

• The word "chattel" (usually in plural) is defined, in one dictionary, as "the name given to things which in law are deemed personal property": See Mozley and Whiteley's Law Dictionary.

• Another expands this as "Movable or transferable property; personal property; esp., a physical object capable of manual delivery and not the subject matter of real property": Black's Law Dictionary, 8 edn., at p. 251

Definition of "chartels".

O In the principal legislation, the Chattels
Transfer Act, "chattels" means "any
movable property that can be completely
transferred by delivery": s.2.

O Thus, two conditions must be fullfilled:

1. It must be capable of being manually
transferred from one place to
another; and

2. Its identify must remain unaffected
by such transfer.

Definition of "chattels".

Two meanings of "chattel" in Kenya:

(a) A movable physical object, e.g. a horse, a book or a shilling as contrasted with a piece of land.

(b) Chattels personal, that is to say, chattels in the sense above plus all proprietary rights except those which are classed as immovable.

• Ct. Concept of chattels real in U.K. e.g. leasehold and other interests in land less than freehold is not known here.

Definition of "chattels"....contd.

Included in (b), above, are:

(i) debts, shares, contracts and other choses in action; or

(ii) furniture or stock-in-trade; or

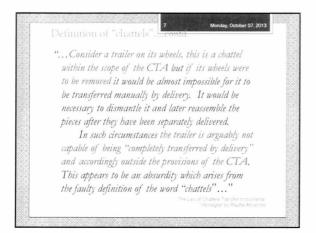
(iii) patents, copyrights and other rights in rem (which are not rights over land).

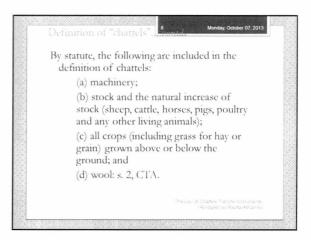
Definition of "chattels"....contd.

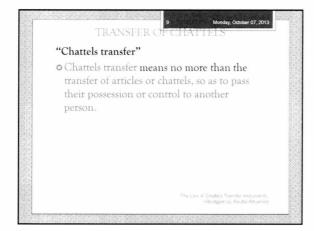
O The first requirement excludes any possibility of symbolic or "constructive" delivery being permissible and thus makes it impossible for any large or bulky object to be a chattel within the definition.

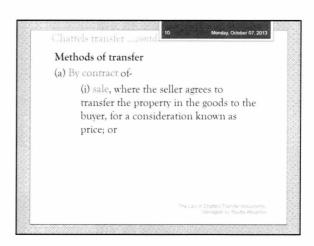
O The second requirement was considered by Bourke J. in the case of Saleb -v- Eligiti & Another. 24 KLR 17, when he referred to the fact that demolition of the house would mean that "the whole character of the thing would be gone".

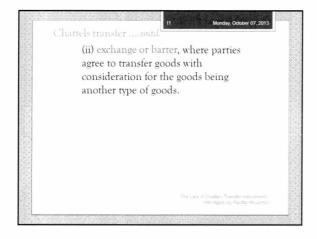
O Bourke, J. said:

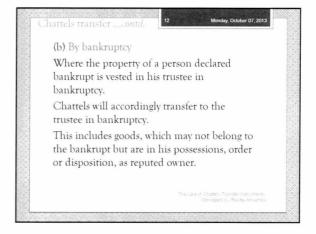


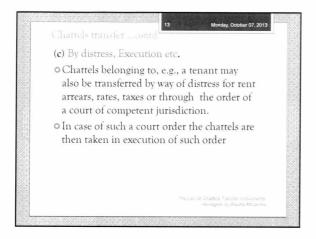


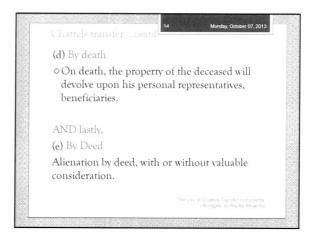


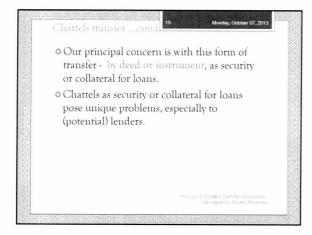


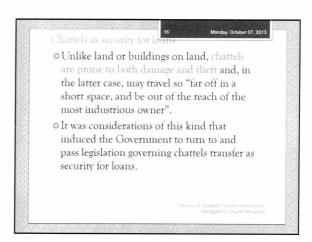


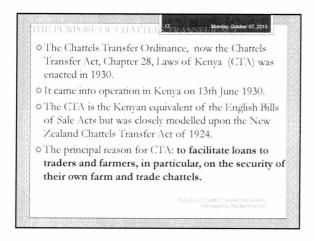


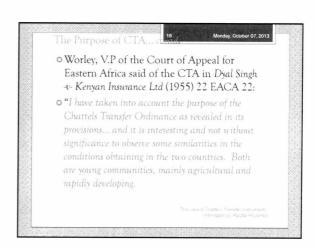


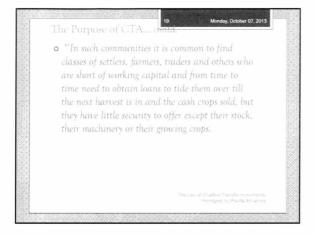


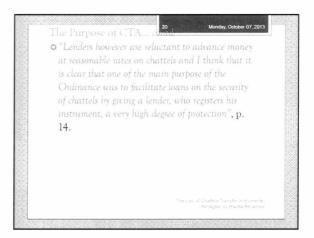


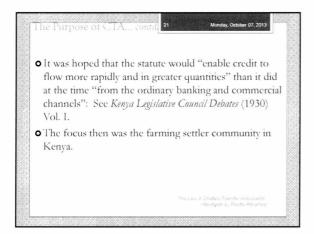


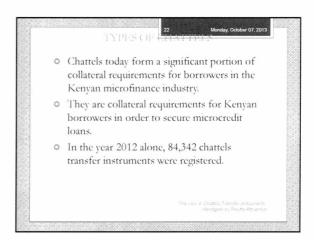


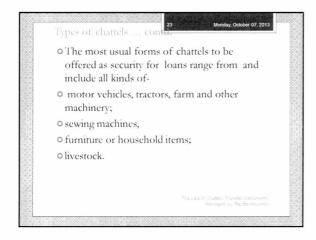


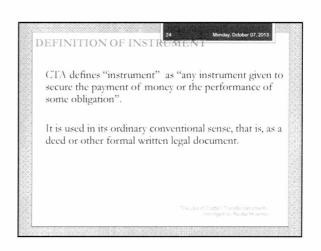


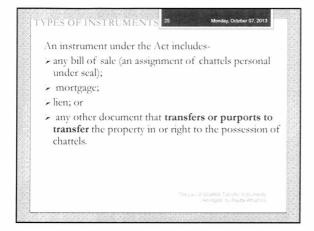


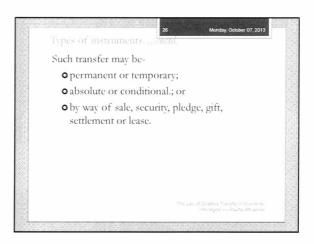


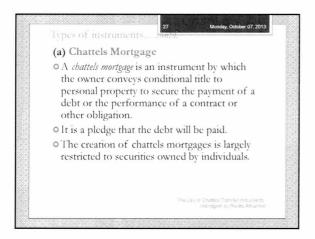


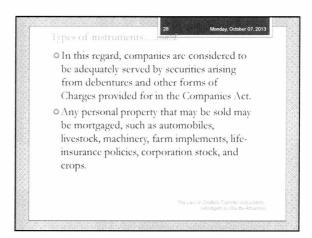


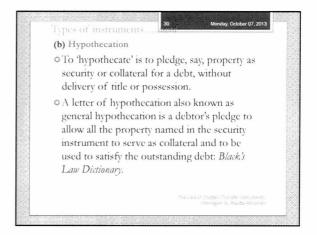


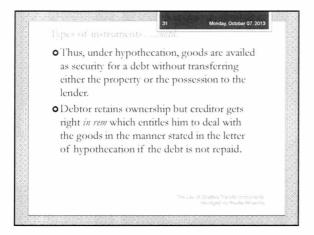


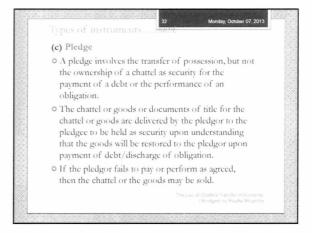


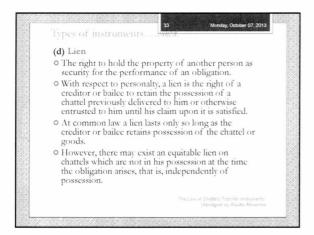


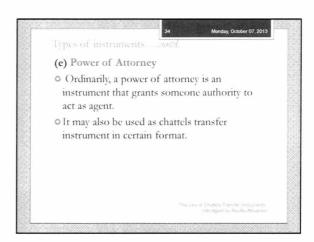


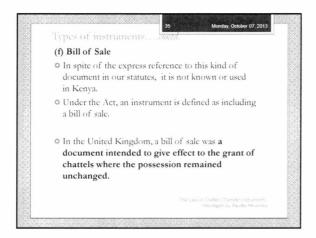


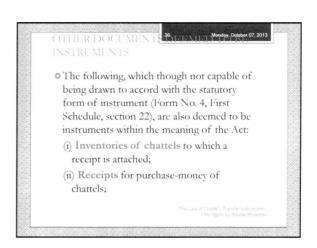


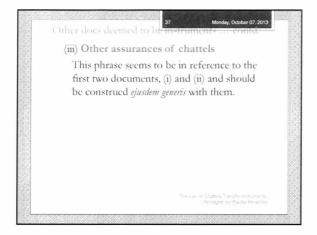


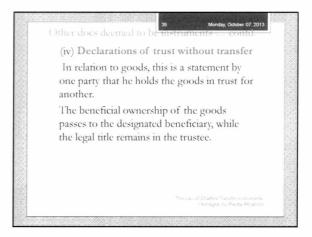












Other does deemed to be instruments... contest.

Ounder this heading such a power of attorney will only constitute an instrument if it confers the power to take possession of chattels as security for a debt.

OThe power may be conferred directly or indirectly.

OIt may also be given to authorize or license another person to take possession of chattels as security for any debt.

Other does deemed to be instruments... contd.

(v) Agreement conferring right to chattels

Any agreement by which a right in equity to any chattels or to any charge or security thereon or there-over is conferred.

Such an agreement will be void if not registered or if it does not comply with the statutory form: See section 2 of the Act.

The CTA specifically excludes the following from the definition of instruments:

(a) securities over, or leases of, mortgaged, charged or leased fixtures;

(b) assignment for the benefit of creditors of the person making them; or

(c) assignments of or share in any ship or vessel; or

(d) transfers of or share in any ship or vessel;

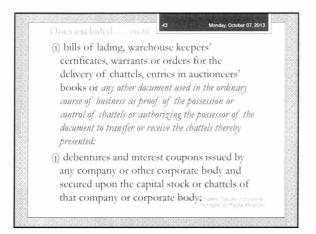
Does excluded ... contd.

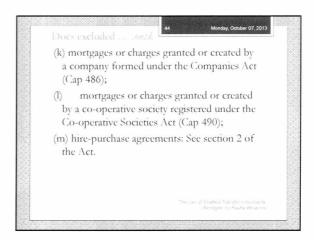
(e) transfer of or agreement to transfer instruments by way of security;

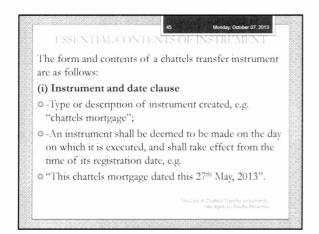
(f) transfers of chattels in the ordinary course of business of any trade or calling;

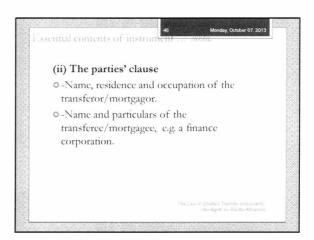
(g) debentures and interest coupons issued by any government or local authority;

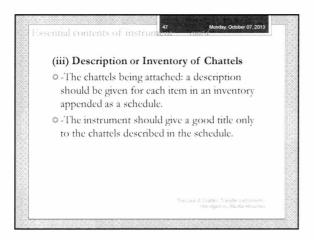
(h) bills of sale of chattels in any foreign parts or at sea;

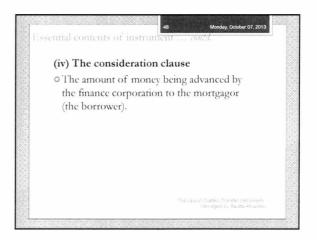


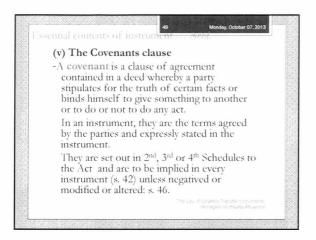


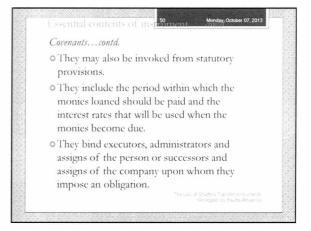


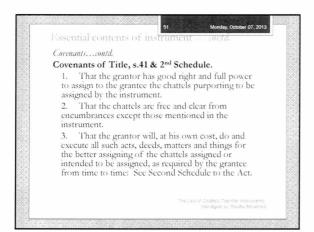


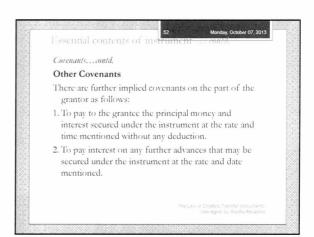


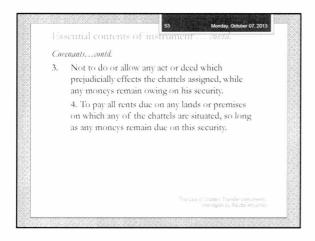


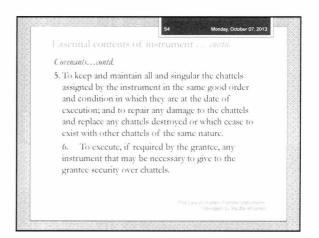


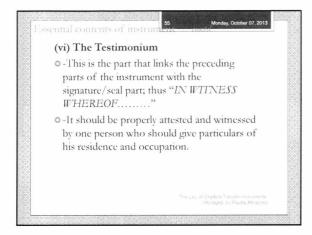


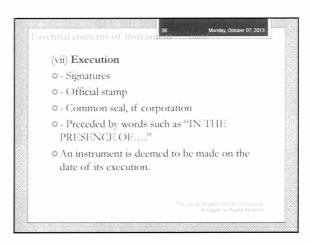


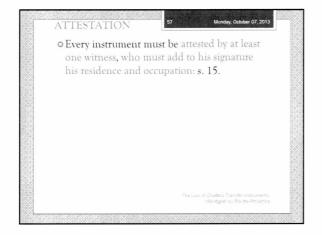


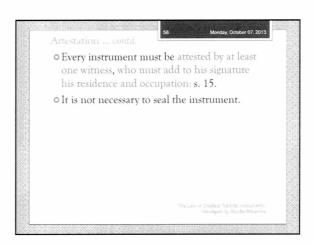










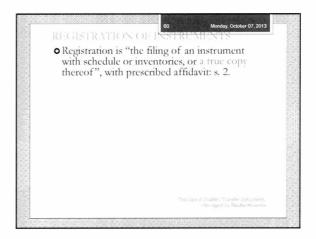


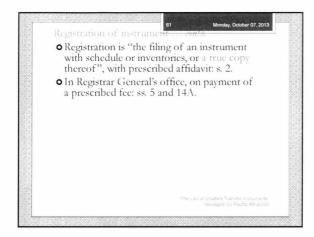
Attestation ... contd.

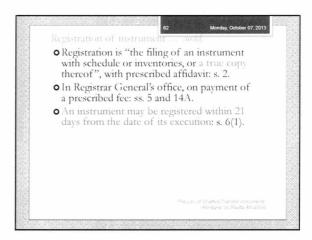
Severy instrument must be attested by at least one witness, who must add to his signature his residence and occupation: s. 15.

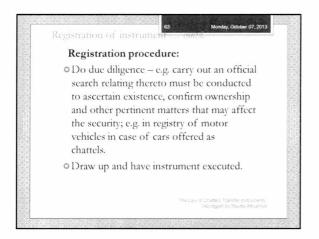
It is not necessary to seal the instrument.

"The natural implication from this provision and its context and the scheme of the Act is that an unattested instrument is valid between parties but incapable of registration and ineffective against other persons": see National and Grindlays Bank Ltd & Dharamshi Vallabhji and Others (1966) EA 186, the Privy Council.





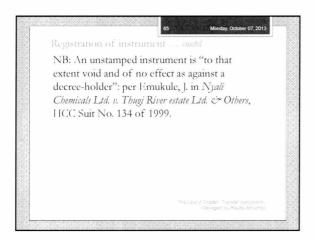


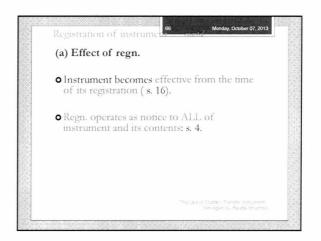


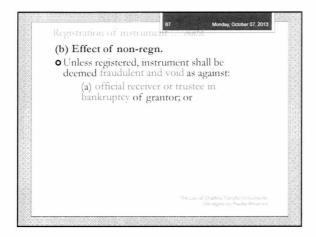
Registration of instrument ... co.t.d.

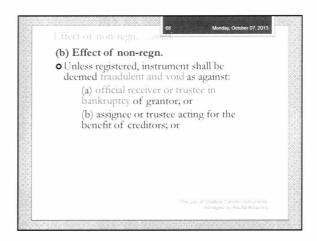
O Lodge instrument with the Registrar of Companies, to be assessed to determine stamp duty payable, (currently at 0.1 per cent of the sum secured or consideration): see s. 38, Stamp Duty Act, Chapter 480.

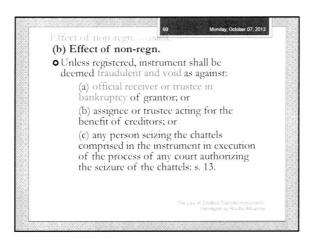
O Registrar will duty-stamp and register the instrument lodged, on payment of a fee.

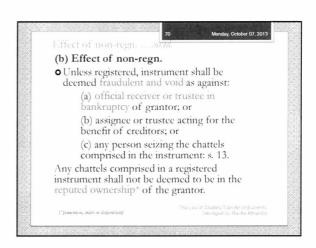


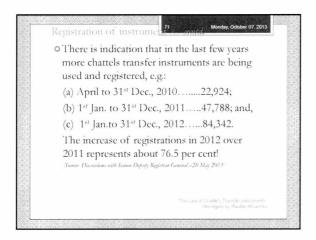


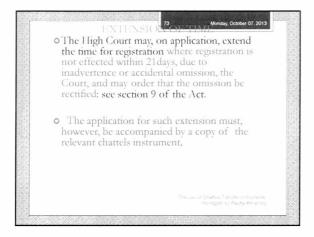


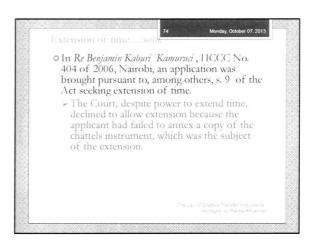


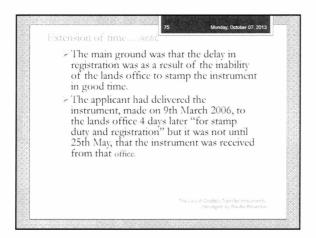


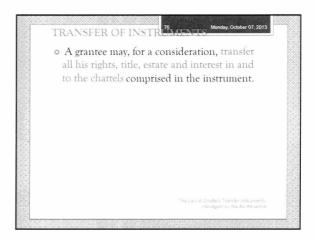


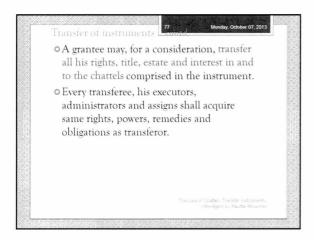


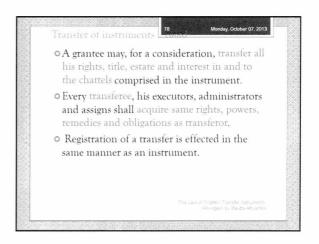


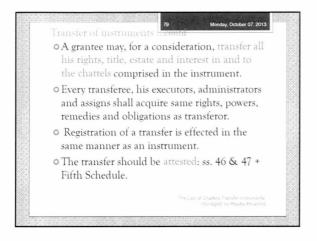


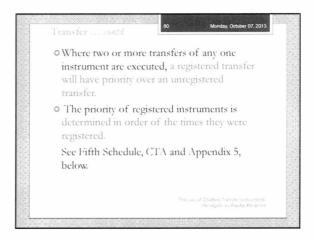


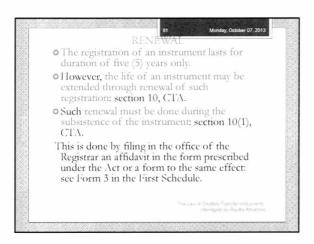


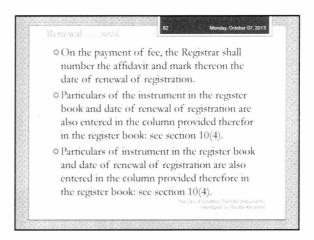


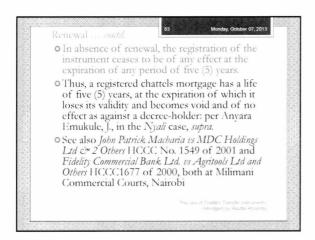


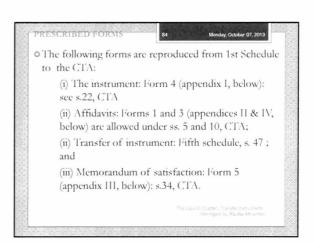


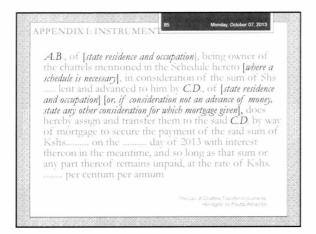


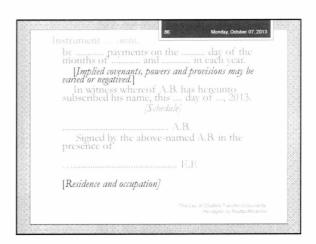




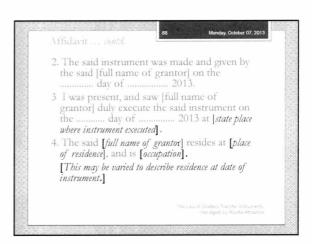






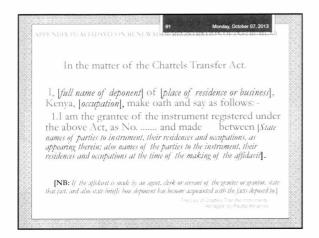


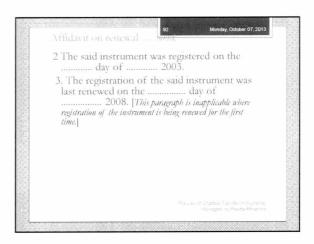
| INSTRUMENT   | 87 Monday, October 07, 2013   |
|--|---|
| In the matter of   | the Chattels Transfer Act.  |
| I, [full name of deponent]<br>Kenya, [occupation], m   | 7, of [place of residence or business], nake oath and say as follows:   |
| true copy of an instr<br>Act, and of every scl<br>endorsed or thereto<br>of every attestation of | ereto annexed and marked "A" is a rument under the above-mentioned hedule or inventory thereon annexed or therein referred to, and of the execution thereof, as made ted by [full name of grantor]. |
|  | The Law of Chattels Transfer instruments  |

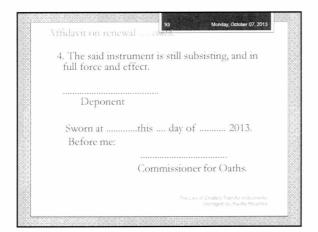


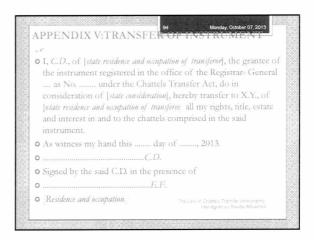
| A1 | ffidavit contd.  |                 |
|----|--|-----------------|
|    | The name subscribed to the sai as that of the witness attesting t execution thereof by the said [n is in the proper handwriting of deponent. | the due grantor |
|    | I am [occupation] and reside at [tresidence]   | place of        |
| Si | worn at the day of .   | 2013,           |
| В  | Before me  | G.H.            |
|    |  |                 |
|    |  |                 |

| I CD boroby concor                               | nt to a memorandum of satisfaction  |
|--|---|
|  | in to a memoralidatifor satisfaction is instrument [or registered copy of the |
|  | ecuring the sum of Shs bearing  |
|  | , 2008 and made between and registered on the                                 |
| day of, 2008                                     | , as No under the Chattels  |
| Transfer Act, the mor<br>given as a security hav | neys for which the instrument was   |
|  | day of, 2013.   |
| Dated this                                       | day 01  |
|  | D.  |
| (Grantee or Assignee.)                           |   |
| Witness  | E.F.  |
| Residence and occup                              | ation]  |
|  | The Law of Chatter, Transfer instruments<br>(Apreliged) by Rautta-Athianneo   |









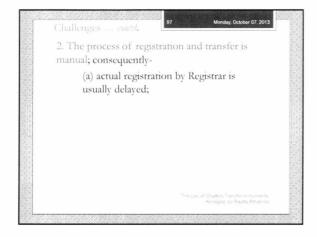
• The fee payable to the Registrar upon registration or renewal shall be such as may be prescribed by the Attorney General (the Minister): see s.14A, CTA, as inserted in 2007.

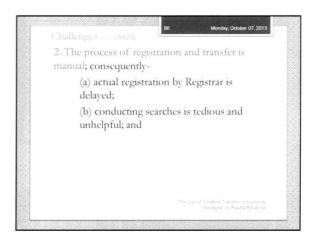
• It seems that AG has yet to prescribe fees but registrar still charges Kshs.50/= and Kshs. 10/= for registration and for renewal, respectively.

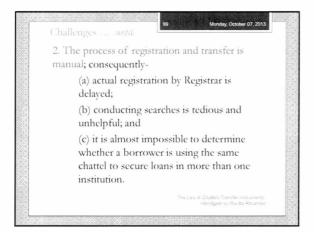
There are many challenges leading to many institutions being frustrated with CTA system.

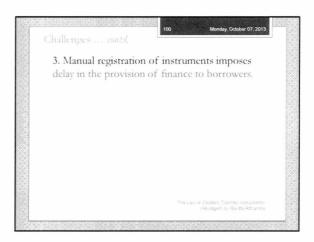
E.g.:

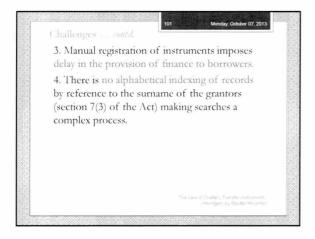
1. The process of chattels registration and creation of , e.g., a chattels mortgage is generally difficult and time-consuming hence few financial institutions (less than 30%) are willing to accept chattels as a form of collateral or security for loans.

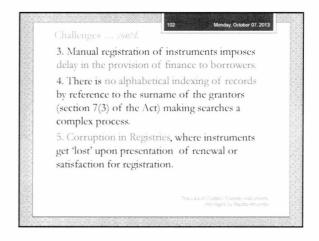


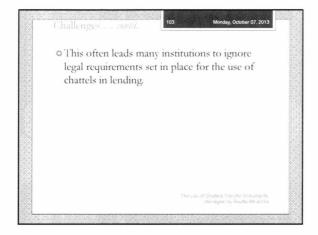


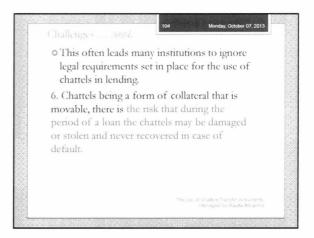












Challenges ... routd.

E.g. cars which are often prone to theft and may never to be traced again.

In Express Finance Limited v. Joseph Muisyo
Nzioka, HCCC 2680 of 1996, the court could only make an order for recovery of the loan as the motor vehicle had already disappeared.

Challenges ... ontal.

E.g. cars which are often prone to theft and may never to be traced again.

In Express Finance Limited v. Joseph Muisyo Nzioka, IICCC 2680 of 1996, the court could only make an order for recovery of the loan as the motor vehicle had already disappeared.

7. Lack of clarity in the method or process of enforcement of repossession of chattels as collateral, in case of default by grantor, is a serious discouragement to lenders.

Challenges ... contd.

O Moreover, due to lack of adequate awareness on the part of borrowers it is difficult to repossess items pledged as collateral.

O Borrowers often seek police intervention when a lender hires an auctioneer to repossess chattels in times of default.

1. The old, manual and uncoordinated system of registering chattels securities should be upgraded by the introduction of technology to suit the 21st century.

