

Replacement of Title to Land in Kenya

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Legal Alert

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A. Introduction

A title document is an essential document that shows proof of right to ownership of property or land. Due to its nature, it may be destroyed, lost or misplaced. Thus, the lawmakers in Kenya foresaw this scenario and designed a law and procedure for replacing lost titles. According to **Section 33 (1)** of the Land Registration Act, 2012, where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issuance of a replacement certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.

B. Checklist and procedure

Below is the procedure that shall be undertaken by a person seeking to replace a title deed:

a) Police abstract: -

Pursuant to **section 33 (1)** of the Land Registration Act, 2012, a person is required to report the loss or destruction of a title to the nearest police station. An abstract shall be issued indicating that the title is lost. To obtain the police abstract, the registered proprietor is required to present:

- (i) Copy of the title or the title number; and
- (ii) Original identity card/passport.

Alternatively, the police abstract can be downloaded from the National Police Service website, printed then presented to the nearest station for stamping.

b) Search at the land Registry: -

The law (Land Registration Act, 2012, **section 33 (4)**) requires an official search to be conducted to show proof of the legal ownership of land/property whose title has been lost, misplaced or destroyed. This is done through application to the relevant land registry for official search to be conducted.

c) Statutory Declaration: -

The law requires the registered proprietor to swear a statutory declaration explaining the circumstances under which the title was misplaced, destroyed or lost. According to section 33 (2) of the Land Registration Act, 2012, the Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed.

d) Application for the title: -

The registered proprietor is required to apply to the Lands registry for issuance of another title in place of the lost or destroyed one. This is done by filling an application form known as The Application for Replacement certificate of Title/Lease on Loss/ Destruction of a Previous Title. The following documents accompany the said application:

- i. The Police Abstract;
- ii. Certified copies of National Identity Card/Passport of the registered Proprietor(s);
- iii. Certified copies of certificate of registration/ incorporation as well as copies of National identity Cards/Passport of the directors /partners/officials who have sworn the statutory declaration in the case of a registered entity;
- iv. Colored passport sized photos of the individual registered

Proprietor (s) or person(s) making the statutory declaration;

- v. Where it is the case of a registered entity, certified extract of the resolution of the entity seeking an application for a replacement title; and
- vi. An official search in respect of the Property and/or any other document showing proof of ownership of the Property.

e) Registration of a caution: -

To protect illegal dealings or transactions on the land whose property is lost, the law (*Section 77 of the Land Registration Act, 2012*) recommends that a caution be registered by the legal owner during application for replacement and before issuance of the title.

f) Publication in the Kenya gazette and local dailies: -

The registrar is required to verify and satisfy that the title has been lost. Thereafter, he or she will cause publication of the name of the person whose title has been lost in the Kenya Gazette and at least two local dailies with nationwide circulation. The publication shall give a sixty (60) days' notice about the loss of the title. The intention of the Gazette Notice is to notify the public that upon expiry of sixty (60) days another Title Deed shall be issued to the Applicant or afford an opportunity to anyone who has a claim or objection to the issuance of that Title Deed to take action. The person shall be required to pay prescribed fee to the government printer for the said publication.

g) Confirmation and Issuance of duplicate of the title: -

After lapse of 60 days, the registrar is required to verify and confirm that the process was duly followed. If satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, he or she may issue a provisional certificate of title or certificate of lease upon the expiry of sixty days from the date of publication in the Gazette or circulation of such newspapers, whichever is first.

Thereafter, the Land Registrar enters the relevant entries into the relevant cards (*i.e green card if the past transaction pertains a freehold and white card where the interest involved is a lease*) and issues a replacement of the Title Deed thereon. The law requires that, where the lost title deed is found, it should be presented to the registrar of lands for cancellation.

C. Conclusion

We advise that replacement of a lost title is important to enable the proprietor reap the full benefit of the owning land.

Prepared By:

Hezbon Ooko, Lawyer

Email: hooko@mumakanjama.com

Reviewed by:

Tony Namiinda, Associate Advocate

Email: tnamiinda@mumakanjama.com

Should you need further advice or an introductory meeting with us, contact us on:



Email: info@mumakanjama.com

Tel: +254-20-2216889/2211437

Charles Kanjama, SC; ckanjama@yahoo.com