

THE UNITED REPUBLIC OF TANZANIA



No. 47 OF 1968

I ASSENT,

Julius K. Nyerere
President

25TH JULY, 1968

An Act to make provision for the Enfranchisement of certain lands held under Customary Land Tenure, to provide for the grant of such lands to the tenants and to repeal the Nyarubanja Tenure (Enfranchisement) Act, 1965

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Customary Leaseholds (Enfranchisement) Act, 1968, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint. Short title
2. The provisions of this Act shall apply to the West Lake Region of Tanganyika and to such other areas of Tanganyika as the Minister may, from time to time by notice in the *Gazette*, declare to be areas to which the Act shall apply. Application
3. (1) In this Act, unless the context otherwise requires — Interpretation
 - "effective date" means, in relation to the West Lake Region, the date of the commencement of this Act and in relation to any other area which is declared by notice under section 2 to be an area to which this Act shall apply, the date which is expressed in such notice to be the date from which this Act shall apply to such area or, if no such date is expressed in the notice, the date of the publication of the notice in the *Gazette*;
 - "enfranchised land" means land enfranchised by section 4;
 - "land" means any parcel of land held under customary tenure and which is used wholly or mainly for or in connection with agricultural, pastoral or mixed agricultural and pastoral purposes;
 - "landlord" means the person who holds any parcel of land under customary tenure and who has granted a tenancy in respect of the land or any portion thereof to a tenant;

"Minister" means the Minister for the time being responsible for land;

"tenant" means any person who holds any parcel of land under a customary lease, sublease, an agreement for a lease or sublease or an agreement for a tenancy, whether such agreement be oral or in writing; and also means a person who occupies land under a licence or any arrangement whatsoever whereunder he pays in cash or kind for his occupation of the land to the landlord; and "tenancy" shall be construed accordingly;

"Tribunal" means a Customary Land Tribunal established under the provisions of section 8;

"unexhausted improvement" means any thing or quality permanently attached to the land directly resulting from the expenditure of capital or labour by or on behalf of a landlord and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation save where the tenant has held or occupied the land for a period of less than three years immediately preceding the enfranchisement of that land.

(2) For the purposes of this Act a parcel of land shall be deemed to be held or occupied by a tenant if the tenant is in or entitled to possession or occupation thereof otherwise than—

(a) as a servant of the landlord or any other person entitled to possession of the land:

Provided that nothing in this paragraph shall apply to any such servant who makes any payment in cash or kind for the possession of the land by him to any person (whether his employer or otherwise) entitled to possession thereof;

(b) as a trespasser:

Provided that nothing in this paragraph shall apply to a person who entered upon the land under a licence.

Enfranchise-
ment of
leaseholds

4.-(1) On the effective date every parcel of land held by a tenant shall be enfranchised and cease to be so held.

(2) On and after the effective date no person who holds any parcel of land on customary tenure shall grant any tenancy of such land or any portion thereof, and every such grant including any agreement for such a grant, whether made before or after the effective date, shall be void.

Vesting of
enfranchised
leasehold

5.-(1) Subject to this section, enfranchised land shall vest in the person who, immediately before the effective date, held the land as tenant who shall hold the same on the terms and subject to the incidents prescribed by regulations made under section 16 for the area in which the land is situate.

(2) Where, in accordance with subsection (1), any enfranchised land vests in any person who, immediately before the effective date, held the land-

- (a) on trust for any other person or purpose, the enfranchised land shall vest in such first-mentioned person on the like trust;
- (b) subject to any incumbrance, interest, right, term or condition (other than an incumbrance, interest, right, term or condition which operates in favour of the landlord) the enfranchised land shall vest in such first-mentioned person subject to the like incumbrance, interest, right, term or condition in so far as the same is capable of having effect in accordance with such regulations aforesaid.

6. On the effective date all rights in any enfranchised land of any person as a landlord shall be extinguished and, save as is provided by section 7, no compensation shall be paid to any such person for the loss of any enfranchised land or for the loss of any incidents owed under or in accordance with the tenancy by the tenant or any other person.

Extinction
of rights
of landlords

7.-(1) Where any land is enfranchised, the person who, immediately before enfranchisement, held the land as the landlord, shall be entitled to receive compensation from the person in whom the enfranchised land is vested under section 5 in respect of the unexhausted improvement of the land effected by the landlord or by some other person on his behalf.

Compensa-
tion for un-
exhausted
improvement

(2) The amount of compensation and the manner in which the same shall be paid shall be determined by the Tribunal having jurisdiction over the area in which the land is situate.

8. The Minister may, by notice in the *Gazette*, establish for the purposes of this Act a Customary Land Tribunal for any area of Tanganyika and each such Tribunal shall exercise and perform within the said area the powers and duties conferred or imposed on such Tribunal by the provisions of this Act.

Establish-
ment of
Tribunals

9.-(1) Subject to section II the provisions of the Schedule to this Act shall have effect with respect to the constitution and proceedings of a Tribunal.

Constitution
and
proceedings
of Tribunal

(2) The Minister may, after consultation with the Minister for the time being responsible for legal affairs and by order in the *Gazette*, amend the provisions of the Schedule to this Act.

10. A Tribunal shall, in relation to the area for which it is established, have power to do all things which it is required or empowered to do by this Act or by regulations made thereunder, and without prejudice to the generality of the foregoing shall have power-

Functions
of Tribunal

- (a) to assess compensation payable to a landlord under section 7;
- (b) to determine whether or not any land is land to which this Act applies;
- (c) to determine whether or not any land has become enfranchised by virtue of the provisions of this Act;

- (d) to determine whether or not any person is a tenant entitled to any land enfranchised in accordance with the provisions of this Act;
- (e) to determine any dispute relating to any enfranchised land, whether such dispute is between the person claiming to be the landlord and the person claiming to be the tenant or between either of them and any other person;
- (f) subject to section 6, to make such orders for costs or compensation as it may deem just;
- (g) where any enfranchised land was, immediately before enfranchisement, in possession of two or more tenants, to partition the land for the purpose of allocation to the tenants;
- (h) at all reasonable times to enter and inspect any land for the purposes of carrying out any of its powers, duties or functions under the provisions of this Act or regulations made thereunder, and to authorize in writing any person to exercise such power of entry and inspection on its behalf;
- (i) to make any order to give effect to any of the provisions of this Act;
- (j) to make such orders as may be necessary for the ends of justice in relation to any matter arising out of this Act.

Powers of
Tribunal

11.-(1) A Tribunal shall have power to order persons to attend and give evidence, to administer oaths and to order the discovery and production of documents in like manner as in proceedings before the High Court.

(2) In its determination of any matter, a Tribunal may take into consideration any evidence which it considers relevant to the subject of the inquiry before it, notwithstanding that such evidence would not be admissible under the law relating to evidence.

(3) In so far as no or no sufficient provision is made in the Schedule to this Act, a Tribunal may regulate its own procedure.

(4) All notices or other documents issued under the hand of the chairman, vice-chairman or secretary of a Tribunal shall be deemed to be issued by the Tribunal.

(5) The proceedings of a Tribunal shall ordinarily be open to the public, but the Tribunal may in its discretion direct that the public be excluded from any meeting or part thereof.

(6) Minutes shall be kept of all proceedings of a Tribunal including a summary of any oral evidence given.

(7) The proceedings of a Tribunal shall be deemed to be judicial proceedings.

Enforcement
of decisions
of Tribunal

12.-(1) A duly authenticated copy of any decision or order of a Tribunal may be filed by any party to the proceedings or by the Tribunal in the primary court having jurisdiction over the area in which the land to which the decision or order relates is situated, and on such decision or order being filed it may be enforced as an order of the primary court.

(2) Where a duly authenticated copy of any decision or order has been filed in a primary court in accordance with subsection (1), the Tribunal shall, on being required by the primary court to do so, transmit to the court the record of the proceedings before it and the same shall be filed by the court together with the certified copy of the decision or order.

13.-(1) Where any party to any proceedings before a Tribunal is aggrieved by an order or decision of the Tribunal in such proceedings he may appeal therefrom to the district court within thirty days after the date of decision or order against which the appeal is brought: Appeals

(2) Every appeal to a district court under this section shall be by way of petition and shall be filed in the district court within thirty days after the date of decision or order against which the appeal is brought:

Provided that:

- (a) the district court may extend the time for filing an appeal either before or after such period has expired; and
- (b) if application is made to the district court within the said period of thirty days, or any extension thereof granted by the district court, the district court may permit an appellant to state the grounds for his appeals orally and shall record the same and hear the appeal accordingly.

(3) In the exercise, of its appellate jurisdiction under this section a district court shall have the same powers as it has in relation to appeals from a primary court and the provisions of section 17 of the Magistrates' Courts Act, 1963 all apply, *mutatis mutandis*, to appeals under this section. Cap. 573

(4) An order of a district court on appeal under this section may be appealed from in the same manner and to the same extent in all respects as if it were an order made by such court in its appellate jurisdiction under the Magistrates' Courts Act, 1963.

14. No matter or thing done by any chairman, vice-chairman, member, officer, servant or agent of a Tribunal shall, if done *bona fide* in the execution or purported execution of the provisions of this Act or of regulations made thereunder, subject any such person as aforesaid to any action, liability or demand whatsoever. Protection of members of Tribunal

15. No effect shall be given by any court or Tribunal to any agreement or contract or any term or condition thereof which is at variance with any provision of this Act or of regulations made thereunder. No agreement to be at variance with this Act

16. (1) The Minister may, in consultation with the Minister for the time being responsible for legal affairs make regulations prescribing the terms and incidents of tenure of enfranchised land. Regulations

(2) In addition to any other matter which may be included therein, regulations made under this section may contain provision, either expressly or by reference to any written law for—

- (a) the interests or rights which may exist in or be created out of suchland;

(b) the devolution of any interests or rights therein on death;

(c) the disposal, *inter-vivos*, of the interests and rights therein.

(3) Regulations made under this section may be made in respect of all the areas to which this Act applies or any area or areas specified therein.

Repeal and
saving of
Act No. 1
of 1965

17. (1) The Nyarubanja Tenure (Enfranchisement) Act, 1965 (hereinafter referred to as "the 1965 Act") is hereby repealed.

(2) Notwithstanding the repeal of the 1965 Act

(a) every parcel of land enfranchised by the 1965 Act, shall remain so enfranchised and shall be deemed to have been enfranchised by this Act;

(b) any land vested in any person in accordance with section 5 of the 1965 Act, shall remain so vested and shall be deemed to have vested in accordance with this Act;

(c) enfranchised land vested in a person appointed by a court of competent jurisdiction or in the local authority under section 9 of the 1965 Act, shall remain held on the like trust and shall thereafter devolve in accordance with the customary law pertaining to the area.

Cap. I

(3) For the avoidance of doubt it is hereby declared that the provisions of section 10 of the Interpretation and General Clauses Ordinance shall have effect in relation to the 1965 Act as if that Act were an Ordinance repealed and replaced by this Act.

THE SCHEDULE

(Section 9)

CUSTOMARY LAND TRIBUNALS

1. A Tribunal shall be composed of-

(a) a Chairman and a Vice-Chairman, appointed by the Minister;

(b) four other members appointed by the Minister.

2. A member of a Tribunal shall hold office for such period not exceeding three years as the Minister may specify in his appointment, unless his appointment shall have been previously revoked; and he shall be eligible for reappointment.

3.-(1) If any member of a Tribunal is incapacitated by illness, temporary absence from Tanganyika or other sufficient cause, from performing the duties of his office, another person may be appointed by the Minister to act in his stead, and every person so appointed shall have all the powers and authority of the member for whom he is acting until such member is again able to perform the duties of his office or ceases to hold office as a member of the Tribunal.

(2) If any member dies, or is permanently incapacitated from holding office for any cause, or resigns, or if his appointment is revoked, the Minister may appoint in his place another person who shall hold office for the unexpired residue of the period of office of the member in whose place he is appointed.

4. A member may resign by giving notice in writing to the Minister.

5. At any meeting of a Tribunal the Chairman shall preside or, in the absence of the Chairman, the Vice-Chairman shall preside.

6. A quorum of a Tribunal shall be the Chairman or the Vice-Chairman and two other members.

7. Subject to the provisions of paragraph 6, a Tribunal may act notwithstanding a vacancy in its number.

8. No act or other proceeding of the Tribunal shall be invalid by reason only of the fact that there is some defect in the appointment of a person purporting to be a member thereof.

9.-(1) Proceedings before a Tribunal shall be determined according to the opinion of the majority of the members who hear the same.

(2) In the event of a Tribunal being equally divided on any issue, the presiding member shall have a casting vote.

10. The Tribunal may award allowances to witnesses at the rate for the time being prescribed for allowances to witnesses in a primary court.

Passed in the National Assembly on the twentieth day of July, 1968.


_____ Msekwa
Clerk of the National Assembly