

TRIBAL LAND (ESTABLISHMENT OF LAND TRIBUNALS) ORDER

(under section 40)

(22nd September, 1995)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

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S.I. 59, 1995,

S.I. 43, 1996.

1. Citation

This Order may be cited as the Tribal Land (Establishment of Land Tribunals) Order.

2. Establishment of Land Tribunal

There is hereby established a Land Tribunal for the purposes of section 40 of the Act.

3. Composition of Land Tribunals

(1) A Land Tribunal shall be comprised of the following members-

- (a) a President appointed in accordance with the Public Service Act, who shall be a qualified attorney or advocate, of not less than five years standing, employed in the public service; and
- (b) two other members appointed on contract in accordance with the Public Service Act;

(2) When the President of a Land Tribunal is unable, by reason of illness or other sufficient reason, to perform the functions of President, another person qualified in terms of subparagraph (1)(a) shall be appointed in accordance with the Public Service Act to act as President until the substantive President is able to resume duty.

(3) When one of the members of a Land Tribunal appointed under subparagraph (1)(b) is unable, by reason of illness or other sufficient reason, to perform the functions of such member, another person shall be appointed in accordance with the Public Service Act, to act as a member in his place until he is able to resume duty.

(4)(a) In respect of cases heard by a Land Tribunal, the Land Board Selection Committee may, where the President of the Land Tribunal considers it desirable, co-opt two additional members to the Tribunal from among suitably mature, qualified and knowledgeable persons from the district within the jurisdiction of which the lands or matters in dispute lie, and where either of such additional members is unable, by reason of illness or other sufficient reason, to continue to perform the functions of such member, the Land Board Selection Committee may, at the request of the President, appoint any other similarly qualified person to act as a member in his place until he is able to resume duty.

(b) Members co-opted in accordance with paragraph (a) may be asked to tender advice in respect of any matter before the Land Tribunal, but shall not be entitled to vote in respect thereof.

(5) The members appointed under subparagraph (1) shall hold office for such period of contract as maybe determined in accordance with the Public Service Act unless they earlier terminate their contracts, or their contracts are terminated in accordance with that Act; and such contracts may be renewed for such further periods of contract as are permissible in terms of that Act.

(6) The persons co-opted under subparagraph (4) shall be paid such allowances as may be determined by the Minister.

(7) Any person who is declared insolvent or adjudged or otherwise declared bankrupt under any law in force in Botswana or elsewhere and has not been discharged, or has made a composition with his creditors and has not paid his debts in full, or is convicted of any offence involving dishonesty, shall not be eligible to be appointed as President or a member of a Land Tribunal, or if already appointed, to remain as the President or a member of a Land Tribunal, and his office as such shall become vacant with effect from such declaration or adjudgment or failure to pay or conviction, as the case may be.

4. Procedure for lodging appeals

- (1) Any person wishing to appeal against a decision of a land board shall-
 - (a) lodge notice of appeal, in the form prescribed, with the clerk of the Land Tribunal concerned, together with the fee of P10;
 - (b) submit written reasons on the basis of which the appeal is lodged;
 - (c) give the names and addresses of the appellant and the respondent, and indicate the district and the area within which, or in respect of which, the dispute arises; and
 - (d) cause a copy of the notice of appeal to be served on the respondent.

(2) An appeal should be brought within four months from the date on which the appellant becomes aware of the decision of the land board, but an appeal lodged outside the period of four months, shall be accompanied by reasons for the late delivery, and the Land Tribunal shall determine whether it will entertain the appeal, or whether, in all the circumstances, it should be rejected.

(3) If, in the opinion of the Land Tribunal concerned, the points at issue in the notice of appeal are not clearly enough defined to enable it to hear and determine the matter, it may remit it to the parties or the land board concerned, with such directions or advice as it deems appropriate or necessary.

5. Witnesses

(1) The parties shall inform the Land Tribunal concerned of any witnesses that they wish to be called at the hearing of the appeal, and the Land Tribunal shall cause subpoenas to be served on such witnesses and any other witnesses that it considers should be called, specifying the place, date and time when they are required to attend to give evidence or produce documents.

(2) Witnesses attending before a Land Tribunal shall be entitled to be paid fees or allowances on the same scale as are applicable in a magistrate's court.

(3) Any person subpoenaed to attend before a Land Tribunal who, without reasonable cause, fails to attend or to produce a document he is required to produce, shall be guilty of an offence and liable to a fine of P100 and to three months' imprisonment.

6. Determination

(1) Subject to the provisions of this Order, a Land Tribunal of appeals shall regulate its own procedure, and the frequency of its meetings.

(2) For the purpose of determining any matter before it a Land Tribunal may order any witnesses-

- (a) to give evidence on oath or otherwise;
- (b) to produce any relevant document;
- (c) furnish, in writing or otherwise, such particulars relating to the matter in question as it may require.

(3) In hearing and determining an appeal, a Land Tribunal shall have exclusive jurisdiction in respect of every matter properly before it and shall not be bound by the rules of evidence or procedure applicable in civil or criminal proceedings, and may disregard any technical irregularity which does not, and is not likely to, result in a miscarriage of justice.

(4) Matters before a Land Tribunal shall be determined-

- (a) in the case of matters involving questions of law, by the decision of the President alone; and
- (b) in the case of matters involving questions of fact, by the decisions of a majority of the members thereof appointed under paragraph 3(1).

(5) The provisions of section 7(5) of the Act shall apply to meetings of a Land Tribunal as they apply to meetings of a land board, and in such event another person shall be appointed in accordance with paragraph 3(3) to act as a member of the Land Tribunal in place of the member concerned for that meeting or for the determination of that matter.

(6) Any interested party to the proceedings before a Land Tribunal may appear by advocate or attorney, or be represented by any other person so authorized by the party.

(7) Proceedings before a Land Tribunal shall be open to the public, unless the Tribunal, for good and sufficient reason, decides otherwise.

(8) A Land Tribunal may, from time to time, adjourn the hearing of an appeal, and shall inform all the parties concerned of the date and time when the hearing will be resumed.

(9) If one of the parties fails, without sufficient reason, to prosecute or defend an appeal after being properly notified of the date, time and place thereof, judgment in default may be entered for the party which does attend, in such manner as the Land Tribunal concerned deems fit, and if neither party appears after being given due notice, the Land Tribunal may, in its discretion, dismiss the appeal or adjourn it to another date.

(10) When a Land Tribunal has determined whether an appeal shall be upheld or dismissed, the judgment, and the reasons therefor shall be recorded in writing, signed by the President, and copies thereof delivered to all the parties.

(10A) A person who is found guilty by the Land Tribunal of an offence referred to in section 39 of the Act shall be liable to a fine of P10,000, or if the offender is a corporate body, to a fine of P20,000.

(10B) A land board, or any other party to an appeal before a Land Tribunal that, without reasonable excuse, fails to enforce any determination made by the Land Tribunal in relation to an appeal under this Order shall be guilty of an offence and liable to a fine of P10,000, or if the offender is a corporate body, to a fine of P20,000.

(11) There shall be a right of appeal from a decision of a Land Tribunal to the High Court, on a question of law, within eight weeks of the delivery of such decision.

6A. Costs

A Land Tribunal shall, where it considers it appropriate to do so, award to a party to the proceedings before it such costs as the Tribunal may determine.

7. Appeals lodged prior to commencement of Order

Any appeal lodged with the Minister or a district commissioner, as the case may be, prior to the commencement of this Order may be heard and determined by the Land Tribunal concerned in accordance with the provisions of section 40 of the Act and this Order.