



AVIATION LAW-PART II



GERIVIA
ADVOCATES LLP

Commissioners for Oaths & Notaries Public

GIGIRI . JKIA

   @gerivialaw

FREQUENTLY ASKED LEGAL QUESTIONS

1. What are some of the bodies/agencies found at Airports in Kenya and what are their functions?

- **NAS Airport Services** - NAS Servair is an on-site airport catering facility exclusively serving domestic and international airlines that fly into and out of JKIA and Moi International Airport in Mombasa. (available at <https://www.nas.ke>).

NAS Airport Services operate as an inflight kitchen. by preparing of meals for flights. At JKIA NAS Servair and LSG Skychefs are available. This function is regulated by KCAA

<https://kaa.or.ke/safety-security-oversight/aviation-security/in-flight-catering-operators> . A flight is expected to take off with food prepared from the departing airport but the airline may elect to carry food for return leg.

- **Customs** - The Customs and Border Control Department of the Kenya Revenue Authority is located at Forodha House at the JKIA Cargo Centre. It ensures the compliance with tax obligations by conducting inspection and assessment of the rates to be paid for goods coming in and going out of the Country (available at

<https://www.kra.go.ke/en/helping-tax-payers/faqs/customs-and-border-control> or <https://www.kra.go.ke/en/>).

The Customs and Border Control Department regulates control of exports and imports, travelers, border patrol and surveillance.

- **KAPU** - The Kenya Airports Police Unit is a branch of the Kenya Police that has jurisdiction over all the airports in the country.

It has its headquarters at JKIA. Some of the functions of KAPU include; crime prevention, investigation and collection of criminal intelligence and arrest of any criminals found within the airports (available at Kenya Airports Police Unit kenyapolice.go.ke).

KAPU is established under Section 24 of the National Police Service Act which provides for general powers of the police service. As such, there is no specific legal provision establishing the unit which is led by a police commandant.

- **KEPHIS** - Kenya Plant Health Inspectorate Service is a government parastatal responsible for regulating plants, seeds, plant varieties and agricultural produce under the Kephis Act, 2012. At Kenyan aerodromes, Kephis regulates the import and exports of plants and seeds by ensuring

that they pose minimal risk to people and the environment. As a result, the JKIA branch of KEPHIS carries out inspections of all agricultural produce to be imported or exported (available at <https://www.kephis.org>).

- **Port Health** - Port Health is a department of the Ministry of Health working in liaison with KAA to maintain maximum standards of health at the airports.

To do this, Port Health offers; emergency medical response, hospital transfers, travel vaccination, import and export clearance of goods of public health concern and the inspection and licensing of airport food premises among other related functions (available at <https://www.porthhealth.org>).

2. Which is the dispute resolution body for matters aviation in Kenya?

- Section 66 of the Civil Aviation Act, 2013 as amended by the Civil Aviation (Amendment) Act, 2016 (CAA) establishes the National Civil Aviation Administrative Review Tribunal (NCAART).

3. What is the mandate of NCAART?

Pursuant to section 69 of the CAA, the Tribunal hears and determines appeals on:

- Any refusal to grant a license, certificate or any other authorization by KCAA or transfer of a license;
- Imposition of any condition, limitation or restriction on a license under the CAA or Regulations;
- Any revocation, suspension or variation of a license under the CAA;
- Any amount of money which is required to be paid as a fee under the CAA;
- Imposition of any order or direction by KCAA under the CAA;
- Consumer protection compliance and enforcement activities related to areas such as rights violations, unfair and deceptive practices and unfair competition by air carriers and travel agents etc.; or
- Any exercise of powers to make decisions, but not powers in respect of staff employment granted to the Director-General or KCAA under the CAA or Regulations.

4. What if someone is discontent with the decision of the NCAART?



- Section 77 of the CAA provides that one may appeal the decision of the Tribunal at the High Court within thirty days from the date of the decision or order.

5. What proposed changes would have been realized with the promulgation of the National Aviation Management Bill, 2020?

- **Nationalization of Kenya Airways:**

It is no secret that the national carrier has experienced some financial struggles over the years. Following the onset of the COVID 19 pandemic, Parliament voted to nationalize the airline hoping that this will improve the fortunes of the airline.

- **Establishment of the National Aviation Council (NAC):**

The NAC's role will be to create a link and encourage co-operation between the aviation sector and other critical sectors of the economy. It will also assess Kenya's actual and potential civil aviation capabilities.

- **Mechanism for transferring assets, functions and liabilities of Kenya Airways following its nationalization**

The Bill proposed the following state-owned entities be established under the Bill:

a.) A holding company known as Kenya Aviation Corporation (KAC) which will hold assets of the Group and develop and oversee the Government strategy in the national aviation sector

b.) It will hold shares of the Group i.e. the operating entities such as Kenya Airways, new KAA and a new entity known as Aviation Investment Corporation whose functions will be undertaking in businesses in relation to aviation activities.

c.) The Bill also provides for subsidiaries of the operating entities.

d.) The Bill also proposes changes to and exemptions from certain laws to accommodate the entities under the Bill e.g. Companies Act, the Public Procurement and Asset Disposal Act etc.

- **Establishment of the Kenya Aviation Corporation Fund (the Fund)**

The Fund will be shared by the KAC Group entities mentioned above. Monies paid into the Fund will include, among others, grants, donations and loans from the government and other bodies and proceeds from the passenger service charge which is currently only apportioned between KAA, KCAA and KRA. The Fund is expected to stabilize KQ's revenue.

(Check out the National Aviation Management Bill of 2020 at http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2020/TheNationalAviationManagementBill_2020.pdf)

6. What is the status of the National Aviation Management Bill?



- On 25th January 2022, the then Speaker of the National Assembly, **Hon. Justin B.N. Muturi** directed that the Bill be withdrawn, following receipt of a letter from the Leader of the Majority Party Hon. (Dr.) Amos Kimunya, requesting to withdraw the Bill so as to enable further consultations and also to incorporate additional input from stakeholders received during public participation phase (the withdrawal notice can be assessed at <http://parliament.go.ke/node/15334>).

7. What are some of the main concerns that stakeholders had about the National Aviation Management Bill, 2020?

- Some of the main concerns were to do with the structures that were to be created under the Bill, with concerns that the nationalization of Kenya airways and creation of additional supervisory structures would create an aviation super structure that would increase bureaucracy and operational costs.

There were also concerns about exempting the structures created under the Bill from certain laws, which would reduce accountability.

Read a detailed review of the withdrawal Bill here:

<https://gerivia.co.ke/1213/a-candid-review-of-the-national-aviation-management-bill-2020-part-i/> and
<https://gerivia.co.ke/1218/a-candid-review-of-the-national-aviation-management-bill-2020-part-ii-exemption-from-laws-proposed-solutions/>.

8. How does one qualify for a license to operate air services and what are the requirements for grant of the same?

Under the Civil Aviation (Licensing of Air Services) Regulations, 2018:

- One must be a citizen of Kenya or in the case of a body corporate or a partnership, at least fifty-one percent of the voting rights must be held by the Kenyan state or a citizen of Kenya, or both. (Regulation 5 of the Civil Aviation (Licensing of Air Services) Regulations, 2018).
- A person will be exempt from these requirements if the kind of services the person wishes to provide will be of a special nature, for instance services in the interest of social welfare, charity, assistance in saving life or any other form of public interest.
- Any person who is carrying out these services of a special nature must use a Kenyan registered aircraft (unless KCAA allows the use of a foreign registered aircraft).
- An application for a license for any of the categories of air services is made to KCAA in the prescribed form. A license will then be given to the applicant if they satisfy all the requirements.
- You will also be required to demonstrate that you are able to comply with the CAA and other applicable laws and that you have the financial and technical capability to undertake the proposed air services.

9. Can I construct a private airport?



you can construct a private airstrip. Section 8 (e) of the KAA Act states that the Board of KAA has a duty to approve the establishment of private airstrips and their operations thereof.

The Civil Aviation (Security) Regulations, 2020 define an airport as any area in Kenya which is open for commercial aircraft operations.

Section 2 of the CAA defines an aerodrome as a defined area on land including any buildings, installations, and equipment used for the arrival, departure and surface movement of aircraft licensed or certificated under the Regulations. This definition is replicated under section 2 of the Civil Aviation (Aerodrome) Regulations, 2013.

KCAA is responsible for the oversight of the construction, maintenance, certification and licensing and registration and operation of aerodromes. The provisions that guide the provision of these services by KCAA are contained in the CAA and in the following Regulations:

- a.) Civil Aviation (Certification, Licensing and Registration of Aerodromes) Regulations, 2018;
- b.) Civil Aviation (Aerodromes) Regulations 2013.
- c.) Based on the existing requirements under the CAA and the Regulations mentioned above KCAA is charged with the provision of the following services:
 - a.) Certification of aerodromes;
 - b.) Licensing of aerodromes;
 - c.) Registration and operation of Category E aerodromes (Category E comprises of aerodromes available for use only by domestic air traffic of maximum certificated take-off mass not exceeding five thousand seven hundred kilogrammes);

- d.) Grant of approvals for the construction of masts and structures; and
- e.) Approval of aerodrome manuals.

- Under section 7 (1) (x) of the CAA, KCAA is responsible for licensing, certification, registration and surveillance of aerodromes.
- Regulation 6 (1) of the Civil Aviation (Aerodrome) Regulations, 2013 states “a person shall not construct an aerodrome unless that person has a valid aerodrome construction permit issued under regulation 7”. All aerodromes in Kenya shall be categorized as follows:
 - a.) Category A comprising aerodromes available for use by both international and domestic air traffic;
 - b.) Category B comprising aerodromes available for use only by domestic air traffic;
 - c.) Category C comprising aerodromes available for use only by domestic air traffic of maximum certificated take-off mass not exceeding thirty thousand kilogrammes;
 - d.) Category D comprising aerodromes available for use only by domestic helicopters operations; and
 - e.) Category E comprising aerodromes available for use only by domestic air traffic of maximum certificated take-off mass not exceeding five thousand seven hundred kilogrammes.

10. What are the requirements to operate a helicopter in Kenya?

- Any person who wishes to operate a helicopter in Kenya has to submit an application form (Form No. AC-AWS001C) to KCAA.
- Section 2 of the CAA defines aircraft as any machine that can derive support in the atmosphere from the reactions of the air, other than reactions of the air against the earth's surface, and includes all flying machines, aeroplanes, gliders, seaplanes, rotorcrafts, airships, balloons, gyroplanes, helicopters, ornithopters and other similar machines but excludes state aircraft.
- Under section 7 (1) (u) of the CAA, KCAA is responsible for the registration of rights and interests in aircraft.
- Regulation 3 (1) of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 states that a person shall not operate an aircraft, as classified in the First Schedule to these Regulations, within or fly over Kenya unless—
 - a.) for an aircraft eligible for registration under the laws of Kenya, the aircraft has been registered by the operator or its owner in accordance with these Regulations and the Authority has issued a certificate of registration for that aircraft which shall be carried aboard that aircraft for all operations.
- Under Regulation 4 of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 states that an aircraft is eligible for registration if it is:
 - a. Owned or leased by a citizen of Kenya;

- b.) Owned or leased by an individual citizen of a foreign state who is lawfully admitted for residency in Kenya;
 - c.) Owned or leased by a corporation lawfully organized and doing business under the laws of Kenya;
 - d.) Owned or leased by a government entity of Kenya; and
 - e.) Not registered under the law of any foreign country.
- Regulation 5 (1) of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2018 as read with KCAA's Advisory Circular CAA-AC-AWS001D of July 2018 lists the requirements for registration of an aircraft as:
 - a.) The full specification of the aircraft including the type, model, serial number.
 - b.) Type certificate or equivalent document.
 - c.) Supplementary type certificates (if applicable).
 - d.) Type certificate data sheet.
 - e.) Statement of compliance on the Civil Aviation (Instruments and Equipment) Regulations 2018.
 - f.) Export Certificate of Airworthiness.
 - g.) Compliance with the current KCAA Aircraft 'B2', 'B3', and 'A9' Notices.
 - h.) Copy of the current Certificate of Registration (if applicable).
 - i.) Serial numbers of major components (e.g. engines, and propellers as applicable).
 - j.) Make and part numbers of avionics and equipment installation.
 - k.) Airworthiness Directives (AD's) status report.
 - l.) A copy of the current Certificate of Airworthiness (if any).
 - m.) Current and historical maintenance records.
 - n.) Availability of a KCAA Approved Maintenance Organization with capability on aircraft type.

The Advisory Circular can be accessed at <https://www.kcaa.or.ke/legislation-%26-publications/advisory-circulars>.
 - The Civil Aviation (Operation of Aircraft-Helicopter) Regulations, 2018 define a helicopter as "a heavier-than-air aircraft supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes". These Regulations contain provisions on:
 - a.) General Operational Requirements;
 - b.) Flight Operations;
 - c.) Helicopter Performance Operating Limitations;
 - d.) Helicopter Instruments, Equipment and Flight Documents;
 - e.) Helicopter Communication, Navigation and Surveillance Equipment;
 - f.) Helicopter Flight Crew;
 - g.) Qualifications-pilot in command and co-pilot;
 - h.) Flight Operations Officer/Flight Dispatcher;
 - i.) Manuals Logs and Records;
 - j.) Cabin Crew;
 - k.) Instructor and Check Personnel Qualifications and Training;
 - l.) Helicopter Maintenance-Commercial;
 - m.) Helicopter-General Aviation; and
 - n.) Exemptions, General Provisions, Offences and Penalties.

11. What is the process of buying and selling an aircraft?



- Sale and purchase of aircraft involves the following stages: conducting due diligence, negotiation of terms of sale and purchase, execution of the sale and purchase agreement and completion.
- Sale and purchase of aircraft in Kenya is effected by way of a sale and purchase agreement. The players typically involved in an aircraft sale and purchase are the seller and the purchaser. Financiers may also be involved in the event that the purchaser is obtaining financing for the transaction.
- The following information will be necessary for the conclusion of a sale and purchase agreement of an aircraft:
 - a.) The parties' names, addresses, identity documents and passport photographs. Where either the seller or the buyer is a corporation, this will include the names and details of the officers of the corporation who have legal authority to execute the sale and purchase agreement on behalf of the corporation;
 - b.) Documents of ownership of the aircraft;
 - c.) Name of the manufacturer and the manufacturer's designation of the aircraft;
 - d.) The serial number of the aircraft;
 - e.) A description of the aircraft that identifies it by reference to its manufacturer;
 - f.) The state in which the aircraft is registered;
 - g.) The maintenance logs of the aircraft; and
 - h.) The certificate of airworthiness (if any) issued to the aircraft.

- The due diligence typical conducted in an aircraft sale and purchase involves an investigation of the title, technical and legal documentation (maintenance and airworthiness logs of the aircraft) relating to both the seller and the buyer.
- The buyer should investigate the validity of the title, the identity and registration of the seller and whether there are any encumbrances such as lien on the aircraft. Searches should be conducted at the international registry, companies' registry and the collateral registry.
- The buyer can also do a search of the ownership of the aircraft at the aircraft registry by making an application to KCAA. This search should confirm the owner of an aircraft and if different from the owner, the operator.
- The buyer should also confirm that the person executing the sale agreement is the owner or a person who has legal authority to execute the sale on behalf of the owner. Additionally, a mechanical inspection of the aircraft should be undertaken.

At Gerivia Advocates LLP, can undertake due diligence in relation to a sale & purchase of an aircraft. (Visit us at <https://www.gerivia.co.ke>).

12. Most airlines operate aircraft on lease. What is the difference between a dry and a wet lease?

- KCAA issued an Advisory Circular (CAA-AC-GEN010) in June 2018 on Aircraft Lease and Interchange. Under this Advisory Circular, a dry lease is defined as any agreement which a lessor such as an air operator, bank, or leasing company leases an aircraft without any crewmembers to an air operator (the lessee) and in which the lessee maintains operational control.
- The Advisory Circular defines a wet lease as any agreement in which an air operator (the lessor) leases an aircraft with a flight crew provided to either the State air operator, foreign air operator, or a foreign person (the lessee). A wet lease requires that a written agreement between the lessor and the lessee be executed by authorized officers of the two parties and thereafter either a copy of the lease agreement or a written memorandum of the terms of the lease agreement must be provided to the KCAA.
- The Advisory Circular can be accessed at <https://www.kcaa.or.ke/legislation-%26-publications/advisory-circulars>.

13. What approvals must one acquire before undertaking any constructions around an airport in Kenya?

- Approval for the construction of a building or structure within the vicinity of an aerodrome is prohibited unless the same is done with the authority of the KCAA. This is to ensure the safety of aircrafts as buildings built at a certain height may alter the takeoff and landing of aircrafts.
- The Director General of KCAA may also issue out notices specifying the designated areas around an aerodrome where no construction ought to be done. The defiance of any of these is an offence under the Civil Aviation Act.
- KAA, under section 3 (b) the Kenya Airports Authority Act has power to control the construction and use of prescribed aerodromes and under section 3 (f) (ii) of the KAA Act, KAA has power to prohibit, control or regulate the presence of any person, aircraft or goods within any prescribed aerodrome or any premises controlled or occupied by KAA. Under section 8 (2) (d) of the KAA Act, the Board of KAA may grant on such terms and conditions as KAA deems fit, authority to carry on any trade or business at aerodromes.
- The issues that are normally considered include height of structure, reflective materials that can interfere with aircraft movement, external lighting, and activity that cannot attract birds to the premises which is in the proximity of the airport. The activity must also not put the security of the airport at peril.
- Gerivia Advocates LLP could undertake due diligence on the property to ensure that the same is not airport land or not part of the designated areas within which no construction may be undertaken. (Visit us at <https://www.gerivia.co.ke>).

14. Which licensed activities can one undertake in the aviation industry?

Under the First Schedule of the Civil Aviation (Licensing of Air Services Regulations) 2018, the following are the licensed activities which one can undertake:

- Transport of passengers or cargo or mail;
- Emergency medical services;
- Aerial work services such as advertising operations;
- Agricultural spraying seeding and dusting;

- Fire spotting, control and fighting;
- Recreational flying including micro lights and balloons.

15. How long is an air operation license valid for?

- A license is valid for two to five years and may be issued subject to conditions.

16. Is it illegal to own and operate a drone in Kenya?

- No. The Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020 allow for Kenyans and to lawfully buy and operate drones within the ambits of the Regulations.

17. Who is eligible to own a drone in Kenya?

- As per Regulation 6 of the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020:

18. Can one acquire a temporary permit to operate a drone?

- Foreign companies or recreational users can apply for a temporary permit lasting up to thirty days for the operation of drones. This permit can only be renewed once. (Regulation 11 of the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020)

19. How do you permanently acquire a permit to operate a drone in Kenya?

- People or companies intending to use drones for commercial purposes must apply to the KCAA for a Remote Aircraft Operator Certificate (ROC). The ROC is valid for 12 months from the date of issue and may be renewed.
- The issuance of this Certificate is dependent upon the operator demonstrating an adequate organization method of control and supervision of flight operations, training program as well as ground handling and maintenance arrangements consistent with the nature and extent of the operations specified and commensurate with the size, structure and complexity of the organization.

20. What are the conditions for issuance of an ROC?

- A license is valid for two to five years and may be issued subject to conditions.

According to Regulation 16 of the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2019 an applicant will only be granted the ROC if he/she/it:

- Has its principal place of business and it is registered in Kenya;
- Meets the applicable regulations and standards for the holder of a ROC;
- Is properly qualified and adequately staffed and equipped to conduct safe operations in commercial operations of the drone;
- Holds a security clearance with the Ministry of Defense; and
- Has an approved aircraft operator security program in accordance with the Civil Aviation (Security) Regulations and meets any other requirements as specified by the KCAA.

21. What are the general rules and requirements for flying and operating a drone in Kenya?

- According to the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020:
 - One must be a Kenyan citizen or resident and must be at least eighteen years old in order to own and operate a drone;
 - Importing or exporting drones is only allowed with the approval of the KCAA;
 - A person shall not transfer the ownership of a drone without the approval of the KCAA;
 - Operators must register their drone with the Authority and be issued with a certificate of registration;
 - All drone operations must be conducted under a specific operational category based on risk factors;
 - Commercial drone operations require a pilot to obtain a Remote Aircraft Operators Certificate from the Authority;
 - Drones shall not fly above four hundred feet or within 164 feet of any person, vessel or vehicle that is not part of the operation;
 - A pilot shall not fly a drone in non-visual metrological conditions or at night unless authorized by the Authority;
 - No person shall operate an Unmanned Aircraft System over a public road or along the public

22. Under what circumstances can my drone license be suspended or terminated?

- Your drone license may be suspended or canceled in the interest of public safety or national security concerns.
- It may also be cancelled or suspended for violation of any of the requirement, rules and or conditions as seen here above.