

CHAPTER 377

THE CUSTOMARY LEASEHOLDS (ENFRANCHISEMENT) ACT

[PRINCIPAL LEGISLATION]

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SCHEDULE

CHAPTER 377

THE CUSTOMARY LEASEHOLDS (ENFRANCHISEMENT) ACT

An Act to make provision for the enfranchisement of certain lands held under customary land tenure, to provide for the grant of such lands to the tenants and for related matters.

[1st August, 1969]

[G.N. No. 207 of 1969]

Acts Nos.

47 of 1968

43 of 1969

19 of 1992

2 of 2002

[PCh377s1]1. Short title Act No. 43 of 1969 s. 4

This Act may be cited as the Customary Leaseholds (Enfranchisement) Act.

[PCh377s2]2. Application

The provisions of this Act shall apply to the Kagera Region of and to such other areas of Mainland Tanzania as the Minister may, from time to time by notice in the Gazette, declare to be areas to which the Act shall apply.

[PCh377s3]3. Interpretation Acts Nos. 43 of 1969 s. 2; 19 of 1992 Sch.; 2 of 2002 Sch.

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

"Appeals Tribunal" means the Customary Lands Appeals Tribunal established pursuant to section 13 of this Act;

"effective date" means, in relation to the Kagera Region, the date of the commencement of this Act and in relation to any other area which is declared by notice under section 2 to be an area to which this Act shall apply, the date which is expressed in such notice to be the date from which this Act shall apply to such area or, if no such date is expressed in the notice, the date of the publication of the notice in the Gazette;

"enfranchised land" means land enfranchised by section 4;

"land" means any parcel of land held under customary tenure and which is used wholly or mainly for or in connection with agricultural, pastoral or mixed agricultural and pastoral purposes;

"landlord" means the person who holds any parcel of land under customary tenure and who has granted a tenancy in respect of the land or any portion thereof to a tenant and includes

any person who, under any customary law, is entitled to possession of a parcel of land occupied by another person;

"Minister" means the Minister responsible for lands;

"tenant" means any person who holds any parcel of land under a customary lease, sublease, an agreement for a lease or sublease or an agreement for a tenancy, whether such agreement be oral or in writing; and also means a person who occupies land under a licence or any arrangement whatsoever whereunder he pays in cash or kind for his occupation of the land to the landlord and includes the person in occupation of parcel of land where some other person is entitled to recover possession from him under customary law, whether or not the person so in occupation holds the land under any lease or agreement; and "tenancy" shall be construed accordingly;

"Tribunal" means a District Land and Housing Tribunal established under the provisions of section 8;

"unexhausted improvement" means any thing or quality permanently attached to the land directly resulting from the expenditure of capital or labour by or on behalf of a landlord and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation save where the tenant has held or occupied the land for a period of less than three years immediately preceding the enfranchisement of that land.

(2) For the purposes of this Act a parcel of land shall be deemed to be held or occupied by a tenant if the tenant is in or entitled to possession or occupation thereof otherwise than—

- (a) as a servant of the landlord or any other person entitled to possession of the land:

Provided that nothing in this paragraph shall apply to any such servant who makes any payment in cash or kind for the possession of the land by him to any person (whether his employer or otherwise) entitled to possession thereof;

- (b) as a trespasser:

Provided that nothing in this paragraph shall apply to a person who entered upon the land under licence.

[PCh377s4]4. Enfranchisement of leaseholds

(1) On the effective date every parcel of land held by a tenant shall be enfranchised and cease to be so held.

(2) On and after the effective date, no person who holds any parcel of land on customary tenure shall grant any tenancy of such land or any portion thereof, and every such grant including any agreement for such grant, whether made before or after the effective date, shall be void.

[PCh377s5]5. Vesting of enfranchised leaseholds

(1) Subject to this section, enfranchised land shall vest in the person who, immediately before the effective date, held the land as tenant who shall hold the same on the terms and subject to the incidents prescribed by regulations made under section 16 for the area in which the land is situate.

(2) Where, in accordance with subsection (1), any enfranchised land vests in any person who, immediately before the effective date, held the land—

(a) on trust for any other person or purpose, the enfranchised land shall vest in such first-mentioned person on the like trust;

(b) subject to any incumbrance, interest, right, term or condition (other than an incumbrance, interest, right, term or condition which operates in favour of the landlord) the enfranchised land shall vest in such first-mentioned person subject to the like incumbrance, interest, right, term or condition in so far as the same is capable of having effect in accordance with the regulations made under section 16.

[PCh377s6]6. Extinction of rights of landlords

On the effective date all rights in any enfranchised land of any person as a landlord shall be extinguished and, save as is provided by section 7, no compensation shall be paid to any such person for the loss of any enfranchised land or for the loss of any incidents owed under or in accordance with the tenancy by the tenant or any other person.

[PCh377s7]7. Compensation for unexhausted improvement

(1) Where any land is enfranchised, the person who, immediately before enfranchisement, held the land as the landlord, shall be entitled to receive compensation from the person in whom the enfranchised land is vested under section 5 in respect of the unexhausted improvement of the land effected by the landlord or by some other person or on his behalf.

(2) The amount of compensation and the manner in which the same shall be paid shall be determined by the Tribunal having jurisdiction over the area in which the land is situate.

[PCh377s8]8. Functions of Tribunal Act No. 2 of 2002 Sch.

A Tribunal shall, in relation to the area for which it is established, have power to do all things which it is required or empowered to do by this Act or by regulations made thereunder and, without prejudice to the generality of the foregoing, shall have power—

- (a) to assess compensation payable to a landlord under section 7;
- (b) to determine whether or not any land is land to which this Act applies;
- (c) to determine whether or not any land has become enfranchised by virtue of the provisions of this Act;
- (d) to determine whether or not any person is a tenant entitled to any land enfranchised in accordance with the provisions of this Act;
- (e) to determine any dispute relating to any enfranchised land, whether such dispute is between the person claiming to be the landlord and the person claiming to be the tenant or between either of them and any other person;
- (f) subject to section 6, to make such orders for costs or compensation as it may deem just;

(g) where any enfranchised land was, immediately before enfranchisement, in possession of two or more tenants, to partition the land for the purpose of allocation to the tenants;

(h) at all reasonable times to enter and inspect any land for the purposes of carrying out any of its powers, duties or functions under the provisions of this Act or regulations made thereunder, and to authorise in writing any person to exercise such power of entry and inspection on its behalf;

(i) to make any order to give effect to any of the provisions of this Act;

(j) to make such orders as may be necessary for the ends of justice in relation to any matter arising out of this Act.

[s. 10]

[PCh377s9]9. Protection of members of Tribunal Act No. 2 of 2002 Sch.

No matter or thing done by any chairman, vice-chairman, member, officer, servant or agent of a Tribunal shall, if done bona fide in the execution or purported execution of the provisions of this Act or of regulations made thereunder, subject him to any action, liability or demand whatsoever.

[s. 14]

[PCh377s10]10. No agreement to be at variance with this Act Act No. 2 of 2002 Sch.

No effect shall be given by any court or Tribunal to any agreement or contract or any term or condition thereof which is at variance with any provision of this Act or of regulations made thereunder.

[s. 15]

[PCh377s11]11. Regulations Act No. 2 of 2002 Sch.

(1) The Minister may, in consultation with the Minister for the time being responsible for legal affairs, make regulations prescribing the terms and incidents of tenure of enfranchised land.

(2) In addition to any other matter which may be included therein, regulations made under this section may contain provision, either expressly or by reference to any written law, for—

- (a) the interests or rights which may exist in or be created out of such land;
- (b) the devolution of any interests or rights therein on death;
- (c) the disposal, inter-vivos, of the interests and rights therein.

(3) Regulations made under this section may be made in respect of all the areas to which this Act applies or any area or areas specified therein.

[PCh377s12]12. Repeal of Act No. 1 of 1965 and saving Act No. 2 of 2002 Sch.

(1) [Repeals the Nyarubanja Tenure (Enfranchisement) Act *.]

(2) Notwithstanding the repeal of the 1965 Act—

(a) every parcel of land enfranchised by the 1965 Act, shall remain so enfranchised and shall be deemed to have been enfranchised by this Act;

(b) any land vested in any person in accordance with section 5 of the 1965 Act, shall remain so vested and shall be deemed to have vested in accordance with this Act;

(c) enfranchised land vested in a person appointed by a court of competent jurisdiction or in the local authority under section 9 of the 1965 Act, shall remain held on the like trust and shall thereafter devolve in accordance with the customary law pertaining to the area.

(3) For the avoidance of doubt it is hereby declared that the provisions of section 10 of the Interpretation and General Clauses Ordinance shall have effect in relation to the 1965 Act as if that Act were an Ordinance repealed and replaced by this Act *.

[s. 17]

SCHEDULE

[Repealed by Act No. 2 of 2002 Sch.]

[PCh378]CHAPTER 378

THE FERTILIZERS AND ANIMAL FOODSTUFFS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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SCHEDULES