

LEGAL NOTICE NO. 452

(ALT. 3/1)

THE NATIVE LANDS TRUST ORDINANCE

(Cap. 100)

IN EXERCISE of the powers conferred by section 64 of the Native Lands Trust Ordinance, the Governor, with the advice and consent of the Native Lands Trust Board, hereby makes the following Rules:

THE NATIVE LAND TENURE RULES, 1956

Citation. 1. These Rules may be cited as the Native Land Tenure Rules, 1956.

Application. 2. (1) The Minister may, by notice in the Gazette, direct that these Rules shall apply to any area of the native lands specified in the notice, being an area within which the Minister considers that a recognisable form of private right-holding exists, in order that such private right-holding may be ascertained, regulated and registered.

(2) As soon as may be after these Rules shall have been applied to any area, the Provincial Commissioner of the province in which such area is situated shall cause notice of the general effect of the provisions of these Rules to be published in writing and to be given at *barazas* throughout the said area and elsewhere as he may direct in such language or languages as shall be understood by all persons concerned with the provision of these Rules, and on such other occasions or in such other manner as he may think fit.

Interpretation
and publication
of notices.

3. (1) In these Rules, unless the context otherwise requires—
“area” means any area to which these Rules have been applied in accordance with the provisions of rule 2;

“certificate” means a certificate issued in accordance with the provisions of rule 15;

“Committee” means the Committee appointed in accordance with the provisions of paragraph (2) of rule 6;

“District Commissioner” means the District Commissioner of the district within which a unit is situated;

“District Officer” means any District Officer appointed by the District Commissioner to be a District Officer for the purpose of these Rules;

“Record” means a Record prepared in accordance with the provisions of rule 9;

“Register” means a Register prepared in accordance with the provisions of rule 16;

“unit” means any part of an area which has been declared to be a unit in accordance with the provisions of rule 5.

(2) (a) Whenever, in accordance with the provisions of paragraph (1) of rule 5, rule 10, paragraph (3) of rule 16 or paragraph (2) of rule 18, any notice is required to be given, the District Commissioner

shall publish the same in writing at the office of the Provincial Commissioner within whose province the area is situated and at the office of such District Commissioner and elsewhere as he may direct in such manner as he may think fit, and the District Commissioner shall also cause the purport of such notice to be promulgated at *barazas* throughout the area, and on such other occasions or in such other manner as he may determine.

(b) Every notice shall be published, and the purport of every notice shall be promulgated, in such language or languages as shall be understood by all persons affected thereby.

4. (1) On or after the publication of a notice in accordance with the provisions of rule 2, the Provincial Commissioner of the province in which the area specified in such notice is situated shall appoint for each such area such Demarcation Officers and Registration Officers as may be necessary.

Appointment of officers.

(2) The District Commissioner shall exercise general control and supervision over the ascertaining and registering of private right-holding of land in the area and may issue such general or special directions to the District Officers for the said area as he may consider expedient.

(3) The District Commissioner or the District Officer may exercise all or any of the powers given to a Demarcation Officer or a Registration Officer by these Rules.

5. (1) Within any area, the District Commissioner may by notice declare one or more units.

Declaration of units.

(2) The District Commissioner shall in each notice—

- (a) specify, as nearly as possible, the situation and limits of each unit;
- (b) declare that the private right-holding of land within such unit will be ascertained and registered in accordance with the provisions of these Rules; and
- (c) fix a period within which any person claiming to be a private right-holder within such unit is required to present his claim thereto to the Committee, either in person or by representation according to native law and custom.

6. (1) The Provincial Commissioner within whose province any area is situated shall appoint an Arbitration Board for each district within which a unit is situated and each Board shall consist of eight Africans residing within such district.

Appointment of Arbitration Boards and of Committees.

(2) The District Commissioner within whose district any unit is situated shall appoint a Committee for each unit from amongst persons nominated by the inhabitants of the unit, and each Committee shall consist of not less than five members.

(3) Each Arbitration Board and Committee shall elect one of its members to be the Chairman thereof.

(4) (a) The District Commissioner, or a District Officer to be appointed by the District Commissioner, shall be the Executive Officer of the Arbitration Board appointed for the district and he may attend and speak at any meeting of the Board but he shall not vote:

Provided that no District Officer who has been appointed under rule 3 shall be appointed under this paragraph.

(b) Any decision of an Arbitration Board may be signified under the hand of the Chairman of the Board or of the District Commissioner or the District Officer appointed under sub-paragraph (a) of this paragraph of the rule.

(5) (a) The District Officer shall be the Executive Officer of the Committee appointed for the unit and he may attend and speak at any meeting of the Committee but he shall not vote.

(b) Any decision of a Committee may be signified under the hand of the Chairman of the Committee or of the District Officer.

(6) (a) Any matter which, by these Rules is referred to a Committee, shall be decided in accordance with native law and custom.

(b) If a Committee is unable to reach a decision as to the private right-holding of any piece of land, it shall refer the matter to the Arbitration Board which shall decide the matter and the decision of the Board shall be final.

(7) At any meeting of an Arbitration Board five members shall constitute a quorum and in the event of there being an equality of votes, the Chairman shall have a casting vote in addition to a deliberative vote.

(8) If, at any meeting of an Arbitration Board or of a Committee the Chairman thereof is absent the members present may elect one of themselves to be Chairman for that meeting.

Functions of
Committees.

7. Every Committee appointed for a unit shall ascertain and determine the claim of any person to be a private right-holder of any piece of land within the unit.

Attendance.

8. (1) All occupiers of land within a unit and every person claiming to be a private right-holder of any such land, and any person whose presence may be required by the Committee, shall attend in person or by representative according to native law and custom as required by the Committee on the land or elsewhere at the time and on the day notified by the Committee; but the ascertainment and determination of any such claim as aforesaid may, after the expiration of a period of thirty days from such day, proceed notwithstanding the absence of any such person or his representative:

Provided that the Committee may in its discretion extend such period.

(2) Where one or more of several heirs of a deceased private right-holder, or one or more out of a group of heirs, having a separate interest from another group or other groups, appear, his or their appearance shall be deemed to be the appearance of all heirs or all groups as the case may be, unless the Committee otherwise directs.

9. (1) There shall be prepared in respect of each unit a Record of Existing Rights. Record of Existing Rights.
- (2) Where a Committee has determined the claim of persons to be private right-holders of any piece of land within the unit it shall record, or cause to be recorded, all such rights in Part I of the Record.
- (3) There shall be entered in Part I of the Record—
- (a) the name and tribal particulars of every right-holder;
- (b) a description or other sufficient identification of each piece of land which any private right-holder is entitled to occupy and of any communal land;
- (c) in the case of any private right-holder who is a minor, the name of his guardian.
- (4) The District Officer shall enter or cause to be entered in Part II of the Record—
- (a) the name of every person in whose favour any land in the unit has been set apart, or to whom any land has been leased, or who has been granted any licence, in accordance with the provisions of Part III or V of the Ordinance;
- (b) a description or other sufficient identification of any land which has been set apart or leased;
- (c) the term and nature of any lease or licence.
10. When the Record in respect of any unit has been completed, the District Officer shall sign and date the same and shall give notice of the date of the completion thereof, and of the place at which the same can be inspected. Publication of Record.
11. Any person named in or affected by the Record who considers the Record to be inaccurate or incomplete in any respect may, within thirty days of the completion thereof, so inform the District Officer, stating in what respect the Record is alleged to be inaccurate or incomplete; and in any such case the District Officer shall refer the matter to the Committee which shall consider and determine the same. Objections to Record.
12. After the expiration of thirty days from the completion of a Record, or on the determination of all objections to a Record in accordance with rule 11, whichever shall be the later, the Record shall be deemed to be a true and complete record of all existing private right-holding in the unit to which the Record relates, but no inaccuracy in, or omission of, any particular relating to any lease or licence shall in any way affect the validity of such lease or licence. Record deemed true and complete.
13. (1) Subject to the provisions of rule 14, a Demarcation Officer, with the assistance of the Committee or any member or members thereof, shall, at any time after the provisions of rule 12 have taken effect in respect of any Record, demarcate, or cause to be demarcated, by such means or in such manner as he may direct, the boundaries of all pieces of land within the unit in accordance with the particulars contained in the Record. Demarcation.

(2) The Demarcation Officer shall prepare, or cause to be prepared, a plan of the unit, showing the several pieces into which the same is divided, and a list showing in respect of each piece the name of the private right-holder or lessee thereof.

(3) No person except a Demarcation Officer shall demarcate or cause to be demarcated any boundary within a unit except with the permission or in accordance with the instructions of a District Officer.

Power of
Committee to
consolidate and
to provide for
amenities.

14. (1) Whenever it appears to a Committee—

- (a) that any person is the private right-holder of more than one piece of land within the unit; or
- (b) that any piece of land to which any private right-holder is entitled is so situated as to prevent or prejudice the proper use of that piece having regard to any other piece of land to which such private right-holder may be entitled; or
- (c) that any boundary between any pieces of land is curved or irregular; or
- (d) that any piece of land is surrounded by pieces of land of which other persons are the private right-holders; or
- (e) that it is desirable to make provision for the present or future needs of the community,

then in any such case the Committee may—

- (i) consolidate all the pieces to which one private right-holder is entitled into one piece being approximately equivalent to the several pieces and allocate to such private right-holder such a piece by adjusting the pieces to which other private right-holders are entitled as may be necessary;
- (ii) require a private right-holder to relinquish any piece to which he is entitled and to accept in place thereof another piece being approximately equivalent thereto;
- (iii) adjust the boundary between any two pieces;
- (iv) require any private right-holder to relinquish a portion of any piece to which he is entitled so as to create a right of way or to provide land for the present or future needs of the community.

(2) If in the exercise of any of its powers under paragraph (1) of this rule, a Committee is of the opinion that any compensation should be paid to a private right-holder by reason of any detriment suffered by him as a result of such exercise of its powers, the Committee may require any other private right-holder or private right-holders to pay to such first-mentioned private right-holder such compensation as it may think proper; and such compensation shall be paid in money or in kind, and at such time or times, as the Committee may direct.

(3) Notwithstanding that no person has made any claim to be the private right-holder of any piece of land within a unit, the Committee may, if satisfied that any person has a valid claim to be the private right-holder in respect of any such piece of land, declare that such person is the private right-holder of such piece of land.

15. (1) There shall be prepared in duplicate in respect of every private right-holding demarcated in accordance with rule 13 a certificate in the form set forth in the Schedule to these Rules. Certificate.

(2) The original of every certificate shall be delivered to the Registration Officer and the duplicate to the private right-holder of the piece of land to which the Certificate relates.

16. (1) The Registration Officer shall prepare a Register for each unit and all land within the unit shall be registered in the Register. Register.

(2) The Register shall contain—

(a) in respect of land occupied by private right-holders—

- (i) the name and tribal particulars of the private right-holder.
- (ii) so far as practicable, an accurate and clear description of the piece of land, including its extent and situation;
- (iii) the number of the piece of land with reference to the plan prepared in accordance with the provisions of paragraph (2) of rule 13;
- (iv) the number and date of the certificate;
- (v) any remarks contained in the certificate;
- (vi) the date of registration;

(b) in respect of land set apart or leased or in respect of which any licence has been granted—

- (i) the number and year of the notice in the Gazette setting such land apart;
- (ii) the purpose for which such land is set apart;
- (iii) the name of the applicant (if any) for such setting apart, or of the lessee;
- (iv) the term and nature of any lease or licence;
- (v) the number of the piece of land with reference to the plan prepared as aforesaid;

(c) in respect of communal land, such particulars as will identify the same with reference to the plan prepared as aforesaid;

(d) particulars of any right of way over any land, and particulars of any right of way enjoyed by the private right-holder of any land.

(3) When the Register in respect of any unit has been completed, the Registration Officer shall sign and date the same and shall give notice of the date of the completion thereof, and of the place at which the same can be inspected.

Objections to Register.

17. Any person named in or affected by the Register who considers the Register to be inaccurate or incomplete in any respect may, within thirty days of the date of completion thereof, inform the District Officer, stating in what respect the Register is alleged to be inaccurate or incomplete; and in any such case the District Officer shall consider the matter with the Committee and may, if he thinks the objection to be valid, amend the Register accordingly, and he shall sign and date the amendment.

Confirmation of Register.

18. (1) After the expiration of thirty days from the completion of a Register, or on the determination of all objections to a Register in accordance with rule 17, whichever shall be the later, the District Commissioner shall confirm the Register and shall sign and date a certificate therein to that effect.

(2) When the Register in respect of any unit has been confirmed, the District Commissioner shall give notice of such confirmation.

Registration of land transactions.

19. (1) Every transaction by which any piece of land or any part thereof within a unit is alienated, charged, mortgaged or otherwise disposed of, or by which the possession thereof or of any part thereof is transferred, and every sub-division thereof, shall be registered by the Registration Officer.

(2) Any transaction or subdivision as aforesaid which is not registered shall be null and void and of no effect.

(3) Any person, whether claiming to be or being the private right-holder or not, who wishes to register any transaction or subdivision as aforesaid shall present himself in person before the Committee and apply for such transaction or subdivision to be entered in the Register.

(4) Subject to the provisions of rule 20 the Registration Officer shall register any transaction or subdivision as aforesaid upon the surrender to him of the duplicate of the certificate relating to such land and the production of the approval of the Committee in writing.

(5) When the Registration Officer registers any transaction or subdivision as aforesaid, he shall enter in the Register the following particulars in respect of each such transaction or subdivision—

(a) the name and tribal particulars of the person to whom the land or possession thereof has been alienated, charged, mortgaged or otherwise disposed of or by whom it has been subdivided;

(b) the consideration, if any, received in respect of such transaction or subdivision;

(c) the date of such transaction or subdivision.

(6) Any entry made in the Register in pursuance of the provisions of this rule shall be signed and dated by the Registration Officer.

20. The Local Board may, after consulting the Committee appointed for any unit, declare that no transaction concerning, nor any subdivision of, any piece of land within the unit shall be registered if such registration would involve the registration of a piece of land of less area than that which the Local Board may specify.

Minimum land transactions.

21. Any recording of private right-holding or of any right or interest in any land, and any demarcation or registration of any land, carried out in accordance with native law and custom within any unit before the application of these Rules to such unit shall be deemed to have been and to be a recording, demarcation or registration of private right-holding under these Rules, and any Record, certificate or Register, as the case may be, or any document or instrument to the like effect already prepared or issued shall be deemed for the purposes of these Rules to be a Record, certificate or Register and the provisions of paragraph (2) and (3) of rule 9 and of rules 10, 11 and 12, and of rule 15, and of rules 16, 17 and 18 shall respectively apply thereto as the case may require:

Saving for records and registers made before application of Rules.

Provided that the provisions of rules 10 and 11 shall not apply in respect of any unit if a Register has been or is deemed to have been prepared for such unit:

Provided further that for the purpose of objecting to any such Register the date of its completion shall be deemed to be the date of the application of these Rules to the unit to which such Register relates, and notice shall accordingly be given in accordance with the provisions of paragraph (3) of rule 16.

22. Every private right-holder whose name is contained in a Register, whether such Register was made before or after the commencement of these Rules, shall pay to the District Commissioner a fee at such rate as the Governor may from time to time prescribe in respect of any area or unit.

SCHEDULE

(Rule 15)

THE NATIVE LAND TENURE RULES, 1956

(L.N. No. 452 of 1956)

CERTIFICATE

No.

Ref. Date

District

Location

Unit

Name of private right-holder

Tribe

Piece No.

Remarks

.....

.....

I, the above-named In accordance with the decision
..... of the Committee and on behalf
have been informed of the of the Committee.
decision of the Committee.

.....
Signature or thumbprint. *Chairman of Committee or
District Officer.*

Explained to the above who
understands the same, and ack-
nowledged it in my presence.

.....
Interpreter and Witness. *Demarcation Officer.*

Made this 6th day of October, 1956.

By Command of the Governor.

E. H. WINDLEY,
Minister for African Affairs.