

THE LANDS TRIBUNAL BILL, 2010

MEMORANDUM

The objects of this Bill are to—

- (a) continue the existence of the Lands Tribunal;
- (b) provide for the powers and functions of the Lands Tribunal; and
- (c) provide for matters connected with, or incidental to, the foregoing.

A. J. SHONGA,
Attorney-General

THE LANDS TRIBUNAL BILL, 2010

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A BILL

ENTITLED

An Act to continue the existence of the Lands Tribunal; provide for the powers and functions of the Tribunal; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I PRELIMINARY

1. This Act may be cited as the Lands Tribunal Act, 2010, and
5 shall come into operation on such date as the Minister may, by
statutory instrument, appoint. Short title
and
commence-
ment
2. In this Act, unless the context otherwise requires— Interpretation
- “assessor” means a person appointed as such under subsection
(7) of section *ten*;
- 10 “Chairperson” means the person appointed as Chairperson
of the Tribunal under section *five*; Cap. 184
- “Deputy Chairperson” means the person appointed as Deputy
Chairperson of the
Tribunal under section *five*;
- 15 “former Tribunal” means the Lands Tribunal established under
the Lands Act; Cap. 185
- “Lands Register” has the meaning assigned to it in the Lands
and Deeds Registry Act; “member” means a member of
the Tribunal;
- 20 “register” means the register kept under section
seven;
- “Registrar” has the meaning assigned to it in the
Lands and Deeds Registry Act; Cap. 185

“Registrar of the Tribunal” means the person appointed Registrar of the Tribunal under section *seven*; and
 “Tribunal” means the Lands Tribunal referred to under section *three*.

PART II

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THE LANDS TRIBUNAL

- Continuation of Tribunal
Cap. 184 **3.** The Lands Tribunal established under the Lands Act, 1995, shall continue to exist as if established under this Act.
- Jurisdiction of Tribunal
Cap. 184
Cap. 185
Cap. 194 **4.** (1) The Tribunal shall have jurisdiction to hear and determine disputes relating to land and in particular— 10
- (a) to inquire into, and make awards and decisions in, any dispute relating to land under the Lands Act, the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas) Act or any other law;
- (b) to inquire into, and make awards or decisions in, any dispute relating to land under customary tenure; 15
- (c) to inquire into, and make awards or decisions relating to, any dispute of compensation to be paid in relation to land under the Lands Act, the Land Acquisition Act or any other law; 20
- (d) to inquire into, and adjudicate upon, any matter affecting the land rights and obligations, under the Lands Act, of any person or the Government;
- (e) to hear and determine appeals against a direction or decision of a person in authority relating to land under the Lands Act, the Lands and Deeds Registry Act, the Housing (Statutory and Improvement Areas) Act or any other law; 25
- (f) to make orders for the rectification of entries made in the Lands Register; 30
- (g) to make orders for the cancellation of certificates of title that it considers to have been erroneously issued or to have been obtained fraudulently, or that it otherwise considers necessary to cancel;
- (h) to make any declaration that it considers appropriate and issue any order for the implementation of the declaration; 35
- (i) subject to the State Proceedings Act, to grant injunctive relief or any other interlocutory relief that it considers appropriate; and
- (j) to perform such acts and carry out such functions as may be prescribed under any other written law. 40
- Cap. 184
Cap. 189
- Cap. 194
Cap. 185
- Cap. 71

(2) The Tribunal shall not be bound by the rules of evidence in civil proceedings, but the main object of the Tribunal shall be to do substantial justice between the parties before it.

(3) An award, declaration, order, decision or judgment of the Tribunal on any matter referred to it for its decision or on any matter falling within its jurisdiction shall, subject to section *sixteen*, be binding on the parties to the matter and on any parties affected.

5. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

Composition
of Tribunal

- 10 (a) a Chairperson, who shall be qualified to be a judge of the High Court;
- (b) a Deputy Chairperson, who shall be qualified to be a judge of the High Court;
- 15 (c) a representative of the Attorney-General who shall be an advocate of not less than ten years legal experience;
- (d) a representative of the House of Chiefs;
- (e) a planner registered under the Zambia Institute of Planners Act, 2010;
- 20 (f) a land surveyor registered under the Land Survey Act;
- (g) a valuation surveyor registered under the Valuation Surveyors' Act; and
- (h) not more than three persons from the public and private sectors.

Act No. of
2010

Cap. 188

Cap. 207

(2) The members referred to under paragraphs (a), (b) and (c) shall be appointed in consultation with the Judicial Service Commission.

(3) The members of the Tribunal shall be appointed on such terms and conditions as may be specified in their letters of appointment.

30 (4) A person shall not be appointed as a member of the Tribunal if the person—

- (a) is an undischarged bankrupt;
- (b) is insane or of unsound mind;
- 35 (c) is in lawful custody or the person's freedom of movement is restricted under any law in force within or outside Zambia; or
- (d) has been convicted of an offence under any law and sentenced therefor to imprisonment without the option of a fine.

Tenure of
office and
vacancies

6. (1) Subject to subsection (2), a member shall hold office for a period of five years from the date of appointment and may be re-appointed for one further term.

(2) The office of a member shall become vacant—

- (a) upon the member's death; 5
- (b) if a member is absent without reasonable excuse from three consecutive sittings of the Tribunal of which the member had notice;
- (c) if the member is adjudged bankrupt;
- (d) if the member becomes mentally or physically incapable 10 of performing the duties of a member;
- (e) if the member is convicted of an offence under any written law and sentenced therefor to imprisonment for a term exceeding six months without the option of a fine;
- (f) in the case of a member referred to under paragraphs (a), 15 (b) and (c) of subsection (1) of section *five*, that member ceases to practise as a legal practitioner on disciplinary grounds confirmed by the Law Association of Zambia;
- (g) in the case of a member referred to under paragraph (e) 20 of subsection (1) of section *five*, that member ceases to practise as a member planner on disciplinary grounds confirmed by the Zambia Institute of Planners;
- (h) in the case of a member referred to under paragraph (f) 25 of subsection (1) of section *five*, that member ceases to practise as a land surveyor on disciplinary grounds confirmed by the Survey Control Board; or
- (i) in the case of a member referred to under paragraph (g) 30 of subsection (1) of section *five*, that member ceases to practise as a valuation surveyor on disciplinary grounds confirmed by the Valuation Surveyors Registration Board.

(3) Wherever the office of a member becomes vacant before the expiry of the term of office, the Minister may appoint another member in place of the member who vacates office but that member shall hold office only for the unexpired part of the term. 35

7. (1) There shall be a Registrar of the Tribunal, who shall be appointed by the Public Service Commission. Registrar of Tribunal

(2) The Registrar of the Tribunal shall, subject to this Act or any rules made under this Act—

- 5 (a) issue all summonses;
(b) keep a record of all the proceedings of the Tribunal;
(c) keep, or cause to be kept and maintained, a register of all orders and judgments of the Tribunal;
(d) have the custody, and keep an account, of all fees and
10 other moneys payable or paid to the Tribunal, and shall keep proper accounts thereof;
(e) subject to any rules made under this Act, hear and determine interlocutory applications:

15 Provided that no direction or order made on an interlocutory application shall operate so as to prejudice the Tribunal from giving such decision upon the case as may be just; and

- (f) have such other functions and exercise such other powers as may be conferred by rules made under section
20 *nineteen* or by any other written law.

(3) A person shall not be appointed as Registrar of the Tribunal unless the person is a legal practitioner with five years legal experience.

25 (4) The Ministry responsible for lands shall provide such other staff as may be necessary for the performance of the functions of the Tribunal. Cap. 30

(5) For the purposes of this section, “legal practitioner” has the meaning assigned to it in the Legal Practitioners Act.

30 8. (1) A person aggrieved with a direction or decision of a person in authority may apply to the Tribunal for determination. Application to Tribunal

(2) In this section, “person in authority” means the President, the Minister, the Minister responsible for local government, a chief, the Registrar or a council registrar.

35 (3) For the purposes of subsection (2), “council registrar” has the meaning assigned to it in the Housing (Statutory and Improvement Areas) Act. Cap. 194

9. A complaint, application or other document required to be filed under this Act shall be filed in the office of the Registrar Filing of complaints, applications, etc.

Proceedings
of tribunal

10. (1) The Tribunal shall sit at such places and times as the Chairperson may determine.

(2) The Chairperson shall preside over the sittings of the Tribunal, and in the absence of the Chairperson, the Deputy Chairperson.

(3) The Tribunal shall, when hearing any matter, be duly constituted 5 if it consists of three members which number shall include either the Chairperson or the Deputy Chairperson.

(4) The Tribunal may sit as a circuit tribunal.

(5) Three members of the Tribunal shall constitute a circuit tribunal: Provided that each circuit shall include the Chairperson or the Deputy 10 Chairperson or the representative of the Attorney-General.

Cap. 87

(6) A hearing before the tribunal shall, for all purposes, and in particular for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding.

(7) The determination of any matter before the Tribunal shall be 15 according to the opinion of the majority of the members considering the matter:

Provided that—

(a) in the event of an equality of votes, the person presiding at the sitting shall have, in addition to a 20 deliberative vote, a casting vote; and

(b) where in any matter before the Tribunal the dispute to be resolved is on a point of law, the decision of the person presiding at the sitting, shall prevail.

(8) A person appearing as a party before the Tribunal may appear 25 in person or through a legal practitioner at the person's own expense.

(9) In any proceedings before the Tribunal, the Government may be represented by the Attorney General or by any other person authorised by the Attorney-General for that purpose.

(10) The Tribunal may appoint persons who have ability and 30 experience in land, agriculture, commerce or other relevant professional qualifications as assessors for purposes of assisting the Tribunal in the determination of any matter before it.

(11) If a member or assessor is present at a meeting or hearing of the Tribunal at which any matter in which the member's or 35 assessor's spouse is directly or indirectly interested in a private capacity, is the subject of consideration, the member or assessor shall as soon as is practicable after the commencement of the meeting or hearing, disclose such interest, and shall not, unless the Tribunal otherwise directs, take part in any consideration or discussion of or 40 vote on any question relating to that matter.

(12) A disclosure of interest made under this section shall be recorded in the record of the proceedings at which it is made.

(13) The validity of any proceedings, act or decision of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(14) The Tribunal shall cause to be kept a record of its proceedings.

10 **11.** (1) The Tribunal may—

(a) order the parties or either of them to produce to the Tribunal such information as the Tribunal considers necessary for purposes of the proceedings; or

15 (b) take any other course which may lead to the just, speedy and inexpensive settlement of any matter before the Tribunal.

(2) The Tribunal may summon witnesses, call for the production and inspection of, any book, document, record and other thing, and examine witnesses.

20 (3) A summons for the attendance of a witness or for the production of any book, document, record or other thing shall be signed by the Registrar of the Tribunal and served in the same manner as a *subpoena* for the attendance of a witness at a civil trial in a subordinate court.

25 (4) Any person giving evidence or summoned to give evidence or to produce any book, document, record or other thing before the Tribunal, shall be entitled to the same privileges and immunities as if the person were summoned to attend or were giving evidence in a civil proceeding before a subordinate court.

30 (5) A person summoned under this section, other than a public officer or a person having an interest in the proceedings for which the person is summoned, may on the order of the Tribunal be paid from moneys appropriated by Parliament such allowances as may be prescribed.

35 **12.** The Tribunal shall deliver judgment on any matter within sixty days after the conclusion of the hearing of the case.

13. (1) The Registrar of the Tribunal shall cause every award, decision or judgment of the Tribunal to be communicated to the parties concerned.

Powers of
Tribunal
with respect
to
proceedings

Judgment
of Tribunal

Publication
of
judgments
of Tribunal

(2) The Chairperson may cause to be published in the *Gazette* any award, decision or judgment of the Tribunal which, in the Chairperson's opinion, is of public interest.

Frivolous or
vexatious
proceedings

14. If the Tribunal determines that any application to the Tribunal is frivolous or vexatious, it may order the applicant to pay the applicant's costs, that of the other party and that of the Government in connection with the proceedings. 5

Immunity of
members and
staff of
Tribunal

15. An action or other proceeding shall not lie or be instituted against a member or a member of staff of the Tribunal for any act or thing done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance of any of the powers or functions conferred under this Act. 10

Appeal to
Supreme
Court

16. A person aggrieved with the decision of the Tribunal may, within thirty days of the receipt of its decision, appeal to the Supreme Court. 15

Expenses of
Tribunal

17. The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under this Act.

Rules

18. The Chief Justice may, by statutory instrument, make rules

- (a) prescribing the powers and functions of the Registrar of the Tribunal; 20
- (b) prescribing the forms to be used in connection with any matter before the Tribunal;
- (c) prescribing the procedure for summoning and compelling the appearance of witnesses and the production of any document or other evidence before the Tribunal; 25
- (d) prescribing the procedure to be followed and the rules of evidence to be observed in proceedings before the Tribunal;
- (e) prescribing the functions of assessors; 30
- (f) empowering the Tribunal to award costs and to do and require all such acts and things as may be necessary for the performance of the Tribunal's functions under this Act;
- (g) prescribing the procedure for the review of the taxation of costs; 35
- (h) for regulating the procedure relating to appeals from the Tribunal; and
- (i) for regulating or prescribing any other matter which is to be regulated or prescribed by rules by the Chief Justice under this Act. 40

PART III
GENERAL PROVISIONS

19. (1) The Tribunal may make an order as to costs as it may consider just having regard to the circumstances of the case. Costs

5 (2) Subject to subsection (1), the costs and charges in connection with any proceedings before the Tribunal shall be the costs reasonably incurred by a person in connection with the proceedings or such part of those costs as may be determined by the Tribunal.

10 (3) The Registrar of the Tribunal shall tax all bills of costs in accordance with the scale of fees for the time being in use in the High Court in civil cases.

(4) A person who is aggrieved by the taxation of costs by the Registrar of the Tribunal shall, within seven days of the taxation, apply to the Registrar of the Tribunal for a review of the taxation, specifying the items in respect of which the review is sought.

(5) Where an application is made under subsection (4), the Registrar of the Tribunal shall review the items in respect of which the application was made.

20 (6) A person who is aggrieved by a decision of the Registrar of the Tribunal under subsection (5) shall, within fourteen days of the receipt of the decision, apply to the person presiding over the Tribunal to review the taxation.

(7) The Chairperson may make an order as to the taxation as the person presiding over the Tribunal considers just.

25 20. (1) A person who is summoned to give evidence or to produce any book, document or thing and— Offences

(a) without reasonable excuse, fails to attend as required;

(b) refuses to be sworn or affirmed as a witness;

30 (c) having been sworn as a witness, refuses to answer any question lawfully put to that person; or

(d) without reasonable excuse, fails to produce the book, document or thing; commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred and fifty penalty units or to imprisonment for a period not exceeding six months.

35 (2) A person who knowingly gives false testimony regarding any matter which is material to a question in any proceedings before the Tribunal commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding seven years.

40 21 (1) The Minister may, by statutory instrument, make regulations for the purposes of this Act. Regulations

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for—

- (a) the organisation and administration of the Tribunal;
- (b) the allowances to be paid to witnesses under section *eleven*; and
- (c) anything that is required to be prescribed under this Act.

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Transitional provisions

22. (1) On, or after, the commencement of this Act, reference in any written law or other document to the Lands Tribunal shall be read and construed as a reference to the Tribunal.

(2) On, or after, the commencement of this Act, reference in any written law or other document to the Chairperson of the Lands Tribunal shall be read and construed as a reference to the Chairperson of the Tribunal.

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Savings

23. Notwithstanding the provisions of this Act —

- (a) any appeal or proceedings pending before the former Tribunal before the commencement of this Act shall be continued by, or re-commenced before, the Tribunal; and
- (b) any right or benefit accruing or liability incurred, before the former Tribunal shall continue in accordance with, and subject to, this Act.

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