



CM ADVOCATES LLP



SECTOR-SPECIFIC CONSENTS IN KENYAN LAND TRANSACTIONS AND CONSTRUCTION

A Deeper Look at the Regulatory Architecture Behind “Clean” Title

Land transactions in Kenya require parties to navigate multiple regulatory hurdles before a transfer or development can proceed. While general consents, such as approvals from a Land Control Board, a lessor, a chargee, or a management company, are common features of everyday conveyancing practice, sector-specific consents introduce a distinct, often overlooked layer of regulatory oversight.

This review revisits the doctrinal foundation of sector-specific consents and then maps ten regulatory regimes that recur most often in Kenyan land and construction practice, several of which (aviation safety zones and construction, industry registration in particular) are routinely missed in standard conveyancing checklists. It closes by testing the conventional account against how courts have actually treated these disputes, including cases where regulators overreached and were corrected.

1. THE CONSTITUTIONAL AND DOCTRINAL FOUNDATION

The requirement for sector-specific consents is rooted in the Public Trust Doctrine, which obligates the State and its regulatory agencies to hold and protect resources such as water bodies, forests, riparian

reserves, and public utility corridors for the benefit of the public. As a child of this doctrine, sector-specific consents serve as legal safeguards that balance private property rights under Article 40 of the Constitution against the broader public interest in environmental protection, public safety, and sustainable development.

While Article 40 protects the right to property, it is not absolute, Article 24 permits the limitation of rights, including property rights, where reasonably justifiable in pursuit of a legitimate public interest such as public safety, environmental protection or the rights of others, and Article 40(6) in any event withholds protection from property unlawfully acquired.

2. MAPPING THE SECTOR-SPECIFIC CONSENT REGIMES

2.1 Wildlife – Kenya Wildlife Service

The Wildlife Conservation and Management Act, 2013, regulates land situated within, adjacent to, or affecting national parks, reserves, sanctuaries, and recognized wildlife migratory or dispersal corridors. While Kenya Wildlife Service (KWS) involvement is most commonly triggered by land bordering a gazetted protected area, its formal consent is also mandatory where an exchange of park land for private land is proposed. In such instances, the Act requires the exchange to be



supported by a comprehensive Environmental Impact Assessment (EIA), approved by the National Assembly, and strictly restricted to land that does not comprise a water catchment area, wetland, or critical habitat for rare or endangered species. Because wildlife migratory corridors are dynamic and rarely reflected on the Registry Index Map (RIM), reliance on a standard official title search is insufficient. Where a property is located within major conservation ecosystems, such as the Maasai Mara, Amboseli, or Tsavo, prudent due diligence requires a physical site inspection coupled with a direct records verification search with KWS.

2.2 Forests – Kenya Forest Service

The Forest Conservation and Management Act, 2016, is distinctive because its regulatory oversight applies equally to public, community, and private forests; the registration of a forest as private land does not extinguish the statutory jurisdiction of the Kenya Forest Service (KFS). Beyond regulating forest produce, KFS exercises strict development control. For instance, Section 37(2) mandates that county governments ensure housing estate developers reserve at least five percent of the total development area as an eco-friendly green zone. Given the historical layout alterations of forest boundaries through excisions and ongoing boundary disputes, particularly around the Aberdares, Mount Kenya, the Mau Complex, Karura Forest, and the coastal mangrove belt, conveyancers must verify boundary coordinates directly against current gazetted maps held by KFS and the Survey of Kenya rather than relying solely on the face of historical title documents.

2.3 Water and Riparian Land – Water Resources Authority

The Water Act, 2016, vests ownership of all water resources in the national government in trust for the people of Kenya. The Water Resources Authority (WRA), established under Section 11, is tasked with regulating the use, management, and protection of these resources, including riparian land. Under the updated Water Resources Regulations, WRA maintains strict oversight over the delineation and protection of riparian reserves. Crucially, land adjoining a water body does not automatically convert entirely to public land; the precise spatial extent of the riparian reserve must be surveyed and formally established. Kenyan courts actively scrutinize WRA enforcement actions, requiring clear evidence of exact coordinates rather than accepting sweeping regulatory assertions at face value. Depending on the project, a developer may require two distinct clearances: a WRA permit for activities altering natural water flow, drainage, or abstraction, and a formal confirmation that the development footprint sits entirely outside the designated riparian reserve.

2.4 Maritime and Beachfront Land - Kenya Maritime Authority and "Controlled Land"

In addition to obtaining development permission from the relevant County Government under the Physical and Land Use Planning Act, 2019, developers must align with the **Kenya National Marine Spatial Plan** and secure clearances from various statutory bodies depending on the project's physical footprint.

For instance, an Environmental Impact Assessment (EIA) License from the National Environment Management Authority (NEMA) under EMCA, 1999 is mandatory for projects affecting ecologically sensitive coastal ecosystems, including beachfronts, mangroves, and wetlands.

Where a project features structures extending beyond the high-water mark into navigable waters, such as jetties, piers, seawalls, or reclamation works, direct consultation and approval from the Kenya Maritime Authority (KMA) is required to ensure maritime safety and compliance with the Kenya Maritime Authority Act, 2006.

Furthermore, if the development impacts water resources, groundwater tables, or natural drainage patterns through boreholes or shoreline protection, a permit from the Water Resources Authority (WRA) under the Water Act, 2016 must be obtained.

Proximity to protected marine ecosystems or critical habitats (like coral reefs and turtle nesting sites) triggers conservation reviews and approvals from the Kenya Wildlife Service (KWS) under the Wildlife Conservation and Management Act, 2013.

Lastly, developments situated near gazetted coastal monuments or heritage zones require antiquities clearance from the National Museums of Kenya (NMK) under the National Museums and Heritage Act, 2006.

Accordingly, structural ownership of a beachfront title does not grant an absolute right to build; developers must undertake a meticulous, project-specific audit to secure all applicable sectoral consents.

2.5 Heritage and Antiquities - National Museums of Kenya

The National Museums and Heritage Act (Cap. 216) empowers the Cabinet Secretary, in consultation with the National Museums of Kenya (NMK), to declare buildings or geographic areas as protected monuments or heritage zones. Once a property is gazetted, or once a formal gazettement application notice is served, a statutory restriction or caveat is entered against the title register, prohibiting any demolition, structural alteration, or extension without express NMK approval. The Physical and Land Use Planning Act, 2019, supplements this by empowering county



governments to restrict alterations to buildings of architectural, historical, or cultural significance. Prominent heritage sites like Lamu Old Town and Fort Jesus are managed through a matrix of NMK approvals, local zoning rules, and environmental checks under EMCA. As demonstrated in *Save Lamu & Others v. National Environment Management Authority & Others* [2019] eKLR, developments in heritage-sensitive zones face rigorous parallel scrutiny from multiple regulatory bodies simultaneously.

2.6 Energy and Utility Wayleaves - KPLC, KETRACO, and Kenya Pipeline Company

The Energy Act, 2019 (Sections 171 and 173), requires utility providers to secure formal written consent from landowners before entering private property to lay pipelines, power transmission lines, cables, or pylons, with compensation protocols anchored under Sections 143–149 of the Land Act, 2012. The courts have consistently affirmed that statutory utility mandates do not override constitutional private property protections. In *Cape Suppliers Limited v. Kenya Power & Lighting Company PLC* (2024), the ELC held KPLC liable for continuing trespass after it installed a secondary 66kV transmission line across private property without securing an explicit easement or owner consent, rejecting the argument that a generic, unregistered government wayleave corridor granted automatic entry. Conveyancers must look beyond the written register for recorded easements and order a physical ground survey to identify any unrecorded utility lines that could impair future development.

2.7 Aviation Safety Zones - Kenya Civil Aviation Authority

Under the Civil Aviation Act (Cap. 394) and its accompanying Aerodromes Regulations, no building may be constructed, altered, or vertically extended within the vicinity of an aerodrome without written clearance from the Kenya Civil Aviation Authority (KCAA). This regulatory vicinity typically spans a 15-kilometer radius from the aerodrome reference point and extends up to 1,500 feet above ground level, expanding further along obstacle limitation surfaces near flight paths. KCAA strictly enforces these height restrictions, regularly issuing compliance directives for obstacle lighting or structural reductions. The principle that private land within airport safety corridors remains subject to overriding public safety interests was firmly anchored by the Supreme Court in the *Mitu-Bell* litigation concerning Wilson Airport. KCAA height clearance is a non-negotiable precondition for any multi-story project near certified aerodromes or flight paths.

2.8 Environmental Impact Assessment - NEMA

Section 58 of the Environmental Management and Co-ordination Act, 1999 (EMCA), prohibits any project listed under its Second Schedule from being financed,

commenced, or licensed without an Environmental Impact Assessment (EIA) license from NEMA. The Second Schedule uses broad, adaptive language capturing urban re-developments, projects near wetlands, rivers, or shorelines, structures out of character with their surroundings, and major changes in land use. The breadth of this schedule frequently sparks litigation; for example, in *Registered Trustees of Jamia Masjid Ahl-Sunnat-Wal-Jamait Nairobi v. Nairobi City County & 2 Others* [2015] eKLR, the court examined whether constructing a modest public utility structure adjacent to a mosque required an EIA license despite not fitting perfectly within a specific schedule sub-category. The case underscores that the flexible statutory language of EMCA can pull seemingly low-impact projects into the mandatory NEMA licensing framework based entirely on situational context.

2.9 Planning and Development Permission - County Governments

The Physical and Land Use Planning Act, 2019 (Sections 56–58), vests primary development control in county governments, prohibiting any form of physical development without prior planning permission. The statutory definition of "development" is expansive, catching subdivisions, amalgamations, changes or extensions of user, infrastructural works, and the establishment of commercial facilities. Operating without this approval exposes a developer to enforcement notices, criminal sanctions, or uncompensated demolition orders. While Section 58(6) provides that planning permission is "deemed granted" if a county authority fails to respond within sixty days, conveyancers must treat these deemed approvals with extreme caution. A silent, deemed approval represents administrative default rather than an affirmative regulatory clearance; it does not cure underlying legal defects, nor does it bind independent statutory regulators like NEMA, KCAA, or the WRA.

2.10 Construction Industry Regulation – National Construction Authority

The National Construction Authority Act (No. 41 of 2011) operates as a parallel, project-level consent framework that sits alongside the county development permit and the NEMA EIA license rather than replacing either. Under Section 15, read together with Sections 17 and 18 of the Act, it is a strict statutory requirement that any person or corporate entity—whether local or foreign—carrying on the business of a contractor must be formally evaluated and registered by the National Construction Authority (NCA). Operating as an unregistered contractor constitutes a distinct criminal offense.

Crucially, the regulatory framework divides compliance into two distinct prongs: the registration of the contractor's corporate capacity and the mandatory registration of every **specific construction project**

itself via the NCA's Online Project Registration System (OPRS). The NCA requires proof of valid county planning approvals and necessary sector-specific clearances (such as NEMA or WRA licenses) as preconditions before it evaluates the site and issues an official project registration certificate. While Section 58 of the Physical and Land Use Planning Act, 2019, handles structural and zoning approval, current administrative practice dictates that county authorities frequently refuse to issue final structural commencement notices until the developer produces this distinct NCA compliance certificate. Furthermore, specialized components of a development project pull in mandatory parallel clearances from independent technical regulators; for example, electrical design and installation works require licensing from the Energy and Petroleum Regulatory Authority (EPRA), while telecommunications, fiber routing, and structured cabling demand regulatory approval from the Communications Authority of Kenya (CA).

3. QUICK REFERENCE: TEN SECTOR-SPECIFIC CONSENT REGIMES

The table below is a working checklist rather than an exhaustive legal statement; the governing instruments should always be checked in their current, consolidated form before being relied upon in a transaction.

Sector / Trigger	Regulator	Governing Law	What Is Required
Land in or adjacent to national parks, reserves, sanctuaries or migratory corridors	Kenya Wildlife Service (KWS)	Wildlife Conservation and Management Act, 2013	KWS clearance; EIA where park boundaries or dispersal areas are affected
Land bordering, or comprising, public, community or private forest	Kenya Forest Service (KFS)	Forest Conservation and Management Act, 2016	KFS boundary confirmation and licence; 5% green zone set aside for housing estate developers (s.37(2))
Land contiguous to rivers, lakes, wetlands, dams or springs (riparian land)	Water Resources Authority (WRA)	Water Act, 2016; Water Resources (Management) Rules 2007 & 2025	WRA confirmation that the riparian reserve has been surveyed/marked; abstraction or works permit
Beachfront / first, and second, row coastal land; 25km border, -zone land	Kenya Maritime Authority (KMA); Cabinet Secretary (Lands)	Kenya Maritime Authority Act, 2006; Land Act, 2012 ("controlled land")	KMA/NEMA clearance for maritime impact; Cabinet Secretary approval where an "ineligible person" is party to the transaction
Gazetted monuments, historic buildings, or heritage buffer zones (e.g. Lamu, Fort Jesus)	National Museums of Kenya (NMK)	National Museums and Heritage Act (Cap. 216)	NMK consent before demolition, alteration or extension; caveat may attach on mere application for gazettelement
Land traversed by power lines, pipelines or fibre/telecom wayleaves	KPLC, KETRACO, Kenya Pipeline Company	Energy Act, 2019 (ss.171, 173); Land Act, 2012 (ss.143,149)	Documented landowner consent before entry; compensation per Land Act; check for unregistered physical lines



Sector / Trigger	Regulator	Governing Law	What Is Required
Land within 15km / 1,500 ft of an aerodrome reference point	Kenya Civil Aviation Authority (KCAA) / KAA	Civil Aviation Act (Cap. 394); Civil Aviation (Aerodromes) Regulations, 2013	Written KCAA approval of height before construction; obstacle lighting on completion
Projects listed in the Second Schedule to EMCA (urban development, structures out of character, works near water bodies, etc.)	National Environment Management Authority (NEMA)	Environmental Management and Co,ordination Act, 1999, s.58	EIA study, public participation, and EIA licence before any other permit may issue
Any “development”, subdivision, change of user, building works, wayleaves, siting of schools/fuel stations etc.	County Government (County Executive Committee Member)	Physical and Land Use Planning Act, 2019, ss.56,58	Development permission; deemed granted if no response within 60 days (s.58(6))
All construction projects and contractors	National Construction Authority (NCA)	National Construction Authority Act, No. 41 of 2011	Contractor registration (ss.15, 17,18) and separate project registration before works commence

4. DUE DILIGENCE AND TRANSACTIONAL RISK MANAGEMENT

Where a parcel of land falls within a regulated or environmentally sensitive area, conveyancers must adopt a structured due diligence process to mitigate transaction risk.

- **Step 1 (pre - contract stage):** a licensed surveyor should conduct a site inspection and verify the property’s boundaries against the Registry Index Map to identify riparian reserves, wayleaves, heritage zones, forest boundaries, or proximity to an aerodrome’s obstacle limitation surface. A KWS, KFS, WRA, NMK or KCAA records check should accompany , not substitute for , the desktop search, since several of these features are poorly reflected, or entirely absent, from the title and the RIM.
- **Step 2 (Contract Negotiation stage):** The Agreement for Sale should expressly make procurement of any required sector,specific consent a condition precedent to completion, allocate responsibility for obtaining it, stipulate who bears the associated cost, and prescribe a

definite timeline. Where construction is contemplated, the agreement (or a related development agreement) should similarly condition completion on NCA project registration and, where relevant, KCAA height clearance.

- **Stage 3 (Consent Application stage):** formal applications should be submitted to each relevant regulatory secretariat with certified title documents, mutation forms (where necessary), survey maps, and any required NEMA EIA project report. Multiagency site visits are common where more than one sector regulator has an interest in the same parcel , for instance, coastal heritage zones routinely draw NMK, NEMA, KMA and the county planning authority simultaneously.
- **Stage 4 (Post - Consent application stage):** the resulting No,Objection letter, clearance certificate, or development permission must be scrutinised for embedded conditions. Regulators frequently attach restrictive covenants , structural setbacks, bans on certain building materials, conservation



easements, that run with the title and affect long-term valuation. Only once these are verified should the sectorspecific clearance be presented to the Land Registrar alongside the standard completion documents as per the transaction requires.

5. CASE LAW: LESSONS FROM THE COURTS

5.1 Public safety zones and the limits of eviction without process

In *Mitu, Bell Welfare Society v Kenya Airports Authority & 2 Others (Petition 3 of 2018) [2021] KESC 34 (KLR)*, the Supreme Court considered the forced eviction of thousands of residents of Mitumba Village, a settlement within the flight path and safety zone surrounding Wilson Airport, Nairobi. The Court accepted that such land constitutes a protected space reserved for aviation safety, but held that the enforcement of that public interest must still comply with constitutional guarantees, adequate notice and lawful eviction procedure, rather than arbitrary demolition. The case confirms that no private occupier can assert an unqualified property right over land reserved for public safety or critical infrastructure, while equally confirming that public authorities are not excused from due process merely because the underlying public interest is legitimate. For conveyancers, the case is a reminder that wayleave, buffer, zone and aviation safety compliance is not optional simply because the underlying land use serves the public interest, but neither does that public interest licence regulators to bypass lawful process.

5.2 Utilities are not exempt from the consent requirement

In *Cape Suppliers Limited v Kenya Power & Lighting Company PLC (Environment & Land Case E307 of 2021) [2024] KEELC 3462 (KLR)*, the court rejected KPLC's argument that an unregistered, government-designated wayleave corridor excused it from obtaining the landowner's consent before erecting a second 66kV line, and found the utility liable in continuing trespass. The decision confirms that the Energy Act's consent requirement binds even a statutory monopoly utility, and that purchasers should not assume that a line already standing on a parcel reflects a properly documented, registered easement.

5.3 Riparian enforcement is not self-proving

The Court of Appeal authority has also pushed back against regulatory overreach in the opposite direction. The Court of Appeal upheld an Environment and Land Court finding that residential units at Green Park Estate, Athi River, were not in fact situated on a riparian reserve, and that a WRA enforcement notice requiring their demolition, issued only after flooding in 2018, despite the developer having held a NEMA EIA licence since 2006 with no objection raised for over a decade, was unlawful. The case is an important

counterweight to the assumption that a regulator's sayso on riparian boundaries is conclusive: courts will examine the survey evidence, and a long regulatory silence followed by a sudden enforcement action is itself a relevant fact.

5.4 Beachfront and "controlled land"

In *Kiluwa Limited & another v Business Liaison Company Limited & 3 others [2021] eKLR*, the Supreme Court dealt with a dispute over firstrow beach plots in which a consolidation of parcels was alleged to have extended a boundary into public reserve land. The case illustrates the layered sensitivity of beachfront transactions, where ordinary boundary and consolidation due diligence intersects with the constitutional designation of the foreshore as public land and the Land Act's separate "controlled land" consent regime for transactions involving noncitizens.

5.5 The EIA threshold question

Finally, *Registered Trustees of Jamia Masjid Ahl, Sunnat, Wal, Jamaat Nairobi v Nairobi City County & 2 others [2015] eKLR* is a useful illustration that the question of whether a project requires an EIA licence at all is itself frequently contested, particularly for projects that do not fall neatly within an enumerated Second Schedule category but may still amount to a "major change in land use" or be "out of character" with their surroundings under the Schedule's general clause.

Together, these decisions demonstrate that sectorspecific consents are not mere procedural formalities but substantive legal mechanisms balancing public safety, environmental protection, heritage preservation and critical infrastructure against private property rights, and that the balance runs in both directions. Regulators are bound by due process and must support enforcement with proper evidence; equally, developers and purchasers who proceed without the requisite statutory approval expose a transaction to demolition, regulatory enforcement, or an unenforceable title.

6. A PRACTICAL COMPLIANCE CHECKLIST

- Has the Registry Index Map been checked against a current physical survey for riparian reserves, wayleaves, forest boundaries and heritage buffer zones?
- If the parcel is within 15km of a certified aerodrome, has KCAA height clearance been obtained or factored into the development timeline?
- If the development falls within the EMCA Second Schedule, including the general "out of character" and "major change in land use" categories, has a NEMA EIA licence been secured before any other permit is sought?

- Has county development permission been obtained (or has the 60-day deemed approval period genuinely lapsed, with that risk understood)?
- Is the contractor NCA registered, and has the specific project been separately registered with the NCA?
- Where the parcel is beachfront, within the 25km border zone, or otherwise “controlled land,” is any party to the transaction an “ineligible person” requiring Cabinet Secretary approval?
- Has the title been checked for a caveat lodged on the strength of a mere application for heritage gazettement, not only a completed declaration?
- Has a physical site visit confirmed the absence of unregistered power lines, pipelines or fibre wayleaves that do not yet appear on the register?

management. They reflect the constitutional reality that private property rights coexist with broader public interests in environmental protection, public safety, heritage preservation, and critical infrastructure. As the jurisprudence shows, failure to obtain the requisite statutory approval can render a transaction unlawful, expose a development to demolition or regulatory enforcement, and undermine the security of title itself, but the same jurisprudence also disciplines regulators who act without evidence or due process. Practitioners must move beyond a register-centric approach to due diligence, treating KWS, KFS, WRA, KMA, NEMK, the relevant utility, KCAA, NEMA, the county planning authority and the NCA as ten distinct gatekeepers, each capable of stopping a transaction or a development on its own terms, and must identify which of them are actually engaged at the earliest possible stage of a transaction, not at completion.

7. CONCLUSION

Sectorspecific consents are no longer peripheral considerations in conveyancing practice; they are essential components of land due diligence and risk

Contributor:

Damaris Njoki

Associate Advocate

dnjoki@cmadvocates.com

CM Advocates LLP – Contact Details

Head Office Nairobi

I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 or +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office

Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

Regional Presence

Uganda | Tanzania | Rwanda | Zambia | Ethiopia | South Sudan

www.cmadvocates.com