



LAWS OF KENYA

THE NATIONAL MUSEUMS AND HERITAGE ACT

CHAPTER 216

Revised Edition 2009 (2006)
Published by the National Council for Law Reporting
with the Authority of the Attorney General

CHAPTER 216

THE NATIONAL MUSEUMS AND HERITAGE ACT

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

Section

- 1—Short title.
- 2—Interpretation.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE
NATIONAL MUSEUMS OF KENYA

- 3—Establishment of the National Museums of Kenya.
- 4—Functions of National Museums.
- 5—Powers of the National Museums.
- 6—Board of Directors.
- 7—Tenure of office.
- 8—Termination of appointment of Chairman and members of the Board.
- 9—Disclosure of interest by Chairman and members.
- 10—Meetings of the Board.
- 11—Delegation by the Board.
- 12—Protection from personal liability.
- 13—Liability of the Board in contract and tort.
- 14—The Director-General.
- 15—Staff.
- 16—Appointment of advisory committees.
- 17—National Museums to undertake research etc.

PART III—FINANCIAL PROVISIONS

- 18—Funds of the National Museums.
- 19—Financial year.
- 20—Annual estimates.
- 21—Investment of funds.
- 22—Restriction on loans to Board members and staff.
- 23—Accounts and audit.
- 24—Annual report.

PART IV—HERITAGE DECLARATIONS

- 25—Declaration of monuments etc.
- 26—Registers.

Section

PART V—SEARCHES AND DISCOVERIES

- 27—Exploration licences.
- 28—Conditions and forms of exploration licence.
- 29—Entry on land under exploration licence.
- 30—Notification of discovery.
- 31—Restriction on moving objects.
- 32—Offences.

PART VI—PROTECTED AREAS

- 33—Where protected area is Trustland.
- 34—Control of access etc. to protected area.
- 35—Compensation to owner of land in protected area.
- 36—Offences.

PART VII—MONUMENTS

- 37—Inspection and repair of monuments.
- 38—Acquisition of monuments and antiquities.
- 39—Guardianship of monuments.
- 40—Agreements for protection or preservation of monuments.
- 41—Enforcement of agreements for protection of monuments.
- 42—Compulsory purchase of monuments.
- 43—Duties of Board to protect and maintain monuments.
- 44—Power of National Museums to relinquish rights over monuments.
- 45—Offences.

PART VIII—ANTIQUITIES AND PROTECTED OBJECTS

- 46—Antiquities property of Government.
- 47—Information concerning antiquities and protected objects.
- 48—Prohibition of removal of antiquities and protected objects.
- 49—Prohibition of sales, etc., of antiquities and protected objects.
- 50—Compulsory acquisition of antiquities and protected objects.
- 51—Offences.

PART IX—EXPORT

- 52—Conditions relating to export.
- 53—Notices to Minister to acquire by compulsory purchase.
- 54—Export through Customs port of entry.
- 55—Offences.

Section

PART X—POWERS OF ENFORCEMENT

- 56—Inspection by the National Museums.
- 57—Heritage wardens.
- 58—Power of heritage wardens to inspect.
- 59—Power of arrest.
- 60—Power of customs officers.
- 61—Forfeiture to Government after seizure.
- 62—Notices.
- 63—Offences.

PART XI—GENERAL

- 64—Burden of proof.
- 65—Stamp duty exemption.
- 66—Rules.
- 67—Licensing of Museums.
- 68—Regulations.
- 69—Transitional provisions.
- 70—Repeals.

PART XII—MISCELLANEOUS

- 71—Amendment to section 4 of Cap. 130.
- 72—Amendment to section 145 of Cap. 265.
- 73—Amendment to section 201 of Cap. 265.
- 74—Amendment to section 7 of Cap. 306.
- 75—Amendment to section 17 of Cap. 499.
- 76—Amendment to section 47 of Act No. 6 of 1996.
- 77—Amendment to section 38 of Act No. 8 of 1999.
- 78—Amendment to section 116 of Cap. 280.
- 79—Amendment to section 65 of Cap. 281.
- 80—Amendment to section 172 of Cap. 282.
- 81—Amendment to section 136 of Cap. 300.

SCHEDULES

CHAPTER 216

THE NATIONAL MUSEUMS AND HERITAGE ACT

Commencement: 8th September, 2006

An Act of Parliament to consolidate the law relating to national museums and heritage; to provide for the establishment control, management and development of national museums and the identification, protection, conservation and transmission of the cultural and natural heritage of Kenya; to repeal the Antiquities and Monuments Act and the National Museums Act; and for connected purposes Cap. 215.
Cap. 216.

ENACTED by the Parliament of Kenya as follows:

PART I—PRELIMINARY

1. This Act may be cited as the National Museums and Heritage Act, 2006. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

“antiquity” means any movable object other than a book or document made in or imported into Kenya before the year 1895, or any human, faunal or floral remains of similar minimum age which may exist in Kenya;

“Board” means the National Museums Board established under section 6;

“cultural heritage” means—

- (a) monuments;
- (b) architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of universal value from the point of view of history, art or science;
- (c) groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding value from the point of view of history, art or science;

- (d) works of humanity or the combined works of nature and humanity, and areas including archaeological sites which are of outstanding value from the historical, aesthetic, ethnological or anthropological point of view;

and includes objects of archaeological or palaeontological interest, objects of historical interest and protected objects;

“Director-General” means the Director-General of the National Museums appointed under section 14;

“exploration licence” means an exploration licence issued under section 27;

“export permit” means a permit to export a monument or part thereof, an antiquity, or a protected object, issued by the Minister under section 52;

“geo-park” means an area of natural heritage;

“heritage” means natural and cultural heritage;

“heritage warden” means a person appointed under section 57;

“maintenance” includes the fencing, covering in, repairing, restoring and cleansing of a monument or the fencing or covering of a protected area, and the doing of any act which may be necessary for the purpose of maintaining or protecting a monument or a protected area or of securing convenient access thereto;

“Minister” means the Minister for the time being responsible for the National Museums;

“monument” means —

- (a) a place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest has been and remains declared by the Minister under section 25 (1) (b) to be a monument;
- (b) a rock-painting, carving or inscription made on an immovable object;
- (c) an ancient earthwork or other immovable object attributable to human activity;

(d) a structure which is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attached to it; and has been and remains declared by the Minister under section 25 (1) (b) to be a monument;

(e) a shipwreck more than fifty years old;

and such adjoining land as may be required for maintenance thereof;

“museum” means a public or private institution which collects, preserves, analyses and exhibit objects of cultural and natural heritage;

“national museum” means a museum vested in the National Museums;

“the National Museums” means the National Museums of Kenya established under section 3;

“natural heritage” means—

(a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

(b) geological or physiographical formations of special significance, rarity or beauty;

(c) precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science, conservation or natural beauty; or

(d) areas which are or have been of religious significance, use or veneration and which include but are not limited to Kayas;

“object of archaeological or palaeontological interest” means an antiquity which was in existence before the year 1800;

“object of historical, cultural or scientific interest” means an object which came into existence in or after the year 1800;

“open space” means an open space not built upon in any urban or peri-urban area whether in a municipality or not to which the public has access and which may be used for parks, gardens, recreation grounds or any other use whatsoever;

“owner” includes a joint owner invested with powers of management on behalf of himself and other joint owners, and an agent or trustee exercising powers of management over a monument, and the successor in title of any such owner, the successor in office of any such agent or trustee; but nothing in this Act shall be deemed to extend the powers which may be lawfully exercised by the owner, agent or trustee;

“permit” means a valid and subsisting permit issued by the Minister under the provisions of this Act;

“private land” means land privately owned and land the subject of a grant, lease or licence from the Government, and includes Trust land;

“protected area” means a site which has been and remains declared by the Minister under section 25 (1) (a) or (c) or (f) to be a protected area;

“protected building” means a building of special architectural or historical interest declared by the Minister to be a protected building under section 25 (1) (e) and includes any object or structure fixed to the building;

“protected object” means—

- (a) a door or door—frame carved in an African or Oriental style before the year 1946; or
- (b) any other object or type of object, whether or not part of an immovable structure, which being of historical or cultural interest has been and remains declared by the Minister under section 25 (1) (d) to be a protected object;

(2) This Act extends to heritage including monuments, antiquities and shipwrecks in lakes and waters within Kenya, or on the seabed within the territorial waters of Kenya.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE NATIONAL MUSEUMS OF KENYA

Establishment of the National Museums of Kenya.

3. There is established a body corporate to be known as the National Museums of Kenya with perpetual succession and a common seal and which shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

- (c) borrowing money;
- (d) entering into contracts;
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. The National Museums shall—

Functions of National Museums.

- (a) serve as national repositories for things of scientific, cultural, technological and human interest;
- (b) serve as places where research and dissemination of knowledge in all fields of scientific, cultural, technological and human interest may be undertaken;
- (c) identify, protect, conserve and transmit the cultural and natural heritage of Kenya; and
- (d) promote cultural resources in the context of social and economic development.

5. (1) The National Museums may—

Powers of the National Museums.

- (a) purchase or exchange, take on lease, or acquire by gift or otherwise, movable or immovable property including an existing museum, for any purpose of or connected with the national museums;
- (b) sell, lease or exchange immovable property from time to time vested in the National Museums which is no longer, or not for the time being, required for any such purposes;
- (c) erect, maintain and improve buildings, including staff quarters, to be used for any such purpose;
- (d) mortgage or charge immovable property from time to time vested in the National Museums as security for repayment, with or without interest, of any money borrowed for the purposes of the National Museums;
- (e) appoint advisory committees for museums;
- (f) acquire by way of gift or purchase, or accept by way of loan or deposit, any object of scientific, cultural, technological, historical or human interest;

- (g) exchange, sell or otherwise dispose of objects not required for the purpose of the National Museums and lend objects vested in the National Museums to any person or institution whether within or outside Kenya:

Provided that no object which is accessioned and registered as part of the collection of a national museum shall be—

- (i) sold, given away, mortgaged, pledged or in anyway permanently disposed of save under authority of a resolution of the Board and with the consent in writing of the Minister; or
- (ii) lent to any person or organization, within or outside Kenya, unless under authority of a resolution of the Board and with the consent of the Minister;
- (h) with consent of the Minister form companies to take over or assist in any of the functions of the National Museums;
- (i) apply money received on the sale or disposal of movable property or by way of payment for admission to a museum or by way of gift or grant or otherwise, in the purchase of any object which in the opinion of the Board it is desirable to acquire for a national museum or in furthering interest in and increasing the utility in a national museum;
- (j) solicit and accept and receive subscriptions, donations, devices and bequests (whether of movable or immovable property and whether absolute or conditional) for the general or special purposes of a national museum or subject to any trust;
- (k) charge for admission to a national museum, or to any lecture, exhibit, conducted tour, course of instruction or other facility, or for publications, such fees or prices as the National Museums may, subject to any regulations made under this Act, think fit;
- (l) borrow, with or without security, such moneys as may from time to time be needed for any purposes of the National Museums;
- (m) in consultation with the National Council for Science and Technology, maintain existing research institutions and establish new ones;

- (n) subject to the provisions of the Environmental Management and Co-ordination Act, conduct environmental impact assessments;
- (o) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in the furtherance of the purposes for which the National Museums is established;
- (p) open a bank account or bank accounts for the funds of the National Museums;
- (q) do all such other lawful things as may seem to the National Museums to be incidental or conducive to the attainment of any of the functions of the National Museums.

No. 8 of 1999.

(2) The National Museums may receive moneys from any source and may apply those moneys to defray its expenses in carrying out the functions and exercising the powers conferred on it by this Act including the reimbursement of expenses incurred by members of the Board in attending meetings of the Board.

6. (1) There is established a Board of Directors of the National Museums of Kenya which shall be the governing body of the National Museums and shall consist of the following members:

Board of Directors.

- (a) a chairman appointed by the Minister after consultation with the President;
- (b) four persons representing scientific interests appointed by the Minister of whom one shall be nominated by Nature Kenya, one by the University of Nairobi, one from one other university and one from the National Council for Science and Technology;
- (c) the Permanent Secretary in the Ministry for the time being responsible for national heritage;
- (d) the Permanent Secretary in the Ministry for the time being responsible for finance;
- (e) the Permanent Secretary in the Ministry for the time being responsible for defence;
- (f) not more than three persons to be appointed by the Minister by virtue of their outstanding interest in and contribution to the work of national museums;

- (g) one person appointed by the Minister from the private sector;
- (h) one person appointed by the Minister upon nomination by the Kenya Tourist Board;
- (i) a Director-General appointed by the Minister after consultation with the Board who shall be an *ex-officio* member and secretary to the Board.

(2) The Board shall elect a vice-chairman from among its members.

(3) The Board shall have the general management, development and control of the National Museums and all functions vested in the National Museums by this Act.

Tenure of office.

7. (1) The Chairman or a member of the Board other than an *ex-officio* member shall hold office for a period of three years and shall be eligible for re-appointment.

(2) The quorum of the Board shall be seven members excluding the *ex-officio* members.

(3) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(4) A member of the Board, other than an *ex-officio* member, may resign his office by notice in writing under his hand addressed to the Minister.

Termination of appointment of the chairman and members of the Board.

8. The appointment of the chairman or member of the Board may be terminated by the Minister, if the chairman or member—

- (a) is unable to perform the functions of his office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
- (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
- (d) is, without reasonable cause, absent from three consecutive meetings of the Board; or
- (e) is otherwise unfit or unable to discharge his function.

9. (1) The Chairman or a member of the Board who has a direct or indirect personal interest in a matter being considered or to be considered by the Board shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board.

Disclosure of interest by chairman and members of the Board.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting of the Board and the chairman or member shall not take part in the consideration or discussion of or vote during any deliberations on the matter by the Board.

10. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule, but subject thereto, the Board may regulate its own procedure.

Meetings of the Board.

(2) The Board may co-opt any person to participate in its deliberations on any particular issue, but a person so co-opted shall have no right to vote at any meeting of the Board.

11. The Board may, by resolution generally or in any particular case, delegate to any committee of the Board the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

Delegation by the Board.

12. Subject to section 13, no matter or thing done by a member of the Board or agent of the Board shall, if the matter or thing is done bona fide for executing the functions, powers and duties of the Board under this Act, render the member, or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Protection of personal liability.

13. The provisions of section 12 shall not relieve the Board of the liability in tort or contract, to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act, or any other written law.

Liability of the Board in Contract and tort.

14. (1) There shall be a Director-General of the National Museums, who shall be appointed by the Minister on the recommendation of the Board on terms and conditions specified in the instrument of his appointment.

The Director-General.

(2) The Director-General shall hold the minimum of a doctorate and have experience in any field or discipline relating to the work of the National Museums.

(3) The Director-General shall be the chief executive officer of the National Museums and shall be responsible to the Board for the day to day management of the National Museums.

