

ACTS SUPPLEMENT

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Act 1

Land (Amendment) Act

2004

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THE LAND (AMENDMENT) ACT, 2004.

An Act to effect certain amendments to the Land Act, Cap. 227; and to provide for other related and incidental matters.

DATE OF ASSENT: 18th March, 2004.

Date of commencement: 18th March, 2004.

BE IT ENACTED by Parliament as follows—

PART I—PRELIMINARY.

1. Short title and commencement.

- (1) This Act may be cited as the Land (Amendment) Act, 2004.
- (2) This Act shall come into force on the date of assent.

2. Interpretation.

In this Act, unless the context otherwise requires—

“the Act” means the Land Act, Cap. 227;

PART II—AMENDMENTS TO PART I OF THE ACT.

3. Amendment to section 1 of the Act.

Section 1 of the Act is amended—

- (a) by inserting immediately after the definition of “Commission” the following—

“Commissioner” means the Commissioner for Land Registration and includes Assistant Commissioner, Principal Registrar of Titles, Senior Registrar of Titles, Registrar of Titles, or District Registrar of Titles so appointed to the extent that he or she has been authorised to exercise or perform any power or duty conferred or imposed by this Act upon the Commissioner”;

(b) by repealing the definition of “Land Tribunal” and replacing it in the appropriate place, with the following new definition—

“District Land Tribunal” means the District Land Tribunal established under section 75 of this Act;

(c) in the definition of “public works” by repealing “hydrogeological”;

(d) by repealing the definition of “Registrar”;

(e) by inserting immediately after the definition of “tenant by occupancy” the following definition—

“third party right” means a right, interest, privilege or liberty which a person has or possesses, either indefinitely or for life or for a lesser period under customary law, common law or equity to use or occupy for a specific purpose or for a specific period all or part of the land of a landowner or to prevent a landowner from exercising any right, interest, privilege or liberty in, on, under or over his or her land, and includes but is not limited to, an easement, a profit a prendre, a usufructuary right, a restrictive covenant, a right arising out of a share-cropping agreement, a right of a person as a member of a group to go on to and to gather and use the fruits of communally owned land or a right to use land which a spouse may acquire by virtue of marriage, but does not include a lease or sub-lease;”

(f) by substituting for the definition of “urban area” the following—

“urban area” means an area gazetted as an urban area by the Minister responsible for urban affairs.

PART III—AMENDMENTS TO PART II OF THE ACT.

4. Amendment to section 3 of the Act.

Section 3 of the Act is amended—

(a) in subsection (2), by inserting immediately after “any person” in paragraph (b)(iv), the words “either as a gift inter vivos or”; and

(b) in subsection (5) (d), by substituting for the words “for services” the words “for goods or services or both”.

5. Amendment to section 4 of the Act.

Section 4 of the Act is amended by substituting—

(a) for subsection (2) the following—

“(2) A certificate of customary ownership shall be in the prescribed form.”;

(b) for the word “parish” occurring in subsection (3) the word “area”.

6. Amendment to section 5 of the Act.

Section 5 of the Act is amended by substituting for the word “parish” appearing in paragraph (d) of subsection (2) the word “area”.

7. Amendment to section 6 of the Act.

Section 6 of the Act is amended by—

(a) substituting for the word “parish” occurring in subsection (2) the word “area”;

(b) substituting for the word “parish” occurring in subsection (4) the word “area”;

- (c) substituting in subsection (4) the words “about land” with “about the land” and deleting the words “within the parish” appearing between the words “tenure” and “to”; and
- (d) substituting for the word “parish” occurring in paragraph (d) of subsection (6) the word “area”.

8. Amendment to section 7 of the Act.

Section 7 of the Act is amended—

(a) in subsection (1)—

(i) in paragraph (a), by substituting for the words “issue that”, the words “approve the issue of a”;

(ii) in paragraph (b), by substituting for the word “issue” wherever it occurs, the words “approve the issue of”;

(iii) by substituting for paragraph (d) the following paragraph—

“(d) reject the report of the Committee and where the recommendation of the Committee is to issue a certificate, refuse the issue of a certificate and where the recommendation of the Committee is to refuse the issue of a certificate, approve the issue of a certificate”.

(b) in subsection (3) by deleting the words “by the Board”;

(c) by substituting for subsection (5), the following subsection—

“(5) Where the Board approves the issue of a certificate of customary ownership with or without conditions, restrictions or limitations, the Recorder shall issue the applicant with a certificate in the terms of the decision of the Board.”

9. Amendment to section 8 of the Act.

Section 8 of the Act is amended in subsection (2) by inserting after “land” in paragraph (h), the words “either as a gift inter vivos or”.

10. Amendment to section 9 of the Act.

Section 9 of the Act is amended in subsection (3), by substituting for the word "parish" the word "area".

11. Amendment to section 14 of the Act.

Section 14 of the Act is amended, in subsection (2) by substituting for the words "for Surveys and Mapping" the words "responsible for surveys".

12. Amendment to section 28 of the Act.

Section 28 of the Act is amended by the repeal of subsections (5), (8) and (10).

13. Amendment to section 30 of the Act.

Section 30 of the Act is amended by inserting immediately after subsection (3), the following subsection—

"(4) Where, after a period of not less than three months, the Mediator certifies that he or she is unable to assist the parties to reach an agreement under this section or the parties or any one of them declines to make use of the services of the Mediator, either party may appeal to the Land Tribunal and the Land Tribunal may make such order as it thinks fit but if the Land Tribunal determines that the occupation of land to which this section refers should come to an end, it shall give not less than one year's notice to the occupant of the land to vacate that land."

14. Amendment to section 31 of the Act.

Section 31 of the Act is amended—

(a) by substituting for subsection (3) the following—

"(3) The tenant by occupancy shall pay to the registered owner an annual nominal ground rent as shall, with the approval of the Minister, be determined by the Board.

(3a) The Minister shall, within sixty days after receipt of a request for approval under subsection (3), communicate his or her decision in writing to the Board.

(3b) Where the Minister makes no communication of his or her decision after the expiration of the period prescribed in subsection (3a), it shall be deemed that the approval has been given.

(3c) For purposes of this section, nominal ground rent shall mean reasonable ground rent—

(i) taking into consideration the circumstances of each case; and

(ii) in any case, of a non-commercial nature";

(b) by the repeal of subsection (5);

(c) in subsection (6) by substituting for the words "owner shall" the words "owner may"; and

(d) by the repeal of subsection (8).

15. Amendment to section 33 of the Act.

Section 33 of the Act is amended by substituting for subsection (9) the following—

"(9) The Recorder shall notify the Registrar of the issue of a certificate of occupancy and an encumbrance to that effect shall be endorsed on the certificate of title by the Registrar".

16. Amendment to section 34 of the Act.

Section 34 of the Act is amended—

(a) by substituting for subsection (1), the following—

"(1) A tenant by occupancy may, in accordance with the provisions of this section, assign, sublet or sub-divide the tenancy with the consent of the land owner".

(b) in subsection (5) by inserting immediately after "refusal" the words "or the conditions, as the case may be";

(c) in subsection (6) by repealing the words "the conditions or as the case may be".

17. Amendment to section 37 of the Act.

Section 37 of the Act is amended by inserting immediately after subsection (5) the following—

“(6) A tenant by occupancy or a registered owner of land who is aggrieved by the decision of the Board or valuation of the appointed valuer under paragraph (iii) of subsection (4) may appeal to the District Land Tribunal.”

18. Repeal of section 38 of the Act.

Section 38 of the Act is repealed.

19. New section 38A of the Act.

The Act is amended by inserting immediately after section 38 the following new section—

“38A. Security of occupancy

(1) Every spouse shall enjoy security of occupancy on family land.

(2) The security of occupancy prescribed under subsection (1) means a right to have access to and live on family land.

(3) For the purposes of subsection (2), the spouse shall in every case have a right to use the family land and give or withhold his or her consent to any transaction referred to in section 39, which may affect his or her rights.

(4) In this section—

“family land” means land—

(a) on which is situated the ordinary residence of a family;

(b) on which is situated the ordinary residence of the family and from which the family derives sustenance;

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(c) which the family freely and voluntarily agrees shall be treated to qualify under paragraph (a) or (b); or

(d) which is treated as family land according to the norms, culture, customs, traditions or religion of the family;

“ordinary residence” means the place where a person resides with some degree of continuity apart from accidental or temporary absences; and a person is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period;

“land from which a family derives sustenance” means—

(a) land which the family farms; or

(b) land which the family treats as the principal place which provides the livelihood of the family; or

(c) land which the family freely and voluntarily agrees, shall be treated as the family's principal place or source of income for food.

(5) For the avoidance of doubt, this section shall not apply to spouses who are legally separated.”

20. Amendment to section 39 of the Act.

Section 39 of the Act is amended by substituting for it, the following—

“39. Restrictions on transfer of family land

(1) No person shall—

(a) sell, exchange, transfer, pledge, mortgage or lease any family land;

(b) enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; or

(c) give away any family land, inter vivos, or enter into any other transaction in respect of family land;

except with the prior consent of his or her spouse.

(2) The consent required under subsection (1) shall be in the manner prescribed by regulations made under this Act.

(3) Subsection (1) of this section shall not apply to any transfer of land by the mortgagee in exercise of powers under the mortgage.

(4) Where any transaction is entered into by a purchaser in good faith and for value without notice that subsection (1) of this section has not been complied with, the transaction shall be void but the purchaser shall have the right to claim from any person with whom he or she entered into the transaction, any money paid or any consideration given by him or her in respect of the transaction.

(5) A consent referred to in subsection (1) shall not be unreasonably withheld:

(6) Where the consent required by subsection (1) is withheld, a person aggrieved by the withholding of the consent may appeal to the Land Tribunal and the Tribunal shall require the spouse to show cause why the spouse cannot give consent and may, in its discretion, dispense with the consent.

(7) A spouse, not being the owner of the land to which subsection (1) applies, may lodge a caveat on the certificate of title, certificate of occupancy or certificate of customary ownership of the person who is the owner of the land to indicate that the property is subject to the requirement of consent under subsection (1).

(8) Notwithstanding subsection (2) of section 149 of the Registration of Titles Act, a caveat referred to in subsection (7) shall not lapse while the caveator's right to security of occupancy subsists.

(9) For purposes of subsection (4)—

“notice” means actual or constructive notice;

“purchaser” means a grantee, lessee, sub-lessee, assignee, mortgagee, chargee or other person who acquires an estate or an interest or right in the land”.

21. Amendment to section 40 of the Act.

Section 40 of the Act is amended—

(a) by substituting for subsection (5) the following subsection—

“(5) For the avoidance of doubt, any non-citizen who immediately before the coming into force of the Constitution held land as lessee on conversion within the meaning of the Land Reform Decree, 1975 shall be deemed to have continued to hold a lease for ninety nine years from the first day of June, 1975.”

(b) by substituting for subsection (6) the following—

“(6) Any citizen who holds land under freehold or mailo tenure and who ceases to be a citizen of Uganda, shall by virtue of ceasing to be a citizen, cease to hold land under freehold or mailo tenure and any such tenure shall automatically and without any other legal requirement than this subsection, be converted into a lease for a period of ninety nine years from the date of that person ceasing to be a citizen of Uganda”.

(c) in subsection (8) by substituting for the words “majority who” in paragraph (b) the words “majority of members who”.

22. Amendment to section 41 of the Act.

Section 41 of the Act is amended—

(a) by substituting for subsection (2) the following—

“(2) Subject to the provisions of this section, the Commission shall be responsible for the management of the Fund, and may contract out the management of any part of the Fund to an organisation in the public or private sector; but no such contract shall absolve the Commission from the responsibility of management.”;

(b) in subsection (4) by substituting for paragraph (d) the following—

“(d) to assist persons to acquire titles under this Act in accordance with a prescribed scheme”.

PART IV—AMENDMENTS TO PART IV OF THE ACT.

23. Amendment to section 52 of the Act.

Section 52 of the Act is amended in subsection (3) by substituting for the words—

“Any instrument or contract other than an instrument which does not require to be under seal” the words—

“Any instrument or contract which does not require to be under seal”.

24. Amendment to section 57 of the Act.

Section 57 of the Act is amended by inserting at the beginning of paragraph (d) of subsection (1) the words “at least”.

25. Amendment to section 59 of the Act.

Section 59 of the Act is amended by—

(a) substituting for subsection (6) the following—

“(6) Each District shall have a District Land Office, which shall provide technical services through its own staff, or arrange for external consultants to the Board.”;

(b) deleting subsection (7).

26. Amendment to section 63 of the Act.

Section 63 of the Act is amended by substituting for subsection (2) the following—

“(2) Members of the Board shall be remunerated and paid allowances out of the Consolidated Fund”.

27. Replacement of section 64 of the Act.

Section 64 of the Act is amended by substituting for it the following new section—

“64. Establishment of Land Committees

(1) A District Council, on the advice of the Sub-county or Division Council, may, in accordance with this section, appoint a Land Committee at Sub-County or Division level which shall exercise the functions conferred on a Committee by this Act or any other law.

(2) A Committee appointed under this section shall consist of a Chairperson and four other persons who shall serve on a part time basis.

(3) A person holding office as a member of a local government council shall relinquish that office upon appointment as a member of a Committee.

(4) A member of a Committee shall hold office for a period of three years and is eligible for re-appointment for one further term.

(5) A District Council may terminate the appointment of a member of a Committee for his or her inability to perform the functions of his or her office, or for good cause.

(6) In determining whether to appoint a Committee, the District Council shall have regard to—

(a) any request from any of the areas referred to in subsection (1) for which a Committee may be appointed and in particular, whether any request is for a Committee to be appointed to perform the functions allocated to a Committee in Part II of this Act;

(b) the extent of the demand, if any, from the people within the areas referred to in subsection (1) for any of the services which they may apply for under Part II of this Act;

- (c) whether any of the areas referred to in subsection (1) indicate that they are prepared to assist in the funding of the Committee;
- (d) the opinions of any of the bodies referred to in subsection (1), on whose recommendation the District Council is to appoint the members of a Committee;
- (e) the state of the finances of the District Council;
- (f) the economic and social benefits of appointing and costs of not appointing a Committee in any particular area; and
- (g) any advice and guidance from the Ministry responsible for local government which shall, before issuing any such advice and guidance, consult with and take account of, the views of the Ministry responsible for land.

(7) A Committee shall assist the Board in an advisory capacity on matters relating to land including ascertaining rights in land and shall perform any other functions conferred on it by this Act or any other law.

(8) Where a Committee has been appointed, it may, with the agreement of the parties to a dispute about land, act as a Mediator in that dispute and when acting as a Mediator, a Committee shall have all the functions of a Mediator set out in section 89 of this Act and as may be prescribed."

28. Amendment to section 68 of the Act.

Section 68 of the Act is amended—

- (a) in subsection (1), by substituting for the words—
“sections 4” the words—
“section 7”
- (b) by substituting for subsection (4) the following—

“(4) A copy of each certificate referred to in subsection (2) shall be deposited with the Board which shall accordingly lodge it as an encumbrance on the respective title”.

PART V—AMENDMENTS TO PART V OF THE ACT.

29. Amendment to section 74 of the Act.

Section 74 of the Act is amended—

(a) by substituting for subsection (1) the following—

“(1) There shall be a tribunal in each district to be known as the District Land Tribunal, which shall consist of a Chairperson and two other members, and which shall sit from time to time to hear and determine disputes concerning land matters within the district.”;

(b) in subsection (3), by substituting for the words “A member of the Tribunal shall be a person” the words “The other members of the Tribunal shall be persons”;

(c) by inserting immediately after subsection (6) the following new subsections—

“(7) The Chairperson of a District Land Tribunal shall be appointed on a full-time basis.

(8) The other members of the Tribunal shall be appointed on a part-time basis.”

30. New section 76A of the Act.

The Act is amended by inserting immediately after section 76 the following new section—

“76A. Modification of Cap. 8.

(1) Notwithstanding the provisions of sections 5, 7 and 29 of the Executive Committees (Judicial Powers) Act, the Parish or Ward Executive Committee Courts shall be the courts of first instance in respect of land disputes.

(2) Notwithstanding the provisions of sections 28 (2) (c) of the Executive Committees (Judicial Powers) Act, appeals on land matters from Division or Sub-County Executive Committee Courts shall lie to the respective District Land Tribunal and from the latter to the High Court and accordingly section 28(2) (c) of that Act shall not apply under this Act.”

31. Amendment to section 76 of the Act.

Section 76 of the Act is amended—

(a) by substituting for paragraph (c) of subsection (1), the following—

“(c) determine disputes as the court of first instance in all land matters where the subject matter does not exceed two thousand five hundred currency points;”;

(b) by deleting paragraph (d) of subsection (1);

(c) in subsection (2), by deleting the words “all the powers of a Magistrate's Court Grade I granted under the Magistrate's Courts Act and shall, in addition and in so far as it is not provided for in that Act, have”; and

(d) by substituting for subsection (3) the following—

“(3) Notwithstanding subsection (1) of this section, a District Land Tribunal shall not make an order for cancellation of entries in a certificate of title and vesting title, but shall refer such cases to the High Court for the necessary consequential orders.”

32. Amendment to section 78 of the Act.

Section 78 of the Act is amended by deleting subsection (2).

33. Amendment to section 79 of the Act.

Section 79 of the Act is amended by substituting for it the following—

“79. Assistant Registrar of Land Tribunal

(1) A District Land Tribunal shall have an Assistant Registrar who shall be a person qualified to be an advocate of the Courts of Judicature.

(2) The Assistant Registrar shall be in charge of the Registry of the District Land Tribunal and in particular shall carry out the following functions—

(a) receive and register applications, notices of decisions and all documents or things relating to applications;

(b) issue and serve notices and summons of the Tribunal;

(c) issue interim orders in the absence of the Chairperson;

(d) keep all documents, books, things or records of the proceedings of the Tribunal;

(e) taxation of costs; and

(f) perform such other functions as the District Land Tribunal may direct.

(3) In the exercise of his or her functions under this section, the Assistant Registrar shall comply with the advice and guidance of the Registrar of District Land Tribunals under section 80A of this Act.”

34. Insertion of new sections 79A-79D.

The Act is amended by inserting immediately after section 79 the following new sections—

“79A. Registration of Land Tribunals

(1) There shall be a Registrar of the District Land Tribunals who shall co-ordinate and monitor the activities of the District Land Tribunals.

(2) A person shall not be qualified to be appointed a Registrar unless he or she is qualified to be appointed as a Registrar of the High Court.

79B. Management of administrative affairs of Tribunal

(1) A Chairperson of a District Land Tribunal shall be responsible for the administration of the Tribunal.

(2) In the administration of the Tribunal, the Chairperson shall be assisted by the Assistant Registrar of the Tribunal and such other officers and employees as may be necessary for the efficient discharge of the Tribunal's functions.

79C. Existing Officers

(1) A Secretary of a District Land Tribunal appointed before the commencement of this section shall be deemed to be a duly appointed officer acting under the equivalent office under this Act.

(2) For the avoidance of doubt, subject to the provisions of this Act, every person who immediately before the commencement of this section held or was acting in any office established by or by virtue of this Act, so far as it is consistent with the provisions of this section, shall be taken to have been appointed as from the coming into force of this section, to hold or act in the equivalent office under this Act.

79D. Supervisory powers over land tribunals

(1) The general powers of supervision over Land Tribunals and the office of the Registrar of Land Tribunals under this Act shall be exercised by the Chief Registrar of the High Court.

(2) All assets, liabilities and monies for the operation of Land Tribunals and the office of the Registrar of Land Tribunals shall be appropriated through the Secretary to the Judiciary.

(3) All assets, liabilities and monies for the operation of Land Tribunals held under the management of the Ministry responsible for lands by virtue of the provisions of this Act, as they stood at the commencement of this section, shall be transferred to the Secretary to the Judiciary.”

35. Repeal.

Sections 80, 81, 82, 83, 84, 85, 86, and 87 (2) of the Act are repealed.

36. Amendment to section 89 of the Act.

Section 89 of the Act is amended by substituting for subsection (1) the following—

“(1) There shall be one or more Mediators in each District who shall be appointed by the District Land Tribunal and the appointment shall be on an ad hoc basis.”

PART VI—MISCELLANEOUS AMENDMENTS.

37. Amendment to section 91 of the Act.

Section 91 of the Act is amended—

(a) by substituting for subsection (2), the following subsection—

“(2) The Commissioner shall, where a certificate of title or instrument—

(a) is issued in error;

(b) contains a wrong description of land or boundaries;

(c) contains an entry or endorsement made in error;

(d) contains an illegal endorsement;

(e) is illegally or wrongfully obtained; or

(f) is illegally or wrongfully retained;

give not less than twenty one day's notice, of the intention to take the appropriate action, in the prescribed form to any party likely to be affected by any decision made under this section”; and

(b) by inserting immediately after subsection (2), the following new subsections—

“(2a) The Commissioner shall conduct a hearing, giving the interested party under subsection (2) an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law.

(2b) Upon making a finding on the matter, the Commissioner shall communicate his or her decision in writing to the parties, giving the reasons for the decision made, and may call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.”

38. Amendment to section 93 of the Act.

Section 93 of the Act is amended by substituting for subsection (1) the following—

“(1) The Minister may, by statutory instrument, make regulations for the better carrying into effect of the provisions of this Act, and such regulations shall be laid before Parliament within two months after publication in the *Gazette*.”

39. Amendment to section 95 of the Act.

Section 95 of the Act is amended—

(a) by substituting for subsection (7) the following—

“(7) In each district, until a District Land Tribunal is established and commences to operate under this Act, magistrates' courts shall continue to have jurisdiction in land matters as they had immediately before the commencement of this Act.”;

(b) by inserting the following new subsection after subsection (8)—

“(9) Pending the survey and registration of land used or set aside for use by the Government or by any other public body before the coming into force of this Act by or to the orders of the Commission, the land occupied or used by the Government or any other public body together with the reasonable curtilage to that land shall remain vested in the Commission for the same estate or interest as immediately before the enactment of this Act.”

40. Miscellaneous amendments to the Act.

The Act is amended by substituting for the reference to—

- (a) “Tribunal” or “Land Tribunal” a reference to “District Land Tribunal”; and
- (b) “Registrar of Titles”, “Registrar” or “District Registrar of Titles”, a reference to “Commissioner”.

41. Amendment to Registration of Titles Act.

The Registration of Titles Act is amended—

- (a) in section 2, by repealing the definition of “Registrar” and substituting the following definition in the appropriate place—

“Commissioner” means the Commissioner for Land Registration appointed under the provisions of section 4 of the Registration of Titles Act, and includes Assistant Commissioner, Principal Registrar of Titles, Senior Registrar of Titles, Registrar of Titles or District Registrar of Titles so appointed to the extent that he or she has been authorised to exercise or perform any power or duty conferred or imposed by this Act upon the Commissioner;”;

- (b) by substituting for section 3 the following section—

“3. Appointment of officers

(1) A Commissioner for Land Registration shall be appointed to have charge and control of the Office of Titles and to exercise the powers and perform the duties conferred or imposed upon the Commissioner for Land Registration by this or any other Act.

(2) There may be appointed Assistant Commissioners for Land Registration and such Registrars of Titles as may be required for the purposes of this Act.

(3) The Commissioner may delegate any of his or her powers or duties under the provisions of this Act and may at any time revoke or vary such delegation; but such delegation shall not be deemed to divest the Commissioner of any of his or her powers and duties.

(4) The appointments referred to in subsections (1) and (2) of this section shall be made in accordance with the provisions of any written law relating to the appointment of persons to the public service.

(5) Any action taken or done by the Commissioner from 1987 up to the commencement of this section in exercise of the functions conferred upon the Registrar of Titles under this Act or any other written law, is hereby validated.

(6) Any reference to the Registrar of Titles in this Act or any other written law shall, *mutatis mutandis*, be a reference to the Commissioner.”; and

(c) by repealing section 69.

Cross References

Executive Committees (Judicial Powers) Act, Cap. 8.

Magistrates Courts Act, Cap. 16.

Registration of Titles Act, Cap. 230.

Land Act, Cap. 22.

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