

KENYA

THE ANTIQUITIES AND MONUMENTS ACT

Commencement : 21st January, 1983

An Act of Parliament to provide for the preservation of antiquities and monuments

Part 1-Preliminary

1. This Act may be cited as the Antiquities and Monuments Act.

2. In this Act, except where the context otherwise requires—

“antiquity” means any movable object other than a book or document made in or imported into Kenya before the year 1895, or any human, faunal or floral remains of similar minimum age which may exist in Kenya;

“authority” means the National Museums Board and any other person or body of persons which may be authorized by the Minister to perform the duties of an authority under this act;

“exploration license” means an exploration license issued by the Minister under section 5;

“export permit” means a permit to export a monument or part thereof, an antiquity, or a protected object, issued by the Minister under section 30;

“honorary antiquity warden” means a person appointed as such under section 35;

“maintenance” includes the fencing, covering in, repairing, restoring and cleansing of a monument or the fencing or covering of a protected area, and the doing of any act which may be necessary for the purpose of maintaining or protecting a monument or a protected area or of securing convenient access thereto;

“monument” means—

- (a) an immovable structure built before the year 1895 other than an immovable structure which the Minister may by notice in the Gazette either specifically or by reference to all immovable structures in a specified area declare not to be a monument for the purposes of this act;
- (b) a rock-painting, carving or inscription made on an immovable surface before that year;
- (c) an earthwork or other immovable object attributable to human activity constructed before the year;
- (d) a place or immovable structure of any age which being of historical interest has been and remains declared by the Minister under section 4 (1) (a) to be a monument;

and includes the site thereof and such adjoining land as may be required for maintenance thereof;

“National Museums Board” means the National Museums Board of Governors established under the National Museums Act;

“object of archaeological or palaeontological interest” means antiquity which was in existence before the year 1800;

“object of historical interest” means an antiquity which came into existence in or after the year 1800;

“owner” includes a joint owner invested with powers of management on behalf of himself and other joint owners and an agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee; but

nothing in this Act shall be deemed to extend the powers which may be lawfully exercised by the joint owner , agent or trustee;

“permit “ means a valid and subsisting permit issued by the Minister under the provisions of this Act;

“private land” means lands privately owned and land the subject of a grant , lease or license from the Government, and includes Trust land;

“protected area “ means a site on which a buried monument or object of archaeological or palaeontological interest exists or is believed to exist , and such adjoining land as may be required for maintenance thereof , which has been and remains declared by the Minister under section 4 (1) (b) to be protected area;

“protected object” means –

- (a) a door or door frame craved in an African or Oriental style before the year 1946;
- (b) any other object or type of object ,whether or not part of an immovable structure, which being of historical or cultural interest has been and remains declared by the Minister under section 4 (1) (c) to be a protected object.

3. The application of this Act shall extend to monuments and antiquities on the seabed within the territorial waters of Kenya.

Part II—Protective Declarations

4. The Minister may, by notice in the Gazette, declare

- (a) a specified place or immovable structure which he considers to be of historical interest ,and a specified area of land under or adjoining it which is in his opinion required for maintenance thereof, to be a monument within the meaning of this Act; or
- (b) a specified site on which a buried monument or object of archaeological or palaeontological interest exists or is believed to exist, and a specified area of land adjoining it which is in his opinion required for maintenance thereof, to be a protected area within the meaning of this Act, or
- (c) a specified object or type of object, whether or not part of an immovable structure, which he considers to be of historical or cultural interest, to be protected object within the meaning of this Act;

and the notice shall state that objections to a declaration thereby made shall be lodged with the Minister within one month from the date of publication of the notice .

(2) A copy of every notice published under subsection (1) shall, if referring to an immovable object or site, be posted by an authority forthwith in a conspicuous place on or near that object or site or on the area to which it relates ,and if referring to a specified movable object, be delivered or sent by an authority forthwith to the person in whose possession that object is or is believed to be.

(3) On the expiration of the period of one month, the Minister, after considering the objections, if any, shall confirm or withdraw the notice

(4) A notice published under this section shall be effectual for all purposes of this Act unless and until it is withdrawn.

(5) An object or area of land declared by or under the Preservation of Objects of Archaeological and Palaeontological Interest Act (now repealed) to be antiquity or a protected area, as the case may be, within the meaning of this Act.

Part III—Searches and Discoveries

5. (1) Unless authorized by an exploration license issued by the Minister, no person shall by means of excavation or surface operations search for a buried monument or buried part of a monument, or for a buried antiquity, whether or not in a protected area.

(2) The Minister shall, before issuing an exploration license, satisfy himself that the applicant is competent by both training and experience to carry out an exploration or excavation in accordance with the most recent scientific methods and that the application is recommended by an authority, and may require the applicant to satisfy him that he has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) There shall be implied on the part of every person to whom an exploration license is issued under this section an undertaking that he, or the institution which he represents, will, at such intervals or within such period as may be specified by that license, produce an adequate report or publication on the results of the exploration and excavation, and will deposit with the minister two copies of the report or publication .

(4) An exploration license may specify, in regard to the acts which it authorizes, such limitations and conditions as the Minister may consider necessary in order to protect a monument or antiquity from injury, removal or dispersion, or may authorize removal of finds to a place within Kenya, or temporarily to a place outside Kenya for the purpose only of special examination or preservative treatment , subject to such limitations and conditions as the Minister thinks fit.

6. An exploration license–

- (a) shall be valid for a period not exceeding one year, but may be renewed for a further period or further periods not exceeding one year at a time;
- (b) may be revoked at any time if the Minister is of the opinion that the holder thereof has failed to conform with any of his express or implied obligations thereunder;
- (c) shall be in the prescribed form;
- (d) shall not entitle the holder thereof to enter upon any land without the consent of the owner thereof, otherwise than as provided by section 8.

7. (1) For the purposes of an exploration license, the holder thereof may, under written warrant from the Minister, enter upon any area of land specified in the warrant, whether or not private land, and whether or not a protected area, and exercise there all rights conferred by the exploration license, for such period and subject to such limitations and conditions as may be stated in the warrant.

(2) Where the holder of an exploration license intends, pursuant to any warrant under subsection (1) , to enter upon private land , he shall give not less than forty-eight hours' notice to the occupier, and if practicable to the owner of the land, and shall, if required by the owner or occupier, give security in such sum and by such means as the Minister may direct for meeting any compensation payable under subsection (3):

Provided that in case of Trust land–

- (i) service on the county council in which the land is vested of a written notice, specifying the exploration license and the nature and duration of, and the land affected by, the warrant, shall be sufficient notice of all subsequent activities in accordance with the warrant and the exploration license, both to the county council and to the residents for whose benefit the council holds the land; and
- (ii) the rights of those residents to require security shall be exercisable by the county council.

(3) Whenever, in the course of operations carried on by the holder of an exploration license, disturbance of the rights of the owner or occupier of private land or damaged to the land, or to crops, trees, buildings, stock or works therein or thereon, is caused, he shall be liable on demand to pay or, make to the owner or occupier such compensation as is fair and reasonable having regard to the disturbance or damage and to the interest of the owner or occupier in the land.

(4) If the holder of an exploration license fails to pay or make compensation when demanded under subsection (3), or if the owner or occupier is dissatisfied with the amount or nature of any compensation offered to him thereunder, the owner or occupier may, within six months of the date on which the demand or offer is made, but not in any case later than two years after the occurrence of the disturbance or damage, take proceedings before a court of competent jurisdiction for the determination and recovery of the compensation (if any) properly to be paid or made under subsection (3).

(5) In the case of disturbance of the rights of occupiers of Trust land, or damaged to any such

land—

- (a) an occupier who claims to be entitled to compensation under subsection (3) shall, within six months after the occurrence of the disturbance or damage, apply to the District Commissioner of the district in which the land is situated;
- (b) the District Commissioner shall notify the holder of the exploration license of the application and afford him a reasonable opportunity of being heard in relation thereto;
- (c) if the District Commissioner is satisfied that the applicant is entitled to compensation. He shall make an award in his favor in accordance with subsection (3);
- (d) the District Commissioner shall give notice in writing to the applicant and the holder of the exploration license of the award or of the rejection of the award;
- (e) any such award shall be subject to review by a magistrate 's court of the first class upon an application by either party filed within thirty days from notification of the award;
- (f) a party to an appeal to the magistrate's court who is dissatisfied with the decision may, within thirty days of that decision shall be final;
- (g) a sum payable under an award shall be deposited by the holder of the exploration license with the District Commissioner upon the expiry of thirty days from notification of the award or from a final appeal decision, as the case may be;
- (h) the District Commissioner shall be responsible for paying the compensation awarded to the person entitled thereto, and every such payment shall be made in a single payment;
- (i) an award made under this subsection shall be enforceable as if it were a decree of a competent court.

8. (1) Where a person discovers a monument or object of archaeological or palaeontological interest other wise than in the course of operations permitted by an exploration license, he shall, without undue delay, give notice thereof, indicating the precise site and circumstances of the discovery, to an authority, and shall, if so instructed by that authority, deliver the object to the authority.

(2) Every authority shall from time to time, but at least once in every calendar year, notify the National Museums Board of any discovery of which it has received notice under this section, and the National Museums Board shall maintain a register of all such discoveries.

9. No person shall move a monument or object of archeological or palaeontological interest from the place where it has been discovered otherwise than in such manner and to such place as may be allowed by an exploration license, or by written permit from the Minister.

10. A person who—

- (a) engages in a search contrary to section 5;
- (b) being the holder of an exploration license, fails to conform with any of his express or implied obligations under the license;
- (c) being the holder of a warrant issued under section 7, enters upon private land pursuant to the warrant without having given previous notice and such security, if any, as may have been directed in accordance with subsection (2) of that section; or
- (d) fails to comply with the provisions of section 8 (1); or
- (e) moves a monument or object of archaeological or palaeontological interest contrary to section 9,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

Part IV – Protected Areas

11. A protected area or part thereof which is an area of Trust land may de set a side as such in accordance with the provisions of section 118 of the Constitution.

12. The Minister may, in respect of a protected area, from time to time—

- (a) by notice in the Gazette, prohibit or restrict access thereto, or any development thereof, or the use thereof for agriculture or livestock, or any other activity thereon which in his opinion is liable to damage a monument or object of archaeological or palaeontological interest therein;

- (b) place the protected area under the control of the National Museums Board, on such terms and with and subject to such powers and duties as he may direct;
- (c) take, or authorize the National Museums Board to take, such steps as are in his opinion necessary or desirable for the maintenance thereof;
- (d) make, or authorize the National Museums Board to make, by-laws for controlling access thereto, with or without payment, and the conduct therein of visitors thereto.

13. (1) Where private land is included in a protected area, and the development or other use of that land by the owner or occupier thereof is prohibited or restricted by the Minister, or, by reason of any steps taken by the Minister, or by the National Museums Board with the authority of the Minister, on or occupier are disturbed in any way, or damaged to the land, or to crops, trees, buildings, stock or works therein or thereon is caused, the Government shall on demand pay or make to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the interest of the owner or occupier in the land.

(2) The provisions of subsection (4) and (5) of section 7 shall apply mutatis mutandis to a claim for compensation under this section.

14. A person who—

- (a) enters upon a protected area or does therein any act or thing contrary to a prohibition or restriction of which notice has been given by the Minister under paragraph (a) of section 12; or
- (b) commits a breach of any by-law made by the Minister under paragraph (d) of section 12,

shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three months or to both.

Part V Monuments

15. An honorary antiquity warden, or any other person authorized in writing by an authority, may at any reasonable time—

- (a) enter and inspect a monument; or
- (b) make photographs, measurements, drawings or other records of particulars of a monument; or
- (c) carry out at the expense of an authority requiring them, repairs to a monument; but where a monument is an inhabited, not less than one month's previous notice in writing shall be given to the occupier of the intention to carry out repairs thereto.

16. The Government or, with the sanction of the Minister, the National Museums Board, may purchase or take a lease or accept a gift or bequest of a monument.

17. (1) The owner of a monument may, by written instrument, constitute an authority the guardian of the monument, if the authority and the guardian of any monument which is the property of the Government or has no apparent owner.

(2) An instrument which constitutes an authority the guardian of a monument shall provide for the matters mentioned in section 18 (2) as if it were an agreement under that section.

(3) The owner of a monument of which an authority has been constituted guardian shall, except as expressly provided by this act, continue to have the same estate, right, title and interest in and to the monument as theretofore.

18. (1) An authority may, with the sanction of the Minister, enter into a written agreement with the owner of a monument and may other person or persons for the protection or preservation of the monument.

(2) An agreement under this section may provide for all or any of the following matters—

- (a) the maintenance of the monument;
- (b) the custody of the monument and the duties of any person who may be employed in connection therewith;
- (c) the occupation or use of the monument by the owner or other wise;
- (d) the restriction of the right of the owner or occupier to built or to do other acts or things on or near the site of the monument;

- (e) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the authority to inspect or to maintain the monument;
- (f) the notice to be given to the authority in case the owner intends to offer the land on which the monument is situated for sale, leases or other disposal thereof, and the right to be reserved to the authority to have first refusal of any such sale, lease or other disposal;
- (g) the payment of any expenses incurred by the owner or by the authority in connection with maintenance of the monument;
- (h) the removal of the monument or any part thereof, subject to the provisions of this Act, to a place of safe custody;
- (i) any other matter connected with the protection or preservation of the monument which is a proper subject of agreement between the owner and the authority;
- (j) the duration of the agreement, with provision for earlier termination thereof by any party thereto; and
- (k) the procedure relating to the settlement of any dispute arising out of the agreement,

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Minister and the consent of all parties thereto.

(4) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates through or under a party by whom or on whose behalf the agreement was executed.

(5) Any rights acquired by the authority or by the owner in respect of expenses incurred in maintenance shall not be affected by the termination of any agreement under this section.

19. (1) If the owner or other person who is bound by the terms of an instrument which constitutes an authority guardian of a monument under section 17 or of an agreement for the protection and preservation of a monument under section 18 refuses to do an Act which is in the opinion of the authority concerned both necessary for the protection, preservation or maintenance of the monument and the responsibility of the owner or other person in accordance with the terms of the instrument or agreement, or neglects to do the Act within such reasonable time as may be fixed by the authority, the authority may authorize any person to do that Act, and the expense thereof, if and so far as it is established to have been the responsibility of the owner or other person, shall be recoverable from him.

(2) If an authority establishes that the owner or occupier of a monument which is the subject of any such instrument or agreement intends to build or to do any other act or thing in contravention of the terms of the instrument or agreement, the High Court may grant an injunction to restrain that building or other act or thing.

20. If the Minister apprehends that the monument is in danger of being destroyed, injured or allowed to fall into decay, he may acquire the monument by way of compulsory purchase under the provisions of the Land Acquisition Act; but that power shall not be exercised—

- (a) in the case of a monument which, or any part of which, is periodically used for religious observances;
- (b) so long as the monument is under the guardianship of an authority as provided by section 17 or the subject of an agreement for its protection and preservation as provided by section 18;
- (c) if the owner of the monument is willing to constitute an authority guardian thereof as provided by section 17 or to enter into an agreement for its protection as provided by section 18, or to give, sell or lease it to the Government or the National Museums Board on acceptable terms, and has executed the necessary instrument or agreement for that purpose within two months after being invited so to do.

21. (1) A monument which is for the time being owned by the National Museums Board or by another authority, or under the guardianship of an authority as provided by section 17, or the subject of an agreement for protection or preservation as provided by section 18, shall be properly maintained by that authority, except so far as its maintenance is the responsibility of the owner of the monument or of any other person.

(2) The authority shall enforce all obligations of the owner of the monument or of any other person to maintain it.

(3) When any such monument or any part thereof is used periodically for religious observances, the authority shall make due provision for the protection of the monument from pollution or desecration—

- (a) by prohibiting entry therein, except in accordance with by-laws made with the concurrence of the persons in religious charge of the monument or part thereof, of any person not entitled so to enter by the religious usage of the sect or community by which the monument or part thereof is used; or
- (b) by taking such other action as the authority may think necessary in that behalf.

(4) Subject only to any by-laws made under subsection (3) in respect of a monument or part thereof used for religious observances, and to the terms of any agreement for protection or preservation of a monument, the public shall have right of access to a monument referred to in subsection (1) on such conditions as regards payment, if any, and otherwise as the Minister may from time to time approve.

22. Subject to the sanction of the Minister, and to the conditions of any instrument or other transaction, an authority may –

- (a) where rights have been acquired by it in respect of a monument by virtue of a sale, lease, gift or bequest, relinquish those rights in favor of the person who would for the time being be the owner of the monument if those rights had not been acquired; or
- (b) relinquish any guardianship which the authority has accepted under the provisions of this Act.

23. A person who –

- (a) destroys, removes, injures, alters or defaces or does any act that imperils the preservation of any monument;
- (b) obstructs the exercise by an honorary antiquity warden or other duly authorized person of any of the powers conferred by section 15; or
- (c) commits a breach of any by-law regulating the entry of persons into a monument which is used for religious observances, or of any other condition of access to a monument,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both, and on conviction of an offence against paragraph (a) may be ordered by the convicting court to pay to an authority for the purpose of making good any damage caused by that offence such sum of money as may be found by that court to be necessary to defray the cost thereof.

Part VI - Antiquities and Protected Objects

24. All antiquities which are lying in or under the ground, or on the surface of any land already protected under any law as a monument or National Park at the commencement of this Act, or being objects of archaeological or palaeontological interest are first discovered in a part of Kenya after the commencement of this Act, shall be the property of the Government.

(2) The Minister may, on behalf of the Government disclaim in writing the ownership of any such antiquity.

25. (1) A person shall, if so required in writing by an authority, within such period not being less than one month as may be specified by the notice, furnish the authority with full particulars of all objects in his possession which he knows or has reason to believe to be antiquities or protected objects.

(2) Every authority shall from time, but at least once in every year, notify the National Museums Board of all antiquities and protected of which the authority has been furnished with particulars, and the National Museums Board shall maintain a register of all such antiquities and protected objects.

26. The Minister may, by notice in the Gazette, prohibit removal, without permit from the Minister, of a specified antiquity or protected object, or of a specified class or type thereof respectively, from the place where the antiquity or protected object or class or type thereof is then situated.

27. (1) No person shall, without a permit from the Minister, sell or otherwise part with ownership

or possession of a protected object.

(2) No person shall buy or take by way of exchange an antiquity unless he has been licensed by the Minister to deal in antiquities.

(3) No person shall sell or give by way of exchange an antiquity to a person who has not been licensed by the Minister to deal in antiquities.

(4) The provisions of this section shall not apply to acquisition by the Government or by the National Museums Board of a protected object or antiquity by way of sale, exchange, gift, bequest or loan.

28. (1) If the Minister considers that an antiquity or protected object is in danger of being destroyed, injured or allowed to fall into decay, or of being unlawfully removed, he may acquire the antiquity or protected object by way of compulsory purchase, on the grounds that acquisition is necessary in the interests of the utilization of the antiquity or protected object by preservation and display for the public benefit, subject to the prompt payment of full compensation as provided by section 75 of the Constitution:

(2) The power of compulsory acquisition under subsection (1) shall not be exercised if the owner of the antiquity or protected object is willing to deposit it with the National Museums Board by way of loan either permanently or for such period as the Minister deems necessary, and has executed the necessary agreement for that purpose within one month after being invited so to do.

29. A person who –

(a) without just cause fails to furnish an authority with full particulars of all objects in his possession which he knows or believes to be antiquities or protected-objects, after being required in writing by the authority so to do within the period lawfully specified by the notice, as provided by section 25 (1)-; or

(b) willfully destroys or damages an antiquity or protected object; or

(c) removes an antiquity or protected object contrary to section 26; or

(d) sells or otherwise parts with ownership or possession of a protected object, or sells or buys or gives or takes by way of exchange an antiquity, contrary to section 27,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

Part VII - Export

30. (1) No monument or part thereof or antiquity or protected object may be removed from Kenya unless its removal has been authorized by an exploration license, or by an export permit issued by the Minister under this section on the recommendation of an authority.

(2) An application for an export permit shall be made in writing to the Minister, and shall contain a full description of the monument or part thereof, or antiquity or protected object in respect of which it is made, the reason for the proposed removal, the place to which and the persons into whose care it is to be removed, and such further information as may be prescribed.

(3) Before issuing an export permit the Minister may cause an inspection to be made, and the monument, antiquity or protected object to be sealed or placed in the custody of an authority.

(4) The Minister may issue an export permit subject to such terms and conditions as he may deem fit, or may, without assigning any reason, refuse to issue any export permit in respect of a specified monument or part thereof, an antiquity, or a protected object.

(5) An export permit –

(a) may in particular be made subject to all or any of the conditions that –

(i) the subject matter thereof shall be deposited in a specified place and in the care of specified persons;

(ii) the subject matter thereof shall be returned to Kenya within a specified period;

(iii) a specified portion of the subject matter thereof shall be surrendered to the

Government or to the National Museums Board, or be deposited with the National Museums Board by way of loan permanently or for a specified period;
(b) shall be in the prescribed form.

31. (1) In the event of the Minister refusing to issue an export permit for an object of historical interest, or imposing conditions which the owner does not accept, the owner may by written notice at any time thereafter require him, as an alternative to issuing an export license, to acquire the object by way of compulsory purchase as provided by section 20.

(2) The Minister shall, within one month after the receipt by him of a notice under this section, either grant an unconditional export license in respect of the object or proceed without undue delay to acquire it by way of compulsory purchase.

32. No monument or part thereof or antiquity or protected object shall be removed from Kenya otherwise than through a Customs port of entry; and the relevant export license, or a copy of the relevant exploration license certified by or on behalf of the Minister, shall be surrendered to a Customs officer before removal from Kenya is effected or allowed.

33. A person who—

- (a) removes a monument or part thereof, an antiquity, or protected object, from Kenya contrary to section 30 or section 32; or
- (b) fails to comply with any of the terms or conditions of an export permit; or
- (c) obtains an export permit by an application containing information which he knows to be false or incomplete in any material particular,

shall be guilty of one offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

Part VIII—Powers of Enforcement

34. (1) The authorized representative of an authority may at any time inspect work being done in connection with a monument or object of archaeological or palaeontological interest, and may for that purpose without warrant enter any premises, and may order the cessation of any such work pending further order from the Minister.

(2) The authority shall forthwith report to the Minister any such order for cessation of work and the reasons for the order.

35. The Minister may appoint persons recommended by an authority to be an honorary antiquity wardens for the purpose of enforcing this Act.

36. An honorary antiquity warden may at any reasonable time inspect an antiquity or protected object which is the subject of a notice under section 26, and may for that purpose without warrant enter premises where the antiquity or protected object is or should be, and require the production of the antiquity or protected object or information as to its whereabouts.

37. A police officer or honorary antiquity warden may—

- (a) require any person who he has reason to believe has committed an offence against his Act to supply his name and address and reasonable evidence of his identity, and may without warrant arrest a person who refuses to comply with those requirements;
- (b) at any time without warrant search any person or the premises occupied by any person whom he reasonably suspects of having acquired ownership or possession of a protected object, or of having bought or taken by way of exchange an antiquity, contrary to section 27, and seize anything which has been so acquired, bought or taken by way of exchange, together with any container thereof.

38. A Customs officer may at time without warrant search anything intended to be removed from Kenya, or any person intending to leave Kenya, if he reasonably suspects that thing or person of containing or carrying a monument or part thereof, or an antiquity or protected object, and seize anything which he believes to be a monument or part thereof or antiquity or protected object that is in process of being removed from Kenya contrary to section 30 or section 32, together with any

container thereof.

39. (1) Anything seized under section 37 or section 38 shall as soon as possible be taken before a magistrate who—

- (a) in respect of seizure under section 37, shall order forfeiture to the Government of the thing seized together with any container thereof if it is established that the thing seized is a protected object the ownership or possession of which has been acquired, or an antiquity that has been bought or taken by way of exchange, contrary to section 27;
- (b) in respect of seizure under section 38, shall order forfeiture to the Government of the thing seized together with any container thereof if it is established that the thing seized is a monument or part thereof or antiquity or protected object that was in process of being removed from Kenya contrary to section 30 or section 32,

whether or not he also convicts any person of an offence against this Act in relation to the same thing and imposes on that person any other penalty.

(2) Anything forfeited to the government under subsection (1) shall, unless the Minister sees fit to restore it to its owner, be deposited with the National Museums Board.

40. An authority may attach to or erect on a monument or protected area such notice or notices as it deems necessary for the better protection of the monument or protected area.

41. A person who—

- (a) obstructs an authorized representative of an authority, police officer, honorary antiquity warden, or Customs officer, in the exercise of his powers or duties under this Act; or
- (b) fails without reasonable cause to comply with a lawful order or requirement of an authorized representative of an authority, police officer, honorary antiquity warden, or Customs officer, under this Act; or
- (c) destroys, removes or damages a notice attached or erected by an authority in exercise of the power conferred by section 40,

shall be guilty of an offence liable to a fine not exceeding ten thousands shillings or to imprisonment for a term not exceeding six months or to both.

Part IX –General

42. In any proceedings under this Act, where the Minister has certified in writing that in his opinion, on the advice of an authority, a thing is a monument or object of archaeological or palaeontological interest or object of historical interest or protected object, as the case may be, the burden of proof shall lie upon any person who asserts the contrary.

43. The Minister shall appoint an Advisory Council, of which all the members shall be appointed by name and not by office, to advise him on matters relating to this Act.

44. An instrument or agreement executed under section 17 or section 18 shall be exempt from stamp duty.

45. No suit for compensation, except as expressly provided by this Act, shall lie against the Minister or a public servant, authority, authorized representative of an authority or honorary antiquity warden in respect of an act done in good faith in the exercise of a power or duty under this Act.

46. The Minister may make rules for carrying out any of the purposes of this Act, and without prejudice the generality of the foregoing for all or any of the following purposes—

- (a) prescribing the forms of and conditions to be implied in, exploration licenses and export permits;
- (b) controlling access to monuments or to protected areas;
- (c) prescribing the fees to be charged for access to monuments or to protected areas;
- (d) regulating the management of a protected area;
- (e) controlling the reproduction of objects of archaeological or palaeontological interest;
- (f) licensing dealers in antiquities;

- (g) prescribing the composition, terms of reference and procedure of the Advisory Council;
- (h) prescribing penalties for breach of any such rules.