SUMMARY OF THE ENERGY ACT, 2019

I. Introduction
The Energy Act was enacted to consolidate the laws relating to energy, provide for National and County Government functions in relation to energy; promotion of renewable energy; exploration, recovery and commercial utilization of geothermal energy; regulation of midstream and downstream petroleum and coal activities; regulation, production, supply and use of electricity and other energy forms. The Act repeals the Energy Act, 2006, the Kenya Nuclear Electricity Board Order No. 131 of 2012 and the Geothermal Resources Act, 1982. The Energy Act (2019), unlike the previous Energy Act (2006), recognizes the existence of renewable energy (e.g. biomass) and other forms of energy such as nuclear energy and coal.

II. Institutions established under the Act
(a) Energy and Petroleum Regulatory Authority- the Authority is mandated among other functions; to regulate generation, supply and use of electrical energy with exception of licensing of nuclear facilities and dealings in crude oil; production, supply and use of renewable energy and formulation and enforcement of environmental, health, safety and quality standards for the energy sector in coordination with other statutory authorities (Section 10).

(b) Energy and Petroleum Tribunal- the Tribunal is mandated to hear and determine disputes and appeals related to energy issues in accordance with the Act (Section 25).

(c) Rural Electrification and Renewal Energy Corporation- the mandate of the corporation includes; undertaking on-farm and on station demonstration of wood-fuel species, seedling production and management; developing and promoting, in collaboration with other agencies, the use of renewable energy and technologies; and promoting, in conjunction with the agency responsible for forests, the use of fast maturing trees for energy production including bio-fuels and establishment of commercial woodlots including peri-urban plantations (Section 44).

(d) Nuclear Power and Energy Agency- The agency promotes the development of nuclear electricity generation in Kenya (Section 56).

(e) The Renewable Energy Resource Advisory Committee- The committee is responsible for advising the Cabinet Secretary on issues related to renewable energy such as; criteria for
allocation of renewable resources, licensing, management of water towers and catchment areas (Section 76).

III. Local Content Requirements

The Act provides that any person carrying out any undertaking or works on energy shall comply with local content provisions (Section 206). The local content plan to be submitted to the Authority will entail giving first consideration to goods and services offered in Kenya as well as qualified and skilled Kenyans with respect to employment as well as on the job training.

IV. Provisions of the Act relevant to forestry

a) Promotion of renewable energy

The Act provides for a nationwide survey and resource assessment of all renewable energy resources within twelve months of coming into force of the Act (Section 74). Section 75 provides that the Cabinet Secretary shall promote the development and use of renewable energy technologies, including but not limited to biomass, biodiesel, bioethanol, charcoal, fuel wood, solar, wind, tidal waves, hydropower, biogas and municipal waste.

*Feed-in- Tariff System (Section 91)*: The Act establishes a renewable energy feed-in-tariff system aimed at catalysing the generation of electricity through renewable energy sources; encouraging local distributed generation thereby reducing demand on the network and technical losses associated with transmission and distribution of electricity over long distances; encouraging uptake of, and stimulating innovation in, renewable energy technology; and reducing greenhouse gas emissions by lessening reliance on non-renewable energy sources. The Cabinet Secretary, may make regulations to implement the Feed-in-Tariff System.

b) Minimal damage to trees and hedges obstructing energy infrastructure

Section 180 (1) of the Act provides that where any tree or hedge obstructs or interferes with the construction of any energy infrastructure, the licensee may request the owner or occupier of land to lop or cut it subject to adequate compensation. Section 180 (3) provides that the trees and hedges shall be lopped or cut in a way that as little damage as possible is done to trees, fences, hedges and
growing crops, and shall cause the boughs lopped to be removed in accordance with the directions of the owner or occupier, and shall make good any damage done to land.

c) Rehabilitation of land
The Act provides that, at the conclusion of activities related energy generation, every person is required to remove all infrastructure they may have brought to the land for purposes of his or her operations, rehabilitate the land and carry out any other action that may be prescribed (Section 186, 1).

d) Compliance with environmental health and safety laws
Section 99 provides that an application for a license must be accompanied with such environmental liability policy as shall be prescribed by the Cabinet Secretary. Sections 96 (1) and 100 (2) further provide that the licences or permits issued by the Energy and Petroleum Regulatory Authority shall take into account, the compliance with the environmental, health, safety laws. Sections 114 (1) and 115 (1) also provide that a person engaged in production of energy utilizing coal shall comply with the applicable environmental, health and safety laws.

e) Strategic Environment Assessment and Social Impact Assessment
Section 107 (1) provides that an application for a permit to construct a facility that produces energy using coal shall be accompanied by a Strategic Environment Assessment and Social Impact Assessment licenses. Section 98 (1) also provides that the Authority shall, in granting or rejecting an application for a license for dealings in energy, take into consideration, the impact of the undertaking on the social, cultural or recreational life of the community.

f) Pollution control
Section 114 (2) provides that in the event of a fire, explosion, injury or fatality occurring in the course of operating a facility for energy, production of coal, either by accident or through negligence, the operator of the facility shall forthwith clean up the polluted or damaged environment, at the operator’s own expense, to the satisfaction of the Authority. In promotion of geothermal energy, the Act requires that wells are kept under close supervision and maintained or abandoned in a safe condition (78, 3). The Cabinet Secretary may order closure of such wells for
the protection of the environment including ground water against contamination among other reasons (Section 88, 1, e).