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Riparian Land In Kenya

Understanding The Legal Property Boundaries Near Water Bodies For Property Investors and Developers - The Kenyan Coastal Region

Riparian land refers to the land adjacent to or alongside a river, stream, lake, ocean or any other natural water body.

In Kenya it constitutes land which is within a certain distance from the highest water mark of a water body and is considered public land, meaning that it cannot be privately owned or developed. The high-water mark refers to the highest level reached by a water body (such as a river, lake, or ocean) during ordinary seasonal floods or tides. This distance ranges from 30 - 60 meters based on the nature of the land – coast foreshore, swamp boundaries etc, whose legal basis has been outlined later in this article.

It is essential to identify such land as it plays a critical role in protecting water quality, preventing erosion, providing habitat for wildlife, managing floods, among others. In the coastal area, riparian land would include coastal wetlands, coastal forests, mangrove swamps, coral reefs, tidal flats, beach dunes, and fishery resources.

This article outlines the legal framework governing riparian land in Kenya, as applicable in its coastal region, and highlights the key considerations for investors, developers, and government agencies involved in its acquisition, use or development.

A. LEGAL FRAMEWORK

i. The Constitution of Kenya, 2010 (the "Constitution")

Article 62 of the Constitution classifies riparian reserves and land between high and low water marks as public land.

Article 66 empowers the Kenyan state to regulate land use in the interest of land planning and environmental conservation.

In **Watamu Association (Suing through its Elected Officials - Clare Taylor, Bea Anderson & Damian Davies) v Wood & 3 others (Petition E003 of 2023) [2024]**, the court in its ruling stated that:

> *"the Constitution states that land in Kenya must be held and used in a manner that is equitable, efficient, productive and sustainable in line with the principles that land as a resource, must be managed in a sustainable and productive way, and that sound conservation mechanisms must be employed. Sound conservation for the riparian (emphasis ours) reserves would entail the protection of wetlands. Such waste in my view, would amount to irreparable loss that cannot be compensated by way of damages."*

Notably, Article 40(6) of the Constitution does not protect property found to have been unlawfully acquired. Therefore, if a private person claims ownership over a riparian reserve or any part of it, such acquisition would be deemed unlawful and such persons cannot invoke constitutional protection of their property rights over that land.

ii. The Land Act, 2012

Section 2, in line with the Constitution, defines public land to include:

> *"the coast foreshore, river, dams, lakes and other reserves"*

Riparian reserve under the same section is defined as:

> *"the land adjacent to the ocean, lake, sea, rivers, dams and water courses".*

Section 12(2) prohibits the National Land Commission from allocating public land:

> *"that is along watersheds, river and stream catchments, public water reservoirs, lakes, beaches, fish landing areas riparian and the territorial sea as may be prescribed".*

iii. Environmental Management and Coordination Act (EMCA), 1999 (Rev. 2015)

Section 42 of the EMCA declares riparian zones as protected areas. It prohibits any activity that may have an adverse effect on the environment within such areas without the express written approval of the National Environment Management Authority (NEMA), being the regulatory body responsible for overseeing and implementing the provisions of the EMCA. Such activities include construction, cultivation, mining, or any form of development.

Before any development or project can be carried out in or near riparian land, EMCA mandates the conduct of an Environmental Impact Assessment (EIA) for any project likely to impact the environment significantly. Specifically, Section 58 requires any person or entity intending to undertake such projects to obtain an EIA license from NEMA. Developers must submit a project report or a full EIA study which assesses the potential environmental consequences of the proposed activity.

In **Save Lamu & Others v NEMA & Others [2019] eKLR**, the court emphasized the importance of compliance with EIA requirements when assessing developments like the Lamu Coal Plant and ruled in favour of public interest that indeed an EIA ought to have been conducted.

The Second Schedule to EMCA lists activities including those that are near water bodies such as lakes, rivers, wetlands or ocean shores, as projects requiring EIA licenses.

iv. The Water Act, 2016

Section 143(1) Provides for the protection of water sources and riparian areas from encroachment and pollution.

Further, under section 144, the Water Resources Authority (WRA) is empowered to declare buffer or protection zones along water bodies, and prohibit or restrict certain land uses or developments therein.

However, where a water body runs through a private land, the private land adjoining the riparian land does not automatically become public land under article 62 of the Constitution. This was reiterated in **Njogu & 5 others v Sino Hydro Corporation Ltd & another (Land Case 92 of 2023) [2024] KEELC 6536 (KLR)**, where the learned Judge stated that:

> *"Under Regulation 2 of the Water Resources Management Regulations, 2007 (the Regulations) riparian land is defined to mean "the land in respect of which management obligations are imposed on the owner due to its proximity to a water body." The regulations do not alter or transfer ownership of any portion of riparian land from the owner to either WRA or the public at large. The regulations simply impose restrictions on its use."*

According to section 36, developers are required to obtain permits from WRA for water abstractions, diversions or interferences with natural water bodies.

Part X of The Water (Resources) Regulations, 2025 strengthens the legal and institutional framework for conserving riparian and catchment areas, recognizing their crucial role in protecting water resources, preventing erosion, mitigating floods, and supporting biodiversity and ecosystem services.

The Regulations define the riparian reserve as land by virtue of its proximity to a water body whose management obligations the WRA mandatorily imposes on the landholder. They clarify boundary limits and seek to prevent degradation of these areas through a range of prohibited activities, which include:

- Tillage or cultivation;
- Clearing of indigenous vegetation or trees;
- Construction of permanent structures;
- Disposal of any form of waste within the riparian reserve;

- Excavation of soil or development of quarries;
- Planting of exotic species that may adversely affect the water resource; and
- Land reclamation.

These activities are strictly prohibited unless the WRA expressly authorizes them in consultation with other relevant stakeholders.

To ensure compliance, the Regulations empower the WRA to issue binding orders requiring landowners or users to:

- Prepare and implement soil and water conservation plans;
- Cease prohibited activities; and
- Undertake remediation of degraded riparian zones.

In cases of non-compliance, the WRA may undertake the necessary remedial actions directly and recover the costs incurred from the landowner or responsible party.

v. Survey Act (Cap. 299)

Section 21 requires that all surveys be conducted in accordance with the regulations issued by the Director of Surveys. This provision empowers the Director of Surveys to issue guidelines that surveyors must follow, including the identification and preservation of riparian reserves.

As such, riparian areas must be excluded from private land allocation during surveys and appropriately documented as part of Kenya's environmental and land governance framework.

vi. Key Institutions

- **National Land Commission (NLC)**
  The NLC is mandated to administer and manage public land on behalf of the Kenyan citizens. It also works jointly with other agencies to map and demarcate riparian zones.

- **County Governments**
  County governments, such as the Mombasa County Government, are tasked with managing riparian land at the local county level. Their responsibilities include securing land for public utilities and recreational purposes. They collaborate with national entities, such as the NLC to safeguard public land, including riparian areas.

- **Kenya Forest Service (KFS)**
  Where riparian land is forested, such as coastal mangrove ecosystems, the KFS takes an active role in its management. This includes issuing special use licenses that require license holders to rehabilitate mangrove areas in partnership with local community groups.

B. DETERMINING THE RIPARIAN RESERVE WIDTH

Part XII of The Survey Regulations (the "Regulations") provides guidance on land reservation along water bodies when surveying unalienated government land as follows:

i. **Coast Foreshore Reservation - Regulation 110**
   This requires a minimum of **60 meter** strip above the high water mark to be reserved for government use, unless varied by the Cabinet Secretary for Lands, Public Works, Housing and Urban Development, for development purposes.

ii. Tidal River Reservation - Regulation 111
This requires a minimum 30-metre strip above high-water mark must be reserved for government purposes, subject to variation by the Cabinet Secretary.

iii. Lake Reservation - Regulation 112
For land fronting lakes, a minimum 30-metre reservation from the ordinary high-water edge is required for government use, with possible reduction if development interests require.

iv. Defining Reservation Boundaries - Regulation 113
Surveyors may define these reservations using straight lines or series of straight lines close to the specified distance from the relevant feature.

v. Swamp Boundaries - Regulation 114
Where land is adjacent to a swamp, surveyors must use a give-and-take straight line boundary, avoiding indefinite median lines.

Swamps which are **150 metres** wide or more must be excluded from land parcels and surveyed with clear beacons.

C. REGULATORY APPROVALS FOR DEVELOPMENTS NEAR RIPARIAN LAND

If investing or developing land near water bodies, the following include approvals and actions that are crucial:

i. Conduct a survey and establish the boundaries
Engage a licensed land surveyor or an approved assistant under a licensed surveyor to identify and demarcate the riparian reserve awhile ensuring that the land parcel boundaries exclude the riparian zone.

ii. Environmental Impact Assessment (EIA)
Required under EMCA for all developments near or within riparian land or if the EIA is not required, a waiver from NEMA or a project report shall deem appropriate.

iii. NEMA approval
This must be obtained before initiating any construction works.

iv. Permits from WRA
If the development entails water abstraction, drainage, or alteration of natural flow, WRA permits are required.

D. LEGAL CONSEQUENCES OF ENCROACHING ON RIPARIAN LAND

These include:

i. Demolition of unauthorized structures – NEMA or county governments may demolish buildings unlawfully erected on riparian reserves.
ii. Encroachment constitutes an offence under the EMCA, attracting fines or imprisonment. For instance, section 144 of the EMCA provides that Imprisonment may be for a term of not less than one year but not more than four years, or to a fine of not less than two million shillings but not more than four million shillings, or to both such fine and imprisonment.

iii. Affected parties may sue for environmental degradation, economic loss, or public nuisance due to an unlawful development.

E. CONCLUSION

Riparian land remains a critical area for environmental sustainability, aquatic and public welfare.

The Kenyan coast region offers breathtaking ocean views and scenic white sandy beaches which offer unique opportunities to develop irresistible luxurious beach properties that harmonize with nature and create great value including tourism.

However, investors must comply with the underlying legal requirements as highlighted in this article.

Understanding the demarcation of riparian boundaries, obtaining appropriate approvals, and appreciating the environmental significance of such riparian land are essential steps towards sustainable and lawful development. Primarily engaging a legal, survey and environmental expet professionals to guide in such projects is inevitable.

CONTACT US

At **CM Advocates LLP**, we have a dynamic team of real estate lawyers dedicated to assisting clients with all legal matters relating to riparian land in the Kenyan coast and other regions. Our services include advising on compliance with environmental and land use regulations, conducting comprehensive due diligence for properties including those adjacent to water bodies, advising on the legal implications of riparian land restrictions on development, compensation and regularization processes, handling all conveyancing related matters. Should you have any questions regarding the riparian land or need legal advice, please do not hesitate to contact us at ***mombasaoffice@cmadvocates.com***.

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