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**Real Property Law**

**1a). mortgages and charges**

A mortgage is a transaction a borrower transfers to a lender, ownership of an interest in land; with the condition of land being that the interest is vested in the lender as security for the loan or charge. The lender has no legal right to sell the land/property until there are no efforts for payments by the borrower.

A charge is an interest in land securing the payment of money or money’s worth or the fulfilment of any condition, and includes a subcharge and the instrument creating a charge, including **an informal charge**, which is a written and witnessed undertaking, the clear intention of which is to charge the chargor’s land with the repayment of money or money’s worth obtained from the charge, **a customary charge** which is a type of informal charge whose undertaking has been observed by a group of people over an indefinite period of time and considered as legal and binding to such people

An owner of private land or a lessee, by an instrument in the prescribed form, may charge the interest in the land or a part thereof for any purpose including but not limited to securing the payment of an existing or a future or a contingent debt or other money or money’s worth or the fulfilment of a condition.

A formal charge shall take effect only when it is registered in a prescribed register and a chargee shall not be entitled to exercise any of the remedies under that charge unless it is so registered

Charges shall rank according to the order in which they are registered. Informal charges shall rank according to the order in which they are made provided that a registered informal charge shall take priority over any unregistered informal charge.

b). leases

means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his or her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;

An owner of a private land can lease that land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee

The rent, royalties and payments reserved under any lease or licence shall be a debt owed to the Commission, and shall be paid by the lessee or licensee at the office of the Commission or at such other place as the Commission may prescribe. The annual rent reserved under any lease or licence shall be payable in advance on the first day of January in each year of the term.

**2a). Easements**

- non-possessory interest in another’s land that allows the holder to use the land to a particular extent, or to restrict the proprietor’s use to a particular extent. The land for the benefit of which any easement is created is referred to as the “dominant land” and the land of the person by whom an easement is created is referred to as “the servient land”

Subject to any other written law applicable to the use of land, the rights capable of being created by an easement are

1. any rights to do something over, under or upon the servient land
2. any right that something should not be so done
3. any right to require the owner of servient land to do something over, under or upon that land
4. any right to graze stock on the servient land.

And do not include:

(a) any right to take and carry away anything from the servient land

(b) any right to the exclusive possession of any land.

b). Compulsory acquisition

Land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for fulfilment of the stated public purpose.

If, after land has been compulsorily acquired the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may offer the original owners or their successors in title pre- emptive rights to re-acquire the land, upon restitution to the acquiring authority the full amount paid as compensation.

If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined. A set of rules is made to regulate the assessment of just compensation.

**d).Overriding interest**

All registered land are subject to the following overriding interests;

spousal rights over matrimonial property, trusts including customary trusts rights of way, rights of water and profits subsisting at the time of first registration, natural rights of light, air, water and support, rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law, leases or agreements for leases for a term not exceeding two years, periodic tenancies and indeterminate tenancies, charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land, rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription, electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law.

3a

1. **Child born in a family setup**

A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child’s liability and obligations to the land (Land Act Section 27, Land Registration Act Section 47)

1. **Child born out of wedlock**

A child born out of wedlock has an automatic claim to their mother’s property but only allows those expressly recognized by the father or whose father contributed in their upbringing to claim his property upon death.(Succession Act Section3(2)) Hence, if the condition is met, then the child can pursue rights on the fathers land according to section 27 of the Land Act

1. **A child suffering from disability**

Statute: Land Registration Act Section 48

The guardian of a person under a legal incapacity or, if there is no such guardian, a person appointed under some written law to represent that person, may make an application, do any act and be party to any proceeding on behalf of that person, and may generally represent that person for the purposes of this Act

Before accepting a document executed by a guardian or other person so appointed to represent a person under a legal incapacity, the Registrar shall be satisfied that the person claiming to be the guardian is entitled to execute the document or require the production of the appointing instrument of the person, and shall file a note of the explanation to that effect.

1. **Youths**
2. **A woman who have been housewife**

i).During marriage

statute: Matrimonial Property Act

This act states that ownership of matrimonial property vests in the spouses according to their contribution towards its acquisition and improvements. This contribution includes both monetary and non-monetary, so the wife has a percentage of rights.

ii).After death

Contrary to the Matrimonial Property Act, the Succession Act does not automatically observe the prescription of matrimonial property hence, the property is administered the deceased husband’s property without indication of the wife’s share.

iii).After dissolution of marriage

Property is divided according to their contributions following the Matrimonial Property Act but putting into consideration the customary laws relating the dissolution of marriage.

3b).

Adding children in the database as benefactors so that children recognition is effective

Making provision for joint-spousal in not only theory but in land registration and documentation in human rights

Ensure proportionate representation of women and provide representation of youth and people with disabilities in land dealing institutions

Enact existing land laws to realize their full action

4.

George has an obligation that he didn’t follow. This was to involve his wife before mortgaging their matrimonial home, after this, he should have got consents; in form of written form, from the two without any form of coercion.

His wife has the right to contest the transfer of their home to Joyce according to the Matrimonial Property Act that she doesn’t be evicted as long as they are married.

In the case of court injunction asking for an eviction, she has the right to challenge it deeming that her consent was not presented during the mortgaging.

5.

First, I assume that the transaction had met the legal requirements i.e. the two parties had a written agreement, with the buyer and sellers full names, national identity card, numbers and postal address, and the signatures attested to by a witness who was present during the signing.

The following are the remedies to this situation.

Salima should make a notice informing Musa.

of the nature and extent of the breach, whether Salima considers that the breach is capable of being remedied by the payment of a stated amount of money owing under the contract, of the period within which Msa must pay the rest of the money, if Salima considers that the breach is capable of being remedied by paying the remaining amount and the consequence to be taken if Musa fails to pay before the deadline.

If Musa still fails to pay, Salima can;

Resume possession of the land peaceably (on mutual agreement),

Obtain an order for possession of the land from the court in accordance with the provisions of section 41 of the Land Act.