

LEGAL NOTICE NO. ....

**THE SEEDS AND PLANT VARIETIES ACT**  
*(Cap 326)*

**IN EXERCISE** of the powers conferred by sections 21,24 and 28(2) of the Seeds and Plant Varieties Act, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives makes the following Regulations—

<b>THE SEEDS AND PLANT VARIETIES ( PLANT BREEDER’S RIGHTS ) REGULATIONS,2021</b>	
<b>PART I- PRELIMINARY</b>	
Citation.	<b>1.</b> These Regulations may be cited as the Seeds and Plant Varieties (Plant Breeder’s Rights) Regulations 2021.
Interpretation.	<b>2.</b> In these Regulations, unless the context otherwise requires—
	“breeder” means the person who breeds, discovers and develops a seed or plant variety and includes the employer of such a person; “breeder’s right” means the right of the breeder as provided for under Part V of the Act; “Committee” means the Plant Breeder’s Rights Committee established under regulation 4; “Director” means the Managing Director of Kenya Plant Health Inspectorate Service; “Distinctness, Uniformity and Stability (DUS Test)” means an evaluation to determine whether a new plant variety is distinct from any known plant variety in respect of specified characteristics, uniform in morphological, physiological or other accepted characteristics; and stable in its description after repeated reproduction or propagation; “grant” means award of Plant Breeders Rights; “grantee” means the holder of a grant, and in relation to a protected variety it means the holder of a grant in respect of that variety;

	<p>“licensee” means a person licensed to exploit a protected plant variety;</p> <p>“own holdings” - any holding or part thereof which the farmer actually exploits for growing plants, whether as his or her property or otherwise managed under his or her own responsibility and on his or her own account, in particular in the case of leaseholds.</p> <p>“Plant examiner” "means a suitably qualified person appointed under section 3B of the Act;</p> <p>“prescribed fee” means the fee prescribed by regulation 35;</p> <p><b>"protective direction"</b> means the provisional protection given to applicants for rights while pending actual grant of rights under the Act.</p> <p>““the Tribunal” means the Seeds and Plants Tribunal established under section 28 of the Act</p>
<p>urpose and Scope</p>	<p><b>3.</b> (1) The purpose of these Regulations is to give effect to the provisions of the act to promote the development of new plant varieties through granting of plants breeders’ rights of and owners of varieties; to protect against unfair exploitation of varieties.</p> <p>(2) These Regulations shall apply in respect of varieties of all plant genera and species for which protection;</p> <p>(a) has been sought by a breeder; or</p> <p>(b) has been granted by the Service.</p>
<p><b>PART 11. THE COMMITTEE</b></p>	

Plant Breeders' Rights Committee.	<p><b>4.(1)</b> There shall be a committee known as the Plant Breeders' Rights Committee, which shall consist of:—</p> <ul style="list-style-type: none"> <li>(a) the Head of Directorate in charge of crops at the Ministry responsible for Agriculture, who shall be the Chairperson;</li> <li>(b) the Director Kenya Plant Health Inspectorate Service, who shall be the Secretary;</li> <li>(c) the Director General, Kenya Agricultural and Livestock Research Organization;</li> <li>(d) the Director Kenya Industrial Property Institute;</li> <li>(e) the Director Kenya Forestry Research Institute;</li> <li>(f) the Chairperson, Seed Trade Association of Kenya or a representative; and</li> <li>(g) the Chairperson, Plant Breeders Associations of Kenya or a representative.</li> </ul>
	(2) The Committee may co-opt a number of members not exceeding three to represent such interests as it may from time to time determine.
	(3) One of the members shall be a representative of academic institutions of higher learning offering seed related sciences.
	(4) Co-opted members shall serve for a maximum term of three years which may be renewed once.
Functions of the Committee.	<p><b>5.</b>The Committee shall:—</p> <ul style="list-style-type: none"> <li>(a) advise the Cabinet Secretary on the review and development of plant breeder's rights policy, laws and regulations;</li> <li>(b) approve procedures and protocols for plant variety protection;</li> <li>(c) review and recommend appropriate plant breeder's rights;</li> <li>(d) Approve cancellations of grants due to non payment of maintenance fee and those requested for cancellations by grantee</li> </ul>

	<p>(e) advise CS on cancelation of grants due other factors of non compliance or misinformation by grantee or new information against the grant;</p> <p>(f) determine and review the list of crops with historical use of farm saved seed and land sizes for which exemptions may be granted to small scale farmers to use on their own holdings;</p> <p>(g) resolve disputes relating to Plant Breeders Rights and</p> <p>(h) perform such other duties as may be assigned by the Cabinet Secretary from time to time.</p>
Meetings of the Committee.	6. Subject to the directions of the Cabinet Secretary, the Committee shall meet at least once every year.
	<b>PART 111. ISSUANCE OF GRANT</b>
Application for a grant of plant breeders' rights.	7.(1) An application for a grant of plant breeder's right, shall be in Form PBR I set out in the Second Schedule and shall be accompanied by the prescribed fees set out in the First Schedule.
	(2) Where the application is by a successor in title to the breeder, it shall be accompanied by—
	a. the original or a certified copy of the deed of assignment shall be in Form PBR III; or
	b. the original or a certified copy of the certificate of grant of letters of administration; or
	c. other relevant documentary evidence to support the application.
	(3) Where the breeder is an employee of the applying institution the application shall be accompanied by a letter of assignment from the breeder in Form PBR IV
	(4) The Director shall consider application under sub regulation (1) and proceed to the next stage if all the applicable requirements have been met as per Regulation 16 and section 18 of the Act, otherwise he will notify applicants to submit additional information or evidence where applicable or reject the application.

	(5)The applicant may during application submit a proposed name of the variety
	(6) Where an applicant has submitted a proposed name in accordance with paragraph 5, such a proposal shall satisfy the requirements of Regulation 16
	(7) An applicant who wishes to withdraw an application may do so by writing to the Director.
Provision of information or evidence in support of applications.	8. A person making an application under these Regulations shall provide the Director with such information or evidence in support of the application as the Director may require.
Refusal of repeated application	<p><b>9.</b> (1) An application made within twelve months of a decision on the same matter, may be declined:</p> <p>(a) by the Cabinet Secretary under Regulations 22 on compulsory license, and;</p> <p>(b) by the Director under the following:</p> <ul style="list-style-type: none"> <li>i. Regulations 7 on application of PBR grant,</li> <li>ii. Regulation 18 on Extension of Grant and</li> <li>iii. Regulation 20 on surrender of grant, if in their opinion the application lacks merit.</li> </ul> <p>(2) The Cabinet Secretary or the Director shall before rejecting a repeated application under paragraph (1), cause the applicant to be accorded an opportunity to make representations.</p>
Forfeiture of right to priority when making application for a grant.	<p><b>10.</b>(1) A person entitled to priority when making application for a grant under Part I of the Fourth Schedule of the Act may forfeit such right, if on being served with a notice by the Director, such a person fails to make a valid application within the period specified in the notice.</p>
	(2) The notice shall be for a period not exceeding thirty days.
	(3) A person aggrieved by an act or omission of the Director under this Regulation may make a representation to the Committee within fourteen days of the act or omission.

Application for protective direction.	<b>11.</b> (1) An application for a protective direction shall be in Form PBR V set out in the Second Schedule and shall be accompanied by the prescribed fee set out in the First Schedule.
	(2) A certificate of grant of protective direction shall be in Form PBR. VI set out in the Second Schedule, and shall be issued on payment of prescribed fee set out in the First Schedule.
Notification of applications	<b>12.</b> (1) The Cabinet Secretary shall, by notice in the <i>Gazette</i> , notify the public on every application made under regulations 7, 18, 20 and 22.
	(2) The notice issued under paragraph (1) shall specify:— <ul style="list-style-type: none"> <li>(a) the proposed denomination;</li> <li><b>(b)</b> the categories of the persons entitled to make representations concerning the application under the Act or these Regulations;</li> <li>(c) the period within which an application for an opportunity to make representations may be made, which shall be sixty (60) days from the date of the publication; and</li> <li>(d) any matter on which a person or organization applying for an opportunity to make representations should satisfy.</li> </ul>
Application for opportunity to make representations	<b>13.</b> (1) A person or organization entitled by virtue of the provisions of the Act or these Regulations to make representations concerning any matter may apply to the Cabinet Secretary in the prescribed form, for an opportunity to make representations.
	(2) An application for opportunity to make representation shall be:— <ul style="list-style-type: none"> <li>(a) in Form PBR. VII set out in the Second Schedule;</li> <li>(b) accompanied by the prescribed fee set out in the First Schedule; and</li> <li>(c) lodged within the period specified in accordance with regulation 12.</li> </ul>

	(3) The Cabinet Secretary shall on receipt of an application under this Regulation, accord the applicant an opportunity to make representations in writing, and may delegate the hearing of representations to the Committee.
Hearing of representations	<b>14.</b> (1) Where the Cabinet Secretary delegates the hearing of representation as provided in Regulation 13(3), the Committee, shall appoint a date and place for the hearing
	(2) In appointing the date and place for hearing, the Committee shall have regard to:- <ul style="list-style-type: none"> <li>(a) the convenience of the applicant and any witnesses;</li> <li>(b) the situation of any land or premises to be viewed in connection with the application; and</li> <li>(c) any other relevant circumstances.</li> </ul>
	(3) The Committee, shall give the applicant not less than 30 days' notice of the hearing.
	(4) The applicant shall at least fourteen days before the date appointed for the hearing, deliver to the Director two copies of any documents intended to be relied on or tendered as evidence at the hearing.
	(5) The applicant may appear in person at the hearing or be represented by a person of his own choice.
	(6) At the hearing, the applicant or his representative may:- <ul style="list-style-type: none"> <li>(a) give evidence;</li> <li>(b) call witnesses;</li> <li>(c) subject to paragraph (7), produce any document; and</li> <li>(d) cross-examine any witnesses called.</li> </ul>
	(7) Copies of the documents relied on or produced in evidence under paragraph (6) must be delivered in accordance with paragraph (4).
	(8) The Committee, may require any witness called at the hearing to give evidence.
	(9) Subject to the directions of the Committee in consultation with the applicant, the hearing shall be held in public.

	<p>(10)The Committee shall take into consideration any written representations made on the matter provided under regulation 13(3),before making decision,</p>
	<p>(11) The Committee shall</p> <p>(a) give the applicant notice of the decision in writing, and shall specify therein the reasons for the decision.</p> <p>(b) submit a report of the Committee decision to Cabinet Secretary</p>
	<p>(12) An applicant aggrieved by decisions of the Committee under this Regulation may appeal to the Tribunal within fourteen days.</p>
<p>Technical Evaluation of Varieties</p>	<p>15.(1) Upon being satisfied that the application for plant Breeder’s Rights has met all the requirements of Regulation 7,8,12 and 14 the Director shall notify the applicant to submit reproductive material and facilities as the case may apply.</p>
	<p>(2)An applicant for a grant under these Regulations shall provide, the reproductive or other plant material of the plant variety to which the application relates, where applicable which shall be accompanied by duly filled Application for Distinctness Uniformity and Stability (DUS) Test Form PBRVIII and prescribed fee set out in the First Schedule.</p>
	<p>(3) The reproductive or other plant material delivered or availed by the applicant for examination by the Plant Examiner under this Regulation shall be of such quality and description, as the Director shall specify.</p>
	<p>(4) If in the course of examination of any plant material delivered or availed to the Director under this Regulation any part thereof is lost or damaged, or is found to be unhealthy or otherwise unsuitable, the Director may require the applicant to supply a further quantity of the plant material.</p>
	<p>(5) The applicant shall at all reasonable times avail to the Director such facilities as may be necessary for the inspection of plants, plant material, trial grounds or other premises to which the application relates.</p>
	<p>(6) The Director may require an applicant to undertake tests in connection with the plant</p>

	<p>variety to which his application relates, at such times and in such manner as the Director may determine.</p> <p>(7)The technical evaluation shall be undertaken based on procedure approved by the Committee to ascertain if the variety meets the criteria provided in Part II of the Fourth Schedule of the Act.</p> <p>(8) The technical evaluation may involve planting, data collection as per procedure in paragraph (7) and generation by a Plant Examiner of a DUS test report, indicating whether the variety has passed the Test in accordance with the criteria provided in Part II of the Fourth Schedule of the Act.</p> <p>Without prejudice to Paragraph (8) the Director may obtain, at the cost of applicant, a test Report for a variety protected in a territory with harmonized plant variety protection system with Kenya.</p> <p>(9) Where the variety has failed the Test in accordance with the criteria provided in Part II of the Fourth Schedule of the Act, Director will notify the applicant in writing and attach the DUS report</p>
Proposal of name for plant variety	<p><b>16.</b>(1) The Director shall require an applicant for a grant of plant breeders' rights to propose a name for the plant variety to which the application relates within such time as Director may specify</p>
	<p>(2) The Director may reject a name proposed if the name:–</p>
	<p>(a) is similar to that of a plant variety of the same class as the variety in respect of which the application is made being either:–</p>
	<p>(i) a class prescribed for the purposes of section 21 of the Act; or</p> <p>(ii) the name so nearly resembles the name of any plant variety as to be likely to deceive or cause confusion as to the identity of the variety or as to the identity of the breeder;</p>
	<p>(b) is likely to deceive or cause confusion as to the characteristics of value of the</p>

	<p>plant variety or as to the identity of the breeder;</p> <p>(c) does not conform with international usage as regards the denomination of plant varieties;</p> <p>(d) is similar to or likely to be confused with:—</p>
	<p>(i) a registered trade mark;</p> <p>(ii) a trade name used in respect of the reproductive material of any kind;</p> <p>(iii) products of the plant variety in respect of which the application is made; or</p> <p>(iv) products of a plant variety of the same class as the variety in respect of which the application is made, being a class specified under paragraph (2)(a);or</p>
	<p>(e) is in the opinion of the Director otherwise undesirable.</p>
	<p>(3) If the Director rejects a proposed name under paragraph (2), he shall so inform the applicant specifying the grounds for the rejection, and shall require the applicant to propose another name within 30 days.</p>
	<p>(4) The Cabinet Secretary shall publish in the <i>Gazette</i>, or in such manner as he may deem appropriate notice of every proposed name that is not rejected by the Director under paragraph (2).</p>
	<p>(5) A person may, within 60 days of publication of a notice under paragraph (4), object to the approval of a proposed name on any of the grounds specified in paragraph (2).</p>
	<p>(6) An objection under paragraph (4) shall be in writing addressed to the Director.</p>
	<p>(7) The Director shall consider any objection lodged under paragraph (4) before approving the proposed name.</p>
	<p>(8) If an applicant does not comply with a request of the Director to propose an alternative name within the period specified, the Director may deem the application to have</p>

	been abandoned.
	(9) An applicant for a grant may at anytime propose to change the names approved under this Regulation.
	(10) Upon a proposal under paragraph (8), the procedure for proposed names prescribed by this Regulation shall apply.
Application report	17 . (1) The Director shall cause preparation of application report for consideration by the Committee. (2) The report in sub paragraph 1 above to include: i. all those applications for plant Breeder's Rights that have met all the requirements of Regulation 7,8,12, 14,15,16 and grant conditions, ii. all those applications for plant breeders'rights that failed to meet any or all of the grant conditions
reviewing and recommending appropriate plant breeder's rights;	18 .(1). The Committee shall review and Consider application reports for granting of rights under regulation 18 (2) and, i. Recommend to CS for gazette ment those plants and species meeting grant requirements, ii. Notify applicants whose application reports have not met requirements for granting of plant breeders rights
Certificate of grant.	<b>19.</b> (1) A certificate for grant of plant breeder's rights shall be in Form PBR. II set out in the Second Schedule and shall be issued upon payment of the prescribed fee set out in the First Schedule.  (2) The Cabinet Secretary shall gazette the Plant Breeders Rights' Grants.  (3) The Period of years for which rights are exercisable shall be as indicated in Third Schedule beginning from date of grant  (4) A holder of a Plant Breeder's Rights grant shall pay annual maintenance fees prescribed in the First Schedule.  (5) The Director may cancel a grant, whose annual maintenance fees have not been paid for two (2) consecutive years upon approval by the Committee.

	(6) The Director may restore grants cancelled under paragraph (4) upon payment of the outstanding annual maintenance fees, Cancellation of Grant fee and restoration of a Grant fee prescribed in the First Schedule.
	<b>PART IV. MANAGEMENT OF GRANTS</b>
Application for extension of period of grant	<p><b>20. .</b></p> <p>(1) An application for extension of the period of a grant shall be in Form PBR IX in the Second Schedule and shall be accompanied by the prescribed fee in the First Schedule.</p> <p>(2) Subject to paragraph (3), an application under this Regulation shall be made not more than eighteen but not less than nine months before the date of expiry of the grant.</p> <p>(3) The Director may accept a late application under this Regulation if satisfied that the applicant's failure to lodge it within the prescribed period was due to circumstances beyond his control:</p> <p style="padding-left: 40px;">Provided the application is lodged at least three months before the date of expiry of the grant.</p> <p>(4) A person who:—</p> <p style="padding-left: 40px;">(a) is licensed to exercise any rights in the plant variety to which the application relates, or who otherwise has a substantial interest in the variety; or</p> <p style="padding-left: 40px;">(b) is in a position to produce evidence which is likely to be material to the consideration of the application and any person or organization representing such licensee or person so interested,</p> <p>may on application to the Director, be afforded an opportunity to make representations concerning the application.</p>
	(5) The duration for extension of grant shall not exceed 5 years for annual crops and 10 years for trees and Vines.
Certificate of extension of Grant	<b>21. .</b> A Certificate of extension of Grant shall be issued in Form PBR X in the Second schedule to successful applicants under Regulation 18 upon payment of fees prescribed in Schedule 1.

Application for surrender of grant	<p><b>22 .</b>(1) An application for surrender of a grant of plant breeders' rights shall be in Form PBR. XI set out in the Second Schedule and shall be accompanied by the prescribed fee set out in the First Schedule.</p> <p>(2) A licensee of any right in the plant variety to which the application relates or a person who otherwise has a substantial interest in the plant variety may, on application to the Cabinet Secretary, be accorded an opportunity to make representations concerning the application for surrender of grant.</p>
Cancellation of grant	<p><b>23 .</b>(1) The Cabinet Secretary, shall give the grantee thirty days' notice of intended cancellation of a grant of the breeder's rights under section 19(7) of the Act.</p> <p>(2) This notice shall be in writing setting out the grounds for the intended cancellation.</p>
Application for compulsory license	<p><b>24 .</b>(1) An application for compulsory licence shall be in Form PBR XII set out in the Second Schedule and shall be accompanied by the prescribed fee in the First Schedule</p>
Issuance of compulsory license	<p><b>25 .</b>(1) A compulsory license shall be in Form PBR. XIII set out in the Second Schedule and shall be issued to successful applicants as per section 23 of the Act.upon payment of the prescribed fee set out in the First Schedule.</p> <p>(2) The Cabinet Secretary shall gazette the compulsory license.</p>
	<p>(3) An application for the revocation, extension, limitation or other variation of the terms of a compulsory license shall be in writing addressed to the Cabinet Secretary.</p>
	<p>(4) The Cabinet Secretary may at any time, on application made by any person concerned, extend or limit, or vary in any other respect, or revoke, a compulsory licence.</p>
<b>PART V. REGISTERS AND RECORDS</b>	
Register of plant varieties	<p><b>26 .</b>(1) The Director shall maintain a register of plant varieties into which he shall enter the details relating to:–</p>
	<p>(a) a plant variety in respect of which a grant has been made; or</p> <p>(b) a plant variety in respect of which an application for a grant is under consideration specified in this Regulation.</p>

	(2) The Director shall enter in the register:—
	<ul style="list-style-type: none"> <li>(a) the name of the variety;</li> <li>(b) a description of its characteristics;</li> <li>(c) the reference number under which the variety is recorded in any reference collection of plant material maintained by the Director;</li> <li>(d) the name and address of the grantee;</li> <li>(e) the date and duration of the grant; and</li> <li>(f) such other particulars as are in the opinion of the Director necessary for plant variety in respect of which a grant has been made.</li> </ul>
	(3)the Director shall enter in the register:—
	<ul style="list-style-type: none"> <li>(a) the proposed name of the variety;</li> <li>(b) a description of the characteristics of the variety as provided by the applicant;</li> <li>(c) the date of grant of any protective direction</li> <li>(d) the name and address of the applicant; and</li> <li>(e) such other particulars as are in the opinion of the Director necessary for a plant variety in respect of which an application for a grant is under consideration.</li> </ul>
Inspection of register and records.	<b>27.</b> .Aperson may, during official working hours, inspect the register kept by the Director, and may on payment of the prescribed fee, obtain a copy of the register.

Amendment of register and records	<p><b>28.</b> (1) Where:—</p>
	<p>(a) the approved name of a plant variety is changed under Regulation 24</p> <p>(b) the period of a grant expires; or</p> <p>(c) a grant is surrendered or cancelled,</p> <p>the Director shall amend the register accordingly.</p>
	<p>(2) The Director shall make such other amendments as may be necessitated by any information supplied to him.</p>
Variety description and test results.	<p><b>29.</b> .The Director shall keep a description and the results of any tests of trials of a plant variety in respect of which an application for a grant is made.</p>
<b>PART VI. EXCEPTIONS</b>	
Exceptions to the Breeder's Right	<p><b>30.</b> (1) The breeder's right shall not extend to:-</p> <p>(i) acts done privately and for non-commercial purposes;</p> <p>(ii) acts done for experimental purposes; and</p> <p>(iii) acts done for the purpose of breeding other varieties, and, except where the resultant variety is Essentially Derived, the breeder may not exploit it without the consent of the owner of the initial variety in accordance with Section 20 (1),(1A) &amp; (1B), of the Act.</p>

	<p>(2) The Director shall gazette a list of agricultural crops and vegetables whose varieties have been improved, protected and with historical practice of saving seeds and maximum land sizes, where small scale farmers will not need permission of the breeder to use farm saved seeds as determined by the Plant Breeders' Rights Committee.</p> <p>(3)The Cabinet Secretary, may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeders rights in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or Essentially Derived Variety.</p>
	<b>PART VII. MISCELLANEOUS</b>
Effective date of decisions	<b>31.</b> . Subject to regulation 35 on appeals to Tribunal, a decision of the director, Committee or Cabinet Secretary shall take effect on such date as they direct.
Extension of period for compliance	<b>32.</b> . The Cabinet Secretary or Director as the case applies may, on application, extend the period set for compliance with any regulation if he considers it appropriate.
Address of grantee or applicant.	<b>33.</b> .(1) A person making any application under these Regulations shall declare an address for service of any documents required to be served upon him.
	(2) An applicant who changes his name or address shall forthwith notify the Director.
	(3) The Director shall upon receipt of notification of change of name or address of an applicant under paragraph (2), amend the register accordingly.
Translation of documents	<p><b>34. (1)</b> Where a document required to be submitted to the Cabinet Secretary or Director, in connection with any matter under these Regulations, is in a language other than English, it shall be accompanied by a certified translation thereof in the English language.</p> <p>(2) Where there is conflict between the original version and the English version, the English version takes precedence.</p>

Fees.	<b>35.</b> .The Fees set out in the First Schedule shall be payable to the Service for the purposes of the Act.
Appeals to the Committee	<b>36.</b> . A person aggrieved by the decision of the Director may appeal to the Committee against the decision.
Appeals to the Tribunal.	<b>37.</b> (1)Aperson aggrieved by the decision of the Committee in Regulation (34) or any matter under these Regulations, may appeal to the Tribunal  (2) In appointing the time and place for hearing an appeal under section 29 of the Act or any matter under these Regulations, the Tribunal shall have regard to the matters specified in regulation 14 (2).
Revocation. LN482/1994	<b>38.</b> Legal Notice No. LN482/1994 of the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations is revoked.

## SCHEDULES

### FIRST SCHEDULE: PLANT BREEDERS' RIGHTS FEES (r. 33)

<b>Type of Charges</b>	<b>Fees (USD)</b>
Application for grant of plant breeders' rights	200
Application for compulsory license	70
Compulsory license Fee	240
Application for extension of compulsory license	70
Extension of Compulsory license Fee	240
Application for protective direction	40
Certificate of protective direction	120
Application for surrender of grant	30
Application for opportunity to make representations	120
Inspection of register and documents	40
Technical evaluation of a variety	1,000
Grant of plant breeders' rights certificate	240

Duplicate copy of the register or other document	0.50/page
Annual fees for maintenance of grant	200
Transfer of grant	100
Purchase of a report from a testing authority of another country	320 Swiss francs
Replacement of lost or destroyed certificate	40
Claim of priority from a preceding application outside Kenya	20
Change of an approved denomination	80
Reinstatement of an abandoned application	80
Surcharge of late payment	80
Application for extension of grant	200
Extension of grant certificate	240
Cancellation of Grant	30
Restoration of a cancelled Grant	100

## SECOND SCHEDULE

**THE SEEDS AND PLANT VARIETIES ACT**

*(Cap.326)*

**APPLICATION FOR A GRANT OF PLANT BREEDER'S RIGHTS**

**PART I**

(Notes to be read before completing the form. Section A and B should be completed by all applicants, while Section C should be completed by applicants from outside Kenya.)

1. This form should be completed by a person or organization applying for a grant of plant breeder's rights under Regulation 7 of the seeds and Plant varieties (Plant Breeder's Rights) Regulations.
2. Where the application is by the successor in title to the breeder, it shall be accompanied by:-
  - (a) The original or a certified copy of letter of assignment; or
  - (b) The original or certified copy of the certificate of the grant of **probate**, letters of administration; or
  - (c) Such other documentary evidence as is in the opinion of the Director is sufficient to establish the title of the applicant.
- 3.(a). If the applicant is a partnership firm, the application must be signed by all partners or by one partner on behalf of the firm
- (b). If the applicant is a body corporate, a society or another similar organization, the application must be signed by the secretary or other principle officer or by its authorized agent.

4. The application shall be processed subject to:-

- (a) Provision of all necessary information, records and materials required by the Director under the seeds and Plant Varieties (Plant Breeder's Rights) Regulations; and
- (b) Payment of the application fee prescribed in regulation 33 of the said Regulations.

5. An applicant who wishes to apply for a Certificate of Protective Direction under the Third Schedule of Seeds and Plant Varieties Act shall also complete Form PBR V.

**PART II**

(To be completed by the Applicant)

THE MANAGING DIRECTOR

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)

**Section A.**

I/We \_\_\_\_\_

(Full Names of Applicant)

of \_\_\_\_\_

(Address)

\_\_\_\_\_

---

(Telephone Number) (Email address)

apply for a grant of plant breeder's rights in the plant variety specified in Section B.

**Section B.**

Details of Plant Variety

1. Species or group of plant varieties to which plant variety belongs:
2. Name or proposed name for variety (if any):
3. Country in which the variety was bred or discovered and developed:
4. Name of breeder:
5. Have plants of the variety or any material forming part of, or derived from them been offered for sale? . If so, give the following particulars: -
  - (i) Country of sale \_\_\_\_\_
  - (ii) Date of first sale or offer for sale \_\_\_\_\_
  - (iii) Terms or conditions of sale \_\_\_\_\_
  - (iv) Has the breeder consented to sale? \_\_\_\_\_ (YES/NO)
6. Country of origin \_\_\_\_\_
7. Has any application for similar rights been lodged in any other country?  
\_\_\_\_\_ (YES/NO)

If Yes give details: \_\_\_\_\_

8. Do you claim priority in respect of an application lodged in another country within the last 12 months? \_\_\_\_\_ (YES/NO)

If Yes, give details of such applications:

\_\_\_\_\_  
\_\_\_\_\_

### **DECLARATION**

I/We declare that I/We have read and understood the conditions specified in Part 1 and undertake to abide by them as required and confirm that the information given in this application is correct to the best of my/our knowledge and belief.

\_\_\_\_\_

Name, (Signature(s) of Applicant (s)) and Date

**FORM PBR. II**  
**(r.17(1))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap.326)**

**CERTIFICATE OF GRANT OF PLANT BREEDER'S RIGHTS**

I certify that .....

(Name of grantee)

of .....

(Address & Telephone)

has been granted plant breeder's rights in respect of .....

.....

(Name/Denomination of variety)

.....

(Class)

(Registration Number)

for a period of .....

years commencing on the ....., 20.....

Date issued ..... Fee paid .....

.....

**Managing Director**

**Kenya Plant Health Inspectorate Service**

**FORM PBR. III**  
**(r.7.(2a))**

THE MANAGING DIRECTOR

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)

LETTER OF ASSIGNMENT/TRANSFER OF RIGHTS BY BREEDER

I \_\_\_\_\_,  
(Name of breeder)

do hereby declare that I have assigned, transferred and delivered all the rights  
for the \_\_\_\_\_ variety.

(Common name)

\_\_\_\_\_  
(Variety Denomination)

To \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address)

Place and Date:  
\_\_\_\_\_

---

---

\_\_\_\_\_  
By.....

(Name, signature of Breeder and Date)  
and date)

Witnessed

( Name signature

**FORM PBR. IV**

**(r.7.(3))**

MANAGING DIRECTOR

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)

LETTER OF ASSIGNMENT FROM A BREEDER WHO IS AN  
EMPLOYEE OF AN ORGANIZATION

I \_\_\_\_\_ being  
employed as a

\_\_\_\_\_ breeder by:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Name and address of employer)

Do herewith declare that I have assigned, transferred and delivered all  
rights to the

\_\_\_\_\_ variety: (Common name)

\_\_\_\_\_

(Variety denomination)

to the said employer

\_\_\_\_\_

Place and  
date: \_\_\_\_\_

\_\_\_\_\_  
(Name and signature of the breeder)

Made on the .....

**FORM PBR. V**

**(r. 11(1))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap. 326).**

**APPLICATION FOR A CERTIFICATE OF PROTECTIVE  
DIRECTION**

This application should be completed by an applicant who is also applying for a protective direction to the Director under the Third Schedule of the Act.

THE MANAGING DIRECTOR

KENYA PLANT HEALTH INSPECTORATE SERVICE (KEPHIS)

I/We.....  
.....

(Name of Applicant)

of.....  
.....

(Address)

having submitted my/our application for grant of plant breeders rights in  
respect of .....

.....

hereby apply for a protective direction in respect of the variety in  
accordance to the Third Schedule to the Seeds and Plant Varieties Act.

Date.....

(Signature of Applicant) .....

**FORM PBR. VI**

**(r. 11(2))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap. 326)**

**CERTIFICATE OF GRANT OF PROTECTIVE DIRECTION**

I certify that .....

(Name of Holder)

.....

(Address)

has pursuant to the provisions of the Third Schedule of the Seeds and Plant Varieties Act, been granted a protective direction in respect of

.....  
of species/class.....Application No.....

with effect from .....

GRANT NO. ....

Date of issue .....

Fee paid .....

.....

Managing Director

Kenya Plant

Health

Inspectorate

Services

**FORM PBR. VII**  
**(r. 13(2)(a))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap. 326)**

**APPLICATION FOR OPPORTUNITY TO MAKE  
REPRESENTATIONS**

(Notes to be read before completing the form)

Notes:

1. This form should be completed by a person or organization applying for an opportunity to make representations concerning any matter pursuant to the provisions of the Seeds and Plant Varieties Act or the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations.
  
2. The application should be lodged within the period specified under regulation 12 of the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations.
  
3. The application may be lodged with the Cabinet Secretary and shall be accompanied by the prescribed fee.

(To be completed by the Applicant)

1. I/We .....

(Name of Applicant)

of .....

(Address)

apply for an opportunity to make representations concerning the

.....  
 .....

(particulars of application or other matter)

notified in the Kenya Gazette vide Gazette No. .... of ....., 20 .....

2. I am a person/organization entitled to make representations concerning this matter by virtue of .....

.....

(Specify relevant provisions of the Act or the Regulations)

.....

(Specify nature of interest)

.....

.....

3. Enclosed herewith is the fee .....  
payable in respect of this application.

Date.....

.....

Signature of Applicant

**FORM PBR VIII****(r. 15(2))****THE SEEDS AND PLANT VARIETIES ACT (Cap. 326).****APPLICATION FOR DISTINCTNESS UNIFORMITY AND STABILITY (DUS) TEST**

Notes	
Part A & D To be completed by all applicants, Part B for variety intended for release and Part C variety intended for Plant Breeder's Rights	
PART A Variety Details	
SPECIES	
<ul style="list-style-type: none"> <li>• Botanical</li> <li>• Common name</li> </ul>	
Proposed Denomination (Name )	
Breeder's reference/entry name	
Purpose for application (tick as appropriate)	<ul style="list-style-type: none"> <li>• Variety release</li> <li>• Plant Breeder's Rights</li> <li>• Other (specify)</li> </ul>
PART B FOR VARIETIES INTENDED FOR RELEASE	
Name used in NPT ( if different from above)	
KIT /Agro-Ecological Zone	
Year(s) and season(s) of NPT testing	
Is the Variety recommended for release	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>

If Yes, Indicate year	
List of parental lines (For Hybrids)	
Attach Filled Technical questionnaire	
<b>PART C FOR PBR APPLICATION</b>	
Indicate (application File no/date)	
<b>PART D APPLICABLE TO ALL APPLICANTS</b>	
1. MATERIAL TO BE SUBMITTED /EXAMINED (in case of hybrids, include parental lines)	<ul style="list-style-type: none"> <li>• Seed (including vegetatively propagated material)</li> <li>• Growing Plants<sup>+</sup></li> </ul>
In case of seed indicate quantity of seed submitted (kg /Number)*	
In case of plants indicate status	
<b>2. APPLICANT'S DETAILS</b>	
Name	
Address	
Telephone	
Email	
Organization	
Enclosed fee in respect of the application	
<b>3. DECLARATION</b>	

I hereby declare that, to the best of my knowledge, the information provided in this form is correct:	
Name	
Signature	
Date	Official Stamp

<sup>+</sup>where the material to be examined is already established in a breeder's facilities

*Note: Condition of seed/Plant shall be as indicated in technical questionnaire*

**\* Below is minimum quantities required for DUS testing. Refer to respective test guidelines for crops not listed in the table**

		MINIMUM NUMBER / WEIGHT OF SEED PER PACKET		
CROP	TYPE	NUMBER OF EXPECTED PACKETS	UNITS	TOTAL
MAIZE	Hybrids and OPVs	1	GRAMS	1000
	inbred lines	1	COUNTS	1500
SUNFLOWER	Hybrids and OPVs	1	GRAMS	1000
	inbred lines	1	COUNTS	5000
RAPE SEED	Hybrids and Synthetic	1	GRAMS	100
	inbred lines	1	GRAMS	500

		MINIMUM NUMBER / WEIGHT OF SEED PER PACKET		
CROP	PACKETS	UNITS	TOTAL	
AMARANTH	1	GRAMS	100	
BARLEY	1	GRAMS	3000	
BUSH BEANS	1	GRAMS	1500	
CHICKPEA	1	COUNTS	3000	
CLIMBING BEANS	1	GRAMS	1500	
COTTON	1(Delinted seed)	GRAMS	3000	
FINGER MILLET	1	GRAMS	1000	
FRENCH BEANS	1	GRAMS	1500	
IRISH POTATO	EACH SEASON	TUBERS	100	
LUCERNE	1	GRAMS	1000	
PEARL MILLET	1	GRAMS	500	
RICE	1	GRAMS	2000	
SORGHUM	1	GRAMS	1000	
SOYA BEANS	1	GRAMS	2000	
SWEET POTATO	EACH SEASON	CUTTINGS	150	
WHEAT	1	GRAMS	3000	

**FORM PBR IX**

**(r.18 (1))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap. 326)**

**APPLICATION FOR EXTENSION OF GRANT OF PLANT BREEDER'S  
RIGHT**

(Application shall be made not more than eighteen but not less than nine months before the date of expiry of the grant).

**TO THE MANAGING DIRECTOR**

**KENYA PLANT HEALTH INSPECTORATE SERVICE**

1. I/We .....

(Name of the applicant)

of .....

(Address)

being the grantee of plant breeder's rights in respect of

.....

(Name/Denomination of Variety)

vide certificate of grant No.....

issued on .....

due to expire on .....

hereby apply for extension of the said grant for a period of  
..... years.

My/our application is supported by the following reasons:

.....  
.....  
.....  
.....

2. The following persons/organizations are, by virtue of the provisions of the Seeds and Plant Varieties Act, and the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations, interested in this application:

- i. ....
- ii. ....

- iii. ....
- iv. ....
- v. ....

3. Enclosed herewith is the application fee . . . . .  
payable in respect of this application.

Date.....

Signature of Applicant

**FORM PBR. X** (r. 19)  
**THE SEEDS AND PLANT VARIETIES ACT**  
(Cap. 326)

**CERTIFICATE OF EXTENSION OF GRANT OF PLANT BREEDER'S  
RIGHTS**

I certify that .....

(Name of Holder)

.....

(Address)

has been granted an extension of Grant of Plant Breeders' Rights in respect of  
.....  
of species/class.....

(Name/Denomination of Variety)

with effect from .....to.....

GRANT NO. ....

Date of issue .....

Fee paid .....

.....

Managing Director

Kenya Plant

Health

Inspectorate

Services

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap. 326)**

**APPLICATION FOR SURRENDER OF GRANT OF PLANT  
BREEDER'S RIGHTS**

THE MANAGING DIRECTOR

KENYA PLANT HEALTH INSPECTORATE SERVICE

1. I/We .....

(Name of the applicant)

of .....

(Address)

being the grantee of plant breeder's rights in respect of

.....

(Name/Denomination of Variety)

vide certificate of grant No.....

issued on .....

due to expire on .....

hereby apply to surrender the grant for the following reasons:

.....  
.....  
.....  
.....

2. The following persons/organizations are, by virtue of the provisions of the Seeds and Plant Varieties Act, and the Seeds and Plant Varieties (Plant Breeder's Rights) Regulations, interested in this application:

- i. ....
- ii. ....

- iii. ....
- iv. ....
- v. ....

3. Enclosed herewith is the application fee . ....  
payable in respect of this application.

Date.....

Signature of Applicant

**FORM PBR. XII**

**(r. 22(1))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap. 326)**

**APPLICATION FOR COMPULSORY LICENCE**

THE CABINET SECRETARY

MINISTRY OF AGRICULTURE LIVESTOCK FISHERIES AND  
COOPERATIVES

1. I/We .....

(Name of Applicant)

of .....

(Address and Telephone Number)

.....  
apply for a compulsory licence in respect of

.....  
(Name/Denomination of variety)

of the .....

species/group, in accordance with the provisions of section 23 of the Seeds and Plant Varieties Act.

2. The above variety was bred/discovered and developed by

.....  
.....

(Name of Breeder)

3. The following persons are, by virtue of the provisions of the Seeds and Plant Varieties Act and Seeds and Plant Varieties (Plant Breeder's Rights) Regulations, interested in this application:

i. ....  
.....

ii. ....  
.....

iii. ....  
.....

iv. ....  
.....

v. ....  
.....

4. Enclosed herewith is the fee .....  
Payable in respect of this application.

.....

Signature of Applicant

Date.....

**FORM PBR. XIII**  
**(r.19(1))**

**THE SEEDS AND PLANT VARIETIES ACT**

**(Cap.326)**

**COMPULSORY LICENSE**

This Compulsory License has been granted to

.....

(Name of  
licensee) (Address & Telephone)

in respect of .....Having been  
granted PBR certificate

(Name/Denomination of variety)

no.....

(Registration Number)

In favour of.....(Name of grantee)  
(Address & Telephone).

This license is for a period of

.....

years commencing on the ....., 20.....

With the following conditions;

1. To supply sufficient amount of seed of variety to farming community at competitive prices;
2. Ensure maintenance of reproductive material of variety is not compromised;
3. The licensee shall periodically furnish the Cabinet Secretary and grantee with information on amounts of seed sold;
4. The licensee shall pay royalties to the grantee.

Date issued ..... Fee paid .....

.....

.....

### THIRD SCHEDULE

Period of grant

(r.20(3))

No	Group of plants and species	Period of years for which rights are exercisable
1	Cereals	20
2	Sugar crops	20
3	Pulses	20

4	Oil crops (Annual and Biannuals)	20
5	Fibre crops	20
6	Root crops	20
7	Flowers	20
	Vegetables	20
	Herbage and lawn grasses, non woody pasture legumes	20
	Woody pasture legumes	25
8	Ornamental and Herbacious plants	25
	Fruit, Nut And Tree Crops	25
9	Trees and Woody Climbers	25

**Cabinet Secretary**





**Peter Munya,**  
*Cabinet Secretary for Agriculture Livestock Fisheries and Cooperatives.*