



**Tuvalu**

# **NATIVE LANDS ACT**

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Tuvalu

## NATIVE LANDS ACT

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Tuvalu

## NATIVE LANDS ACT

### AN ACT RELATING TO NATIVE LAND AND REGISTRATION OF TITLE THERETO<sup>1</sup>

Commencement [14th March 1957]

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Native Lands Act.

### 2 Interpretation

In this Act unless the context otherwise requires —

“**the Appeals Panel**” means the Lands Courts Appeals Panel established by section 9;

“**boundary mark**” means and includes any survey stone, iron pipe or spike, wooden peg or post, concrete post or pillar or other survey mark and trees planted and marks made on trees or other fixtures to denote a boundary;

“**Code**” or “**Lands Code**” means the Tuvalu Lands Code;

“**Commission**” means the Native Lands Commission which was constituted under the terms of the Native Lands Commission Act;

“**Kaupule**” means a Kaupule established under the Falekaupule Act;<sup>2</sup>

“**court**” means a lands court established by section 6;

“**court register**” means one of the registers of a court referred to in section 19;

“**lease**” does not include a sub-lease;

“**Lands Officer**” means the Lands Officer of Tuvalu;

“**Leases Register**” means the book kept for the purpose of registering leases under section 31(5);

“**lessee**” means the registered lease-holder;

“**native adoption**” means the adoption of one native by another in accordance with native customary law;

“**native land**” means land owned by a native or natives;

“**native lease**” means a lease of native land to a native where the term of the lease does not exceed 21 years and where the land the subject of the lease does not exceed 5 acres, and includes a sub-lease;

“**native will**” means any will, codicil or other testamentary instrument made by a native and duly attested in accordance with customary law;

“**president**” means the president of a court and, save in sections 19(2), 39 and 41, any member of the court, for the time being presiding;

“**register of native lands**” means a register of native lands established in any island under the provisions of the Native Lands Commission Act and maintained by the court under the provisions of this Act;

“**sub-leases Register**” means the book kept for the purpose of registering sub-leases under section 31 (5);

“**survey mark**” means and includes any boundary mark or other mark and any beacon established and fixed by survey;

“**title**” means right, title and interest.

### **3 Delegation of powers and duties by Lands Officer**

The Lands Officer may delegate the exercise of any power or the performance of any duty conferred or imposed upon him by this Act to any public officer.

#### **3A Lands Officer to act with Minister’s approval**

The Lands Officer shall not exercise powers conferred on him without first obtaining the written approval of the Minister.



## PART II - TITLES TO NATIVE LAND

### 4 Indefeasibility of title

- (1) Subject to the provisions of this section, titles to native lands —
  - (a) registered by the Commission as evidenced by a register of native lands, and
  - (b) registered by the court in pursuance of sections 14 and 19(1)(b) as evidenced by a register of native lands,shall be indefeasible.
- (2) When the court has, under the powers conferred upon it by section 19(1) (a), approved the transfer of any native land as a result of causes arising subsequent to the proceedings of the Commission on the island concerned, and such transfer has not been varied on appeal under section 25 or 26, the title thus obtained, as evidenced by the necessary rectification of the court register recording the new title to the land in the register of native lands, shall be indefeasible.

## PART III - ALIENATION

### 5 Restriction of alienation of native land

- (1) Subject to the provisions of this Act native land shall not be alienated, whether by sale, gift, lease or otherwise, to a person who is not a native.
- (2) This section shall in no way prohibit or restrict the alienation of native land to the Crown, a Kaupule or a society registered under the Co-operative Societies Act.<sup>3</sup>

## PART IV - THE LANDS COURT

### 6 Constitution of lands court within each Kaupule's area<sup>4</sup>

- (1) There is hereby established within the area of authority of each Kaupule, a Lands Court consisting of not less than 6 members.
- (2) The Governor-General acting in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorised by him for the purpose, may appoint fit and proper persons to be the members of each Lands Court and declare which members shall be President and Vice-President:

Provided that —

- (a) an Island Magistrate within the meaning of the Island Courts Act;<sup>5</sup> or
  - (b) a member of a Kaupule established under the Falekaupule Act; or
  - (c) a member of the Lands Court Appeals Panel under section 9 of this Act,
- is not eligible for appointment as a member of a Lands Court.
- (3) The Governor-General acting in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorised by him for the purpose, may remove from office a member of the Lands Court.

## **7 Registrar of lands court**

There shall be a registrar of the court appointed by each Kaupule.

## **8 Oath by members of lands court**

Members of a lands court shall be required to take the oath or affirmation set forth in Schedule 1 in the presence of the President of the Kaupule or of the Lands Officer, as the case may be.

## **9 Establishment of Appeals Panel<sup>6</sup>**

- (1) There is hereby established a Lands Courts Appeals Panel which shall consist of a President and Vice-President and not less than 3 other members.
- (2) The Governor-General acting in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorised by him for the purpose, may appoint fit and proper persons to be the members of the Lands Courts Appeals Panels and declare which members shall be President and Vice-President:

Provided that —

- (a) an Island Magistrate within the meaning of the Island Courts Act; or
  - (b) a member of a Kaupule established under the Falekaupule Act; or
  - (c) a member of the Lands Court under section 6 of this Act,
- is not eligible for appointment as a member of the Lands Courts Appeals Panel.
- (3) The Governor-General acting in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorised by him for the purpose, may remove from office a member of the Lands Courts Appeals Panel.

## 10 Appeals to Appeals Panel

All appeals from judgments, decisions or orders of lands courts shall lie in the first instance to 3 or more members of the Appeals Panel who shall in each case be designated by the President or in his absence by the Vice-President of the Panel.

## 11 Persons subject to lands court's jurisdiction

All persons who own or who are eligible to own native lands shall be subject to the jurisdiction of the court.

## 12 Certain powers of lands court relating to land<sup>7</sup>

(1) Subject to sections 31(1) and 33 the court shall hear and adjudicate in accordance with the provisions of the Lands Code or, where the Code is not applicable, the local customary law, and the Cadastral Survey Maps all cases concerning land, land boundaries and transfers of titles to native land registered in the registers of native land and any disputes concerning the possession and utilization of native land.

(2) In this section “Cadastral Survey Maps” means the maps drawn by the Lands and Survey Department under the auspices of the United Nations Development Programme and the United Nations Centre for Human Settlement from 1981 to 1988 for the following islands —

Nanumea	Cadastral Survey Maps 1986
Nanumaga	Cadastral Survey Maps 1986
Niutao	Cadastral Survey Maps 1987
Nui	Cadastral Survey Maps 1987
Vaitupu	Cadastral Survey Maps 1986
Nukufetau	Cadastral Survey Maps 1988
Nukulaelae	Cadastral Survey Maps 1986
Funafuti	Cadastral Survey Maps 1981 and 1988.

(3) Notwithstanding the generality of subsection (1) the court may not use the Cadastral Survey Maps if a party proves to the satisfaction of the court that the Cadastral Survey Map in respect of the land in dispute is incorrect.

(4) Any decision made by the court before the coming into effect of this Act shall be deemed valid.

## 13 Dealings to be in accordance with Lands Code, etc.

Every attempt to transfer, transmit or otherwise deals with native land except in accordance with the provisions of section 12 shall be null and void and of no effect.

#### **14 Unregistered titles**

The court may, subject to the approval of the Lands Officer, register or cause to be registered in the register of native lands any title to native land which it finds to have existed at the time of the enquiry of the Commission held on the island but which was not registered by the Commission:

Provided that no judgment or order of the Commission shall thereby be reversed or amended.

#### **15 Native wills**

The court shall be a court of probate in respect of native wills and shall have the power to adjudicate in accordance with native customary law on all cases arising from the administration and partition of native estates.

#### **16 Native adoptions**

The court shall adjudicate on all cases brought before it concerning native adoptions and the conveyances of land which such adoptions may entail.

#### **17 Customary fishing rights**

The court shall adjudicate on all cases brought before it concerning the determination of native customary fishing rights.

#### **18 Native leases**

- (1) The court may approve or disallow all native leases as provided for in Part VI.
- (2) The court may order the payment of rent or of damages for failure to perform any legal undertaking provided for in native leases and may, if necessary, enforce such order by seizure and sale of the goods of the party concerned to the amount fixed by the order, which may not, however, exceed the sum of \$100.
- (3) The court may, on the application of a lessor of a native lease and on proof that the lessee has committed a breach of any of the covenants of the lease whether expressed or implied, make an order of possession in favour of the lessor on such terms as it may deem just.

#### **19 Court registers**

- (1) The court shall keep registers in the form prescribed by the Minister and shall therein register or cause to be registered –
  - (a) all transfers of titles to land approved by the court;

- (b) titles to garden pits, ponds, fish traps and sea walls constructed with its permission subsequent to the registration of titles by the Commission;
  - (c) all native wills deposited with the court;
  - (d) all native adoptions approved by the court;
  - (e) all native leases approved by the court.
- (2) Only the members of the Appeals Panel, the Lands Officer, the president and the registrar of the court may make entries in the registers of native lands and other court registers.
- (3) Each such entry shall make reference to the judgment or order in the court minutes on the authority of which the entry is made; and the reference shall include the number of the case or the page and number of the minute book where the judgment or order is recorded.

## 20 Paternity

- (1) If in any island a single woman is delivered of a child, the court may summon before it that woman and all other such natives as it may think fit and may enquire into the paternity of the child.
- (2) Subject to anything to the contrary in the native customary law, the court may make an order regarding the paternity of the child and its future support in one of the following ways —
- (i) If the father being a native accepts the child as being his, such child shall after reaching the age of 2 reside with the father or his relations and shall in accordance with native customary law inherit land and property from his father in the same way as the father's legitimate children; or
  - (ii) If the putative father being a native does not acknowledge paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may transfer to the child title to any such portion of land or other property owned by the putative father as shall be necessary for the maintenance and support of the child; or
  - (iii) If the putative father being a native does not acknowledge paternity of the child, but the court is satisfied that he is the father of the child, it may order that the child shall live with the mother and may if such putative father owns no land which will be of assistance in maintaining the child, order monetary maintenance up to an amount not exceeding \$2 per month or maintenance by supply of foodstuffs to be paid by the father to the mother, or whoever is supporting the child, until such time as the child reaches the age of 21, or the father inherits sufficient land to allow for a transfer as provided for in paragraph (ii), and in which event a transfer shall be ordered in substitution for the

order for maintenance, and any sum of money or foodstuffs due under such a maintenance order may be claimed as a civil debt in the island court.

## **21 Court records**

- (1) The evidence given in all cases brought before the court, the observations of the members and summing up of the president and the judgment of the court shall be recorded by the registrar in the court's minutes book which shall be kept in the manner prescribed by the Lands Officer; and the minutes of each case shall be signed by the registrar and the president of the court.
- (2) The minutes of evidence, affidavits, certificates of representation and certified copies of any testamentary instruments which may have been tendered in evidence shall be preserved in the records of the Kaupule within whose area of authority the court is established or as the Lands Officer may otherwise direct.

## **22 Quorum of court**

A quorum of the court shall be half the total number of members and for the determination of boundaries it shall be 5 members, or half the total number of members whichever is the less.

## **23 Interested parties**

A member of the court shall not sit during the proceedings in any action in which he has an interest or for which he has been called as a witness.

## **POWERS AND PROCEDURE OF COURT**

## **24 Powers and procedures of Court**

The court shall have the powers and observe the procedure set out in Schedule 2.

## **25 Appeals**

- (1) Any person feeling himself aggrieved by any judgment, decision or order of the court may within 3 weeks of its being given or made and on payment of such fee as may be prescribed, give notice to the registrar of his desire to appeal and the registrar shall record the appeal in the prescribed form.
- (2) Any member of the Appeals Panel or the Lands Officer may in any case extend the time within which notice of desire to appeal under this section is required to be given.

- (3) A member or members of the Appeals Panel sitting as an appellate tribunal under this Act shall have full jurisdiction over the whole proceedings as if those proceedings had been instituted and prosecuted before the member or members as a court of first instance and may re-hear the whole case and without prejudice to the generality of the foregoing may —
- (a) set aside any judgment, decision or order of the court and substitute any judgment, decision or order which ought to have been made and make such further or other order as the case may require;
  - (b) direct the court which gave the judgment or decision or made the order or any other court to take further evidence either generally or on some particular point and in the meantime order the stay of any proceedings for the execution of any judgment or order;
  - (c) set aside the judgment or decision and order a retrial before the court which heard and determined the proceedings in question or any other court;
  - (d) allow or require new evidence to be adduced either by oral examination in court or by affidavit;
  - (e) give any judgment or decision and make any order that ought to have been given or made and make such further or other order as justice may require and give all necessary and consequential directions.
- (4) Before an appeal is determined under this section both the appellant and the respondent shall be entitled to make to the member or members of the Appeals Panel designated for the purpose of hearing and determining the appeal under section 10 —
- (a) oral submissions either in person or by an advocate or other person;
  - (b) written submissions either in addition to or in substitution for oral submissions under paragraph (a).

## 26 Further appeal

- (1) Any person aggrieved by a judgment, decision or order of a member or members of the Appeals Panel sitting as an appellate tribunal under this Act may appeal against the same on the ground that it was wrong in law to the Senior Magistrate's Court if, within 3 weeks of its being given or made, notice in such form and on payment of such fee as may be prescribed has been given to the Clerk of the Senior Magistrate's Court.
- (2) Any person aggrieved by a judgment, decision or order of the Senior Magistrate's Court under this section may with the leave of that court or of the High Court appeal against the same to the High Court if, within 3 weeks of its being given or made, notice in such form and on payment of such fee as may be prescribed has been given to the Registrar of the High Court.

- (3) The Senior Magistrate in the case of an appeal under subsection (1) or the Chief Justice in the case of an appeal under subsection (2) may extend the time within which notice of appeal under this section is required to be given.
- (4) In determining an appeal under this section the High Court or the Senior Magistrate's Court may give any judgment or decision and make any order that ought to have been given or made and make such further or other order as justice may require and give all necessary and consequential directions.
- (5) Before the High Court or the Senior Magistrate's Court makes a determination under this section both the appellant and the respondent shall be entitled to make to the court both oral and written submissions in the manner prescribed by section 25(4).

## **27 High Court and Senior Magistrate's Court may be assisted by assessors**

- (1) The Chief Justice or the Senior Magistrate may appoint 2 or more persons whom he considers suitably qualified to serve as assessors to assist the court in the hearing and determination of any appeal under section 26.
- (2) The validity of any proceedings shall not be affected by the absence therefrom at any stage of one or more or all of the assessors appointed under subsection (1).
- (3) In giving his judgment or decision or in making any order the Chief Justice or the Senior Magistrate shall not be bound to conform to any opinion which may have been expressed by an assessor and the decision on every matter on which an opinion may have been so expressed shall be vested exclusively in the Chief Justice or the Senior Magistrate.
- (4) Any assessor may require that there shall be written down and included in the record any opinion he may have expressed to which the Chief Justice or the Senior Magistrate does not conform.

## **PART V - LANDS CODE**

### **28 Mining licences and Acts not to be affected by Lands Code**

- (1) Nothing in the Lands Code shall affect in any way the validity of any licence now or hereafter granted by the Crown conferring upon any person or persons the right to carry out mining operations within Tuvalu.
- (2) Nothing in any Lands Code shall in any way invalidate, amend, or repeal any of the provisions of this Act or any other law of Tuvalu.



**29 Amendment of Lands Code**

- (1) The Minister at the request of a Kaupule within whose area of authority an island wholly or partly lies may by order amend the Lands Code in respect of its application to that island.
- (2) The Minister shall cause a copy of every order made under this section to be laid before the Parliament at its sitting next following the date on which the order comes into operation.

**PART VI - LEASES****30 Leases and sub-leases invalid until approved and registered**

No lease or sub-lease of any native land shall be valid until it has been approved and registered in accordance with the provisions hereinafter contained.

**31 Approval and registration of certain leases and sub-leases**

- (1) A lease or sub-lease of native land, other than a native lease, shall require the approval of the Minister.
- (2) Any native or non-native who desires to obtain a lease of native land, other than a native lease, shall submit such lease for the inspection of the court of the island in which the land the subject of the lease is situate.
- (3) A lease of native land shall not be approved by the Minister unless the court of the island in which the land is situate has confirmed –
  - (a) that the land is the property of the lessor;
  - (b) that the lessor is not prohibited under the Lands Code from alienating the land for the term proposed; and
  - (c) that the lessor will be left with sufficient land to support himself and his dependents:

Provided that paragraph (c) shall not apply to any island or place designated by notice by the Minister under this subsection.

- (4) The Minister shall also satisfy himself:
  - (a) that the terms of the lease or sub-lease are not manifestly to the disadvantage of either party;
  - (b) that the agreement conforms with the requirement of regulations made under section 63; and
  - (c) that the fees prescribed have been paid.
- (5) Upon these conditions being fulfilled the Minister shall cause a copy of such lease or sub-lease to be registered in a book to be kept for that purpose and

known as the Leases Register or Sub-Leases Register as the case may be and shall cause an endorsement to be made on the lease or sub-lease recording the approval, the registered number and the date of registration.

### **32 Approval of native leases**

- (1) Any native desiring to obtain a native lease shall submit the proposed lease to the court of the island in which the land the subject of the native lease is situate.
- (2) On being satisfied that the land to be leased is the property of the lessor and that the terms and conditions of the lease are fair both to the lessor and the lessee and that if the lease takes effect there will be sufficient land left to the lessor to support himself and his family, the court shall approve the lease and thereupon the president shall cause the registrar to enter a copy of the lease in the court register of native leases and to make an endorsement upon the lease to the effect that it has been approved and registered.

### **33 Term and extent of lease and sub-lease**

No lease or sub-lease shall be granted for a longer period than 99 years or of any parcel of land of greater extent than 10 acres without the approval of the Minister.

### **34 Transfer of lease and sub-lease**

No lease or sub-lease granted under the provisions of this Act, other than a native lease, shall be assigned or transferred without the approval of the Minister in the case of leases or sub-leases granted under section 33; and any such assignment or transfer approved as aforesaid shall be registered in the Leases Register or Sub-Leases Register as the case may be.

### **35 Transfer of native leases**

No native lease shall be assigned or transferred without the approval of the court of the island in which the land the subject of the lease is situate.

### **36 Implied covenants by lessee**

In any lease or sub-lease there shall be implied unless expressly stated to the contrary the following covenants by the lessee, that is to say —

- (a) that he will pay the rent thereby agreed at the times therein mentioned and all rates and taxes which may be payable in respect of the property during the continuance of the lease or sub-lease;

- (b) that he will at all times during the continuance of the lease or sub-lease keep and at the termination thereof yield up the leased property in good repair, accidents and damage from fire, storm and tempest and reasonable wear and tear excepted.

### **37 Powers implied in lessor**

In any lease or sub-lease there shall also be implied unless expressly stated to the contrary the following powers in the lessor, that is to say —

- (a) that he may by himself or his agents at all reasonable times during the term upon giving to lessee 2 days' previous notice enter upon the leased property and view the state of maintenance thereof, and may serve upon the lessee or leave at his last or usual place of abode or upon the property a notice in writing of any defect requiring him within a reasonable time to be therein mentioned to repair the same;
- (b) that in case the rent or any part thereof shall be in arrear for the space of 3 months, it shall be lawful for such lessor to enter upon and take possession of such property;
- (c) in the case of default being made in the fulfilment of any covenant whether expressed or implied in such lease or sub-lease on the part of the lessee and being continued for the space of 6 months, or in case the repairs required by the notice in writing specified in paragraph (a) not having been completed within the time therein specified it shall be lawful for such lessor by order of the court to enter upon and take possession of such property.

### **38 Sub-letting**

There shall also be implied in any lease or sub-lease, unless specifically stated to the contrary, that the lessee will not sub-let the land comprised in the lease or sub-lease without the consent of the lessor.

### **39 Giving up possession of leased land**

Where a lessee shall have delivered to the lessor his copy, if any, of the lease or sub-lease accompanied by a notice in writing stating that upon a given date he will give up possession of the land comprised in such lease or sub-lease the Minister, or in the case of a native lease the president, may, upon application to him by the lessor and production of such evidence as he may require that the lessee has abandoned the occupation of the land contained in the said lease or sub-lease make upon the lease or sub-lease a memorial of the surrender of such lease or sub-lease.

**40 Passing of interest of lessee**

Whenever any memorial shall have been made upon a lease or sub-lease in pursuance of the last preceding section the interest of the lessee in such land shall revert in the lessor, and production of such lease or sub-lease bearing such memorial shall be sufficient evidence that such lease or sub-lease has been so surrendered.

**41 Entry in register of determination of lease by lessor**

The Minister, or in the case of a native lease the president, upon presentation of proof to his satisfaction of lawful re-entry and recovery of possession by a lessor shall make or cause an entry to be made in the Leases Register, Sub-Leases Register or Court Register as the case may be and the lease or sub-lease shall thereupon determine but without releasing the lessee from his liability in respect of the breach of any agreements in such lease or sub-lease expressed or implied and the proper registering authority shall cancel such lease or sub-lease if delivered up to him for that purpose.

**PART VII - SURVEY****42 Interpretation of this Part**

In this Part “surveyor” means a Government surveyor or any person authorised in writing by the Lands Officer to exercise the powers conferred on surveyors by this Part.

**43 General powers of surveyors**

- (1) A surveyor may at all reasonable times enter and remain upon any land he is required by or under any Act, by any court or by the Lands Officer to survey or mark out and upon any neighbouring land.
- (2) A surveyor may establish in or upon any land referred to in subsection (1) survey marks in such manner and number as he may think fit and may dig up any ground for that purpose and may cut down and remove any trees, crops or other growth and remove or alter any fence or other property which may obstruct any survey or boundary line.
- (3) In exercise of the powers conferred by subsection (2) as little damage as possible shall be done.

**44 Clearance of boundary and other lines**

- (1) A surveyor may give a written direction to any person requiring him to clear any boundary or other line reasonably required for the purpose of marking out or conducting a survey of land in which that person has an interest.
- (2) Any person who wilfully and without reasonable excuse, the proof whereof shall lie on him, fails to comply with a requirement imposed under this section shall be liable to a fine of \$10 and to imprisonment for 1 month.
- (3) Any court before whom a person is convicted of an offence under this section may order the convicted person, in addition to any penalty which may be imposed, to pay to the Lands Officer a sum equivalent to the expenditure incurred or likely to be incurred from public funds in clearing the boundary or other line in question.

**45 Compensation for damage**

- (1) Whenever it appears that any trees, crops or other growth or any fence or other property will require to be removed, damaged or destroyed in exercise of a power conferred by section 43 or in compliance with a requirement imposed under section 44 a surveyor shall first assess the amount of compensation to be paid therefor and shall give to the owner thereof notice in writing of that amount.
- (2) Any person dissatisfied with the amount of compensation assessed under subsection (1) may appeal against the assessment to the Lands Officer if within 3 weeks of receiving a notice referred to in that subsection notice in such form as may be prescribed has been given to the Lands Officer.
- (3) The Lands Officer shall either dismiss the appeal affirming the amount assessed under subsection (1) or allow it in which case he shall determine the amount of compensation to be paid:

Provided that where an appellant so requests in the notice of appeal the Lands Officer shall refer the determination of the appeal in accordance with this subsection to any person whom he may with the approval of the appellant designate.

- (4) The determination of an appeal under this section either by the Lands Officer or by the person designated under subsection (3) shall be final.
- (5) The Lands Officer may in any case extend the time within which notice of appeal under this section is required to be given.
- (6) No power conferred by section 43 shall be exercised and no requirement imposed under section 44 shall be complied with in the circumstances described in subsection (1) unless an assessment of the amount of compensation has first been made under that subsection.

**46 Direction requiring attendance**

- (1) A surveyor may give to any person whom he reasonably believes may be of assistance a written direction requiring that person to attend at a time and place to be specified in the direction.
- (2) A surveyor may further require any person who has attended in compliance with a requirement under subsection (1) to give him such information and other assistance as the surveyor may reasonably require for the purpose of ascertaining the boundaries, marking out or conducting a survey of any land.
- (3) Any person who wilfully and without reasonable excuse, the proof whereof shall lie on him, fails to comply with a requirement imposed under this section shall be liable to a fine of \$10 and to imprisonment for 1 month.
- (4) The Lands Officer may authorise the payment out of public moneys to any person complying with a requirement under this section of such compensation as may be prescribed for any loss or inconvenience thereby occasioned:

Provided that where no compensation has been prescribed for the purposes of this section such compensation shall be paid as the Lands Officer deems in all the circumstances to be just and reasonable.

**47 Payment for boundary marks**

Where boundary marks or other survey marks are established by a surveyor on land at the request of any person the cost of so establishing those marks shall be recoverable by the Lands Officer from that person in any court.

**48 Replacement of survey marks**

- (1) The Lands Officer may cause any survey mark established on land by a surveyor, whether under this Act or otherwise, which is found to have been removed, damaged or destroyed to be replaced, re-established or restored and may in any court recover from the person responsible for that removal, damage or destruction the cost of so doing including the cost of any survey thereby occasioned.
- (2) Without prejudice to subsection (1), the cost there referred to may in the case of the replacement, re-established or restoration of a survey mark established at the request of any person be recovered by the Lands Officer from that person in any court.

**49 Penalty for damaging survey mark**

- (1) Any person who wilfully and without the written consent of the Lands Officer or a surveyor removes, damages, destroys, defaces, obliterates or in any other way whatsoever interferes with any survey mark established by a surveyor,

whether under this Act or otherwise, shall be liable to a fine of \$100 and to imprisonment for 6 months.

- (2) Any court before whom a person is convicted of an offence under this section may order the convicted person, in addition to any penalty which may be imposed, to pay to the Lands Officer a sum equivalent to the expenditure incurred or likely to be incurred from public funds in replacing, re-establishing or restoring the survey mark in question including the cost of any survey thereby occasioned.

## **50 Removal of survey marks**

- (1) Any person who wishes to have any survey mark removed or altered in any way, whether temporarily or permanently, may apply in writing to the Lands Officer setting forth the grounds of the application.
- (2) Where in consequence of an application under subsection (1) the Lands Officer causes a survey mark to be removed or altered he may in any court recover from the person who made the application the cost of so doing and the cost of replacing, re-establishing or restoring the mark where the application was for its temporary removal or alteration including the cost of any survey thereby occasioned.

# **PART VIII - PENALTIES**

## **51 Offences**

Any person who –

- (a) wilfully makes any false statement or declaration in any dealing in land; or
- (b) suppresses or conceals or aids and abets in the suppressing or concealing from the proper registering authority any material document, fact or matter; or
- (c) wilfully makes any false declaration required under the provisions or made in pursuance, of this Act; or
- (d) in the course of his examination before the court wilfully gives false evidence; or
- (e) in the course of his examination before the court wilfully refuses to give evidence; or
- (f) fraudulently procures any document of title or any instrument affecting title, or the making of any alteration thereto or erasure therefrom,

shall be liable to a fine of \$200 and to imprisonment for 1 year.

**52 Penalty for failure to comply with court's order**

Any person who wilfully and without reasonable excuse, the proof whereof shall lie on him, fails to comply with any judgment, decision, order or direction of a lands court, a member or members of the Appeals Panel, the Senior Magistrate's Court, the High Court, a magistrate or an island magistrate exercising jurisdiction under this Act shall be liable to a fine of \$100 and to imprisonment for 6 months.

**53 Penalty for fraudulent alteration, etc.**

Whosoever shall fraudulently alter, add to, erase, deface or destroy or permit to be altered, added to, erased, defaced or destroyed any register or any entry therein or any registered instrument shall be liable to a fine of \$200 and to imprisonment for 1 year.

**54 Penalty for wilfully destroying, etc.**

Whosoever shall wilfully destroy, injure, mutilate, deface or lose any register or any registered instrument or shall wilfully allow any such register or registered instrument to be destroyed, injured, mutilated, defaced or lost whilst in his custody or keeping shall be liable to a fine of \$200 and to imprisonment for 1 year.

**55 Meaning of register in sections 53 and 54**

In sections 53 and 54 any reference to a register means any register of native lands, court register, Leases Register or Sub-Leases Register.

**56 Unlawful occupation**

- (1) Complaints concerning unlawful occupation on native land may be lodged with the registrar of the court who shall issue a summons for the appearance before him of the party or parties so informed against and of any other person or persons whom it may be necessary or proper to examine as a witness or witnesses on the hearing of such information; and the court shall in the presence of the parties proceed to hear and determine such information and being satisfied of the truth thereof shall issue a warrant addressed to any police officer requiring him forthwith to dispossess and remove from such land any person in unlawful occupation of such land and the officer to whom such warrant is addressed shall forthwith carry the same into execution.
- (2) The court may order such person to pay to the proprietor compensation for the period of the unlawful occupation and to pay to the Government any costs incurred in dispossession and removal.
- (3) Any person who occupies land without a claim of right made in good faith shall be liable to a fine of \$50.



**57 Removal of or interference with boundary mark**

No boundary mark shall be defaced, obliterated, moved, injured or otherwise impaired, destroyed or rendered useless except by a person duly authorised thereto by a court and any person acting in contravention of this section shall be liable to a fine of \$50 and to imprisonment for 6 months.

**58 Disturbance of court**

Any person who within or close to the building where the court is sitting or in the presence or hearing of the president or members of the court when engaged in determination of boundaries wilfully misbehaves in a violent, threatening or disrespectful manner to the disturbance of the court or to the intimidation of suitors or others resorting thereto, or wilfully insults any member or officer of the court shall be liable to a fine of \$50 and to imprisonment for 6 months.

**59 Failure to answer summons**

Any person summoned by the court who fails to appear at the time and date specified in the summons without good cause shall be liable to a fine of \$10.

**60 Proceedings where to be instituted**

Proceedings for any offence created under this Part or Part VII shall be taken either before a magistrate's court or before an island court:

Provided that in no case shall an island court pass a sentence which is not authorised by the Island Courts Act.

## **PART IX - GENERAL**

**61 Attestation**

The president or registrar of the court or any member designated by the president may administer oaths and take affidavits, declarations and affirmations.

**62 Interim injunctions**

- (1) Any magistrate or island magistrate may in respect of any proceedings before a lands court by an interlocutory order grant an interim injunction in every case in which it appears to him to be just and expedient so to do.
- (2) An order under subsection (1) may be made either unconditionally or on such terms or conditions as the magistrate or island magistrate thinks just.

- (3) Where an injunction is granted under subsection (1) the magistrate or island magistrate as the case may be shall forthwith transmit a copy of the order to the registrar of the lands court before which the material proceedings are pending.

### **63 Regulations and fees**

The Minister may make regulations to give effect to the provisions of this Act, and in particular, but without prejudice to the generality of the power hereinbefore given, may prescribe —

- (a) the manner in which leases shall be prepared, including the quality, size and condition of paper and quality and colour of ink to be used;
- (b) the fees payable for the examination and approval of leases and for matters related thereto;
- (c) the fees payable for the registration of leases and for matters related thereto;
- (d) the fees which may be demanded and received by registrars of lands courts in connection with the practice and procedure of the courts and with appeals therefrom.

### **64 Regulations governing practice and procedure of Lands Court**

Without prejudice to section 63 the Lands Officer may, with the approval of the Senior Magistrate, make regulations —

- (a) regulating the practice and procedure of lands courts and of tribunals hearing first appeals therefrom;
- (b) prescribing the forms and books to be used or maintained in connection with the practice and procedure of lands courts and with first appeals therefrom;
- (c) prescribing the form of notice under section 45 (2):

Provided that nothing in this section shall empower the Lands Officer to prescribe the fees payable in respect of any matter.

**SCHEDULE 1***(Section 8)***OATH**

“I, A.B. do swear that while serving as a member of the Lands Court, I will do right to all manner of people after the laws and usages of Tuvalu without fear or favour, affection or ill-will.

So help me God.”

**AFFIRMATION**

“I, A.B. solemnly, sincerely and truly declare and affirm that while serving as a member of the Lands Court I will do right to all manner of people after the laws and usages of Tuvalu without fear or favour, affection or ill-will.”

**SCHEDULE 2***(Section 24)***POWERS AND PROCEDURE OF LANDS COURT**

1. The court, either of its own motion or on the application of any party, may summon any person subject to its jurisdiction to attend to give evidence, or to produce documents, or to be examined.
2. If an applicant fails to appear at the time and place at which he has been required to attend the court and does not excuse his failure to the satisfaction of the court, the court may strike out his application; and if any party does not obey a summons issued under paragraph 1 and does not excuse his failure to the satisfaction of the court, then, after proof of service, the court may appoint a relative of such party to the proceedings as may reasonably be expected to have good knowledge of the history of the title to the land under dispute, or other matter in issue, to represent such party and may thereupon proceed to hear and determine the matter in issue.
3. In all matters before the court the parties or their representatives, or, in the case of a party who has failed to appear, his representative as appointed under paragraph 2 shall be present throughout the proceedings:  

Provided that the president may clear the court if he considers that the court should discuss a submission or their verdict without the parties being present.
4. The following procedure shall be observed by the court —
  - (a) A statement of the matter in issue shall be made to the court by the applicant if it is in the nature of a claim against the other party or by the registrar if the matter arises out of the court's own motion.
  - (b) If there is an applicant, the court shall first hear his evidence together with that of any witnesses whom he wishes to call, and shall then proceed to hear the evidence of the other party together with that of his witnesses; and if there is no applicant the court may call such witnesses and in such order as it thinks fit.
  - (c) Any person appearing before the court to give evidence may be examined or give evidence on oath in the form, or with the ceremony that he declares to be binding on his conscience.
  - (d) After each party to the action has given evidence, the opposite party shall be entitled to ask any questions bearing on the evidence given. Similarly each party may ask questions of any witness for the other party after the latter has given evidence. All questions shall, however, be put through the president. The president may ask any questions at any stage in the proceedings, and may recall and question either party or any witness at any stage in the proceedings before judgment.

- (e) During the course of the proceedings the president may discuss with the members of the court the native custom applicable to the matter in issue. After hearing all the evidence and discussing as necessary the native custom, the president shall summarise the facts and the custom for the benefit of the other members of the court. The court shall then consider its judgment, which shall be by a majority vote of all members eligible to take part in the matter in issue. In the event of an equal division of opinion amongst the members, the president shall have a casting vote in addition to his original vote. The judgment so arrived at shall be pronounced in open court by the president and shall be entered by the registrar in the minutes of the court.
- (f) The court, unless cleared under paragraph 3, shall be open to attendance by members of the public.

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 22 - Acts 5 of 1956, 2 of 1959, 4 of 1967, 8 of 1968, 6 of 1969, 8 of 1971, 9 of 1971, 11 of 1971, 15 of 1972, 3 of 1973, 13 of 1974

Amended by Act 4 of 1996, commencement 30 August 1996, (by Act 4 of 2009)

Amended by Act 7 of 2006, commencement 21 September 2007 (LN 5/2007)

<sup>2</sup> Cap. 4.08

<sup>3</sup> Cap. 40.20

<sup>4</sup> Amended by Act 4 of 1996

<sup>5</sup> Cap. 7.32

<sup>6</sup> Amended by Act 4 of 1996

<sup>7</sup> Substituted by Act 7 of 2006