



PROPOSED ACTS TO BE REPEALED ON ENACTMENT OF A COMMUNITY LAND ACT

1.0 LAND (GROUP REPRESENTATIVES) ACT

The preamble to the act notes the general objective of the Act as an Act to provide for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act, and for purposes connected therewith and purposes incidental thereto.

Part I provides for the preliminary where section 1 provides for the citation of the Act while section 2 provides for the interpretation terms used in the Act so as to retain the original meanings.

Part II provides for the registrar and the register.

- ❖ Section 3 provides for the appointment of registrar and staff. That the Minister is by gazette notice, appoint a public officer to be registrar of group representatives to perform the duties and exercise powers imposed and conferred on the registrar. He may also appoint a deputy registrar of Group Representatives and assistant Registrar as he considers necessary who are all subjected to the directions of the Registrar of Group Representatives.
- ❖ Section 4 provides for duties of registrar and they include; keeping a register called the register of group representatives. The Registrar of Group Representatives is to supervise the administration of groups which have group representatives.

Part III provides for incorporation of group representatives.

- ❖ Section 5 provides for the meeting to elect group representatives. Once a group has been advised to apply for group representatives to be incorporated, the registrar is to convene meeting of the members of the group at a specified time and place to adopt a constitution, elect not more than ten or not than less than three persons to be group representatives of the group and elect persons to be officers of the group. Section 6 provides for disqualification for office of any member of the group and grounds for such disqualification. Section 7 provides for the incorporation of group representatives which application is made to the registrar. After the registrar is satisfied of complied

requirements and acceptable constitution, the registrar may issue certificate of incorporation. Thereafter the persons named in it will be group representatives and the officers so appointed will be officers of the group. The conditions or limitations in a certificate constitute a binding obligation upon the group representatives in so far as they are applicable to the group representatives.

- ❖ Section 8 provides for powers of group representatives. Some of these powers are the power to sue and be sued in its corporate name and perpetual succession. Section 9 provides for the changes in group representation in case of death, incapability or retirement and in a situation where no appointment is made within two months than the minister may in writing make the appointment if so demands. For any replacement of a member of the group, there ought to be a group's resolution. Thereafter, the registrar is to be informed of the changes within 28 days of the resolution to effect the change.
- ❖ Section 13 provides for amendment of the name, constitution or rules of the group and dissolution of the incorporated group representatives by consent (application) to the registrar. The application is to be in writing and signed by a majority of the group representatives and shall be supported by a copy of the minutes of the meeting at which the resolution to make the amendment or effect the dissolution was passed. The application shall be delivered to the registrar within 14 days after the day on which the resolution was passed. If consent is given, the name, constitution or rules shall stand amended accordingly, or the incorporated group representatives shall stand dissolved, as the case may be, either immediately or at a future date specified by the registrar. The registrar shall give to the land registrar such directions as are necessary to reflect the amendment or dissolution in the land register.

Part IV provides for the administration of groups.

- ❖ Section 14 introduces part IV of the Act and its application to group representatives.
- ❖ Section 15 provides for the meetings of the groups. It stipulates that the registrar may convene a meeting of a group at any time. On the other hand, an annual general meeting of a group shall be held every year in the month prescribed for the annual general meeting in the group's constitution. If the group representatives; or a number of members of a group who together own assets registered in the group's register whose value exceeds one-half of the value of the assets registered in respect of all the group's members; or the District Agricultural Committee, so request the chairman (or in his absence the vice-chairman) shall convene a meeting of the group within twenty-one days after the date of the request. The registrar or a public officer appointed by him in writing for the purpose may attend any meeting of a group and speak at it, but may not vote. All members of a group shall be entitled to attend a meeting of the group and vote. It is noteworthy that no business shall be transacted at a meeting of a group unless at least sixty per cent of the members of the group are present at the meeting. A resolution at a meeting of a group supported by the votes of not less than sixty per cent of the members of the group present at the meeting shall be treated as the decision of the group.
- ❖ Section 16 provides that every group is to have an office and a postal address and the group representatives are to notify the registrar of the office and postal address when they apply for incorporation. Section 17 provides that every group maintains a register of its members in such form as the registrar may require or as may be prescribed such as containing the name of each member, the date of membership e.t.c. Section 18 provides that every group is to keep one or more books of account and that failure of such is an offence. Section 19 provides for the procedure of maintaining

the accounts. Section 20 provides that the books of account and all documents are open for inspection on request of any member of the group. Section 21 provides that any person who acts as or represents himself to be an officer of a group when he is not an officer of that group shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

Part V provides for general provision that facilitate implementation of the Act. (section 22 to section 32)

- ❖ The Act provides that a person named in the register as the holder of an office shall be presumed to be a holder of such office. Additionally documents such as books, accounts, list of members and writings, as to dissolution or purported dissolution of a group so registered are presumed to be for the group unless a contrary opinion is expressed.
 - ❖ The registrar ought to be informed in case of any changes on the records. Where the registrar is not satisfied of the changes, then may order for true and complete copies of the documents. This power is discretionary. The registrar may cause the accounts of a group to be audited, and may recover the cost of so doing out of the funds of the group. Of course such a step is precipitated by any suspicious circumstance in the books of accounts. Where any document or information required by the registrar is not furnished, or is duly furnished but is false or incomplete in a material particular, each officer of the group shall be guilty of an offence and liable to a fine not exceeding five thousand shillings, or where false information is furnished to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment. However, an officer may be excused from prosecution in a case where the officer satisfies the court that he exercised due diligence to secure compliance with the requirement and that the non-compliance occurred by reason of matters beyond his control.
 - ❖ Further in any legal proceeding where any document purporting to be a true copy of or an extract from any register or document kept by the registrar and purporting to be certified by the registrar as a true copy or extract, will be admissible as prima facie evidence. However, this is a rebuttable presumption where contrary evidence is provided.
 - ❖ On inspection of the register, the Act mandates any person to inspect at the office of the registrar the register and any documents relating to any group lodged with the registrar under this Act, and may obtain from the registrar a copy of or an extract from such register or document. This is arguably in line with the right to information of every member of the group. It is a form of check on the workings of the representatives.
 - ❖ In the event there is need for service of documents e.g notices, requirement or other document issued under this Act or under any constitution or rule made there under shall be validly served; on a group, if it is sent by registered post addressed to it at its registered postal address; or on an individual, if it is served on him personally or is sent by registered post addressed to him at the registered postal address of the group with which he is concerned.
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2.0 ADJUDICATION ACT

It is an old piece of legislation assented to on 26th June 1969 and commenced on 28th June 1969. To at least modernize the Act, it was revised in 2012. Stemming from the preamble, the Act's objective is to provide for the ascertainment and recording of rights and interests in Trust Land and for purposes connected therewith and purposes incidental thereto.

Part I provides for the preliminary where we have the short title of the Act.

- ❖ It also has the interpretation section. Section 3 of the Act provides for the application of the Act. The Minister may by order apply this Act to any area of Trust land if the county council in whom the land is vested so requests; and the Minister considers it expedient that the rights and interests of persons in the land should be ascertained and registered; and the Land Consolidation Act (Cap. 283) does not apply to the area. Essentially, the Act applies to Trust land not within the ambit of the Land Consolidation Act

Part II provides for appointment of the adjudication officer and staff, adjudication committees and arbitration boards.

- ❖ Section 4 provides for appointment of officers namely public officer to be adjudication officer (appointed by the minister) for the adjudication area who will in turn appoint in writing the demarcation officers, survey officers and recording officers, being public officers, as may be necessary for the same interests. Section 5 provides for the establishment of adjudication sections. The adjudication officer is by notice is required to either establish adjudication sections within the adjudication area or establish the whole adjudication area as an adjudication section. A separate notice is to be published in respect of each adjudication section and under each, the adjudication officer is to define the area clearly, the interests in land and others. The adjudication officer is the Act's administrator.
- ❖ The adjudication officer in consultation with the District commissioner is to appoint an adjudication committee. These are not less than 10 persons resident within the adjudication section. The adjudication officer shall appoint an executive officer for each committee to keep its records and to inform the recording officer of its decisions. The executive officer shall attend and may speak at any meeting of the committee, but may not vote. Section 7 provides for the appointment of arbitration board by the Provincial Commissioner. The board consists of not less than six and not more than 25 people resident in the adjudication area. The adjudication officer may from time to time appoint in writing not less than five persons from the panel to form an arbitration board for a particular question arising in an adjudication section within the adjudication area.
- ❖ Section 11 provides for the particular powers of adjudication officer; he may issue to the officers subordinate to him and to committees and boards such general or particular directions as he thinks necessary for carrying out the provisions of the Act which relate to the procedure for demarcation, recording of title and survey within the adjudication area; at any time before the adjudication register is completed, he may correct any error or supply any omission occurring in the adjudication register; he may make a claim or otherwise act on behalf of a person who is absent or under a disability if he considers it necessary to avoid injustice. Section 12 provides for the procedure before adjudication officer in the case of a hearing of any objection or petition.

Part III provides for ascertainment of interests in land.

- ❖ Every person who considers that he has an interest in land within an adjudication section may make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the notice published under section 5 of this Act. Every person whose presence is required by the adjudication officer, demarcation officer, recording officer, committee or board shall attend in person or by a duly authorized agent at the time and place ordered. If any person ordered to attend is absent, the demarcation, recording, adjudication or arbitration, as the case may be, may proceed in his absence.
 - ❖ If the demarcation officer or the recording officer considers that a person who has not made a claim has an interest in land within the adjudication section, he may, but is not bound to, proceed as if that person had made a claim. Where several persons claim separately as successors of a deceased person, and one or more of those persons attends, his or their attendance shall be taken to be the attendance of all the successors, unless the adjudication officer otherwise directs. Section 15 provides for duties of demarcation officer which include; to demarcate or cause demarcation and to submit to the committee any boundary dispute which he is unable to resolve.
 - ❖ Section 16 provides for the duties of the survey officer which include; carrying out survey work as required and preparing or causing to be prepared a demarcation map of the adjudication section. Section 17 provides for general powers of demarcation and survey officers In the performance of their respective duties, the demarcation officer and the survey officer may each enter at any reasonable time upon any land within the adjudication area for the purpose of demarcating or surveying any parcel therein, and may summon any person who can give information regarding the boundaries of a parcel to point out the boundaries.
 - ❖ Section 19 provides for the duties of recording officer who is to consider all the claims made in pursuance of the notice published under section 5 of the act and after such investigation as he considers proper is to prepare in duplicate in accordance with the act, a form in respect of every parcel shown on the demarcation map. He is also to rectify the forms in accordance with decision of the adjudication officer, committee or board.
 - ❖ Section 20 provides for the functions of the committee which include; adjudicate upon and decide in accordance with recognized customary law any question referred to it by the demarcation officer or the recording officer; advise the adjudication officer or any officer subordinate to him upon any question of recognized customary law as to which he has sought its guidance; safeguard the interests of absent persons and persons under disability; bring to the attention of officers engaged in the adjudication any interest in respect of which for any reason no claim has been made; assist generally in the adjudication process.
 - ❖ Section 22 provides that the arbitration board is to hear and determine any matter referred to it or complaint made to it under section 21 which are; If a committee is unable to reach a decision on a matter before it, it shall refer the matter to the arbitration board for decision. The adjudication officer may require the committee to reconsider any decision which it has made. Any person named in or affected by a decision of the committee who considers the decision to be incorrect may, within fourteen days after the decision, complain to the executive officer of the committee, saying in what respect he considers the decision to be incorrect. Upon receipt of a complaint under subsection (3) of this section,
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the executive officer of the committee shall refer it with all the particulars of the case to the executive officer of the board, who shall submit it to the board.

Part IV provides for preparation of the adjudication register.

- ❖ The recording officer is mandated under Section 23 to prepare an adjudication record. The forms prepared by the recording officer are to be comprised in the adjudication record. In preparing the adjudication record, the recording officer, if he is satisfied that—any person has, under recognized customary law, exercised rights in or over land which should be recognized as ownership, shall determine that person to be owner of that land:
- ❖ Provided that if— (a) the land adjoins land of which a group is determined under paragraph (b) of this subsection to be the owner; and that person desires to join the group and to have his land added to the group's land; and the group is willing to have that person as a member, the recording officer shall determine that group to be the owner of that land, and thereupon that person shall become a member of that group; any group has, under recognized customary law, exercised rights in or over land which should be recognized as ownership, shall determine that group to be the owner of that land; (c) land has been set apart under the Constitution, shall determine the person in whom the land is vested to be the owner of the land set apart; (d) land is entirely free from private rights, or all private rights in or over the land have been relinquished in favour of the county council, shall determine the county council to be the owner of the land; (e) any person or group is entitled to any interest in land not amounting to ownership, including any lease, right of occupation, charge or other encumbrance, whether by virtue of recognized customary law or otherwise, shall determine the nature, incidents and extent of the right to enable it to be recorded in the name of the person or group entitled to the benefit of it.
- ❖ Each of the forms which comprise the adjudication record shall contain the following information— (a) the number of the parcel as shown on the demarcation map and its approximate area; (b) a record of— (i) the name and description of the owner, with particulars of any restriction on his power of dealing with it; (ii) where the land has been set apart, the year and number of the Gazette notice by which, and the purpose for which, the land was set apart; and (iii) where the land is recorded under subsection (2)(d) of this section as being in the ownership of the county council, the fact that the land remains Trust land; (c) particulars of any such right as is referred to in subsection (2)(e) of this section; (d) if any owner or other person is under a disability, the name of his guardian, the nature of his disability and (if he is a minor) his age; and (e) the date on which the form is completed.
- ❖ Section 24 provides that the demarcation map and the adjudication record are collectively known as the adjudication register. Section 25 provides for the action on completion of adjudication record. The adjudication officer is to certify the adjudication record and demarcation map; deliver the duplicate adjudication record to the Director of Land Adjudication; display the original adjudication register for inspection at a convenient place within the adjudication section and give notice that the adjudication register has been completed and may be inspected at that place during a period of sixty days from the date of the notice.

- ❖ Where no objection has been raised on the adjudication register and upon expiration of the stipulated appeal period, the Chief Land Registrar is to cause registration of the parcels in accordance with the adjudication register.

Part V provides for the miscellaneous.

- ❖ Section 30 provides that except with the consent in writing of the adjudication officer, no person shall institute, and no court is to entertain any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final. The act has further provided for publication of notices (section 31), fees for adjudication (section 32), offences noted under the Act and the penalties (section 33), protection of officers on liability (section 34), minister making regulations (section 35) and amendments of the Land Adjudication Act contained under the schedule as well as amendments of the Registered Land Act contained under the schedule (section 36 and 37 respectively).

3.0 LAND CONSOLIDATION ACT

It is one of the colonial Acts that still apply to date. It was assented to on 17th July 1959 and commenced on 28th July 1959. At least to modernize the Act, it was revised in 2012. The preamble to the Act stipulates that the objective of the Act is for the ascertainment of rights and interests in, and for the consolidation of land in the special areas; for the registration of title, and of transactions and devolutions affecting such land and other land in the special areas; and for purposes connected therewith and incidental thereto. It is high time that the Act was repealed.

Part I preliminary

- ❖ Section 1 provides for the citation of the Act which is Land Consolidation Act. Section 2 provides for the application of the Act. It is unfortunate though expected of such an old Act that it doesn't directly elaborate the application of the Act. The application section is jumbled in verbosity. For instance, the Act provides that it applies to consolidation of land in special areas yet the Act doesn't define "the special areas."
- ❖ Section 3 provides that the when the Act has been applied to any area, the Adjudication Officer of the district which such area is situate will forthwith cause notice of the general effect of the provisions of the Act to be given throughout the said area. Section 4 further provides for the interpretation clause which most of its provisions have expectedly been repealed.

Part II provides for the ascertainment and recording of rights and interests in land; consolidation and demarcation; and creation of adjudication register.

- ❖ The short title clearly captures the whole process of consolidation. It starts with ascertainment of rights and determination of any disputes arising which is adjudicated. Thereafter, the interests are recorded, boundaries set (demarcation) and thereafter registered in an adjudication register. The register merely shows the adjudicated interests, name of the land owner plus the interests held, freehold or leasehold.
- ❖ The minister is to appoint adjudication officers (Section 6) who are required to administer the Act. An adjudication officer is required to issue a notice of adjudication of an area he wishes to adjudicate. (Section 5) Section 7 provides for the adjudication sections within each area the adjudication officer may by notice declare one or more adjudication section specifying the area, duration and rights and

interest. Initiation of the adjudication process operates as a stay of any pending court process and also bars institution of any suit over some land where a person claims under customary or native law not unless there is prior consent of the adjudication officer.

- ❖ In the event of a dispute, the Act has established an Arbitration board tasked with solving disputes arising from adjudication process. Section 15 provides for the record of existing rights where the findings of the committee or arbitration board are to be recorded. The record of existing rights is to be divided in three parts that include; part I (name and description, interests, restrictions) part ii (description or other sufficient identification, approximate of the area) and part iii (description of the area). Section 16 provides for the notice of completion of record of existing rights. When the Record of Existing Rights in respect of any adjudication section has been completed, the chairman of the Committee and its executive officer shall sign and date a certificate to that effect and shall forthwith give notice of such completion and of the place or places within the adjudication section at which the Record can be inspected.
- ❖ Section 17 provides for the objection to record of existing rights while section 18 provides or the procedure with regard to objections. The executive officer with whom an objection is lodged in accordance with the provisions of section 17 of this Act is to either refer the objection to the Committee, if it appears to him that the inaccuracy or incompleteness alleged is a consequence of any decision of the Committee; or submit the objection to the Adjudication Officer, if it appears to the executive officer that the inaccuracy or incompleteness alleged is a consequence of any decision of an Arbitration Board.
- ❖ Upon determination of the objection, Section 19 stipulates that the decision of the adjudication officer is to be final. Section 20 provides for the record of existing rights to be final. After the expiry of sixty days from the date mentioned in section 17, or on the date upon which all alterations to the Record of Existing Rights have been made in accordance with section 19, of this Act, whichever is the later, the Record shall be deemed to be a true and complete record of all existing rights and interests in the adjudication section to which the Record relates: Provided that no inaccuracy in, or omission of, any particular shall in any way affect the validity of any lease or license granted under Part VI of the Trust Land Act (Cap. 288).
- ❖ Section 21 provides for consolidation. The Committee is to set aside out of land in the adjudication section such land as may, in its opinion, be required for the needs of the community; and any detriment to any landowner caused by such setting aside shall be divided as equitably as possible between all landowners in the allocation of parcels (hereinafter provided for) within the adjudication section. To each landowner the Committee is to allocate land within the adjudication section, and in making such allocation the Committee shall have regard, so far as possible, to the site, quality, nature and extent of the land to which each landowner was entitled and to any interest, lease, right of occupation, charge or other encumbrance affecting the land, whether by African customary law or otherwise, according to the Record of Existing Rights, to the intent that so far as possible equality of exchange shall be achieved, subject to the liability of each such landowner to bear a share of the detriment caused by the setting aside of land for the community in accordance with the provisions of subsection (1) of this section.
- ❖ Without prejudice to the generality of the foregoing for the purposes of this section the Committee may—(a) consolidate all the land to which a landowner is entitled in accordance with the provisions

of section 15(2)(a) of this Act; (b) require a landowner or the county council to relinquish any land to which he or it is entitled and to accept in place thereof other land; (c) require a landowner or the county council to relinquish any land to which he or it is entitled in order to create a right of way or to provide for the needs of the community: Provided that the county council shall not be required to relinquish any land which is subject to a lease unless the lessee consents.

- ❖ If, in the exercise of any or all of its powers under this section, a Committee is of the opinion that any compensation should be paid to any person on account of any detriment suffered by him as a result of such exercise of its powers, the Committee may require any other landowner or landowners who, in the opinion of the Committee, has or have profited there from to pay to such person such compensation as it may think proper; and such compensation shall be paid in money or in kind, and at such time or times, as the Committee may direct.
- ❖ The interest recorded do not amounting to ownership. Where any person is entitled to the benefit of any interest, lease, right of occupation or charge affecting any land of a landowner, whether by virtue of African customary law or otherwise, and that landowner is required to relinquish that land in accordance with the provisions of section 21(3) of this Act, then such interest, lease, right of occupation or charge shall cease and determine in respect of that land together with the rights of the landowner; and such landowner shall either—
 - (a) grant to the said person an interest, lease, right of occupation of, or a charge on, land allocated to the landowner in accordance with the provisions of subsection (2) of the said section; or (b) pay to the said person compensation, and thereupon his entitlement to the benefit of an interest, lease, right of occupation of, or a charge on, land of such landowner shall cease and determine. In the event of any dispute, the aggrieved party may refer the dispute to the committee.
- ❖ Section 23 provides for demarcation. The demarcation officer with the assistance of the committee is mandated to demarcate adjudicated land. Demarcation is basically setting boundaries on the ground. The demarcation officer is to prepare a demarcation plan. The land owner is to pay the costs of demarcation assessed by the demarcation officer.
- ❖ Section 24 provides for the adjudication register. That the committee is to prepare or cause to be prepared in respect of every parcel of land shown on the demarcation plan a form containing the particulars set forth. The form is to contain all the particulars and each form is to be signed by the chairman of the committee or by its executive officer and by the demarcation officer. The forms and demarcation plan is to be delivered to the adjudication officer and all is collectively known as the adjudication register.
- ❖ Section 25 provides for the notice of completion of adjudication register. After completion, the executive officer of the committee is to sign and date a certificate to that effect and give notice of the completion thereof and of the place or places within the adjudication section at which the same can be inspected. The adjudication register is not conclusive. Fortunately, section 26 provides for objection to adjudication register. Where there is an error apparent of the face of the register, clerical error or error of a like nature in the adjudication register, the adjudication officer may correct it.
- ❖ Section 30 provides that every landowner whose name is contained in an Adjudication Register compiled or deemed to have been compiled in accordance with the provisions of this Part, whether such register was made before or after the application of this Act, shall pay a fee at such rate as may be prescribed in respect of the adjudication area or section.

4.0 TRUST LAND

It is an Act of parliament to guide the management of Trust Land.

Part I is generally the introductory part of the Act.

- ❖ Section 1 cites the Act as Trust Land Act while section 2 provides for the interpretation of the various terms used in the Act. Section 3 deals with the scope of application of the Act. It provides that the Act cardinally deals with trust land.

Part II provides for the establishment of divisions and divisional board.

- ❖ Section 4 provides for the establishment of divisions. A council is to divide the Trust land vested in it into such divisions as appear to it necessary or expedient for the purposes of this Act, or may declare the whole of that land to be a division. The divisions are basically administrative units for ease of management. Section 5 provides for the divisional boards which is to consist of a chairman, appointed by the minister for the time being responsible for land after consultation with the council, not less than four and not more than fifteen persons appointed by the council, not more than two public officers appointed by the council and two persons appointed by the council from amongst its members. A divisional board is responsible for a division.
- ❖ However, where a Divisional Board established under the Kenya (Land Control) (Transitional Provisions) Regulations, 1963 (L.N. 457/1963) has jurisdiction over any division created under this Part of the Act, that Board shall be the Divisional Land Board for that division for the purposes of this Act. This provision was necessary to avoid duplication of duties and also ensure few bodies deal in land hence effective management.

Part III was repealed.

Part IV is on Setting apart of land.

- ❖ Section 7 provides that where a written notice is given to a council that an area of Trust land is to be set apart for use and occupation for any of the purposes specified, the council is to give notice of the requirement and cause the notice to be published in the Gazette. The Council may require the government within a specified reasonable time demarcate and clearly state the boundary. For a better understanding, trust land belonged to a given community and was managed by a municipal council or county council. To an extent, it is private land. Therefore, whenever the government requires utilizing trust land for any a public purpose, there was definitely need to have a comprehensive process of how it was to happen.
- ❖ Section 8 provides for compensation for land set aside under section 7. The compensation to the community whose land was held in trust has to be assessed as stipulated in section 9 and paid in full before any trust land is set aside. Section 10 provides for appeals on compensation. Whoever is not satisfied with the rejection of his application for compensation or with the amount of the award, may within 30 days after being notified of the award or rejection as the case may be appeal in writing through the District Commissioner to the Provincial Agricultural Board of the province in which the land to be set apart is situate and that board is to hear and determine the appeal and notify the appellant in writing of its decision. Of course with the introduction of new administrative County units, such an appeal process is obsolete.

- ❖ However, the Constitutional transitional clauses requiring interpretation of laws with necessary amendments to ensure consistency with the Constitution may be remedy the situation. The Minister may make regulations providing for the practice and procedure to be followed in respect of appeals to a Provincial Agricultural Board under this section. Any party to an appeal to a Provincial Agricultural Board who is dissatisfied with the decision of that Board may appeal to the Resident Magistrate's Court. A party to an appeal to the Resident Magistrate Court who is dissatisfied with the decision may appeal to the High Court whose decision shall be final.
- ❖ Section 11 further elaborates on the provision and payment of compensation awarded. Where the District Commissioner makes an award, he shall give notice in writing of any award to the Minister, who is to cause the amount of the award to be deposited forthwith with the District Commissioner for payment to the person entitled thereto. Where on appeal the amount of the award is reduced, the District Commissioner is to pay the amount by which the sum deposited exceeds the reduced amount of the award to the person who deposited it.
- ❖ Where on appeal the amount of the award is increased, the District Commissioner is to give notice thereof to the appellant, and also to the Minister, who is to cause the amount of the increase to be deposited forthwith with the District Commissioner. The District Commissioner shall be responsible for paying the compensation awarded to the persons entitled thereto, and every such payment is to be made in one single payment. This was to protect the person's compensated from the risk of losing their dues in the event the government sets aside trust land before full payment.
- ❖ Section 12 provides that any person claiming a right or interest in land set apart under this Act shall have access to the High Court for— the determination of the legality of the setting apart; and the purpose of obtaining prompt payment of any compensation awarded. The right to challenge an attempt to set aside may be exercised at any time. However, the council may set aside any land if in its opinion, the land is likely to benefit the persons ordinarily resident in that area or any other area of Trust land vested in the council, either by reason of the use to which the area set apart is to be put or by reason of the revenue to be derived from rent. This is covered under Section 13 which provides that a council may set apart an area of Trust land vested in it for use and occupation— by any public body or authority for public purposes; or for the purpose of the extraction of minerals or mineral oils; or by any person or persons for the reasons stated above.
- ❖ The following procedure is to be followed before land is set apart under this section; the council shall notify the chairman of the relative Divisional Board of the proposal to set apart the land. The chairman shall fix a day, not less than one and not more than three months from the date of receipt of the notification, when the Board shall meet to consider the proposals. The chairman shall forthwith inform the council of the day and time of the meeting. The council shall bring the proposal to set apart the land to the notice of the people of the area concerned, and shall inform them of the day and time of the meeting of the Divisional Board at which the proposal is to be considered. The Divisional Board shall hear and record in writing the representations of all persons concerned who are present at the meeting, and shall submit to the council its written recommendation concerning the proposal to set apart the land, together with a record of the representations made at the meeting. The recommendation of the Divisional Board shall be considered by the council, and the proposal to set apart the land shall not be taken to have been approved by the council except by a resolution passed by a majority of all the members of the council.

- ❖ However, where the setting apart is not recommended by the Divisional Board concerned, the resolution shall require to be passed by three-quarters of all the members of the council. If the council approves a proposal to set apart land in accordance with this section, the council shall cause a notice of the setting apart to be published in the *Gazette*.

Part V repealed with exclusions.

Part VI is on Leases and Licenses.

- ❖ Section 37 provides for licenses. Licenses may be granted in such manner and subject to such conditions as may be prescribed and subject to the payments of such fees or royalties or both as the council may with the approval of the minister fix to any person. Section 38 provides for wayleaves. A wayleave license may be granted to any person empowering the person, servants and agents to enter upon trust land vested in the council to lay pipes, make canals, aqueducts, weirs and dams and execute any other works required. Where the land concerned is the subject of a mining right under the Mining Act (Cap. 306), or of a subsisting lease, the council shall not grant a way leave license in respect of such land except with the consent of the lessee or the holder of the mining right, as the case may be. However, if any such lessee or holder refuses his consent, the council may apply to the Minister, who may grant consent. In case of damage, the person is entitled to compensation.
- ❖ Section 38 A provides that where a lessee desires a change of user of any land so set aside, the lessee may make an application in writing to the council concerned. Section 39 provides for forfeiture of lease or licence while section 40 provides that no forfeiture of any lease or licence under the Act or any rule made there under is to operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited. Section 41 provides that the issue of licences and occupation permits in respect of land set apart under the Act save where a contrary intention is in this Act expressed be governed by rules made under the Act.

Part VII is on Miscellaneous powers.

- ❖ Section 51 provides for powers of the president. The President or the Community may, after giving not less than thirty days' notice to the council and to the occupier, enter upon Trust land for any purpose incidental to the setting apart of land or for carrying out any of the works specified in this section. The works referred to this section are— the taking of stone and other materials for the making and repair of roads, railways, canals, water channels or other public works, whether of a like nature or not; any of the works specified in this Act, and any other works of a public nature; any work which may be considered necessary for maintaining or improving the flow of water in any river, stream, spring, lake or swamp, and for that purpose constructing dams and diverting any river, stream, spring, lake or swamp.
- ❖ The President or the Community may in writing authorize any person to exercise any of the powers conferred upon the President or the Community, as the case may be, by this section, and any authority so granted shall be deemed to include the contractors, agents and servants of such person. Compensation, assessed in accordance with section 9 of this Act, shall be payable in respect of anything done under this section for loss or disturbance and for the fair value of buildings and crops destroyed or damaged, and, in any case where the usefulness of any land for agricultural purposes is impaired by anything so done, compensation in respect thereof shall be payable.
- ❖ In addition, compensation under this section, any person who has, pursuant to this section, temporarily occupied any land for a camp site or has used or constructed any road of access to any land, whether such land was used as a camp site or not, shall so far as is reasonably practicable, rehabilitate the land so occupied as a camp site or used or constructed as a road of access.
- ❖ Section 52 provides for the power to enter land and premises. Any government officer or any person authorized by any such officer may for any purpose relating to the Act have power at all times to enter upon any trust land or to enter any premises or place on such lands and there to make such inspection, examination and inquire and to call for such information as may be necessary for carrying into effect any of the provisions of this Act or other law.
- ❖ Any person who refuses to permit any such officer or authorized person to carry out any of the powers conferred by this section, or obstructs or hinders any such officer or authorized person in the execution of his duty under this Act, or fails to give any required information, or furnishes false information, to such officer or authorized person, shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

Part VIII provides for general provisions.

- ❖ Section 53 bestows powers to the Commissioner of Lands to administer the Trust land of each council as agent for the council. Section 54 further provides for protection of Government and officers that there will not be liability on acts done in good faith and without negligence under the Act or for the purpose of carrying into effect any of its provisions. No compensation is to be payable for any act done under this Act in good faith and without negligence save where express provision is made in this act for the payment compensation.
- ❖ Section 56 further provides for service of documents that they may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode or by sending it through the post in a registered letter addressed to him there. Service by registered post

will be deemed to have been served not later than the fourteenth day succeeding the day on which it was posted and for proof of such service it will be sufficient to prove that the letter containing the notice was properly addressed, registered and posted.

- ❖ Section 57 provides for publication of notices, e.t.c. Any order, notice or other document required by this Act, or any rule made there under, to be published may be published by affixing a copy in the District Commissioner's office and in some other public or conspicuous place or situation in the area concerned, and, where it is deemed necessary, by publishing it in the *Regional Gazette*. Such publication or affixing shall be deemed good and sufficient publication and notice to all persons concerned. Any person who, without lawful cause or excuse, tears, defaces, alters, injures or removes any notice so affixed shall be guilty of an offence and liable to a fine not exceeding two hundred shillings.
- ❖ Section 58 provides that save where provision to the contrary is expressly made in the Act, no appeal will lie from any decision given, order made or matter or thing done under the Act. Section 59 provides that save in regards to matters wherein express provision is made in this Act, Trust land shall be subject in all respects to the general law from time to time in force. Section 60 provides for penalty. Every omission or neglect to comply with, and every act done or attempted to be done contrary to the provisions of this Act or of any rule or order made there under or in breach of the conditions and restrictions subject to or upon which any licence or permit has been issued, is deemed to be an offence under this Act, and for every such offence for which no penalty is specially provided the offender is liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.
- ❖ Section 64 provides that the minister may with the approval of the council concerned make rules relating to Trust land for the purpose of carrying this Act into effect and for prescribing the fees to be paid for any matter or thing done under the Act. The section has also provided for the particular sections.

Part IX provides for saving-extinguishment of rights.

- ❖ Section 68 provides that save as is expressly provided in the Act nothing herein contained is to affect any right, power, privilege or exemption of the Government prejudicially. Section 68 provides that in respect of the occupation, use, control, inheritance, succession and disposal of any Trust land, every tribe, group, family and individual shall have all the rights which they enjoy or may enjoy by virtue of existing African customary law or any subsequent modifications thereof, in so far as such rights are not repugnant to any of the provisions of this Act, or to any rules made there under, or to the provisions of any other law for the time being in force.

Schedules enlists for the repealed sections.

RESOURCE CONFLICT INSTITUTE

P.O BOX: 7150 – 20110

Tell: (+254) 51-2211-046

Cell: (+254) 72-2256-059

Email info@reconcile-ea.org

Website: www.reconcile-ea.org

Location: Print House Road next to CK Patel Building – Industrial
Area