

THE LAND ACQUISITION ACT

(*Cap. 295*)

THE LAND ACQUISITION (COMPENSATION TRIBUNAL) RULES, 2010

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THE LAND ACQUISITION ACT

(Cap. 295)

IN EXERCISE of the powers conferred by section 36 of the Land Acquisition Act, the Minister for Lands makes the following Rules:—

THE LAND ACQUISITION (COMPENSATION TRIBUNAL) RULES, 2010

PART I—PRELIMINARY

1. Citation.

These Rules may be cited as the Land Acquisition (Compensation Tribunal) Rules, 2010.

2. Interpretation. Cap. 295

In these Rules, unless the context otherwise requires—

“Act” means the Land Acquisition Act;

“applicant” means a person, his duly recognised agent or legal representative who makes an application to the Tribunal under section 29 (7) of the Act and includes a public body for purposes of which land is acquired within the meaning of section 29 (8) of the Act;

“Chairman” means the person holding office or acting Chairman of the Tribunal;

“disputed decision” means a decision of the Commissioner for an award against which an application is brought under these Rules;

“respondent” means any other party to the proceedings before the Tribunal other than the applicant.

3. Reference of dispute.

Any person who is aggrieved by an award of the Reference of dispute.

Commissioner as specified in section 29 (7) and (8) of the Act may apply to the Tribunal in accordance with these Rules.

PART II—APPLICATION TO THE TRIBUNAL

4. Notice of application.

(1) A party desirous of referring a disputed decision to the Tribunal shall file a written notice in the requisite form approved by the Tribunal.

(2) The applicant shall deliver six copies of the notice of application to the Tribunal so as to reach it not later than sixty days after the date on which the disputed decision was served upon him.

(3) The notice shall include-

(a) the name and address of the applicant;

(b) the particulars of the disputed decision;

(c) a statement of the purpose of the hearing; and

(d) a statement of the applicant's dissatisfaction with the decision which is the subject of the application.

(4) The applicant shall sign the notice of application.

5. Additional matters.

The applicant may, in his notice of application or in a separate application to the Tribunal include-

(a) a request for an early hearing of the application, and the reasons for that request;

(b) a notification that at the hearing of his application, he intends to call an expert witness and the name, address and description of the field of expertise of the proposed expert witness; or

(c) a request that an expert who took part in the disputed decision attend the hearing of the application and give evidence.

6. Receipt of application.

(1) Upon receipt of a notice of application, the clerk shall—

(a) acknowledge receipt of the notice of application by stamping and endorsing the date on which the notice of application is received;

(b) enter the particulars of the notice of application* in a register kept by the Tribunal for that purpose;

(c) inform the applicant in writing of the case number of the application as entered in the register;

(d) advise the applicant of the address to which notices and communications to the Tribunal shall be sent; and

(e) advise the applicant of any steps required to be performed on his part to enable the Tribunal determine the application.

7. Service of application

(1) Upon filing the notice of application with the Tribunal, the applicant shall serve a copy of the notice of application on the respondent within thirty days from the date of filing the notice.

(2) The Tribunal may, at the request of any party and on payment of such costs as the Tribunal may determine, serve a copy of the notice of application and of any reply, together with any amendments or supplementary statements, written representations or other documents received from any party on all parties to the proceedings and if any person or body is subsequently enjoined as a party, upon that person or body.

8. Application for extension of time.

(1) The Tribunal may, on the application by a party to the proceedings, extend the time appointed by these Rules, not being a time limited by the Act, for doing any act or taking any proceedings and may do so upon such terms and conditions it considers fit.

(2) An application to the Tribunal for an extension of a time limit under paragraph (1) of this rule shall state the grounds on which the application is based and be supported by an affidavit of the applicant.

9. Documents to accompany application or reply.

(1) A party to a proceeding before the Tribunal shall deliver to the Tribunal with his application or reply, a copy of every document including every map, plan, certificate or report which he intends to rely on for the purposes of his application or reply.

(2) Where the Tribunal or parties to the proceeding are in possession of any document which a party intends to rely on during the hearing, the Tribunal may, on such terms as it considers fit, exempt a party from the provisions of paragraph (1) of this rule.

(3) If any document required to be delivered to the Tribunal under this rule is, in the opinion of the party who has possession of the document, related to his intimate personal or financial circumstances or is commercially sensitive and the party concerned seeks to restrict its disclosure, he shall inform the Tribunal of that fact and of his reasons for the restriction, whereupon the Tribunal shall serve the copies of the document in accordance with the directions of the Chairman.

10. Objection.

(1) An objection to the jurisdiction of the Tribunal or the admissibility of an application or any other objection shall be made in writing to the Tribunal within twenty one days from the date on which the party objecting was served with the application.

(2) The party making an objection under paragraph (1) of this rule shall serve a copy of the preliminary objection on the applicant within fifteen days from the date of lodging the objection.

(3) On receipt of any preliminary objection, the applicant shall submit written submissions on the objection within seven days from the date of service on him of the objection.

(4) The Tribunal shall suspend the hearing of the application pending its ruling on the objection.

11. Amendment of application and delivery of supplementary grounds of application.

(1) The applicant may, at any time before the application is set down for hearing, amend his notice of application or any statement of grounds of application or deliver a supplementary statement of grounds of application.

(2) The applicant may, with leave of the Tribunal, amend his notice of application or statement of grounds of application at any time after the application has been set down for hearing or during the hearing of the application.

(3) The Tribunal may grant leave to amend the notice of application or statement of grounds of application on such terms and conditions as it considers fit.

(4) The applicant shall deliver to the Tribunal and serve on the respondent and any other party to the proceedings, a copy of every amendment and supplementary statement.

12. Application by minors and persons under disability.

(1) When the person by whom an application is brought is a minor or is under a disability, the application may, subject to conditions which may be imposed by the Tribunal, be brought by a person legally authorised to act on his behalf or by a person appointed by the Tribunal.

(2) A person acting under paragraph (1) of this rule may take all necessary steps for the purpose of the application as an applicant is required by these Rules.

PART III—REPLY

13. Action by Respondent.

(1) Upon receipt of a copy of a notice of application setting forth the grounds of application or a separate statement of grounds of application, the Commissioner shall deliver to the Tribunal a written reply which shall state-

(a) whether or not the Commissioner intends to oppose the application;

(b) where the Commissioner intends to oppose the application, the grounds on which he relies on in opposing the application;

(c) the name and address of any other person who, in the opinion of the Commissioner, has a direct interest in the subject matter of the application.

(2) The Commissioner shall include with his reply, a statement summarising the facts relating to the disputed decision and if they are not part of that decision, the reasons thereof and shall deliver to the Tribunal six copies of the reply.

(3) Subject to paragraph (3) of rule 9, the Commissioner shall also deliver to the Tribunal any other relevant documents which he intends to rely on during the hearing of the application.

(4) The Commissioner shall serve the reply and any other documents filed under paragraph (3) of this rule on the applicant and on any other person named by the Commissioner as having a direct interest in the subject matter of the application.

(5) In his reply or in a separate notice to the Tribunal, the Commissioner may request—

(a) further particulars of the application; or

(b) a determination of any question as a preliminary issue.

(6) Every reply by the Commissioner shall be signed by the Commissioner and delivered to the Tribunal not later than twenty one days after the date of service on the Commissioner of the copy of the notice of application or, if received later, the copy of the separate grounds of application.

14. Amendment of reply.

(1) The Commissioner may, at any time before the application is set down for hearing, amend his reply or deliver to the Tribunal, a supplementary statement of reply.

(2) The Commissioner may, with the leave of the Tribunal, amend his reply after the application is set down for hearing or at the hearing of the application.

(3) The Tribunal may grant leave to Commissioner to amend his reply on such terms and conditions it considers fit.

(4) The Commissioner shall send a copy of every amendment and supplementary statement to the Tribunal and serve a copy on all parties to the hearing.

PART IV—THIRD PARTIES

15. Joinder of parties.

If it appears to the Tribunal, whether on application by a party to the hearing or on its own motion, that it is desirable that a person be made a party to the proceedings, the Tribunal may order that that person be enjoined as a respondent and may give directions as to the delivery and service of documents as it considers fit.

16. Intervener.

(1), The Tribunal may, in any proceedings before it and on the written request by a person, corporation or group of persons associated in the pursuit of any of the objectives of the Act, grant status as an intervener to that person, corporation or group of persons.

(2) A person seeking status as an intervener shall furnish to the Tribunal a statement in writing which shall include—

(a) his full names and address;

(b) the interests claimed in the subject matter; and

(c) his position in relation to the application.

(3) The decision of the Tribunal shall be binding on a person granted the status of an intervener, in so far as it relates to matters in respect of which he intervened.

PART V—HEARING

17. (1) The Tribunal may on its own motion or on the application by a party to the proceedings give directions, including directions for the furnishing of further particulars or supplementary statements, as are necessary to enable the parties prepare for the hearing or assist the Tribunal determine the issues related to the proceeding before it.

(2) The Tribunal may take into account the need to protect any matter that relates to the intimate personal or financial circumstance of any party, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security and may order that all or part of the evidence of a person be heard in private or prohibit or restrict the publication of that evidence.

(3) Subject to the provisions of paragraph (2) of this rule, all proceedings before the Tribunal shall be held in public.

(4) The Tribunal shall not compel a person to give any evidence or produce any document or other material that he could not be compelled to give or produce in a trial for an action in a court of law.

(5) An application by a party for directions shall be made in writing to the Tribunal and shall, unless accompanied by the written consent of all parties, be served by the party seeking directions on all other parties to the proceedings.

(6) If any party objects to the directions sought, the Tribunal shall consider the objection and if it considers it necessary, give the parties an opportunity to appear and be heard by it on the objection raised.

18. Failure to comply with directions.

(1) Where a party fails to comply with directions given under these Rules, the Tribunal may, in addition to other powers available to it, before or at the hearing of the application dismiss the whole or part of the application, or, as the case may be, strike out the whole or part of a respondent's reply and where appropriate, direct that a party be excluded from participating in the proceedings.

(2) The Tribunal shall not dismiss, strike out or give any directions under paragraph (1) of this rule unless it has served a notice on the party who has failed to comply with the direction, giving him an opportunity to show cause why the Tribunal should not give directions under paragraph (1) of this rule.

19. Varying or setting aside of directions.

A person on whom directions (including any summons) are served and who had no opportunity of objecting to the making of directions may apply to the Tribunal to vary or set aside the directions, but the Tribunal shall not do so without first notifying the person who applied for the directions and considering any representations made by him.

20. Subpoenas and orders.

(1) A person summoned to give evidence before the Tribunal shall be given at least seven days' notice of the hearing unless the person has informed the Tribunal that he accepts the shorter notice given.

(2) Any person other than the applicant or respondent required in obedience to a summons to attend and give evidence or produce any document shall not attend the hearing except on the undertaking that the necessary expenses of his attendance will be paid by the party requiring his attendance.

21. Place and time of hearing.

(1) The Tribunal may on its own motion or at the instance of any of the parties to the dispute fix the date, time and place for the hearing subject to giving any necessary directions by the Tribunal and in setting the hearing date the Tribunal shall have regard to any material circumstances including convenience as to the Tribunal's own diary and schedules of business.

(2) A hearing notice may be issued by the Tribunal on its own motion or by any party to the hearing and served on all other parties to the proceedings not less than twenty one days before the date so fixed.

(3) The hearing notice shall include-

(a) a statement of the purpose of the hearing and a statement of the issues involved;

(b) information and guidance, in a form approved by the Minister, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation;

(c) a statement of the right of the parties to ask for and receive reasons in writing for a decision of the Tribunal; and

(d) a statement explaining the possible consequences of nonattendance and of the right of an applicant and of any respondent who has presented a reply, but who fails to attend and is not represented, to make representations in writing.

(4) The Tribunal may alter the place and time of any hearing and the Tribunal shall give the parties not less than seven days notice of the alteration:

Provided that any altered date shall not be a date prior to the date notified under paragraph (1) of this rule.

(5) The Tribunal may from time to time, on its own motion or on the application of a party to the proceedings, adjourn the hearing and if the date, place and time of the next hearing is announced in the presence of all the parties at the time of the allowing adjourning the hearing, no hearing notice shall be required to be issued to any party.

(6) Subject to this rule, the Tribunal may, if it considers fit, visit any site, and may conduct a hearing at the site on the day of the visit.

(7) The Tribunal shall transact business from Monday to Friday during official business hours.

22. Public notice of hearings.

The Tribunal shall provide for public inspection, at the principal office of the Tribunal and at the place where a hearing is to be held, a list of all applications for which a hearing is to be held and of the place and time fixed for the hearing.

23. Exclusion of persons disrupting. Proceedings.

Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

24. Failure of Parties to attend hearing.

(1) Where a party fails to attend or be represented at a hearing of which he has been duly notified, the Tribunal may-

(a) unless it is satisfied that there is sufficient reason for the absence of the party, hear and determine the application in the absence of that party; or

(b) adjourn the hearing; and

may make orders as to costs as it considers fit.

(2) Before disposing an application under paragraph 1 (a) of this rule, the Tribunal shall consider any representations made in writing submitted by that party in response to the notice of application and for the purpose of this rule, the application and any reply shall be treated as representations in writing.

(3) A party aggrieved by the decision of the Tribunal under paragraph 1 (a) may file an application within thirty days from the date of the decision for review of the order, and the Tribunal may within reasonable time review the order on such terms as it considers fit, if the Tribunal is satisfied that there was sufficient cause for non -attendance.

25. Procedure at hearing.

(1) The Chairman shall, at the commencement of the hearing, explain the order of proceedings which the Tribunal proposes to adopt.

(2) The Tribunal shall conduct the hearing in a manner as it considers suitable for the determination of the application or the clarification of issues before it and generally for the just handling of the proceedings and shall, so far as it appears to it appropriate, avoid legal technicality and formality in its proceedings.

(3) The parties shall be heard in such order as the Tribunal shall determine, and shall be entitled to give evidence, call a witness, and address the Tribunal on both evidence and generally on the subject matter of the application.

(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or written statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent or author of a written statement.

(5) The Tribunal may receive evidence of any fact which appears to it to be relevant to the application.

(6) The Tribunal may, during the hearing and if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of application or, as the case may be, his reply and to adduce any evidence not presented to the Commissioner before or at the time the Commissioner took the disputed decision.

(7) The Commissioner may require any witness to give evidence on oath or affirmation and for that purpose it may administer an oath or affirmation in the prescribed form.

26. Demonstration and display facilities.

The Tribunal may, at the request of any party and upon payment of the prescribed fees, provide visual demonstration facilities for the display of any maps, charts, diagrams, illustrations or texts and documents, which that party intends to exhibit during the hearing.

27. Judicial notice.

(1) The Tribunal may take judicial notice-

(a) of facts that are publicly known and that may be judicially noticed by a court of law; and

(b) of generally recognised facts and any information, policy or rule that is within its specialised knowledge.

(2) Before the Tribunal takes notice of any fact, information, opinion, policy or unwritten rule other than that which may be judicially noticed by a court, it shall notify the parties of its intention and afford them a reasonable opportunity to make representations with respect thereto.

28. Opportunity to be heard or cross-examine.

The Tribunal shall grant to any party a reasonable opportunity—

(a) to be heard, submit evidence and make representations; and

(b) to cross-examine witnesses to the extent necessary to ensure fair hearing.

29. Change of advocate.

(1) A party represented by an advocate may, at any stage of the proceedings change his advocate upon giving notice to the Tribunal and his former advocate.

(2) The party shall serve the notice of change of advocate on all other parties to the proceedings.

PART VI—DETERMINATION OF APPLICATION

30. Failure to reply and no contest.

Where the Commissioner-

(a) fails to file a reply with the Tribunal within twenty one days or a longer time as the Tribunal may allow;

(b) states in writing that he does not oppose the application; or

(c) states in writing that he withdraws his opposition to the application,

and if there is no subsisting opposition to that application, the Tribunal may determine the application on the basis of the notice and grounds of application without proceeding with the hearing.

31. Withdrawal of application.

(1) The applicant may, with leave of the Tribunal and at any time before or at the hearing of the application, withdraw his application upon such conditions as the Tribunal considers fit, whereupon the application shall be marked as withdrawn.

(2) Where an application is withdrawn under paragraph (1) of this rule, no application shall be heard by the Tribunal in relation to the same subject matter unless the Tribunal, for good reason shown, otherwise determines.

32. Preliminary issues.

(1) The Tribunal may order any question of fact or law which is in issue in the application to be determined at a preliminary hearing.

(2) If, in the opinion of the Tribunal, the determination of that question disposes of the whole application, the Tribunal may treat the preliminary hearing as the hearing of the application and may make orders by way of disposing of the application as the Tribunal considers fit.

(3) The Tribunal may, upon written consent by all parties and hearing submissions thereto, determine any question of fact or law under paragraph (1) of this rule without an oral hearing.

(4) Where the determination of the question of fact or law results in the disposal of the application, the Tribunal shall not make an order disposing the application without an oral hearing unless it has given the parties an opportunity to make representations in writing or the parties have agreed in writing that it may dispose the application without an oral hearing.

(5) The decision of the Tribunal in relation to a preliminary issue may be given orally at the end of the hearing, or may be reserved, but in either event (whether there has been a hearing on the preliminary issue or not), shall be recorded in writing in a statement which shall contain the reasons for its decision and be dated and signed by the Chairman.

(6) The Tribunal shall deliver a copy of the document recording the decision on the preliminary issue to each party.

33. Power to determine application without hearing.

The Tribunal may by consent in writing of all the parties to a hearing determine the application or any issue arising therefrom without an oral hearing.

34. Consolidation of applications.

The Tribunal may, in its discretion and upon giving the parties concerned an opportunity to be heard, order the consolidation of any applications before it where notices of application have been given in respect of the same matter or in respect of several interests in the same subject in dispute.

35. Decision of Tribunal.

(1) A decision of Tribunal may be taken by a majority of the members present and the decision shall record whether it was unanimous or taken by a majority of the members present.

(2) The decision of the Tribunal shall be valid if the dispute is heard and decided by three members of the Tribunal, one of whom shall be a valuer.

(3) The decision of the Tribunal may be given orally at the end of the hearing or may be reserved and shall-

(a) be reduced to writing whether there has been a hearing or not; and

(b) shall be signed and dated by the Chairman and every member who heard the matter.

(4) A dissenting opinion may be pronounced separately by the member who wrote it and shall be dated and signed by that member.

(5) Every document containing a decision referred to in this rule shall, as soon as may be reasonable, be entered in the register and the Tribunal shall send a copy of the entry to each party.

(6) Every copy of an entry sent to the parties under paragraph (5) of this rule shall be accompanied by a notification indicating the rights of the parties and of the time within which and place at which those rights may be exercised.

(7) Where the decision of the Tribunal refers to any evidence which has been heard in private, a summary of the decision, omitting such material as the Tribunal may direct, shall be entered in the register, but copies of the complete decision document shall be sent to the parties together with a copy of the entry.

(8) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the applicant.

(9) Where a final decision has been made by the Tribunal in respect of any application, the Tribunal shall, within thirty days thereafter, cause to be published—

(a) in the Kenya Gazette; and

(b) where the matter is of public importance, in at least one newspaper of national circulation,

a summary thereof stating the names of the parties, the nature of the application and the date and place of the decision.

(10) The Tribunal shall, in publishing its decision under paragraph (9) of this rule, have regard to the need to preserve the confidentiality of any evidence heard in private in accordance with these rules.

36. Reasons for decisions.

The Tribunal shall give reasons for reaching its decisions, and each decision shall include—

(a) a statement of the findings of fact made from the evidence adduced, including, where applicable, any relevant government policy; and

(b) a statement of the laws and rules of law applied, and the interpretation thereof.

37. Order for costs and expenses.

(1) The Tribunal shall not make an order awarding costs, but may, subject to paragraph (2) of this rule, make an order—

(a) against a party, including a party who has withdrawn his application or reply, if it is of the opinion that the party has acted frivolously or is vexatious or that his conduct in making, pursuing or resisting an application was wholly unreasonable;

(b) against the Commissioner, where it considers that the decision against which the application is brought was wholly unreasonable; or

(c) with respect to any costs or expenses incurred or any allowances paid, as a result of postponement or adjournment of a hearing at the request of a party.

(2) An order shall not be made under paragraph (1) against a party without first giving that party an opportunity to make representations against making of the order.

(3) Any costs required by an order under this rule to be taxed shall be assessed by the Tribunal.

PART VII—MISCELLANEOUS PROVISIONS

38. Chairman to act for Tribunal.

(1) The Tribunal may authorise the Chairman to do any act required or authorised by these Rules to be done by the Tribunal, not being an act which is required by the Act to be done by the Tribunal itself.

(2) In the event of the death or incapacity of the Chairman following the decision of the Tribunal in any matter, the functions of the Chairman for the completion of the proceedings, including a review of any decision, may be exercised by any other person duly acting as chairman of the Tribunal.

(3) The Chairman may by instrument in writing, delegate to any officer of the Tribunal any of his powers which are not required by the Act to be performed by him personally.

39. Additional powers of the Tribunal.

(1) The Tribunal may—

(a) where the parties to an application agree in writing upon the terms on which an application or issue should be decided, confirm the agreement reached by the parties and decide accordingly;

(b) at any stage of proceedings before it, by order strike out or amend any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious; or

(c) at any stage of the proceedings before it, by order strike out any application for want of prosecution.

(2) Before making any order under paragraphs 1 (b) and (c) of this rule, the Tribunal shall send a notice to the party against whom the order is to be made, giving that an opportunity to show cause why the order should not be made.

40. Correcting irregularities.

(1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render any proceedings void.

(2) Where any irregularity comes to the attention of the Tribunal, the Tribunal may (and shall, if it considers that any person may have been prejudiced by the irregularity) give such directions as it considers just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Chairman or the Tribunal, or errors arising as a result of an omission, may be corrected by the Chairman by certificate under his hand or by the Tribunal.

41. Proof of documents and certification of decisions.

(1) Any document purporting to be a document duly executed or issued by the Chairman shall, unless the contrary is proved, be considered to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Chairman to be a true copy of any entry of a decision in a register kept under these Rules shall, unless the contrary is proved, be sufficient evidence of the entry and of matters contained therein.

42. Language.

(1) The language of the Tribunal shall be English or Kiswahili.

(2) The Tribunal may, at its discretion, allow an application lodged in any local language spoken in Kenya by persons or a community directly affected by the subject matter of the application, if those persons or community cannot immediately obtain a translation

but undertake to do so within a reasonable time.

(3) The Tribunal shall, taking into account all the circumstances, grant the assistance of a competent interpreter free of charge to a party or witness who does not understand or speak the language used at the hearing or who is deaf.

(4) The rulings of the Tribunal shall be prepared in the English language but may be translated, on request by a party, into the Kiswahili language.

43. Filing fees.

(1) There shall be paid to the Tribunal such filing and other fees, including fees for service by the Tribunal of any notice or process, as shall be prescribed by the Minister.

(2) The Tribunal may, if it considers it to be in the interest of justice, or on grounds of financial hardship on the part of the applicant, waive all or part of the filing fees payable in any application.

44. Prescribed forms.

The Tribunal may from time to time prescribe and issue free of charge forms as it may consider necessary for the purposes of filing applications or replies and for any interlocutory matters.

45. Recording of Proceedings.

(1) The Chairman shall take or cause to be taken notes of all proceedings before the Tribunal or may order that the record of any proceedings before it shall be taken by short hand notes or tape recorded or, at the discretion of the Tribunal, electronically recorded.

(2) A verbatim record of every hearing shall be made by the Tribunal, and copies of the transcript thereof shall be circulated to all members of the Tribunal and, on request, to any party to the hearing.

Made on the 13th February, 2010.

JAMES ORENGO,

Minister for Lands.