

CHAPTER 188

THE LAND SURVEY ACT

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CHAPTER 188

LAND SURVEY

An Act to make further and more comprehensive provisions for the registration and licensing of land surveyors; to provide for the manner in which land surveys shall be carried out and diagrams and plans connected therewith shall be prepared; to provide for the protection of survey beacons and other survey marks; to provide for the establishment and powers of a Survey Control Board which will be responsible for the registration and licensing of land surveyors and for the exercise of disciplinary control over such surveyors; and to provide for matters incidental to and connected with the foregoing.

59 of 1960
 57 of 1964
 44 of 1965
 69 of 1965
 9 of 1973
 34 of 1974
 13 of 1994
 Government
 Notice
 274 of 1964
 Statutory
 Instrument
 65 of 1965

[23rd December, 1960]

PART I

PRELIMINARY

1. This Act may be cited as the Land Survey Act.

Short title

2. In this Act, unless the context otherwise requires-

Interpretation

"approve", in relation to any plan or diagram, means the signing of such plan or diagram by a Government surveyor in order to signify that the requirements of this Act and of any regulations made thereunder have been complied with in regard to such plan or diagram;

"beacon" means the mark or structure made or erected at, or indicative of, the corner point of a parcel of land, or at an intermediate line point on a rectilinear boundary of a parcel of land, by a land surveyor or by his agents, servants or workmen acting under his direction, and includes a bench mark, reference mark and trigonometrical station;

"Board" means the Survey Control Board established under the provisions of section *six*;

"the Court" means the High Court;

"Customary area" has the meaning assigned to it in section *two* of the Lands Act.

Cap. 184

"diagram" means a document containing geometrical, numerical and verbal representations of one or more parcels of land, the boundaries of which have been surveyed by a land surveyor, and which document has been signed by such surveyor or which has been certified by a Government surveyor as having been compiled from approved records of a survey or surveys carried out by one or more land surveyors, and includes any such document which, at any time prior to the commencement of this Act, has been accepted as a diagram in the Registry or in the office of the Surveyor-General or his predecessors;

"general plan" means a plan depicting, in such manner and to such standards of accuracy as may be prescribed, the relative position, beacons, boundaries and dimensions of one or more parcels of land as surveyed by a land surveyor, and which has been signed by such surveyor or which has been certified by a Government surveyor as having been compiled from the approved records of a survey or surveys carried out by one or more land surveyors, and includes any general plan

which, at any time prior to the commencement of this Act, has been accepted as a general plan by the Surveyor-General or any of his predecessors;

"Government Surveyor" means the Surveyor-General and any public officer employed in the office of the Surveyor-General and so appointed by the Surveyor-General;

"land surveyor" means a person holding a licence;

"legal practitioner" means a person authorised to practise as a barrister and solicitor under the provisions of the Legal Practitioners Act; Cap. 30

"licence" means a licence issued under the provisions of section *nine*;

"local authority" means-

- (a) a city council;
- (b) a municipal council;
- (c) a township council; and
- (d) a district council;

"owner" means-

- (a) the person registered as the proprietor of any land except where that person has leased or sub-leased the land to another person for a period not shorter than ninety-nine years less three days;
- (b) the person in whom the fee simple of any land is vested under a registered deed;
- (c) the lessee of State Land expressed to be for a period of fourteen years or more;
- (d) the lessee of land held under any other lease expressed to be for a period not shorter than ninety-nine years less three days; and

(e) the allottee of land held under a provisional title and in process of alienation by the President;

and includes the liquidator of any company which is an owner as aforesaid, and the representative recognised by law of any owner as aforesaid who has died, become insolvent, assigned his estate for the benefit of his creditors, or is under any legal disability;

"parcel of land" means any piece or unit of land, enclosed within determinable boundaries, which has been or is to be registered;

"prescribed" means prescribed by regulation made under the provisions of this Act;

"public place" includes any street, road, thoroughfare, sanitary lane, park, square or other open space shown on a general plan of a township filed in the Registry or in the office of the Surveyor-General and all other land in a township the control whereof is vested, to the entire exclusion of the owner thereof, in the President or a local authority or to which the owners of other land in such township have a common right;

"Registrar" means the Registrar assigned to the Registry of Deeds in Lusaka under the provisions of the Lands and Deeds Registry Act; Cap. 185

"registration", in relation to any land, means the registration of any right in or to such land, or of any document or plan relating to such land, in accordance with the Lands and Deeds Registry Act; and "register" and "registered" shall be construed accordingly; Cap. 185

"Registry" means the Registry of Deeds, and any District Registry of Deeds, established under the provisions of the Lands and Deeds Registry Act; Cap. 185

"stand" means a parcel of land as originally surveyed within a township, but does not include a public thoroughfare;

"State Land" means any land included within "State Lands" as defined in the Lands Act; Cap. 184

"subdivisional survey" means a survey of a portion or portions of a registered parcel of land;

"the Surveyor-General" means the Surveyor-General appointed under the provisions of section *four*;

"township" means the area of-

(a) a municipality;

(b) a township;

"trigonometrical station" means a permanent mark in the form of a beacon, bolt or mark cut into rock, stone, concrete, brick or wood, the position of which permanent mark has been determined by or on behalf of the Surveyor-General, and includes any such permanent mark as was on the *commencement of Act No. 44 of 1965 a trigonometrical control point under the provisions of the Trigonometrical and Topographical Survey Act, 1958;

* 27th August, 1965.

(As amended by Nos. 44 and 69 of 1965, S.I. No. 65 of 1965 and No. 9 of 1973)

3. This Act shall only apply to any survey used for the purpose of effecting the registration of any parcel of land, or for re-determining the position of a curvilinear boundary or of any beacon defining the boundary of any registered parcel of land. Application

PART II

ADMINISTRATION

4. (1) There shall be a Surveyor-General who shall be a public officer and land surveyor. Appointment of Surveyor-General

(2) Subject to the general or special directions of the Minister, the Surveyor-General shall-

(a) supervise and control the survey and charting of land for the

- purposes of registration;
- (b) take charge of and preserve all records appertaining to the survey of parcels of land which have been approved;
 - (c) direct and supervise the conduct of such trigonometrical, topographical and level surveys, and such geodetic and geophysical operations, as the Minister may direct;
 - (d) take charge of and preserve the records of all surveys and operations carried out under paragraph (c);
 - (e) supervise the preparation of such maps as the Minister may direct from the data derived from any surveys, and the amendment of such maps; and
 - (f) generally administer the provisions of this Act.

(3) All records and documents in the custody of the Surveyor-General shall become the property of the Government, but approved plans and diagrams shall be available, for the purposes of reference, to the public in the office of the Surveyor-General.

(As amended by S.I. No. 65 of 1965 and No. 9 of 1973)

*27th August, 1965.

5. Any Government surveyor may-

- (a) examine and check survey records which have been lodged with the Surveyor-General for approval, and reject the whole or any part of any such records when his examination reveals inconsistencies in data outside such limits as may be prescribed or doubt as to the standards of accuracy, or the soundness of methods, employed in the survey concerned;
- (b) examine all plans and diagrams of surveys of parcels of land before any registration of such parcels is effected, and approve such plans and diagrams if he is satisfied that such surveys have been carried out in such a manner as should ensure accurate results, and that such plans and diagrams have been prepared, and the boundaries of the land surveyed have been defined, in the prescribed manner:

Provided that no such approval shall be given in contravention of any other written law;

Powers of
Government
surveyors

(c) on the diagram of any parcel of land attached to a registered document-

- (i) define the geometrical figure representing any surveyed portion of such parcel, the transfer of ownership of which has been lodged with the Registrar for registration;
- (ii) define the geometrical figure representing any surveyed portion of such parcel of land which has been declared a private township in accordance with the provisions of the Town Planning Act, Chapter 123 of the 1959 Edition of the Laws;
and inscribe a certificate at some suitable place on the face or on the reverse of such diagram reciting the numerical extents of the portion which is to be so transferred and of the remaining portion of the original parcel of land;
- (d) cancel or appropriately amend any general plan or diagram found to be incorrect;
- (e) prepare, certify and issue, at the request of any person and on payment of the prescribed fees, copies of approved diagrams filed in the office of the Surveyor-General which are available to the public, and copies of diagrams attached to registered documents;
- (f) endorse, amend and, if necessary, correct any registered diagram or plan, and sign such endorsement, amendment or correction.

6. (1) There is hereby established a Survey Control Board which shall consist of-

Establishment
of Survey
Control Board

- (a) the Surveyor-General;
- (b) one member appointed by the Minister from amongst public officers who are land surveyors and nominated by the Surveyor-General;
- (c) not more than two members appointed by the Minister from a panel of names of land surveyors submitted by the representative body of land surveyors in Zambia; and
- (d) one member appointed by the Minister from amongst legal

practitioners of not less than five years' standing.

(2) The Surveyor-General shall be the Chairman of the Board, and, in case of his absence from any meeting of the Board, the member appointed under paragraph (b) of subsection (1) shall preside over such meeting.

(3) Three members of the Board shall form a quorum.

(4) The Minister may, in his discretion-

(a) revoke the appointment of any member of the Board made by him;

(b) appoint a land surveyor of his own choice temporarily to fill a vacancy on the Board caused by the temporary inability of a member appointed under paragraph (c) of subsection (1) to attend meetings of the Board.

(5) The Board shall meet at the discretion of the Chairman or upon requisition in writing addressed to the Chairman by one or more of the members.

(As amended by S.I. No. 65 of 1965 and No. 9 of 1973)

7. The duties of the Board shall be-

Duties of Board

(a) to conduct examinations of and trial surveys by persons who desire to become land surveyors;

(b) to keep a register of land surveyors;

(c) to hear complaints and to take such disciplinary action as may be necessary against land surveyors in accordance with the provisions of this Act;

(d) to make recommendations to the Minister relating to the making of regulations under section *forty*;

(e) generally to control and regulate the practice of the survey profession.

8. (1) Any person who, immediately before the commencement of this Qualifications

Act, held a licence to practise as a land surveyor under the law then in force shall be entitled to be granted a licence.

and application
for grant of
licences

(2) Any person who is not entitled to be granted a licence under subsection (1) but who-

- (a) has attained the age of twenty-one years; and
- (b) has passed an examination to the satisfaction of the Board demonstrating a comprehensive knowledge of the provisions of this Act and of any regulations for the time being in force thereunder; and
- (c) holds-
 - (i) a licence to practice as a land surveyor in such country other than Zambia as may be approved for the purpose by the Board; or
 - (ii) a degree in land surveying from a university approved by the Board; or
 - (iii) a degree in geography, mathematics, physics or engineering from a university approved by the Board, including a post-graduate diploma or post-graduate qualification in land surveying; or
 - (iv) such other qualification from such educational institution as may be approved by the Board; or
- (v) has had such practical experience of land surveying in Zambia extending to a period not less than five years as may be approved by the Board;
and
- (d) has completed to the satisfaction of the Board, a trial survey set or approved by the Board;
may apply for a licence.

(3) Any person entitled to be granted, or to apply for, a licence may make written application in that behalf to the Board, and such application shall be accompanied by such proof of such entitlement as the Board may require.

(4) Notwithstanding the provisions of subsection (2), the Surveyor-General shall be entitled to be granted a licence if he satisfies the requirements of paragraphs (a) and (c) of the said subsection.

(As amended by No. 9 of 1973. and No. 34 of 1974)

9. (1) Upon receipt of an application for a licence from a person mentioned in subsection (1) of section *eight*, the Board upon being satisfied that such person is duly entitled under the said subsection, shall issue to such person a licence.

Grant of
licences

(2) Upon receipt of an application for a licence from a person mentioned in subsection (2) of section *eight*, the Board shall, if satisfied of the qualifications of such person and upon receipt of the prescribed fee and of a declaration in the form set forth in the Schedule, grant a licence to such person.

(3) Licences granted under the provisions of this section shall be in such form as may be prescribed.

10. (1) A land surveyor shall-

Duties of land
surveyor

- (a) carry out every survey undertaken by him in such a manner as will ensure accurate results and in accordance with the provisions of this Act and any regulations in force thereunder;
- (b) be responsible to the Surveyor-General for the correctness of every survey carried out by such land surveyor or under his supervision and of every general plan and diagram which bears his signature;
- (c) deposit with the Surveyor-General, for the purpose of being permanently filed in the office of the Surveyor-General, such records as may be prescribed relative to every survey carried out by him after the commencement of this Act; and
- (d) when required by the Surveyor-General, without delay correct in any survey carried out by such land surveyor after the commencement of this Act or in any work appertaining thereto, any error which is in excess of the prescribed limits of error and take such steps as may be necessary to ensure the amendment of any diagram and general plan based on such incorrect survey and to adjust the position of any beacon he has placed in accordance

with such incorrect survey.

(2) As soon as practicable after the commencement of this Act, the Surveyor-General shall examine all such records as are mentioned in paragraph (c) of subsection (1) before approving any general plan or diagram to which such records refer.

(3) Neither the Government nor any officer thereof shall be liable for any defective survey or work appertaining thereto performed by a land surveyor, notwithstanding that a general plan or diagram relating to such survey or work has been approved or accepted for registration.

11. If a land surveyor, other than a Government surveyor-

Offences by
land surveyor

- (a) signs, except as provided in section *thirty-four*, a general plan or diagram of any parcel of land in respect of which he has not carried out or personally supervised the whole of the survey and field operations and carefully examined and satisfied himself of the correctness of the entries in any field book, and the calculations, working plans and other records in connection therewith, which may have been made by any other person; or
- (b) signs a defective general plan or diagram knowing it to be defective; or
- (c) repeatedly performs, through negligence or incompetence, defective surveys or surveys to which adequate checks have not been applied; or
- (d) makes any entry in a field book, copy of a field book or other document which purports to have been derived from actual observation or measurement in the field when it was not in fact so derived; or
- (e) supplies erroneous information to the Surveyor-General in connection with any survey, boundaries or beacons of land knowing it to be erroneous; or
- (f) is guilty of such improper conduct as, in the opinion of the Board, renders him unfit to practise as a land surveyor;
the Board may impose upon him such of the penalties prescribed in subsection (1) of section *thirteen* as it thinks fit.

12. (1) Every complaint against a land surveyor shall be submitted in writing to the Board and shall be signed by the person making the

Complaints
against land

complaint, and, if it appears to the Board that an inquiry is justified, the Board shall fix a time and date for the holding of such inquiry. surveyors

(2) At least thirty days before the date fixed for the inquiry, the land surveyor against whom the complaint has been made shall be notified, by registered letter sent to his last known address, of the time, date and place fixed for the inquiry and shall be provided with a copy of the complaint.

(3) At an inquiry under this section the land surveyor against whom the complaint has been made shall be entitled to be heard in his defence either personally or by his legal representative.

(4) The Board shall have full power to summon witnesses and to examine them upon oath or affirmation and to carry out any investigations concerning the complaint, and may hold the inquiry whether or not such land surveyor appears before it or is represented by his legal representative or has filed any reply to the notice prescribed in subsection (2).

(5) For the purposes of subsection (4), any member of the Board may administer an oath or affirmation.

(6) The findings and decision of the Board on such inquiry shall be made in writing and signed by the Chairman.

13. (1) If, after an inquiry, a land surveyor is found to be guilty of an offence under section *eleven*, the Board may-

Powers of Board on inquiries

(a) admonish such land surveyor; or

(b) suspend his licence for a period not exceeding three years, in which case the Chairman of the Board shall enter the reasons for and period of such suspension in the Register; or

(c) cancel his licence, in which case the Chairman of the Board shall remove the name of such land surveyor from the Register; and

(d) in addition to admonishment or suspension or cancellation of his licence, order such land surveyor to pay the cost of any correction to any survey records which his conduct may necessitate.

(2) Any person whose licence has been suspended or cancelled under subsection (1) may appeal to the Court whose decision shall be final.

(3) The Board may, in its discretion and subject to such conditions as it may deem fit-

(a) reinstate any land surveyor whose name has been removed from the Register; or

(b) cancel the suspension of a land surveyor's licence.

(4) Notice of suspension or cancellation of a licence or of reinstatement or cancellation of suspension of a land surveyor's licence shall be published in the *Gazette*.

(5) For the purposes of this section, "Register" means the register of land surveyors kept under the provisions of paragraph (b) of section seven.

14. After the commencement of this Act, no person, except a land surveyor, shall-

Unauthorised
practice as
surveyor

(a) perform any survey for the purpose of preparing any diagram or plan to be filed or registered in the Registry or referred to in any manner whatsoever in any other document to be so filed or registered;

(b) perform any survey affecting the delimitation of the boundaries or the location of the beacons of any parcel of land registered or to be registered in the Registry; or

(c) hold himself out in any matter whatsoever as a land surveyor;

and any person who contravenes any provision of this section shall be guilty of an offence and liable to a fine not exceeding three thousand penalty units.

(As amended by Act No. 13 of 1994)

PART III

ORIGINAL SURVEYS AND RE-SURVEYS

15. If a land surveyor carries out a survey of any previously unsurveyed parcel or parcels of land, he shall deliver or transmit to the Surveyor-General for examination and filing-

Original survey
of land
Cap. 283

- (a) a plan approved by the Commissioner of Lands showing the boundaries of such parcel or parcels of land or, in the case of land subject to the provisions of the Town and Country Planning Act, a plan approved by the appropriate town planning authority;
- (b) such original records as may be prescribed relative to such survey, and any other information which such land surveyor may consider material and useful or which the Surveyor-General may require;
- (c) where applicable, an agreement as to beacons and boundaries as prescribed in section *sixteen*.

(As amended by No. 44 of 1965)

16. (1) An agreement as to beacons and boundaries (in this section referred to as the agreement) shall be required-

Agreement as to
beacons and
boundaries

- (a) when, in the course of an original survey abutting upon a previous survey, or of a re-survey, or of a subdivisional survey, the data derived from the later survey differ beyond the prescribed limits from the data obtained in the previous survey;
- (b) in any survey performed for the purpose of settling a boundary dispute, when such dispute has been resolved and new diagrams resulting from such survey are to be registered.

(2) The agreement shall be, as far as practicable, in such form as may be prescribed and shall be signed by the owner of the parcel of land under survey or his duly authorised agent, by every contiguous owner or his duly authorised agent, and by two competent witnesses to each signature, being persons of either sex above the age of eighteen years, one of whom may be the land surveyor performing the survey.

(3) If any contiguous owner fails to sign the agreement within a period of one month from the date upon which he or his duly appointed agent was called upon to sign the agreement, the owner of the land under survey of his duly authorised agent shall serve upon such contiguous owner or his duly authorised agent a notice in writing, informing him that if he fails, within a further period of one month from the date of service of such notice, to lodge with the Surveyor-General an objection to the boundaries or beacons of such parcel of land as set forth in the agreement which he was called upon to sign, he will be deemed to have agreed to such boundaries and beacons:

Provided that-

- (i) if such contiguous owner is outside Zambia when so called upon to sign such agreement and when so served with such notice, the periods of one month shall be extended to three months;
- (ii) if the address of any such contiguous owner cannot be ascertained by diligent inquiries, the publication of such notice in an issue of the *Gazette* and once each week during two consecutive weeks in a newspaper circulating in the District within which such parcel of land is situate shall be deemed to be service of such notice for the purposes of this subsection.

(4) The service of notice referred to in subsection (3) shall, subject to proviso (ii) to that subsection, be effected by personal delivery or by registered post, and in the latter case, the date of service shall be deemed to be the date upon which the letter containing such notice would, in the ordinary course, reach the post office from which it is to be delivered to the addressee thereof.

(5) Whenever-

- (a) a contiguous owner has failed to sign the agreement; and
- (b) the Surveyor-General has been satisfied by such proof as he may deem necessary that the provisions of subsection (3) have been complied with; and

(c) no objection to any beacon or boundary adopted in the survey to which the agreement relates has been lodged with the Surveyor-General by such contiguous owner within the period mentioned in the notice served upon him in terms of subsection (3); and

(d) the other requirements of this Act and the regulations have been complied with in regard to the survey and resulting plans and diagrams;

a Government surveyor shall approve the survey to which the agreement relates.

(6) If any contiguous owner has failed to sign the agreement, and has, within the period mentioned in any such notice as is referred to in subsection (3), lodged with the Surveyor-General an objection to any beacon or boundary adopted in the survey in question, the Surveyor-General may, if every person affected by such objection undertakes in writing to accept the award of an arbitrator or arbitrators to be appointed by the Surveyor-General as final and conclusive upon all matters in dispute in connection with any beacon or boundary and in regard to the costs of or incidental to such arbitration, appoint such arbitrator or arbitrators to determine such matters and costs and his or their award shall thereupon be final and conclusive.

(7) If any person who has lodged an objection mentioned in subsection (6) fails to give the undertaking therein referred to, he may, if he was in Zambia upon the date upon which he was called upon to accept the award of an arbitrator or arbitrators as aforesaid, within one month, and, if he was not in Zambia on such date, within three months after such date, institute an action in the Court to determine any such matter, or, if the President is one of the persons affected by such objection, proceed to arbitration in respect of any such matter and, if he fails within such period to institute such action or to proceed to such arbitration, as the case may be, he shall be deemed to have agreed to such beacons and boundaries.

(8) For the purposes of this section, "contiguous owner" means the owner of any land abutting upon the boundary under dispute.

(As amended by S.I. No. 65 of 1965)

17. (1) Whenever a dispute in regard to any boundary or beacon of

Rectification of

contiguous parcels of land has been finally determined by the judgment of the Court or by the award of an arbitrator or arbitrators, the owners of any land affected by such judgment or award, or such of them as may be specially directed thereby, shall take such steps as may be necessary to produce an amended title to such land, and such amended title shall be based upon a diagram correctly representing the boundaries and beacons of such land as determined by such judgment or award.

title deeds after
determination
of boundary
dispute

(2) Any judgment or award mentioned in subsection (1) shall determine in what proportion the costs of any survey for the purpose of framing any diagram or otherwise giving effect to such judgment or award, and of the amended title, shall be borne by the owners of any land affected by such judgment or award.

18. (1) Whenever it is established to the satisfaction of the Surveyor-General that the diagram of any registered parcel of land or attached to any registered document (in this section referred to as the existing diagram) does not correctly represent the boundaries of such parcel of land-

Replacing
incorrect
diagram by new
diagram after
re-survey

- (a) the owner thereof may apply to the Surveyor-General for the cancellation of the existing diagram and the approval in lieu thereof of a new diagram of such land for registration; or
- (b) the Surveyor-General may in writing call upon the owner thereof to arrange within a specified period for a new approved diagram to be registered which shall supersede the existing diagram;
and, in the event of an owner failing to comply with any requirement mentioned in paragraph (b), the Surveyor-General may apply to the Court for orders to be made for the execution of such obligations by the said persons:

Provided that the provisions of section *sixteen* shall, *mutatis mutandis*, apply in regard to such new diagram and to all matters in connection therewith, or with the survey upon which it is based, and that it shall not be approved unless the said provisions have been complied with.

(2) A land surveyor performing the re-survey of land for the purposes of this section shall, in addition to the other documents required by section *sixteen* to be delivered or transmitted to the Surveyor-General, deliver or transmit to him for the purpose of being filed for record in the office of

the Surveyor-General a report with an explanatory plan, clearly setting forth the degree or particulars in which such re-survey differs from the survey upon which the existing diagram or diagrams was or were based as disclosed by such diagram or diagrams and containing such other information as such land surveyor may deem useful or the Surveyor-General may require.

(3) Upon receipt by the Surveyor-General of an application from the owner, or upon the Surveyor-General calling on the owner to arrange for the registration of a new diagram under subsection (1), the Surveyor-General shall notify the Registrar accordingly, and no registration of the land represented by such new diagram, or any portion thereof or undivided share therein, shall be effected in the Registry until an amended title thereto has been registered.

(4) If it appears from a re-survey under this section that an existing diagram is correct, the Surveyor-General shall endorse thereon a certificate that the land represented thereby has been re-surveyed and that the existing diagram has been found to be correct, and thereupon the beacons and boundaries of such parcel of land shall be deemed to have been lawfully established in accordance with section *twenty-five*:

Provided that the provisions of section *sixteen* shall, *mutatis mutandis*, apply in the same manner as if such re-survey were a survey and as if such endorsement were an approval of a diagram for the purposes of that section, and that such endorsement shall not be made unless those provisions have been complied with.

19. (1) Whenever-

Re-survey of
blocks of land

- (a) the owners of not less than one-half of a section or block of registered parcels of land apply to the Surveyor-General for a re-survey of such section or block; and
 - (b) the Surveyor-General reports that the boundaries of the several parcels of land constituting such section or block are confused and need adjustment;
- the Minister may order that such section or block be re-surveyed.

(2) No beacons or boundaries which have been lawfully established under section *twenty-five* shall be affected by any re-survey or any other act performed under this section.

(3) Whenever in the course of a re-survey ordered under this section a dispute arises as to the boundaries of the parcel of land concerned, the Surveyor-General may give notice in writing to every person who is a party to such dispute that he proposes to appoint an arbitrator for the purpose of determining such dispute, and the provisions of subsection (4) of section *sixteen* shall, *mutatis mutandis*, apply in regard to such notice.

(4) Any person to whom notice is given under subsection (3) may, if he was in Zambia upon the date when such notice was served upon him, within one month, and, if he was not in Zambia on such date, within three months after such date, institute an action in the Court to determine such dispute, or, if the President is one of the parties to such dispute, proceed to arbitration in respect thereof under the Arbitration Act; and if no such person institutes any such action or arbitration proceedings within such periods, the Surveyor-General may appoint an arbitrator to determine such dispute, and the award of such arbitrator in regard to such dispute and in regard to all costs thereof or incidental thereto shall be final. Cap. 41

(5) The Minister may direct that the costs of any such re-survey be recovered by the Surveyor-General proportionately from the respective owners in such manner as the Minister may direct.

(6) Upon payment by an owner of any parcel of land of all costs due by him in respect of a re-survey ordered under this section, a Government surveyor shall cancel the existing registered diagrams of such parcel of land and shall issue for registration in lieu thereof a new approved diagram.

(7) A Government surveyor shall not approve a general plan representing any parcels of land based upon a re-survey under this section until a copy thereof has been available for inspection during a period of six weeks at his office and at the office of the District Secretary of the District within which such land is situate, and until he has published, in two consecutive issues of the *Gazette* and once every

week during two consecutive weeks in a newspaper circulating in such District, a notice stating his intention to approve such general plan and calling upon persons interested who object to such approval to lodge such objection with the Surveyor-General:

Provided that a Government surveyor may approve any such general plan, without publishing such notice, if every owner of any land affected by such re-survey has agreed in writing to such general plan or to the beacons and boundaries adopted in such re-survey, or if such general plan is in accordance with a judgment or award under subsection (4) in an action or arbitration proceedings to which every such owner was a party.

(8) If, within four weeks of the date of the last publication of a notice under subsection (7), no objection has been lodged by any person, other than a person who was a party to an action or arbitration proceedings under subsection (4), a Government surveyor may approve such general plan, and upon such approval, he shall, by *Gazette* notice, declare that such general plan has been approved.

(9) If, within such period of four weeks, any such objection has been so lodged, the provisions of subsections (6) and (7) of section *sixteen* shall, *mutatis mutandis*, apply:

Provided that a Government surveyor may approve and make use of a general plan or general plans of such portions of the area re-surveyed as are not affected by such objection and generally may take any steps in regard to such portions as if no such objection had been lodged.

(As amended by S.I. No. 65 of 1965)

PART IV

SUBDIVISIONAL SURVEYS

20. No diagram of any portion of a registered unsurveyed parcel of land shall be approved until a survey has been made of the whole of such parcel of land and a diagram has been registered on the basis of such survey.

No diagram of portion of unsurveyed land to be approved

21. When submitting to the Surveyor-General for approval the records of a subdivisional survey, the land surveyor concerned shall deliver, in addition to any other records-

Approved plans
of proposed
subdivisions
Cap. 283

- (a) a plan showing the proposed subdivision or subdivisions approved by the appropriate authority constituted under the Town and Country Planning Act when the land is subject to the provisions of that Act;
- (b) in the case of land leased from the President, a plan of the proposed subdivision or subdivisions approved by the Commissioner of Lands.

(As amended by No. 44 of 1965 and S.I. No. 65 of 1965)

22. (1) Whenever the owner of a surveyed parcel of land desires to subdivide the same and to effect separate registration of one or more portions of such land, each of the portions to be so registered shall be surveyed and a diagram thereof, prepared in accordance with this Act, shall be submitted to the Surveyor-General for approval:

Subdivisional
diagrams

Provided that, if it is desired to effect a separate registration of the remaining extent of such parcel of land, no diagram of such remaining extent shall be submitted to the Surveyor-General or approved unless it be designated as a subdivision of the parcel of land.

(2) Upon separate registration of any subdivision of a parcel of land being effected, a Government surveyor shall, in accordance with the provisions of paragraph (c) of section *five*, define on the copy of the registered diagram of the parcel of land so divided belonging to the owner of such remaining extent, and on the copy of such diagram registered in the Registry, the geometrical figure representing such subdivision, the numerical extent thereof and the numerical extent of the remaining portion after deduction of the subdivision from the parcel of land:

Provided that, in such cases as may be prescribed, such definition and deduction may be made on a supplementary plan to be attached to the registered diagram or registered separately instead of on such diagram.

23. If a subdivisional survey discloses, in the opinion of a Government

Rectification of

surveyor, that-

- (a) the numerical data derived from the subdivisional survey differ beyond the prescribed limits of error from the numerical data on the diagram of the parcel of land under subdivision, a Government surveyor shall not approve a diagram based upon the subdivisional survey until the provisions of section *sixteen* and subsection (2) of section *eighteen* have been complied with in regard thereto and to all matters in connection therewith, as if the parcel of land represented on the diagram based upon the subdivisional survey were a parcel of land such as is referred to in the said section or subsection:

Provided that every parcel of land, a beacon or boundary whereof has a bearing on or reference to the parcel of land represented on such last mentioned diagram, shall be deemed to be contiguous to such parcel of land for the purposes of subsection (1) of the said section *sixteen*;

- (b) the numerical data derived from the subdivisional survey differ from the numerical data on the diagram of the land under subdivision upon which any registration has been based, but not beyond the prescribed limits of error, a Government surveyor shall, if satisfied that the subdivisional survey has been more accurately performed than the previous survey of the land under subdivision and that the positions of the beacons and boundaries adopted in both such surveys are identical, approve a new diagram of the parcel of land under subdivision or a diagram of any portion thereof prepared in accordance with the subdivisional survey:

Provided that if a Government surveyor approves of a new diagram of the whole parcel of land under subdivision, the provisions of subsection (3) of section *eighteen* shall apply in regard to such new diagram.

errors
ascertained by
subdivisional
survey

24. When a surveyed and registered parcel of land is subdivided into one or more precise fractions, a Government surveyor may withhold his approval of a diagram purporting to represent an exact fraction of the total area of such surveyed and registered parcel of land until he is satisfied that such total area has been redetermined by a re-survey of the whole of such parcel of land in conjunction with the survey of the subdivisional fraction or fractions.

Diagram of
exact fraction of
land

PART V

BEACONS AND BOUNDARIES

25. (1) Notwithstanding anything contained in any written law, the position of any beacon or boundary deemed in terms of this section to have been lawfully established shall be unimpeachable, that is to say, it shall not be capable of being brought into question in any court, and the Surveyor-General or Registrar shall not accept for filing or registration any document which shows any beacon or boundary inconsistent with such position.

Beacons and
boundaries
lawfully
established

(2) A beacon or boundary shall be deemed to have been lawfully established-

- (a) when its position is in agreement with the position thereof adopted in a re-survey and when a diagram based on such re-survey has been approved in accordance with the provisions of section *eighteen*;
- (b) when its position is in agreement with the position thereof adopted in an original survey and when a diagram based on such original survey has been approved in accordance with the provisions of section *sixteen*;
- (c) when its position is in agreement with the position thereof adopted in a subdivisional survey such as is referred to in paragraph (a) of section *twenty-three*, and when a diagram based on such subdivisional survey has been approved and registered in the Registry;
- (d) when its position is in agreement with the position thereof adopted in a re-survey in accordance with the provisions of section *nineteen*, and when a general plan based on such re-survey has been approved;
- (e) when its position is in agreement with an order of the Court.

26. (1) All beacons erected for the purpose or in consequence of any survey or re-survey of land under this Act shall be substantially and durably constructed under the supervision of, and in the position determined by, a land surveyor.

Manner and
cost of erecting
beacons for
survey purposes

(2) Beacons shall be composed of such materials, and erected in such manner, as may be prescribed.

(3) Subject to the proviso to subsection (4) of section *twenty-eight*, the cost of erecting beacons, including the cost of determining their position by survey, when necessary, shall be borne by the owner of the land surveyed or re-surveyed, who shall be entitled to recover from the owner or owners of land contiguous to the boundaries concerned a proportionate share of the cost of determining the position of and erecting any beacon which is also a corner beacon of his or their properties.

27. Except with the consent of a Government surveyor, it shall not be lawful for any person to place any fence post or fence anchor or any other erection, or to make any excavation, within 1220 mm of any beacon or survey station: No poles, etc., to be placed near beacon

Provided that, subject to the provisions of section *twenty-nine*, the foregoing provisions of this section shall not apply to-

- (a) any township stand; or
- (b) any parcel of land not exceeding 4.047 hectares.

28. (1) Every owner of land shall maintain in proper order and repair, in accordance with any regulations made under this Act, any beacon or mark defining a corner point of his parcel of land, whether such beacon or mark was erected for the purpose of or in connection with a survey or re-survey of such land under this Act or any prior written law, or for the purpose of or in connection with a survey or re-survey of any land contiguous thereto. Repair of re-erection of beacons

(2) If any such beacon or mark has not been maintained in proper order or repair, or has been removed or obliterated, the Surveyor-General may, by delivery or by transmission in a registered letter through the post, serve upon the owner of every parcel of land whereof such beacon or mark indicates a corner point a notice in writing calling upon him to arrange for the restoration of such beacon or mark to its correct position, or to have it re-erected in the prescribed manner, as the case may be:

Provided that the restoration or the re-erection of any such removed or obliterated beacon or mark shall be carried out by or under the immediate supervision of a land surveyor.

(3) If a beacon or mark in respect of which notice has been given under subsection (2) is not restored or re-erected within six weeks of the date upon which any such notice was delivered or posted, the Surveyor-General may cause such beacon or mark to be so restored or re-erected by a land surveyor.

(4) The owners of all parcels of land of which a beacon or mark indicates the corner points shall be liable in equal shares for the costs of the repair, restoration or re-erection of any such beacon or mark, and the Surveyor-General may recover from every such owner his proportionate share of all costs incurred by the Surveyor-General under subsection (3):

Provided that, if it is clearly established that any such owner, or the servant or agent of any such owner, has damaged, removed or obliterated any such beacon or mark, the entire costs of the repair, restoration or re-erection of such beacon or mark shall be borne by such owner.

(5) In the case of a township, the local authority shall be responsible for the maintenance of all reference marks and beacons of unalienated lands, and any destruction of or damage to any such reference mark or beacon may be made good by the Surveyor-General at the expense of such local authority.

29. (1) Any person who, without lawful excuse, the burden of proof whereof shall be on him-

Offences and
compensation

- (a) alters, moves, disturbs or wilfully damages or destroys any beacon, bench mark, reference mark, signal or trigonometrical station intended to be permanent and erected for the purpose of or in connection with any survey operations, whether such beacon, bench mark, reference mark, signal or trigonometrical station is upon his own land or not; or
- (b) erects any such beacon, except under the supervision of a land surveyor, whether his intention is to alter the boundary line of

any parcel of land or to cause deception as to the boundary line or not;

shall be guilty of an offence and liable to a fine not exceeding two thousand penalty units or to imprisonment for a period not exceeding six months, or to both; and the removal or disturbance of any such beacon, mark or signal for the purpose of erecting another beacon, mark or signal in its place shall not constitute a lawful excuse under this section unless a land surveyor personally superintends such removal or disturbance and the erection of such other beacon, mark or signal.

(2) For the purpose of awarding compensation under the law relating to criminal procedure in respect of any damage caused by such offence, any beacon in connection with which such offence was committed shall be deemed to be the property of any person upon whose land or upon a boundary of whose land such beacon was situate; and any bench mark, reference mark or trigonometrical station in connection with which any such offence was committed shall be deemed to be the property of the Surveyor-General.

(As amended by Act No. 13 of 1994)

30. Any person who, for the purpose of carrying out any work which he may lawfully perform, desires to remove or disturb any beacon or mark erected in connection with the survey of land, may apply to the Surveyor-General for authority to effect such removal or disturbance, and the Surveyor-General may thereupon authorise in writing such removal or disturbance and, at the expense of such applicant, employ any land surveyor personally to effect or supervise the removal or disturbance and subsequent replacement of such beacon or mark or the erection or placing of any other mark to indicate the position of such removed or disturbed beacon or mark, in such manner as the Surveyor-General may direct.

Authority to
remove beacons

(As amended by S.I. No. 65 of 1965)

PART VI

GENERAL PLANS AND DIAGRAMS

31. Every general plan or diagram submitted for approval shall be prepared in accordance with the requirements prescribed, and the

Manner of
preparing

numerical and other data recorded thereon shall be within the prescribed limits of consistency:

general plans and diagrams

Provided that a Government surveyor may approve a diagram prepared before the commencement of this Act in accordance with any law or usage in force at the time of such preparation.

32. No diagram of any parcel of land shall be accepted in the Registry in connection with any registration therein of such land, unless such diagram has been approved:

No registration of land without approved diagram

Provided that, in the event of such approval being contingent upon any act being subsequently performed in the Registry, the Surveyor-General may approve such diagram provisionally, and, upon the performance of that act in the Registry, the Surveyor-General shall finally approve such diagram when submitted to him.

(As amended by No. 44 of 1965)

33. (1) No general plan or diagram shall be approved unless its geometrical figure and all the other data it contains are consistent with all details furnished in the approved survey records of the parcel of land to which such general plan or diagram relates.

Consistency between general plans or diagrams and survey records and signing and approval thereof

(2) Subject to the provisions of section *thirty-four*, no general plan or diagram shall be approved unless-

(a) it is prepared under the direction of and signed by the land surveyor or land surveyors who carried out the respective survey; and

(b) it accords with such requirements as may be prescribed:

Provided that a general plan or diagram may be approved if it has been framed from an approved general plan or from an approved diagram or diagrams or from approved survey records filed in the

Surveyor-General's office or registered in the Registry, without the signature thereon of the land surveyor who signed the original general plan or diagram, if he is not available or unreasonably refuses to sign the general plan or diagram so framed.

(No. 44 of 1965)

34. A Government surveyor may approve a general plan or a diagram which is not signed by a land surveyor and which has been framed without any re-survey from an approved general plan or general plans or from other approved survey records or from two or more approved diagrams and which has been framed for the purpose of-

Approval of general plan or diagram for consolidation purposes or rearrangement of boundaries

(a) a consolidation of two or more parcels of land; or

(b) a rearrangement of boundaries of one or more parcels of land.

(No. 44 of 1965)

35. Whenever the Surveyor-General is satisfied that-

Endorsement on general plan

(a) the whole or any part of a survey relating to any general plan has been cancelled; or

(b) the numerical and other data recorded on any general plan have been superseded by a re-survey or by a consolidation of parcels of land or by a rearrangement of boundaries of one or more parcels of land;

he may insert an endorsement to that effect on such general plan.

(No. 44 of 1965)

36. If the Surveyor-General is satisfied that the diagram of any registered parcel of land entirely fails to represent such land, or misrepresents it to such an extent that damage or loss might result to any person who is or may become interested therein, he may give notice of such fact to the Registrar and to the owner of such parcel of land, and thereafter no further registration relating to such parcel of land or of any portion thereof or undivided share therein shall be effected in the Registry until a new diagram thereof has been approved and an amended title thereto has been registered in accordance with such new diagram:

Registrar and owner to be informed of incorrect diagram

Provided that, if the Surveyor-General is unaware of the address of the

owner of such parcel of land, a publication of such notice in one issue of the *Gazette* and once every week during two consecutive weeks in a newspaper circulating in the District within which such parcel of land is situate shall be deemed to be sufficient notice to such owner for the purpose of this section.

37. A Government surveyor may withhold his approval of a general plan or diagram if he considers that any parcel of land represented thereon is not lawfully provided with adequate access rights.

No approval for plan or diagram of parcel of land not provided with access rights

PART VII

MISCELLANEOUS

38. (1) Aerial photography shall not be used for the purposes of land survey without the written permission of the Surveyor-General.

Aerial photography

(2) A request for permission to make use of aerial photography for the purposes of land survey shall be accompanied by a plan showing clearly the extent to which it is intended to make use of such photography and specifying the extent of ground control to be provided.

39. (1) A Government surveyor, a land surveyor and any other person generally or specially authorised in that behalf by the Surveyor-General may, for the purpose of performing any duties imposed by or under any written law relating to survey-

Powers of entry, etc., upon land

(a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of such duties;

(b) place or erect any permanent beacon, bench mark, reference mark or trigonometrical station, or any temporary flag, signal or other mark upon such land or upon any building or structure erected thereon;

- (c) make use of any natural material upon which no work has previously been expended and, except within a township, of any water, whether conserved or not, found upon or in such land;
- (d) cut any vegetation growing wild in the vicinity of any such beacon, mark, station, flag or signal for the purpose of enabling observations to be made thereto or therefrom:

Provided that-

- (i) reasonable notice of the intention to exercise any of the powers conferred by this subsection shall be given to the owner, or, if such owner is not in occupation, to the occupier, of such land; and
- (ii) as little damage and inconvenience as possible shall be caused by the exercise of the said powers, and such owner or occupier shall be entitled to compensation for any damage caused to or in any enclosed place, and for any unreasonable damage caused to any other property belonging to such owner or occupier.

(2) Any person who in any manner whatsoever prevents, obstructs or impedes, or attempts to prevent, obstruct or impede, the exercise of any power conferred by subsection (1), or who moves, obscures or destroys any flag, peg, signal or other mark of a temporary character lawfully placed on any land in connection with any surveying operations, shall be guilty of an offence and shall be liable to a fine not exceeding seven hundred and fifty penalty units.

(3) The Minister may require that an easement in favour of the President protecting any beacon, bench mark, reference mark or trigonometrical station, and ensuring an unobstructed view to and from any such beacon, mark or station, shall be granted over any land upon or near which any such beacon, mark or station is situate by the person who may lawfully grant the same in respect of such land, and may cause such easement to be registered against the title of such land:

Provided that the costs of such registration and reasonable compensation for the depreciation, if any, in the value of the servient tenement by reason of the establishment of such easement, shall be paid by the President.

(As amended by S.I. No. 65 of 1965 and Act No. 13 of 1994)

40. The Minister may, by statutory instrument, make regulations prescribing- Regulations

- (a) the fees to be paid by an owner of land for any survey of such land, including any records relating to such survey, the manner in which and the person by whom such fees may be taxed, the costs of such taxation and by whom they shall be borne;
- (b) the manner in which surveys shall be performed and the manner and form in which the records of such surveys shall be prepared and furnished to the Surveyor-General;
- (c) the degree of accuracy to be obtained and the limit of error to be allowed in surveys and re-surveys of land;
- (d) the diagrams and general plans required in respect of all surveys of parcels of land, the manner of preparing such diagrams and general plans, the information to be recorded thereon and the number of such diagrams and general plans to be supplied;
- (e) the form and dimensions of beacons, reference marks, bench marks and trigonometrical stations, the manner of marking the same for identification and the manner of their construction, erection, protection, maintenance and repair;
- (f) the procedure to be followed in arbitration proceedings under this Act and the powers and duties of arbitrators appointed thereunder;
- (g) the manner in which surveys shall be based upon existing secondary and tertiary triangulations;
- (h) the manner of re-surveying stands in any township, or any part thereof, or sections or blocks of land, other than such stands, for the purpose of re-establishing the boundaries and the beacons thereof, and the manner of recovering the costs of such re-surveys;
- (i) the steps to be taken by the Surveyor-General to test the accuracy of surveys, the records of which are lodged with him for approval and, in the event of such surveys being inaccurate in the opinion of the Surveyor-General, the action to be taken to ensure the rectification of the survey and the records thereof;
- (j) the testing of surveying instruments and of measuring tapes to be used in the survey of land;
- (k) the unit of measure to be used on general plans and diagrams;
- (l) the manner in which the Survey Control Board shall conduct its

meetings;

- (m) anything which is to be prescribed under this Act;
and generally as to any matter appertaining to the surveying and charting of land and for carrying out the objects and purposes of this Act.

(As amended by G.N. No. 274 of 1964)

41. Notwithstanding anything contained in any other written law, the Minister may, by statutory notice, specify the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the office of the Surveyor-General. Fees of office

42. (1) This Act shall bind the President in so far as any land surveyed or re-surveyed or otherwise dealt with thereunder is State Land which has not been alienated to any other person or which, having been so alienated, has been re-acquired by the President, and, for the purpose of giving or serving any notice required or permitted to be given under this Act in respect of State Land, the Surveyor-General shall be deemed to be the owner thereof. Act to bind President

(2) Where any land surveyed or re-surveyed or otherwise dealt with under this Act is unalienated land in a former Reserve* or in Trust Land*, the President shall, for the purposes of this Act, be deemed to be the owner thereof, and any notice required or permitted to be given or served under this Act in respect of such land shall be given to or served on the Surveyor-General.

* Also referred to as "customary area". See meaning assigned thereto by section 2 of the Lands Act, Cap. 184.

(As amended by S.I. No. 65 of 1965)

SCHEDULE

THE LAND SURVEY ACT

(Section 9)

DECLARATION

I,, do solemnly and sincerely declare that I will discharge the duties of a land surveyor carefully and without partiality, fear, favour or affection, and will conform to all regulations defining those duties which are now in force, or shall hereafter be established by competent authority.

Declared before me
at this
day of, 19.....

Commissioner for Oaths

*Also referred to as "customary area". See meaning assigned thereto by section 2 of the Lands Act, Cap. 184.