

Tanzania

## Freehold Titles (Conversion) and Government Leases Act Chapter 393

Legislation as at 31 July 2002

FRBR URI: /akn/tz/act/1963/24/eng@2002-07-31

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## Tanzania

# Freehold Titles (Conversion) and Government Leases Act Chapter 393

Published in Tanzania Government Gazette

Commenced on 1 July 1963

*[This is the version of this document at 31 July 2002.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Acts Nos. 24 of 1963; 48 of 1964; 4 of 1965; 39 of 1966; 44 of 1969; 4 of 1970]*

**An Act to convert freehold estates in land into leasehold estates and to provide for the corresponding diminution of other estates and interests in and over land, to declare the incidents of such leasehold estates and to provide for the development of land.**

### Part I – Preliminary provisions (ss. 1-3)

#### 1. Short title

This Act may be cited as the Freehold Titles (Conversion) and Government Leases Act.

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**appointed day**" means the first day of July, 1963;

"**Commissioner**" means the Commissioner for Lands and includes any person to whom the relevant function, power or duty of the Commissioner has been delegated under section 58;

"**compulsory purchase order**" means an order made under section 48 as varied in accordance with any directions of the Land Tribunal, and any order substituted in accordance with any such directions;

"**Court**" means the High Court;

"**development requirements**" means development requirements annexed to leased land under Part IV of this Act as varied in accordance with any directions of the Land Tribunal, and any requirements substituted in accordance with any such directions;

"**fee simple**" includes an estate of absolute ownership created before the twenty-sixth day of January, 1923, and any other absolute estate or interest which is, or if it had been registered under the Land Registration Act <sup>1</sup> prior to the appointed day would have been, registered as a freehold estate;

"**Government lease**" means the term vested in any person by section 5 or a grant made under section 16, and includes any renewal;

"**Land Tribunal**" means the Tribunal established by section 51;

"**leased land**" means land held for a Government lease;

"**Minister**" means the Minister responsible for land;

"**mortgage**" includes a lien or charge by deposit of title deeds, a registered charge and a submortgage, and "mortgagee" shall be construed accordingly;

"**person of full age**" includes a corporation;

"**registered land**" and "land register" have the meanings respectively ascribed to those expressions in the Land Registration Act;

"**Registrar**" means, in the case of registered land, the Registrar of Titles appointed under the Land Registration Act <sup>2</sup>, and in the case of land which is not registered land means the Registrar of Documents appointed under the Registration of Documents Act <sup>3</sup>, and includes any person authorised under those enactments to exercise the powers and functions conferred on such Registrars respectively;

"**sublease**" includes a lease of land which on the appointed day becomes held by a tenant, and any sublease, and "sublessee" shall be construed accordingly;

"**tenant**" means the person who for the time being holds any leased land for a Government lease, and includes his personal representatives and other statutory assignees, and any person who acquires a title to such lease by adverse possession;

"**will**" includes a codicil.

- (2) In this Act, references to development conditions in relation to rights of occupancy means those conditions and covenants relating to the use, development and exploitation expressly or impliedly contained in a contract for, or certificate issued in respect of, a right of occupancy.
- (3) For the purposes of this Act, a freehold estate which is extinguished under section 5 shall be deemed to have converted into a Government lease and references in this Act to the conversion of interests and converted interests shall be construed accordingly.

### 3. Application to certain rights of occupancy

- (1) Nothing in Parts II, III, IV or V of this Act shall apply to any right of occupancy granted under the Land Act <sup>4</sup> to any land subject thereto, other than a right of occupancy granted before the appointed day over land held at the time of such grant for an estate of freehold, and the land subject thereto.
- (2) A right of occupancy granted before the appointed day over land held at the time of the grant for an estate of freehold, and a term created out of such right of occupancy shall be deemed to be a "derivative lease" and an "interest" for the purposes of this Act.

## Part II – Conversion of estates and interests (ss. 4-15)

### 4. Interpretation of Part II

In this Part, unless the context otherwise requires—

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"**derivative lease**" means a lease or a sublease granted before the appointed day over land which, by virtue of the provisions of section 5, becomes vested in any person for a Government lease, other than any such lease or sublease which expires or is otherwise determined before that day;

"**interest**" means any estate, term, interest, charge, lien, right, title, equity or other property in or over land or in or over an incorporeal hereditament, whether the same be vested or contingent, legal or equitable, and whether created by statute or grant or acquired by user, and includes the benefit of any covenant which touches and concerns land, but does not include any such interest which expires or is otherwise determined before the appointed day;

"**land**" includes an undivided share of land, but does not include incorporeal hereditaments;

"**possession**" includes the receipt of the rents and profits, and the right to receive the same.

### (a) – Conversion and diminution of interest in real property (ss. 5-9)

#### 5. Conversion of freehold estates into Government leases

- (1) All land, which immediately before the appointed day is vested in any person of full age for an estate of fee simple in possession shall, on the appointed day, vest in such person for an term of ninety-nine years from the appointed day; and thereupon such estate in fee simple shall be extinguished.
- (2) All land, which immediately before the appointed day is settled land within the meaning of the Settled Land Acts, 1882 to 1890<sup>5</sup>, other than land vested in a person of full age for an estate in fee simple in possession, shall, on the appointed day, vest in the trustees of the settlement or, if there are none and until trustees are appointed, in the Public Trustee, for a term of ninety-nine years from the appointed day; and thereupon every legal estate of freehold in the land created by or under the settlement shall cease to subsist at law and shall be converted into equitable interests in the term vested in the trustees or the Public Trustee, as the case may be.

#### 6. Continuance of other interests correspondingly diminished

- (1) The extinguishment, conversion or diminution of any interest in accordance with the provisions of this Act, or of any order of the Court under section 9, shall not destroy or defeat any other interest created or derived from or subsisting against any such first-mentioned interest, or subsisting in or against any land which, prior to the appointed day, was vested in any person for any such first-named interest; but every such other interest shall, according to its nature, title and extent and subject to the rents, services and conditions (if any) on which the same is held and to accrue rights and liabilities—
  - (a) be deemed to have been created or derived from and shall subsist against the converted or diminished interest, or shall subsist in or against the land held for such converted or diminished interest, as the case may be; and
  - (b) be itself converted and diminished to the extent, if any, necessitated by any conversion or diminution of the interest out of which it is deemed to have been created or derived or against which it subsists, and to the extent expressly provided in this Act or by order of the Court under section 9,

unless it is itself expressly extinguished by this Act or by an order of the Court under section 9:

Provided that nothing in this section shall be construed as varying *inter se* the respective interests of persons beneficially entitled in succession under any settlement or trust to any converted or diminished interest.

- (2) For the avoidance of doubts it is hereby declared that—
- (a) no interest granted or subsisting before the appointed day shall be destroyed or defeated for the reason that, apart from the provisions of this paragraph, it is only capable of being created out of, or subsisting as or against, or being appurtenant to, a freehold estate or of being enjoyed or created by or subsisting against a person in whom an estate of inheritance is vested, and that the relevant freehold estate or estate of inheritance is hereby converted to an interest or less than freehold; and
  - (b) subject to the proviso to subsection (1) of this section, the conversion of an interest under this section shall extend to the conversion of estates of inheritance or perpetual interests, or interests equivalent to such estates, into interests for terms of years.

## 7. Derivative leases

- (1) Where—
- (a) on the appointed day, the unexpired term of any derivative lease equals or is less than the statutory term, the term of that lease shall remain unchanged;
  - (b) on the appointed day, the unexpired term of any derivative lease exceeds the statutory term, the term of that lease shall be diminished to the statutory term;
  - (c) the term of any derivative lease granted before and to commence after the appointed day, together with the period between the appointed day and the day on which the lease is to commence, exceeds the statutory term, the term of that lease shall be diminished to the statutory term less such period;
  - (d) on the appointed day, land is vested in any person for a derivative lease for a life or lives, at a rent or fine, the lease shall unless sooner determined, determine at the expiration of the statutory term.
- (2) Where any derivative lease which is renewable either perpetually or for a term or terms is renewed on or after the appointed day for a term which, together with the period which has elapsed since the appointed day, would exceed the statutory term, the renewal shall have effect only for a term (if any) equal to the difference between the statutory term and such period; and any right to renew such lease after the expiration of the statutory term is hereby extinguished.
- (3) Subject to the provisions of section 8, in this section and in section 12, "statutory term" means a term equal to the term of the Government lease for which the land is held less the last ten days:

Provided that in the case of derivative lease which is—

- (a) a lease of the grantor's reversion, and, by reason of the provisions of this section such lease would expire unless sooner determined, on the same date as the expiration of a derivative lease on which such first-mentioned lease is immediately expectant, the statutory term of the former shall be one day longer than the statutory term of the latter or one day shorter than the term of the grantor or his successor in title, whichever is the less;
- (b) itself created out of a derivative lease (not being a lease of the grantor's reversion), the "statutory term" means a term one day less than the term (as determined in accordance with the provisions of this section) of the lease out of which it is created.

## 8. Effect of renewal of Government leases

- (1) Where any Government lease is renewed in accordance with the provisions of this Act—
- (a) the statutory term in relation to any derivative lease which—
    - (i) but for the provisions of paragraph (b) of subsection (1) of section 6, or of section 7, would have been subsisting on the date of renewal; and



- (ii) has not otherwise determined prior to the date of renewal,  
shall be deemed to have been the aggregate of the term of Government lease and any such renewal or renewals, less the last ten days;
- (b) the provisions of subsection (1) of section 6 shall have effect in relation to any other interest, which—
  - (i) but for the provisions of paragraph (b) would have been subsisting on the date of renewal; and
  - (ii) has not otherwise determined prior to the date of renewal,  
as if the term of the Government lease to which the relevant land is subject had been the aggregate of the original term and of any such renewal or renewals.
- (2) The provisions of this section in relation to any interest shall have effect subject to any agreement made after the appointed day.
- (3) In this section "renewal" includes a grant of Government lease under section 16 on a surrender for the purposes of a re-grant.

## 9. Settled land and rent charges

- (1) Any person entitled to any beneficial interest, whether legal or equitable or vested on contingent, created by or under a settlement within the meaning of the Settled Land Acts, 1882 to 1890 (not being an interest in any property held on trust for sale) may apply to the Court for an order varying the limitations or trusts of the settlement, or revoking the same and substituting new limitations or trusts.
- (2) If, on any such application, the Court is satisfied that, by reason of the conversion or diminution by or under this Act of any interest in land which is subject to or created by the settlement, or of any change in the relative values of the beneficial interests created by or under the settlement, it is just and equitable that fresh provision be made in order to give effect to the intentions of the settlement or to re-define the several beneficial interests, it may vary the limitations or trusts of the settlement or revoke the same and substitute new limitations or trusts.
- (3) Without prejudice to the generality of the jurisdiction conferred by subsection (2), the Court may, on an application under this section—
  - (a) vest the settled land in the trustees of the settlement or other trustees on trust for sale, either with or without a power of postponement, free from the limitations and trusts of the settlement, but subject to trusts of the proceeds of sale;
  - (b) make provision for the redemption of any legal or equitable rent charge, notwithstanding that it was not created by or under the settlement;
  - (c) create limitations or trusts corresponding to the limitations or trusts subsisting in the settled land immediately before the appointed day, notwithstanding that, apart from this section, the interest created is not an interest which may be created in a term of years;
  - (d) convert legal interests into equitable interests;
  - (e) bar any entail, other than an entail vested in a tenant after possibility of issue extinct, or convert any entail vested in any such tenant into a life estate;
  - (f) in any case in which it is satisfied that a determinable fee vested in a natural person is unlikely to determine during the lifetime of any person in existence entitled to the reversion, or that a right of entry which arises on the breach of any condition subject to which an estate of inheritance was granted to a natural person is unlikely to be exercisable during the lifetime of any person in existence entitled to exercise the same, or in any case in which it

vests land subject to a determinable or conditional fee in trustees for sale, extinguish such possibility of reverter or right of entry;

- (g) confer on trustees or on the tenant for life such powers of management, advancement and maintenance as in the circumstances are desirable.
- (4) An order of the Court under this section shall have effect as a settlement or grant to trustees of the relevant interest by the settlor, and shall operate to extinguish, in addition to every interest expressly extinguished, the interest of any person under any limitation or trust which is varied or revoked which exceeds the interest of such person under the limitations or trusts as so varied or substituted.
- (5) The vesting of any interest in trustees for sale by an order under this section shall not affect any priority as between competing interests acquired before the date of the order.

### **(b) – Consequential provisions (ss. 10-14)**

#### **10. Trustees may retain converted interests**

- (1) A trustee—
  - (a) in whom a Government lease is vested by this Act shall not be liable for breach of trust by reason only of his continuing to hold the same, notwithstanding any prohibition against investment in a term of years, or any direction to realise terms of years, contained in a trust instrument or will made before the appointed day;
  - (b) shall not be liable for breach of trust by reason only of his continuing to hold any other interest converted or diminished in accordance with the provisions of this Act, notwithstanding any prohibition, contained in a trust instrument or will be made before the appointed day, against holding the same or investing in any interest on which such first-mentioned interest is charged.
- (2) The provisions of this section shall be in addition to the provisions of section 4 of the Trustee Act, 1893, Amendment Act, 1894<sup>6</sup>.

#### **11. Description of property as real property, and equitable conversion**

- (1) Where in any written law, instrument, contract or will made before the appointed day property is described by reference to its real nature (whether or not that term is used expressly), or a distinction is made between real and personal property, and the devolution of such property under such written law, instrument, contract or will after that day is dependent on such description or distinction, then, for the purposes of the identification and devolution of the property, a Government lease shall be deemed to be real property.
- (2) Where in any written law, instrument, contract or will made before the appointed day trustees are directed to expend money on the purchase of real property (whether or not that term is used expressly), and to hold the same on trust for, or to convey the same to any person, and such purchase has not been made before the appointed day, the same may be expended on the purchase of a Government lease, or of any investments authorised or by the general law, but the identification of the beneficiaries or grantee shall be determined as if this Act had not been passed.

## 12. Contracts

No contract made before the appointed day—

- (a) for the grant of any freehold estate by the Republic or the President, shall become void or voidable by reason of the provisions of section 62; but every such contract shall be construed as a contract for the grant of a Government lease:

Provided that every person who claims that he is entitled under such a contract to a grant of a Government lease under this paragraph shall give notice of his claim to the Commissioner within six months after the appointed day, and, if any such person fails to do so, such contract shall be void and notwithstanding the provisions of the Law of Contract Act<sup>7</sup>, any sums paid shall be irrecoverable;

- (b) for the disposition of any freehold estate, shall become void or voidable by reason of the conversion of such estate into a term of years or of a legal estate into an equitable interest, or by any other diminution, by or under the provisions of this Act; but every such contract shall be construed as if it were a contract for the term or interest into which the estate is converted or for the diminished interest, as the case may be;
- (c) for the disposition of any other interest, shall become void or voidable by reason of the conversion or diminution in accordance with the provisions of this Act of such interest or of the conversion or diminution in accordance with the provisions of this Act of any other interest out of which such first-mentioned interest is to be created; but every such contract shall be construed as if it were a contract for such first-mentioned interest as so converted or diminished, or as if such first-mentioned interest were to be created out of such other interest as so converted or diminished, as the case may be:

Provided that a contract for a lease for a term greater than the term vested in the proposed grantor on the appointed day shall be construed as a contract for a lease for the unexpired term vested in the grantor on the appointed day less the last day.

## 13. Claims not defeasible by absence of freehold estates

No claim by prescription or user to any incorporeal hereditament made on or after the appointed day, whether the enjoyment or user by reason of which the claim is made commenced before, on or after the appointed day, shall be defeated on the ground that there is no freehold or absolute estate in the dominant or servient tenement, but where in accordance with the law in force immediately prior to the appointed day any such claim lay in favour of an estate of inheritance in a dominant tenement as against an estate of inheritance in a servient tenement, then on and after the appointed day such claim may be made in favour of the Government lease in a dominant tenement against the Government lease in servient tenement.

## 14. No new entails in personality

For the avoidance of doubts it is hereby declared that a purported disposition of property (other than a limitation under an order of the court made under section 9) made on or after the appointed day for an entitled interest shall have effect as if it included a disposition of the reversion expectant on such entailed interest vested in the grantor immediately before the disposition:

Provided that nothing in this section shall apply to any disposition of an interest which subsists immediately before the appointed day as an entailed estate or interest, or to any entailed interest created by an order of the court made under section 9.

**(c) – Final determination of interests (s. 15)****15. Final determination of interests**

For the avoidance of doubts it is declared that, notwithstanding the provisions of this Act or any disposition made on or after the appointed day, every interest in or over land, or in any incorporeal hereditament in or covenant touching or concerning land, which is vested in any person for a Government lease, other than the reversionary interest of the Republic or the President, shall, unless it has previously been determined, determine and be extinguished at the expiration of ninety-nine years from the appointed day, or in the event of the relevant Government lease being renewed, at the expiration of the period or periods for which it is renewed:

Provided that nothing in this section shall apply to—

- (a) the interests specified in subsection (1) of section 66;
- (b) the interest of any person in compensation payable for unexhausted improvements under section 24; or
- (c) any right of action which accrued prior to the land ceasing to be held for a Government lease, or to any liability of a person formerly entitled to any interest.

**Part III – Government leases (ss. 16-36)****(a) – Grants and renewals (s. 16)****16. Grants and renewals**

- (1) The Commissioner may, on behalf of the Republic—
  - (a) renew any Government lease;
  - (b) where any Government lease is surrendered for the purpose of accepting a new Government lease over the same land, grant a Government lease over such land; or
  - (c) where, immediately before the appointed day, any person is entitled by virtue of any provision in a lease granted under the former German law, or under any undertaking of the Government or any former Government in pursuance of any such provision, to a grant of a freehold estate in any land grant such person or his personal representatives a Government lease over such land:

Provided that where a grant is made under paragraph (c) of this subsection, the initial term shall be ninety-nine years less the period which has expired since the appointed day.

- (2) The term of every renewal or re-grant made by the Commissioner under this section shall commence on the expiry or surrender, as the case may be, of the immediately preceding term.
- (3) Where the tenant does not seek a renewal of a Government lease, the Commissioner may, in the case of any sublease or mortgage to which section 27 applies, renew the lease to the sublessee or mortgagee.

**(b) – Terms and conditions of Government leases (ss. 17-26)****17. General conditions**

- (1) Subject to the provisions of this Act, the tenant shall hold the leased land of the Republic—
  - (a) without impeachment for waste, other than equitable waste:  
Provided that this paragraph shall have effect subject to section 23;
  - (b) at a rent per annum calculated in accordance with the provisions of Part I of the First Schedule to this Act:  
Provided that the Commissioner shall waive the rent of land held for a Government lease which is used exclusively for the purposes of public worship or for burial or exclusively both for public worship and for burial, or where part only of such land is so used, such part of such rent as is attributable to such part of such land; and
  - (c) subject to the condition that the tenant shall pay such road frontage premium as may be charged in respect of the leased land in accordance with the provisions of Part II of the First Schedule; and
  - (d) subject to the rights reserved to the grantor, and to the restrictions contained (if any) in the relevant grant of the freehold estate for which the land was held immediately before the appointed day.
- (2) The relationship of landlord and tenant between the Republic and the tenant shall not imply any covenant for quiet enjoyment by the Republic in respect of the acts of any person claiming any interest in land from or under the Republic or the President, nor shall the provisions of section 7 of the Conveyancing and Law of Property Act, 1881<sup>8</sup>, apply in relation to any grant or renewal made under section 16.
- (3) Notwithstanding the registration, under the Land Registration Act<sup>9</sup>, of any freehold estate or Government lease, the provisions of section 58 of that Act shall not apply to a Government lease.
- (4) For the avoidance of doubts, it is declared that rights reserved to the grantor, and restrictions, contained in the grant of the freehold estate for which land was held immediately before the appointed day shall be enforceable according to their tenor by the Republic against the tenant of the Government lease to which such land is subject notwithstanding any rule of law against perpetuities or against exceptions in grants:  
Provided that nothing in this section shall apply to any such right or restriction expressed to be exercisable or operative for a limited period, after the expiry of that period.

**18. Rent**

- (1) Rent for a Government lease shall be due and payable without demand annually in advance—
  - (a) in the year 1963, within three months after the appointed day, and thereafter, on the anniversary of the appointed day; or

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- (b) in the case of a Government lease granted under section 16, on the date specified in the grant,
- and shall be paid to the Commissioner or to such person as he shall direct.
- (2) Notwithstanding the provisions of paragraph (c) of subsection (1) of section 26, a Government lease shall not be liable to forfeiture on the grounds of non-payment of part only of the rent without formal demand for the residue, unless the sum paid as rent by the tenant is less than the sum paid by him as rent for a previous year.
  - (3) The acceptance of any sum by or on behalf of the Commissioner as rent for a Government lease, or a receipt, shall not—
    - (a) constitute an admission by or on behalf of the Republic that such sum is the sum due as rent for such lease, or estop the Republic from claiming any greater sum; or
    - (b) operate as a waiver by or on behalf of the Republic of any forfeiture accruing by reason of the breach of any obligation, condition, covenant or restriction.
  - (4) Directions under subsection (1) may be given by notice in the *Gazette* or by service on the tenant.

## 19. Summary proceedings for recovery of rent

- (1) Subject to the provisions of this section but without prejudice to any other remedy for the recovery of rent, where any person who is liable for rent for a Government lease fails to pay such rent or any instalment by the due date, an Internal Revenue Officer may serve or cause to be served on such person at his ordinary place of residence or business a written demand calling upon such person to pay such rent or instalment within fourteen days of the service of the demand and, if at the expiration of such period of fourteen days the rent or instalment has not been paid, the Internal Revenue Officer may apply *ex parte* to a civil magistrate having jurisdiction within the area in which the Government Lease or any part is situate for a summary warrant in the form set out in the Fifth Schedule.
- (2) An application under this section shall be accompanied by—
  - (a) a copy of the demand containing a certificate by the person who served the same stating the time and place of service and the person on whom it was served; and
  - (b) a certificate by the Internal Revenue Officer of the amount due and owing,and upon production such civil magistrate aforesaid shall have jurisdiction to grant such summary warrant; and every such warrant shall contain every authority and be executed in all respects as though it were both a warrant of attachment and a warrant of sale issued out of the court of such magistrate.
- (3) Nothing in this section shall apply to any case where the annual rent of the Government Lease exceeds two hundred shillings.
- (4) In this section "authorised officer" means the Commissioner for Lands and such other person as he may appoint in writing in that behalf.

[s. 18A]

## 20. Road frontage premium

A tenant shall not be liable to pay any road frontage premium unless the Commissioner has first served upon him a notice specifying the amount of the road frontage premium required to be paid by him.

[s. 18B]

## 21. Dealings with Government leases

- (1) A disposition of a Government lease shall not be operative without the consent of the Commissioner.
- (2) In this section, "a disposition" means—
  - (a) an assignment, sublease, mortgage or settlement of the term whether in the whole leased land or a part of the land, other than—
    - (i) any transaction in pursuance of a contract made before the tenth day of April, 1963; or
    - (ii) a sublease—
      - (A) for a term of five years or less, unless such sublease contains an option whereby the sublessee can require the tenant to grant him a further term or terms which, together with the original term, exceed five years; or
      - (B) from year to year or for periods of less than a year whether or not the lease includes an initial fixed term, unless such initial fixed term exceeds four years; or
    - (iii) a re-assignment or surrender by a mortgagee to the person entitled to the equity of redemption or the reversion immediately expectant on the mortgage term, as the case may be;
  - (b) a partition;
  - (c) a vesting declaration;
  - (d) a deed or arrangement or declaration of trust binding any party to make any such disposition, including a deed or agreement entitling a party to require any disposition to be made,but does not include—
  - (i) an assent by personal representatives; or
  - (ii) a sale by a mortgagee under any express or statutory power, or under an order of the court; or
  - (iii) an assignment under a foreclosure order; or
  - (iv) a sale in execution of a decree under an order of the court.

[s. 19]

## 22. Disposition without consent to be void

- (1) Where the Commissioner fails to give his consent to any disposition to which section 21 applies within six months after it is sought, or refuses his consent, the transaction shall become void.

[s. 20]

## 23. Development requirements

Where development requirements are annexed under this Act to leased land, there shall be implied in the Government lease for which such land is held covenants by the tenant with the Republic, binding the tenant—

- (a) to comply with such requirements within the time (if any) limited; and

- (b) to permit the Commissioner and any person authorised by him to enter upon the leased land at any reasonable time and to inspect the same in order to ascertain if the tenant is complying with such requirements.

[s. 21]

## 24. Unexhausted improvements

- (1) Where—

- (a) after the expiration of a Government lease; or
- (b) after the prior determination of a Government lease, otherwise than on a forfeiture for failure to comply with the covenant implied by paragraph (a) of section 23,

a right of occupancy is granted under the Land Act over the former leased land or any part to any person other than the former tenant, the former tenant shall be entitled to obtain from the grantee of the right of occupancy the value of any unexhausted improvements existing on the land or part on the date of such grantee's entering into occupation.

- (2) Where a Government lease is forfeited for failure to comply with the covenant implied by paragraph (a) of section 23, the Commissioner shall cause the unexhausted improvements existing on the former leased land to be valued, and the land shall forthwith thereafter be advertised for disposal for a right of occupancy on the following conditions—

- (a) the term of the right of occupancy shall be a term not less than the unexpired term of the Government lease immediately before the forfeiture;
- (b) the rent for the land shall not exceed the rent currently reserved in rights of occupancy for unimproved land of a similar description and extent;
- (c) the land shall be advertised for disposal at a reserved premium equal to the assessed value of the unexhausted improvements and tenders shall be invited for the enhancement of the premium;
- (d) the remaining conditions of the right of occupancy shall not be more onerous than the terms, conditions and covenants subject to which the former leased land was held immediately prior to its forfeiture.

- (3) Where—

- (a) tenders are received for a right of occupancy within six months of the same being first advertised under subsection (2), the tenders shall be published and the Commissioner shall, on receipt of the premium from the person to whom a right of occupancy over the land is granted (or in the event of his default, any damages recovered in respect of such premium), whether or not such person tendered the highest premium, pay to the former tenant a sum equal to the highest premium tendered;
- (b) no tenders for a right of occupancy advertised under subsection (2) are received within six months of the first advertisement, the provisions of subsection (1) of this section shall apply as if the Government lease had been forfeited otherwise than for failure to comply with the covenant implied by paragraph (a) of section 23.

- (4) Where a right of occupancy is granted over land which was formerly held for a Government lease otherwise than to a person whose tender is accepted under paragraph (a) of subsection (3) of this section, the provisions of paragraph (b) of section 14 of the Land Act shall have effect as if such provisions were contained in the contract for the relevant right of occupancy and as if the reference to the previous occupier included a reference to the former tenant.

- (5) Any dispute as to the value of unexhausted improvements existing on former leased land shall be settled by the Land Tribunal on the application of a party.



- (6) Nothing in subsections (1) to (4) inclusive of this section shall apply in any case where a Government lease which is forfeited is vested in any other person under the provisions of section 4 of the Conveyancing and Law of Property Act, 1892<sup>10</sup>, and section 31 of this Act.

[s. 22]

## 25. Removal of fixtures

- (1) Notwithstanding the forfeiture, surrender or other termination of a Government lease, the former tenant may, within a period of three months, enter upon the former leased land and sever and remove any fixture which he might have severed and removed prior to the termination of the lease.
- (2) The tenant or, if the application is made within one month of the termination of a Government lease, the former tenant, may apply to the Court for a declaration that any fixture on the leased land shall be deemed to be a fixture of a kind which a tenant may sever and remove, and if the Court is satisfied that the application is made in respect of a fixture which was annexed to the land by the tenant or former tenant, or by any predecessor in title being of kin to the tenant or former tenant, and that the fixture possesses a special value for the tenant or former tenant or his kin, it may declare the same to be of a kind which a tenant may sever and remove, and, if the application is made after the termination of the lease, may extend the time within which the former tenant may enter upon the former leased land and sever and remove the same. The Commissioner shall be made a party to every application under this subsection.
- (3) Where any person severs or removes a fixture in pursuance of a declaration under this section, he shall repair any damage caused by such severance or removal (such repair to include, where it is necessary to prevent any damage to any building or other structure or to the land, the replacement of the fixture by a new fixture of a similar nature) and, if he does not do so, the Commissioner may make such repairs and recover the cost from such person.

[s. 23]

## 26. Forfeiture

- (1) There shall be implied in every Government lease a condition that if—
- (a) the tenant fails, on demand made and after any relevant conditions precedent to be complied with by the Republic or the President have been complied with by or on behalf of the Republic, to grant or surrender to the Republic any rights reserved to the grantor in the relevant grant of the freehold estate for which the leased land was held immediately before the appointed day, or if the tenant contravenes any restrictions contained in such grant; or
  - (b) the tenant fails to comply with or breaks the covenants implied in the lease by section 23; or
  - (c) the rent or any part of it remains unpaid for three months after becoming payable (whether formally demanded or not); or
  - (d) where a notice requiring payment of a road frontage premium has been served upon the tenant under the provisions of section 20, such premium or any part of it remains unpaid for six months after the notice has been so served upon the tenant; or
  - (e) the tenant fails to pay the rates and taxes or other dues imposed on the land within three months of the same becoming payable,

the Commissioner may, on behalf of the Republic, by certificate under his hand, forfeit the lease, and thereupon, subject to the provisions of this Act, the Government lease shall determine:

Provided that the Commissioner shall not forfeit a Government lease

- (a) unless he has first served notice on the tenant specifying the default and, if it is capable of being remedied, requiring the tenant to remedy the same, and the tenant fails, within a reasonable time, to remedy the default; and
  - (b) unless he has first published in the *Gazette* a notice of his intention to forfeit the lease and not less than twenty-eight days have expired after the first publication; and
  - (c) in any case in which application for relief under section 31 has been received by the Land Tribunal before the expiration of such period of twenty-eight days, until after the determination or withdrawal of such application.
- (2) Subject to the provisions of this Act, the Commissioner may include in any notice under subsection (1) a claim for compensation for the default for which he seeks to forfeit the lease.
  - (3) The tenant shall, with all convenient speed, inform every person who holds the leased land or any part thereof of him for a sublease, and every mortgagee of the Government lease, of every notice served on him under subsection (1) and every sublessee and mortgagee shall, with all convenient speed, inform the persons claiming immediately under them of such information.
  - (4) Nothing in this section shall be construed as precluding the Commissioner, on behalf of the Republic, from forfeiting, subject to the proviso to subsection (1), any Government lease on any other ground authorised by any other written law.

[s. 24]

### (c) – Subleases and mortgages (ss. 27-30)

#### 27. Implied covenant by sublessor and mortgagor

- (1) There shall be implied—
  - (a) in every sublease to which this section applies, a covenant by the sublessor with the sublessee, binding the sublessor;
  - (b) in every mortgage to which this section applies, a covenant by the borrower with the mortgagee binding the borrower,

to inform the sublessee or mortgagee, as the case may be, not later than six months before the expiry of the relevant Government lease whether or not he proposes to apply to the Commissioner for a renewal, and if he does not and the sublessee or mortgagee, as the case may be, so requests, to apply forthwith to the Commissioner to renew the lease to the sublessee or mortgagee, as the case may be.

- (2) This section applies—
  - (a) to a sublease of leased land which—
    - (i) on the appointed day is held directly by the tenant; and
    - (ii) is the derivative lease to which subparagraph (i) of paragraph (a) of subsection (1) of section 8 of this Act applies, which has not determined prior to six months before the expiration of the relevant Government lease;
  - (b) to a mortgage which—
    - (i) on the appointed day is a mortgage of a Government lease;
    - (ii) is an interest to which subparagraph (i) of paragraph (b) of subsection (1) of section 8 of this Act applies, which has not determined prior to six months before the expiration of the relevant Government lease.

- (3) In this section "derivative lease" and "interest" have the meanings respectively ascribed to those expressions in section 4.

[s. 25]

## 28. Covenants in subleases granted before annexure of development requirements

- (1) There shall be implied in every sublease granted before the date on which any development requirements are annexed to any leased land held for such sublease, a covenant by the sublessee with the sublessor binding the sublessee to comply with the development requirements in so far as they affect the land held for such sublease, and any express term or condition of any such sublease shall, after the annexure of any development requirements to such land, have effect only to the extent that it is not inconsistent with the development requirements.
- (2) Where any sublease to which subsection (1) of this section applies contains any covenant or condition (whether express or implied) whereby the sublessee is required to permit the sublessor or any other person to enter, in case of default, upon the land held for such sublease in order to effect any development or improvements prescribed in the sublease to be effected by the sublessee or to make good any defect or breach of covenant, such covenant or condition shall be deemed to include the like covenant or condition in the case of any default by the sublessee in complying with the development requirements annexed to such land.
- (3) Where the covenant specified in subsection (1) of this section is, in accordance with the provisions of that subsection, implied in any sublease which was granted before the appointed day, and the covenants and conditions of the sublease to be performed by the sublessee become substantially more onerous than the terms and conditions which would have been obtained had this Act not been passed, the sublessee may disclaim the sublease and upon the registration of the disclaimer under the Land Registration Act <sup>11</sup> or the Registration of Documents Act <sup>12</sup>, as the case may require, the sublease shall be deemed to have been surrendered:

Provided that nothing in this section shall entitle a mortgagee to whom the sublease has been assigned to disclaim a sublease unless either the equity of redemption of the mortgagor has been foreclosed or the person entitled to the equity of redemption consents thereto.

[s. 26]

## 29. Covenants in mortgages

- (1) There shall be implied in every mortgage made before the appointed day, which on that day becomes a mortgage of a Government lease, covenants by the borrower with the mortgagee binding the borrower—
- (a) to pay the rent for the Government lease and to comply with the terms and conditions on which the borrower holds the land, and to keep the mortgagee effectually indemnified against any damage or loss whatsoever in respect of any breach;
- (b) in case of default by the borrower in complying with any development requirement annexed to the leased land, to permit the mortgagee to enter upon the land and to effect such developments and improvements as may be necessary to ensure that the development requirements are complied with (the mortgagee exercising his own discretion as between alternative developments or improvements permitted by the development requirements), and to repay the mortgagee every sum expended by the mortgagee on such developments

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and improvements with interest at the same rate as is payable on the principal sum secured by the mortgage,

and every sum so expended by the mortgagee and the interest shall be a charge on the mortgaged property.

- (2) Where any mortgage made before the appointed day other than a mortgage specified in subsection (1) of this section contains any covenant or condition (whether express or implied) whereby the borrower is required to permit the mortgagee or any other person to enter, in case of default, on land held for the interest mortgaged in order to repair or make good any damage or breach of covenant, such covenant or condition shall be deemed to include the like covenant or condition in the case of any default by the borrower in complying with any covenant implied in such interest by section 28.
- (3) Where, prior to the appointed day, any money was advanced on the security of any estate of freehold without any personal covenant for repayment, there shall on and after that day be implied in the transaction a personal covenant by the borrower, with the lender, binding the borrower and his legal personal representatives to repay such money, with the interest (if any) then stipulated, if such security is, by reason of the conversion or diminution in accordance with the provisions of Part II of this Act, insufficient to discharge such debt and interest or if the security is forfeited in accordance with the provisions of this Part.

### 30. Agreements

The provisions of sections 27, 28 and 29 shall be in addition to any other law whereby covenants are implied in leases or mortgages and shall have effect subject to any agreement made after the appointed day.

[s. 28]

### (d) – Relief against forfeiture (s. 31)

### 31. Relief

- (1) Notwithstanding that a Government lease is held of the Republic, or the reversionary interest of the Republic or the President in any land held for a Government lease, the Land Tribunal may grant to the tenant or persons claiming under him the like relief against the forfeiture of a Government lease as is available to any other lessee or the person claiming under him respectively, and the Land Tribunal shall have such jurisdiction in that behalf as is vested by written law and otherwise in the High Court; and the Land Tribunal may grant relief in accordance with any written law notwithstanding that the Commissioner is proceeding to forfeit, or has forfeited, the Government lease for breach of an obligation, covenant, condition or restriction to which the relevant lease or sublease or the tenant or sublessee, is subject in accordance with this Act.
- (2) The provisions of section 211 and 212 of the Common Law Procedure Act, 1852<sup>15</sup>, of section 14 of the Conveyancing and Law of Property Act, 1881, of section 4 of the Conveyancing and Law of Property Act, 1892, and of section 57 of the Land Registration Act, shall have effect in relation to the jurisdiction conferred on the Land Tribunal by this section as if the references to the Court having jurisdiction to grant or refuse relief were references to the Land Tribunal and the provisions of the general law shall have effect *mutatis mutandis* in relation to such jurisdiction.
- (3) Notwithstanding the provisions of subsection (1) of section 14 of the Conveyancing and Law of Property Act, 1881, or section 4 of the Conveyancing and Law of Property Act, 1892, the Commissioner shall not be entitled to claim any compensation for any breach of a covenant to comply with development requirements, other than the requirements specified in section 45.

- (4) The conditions upon which an order may be under section 4 of the Conveyancing and Law of Property Act, 1892, and this section shall extend, in any case in which the Land Tribunal thinks it just and equitable, to the payment to the tenant by the person in whom the lease is to be vested, of the value of the unexhausted improvements on the leased land, or of an apportioned part of it.
- (5) The High Court shall have no jurisdiction to grant relief against the forfeiture of a Government lease.

[s. 29]

### (e) – Miscellaneous (ss. 32-36)

#### 32. The Republic as landlord

Subject to the provisions of this Act, the Republic as landlord of any leased land shall have and enjoy all the same rights as, but for the passing of this Act, would have been enjoyed by a person seized in fee simple in possession of land who had granted a lease on the same terms and conditions as those for which the leased land is held:

Provided that nothing in this section shall be construed as derogating from the provisions of subsection (1) of section of the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions) Act <sup>14</sup>.

[s. 30]

#### 33. Commissioner to exercise functions on behalf of Republic

- (1) In addition to the powers and functions expressly conferred on him by this Act, the Commissioner may exercise and perform on behalf of the Republic all the rights, powers, functions and obligations of the Republic as landlord of, or in relation to the interest of the Republic or the President in or over, any leased land.
- (2) Notwithstanding the provisions of section 2 of the Government Proceedings Act <sup>15</sup>, suits and other proceedings by or against the Republic relating to any leased land or to the interest of the Republic or the President in or over the same shall be instituted by or against the Commissioner.
- (3) The provisions of subsection (1) of this section shall not be construed as precluding the President from exercising or performing any power, function or duty which he has power to exercise or perform under subsection (1) of section 7 of the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions) Act <sup>16</sup>.

[s. 31]

#### 34. Assignee of Government lease entitled to call for certain title

Notwithstanding the provisions of any law whereby an intended assignee of a term of years shall not be entitled to call for the title to the freehold, the intended assignee of a Government lease (not being a lease granted under section 16) may call for the title under which the tenant or his predecessor in title held the leased land immediately before the appointed day:

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Provided that where the leased land is registered under the Land Registration Act after the appointed day, the intended assignee shall not be entitled to call for any title other than the registered title.

[s. 32]

### 35. Taxes, rates and charges

- (1) Where under the provisions of any written law enacted or made before the date on which this Act is enacted, the liability for any tax, rate or other imposition, or for any charge, is imposed, chargeable, or subsists, either primarily or in default of some other person or interest primarily liable—
  - (a) on the person who holds land for an estate of freehold or against land held for an estate of freehold; or
  - (b) on the person who receives or is entitled to receive the rack rent of any premises or land, or who would be entitled to receive the rack rent if the premises or land were let a rack rent, or against such person's interest in the premises or land,

such law shall, in respect of any period commencing, or time, on or after the appointed day, be read and construed in relation to leased land as if such liability were imposed and chargeable on the person in whom the leased land is vested for a Government lease, or subsisted against the leased land, as the case may be, and no liability shall adhere to the Republic, or to the land after it ceases to be held for a Government lease.

- (2) Where under the provisions of any written law enacted or made before the date on which this Act is enacted, the liability for any tax, rate or other imposition, or for any charge, is imposed, chargeable or subsists, either primarily or in default of some other person or interest primarily liable, on a person who holds a head lease of or over land or against such person's interest in the land, such law shall, in respect of any period commencing, or time, on or after the appointed day, be read and construed in relation to leased land as if such liability were imposed and chargeable on the person who holds a sublease of the land direct of the tenant of the leased land, or the interest of such sublessee in the leased land, as the case may be.
- (3) Where the amount of any tax, rate or other imposition, or of any charge, is determined by reference to a valuation of a freehold estate in any property prepared before the appointed day under any written law, such valuation shall not be varied or reduced so long as it is in force under such law by reason only of the extinguishment by this Act of the freehold estate in the land or the conversion of the interest of the owner of the former freehold estate into a Government lease.

[s. 33]

### 36. Variation of Government leases

Nothing in this Act shall preclude the Commissioner and a tenant (not being a mortgagee) from entering into a deed of variation altering, adding to or deleting the terms and conditions on which a Government lease is held.

[s. 34]

## Part IV – Development requirements (ss. 37-50)

### 37. Interpretation of Part IV

In this Part, unless the context otherwise requires—

"urban area" means—

- (a) a municipality established under the Local Government (Urban Authorities) Act <sup>17</sup>;

- (b) a township within the meaning of that expression in the Local Government (District Authorities) Act <sup>18</sup>;
- (c) a planning area declared as such under section 13 of the Town and Country Planning Act <sup>19</sup> being a planning area which includes any of the places or areas described in paragraphs (a), or (b) or any part thereof;

"**urban holding**" means leased land situated within an urban area;

"**large rural holding**" means leased land, not being an urban holding, exceeding one hundred and twenty acres in area;

"**small rural holding**" means leased land, not being an urban holding, of one hundred and twenty acres or less in area;

"**local government authority**" means the city council, municipal council, town council, township authority or district council within whose area of jurisdiction the leased land lies or, where the leased land lies within the area of jurisdiction of two or more such authorities, means that one of them which the Commissioner shall appoint.

[s. 35]

### (a) – Annexure of development requirements (ss. 38-46)

#### 38. \*\*\*

*[Repealed by Act No. 48 of 1964 s. 3]*

[s. 36]

#### 39. Urban holdings

The Minister may, on the recommendation of the local government authority or on his own motion after consultation with the Minister responsible for local government, declare any urban area or any part of it to be ripe for development—

- (a) as a whole forthwith; or
- (b) on specified dates in accordance with a programme of development for such urban area or part of it as may be specified in the declaration,

and where any such declaration is made, the Commissioner may annex such development requirements to any urban holding situated in the urban area or that part of the urban area to which the declaration relates, as the case may be, as, having regard to the requirements of town planning, he would have included as development conditions in a grant, made on the date of annexure, of a right of occupancy over the same land for the unexpired term of the Government lease.

[s. 37]

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#### 40. Large rural holdings

- (1) Where the Minister is satisfied that any large rural holding is capable of development and that further development would be in accordance with good estate management (having regard to the character and situation of the holding and other relevant circumstances), he may declare the holding as ripe for development, and thereupon the Commissioner may annex development requirements to the holding.
- (2) The development requirements which may be annexed to a holding under this section are such of the development conditions as are for the time being prescribed for rights of occupancy by regulations made under the Land Act <sup>20</sup>, or such other requirements as the Commissioner would have included in a grant, made on the date of annexure, of a right of occupancy over the same land for the unexpired term of the Government lease.
- (3) In this section, "relevant circumstances" include all circumstances affecting the management or development of the holding other than the personal circumstances of the tenant or any occupier.

[s. 38]

#### 41. Small rural holdings: Building development

Where the local government authority—

- (a) presents to the Minister that the appropriate development of any small rural holding is development as, or as part of, a building scheme; and
- (b) produces to the Minister a plan of the building scheme laid out in building plots; and
- (c) satisfies the Minister that the demand for buildings within the area of the scheme is such as to require the development of the holding as, or as part of, the scheme,

the Minister may declare such holding as ripe for development as, or as part of, a building scheme, and the Commissioner may annex such development requirements to the holding as he would have included as development conditions in a grant, made on the date of annexure, of a right of occupancy over the same land for the unexpired term of the Government lease for the purposes of development as, or as part of, a building scheme of a similar nature.

[s. 39]

#### 42. Small rural holdings: Other development

- (1) Where, on the recommendation of the local government authority or of his own motion, the Minister is satisfied that any small rural holding is, having regard to all the relevant circumstances including comparison with the development of neighbouring land of a like character, under-developed, and that further development would be in accordance with good estate management (having regard to the character and situation of the holding and other relevant circumstances), he may declare such holding as ripe for development, and the Commissioner may annex such development requirements to the holding as he would have included as development conditions in a grant, made on the date of annexure, of a right of occupancy over the same land for the unexpired term of the Government lease.
- (2) In this section, "relevant circumstances" has the meaning ascribed to that expression in section 40.

[s. 40]



#### 43. Annexure on grant or assignment

Where—

- (a) the Commissioner makes a grant of a Government lease under paragraph (c) of subsection (1) of section 16;
- (b) an application is made to the Commissioner for his consent to a disposition of any leased land to which development conditions have not been annexed,

the Commissioner may, as a condition of making such grant or giving such consent, annex such development requirements to the leased land as he would have included as development conditions in a grant, made on the date of annexure, of a right of occupancy over the same land for the term, or as the case may be, the unexpired term, of the Government lease.

[s. 41]

#### 44. Annexure on applications under sections 47 and 48

Where, on an application made for an order under sections 47 and 48 or for a compulsory purchase order, the Commissioner is of the opinion that alternative development requirements of a kind appropriate to the leased land, and which he is authorised by the provisions of this Part to annex, would provide for the development of such land to a like extent as those already annexed to the land, and that such alternative development requirements are consistent with the continued existence of the interests sought to be modified, extinguished or compulsorily acquired, he may—

- (a) instead of making such order; or
- (b) in the case of any easement, right of way or covenant, in addition to making an order for the modification,

revoke the existing development requirements and annex such alternative development requirements to the leased land.

[s. 42]

#### 45. Continuing requirements

- (1) Where the Commissioner annexes any development conditions to any leased land under the provisions of this Part, he may, in addition, annex further requirements to the leased land—
  - (a) in the case of development requirements whereby the tenant is required to erect any building or other structure, to keep and maintain such building or structure in good and substantial repair and condition during the remainder of the Government lease and any renewal and, in the event of the destruction thereof, to replace the same with a like building or structure of the same value; and
  - (b) in the case of farm or plantation land, to keep and maintain the land in good conditions, to keep the land cultivated, planted or stocked in accordance with the development requirements, and to farm the leased land in accordance with the rules of good husbandry practised in the neighbourhood.
- (2) Where the Commissioner renews a lease or makes a grant under section 16, or consents to a disposition of leased land, and in either case development requirements have not been annexed to the leased land, he may annex requirements to the leased land—
  - (a) where the development of the leased land consists of buildings or structures to keep and maintain such buildings or structures in good and substantial repair and condition during the remainder of the Government lease and any renewal and, in the event of the destruction, to replace the same with like buildings or structures of the same value; and

- (b) in the case of farm or plantation land, to keep and maintain the land in good condition, to keep the land cultivated, planted or stocked, and to farm the same in accordance with the rules of good husbandry practised in the neighbourhood.
- (3) Every requirement annexed to leased land under this section shall be deemed to be a development requirement within the meaning of that expression in this Act.

[s. 43]

#### 46. Notice of annexure of development requirements

- (1) Where the Commissioner annexes any development requirements to any leased land, he shall cause the prescribed notice to be served on the tenant and on the Registrar.
- (2) Where notice is served on the Registrar of Titles under this section, he shall mark the register in the prescribed manner.
- (3) The annexure of development requirements shall have effect on such date as may be specified in the notice, which, except in the case of requirements annexed under section 44 or 45, shall not be less than thirty days after the date of service on the tenant:

Provided that where a declaration is made under section 39, that an area is ripe for development in parts, the annexure of development requirements shall not have effect before the date specified in such declaration as the date on which that part of the area in which the holding to which the requirements are annexed, or any part of it, is situated is ripe for development.

- (4) No proceedings may be instituted by the tenant or any person claiming under him for the forfeiture of a sublease for failure to comply with the covenant implied in such sublease by subsection (1) of section 28, or to permit the tenant or any other person to enter upon the land held for such lease for the purposes described in subsection (2) of section 28, unless a copy of the relevant notice under this section has been served on the sublessee in sufficient time to enable him to comply.

[s. 44]

#### **(b) – Modification and extinguishment of easements, etc., and covenants, and acquisition of certain subleases and profits (ss. 47-50)**

#### 47. Easements, etc., and covenants

- (1) Where, at the time at which development requirements are annexed to any leased land, the land is subject to any easement or right of way or to the burden of any covenant touching or concerning the land, the tenant may apply to the Commissioner for an order for modification or extinguishment, and if the Commissioner is satisfied—
  - (a) that the proper and effective development of the leased land in accordance with the development requirements necessitates the modification or extinguishment of such easement, way or covenant; and
  - (b) in any case in which any person entitled to make representations against the order requests the Commissioner to annex alternative requirements, that any alternative development requirements—
    - (i) of a kind appropriate to the leased land and which he is authorised by this Act to annex; and

- (ii) consistent with the continued existence, or as the case may be, unmodified continuance of the relevant easement, way or covenant,

would not provide for the development of the land to the same extent as those annexed to the land, he may, subject to the provisions of this section, make an order for the modification or extinguishment, as the case may be, of the easement, way or covenant:

Provided that the Commissioner shall not make an order for the extinguishment of an easement of way granted or acquired before the appointed day in any case where such easement is the sole means of access to the dominant tenement.

- (2) The tenant shall serve notice in the prescribed form of the application on the person entitled to the benefit of the easement, way or covenant, or, in the case of a public right of way, on the local government authority.
- (3) Before making an order under this section, the Commissioner shall give the person entitled to the benefit of the easement, way or covenant, an opportunity of making representations in writing or, if such person so requires, in person or by his agent.
- (4) Where an application is made for an order to modify or extinguish any public way under this section, the Commissioner shall give notice of such proposal (at the cost of the applicant) in two consecutive editions of the *Gazette* prescribing the date (not being less than thirty days after the first publication of such notice) before which representations in writing or requests for an oral hearing shall be made; and where such notice is so published no proceedings shall lie by or on behalf of any person claiming to impugn the modification or extinguishment of such public way on the grounds that he was not afforded an opportunity to make representations in accordance with the provisions of subsection (3) unless such person has made a request for an oral hearing within the period prescribed in the notice and the Commissioner has refused or neglected to grant the same.
- (5) Where the Commissioner makes an order under this section—
  - (a) he shall serve a copy thereof on the tenant and the person entitled to the benefit of the easement, way or covenant, as the case may be (or in the case of a public way, on the local government authority); and
  - (b) he shall serve a copy on the Registrar, and the Registrar shall register the same and, in the case of registered land, make such entry in the land register as the circumstances of the case require.
- (6) Every order made under this section shall come into effect on such date, not being less than sixty days after the service of a copy of the order on the person entitled to the benefit of the easement, way or covenant or, as the case may be, the local government authority, as may be specified in the order.

[s. 45]

#### **48. Compulsory acquisition of subleases of parts of leased land, and profits**

- (1) Where, at the time at which development requirements are annexed to any leased land—
  - (a) any part or parts of the land are subleased so that the land is subdivided, and the subdivisions are severally held by two or more sublessees or by the tenant and one or more sublessees; or
  - (b) any person is entitled to a profit in the land,

the tenant may apply to the Commissioner for an order for the compulsory acquisition of such subleases or one or more of them, or of the profit, as the case may be.

- (2) Where, on an application made under this section, the Commissioner is satisfied—
- (a) that the proper and effective development of the leased land in accordance with the development requirements cannot be effected, or will be substantially impeded, on account of such subdivision of the land or the enjoyment of the profit, as the case may be; and
  - (b) in any case in which any person entitled to make representations against the order requests the Commissioner to annex alternative requirements, that any alternative development requirements—
    - (i) of a kind appropriate to the leased land and which he is authorised by this Act to annex; and
    - (ii) consistent with the continued existence of the relevant sublease or profit, would not provide for the development of the land to the same extent as those annexed to the land,he may, subject to the provisions of this section, make a compulsory purchase order for the acquisition of the subleases or any one or more of them, or of the profit, as the case may be.
- (3) The tenant shall serve notice in the prescribed form of the application—
- (a) on every sublessee or person entitled whose sublease or profit he seeks to acquire compulsorily; and
  - (b) on every person having a registered interest under such sublessee or person entitled or whom he knows is eligible, in accordance with the provisions of the Second Schedule, to claim a share in compensation paid on such compulsory acquisition.
- (4) The Commissioner shall not make an order under this section unless—
- (a) he has given an opportunity to make representations in writing or, if such person so requires, in person or by his agent, to the sublessee or person entitled whose sublease or profit is sought to be acquired compulsorily and to every other person who notifies the Commissioner under Head A of the Second Schedule that he wishes to make representations; and
  - (b) he has compiled a compensation list in accordance with the provisions of the Second Schedule.
- (5) Where the Commissioner makes a compulsory purchase order, he shall—
- (a) serve a copy on the tenant, on the sublessee or person entitled to a profit, as the case may be, whose sublease or profit is to be compulsorily acquired, and on every other person whose name appears in the compensation list as a claimant to a share in compensation;
  - (b) serve a copy on the Registrar; and
  - (c) give notice in the *Gazette* of the making of the order.
- (6) A compulsory purchase order shall come into effect on such date, not being less than sixty days after the publication of notice in the *Gazette*, as may be specified in the order, and on such date—
- (a) every sublease specified in such order shall be deemed to have been surrendered to the tenant and all interests of the sublessee and of any person claiming under him shall be determined;

- (b) every profit specified in such order shall be deemed to have been released to the tenant and all interests of the person entitled and of any person claiming under him shall be determined:

Provided that the Commissioner may except, on such terms as he thinks fit and with or without modification, any easement, right of way or covenant touching or concerning the land from determination under this section.

[s. 46]

#### 49. Compensation for compulsory acquisition

- (1) Where a compulsory purchase order is made, the tenant shall pay compensation to the Commissioner for every sublease or profit, as the case may be, acquired compulsorily. All such compensation shall be a debt due to the Commissioner, with interest at the rate of six *per centum* per annum or such other rate as may be prescribed, and shall be paid in accordance with the terms of a compensation scheme made under the provisions of the Second Schedule.
- (2) Subject to the provisions of section 50, on the registration of a copy of the compulsory purchase order under that section, the leased land shall stand charged with the payment of such compensation and interest from the date on which the order takes effect, and the Commissioner and any assignee of the Commissioner under this section shall have all the powers and remedies in case of default and be subject to all the obligations that would be conferred or implied in a mortgage by deed by way of subdemise of the leased land.
- (3) The Commissioner shall hold all moneys received from the tenant as compensation or interest on trust to apply the same in accordance with the provisions of the compensation scheme.
- (4) The Commissioner may, instead of himself proceeding to recover any sums due on the tenant's default in making payment in accordance with the provisions of the compensation scheme, or to enforce the charge, and upon such terms as to security or providing that any money received be paid into Court, as he thinks fit, assign the right to recover the debt or any instalment, or to enforce the charge, to any person entitled to or to a share in the compensation, who shall be entitled to sue in his own name and to recover as trustee for all such persons.
- (5) Every assignment under subsection (4) shall be under the hand and seal of the Commissioner.

[s. 47]

#### 50. Charge for compensation

- (1) On the receipt of a copy of an order served on him in accordance with the provisions of subsection (5) of section 48, the Registrar shall register the same and, in the case of registered land and notwithstanding any law to the contrary, shall make such entry in the land register relating to the surrender, release or other determination of an interest, and to the charge created by subsection (2) of section 49, as the circumstances of the case require.
- (2) When the Commissioner certifies under his hand and seal that compensation and interest due under a compensation scheme has been paid, the Registrar shall endorse a memorandum of satisfaction on the copy of the order served on him under subsection (5) of section 48 and, in the case of registered land, enter the same in the land register.
- (3) The charge created by subsection (2) of section 49 shall have priority according to the subleases or profits to which it relates, and the priority of the charge in respect of each such interest shall be determined by the date of the creation:

Provided that, if, had such interests not been determined under section 48, any such interest would have been postponed to any other interest in the leased land, the charge in respect of such first-mentioned interest shall be postponed to such second-mentioned interest.

[s. 48]

## Part V – The Land Tribunal (ss. 51-54)

### 51. Land Tribunal

- (1) There shall be a Land Tribunal for the purposes of this Act.
- (2) The provisions of the Third Schedule to this Act shall have effect as to the constitution and proceedings of, and otherwise in relation to, the Land Tribunal.

[s. 49]

### 52. Appeals to Tribunal

- (1) The former tenant may appeal to the Land Tribunal against the advertised rent and conditions (other than the term or the reserved premium) on which land is to be disposed of for a right of occupancy under the provisions of subsection (2) of section 24 on the grounds that the rent is excessive or the conditions are more onerous than the terms, conditions and covenants subject to which the former leased land was held immediately prior to its forfeiture.
- (2) The tenant, or any sublessee who holds land or any part to which development requirements have been annexed, may appeal to the Land Tribunal against—
  - (a) the annexure of development requirements on the ground that the leased land has been developed prior to the annexure of the development requirements and the value or extent of the development equals or exceeds the value or extent of development that would have been required had a right of occupancy subject to development conditions been granted over the land at the time the development was commenced, or five years before the annexure of the development requirements, whichever is the later, and the development is kept and maintained in good and substantial repair and condition and, in the case of agricultural land, the land is kept and maintained in good condition; or
  - (b) against any particular development requirement or requirements so annexed (other than the requirements specified in section 45) on the grounds that—
    - (i) it is not such as would have been included in a grant, made at the date of annexure, of a right of occupancy over the same land for the unexpired term of the Government lease; or
    - (ii) it fails to take into account any existing development of the leased land, or is otherwise unreasonable or inappropriate.
- (3) Any person entitled to any easement, way or covenant which is modified or extinguished under section 47 may appeal to the Land Tribunal against the modification or extinguishment, and any person entitled to any sublease or profit in respect of which a compulsory purchase order is made, or to any interest which will determine on such an order taking effect, may appeal to the Land Tribunal against such order, on the grounds that—
  - (a) the continued or unmodified existence of the relevant interest will not prevent or impede the development of the leased land in accordance with the development requirements; or
  - (b) there are alternative development requirements appropriate to the leased land and which the Commissioner is authorised to annex in accordance with the provisions of Part IV of this Act, which will permit of the continued or unmodified existence of the relevant interest.

[s. 50]

**53. Powers of Tribunal on appeals under section 52**

On an appeal under this Part, the Land Tribunal may give directions for—

- (a) the variation of the rent and the variation or deletion of any condition (not being a condition prescribing the term or reserved premium) on which land is advertised for disposal under the provisions of subsection (2) of section 24;
- (b) the revocation of the annexure of development requirements;
- (c) the variation or deletion of any particular development requirement or requirements (other than a requirement specified in section 45); and with the consent of the Commissioner, the substitution of a new development requirement or requirements;
- (d) the variation or revocation of any order modifying or extinguishing any easement, way or covenant or for the compulsory acquisition of any sublease or profit and, with the consent of the Commissioner, the substitution of a new order modifying, extinguishing or acquiring the same;
- (e) the postponement of any development requirement or any order.

[s. 51]

**54. Decisions of Tribunal to be final, and duties of Commissioner**

- (1) No appeal shall lie to any court or other authority from any decision or act of the Commissioner under any of the provisions of this Act if an application or appeal lies to the Land Tribunal, and the decisions or acts of the Commissioner under subsection (2) of section 24, or under Part IV of this Act, shall not be subject to review in any court if the issue to be determined on such review is such as may be determined on an appeal to the Land Tribunal.
- (2) The decision of the Land Tribunal on any application or appeal under this Act shall be final.
- (3) The Commissioner shall give effect to every order or direction of the Land Tribunal given under this Act.
- (4) In the case of directions to vary, delete or substitute any development requirement, or to vary or substitute any order under section 47 or any compulsory purchase order, the Commissioner shall give notice of the variation, deletion or substitution and serve the same on the same persons and in the same manner as he is required by this Act to give or serve notice of the annexure of development requirements or the making of any such order, as the case may be, and the requirements or order, as so varied, or the substituted requirement or order, shall have effect upon the date of service on the tenant, or on such other date as may be specified.
- (5) Upon the delivery of any notice under subsection (4) to the Registrar, he shall register the same and, in the case of any registered land, make such entry in the land register as the circumstances of the case require.

[s. 52]

**Part VI – Miscellaneous provisions (ss. 55-66)****(a) – General and administrative (ss. 55-60)****55. Rights of entry, and power to call for information**

- (1) Any person authorised in that behalf by the Minister for Agriculture shall have power to enter and inspect at all reasonable times any large or small rural holding (other than any part occupied exclusively as a dwelling house) in order to make a survey of the existing development, potentiality or cost of further development.

- (2) Any person authorised in that behalf by the Commissioner shall have power to enter and inspect at all reasonable times any leased land (other than any part occupied exclusively as a dwelling house) for the purposes of ascertaining the existing development, potentiality and cost of further development prior to annexing development requirements to such land.
- (3) Every person authorised to enter or inspect land under this section shall be furnished with a written authorisation signed by or on behalf of the Minister or the Commissioner, as the case may be, and, if so required by any person having any interest in any leased land which he enters or inspects, shall produce the same to such person.
- (4) The Commissioner may require any person whom he believes to be in possession of any land held immediately before the appointed day for an estate of freehold or to be entitled to any interest, to inform him in writing within such time (not being less than seven days after the requirement) as he may specify, of the extent of his estate or interest in the land, the size of his holding, the name of the person of whom he holds such estate or interest and such other matters relating to the estates and interests in the land and the devolution as may be prescribed.
- (5) Any person who—
  - (a) wilfully obstructs or delays any person authorised to enter or inspect land under this section in the lawful exercise of the power in that behalf; or
  - (b) refuses or wilfully neglects to inform the Commissioner within the specified time of such matters as may be required of him under this section, or knowingly gives the Commissioner information of such matters which is false in any material particular,commits an offence and on conviction is liable to a fine not exceeding one thousand shillings.
- (6) In this section "large rural holding" and "small rural holding" have the meanings respectively ascribed to those expressions in section 37.

[s. 53]

## 56. Service of notices, etc.

- (1) Any direction, notice or copy of an order required to be served on any person under this Act shall be sufficiently served—
  - (a) if it is addressed to and left for him at his last known place of abode or business; or
  - (b) if it is sent by prepaid registered post addressed to him at his last known place of abode or business and is not returned through the post office undelivered; or
  - (c) in the case of a notice or copy of an order required to be served on a tenant, mortgagor or sublessee of leased land, if it is addressed to him and affixed in a prominent manner on the leased land.
- (2) Any notice or copy of an order required to be served under this Act on any tenant, mortgagor or sublessee shall be sufficiently addressed although only addressed to him by such designation.
- (3) Any notice or copy of an order served in accordance with the provisions of paragraph (b) of subsection (1) shall be deemed to have been served at the time at which the registered letter would be delivered in the ordinary course of post.
- (4) Nothing in this section applies to notices or copies of orders served in proceedings in the court or before the Land Tribunal.

[s. 54]



### 57. Authentication of certain notices and copies of orders

Every notice served in accordance with the provisions of section 46 or 54, and every copy of an order served in accordance with the provisions of sections 49, 50 or 56 shall be authenticated by the seal of the Commissioner and the signature of the Commissioner or of some other person authorised to affix the seal of the Commissioner, and shall not be valid unless so authenticated.

[s. 55]

### 58. Delegation of Commissioner's powers

The Commissioner may, by notice in the *Gazette*—

- (a) delegate to any person holding office in the service of the Republic, any of his functions, powers or duties under this Act, including the functions, powers and duties conferred on him by section 33;
- (b) authorise any such person to affix the seal of the Commissioner.

[s. 56]

### 59. Exemption from certain duties and fees

- (1) A disclaimer and surrender under section 28 shall be exempt from—
  - (a) any surrender fine payable under the relevant sublease;
  - (b) any registration fee payable under the Registration of Documents Act <sup>21</sup> or the Land Registration Act <sup>22</sup>;
  - (c) stamp duty.
- (2) The—
  - (a) modification or extinguishment of any interest under section 47;
  - (b) compulsory acquisition of any sublease or profit under section 48;
  - (c) creation or satisfaction of any charge under section 49 or 50; or
  - (d) delivery or entry of any notice under section 54,shall be exempt from—
  - (i) any registration fee payable under the Registration of Documents Act <sup>23</sup> or the Land Registration Act <sup>24</sup>;
  - (ii) stamp duty.
- (3) The issue of a certificate of title to leased land for a Government lease in substitution for a certificate of title to such land for an estate of freehold, if made to the registered owner of the

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Cap. 117

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Cap. 334

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freehold estate shall be exempt from any issue or registration fee under the Land Registration Act<sup>25</sup>.

[s. 57]

## 60. Rules

- (1) The Chief Justice may make rules of court regulating the procedure to be followed and the fees to be paid in proceedings in the Court under this Act.
- (2) Subject to the provisions of subsection (1), the Minister may make rules prescribing anything to be prescribed under this Act, and, with the consent of the Minister for Justice, for applications and appeals to, and for the procedure to be followed and the fees to be paid in proceedings before, the Land Tribunal.

[s. 58]

### (b) – Amendment of land register (s. 61)

## 61. Amendment of land register

- (1) The Registrar of Titles may, at any time after the appointed day, and shall when so directed by the Minister or any person having any interest in leased land which is registered land, make such amendments to the relevant folio of the land register as the provisions of Part II of this Act require.
- (2) Where the Registrar makes an amendment to the land register under this section, he shall give notice to all persons having registered interests which are thereby affected, and the provisions of Part XVI of the Land Registration Act<sup>26</sup> shall apply as if the amendment had been made under that Act.
- (3) Before issuing a certificate of title to an interest inscribed in the land register after such amendment in substitution for any certificate previously issued in respect of the former corresponding interest, the Registrar shall call upon the person entitled to surrender such previous certificate, and the Registrar shall not issue a new certificate unless the previous certificate is surrendered or the person entitled to such interest gives the Registrar such security for the failure to surrender the same as the Registrar may reasonably require.

[s. 59]

### (c) – Amendment and construction of laws, and saving (ss. 62-66)

## 62. No new grants of freehold

On and after the appointed day, no grant of land may be made for an estate of freehold or for any absolute or perpetual interest.

[s. 60]

<sup>25</sup>

Cap. 334

<sup>26</sup>

Cap. 334

### 63. General amendment

Subject to any order made under section 64, any reference in any Act or Act enacted before the passing of this Act to freehold land shall be construed in relation to any period commencing, or any time, on or after the appointed day, as including a reference to leased land.

[s. 61]

### 64. \*\*\*

[Omitted]

[s. 62]

### 65. \*\*\*

[Amendments incorporated into relevant laws.]

[s. 63]

### 66. Exemption

- (1) Nothing in this Act shall, unless the Minister otherwise directs in any particular case, operate to extinguish, determine or diminish, or authorise any person to extinguish, modify or acquire compulsorily—
  - (a) any road of access granted under the Highways Ordinance<sup>27</sup>;
  - (b) any way leave to which a statutory undertaker is entitled under a law authorising the undertaking;
  - (c) any mining right or mineral oil right within the meanings respectively ascribed to those expressions in section 11 of the Mining Ordinance;
  - (d) any existing right or water right (within the meanings respectively attached to those expressions in the Water Ordinance<sup>28</sup>) declared appurtenant to land under section 17 of that Ordinance, or an easement made appurtenant to land under section 28 of that Ordinance;
  - (e) any right, title or interest in or over land vested in the Republic or the President by any Ordinance or Act.
- (2) In subsection (1), "statutory undertaker" means a licensee under the Electricity Ordinance<sup>29</sup>, a Water Authority under the Waterworks Ordinance<sup>30</sup>, an Authority under the Public Health

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R.L. Cap. 167

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R.L. Cap. 410

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R.L. Cap. 131 R.L. Cap. 131

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R.L. Cap. 281

(Sewerage and Drainage) Ordinance<sup>31</sup>, and a city municipal, town or district council or township or minor settlement authority in relation to its health or sanitary services.

[s. 64]

## First Schedule (Section 17)

### Rents

1. In this Schedule—

"**municipality**" has the meaning ascribed to that expression in the Urban Authorities (Rating) Act<sup>32</sup>;

"**road**" means any road or street, square, court, alley or passage, bridge, lane, footpath, bridle-path or drift-way, and includes lands reserved, but does not include a highway as defined in the Highways Act<sup>33</sup> or a sanitary lane or any land reserved for a highway or a sanitary lane;

"**road work**" means any of the works specified in subparagraph (a) of paragraph 6 of this Schedule and includes construction of a new road;

"**urban holding**", "local government authority", "large rural holding" and "small rural holding" have the meanings respectively ascribed to those expressions in section 37.

2. The rent for an urban holding—

- (a) wholly situated within a municipality in which a valuation roll is in force for the purposes of the Urban Authorities (Rating) Act, is one-thousandth part to the nearest shilling of the rateable value of the holding in the valuation roll for the time being in force;
- (b) no part of which is situated within a municipality in which a valuation roll is in force, which is Shs. 20/=;
- (c) partly situated within a municipality in which a valuation roll is in force as and partly situated outside such municipality, is one-thousandth part to the nearest shilling of the rateable value of that part of the holding which appears in the valuation roll for the time being in force, or Shs. 20/=, whichever is the greater.

### Part I – Rents

3. Subject to the provisions of paragraph 5, the rent for a small rural holding is Shs. 20/=.

4. Subject to the provisions of paragraph 5, the rent for a large rural holding—

- (a) not exceeding 999 acres is Shs. 20/=;
- (b) exceeding 999 acres but not exceeding 1,999 acres is Shs. 40/=;
- (c) exceeding 1,999 acres but not exceeding 2,999 acres is Shs. 60/=;
- (d) exceeding 2,999 acres but not exceeding 3,999 acres is Shs. 80/=;
- (e) exceeding 3,999 acres but not exceeding 4,999 acres is Shs. 100/=;

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R.L. Cap. 336

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Cap. 289

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Cap. 167

- (f) exceeding 4,999 acres is Shs. 120/=.
5. Where any small rural holding or large rural holding is either wholly or in part situated in any municipality, the provisions of subparagraph (a) or (c) of paragraph 2, as the case may be, shall apply *mutatis mutandis* for the ascertainment of the rent:

Provided that if subparagraph (c) applies, there shall be substituted for the sum "Shs. 20/=" therein, the words and figures "the rent assessed in accordance with the provision of paragraph 3 or 4, as the case may be".

## Part II – Road frontage premia

6. Where—
- (a) the Government or a local government authority has constructed a road in any urban area or has caused to be executed in such area any or all of the following works that is to say, to sewer, level, pave, metal, flag, channel or make good such road or part of such road; or
  - (b) the Government or a local government authority has prepared or approved a scheme for the construction of a road or execution of any road work in any urban area,
- the Commissioner may, after ascertaining the cost or the estimated cost, as the case may be, of construction of such road or execution of such road work from the Government department or the local government authority concerned, apportion such cost or estimated cost on the lands, whether such lands are leased lands or lands held under rights of occupancy granted under the Land Act or lands held under any arrangement entered into between the occupier and the Government, which front, adjoin or abut on such road or part thereof, or which, although they do not front, adjoin or abut on such road or part thereof, in the opinion of the Commissioner are or will be benefitted by the road.
7. In settling apportionment of the cost of construction of a road or execution of a road work in respect of any leased land the Commissioner shall have regard to the following factors—
- (a) the frontage of the land;
  - (b) the greater or less degree of benefit to be derived by the leased land from the road or road work; and
  - (c) any other factor the Commissioner may consider relevant.
8. The sum apportioned in respect of any leased land shall be the road frontage premium of such land and the Commissioner may call upon the tenant to pay the same in accordance with the provisions of this Act.

## Second Schedule (Sections 48 and 49)

### Compensation for compulsory acquisition

#### (a) – Compensation list

1. (1) On receipt of an application for a compulsory order, the Commissioner shall (at the cost of the applicant), in not less than two consecutive editions of the *Gazette*, give notice of the application, and call upon all persons entitled to any sublease or profit sought to be compulsorily acquired, and all persons entitled to any other interest which would be determined on the coming into effect of the compulsory purchase order for which application is made, to notify him and the tenant, before such date, not being less than sixty days after the first publication, as may be specified in the notice—
- (a) if such person wishes to make representations in writing or in person or by agent;

- (b) if such person wishes to claim compensation for the sublease or profit acquired or, as the case may be, a share in the compensation payable in respect of the sublease or profit out of which his interest was created.
  - (2) Every notice served on the Commissioner or tenant in pursuance of this paragraph shall contain an address for service of the person serving the same.
2.
  - (1) After the date specified in the notice published under paragraph 1, the Commissioner shall compile a compensation list in two parts.
  - (2) Part I of the compensation list shall contain the names, addresses and interests of the sublessees and the persons entitled to profits, whose subleases and profits are sought to be compulsorily acquired and a statement whether or not each sublessee or person claims compensation; and each sublease and profit shall be identified by a serial number.
  - (3) Part II of the compensation list shall consist of such number of heads as there are subleases and profits listed in Part I. Subject to the provisions of subparagraph (4) of this paragraph, each head of Part II shall contain the names, addresses and interests of the persons claiming a share in the compensation payable in respect of the same sublease or profit. Each such head shall be identified by the same number as is used in Part I to identify the sublease or profit out of which the interests included in such head are created.
  - (4) The Commissioner shall not include any entry relating to an easement, right of way or restrictive covenant in the compensation list.
  - (5) No person shall be entitled to compensation or a share payable in respect of any sublease or profit compulsorily acquired under this Act unless his name is included in the compensation list.

### **(b) – Assessment of compensation**

3.
  - (1) The Commissioner shall draw up a compensation scheme in three parts.
  - (2) Part I of the compensation scheme shall contain the entries contained in Part I of the compensation list, and against each entry there shall be specified the value of each sublease or profit compulsorily acquired as agreed between the parties or determined in accordance with this Schedule.
  - (3) Part II of the compensation scheme shall contain the entries contained in Part II of the compensation list arranged under the same heads and, against each entry, there shall be specified the value of the interest as agreed between the parties or determined in accordance with this Schedule.
  - (4) Part III of the compensation Schedule shall contain—
    - (a) the number of instalments in which the compensation shall be paid by the tenant, and the dates of each instalment;
    - (b) the order and method of distribution of the compensation between the persons entitled or claiming a share,as determined in accordance with the provisions of this Schedule, or any agreement varying the same.
4.
  - (1) In the absence of agreement by the interested parties as to—
    - (a) the title of any person to a sublease, profit or other interest;
    - (b) the value of any sublease, profit or other interest,the matter shall be referred to the Court on a summons taken out by a party; and the decision of the Court shall be final and shall not be subject to review in any other Court.

- (2) For the purposes of item (b) of subparagraph (1), a person whose name is included in a head in Part II of the compensation list shall be deemed to be an interested party in relation to the value of a sublease or profit out of which his interest was created.
5. The Court shall assess the value of any interest in accordance with the value at the date on which the notice published under paragraph 1 first appears in the *Gazette*. No deduction shall be made from the value of any sublease or profit specified in Part I of the compensation Schedule on account of any interest specified in Part II which was created out of such sublease or profit.

### Payment of compensation

6.
  - (1) In the absence of any agreement by the interested parties, the tenant shall pay compensation in twenty equal annual instalments.
  - (2) The maximum compensation payable by the tenant shall be the sum of the values specified in Part I of the compensation scheme, with interest.
7. On receipt of any compensation, the Commissioner shall divide the same into as many parts (hereinafter referred to as head sums) as there are subleases and profits specified in Part I of the compensation Schedule in proportion to the respective values.
8.
  - (1) Unless the parties otherwise agree, the Commissioner shall hold each such head sum on trust—
    - (a) first, to pay to the persons specified in the head specified in Part II of the compensation scheme which has the same number as the sublease or profit to which the head sum relates, the values of their respective interests:  
Provided that—
      - (i) where any interest specified in any head in Part II of the compensation scheme was created out of some other interest specified in that head, the maximum sum payable in respect of the first such interest shall not exceed the value of the second such interest;
      - (ii) where there is more than one such interest in the same head in Part II of the compensation scheme, payments shall be made in respect of each such interest in the order of their creation, earlier interests taking precedence over later interests;
    - (b) secondly, to pay the residue to the person entitled to the relevant sublease or profit in Part I of the compensation Schedule, if his claim is recorded, or if such claim is not so recorded to repay the same to the tenant.
  - (2) Unless the parties otherwise agree, the Commissioner shall hold any interest paid by the tenant on trust to pay the same to the persons to whom compensation or any share therein is due, in proportion to the net sum payable to each such person.
9. Nothing in this Act shall preclude any person whose interest is determined upon a compulsory purchase order taking effect from recovering any money lent on the security of such interest from the borrower by action; but any compensation or share paid to the lender in respect of such interest under this Schedule shall be deducted from the sum due.

### **Third Schedule (Section 51)**

#### **The Land Tribunal**

##### **(a) – Constitution**

1. (1) The Land Tribunal shall be composed of—
  - (a) a Chairman and a Vice-Chairman appointed by the Minister for Justice;
  - (b) four other members appointed by the Minister for Lands.
- (2) The Minister for Justice shall appoint as Chairman a person qualified for appointment as a judge of the High Court, and as Vice-Chairman a person who holds one of the professional qualifications required by the provisions of the Advocates Act to be held by persons who make application to be admitted under that Act as an advocate.
2. A member of the Tribunal shall hold office for such period not exceeding three years as the appointing Minister may specify in his appointment, unless his appointment shall have been previously revoked; and he shall be eligible for re-appointment.
3. (1) If any member of the Tribunal is incapacitated by illness, temporary absence from Tanzania or other sufficient cause, from performing the duties of his office, another qualified person may be appointed by the appointing Minister to act in his absence, and every person so appointed shall have all the powers and authority of the member for whom he is acting until such member is again able to perform the duties of his office or ceases to hold office as a member of the Tribunal.
- (2) If any member dies, or is permanently incapacitated from holding office for any cause, or resigns, or if his appointment is revoked, the appointing Minister may appoint in his place another qualified person who shall hold office for the unexpired residue of the period of office of the member in whose place he is appointed.
4. A member may resign by giving notice in writing to the appointing Minister.
5. A quorum of the Tribunal shall be the Chairman or the Vice-Chairman and two other members.
6. Subject to the provisions of paragraph 5, the Tribunal may act notwithstanding a vacancy in its number.
7. No act or other proceeding of the Tribunal shall be invalid by reason only of the fact that there is some defect in the appointment of a person purporting to be a member.

##### **(b) – Additional powers**

8. The Tribunal may delegate to any member of the functions or powers of the Tribunal other than the determination of an application or as appeal.
9. (1) Applications and appeals shall be determined according to the opinion of the majority of the members who hear the same:  
  
Provided that the Tribunal shall be bound by the decision of the presiding member on a point of law.
- (2) In the event of the Tribunal being equally divided on any issue, the presiding member shall have a casting vote.
10. The Tribunal shall determine every appeal as, having regard to the provisions and purposes of this Act and in particular to the grounds of appeal set out in section 52, the merits of the case require.



11. The Tribunal may award costs. The costs shall be such sum as the Chairman or Vice-Chairman shall assess having regard to the nature of the proceedings and the work involved:  
Provided that the Tribunal may direct costs to be taxed in accordance with rules made in that behalf.
12. The Tribunal may award allowances to witnesses at the rate prescribed for allowances to witnesses in the High Court.
13. An order of the Tribunal awarding costs or allowances to witnesses may be enforced in the same manner as an order of a district court in that behalf, and a district court shall have jurisdiction notwithstanding the sum awarded exceeds any pecuniary limit on its jurisdiction.
14. Save as may be provided by rules made under this Act, the Tribunal may regulate its own procedure.

#### **Fourth Schedule (Section 18(a))**

##### **Form**

*[Editorial note: The form has not been reproduced.]*