

Introduction

The Rating Act, cap 267 as read with the Valuation for Rating Act, cap 266, provides the legal framework for the imposition and collection of land rates in Kenya. The Acts set out the criteria for the assessment and payment of land rates by owners and occupiers of land. As a general requirement, a **rateable owner** of property is required to pay land rates.

However, there are certain classes of rateable owners who are exempt from paying land rates by virtue of their utilization of land. In this legal alert, we will examine the exemption from paying land rates with specific reference to charitable institutions, the relevant provisions and case law.

Who is a Rateable Owner?

Section 7 of the Valuation for Rating Act defines a **rateable owner** to include;

- a. The owner of a registered freehold or a tenant for life of a property; or
- b. The lessee of that property holding under a registered lease-
 - i. for a term of not less than 25 years; or
 - ii. for the natural life of the lessee; or
 - iii. which is renewable indefinitely at the will of the lessee; or
 - iv. having interest other than an interest as a statutory tenant arising under the Rent Restriction Act, cap 296;
- c. the lessee of public land under a registered lease entitling him to possession of the property for a term of not less than 25 years; or
- d. The lessee from a local authority of the rateable property holding a registered lease of not less than 10 years.

In **Republic v Municipal Council of Limuru, Ex Parte David Ngure Kienjuku**, the court clarified the definition of a rateable owner under section 7(1) to mean "...the owner of a registered freehold or tenant life or a lessee of that property **for a definite period of not less than 25 years or for the natural life of that person...**"

In determining who is a rateable owner, the Act considers the nature of the interest in land.

Who is Exempted from paying land rates?

Notwithstanding section 7 above, certain classes of rateable owners may be exempted from paying land rates based on the nature of their use of the land.

Section 27 of the Act provides that no land rates shall be paid in respect of any land which is used, *or to be used*, directly and exclusively for any of the following purposes;

- a. Public religious worship;
- b. Cemeteries, crematoria and burial or burning grounds;
- c. Hospitals or other institutions for the treatment of the sick;
- d. Educational institutions, including students' residences provided by the educational institutions;
- e. Charitable institutions, museums and libraries;
- f. Outdoor sports; or
- g. National parks and national reserves within the Wildlife Act.

It is important to note that while the above exemptions apply, the use of property for any purpose other than religious or educational purposes, which **accrues profit** or for residential purposes shall be subject to payment of land rates.

Exemptions for charitable institutions

The exemption of charitable institutions from paying land rates is based on the recognition of their role in providing essential services to the community. Charitable institutions are considered to be organizations that operate for the benefit of the public, and their

activities are seen as promoting the public good. Therefore, it is only fair that they should be exempted from paying land rates, as their resources are already stretched in providing essential services to the public.

Pursuant to the Valuation for Rating Rules, Legal Notice No. 389 of 1990, charitable institutions have been defined as institutions, body of persons or irrevocable trusts for the time being granted exemptions as a charity by the Commissioner of Income tax from payment of tax upon its income pursuant to the provisions of the Income tax Act.

The Legal Notice further provides that charitable institutions are to make applications for exemption to the Cabinet Secretary for Devolution (*then the Minister for Local Government*). Rule 4 of the Legal Notice outlines the procedure for obtaining exemptions by charitable institutions as follows;

- a. The application must be made in writing setting forth in detail the reasons for seeking exemption;
- b. The Minister may grant or refuse to grant the exemption applied for;
- c. Such grant or refusal for exemption shall be final;
- d. If exempted, the production of evidence of exemption granted by the Cabinet Secretary shall be sufficient proof of exemption.

Case Law on Exemption of charitable institutions

There have been several cases in Kenya that have considered the exemption of charitable institutions from paying land rates.

The exemption **Registered Trustees Supreme Council of Kenya Muslim v The Attorney General & 2 Others**, the court held that an exemption for rates is valid if granted by the Cabinet Secretary of the relevant ministry. The bone of contention was the rental income the applicant obtained from its shops. The Court held that the applicant's rental income was used for its charitable objects. Consequently, the High Court issued judicial review orders of certiorari and prohibition against Nairobi City County from demanding land rates, reasoning that the applicant was a charity institution that was legitimately granted an exemption by the Minister for Local Government. The court held that the guiding factor in determining which property belonging to charitable institutions is subject to land rates is whether the funds generated from the premises would be used for the purpose of charity. If such funds were considered profit, then the charitable institution would be liable to remit land rates.

In **Republic v County Government of Machakos Ex- parte Victory Faith Ministries (2018) eKLR**, the applicants approached the courts having received a demand from the county government to pay land rates arguing that although the suit land was being used for educational purpose, it could not be exempt from paying the rates because the said students in those schools pay fees, thus generating income for the applicant. While the courts agreed with the county government on the need for the applicant to pay land rates, the failure by the county government to produce documentation supporting their profit-making allegations proved fatal and their demand to collect rates was quashed by the courts.

Conclusion

The exemption of charitable institutions from paying land rates is an important provision under the Rating Act and the Valuation for Rating Act. It recognizes the important role played by charitable institutions in providing essential services to the community. Recognized by the courts, it is important for charitable institutions to be aware of this exemption and take advantage of it where applicable.

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