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CHAPTER 189

LANDS ACQUISITION

2 of 1970

13 of 1994

An Act to make provision for the compulsory acquisition of land and other property; and to provide for matters incidental to or connected with the foregoing.

S.I. No.

110 of 1992

[*10th February, 1970*]

PART I

PRELIMINARY

1. This Act may be cited as the Lands Acquisition Act.

Short title

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

Interpretation

"Court" means the High Court for Zambia;

"land" includes any interest in or right over land, but shall not include a mortgage or other charge;

"property" includes land, and includes any interest in or right over property, but shall not include a pledge or other charge;

"Register" means the appropriate register established in terms of the Lands and Deeds Registry Act; Cap. 185

"Registrar" has the meaning assigned to it in the Lands and Deeds Registry Act; Cap. 185

"rural area" means any area which is not an urban area;

"transfer" includes convey, assign, surrender or otherwise alienate or dispose of land or other property, and "transfer" as a noun shall be correspondingly construed;

"urban area" means the area of a city, municipality or township as defined in the Local Government Act. Cap. 281

PART II

COMPULSORY ACQUISITION

3. Subject to the provisions of this Act, the President may, whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do, compulsorily acquire any property of any description. Power to acquire property

4. (1) Whenever it appears to the President that it may be desirable or expedient to acquire any land, it shall be lawful for any person authorised either generally or specially by the Minister in that behalf and for his servants and agents-

(a) to enter upon the land in question or any land in the vicinity thereof and survey and take levels of any such land; or

- (b) to dig or bore under the sub-soil; or
- (c) to do all other acts necessary to ascertain whether the land is or may be suitable for the purpose in question; or
- (d) to clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of the work (if any) proposed to be done thereon:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) unless he has previously given such occupier not less than seven days' notice of his intention so to do.

(2) As soon as conveniently may be after any entry made under subsection (1) the Government shall pay for all damage done by the persons so entering. In the case of a dispute as to the amount to be paid, either the Minister or the person claiming payment may refer such dispute to a court having jurisdiction.

5. (1) If the President resolves that it is desirable or expedient in the interests of the Republic to acquire any property, the Minister shall give notice in the prescribed form to the persons interested in such property and to the persons entitled to transfer the same or to such of them as shall after reasonable inquiry be known to him. Notice of intention to acquire property

(2) Every such notice shall, in addition, invite any person claiming to be interested in such property to submit such claim to the Minister within four weeks of the publication of the *Gazette* notice in terms of section *seven*.

6. (1) The Minister may, by notice under section *five* or by any subsequent notice, direct the persons to whom notice is required by section *five* to be given to yield up possession of such property on the expiration of the period specified in the notice, which period shall be not less than two months from the date of service of the notice: Notice to yield up and power to take possession

Provided that where the President certifies that the property in question

is urgently required, the persons aforesaid may be required to yield up possession of the property on the expiration of such lesser period as the President may direct.

(2) On the expiration of the period referred to in subsection (1) the President and all persons authorised by him may take possession of such property.

7. (1) Every notice under section *five* or *six* shall be served either personally on the persons to be served or by leaving it at their last usual place of residence or business if any such place can after reasonable inquiry be found; and if any such person is absent from Zambia or if he or his last usual place of residence or business cannot after reasonable inquiry be found, such notice shall be left with the occupier of such property or, if there be no such occupier, shall be affixed upon some conspicuous part of such property. Service of notices

(2) If any person upon whom such notice is required to be served is a body corporate, such notice shall be deemed to have been duly served if left at, or addressed by prepaid registered letter to such body corporate at, its registered office or principal office in Zambia.

(3) Every such notice shall be published in the *Gazette* as soon as may be practicable after the same has been served in accordance with the provisions of this section, and, in addition, in the case of land, a caveat shall be lodged with the Registrar.

(4) Where any such notice has been published the acquisition of the property to which it relates shall not be invalid by reason only of any irregularity in the service of the notice or by reason of it having been published prior to its service on any person required to be served therewith.

8. (1) Where any property proposed to be acquired under this Act is a portion of land held in circumstances in which the residue of land would be less than half an acre, the owner of such land may, within thirty days of the publication in the *Gazette* under section *seven* of the notice to yield up possession, by notice in writing served upon the Minister require the President to acquire the whole of the land and, upon such notice being served, the President shall acquire the whole of such land: Acquisition of portion of land

Provided that where the owner of such land owns also immediately adjoining land which, together with the residue as aforesaid, would exceed half an acre in area, the President may refuse to acquire such residue.

(2) This section shall not apply to any land situate within an urban area.

9. Provided he is willing and able to yield up possession of the whole thereof, no person shall be required to yield up to the President possession of part only of any house or other building.

Acquisition of
portion of house
or other
building

PART III

COMPENSATION

10. Subject to the provisions of this Act, where any property is acquired by the President under this Act the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation in money as may be agreed or, in default of agreement, determined in accordance with the provisions of this Act:

Compensation
payable for
property
acquired

Provided that where the property acquired is land the President may, with the consent of the person entitled to compensation, make to such person, in lieu of or in addition to any compensation payable under this section, a grant of other land not exceeding in value the value of the land acquired, for an estate not exceeding the estate acquired and upon the same terms and conditions, as far as may be practicable, as those under which the land acquired was held.

11. (1) If within six weeks after the publication in the *Gazette* under section *seven* of the notice to yield up possession, there remains outstanding any dispute relating to or in connection with the property, other than a dispute as to the amount of compensation, the Minister or any person claiming any interest in the property may institute proceedings in the Court for the determination of such dispute.

Disputes

(2) Where any dispute arises as to the amount of compensation, the Minister or any person claiming to be entitled to compensation may, and shall if such dispute is not settled within the aforementioned period of six weeks, refer such dispute to the Court which shall determine the amount of compensation to be paid.

(3) *Repealed by S.I. No. 110 of 1992.*

(4) The existence of any dispute as aforesaid shall not affect the right of the President and persons authorised by him to take possession of the property:

Provided that where a dispute exists as to the amount of compensation or the right to acquire the property without compensation, possession may be taken only after payment of the amount regarded by the Minister as just compensation-

- (i) in the case of a dispute as to the amount of compensation, to the person entitled to compensation (or into court if the identity of such person, or any question of apportionment, is also in dispute);
- (ii) in the case of a dispute as to the right to acquire the property without compensation, into court.

(5) If the sum paid in terms of subsection (4) is greater than the amount subsequently determined by the court, or if the right to acquire the property without compensation is upheld, any sum paid in excess of any compensation lawfully payable shall be a debt recoverable by action or shall be paid out of court, as the case may be.

(As amended by S.I. No. 110 of 1992)

12. In assessing adequate compensation as provided in the Constitution for any property to be acquired under the provisions of this Act, the Minister and the Court shall act in accordance with the following principles:

Principles for assessment of compensation

- (a) No allowance shall be made on account of the acquisition being compulsory;

(b) The value of property shall, subject as hereinafter provided, be the amount which the property might be expected to realise if sold in the open market by a willing seller at the time of publication under section *seven* of the notice to yield up possession:

Provided that there shall be taken into account and deducted-

- (i) any returns and assessments of capital value for taxation made or acquiesced in by the claimant:
- (ii) any money granted by the Government for the development of the property or any other investment or donations made by the Government, or deemed to have been made or granted; or any investment or donation, whether in the form of money, services, equipment or any other contribution, made by a company or any other body, unless any contributor indicates in writing that the contribution was specifically made for the use and benefit of the registered owner:

Provided further that such grants, donations or investments, made as aforesaid shall have such value calculated on a *pro rata* basis of the property as assessed at the time of publication of the notice to yield up possession under section *seven*;

- (c) The special suitability or adaptability of the property for any purpose shall not be taken into account if that purpose is one to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of the Government or a local authority;
- (d) No allowance shall be made on account of any improvements effected or works constructed after the publication of the notice to yield up possession;
- (e) Where part only of the land held by any person is acquired, there shall be taken into account any probable enhancement of the value of the residue of the land by reason of the proximity of any improvements or works made or constructed or to be made or constructed on the part acquired;
- (f) Allowance shall be made for the damage, if any, sustained by the person having an estate or interest in the land by reason of the

- severance of such land from any other land belonging to the same person or other injurious effect upon such other land;
- (g) No allowance shall be made for any probable enhancement in the future of the value of the land to be acquired.

(As amended by S.I. No. 110 of 1992)

13. Repealed by S.I. No. 110 of 1992.

14. (1) The decision of the Court (or, in the case of an appeal, the Supreme Court) shall be final and conclusive as between all the parties to the proceedings in question. Effect of decision

(2) The payment to the person who appears to be entitled thereto (or into court if the identity of such person, or any question of apportionment, is in dispute) of the compensation determined by the Court shall operate as a complete discharge of the Minister from all claims in respect of the property, but shall not bar any subsequent proceedings against the person to whom the same was awarded by any person claiming to have a better right to the compensation or the right to a share thereof:

Provided that no proceedings under this subsection by any person claiming to have a better right to any compensation or a right to a share therein shall be commenced after the expiration of three years from the date of the final decision.

(3) For the purposes of this section, the date of the final decision means the date of the judgment of the Court or the Supreme Court, as the case may be.

(4) Where it appears to the Minister that any estate or interest in any property acquired under this Act was held by any person in any fiduciary or representative capacity, the Minister may apply to the Court for directions as to whom and in what proportions the compensation should be paid.

(As amended by S.I. No. 110 of 1992)

PART IV

UNUTILISED AND UNDEVELOPED LAND AND ABSENTEE OWNERS

15. (1) Notwithstanding anything contained in this Act or any other law, but subject to subsection (2), no compensation shall be payable in respect of undeveloped land or unutilised land.

Land for which
no
compensation
payable

(2) Save where the land acquired is unutilised land to which an absentee owner is beneficially entitled, compensation shall be payable in respect of the unexhausted improvements on unutilised land:

Provided that such compensation shall be limited to the value, for the purpose for which the land is acquired, of such unexhausted improvements.

(3) Land shall be deemed to be undeveloped if it is inadequately developed bearing in mind the national need, and in particular, but without derogating from the generality of the foregoing, land shall not cease to be undeveloped by reason only-

- (a) that it has been fenced or hedged; or
- (b) that it has been cleared, levelled or ploughed; or
- (c) that it consists of a cleared or partially cleared site of some former development; or
- (d) that it is being used, otherwise than as an ancillary to adjacent land which is not undeveloped or unutilised land, as a place of deposit for refuse or waste or as standing or parking places for vehicles:

Provided that in the case of land in a rural area which is used for agricultural, pastoral or mixed agricultural and pastoral purposes, the land shall not be deemed to be undeveloped unless such land has not

been used for cultivation or pasturage or mixed cultivation and pasturage, as the case may be, at any time during the period of two years immediately preceding the publication of the notice to yield up possession.

(4) Land shall be deemed to be unutilised-

- (a) in the case of land in a rural area, if, having regard to the character and situation of the land and all other relevant circumstances, the exploitation of the land is not in accordance with good estate management;
- (b) in the case of land in an urban area, if-
 - (i) it has been developed by erection of buildings, structures or works which have fallen into substantial disrepair or into disuse, and the land has been unoccupied, or occupied solely by persons employed as watchmen, for a continuous period of not less than three months preceding the publication of the notice to yield up possession; or
 - (ii) it is used at the time of the publication of such notice solely for cultivation or pasturage or both cultivation and pasturage; or
 - (iii) it is used at the time of the publication of such notice solely for habitation, in dwellings of their own construction or adapted from buildings formerly abandoned by persons holding at the will or sufferance of a person having title to the land or by trespassers.

(5) Nothing in this section shall apply to land within six months immediately following-

- (a) the acquisition by the owner of his title to or interest in the land; or
- (b) the approval of any relevant authority, under any law for the time being in force, of a scheme for the development of the land; or
- (c) the consent of the Commissioner of Lands to a disposition of the land.

(6) In this section, "unexhausted improvements" means any quality

permanently attached to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation other than standing crops and growing produce.

16. An "absentee owner" for the purposes of this Act means, as applied to the owner of any estate or interest in or right over land or other property-

Absentee owners

- (a) in the case of an individual, a person who is not ordinarily resident in Zambia;
- (b) in the case of a partnership, a co-ownership or a body corporate, one in which the effective control lies, directly or indirectly, in the hands of individuals who are not ordinarily resident in Zambia.

PART V

TRANSFER

17. Where a notice to acquire any land under this Act has been published in terms of section *seven*, the persons entitled to transfer the land shall, notwithstanding anything to the contrary contained in any other law or in any order of any court otherwise than under this Act, within two months of the publication of such notice transfer the same to the President.

Transfer to President

18. Every transfer to the President under this Act shall, notwithstanding anything to the contrary contained in any written law, be in the prescribed form.

Form of transfer

19. (1) Where two months have elapsed since publication in terms of section *seven* of a notice to acquire land and no transfer of such land has been executed in accordance with the terms of such notice or such other terms as may have been agreed between the Minister and the person entitled to transfer the land, the Minister may make application to the Registrar in such manner as may be prescribed for an entry to be made in the Register recording the compulsory acquisition of the land in accordance with such terms.

Entry in Register where no transfer available

(2) Notwithstanding anything to the contrary contained in any other law or in any order of any court otherwise than under this Act, the Registrar shall, if satisfied by affidavit or otherwise that the application is made in such circumstances as aforesaid, make an entry in the Register recording the compulsory acquisition of the land in accordance with such terms.

20. Where a transfer to the President under this Act is registered in accordance with the provisions of any law or where an entry is made in the Register in terms of section *nineteen*, such transfer or entry shall vest the land in question in the President free from all adverse or competing rights, title, trusts, charges, claims or demands whatsoever, but subject to any terms and conditions contained in such transfer or entry.

Effect of
transfer or entry
in Register

PART VI

COMPENSATION ADVISORY BOARD

21. There is hereby established a board, to be known as the Compensation Advisory Board (hereinafter referred to as the Board), to advise and assist the Minister in the assessment of any compensation payable under this Act.

Establishment
of Board

22. (1) The functions of the Board shall be discharged by committees of not less than three persons chosen by the Minister from a panel of persons nominated by the President.

Membership of
Board,
committees, etc.

(2) The chairman of any committee shall be a public officer qualified to practise as a barrister and solicitor in the Republic.

(3) Committees of the Board may discharge the functions of the Board at the same time and in different places within the Republic.

(4) There shall be paid to members of the Board who are not public officers, out of moneys appropriated by Parliament for the purpose, remuneration and allowances as determined by the Minister and any expenses incurred in the performance of their duties.

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| 23. The President may, by statutory instrument, make regulations with respect to the constitution, powers, practice and procedure of the Board and committees. | Regulations relating to Board |
| 24. Nothing in this Part shall be construed as imposing an obligation on the Minister to accept any advice given, or recommendation made, by the Board. | Minister not bound by recommendation |

PART VII

MISCELLANEOUS AND GENERAL

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| 25. (1) Nothing in this Act shall be construed as requiring the President to complete the acquisition of any property unless he has taken possession thereof or has failed within one month of the judgment of the Court to inform such Court in writing that he does not intend to proceed with such acquisition: | President may withdraw from acquisition |
|---|---|

Provided that where the acquisition of any property is not completed, the Government shall pay to the owner thereof and all persons owning any estate or interest therein all such costs and expenses as may have been incurred by them by reason of or in consequence of the proceedings for acquisition and compensation for any loss or damage which may have been sustained by reason or in consequence of the notice of intended acquisition.

(2) The amount of any such costs or expenses or compensation shall, in default of agreement, be determined by the Court.

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| 26. The fact that a notice has been served or published in terms of this Act shall not be regarded as an admission by the President that the person named in any such notice or the person on whom any such notice was served or any other person has any estate or interest in the land specified in the notice or any part thereof, or debar the Minister from alleging in any proceedings under this Act or otherwise that all rights in or in relation to such land are vested in the President. | Service of notice not admission |
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27. (1) Any disposition of or other dealing with (other than by or to the President in terms of this Act) undeveloped land or unutilised land-

Certain
dispositions
void

(a) in the case of an absentee owner, after the 22nd October, 1969;
or

(b) in any other case, after the service of a notice under section *five*;
shall be void:

Provided that nothing in this subsection shall apply to any disposition of or other dealing with land-

(i) the acquisition of which has not been completed in terms of section *twenty-five*; or

(ii) by an executor or an administrator pursuant to the will of or on the intestacy of a person who was ordinarily resident in the Republic at the time of his death.

(2) Notwithstanding the provisions of subsection (1), where consideration in money or money's worth has been given prior to the 22nd October, 1969, under any contract (which for the purposes of this section includes negotiations evidenced in writing preparatory to entering into a written contract) for the sale and purchase of land, the Minister may, if satisfied that hardship would otherwise be caused, exempt any such contract and any transfer pursuant thereto from the provisions of this section.

28. (1) Any person who wilfully fails to comply with a notice to yield up possession, or who wilfully hinders or obstructs any duly authorised person taking possession of any property in terms of this Act or exercising any rights or performing any functions under this Act in relation thereto, shall be guilty of an offence and liable on conviction to a fine not exceeding fifteen thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Penalty for
hindering or
obstructing

(2) If any person hinders or obstructs any duly authorised person from taking possession of any land in terms of this Act, the Minister may

apply *ex parte* to the subordinate court presided over by a resident magistrate within whose jurisdiction such land is situate for an order of ejectment and such court may thereupon, and upon proof of publication in terms of section *seven* of the notice to yield up possession, issue an order of ejectment addressed to any officer of the court or to any police officer and such officer or police officer shall forthwith eject any person so withholding possession.

(As amended by Act No. 13 of 1994)

29. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and in particular, but without derogating from the generality of the foregoing, may make regulations prescribing anything which in terms of this Act may be prescribed. Regulations

30. (1) The Public Lands Acquisition Act, Chapter 87 of the 1958 Edition of the Laws (hereinafter referred to as the Act), is repealed. Repeal and saving

(2) Notwithstanding the repeal of the Act-

(a) all proceedings commenced under the Act and pending before any court immediately before the commencement of this Act shall be continued and concluded as if this Act had not come into force:

Provided that where any proceedings are pending before any court otherwise than on appeal from another court and such proceedings are for the assessment of compensation, the compensation shall, if it has not been assessed, be determined by the Court in accordance with the provisions of this Act;

(b) all orders, notices, directions, appointments and other acts and things lawfully made, issued or done under any of the provisions of the Act before the commencement of this Act shall be deemed to have been made, issued or done under the corresponding provision of this Act;

(c) any order of the Court made before the commencement of this Act may be enforced as if this Act had not been passed.

(As amended by S.I. No. 110 of 1992)