupation of land, title to land, trespass to agricultural land, destruction of crops and ownership of land. The Employment and Labour Relations Court handles labour disputes including sexual harassment at the workplace, unfair termination, strikes and trade union agreements.

The High Court deals with civil and criminal matters either being brought for the first time or as an appeal from the magistrates' courts. In regard to civil matters, it handles commercial matters whose value is above Kenya shillings twenty million (Kes 20,000,000/-). Cases relating to issues such as charging/using agricultural land to obtain a loan from a bank, and contract for the sale of agricultural produce are heard at the High Court.

- **Magistrates Courts**- have authority to handle both civil and criminal disputes but with certain limitations. For civil matters, the magistrates' courts hear matters whose value is below Kenya shillings twenty million (Kes 20,000,000/-).
- **The Small Claims Court**- determines civil cases relating to contracts for goods and services, money held and received, property damage and personal injury which do not exceed Kenya shillings one million (Kes 1,000,000/-). Such cases are heard and determined within 60 days. Filing a case at the Small Claims Court is easy. The forms are available at https://judiciary.go.ke/small-claims-court-forms/
- **Tribunals** -are specialised courts established to deal with specific issues. For instance, the Co-operatives Tribunal hears and determines cases that relates to operations of cooperative societies including the loaning processes. For instance, if Karimi borrows money from a savings sacco and refuses to pay back, the sacco can sue her at the Cooperatives Tribunal. If Ndanu applies to KEPHIS for plant breeder rights over a new variety of sorghum and the same is denied, she can challenge this decision at the Seeds and Plants Tribunal.



13.1.1. Alternative Dispute Resolution

These are dispute resolution mechanisms that operate outside the court systems. Article 159 (2c) of the Constitution, provides that these forms of dispute resolution which includes reconciliation (negotiation), mediation, arbitration and traditional dispute resolution mechanisms shall be promoted by the courts towards resolution of disputes.

Negotiation (reconciliation): This is where the conflicting persons (parties) have a discussion to resolve the dispute by themselves without the intervention of a third person.

dispute between them.

Mediation: This is a more structured but voluntary process where a third person known as the mediator facilitates communication and negotiation between the people in dispute to help them reach an agreement.

Court annexed mediation: Sometimes cases already in court are referred to mediation. This is known as court annexed mediation. In such instances the agreement that the parties arrive at is adopted as a court judgment. This is provided for under the Civil Procedure (Court-Annexed Mediation) Rules 2022. The process of court annexed mediation is as follows: -

The court notifies the parties of the decision to refer the case to mediation. Alternatively, the parties agree to refer the case to mediation.

The parties agree on a mediator from the register of accredited mediators. If they do not agree, the court appoints the mediator.

The mediator conducts the mediation.

If parties reach a settlement, the mediator files a settlement report in Court.

If parties do not reach a settlement, the mediator files a non-compliance report.

The settlement agreement is adopted by the court as a judgment.

In case the parties did not reach an agreement, the case continues in court. The same applies where parties agree on just few issues.

Arbitration: is governed by the Arbitration Act CAP 49. It is a voluntary process that is more formal than negotiation and mediation but less formal than the court system. The parties submit their grievances to a third party, an arbitrator, who acts as a judge and makes a binding decision. The arbitrator's decision is submitted to court and operates as a court judgment.

13.2. Resolving common disputes in Agrifood Systems

i.) Damage to agricultural produce

Agricultural produce may be damaged intentionally or negligently such as by another person's livestock. Such disputes can be resolved outside court as follows: -

The person whose crops are damaged should report the case to an agricultural extension officer near them. Agricultural extension offices are generally located within respective sub-county offices.	→	The agricultural extension officer will then investigate the damage and issue a crop damage assessment report.	→	Using the crop damage assessment report, the person whose crops are damaged should report the dispute to their area chief or sub-chief.	→	The chief will then summon the person whose livestock caused the damage for a reconciliation meeting. At the meeting, the chief will use the assessment report to bring the parties to an agreement on the compensation to paid or other modes of agreement.	→	If the parties fail to agree, person whose crops are damaged can forward the dispute to court.

Note: *Take note that this process does not apply to crop damage resulting from wildlife.*

ii.) Land boundary disputes (S.18 Land Registration Act)

This is where people disagree on the location of a boundary. Parties can resolve the issue through negotiation or mediation by a surveyor. If this fails, where the boundaries of the land are not fixed and the land is not titled, the case should be referred to the nearest land registrar. If the case is not resolved by the registrar, the aggrieved person can file the case at the environment and land relations court. Where the boundaries are fixed, the case should then be filed at the Environment and Land Court.

iii.) Disputes relating to sale or leasing of agricultural land

The agreement between the parties usually provides for the mode of dispute resolution. For instance, parties to the agreement can include a provision that any dispute must first be referred to an alternative dispute resolution mechanism before court. In case there is no such provision, parties are free to use alternative methods including mediation and arbitration or take the matter to the magistrates or environment and land court depending on the monetary value of the dispute.

iv.) Disputes relating to co-operative societies

These include disputes relating to the election of the committee members, non payment of a loan by a member or deduction of the guarantor's deposits where a borrower failed to pay among others. Such disputes should be filed at the Co-operatives Tribunal.

v.) Employment disputes

All employment disputes must first be reported at the labour office near the place of work. The labour officer acts as a mediator between the parties. Where this fails, the case should be referred to the Magistrates Court or Employment and Labour Relations Court depending on the earnings of the employee. See 6.6 above.

14. MODULE FOURTEEN: LAW MAKING AND OPPORTUNITIES FOR PUBLIC PARTICIPATION

14.0. Learning Objectives

At the end of this module, the trainees should: -
a.) Understand the law-making process.
b.) Participate in law making effectively

14.1. The Law-Making Process

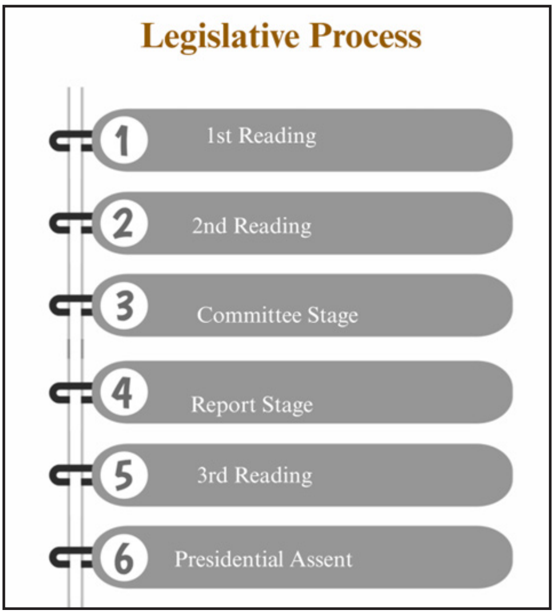
Laws in Kenya are made by: -

a.) **The National Assembly**- made up of members of parliament (MPs) who make laws affecting the country nationally.

b.) **Senate**- comprises of senators who consider, debate on and approve laws concerning counties, as a whole.

c.) **County Assembly**- comprises of members of the county assembly who make laws concerning specific/individual counties.

The legislative process is guided by part 4 (Articles 109-116) of the Constitution.



At this stage, the government invites the public to give their views by either submitting written comments or attending public hearings. This is an opportunity to make your voice heard!

Origination of a legislative proposal

This is the ideation or creation of the legislative proposal. This can be done by a parliamentary leader of minority or majority party leader, individual member of parliament, a committee of the house or a member of the public through a petition. A good example is the Food and Feed Safety Control Co-ordination Bill 2023 which was originated by National Assembly Majority.

Drafting the legislative proposal

This is where the idea is reduced into writing formally and submitted to the speaker. The speaker will then forward the proposal to the clerk who fine tunes it.

Publication of the legislative proposal

At this point a legislative proposal turns into a bill. In case of a non-money bill sponsored by a committee, the speaker approves its publication into a bill. In case of a non-money bill sponsored by an individual member, the speaker refers it to the relevant committee for scrutiny before it is published as a bill. The Budgets and Appropriations Committee analyses how it affects current and future budgets and recommends to the speaker whether it should be published or not. A money bill is that which relates to taxes, government loans, government charges or public money. A non-money bill is any other bill that does not deal with these issues. Example; the Food and Feed Safety Control Co-ordination Bill 2023 was received and published by the National Assembly on 6th June 2023 on the Kenya Gazette Supplement No. 75.[20]

First Reading

This is the formal introduction of the bill to the whole parliament. During this stage, the bill is read out for the first time, and its title and objectives are presented. There is no debate at this stage, and the bill is then referred to the relevant parliamentary committee. The committee conducts public participation and consults the relevant stakeholders. The committee compiles a report with specific recommendations (includes views and recommendations of the public). Ex; the Food and Feed Safety Control Co-ordination Bill 2023 was read for the first time in the National Assembly on 6th June 2023.

Second Reading

This is the debate stage. The MPs, senators or MCAs debate the general principles and merits of the bill. Here they may support, oppose, or suggest amendments to the bill. While debating, they take into account the public views. Once the debate ends, a vote is taken and if the bill passes this stage, then it is sent to the relevant committee of the House for further analysis and scrutiny. Ex: the Food and Feed Safety Control Co-ordination Bill 2023 was passed at the National Assembly at the second reading on 15th and 16th August 2023.

Committee Stage

The committee stage involves an analysis of the bill clause by clause. Any amendments to the bill are proposed, discussed and voted upon. Ex; the Food and Feed Safety Control Co-ordination Bill 2023 went through this stage at the National Assembly on 23rd August 2023.

Report Stage

The committee in-charge prepares a report on the voting and discussions during the committee stage and presents it before the entire senate/parliament or county assembly who vote on it. Any member may still introduce amendments to any specific clause which pushes the house to go through a re-committal.

20 See: <http://www.parliament.go.ke/sites/default/files/2023-06/The%20Food%20And%20feed%20Safety%20Control%20Co-ordination%20Bill%2C%202023.pdf> accessed 25 June 2025

Third Reading
This stage involves a general discussion of the bill. During this stage, no further substantive amendments to the bill are permitted. Only small changes like re-numbering clauses can be made. There is very little debate, and the members take a final vote approving or disapproving the bill. Ex; the National Assembly passed the Food and Feed Safety Control Co-ordination Bill 2023 during the third reading on 23rd August 2023.

At this stage any Bill concerning Counties is referred to the Senate after the third reading. The Senate follows the process once more up to the third reading. If the Senate passes it without amendment, the Speaker of the National Assembly presents the Bill to the President for assent. If the Senate rejects the bill with or without amendments, it is referred to a Mediation Committee which is made up of members drawn from both houses. The committee formulates a version of the Bill agreeable to both houses then it is returned for passing. If the houses fail to agree, the Bill is considered lost.

Ex; after the National Assembly passed the Food and Feed Safety Control Co-ordination Bill 2023, it was referred to the Senate on 25th August 2023 as it contains provisions that affect counties. It was read for the first time at the Senate on 19th September 2023. It was then referred to a Standing Committee on Agriculture, Livestock and Fisheries. The Committee published advertisements on Daily Nation and Standard newspapers to invite the public for comments. It also sent invitations to key stakeholders like the Ministry of Agriculture to submit comments.[21] The Committee then prepared a report with recommendations.[22] The Senate rejected the Bill and returned it to the National Assembly with amendments. The National Assembly rejected the amendments on 18th October 2024. The Bill is currently being considered by a mediation committee.[23]

Presidential Assent
Once the House passes a Bill, it is presented to the President for Assent, i.e. the President's signature. If the President assents a Bill, it becomes law and is known as an Act of Parliament. The President may however refer the Bill back to parliament with a memorandum outlining reservations. If referred back, the house may amend it in light of the reservations or pass the bill a second time without amendments. If passed without considering the President's reservations the vote has to be by two-thirds majority. In the case of the county assembly, the bill is assented to by the governor.

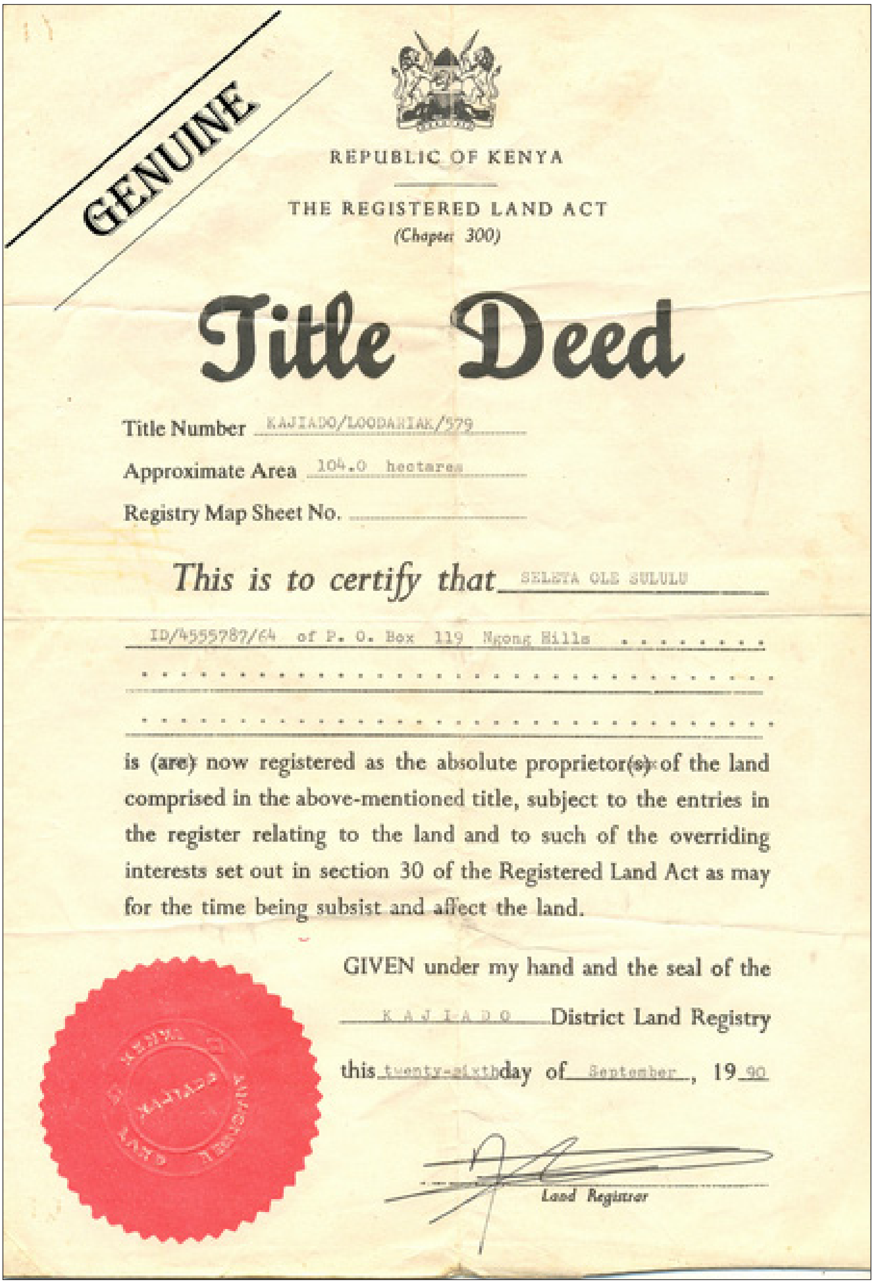
21 See a meeting with the Kenya Association of Manufacturers and Kenya Veterinary Board on the Bill < https://www.facebook.com/story.php/?story_fbid=738435608324206&id=100064733196911> accessed 26 June 2025

22 Standing Committee on Agriculture, Livestock and Fisheries 'Report on the Food and Feed Safety Control Co-ordination Bill 2023' (November 2023) <http://www.parliament.go.ke/sites/default/files/2024-02/SC%20on%20Agriculture%20on%20the%20Food%20and%20Feed%20Sfety%20Control%20Coordination%20Bill%2C%202023-%20NA%20Bill.pdf> accessed 25 June 2025

23 National Assembly 'Bills Tracker, 2025' Page 13 < http://www.parliament.go.ke/sites/default/files/2025-03/BILLS%20TRACKER%20AS%20AT%20THURSDAY%2C%206TH%20MARCH%202025.pdf> accessed 25 June 2025

15. ANNEXURES

15.0. Certificate of Title



GENUINE

REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Chapter 300)

Title Deed

Title Number KAJIADO/LOODARIAK/579

Approximate Area 104.0 hectares

Registry Map Sheet No. ....

This is to certify that SELEYA OLE SULULU

ID/4555787/64 of P. O. Box 119 Ngong Hills . . . .

is (are) now registered as the absolute proprietor(s) of the land comprised in the above-mentioned title, subject to the entries in the register relating to the land and to such of the overriding interests set out in section 30 of the Registered Land Act as may for the time being subsist and affect the land.

GIVEN under my hand and the seal of the K A J I A D O District Land Registry this twenty-sixth day of September, 19 90

Land Registrar

Source: Wikimedia Commons – Blank Kenyan Title Deed

15.1. Certificate of Lease

REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Chapter 300)

Certificate of Lease

TITLE NO. KISUMU/ MUNICIPALITY/

APPROXIMATE AREA (0,0243) HE

LESSOR GOVERNMENT OF THE REPUBLIC OF KENYA

RENT KSHS.950/=(PA) Rev.

TERM 99 YEARS FROM 1.4.1992

This is to certify that

ID/

OF P.O. BOX , ELDORET

is (are) now registered as the proprietor(s) of the leasehold interest above referred to, subject to the agreements and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in section 30 of the Registered Land Act as may for the time being subsist and affect the land comprised in the lease.

GIVEN under my hand and the seal of the

KISUMU District Registry

this 22ND day of AUGUST, 20 14

Land Registrar

Source: Real Consult Valuers Limited Facebook

15.2. Land sale agreement

AGREEMENT FOR SALE

An agreement made this .... day of ....20..................... between

A. **xxxxxxxxxxxx** ("the Vendor") all of P.O Box ....

AND

B. .... ("the Purchaser") of P.O Box ....

The property sold is **ALL THAT** piece of land situate at .... in the .... Area of the Republic of Kenya containing by measurement .... hectare or thereabouts being Land Reference Number ..../............/..........

The Purchase Price is .... and will be paid as follows; a deposit of .... upon signing of the agreement and the balance of .... is to be paid by the Purchaser upon the transfer and registration of the said Title into the Purchaser's name.

The completion date is on ....,[24]

The property is sold free from encumbrances and in vacant possession upon completion.

The Purchaser shall take possession immediately upon payment of the full purchase price.

The property sold is subject to:

a.) All subsisting easements, quasi-easements and rights of way (if any); and
b.) The Acts, reservations, stipulations and conditions contained or implied in the Title.

SPECIAL CONDITIONS

1. The Completion Date is within three (3) months of the date of this Agreement.
2. The Purchaser shall pay any duties and charges necessary to effect transfer of the said title.
3. On or before the completion date the Vendor shall deliver to the Purchaser the following: -
   i. *A transfer duly executed by the Vendor in favour of the Purchaser in respect of the said property;*
   ii. *All documents of Title;*
   iii. *The consents, Land Rent, City Council Rates and any authorisations necessary for completion of the transaction.*
   iv. *All bills for electricity, water and utilities duly paid up until the date of this Agreement.*

4. The Purchaser and the Vendor shall each bear their legal costs, and the Purchaser shall bear the cost of the Stamp Duty and Registration Fees.

IN WITNESS WHEREOF both parties have set their hands on the day and year first hereinbefore written.

SIGNED by .... the **Vendor**

In the presence of: ....

SIGNED by .... the **Purchaser**

in the presence of:- ....

24 The date the Title will be handed over and balance of the purchase price paid.

15.3. Land lease agreement

LEASE AGREEMENT

An agreement made this .... day of ....20...................... between

A. **xxxxxxxxxxxx** ("the Lessor") all of P.O Box ....

AND

B. .... ("the Lessee") of P.O Box ....

Property	
Term/Period	
Rent/Premium	

The Lessor as legal and or beneficial owner of the above noted title HEREBY LEASES to the Lessee the Property for the Term subject to the payment of the Rent and subject to the conditions set out in this Lease.

The Lessee is only allowed to conduct the following activities on the Property ....
IN WITNESS WHEREOF both parties have set their hands on the day and year first hereinbefore written.

SIGNED by .... the **Lessor**

In the presence of: ....

SIGNED by .... the **Lessee**

in the presence of:- ....

15.4. Land Leasing Guidelines

Access Land Leasing guidelines here[25]

25 Guidelines for Leasing of Agricultural Land by Youth in the Western Kenya Counties of Kakamega, Siaya, Bungoma, Vihiga and Kisumu, developed with the support of GIZ Kenya. https://shambashapeup.com/documents/167/Guidelines_for_leasing_Agri_land_by_youth.pdf accessed 24 June 2025

This manual equips trainers with the legal knowledge and practical tools they need to guide farmers, protect rights, and strengthen agriculture and food systems in Kenya—laying the groundwork for a more just and sustainable future.

Training Manual for Training of Trainers on
Legal Aspects of Agriculture and
Food Systems in Kenya.

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