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Act

No. 5 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA

PRESIDENT

31st March, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of s. 2 of Cap. 57:01
3. Replacement of s. 3 of the principal Act
4. Replacement of s. 7 of the principal Act
5. Insertion of ss. 9A and 9B into the principal Act
6. Amendment of s.11 of the principal Act
7. Amendment of s. 12 of the principal Act
8. Insertion of s. 20A into the principal Act
9. Replacement of s. 37 of the principal Act
10. Repeal of s. 38 of the principal Act
11. Replacement of s. 39 of the principal Act
12. Insertion of ss. 44A and 44 B into the principal Act

An Act to amend the Land Act

ENACTED by the Parliament of Malawi as follows —

1. This Act may be cited as the Land (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Short title and
commence-
ment

2. The Land Act (hereinafter referred to as the “principal Act”) is amended, in section 2, by—

Amendment
of s. 2 of
Cap. 57:01.

(a) deleting the definition of the term “customary land” and substituting therefor the following new definition—

““customary land” means land held, occupied and used in accordance with customary law”;

(b) deleting the definition of the term “customary law” and substituting therefor the following new definition—

““customary law” means customary law and practice prevailing in the traditional land management area”;

(c) inserting the following new definition immediately after the definition of the term “customary law” -

““freehold land” means a fee simple, fee tail or life estate”;

(d) deleting the definition of the term “Government land” and substituting therefor the following new definition—

““Government land” means land acquired and owned by the Government, but does not include a public road”;

(e) deleting paragraph (c) and paragraph (d) under the definition of the term “public land” and substituting therefor the following new paragraphs—

“(c) land *gazetted* for national parks, recreation areas, forest reserves, conservation areas, historic and cultural sites;” and

“(d) land vested in Government as a result of uncertain ownership, abandonment or land that cannot be used for any purposes;”

(f) deleting paragraph (e) under the definition of “public land”;

(g) inserting the following new definition immediately after the definition of the term “rules of good husbandry”—

““Traditional Authority” has the meaning assigned thereto in the General Interpretation Act;” and

(h) deleting the definition of the term “traditional land management area” and substituting therefor the following new definition—

““traditional land management area” means customary land demarcated and held by a Traditional Authority on trust for the residents under his jurisdiction.”.

Cap. 1:01

Replacement
of s. 3 of the
principal Act

3. Section 3 of the principal Act is repealed and replaced with the following new section 3—

3.— (1) There shall be a Commissioner for Lands (in this Act otherwise referred to as the “Commissioner”) who shall be a public officer.

“Commissioner for Lands

(2) A person shall not qualify for appointment as Commissioner unless he—

(a) holds a minimum education qualification of a Bachelor’s degree obtained from an institution recognised or accredited under the National Council for Higher Education Act; and

Cap. 30:12

(b) has not less than 10 years’ experience in land law and policy.”

4. Section 7 of the principal Act is repealed and replaced with the following new section 7—

Replacement of s. 7 of the principal Act

“Categories of land

7. Land shall be categorized as public land, customary land or private land.”

5. The principal Act is amended by inserting, immediately after section 9, new sections 9A and 9B as follows—

Insertion of ss. 9A and 9B into the principal Act

“Access to land

9A.— (1) Subject to the availability of land and a person’s means, every person shall have the right to access land for shelter and livelihood.

(2) Government shall ensure that there is no concentration of land in a few individuals to the disadvantage of other deserving persons.

(3) The Minister shall prescribe land ceilings taking into account the—

(a) availability of land;

(b) utilization of land; and

(c) capacity of a person to develop the land.

No sale of vacant land

9B. No person shall sell vacant leasehold or freehold land.”

6. Section 11 of the principal Act is amended by inserting, immediately after subsection (2), new subsections (3) and (4) as follows—

Amendment of s.11 of the principal Act

“(3) Land for investment allocated by the Malawi Investment and Trade Centre Limited shall be withdrawn if it is not developed within two years of the allocation.

Cap. 23:01 (4) Any underdeveloped plots shall be subdivided in accordance with the Physical Planning Act and may be reallocated.”.

Amendment of s. 12 of the principal Act 7. Section 12 of the principal Act is amended, in subsection (4), by deleting the words “annual and”.

Insertion of s. 20A into the principal Act 8. The principal Act is amended by inserting, immediately after section 20, a new section 20A as follows—

“Land
Eviction
Orders

20A.— (1) Notwithstanding section 45, the Minister or a local government authority may issue a land eviction order against any person who uses or occupies any public land without a valid grant, lease or disposition issued under any written law.

(2) A land eviction order shall be in a prescribed form and shall state—

(a) the particulars of land to which the eviction order relates;

(b) the particulars of the person against whom the eviction order is made;

(c) the period within which the person must vacate the land; and

(d) the penalty which may be imposed for non-compliance with the terms of the eviction order.

(3) For purposes of enforcing a land eviction order, the Minister or a local government authority—

(a) may enter the land to which the eviction order relates and take any appropriate action to enforce the order; and

(b) shall not be held responsible for the consequences of any action taken in good faith pursuant to the enforcement of the eviction order.

(4) The Minister or a local government authority may delegate the powers conferred under subsection (3) to any authorized officer or police officer.

(5) A land eviction order shall be served on the person against whom it is issued, or his agent or legal practitioner, or may be left and attached to a prominent place on the land to which the eviction order relates.

(6) Where the Minister or a local government authority takes any action for purposes of enforcing a land eviction order and incurs any costs by reason

thereof, the Minister or the local government authority may recover the costs as a civil debt against the person to whom the eviction order relates.”.

9. *Section 37 of the principal Act is repealed and replaced with the following new section 37—* Replacement of s. 37 of the principal Act

“Land not to be granted or sold to a person who is not a citizen of Malawi

37.— (1) Subject to section 11, land shall not be granted or sold to a person who is not a citizen of Malawi.

(2) Any existing grant in favour of a person who is not a citizen of Malawi shall be valid until it expires.

(3) Subject to subsection (4), any existing lease in favour of a person who is not a citizen of Malawi shall, upon expiry, not be renewed.

(4) An existing lease in favour of a person who is not a citizen of Malawi may, upon expiry, only be renewed if the land is—

(a) developed and;

(b) used as a residential home or for commercial or charitable purposes.”.

10. Section 38 of the principal Act is repealed.

Repeal of s. 38 of the principal Act

11. *Section 39 of the principal Act is repealed and replaced with the following new section 39—* Replacement of s. 39 of the principal Act

“Failure to develop freehold land

39.— (1) Where a holder of private land under freehold title has commenced development of the land within two years from the commencement of this Act, the Minister may, without prejudice to any other powers conferred on him by this Act or any other written law, by written notice sent to the person concerned and addressed to his registered or his last known address, demand voluntary surrender of the land by the person to the Government within a period of ninety days from the date of the written notice, failing which the Minister shall enter the land and register the freehold title in the name of the Government.

(2) Where the holder of a private land has not commenced development of the land within two years pursuant to subsection (1), he may apply to the Minister for the extension of the period within which to

commence development of the land, and the Minister may, upon being satisfied, grant the extension.

Insertion of
ss. 44A and
44B into the
principal Act

12. The principal Act is amended by inserting, immediately after section 44, new sections 44A and 44B as follows—

"Lease
granted by
the Minister
to revert to
public land

44A.— (1) Where a lease granted by the Minister in accordance with this Act expires, the land shall become public land.

(2) Where the expired lease referred to under subsection (1) was created out of customary land, the Minister may—

(a) convert the public land to customary land; and

(b) reallocate the land, giving priority to communities living in the area surrounding the land.

Surrender of
land upon
change of use
from
agricultural to
residential or
commercial
development
Cap. 23:01

44B. Where a land holder makes an application under the Physical Planning Act for change of use of the whole or any part of the land that was granted for agricultural purposes to residential or commercial development, any approval for the change of use of the land shall be granted on condition that—

(a) no vacant land shall be sold; and

(b) fifty per cent of the land intended for residential or commercial development shall, subject to payment of appropriate compensation, be surrendered to the Government."

Passed in Parliament this twenty fifth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament