

THE LAND DISPUTES TRIBUNALS ACT
1990

No. 18 of 1990

Date of Assent: 14th January, 1991

Date of Commencement: ~~By Notice~~

ARRANGEMENTS OF SECTIONS

Section

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An Act of Parliament to limit the jurisdiction of magistrates' courts in certain cases relating to land; to establish Land Disputes Tribunals and define their jurisdiction and powers and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Land Disputes Tribunals Act, 1990 and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Short title
and
commencement.

2. In this Act, unless the context otherwise requires—

Interpretation.

“elders” means persons in the community or communities to which the parties by whom the issue is raised belong and who are recognized by custom in the community or communities as being, by virtue of age, experience or otherwise, competent to resolve issues between the parties;

Cap. 302.

Cap. 300.

Cap. 284.

Cap. 283.

Cap. 282.

“land” means “agricultural land” as defined in section 2 of the Land Control Act, whether or not registered under the Registered Land Act, but does not include land situated within an adjudication section declared under the Land Adjudication Act or the Land Consolidation Act or land which is the subject of determination by the Land Registration Court under the Land Titles Act;

“magistrate’s court” means the Resident Magistrate’s Court or a District Magistrate’s Court;

“Minister” means the Minister for the time being responsible for matters relating to land;

Cap. 300.

“Registrar” has the meaning assigned to that term under the Registered Land Act.

“registration district” means the administrative district in which the land the subject of a dispute is situated;

“Tribunal” means a Land Disputes Tribunal established under section 4.

Limitation of
jurisdiction, etc.

3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to—

- (a) the division of, or the determination of boundaries to, land, including land held in common;
- (b) a claim to occupy or work land; or
- (c) trespass to land,

shall be heard and determined by a Tribunal established under section 4.

(2) Every dispute referred to in subsection (1) shall be instituted by presenting a claim to the Tribunal for the area in which the land is situated, and shall contain, and contain only, a summary of the material facts on which the claimant intends to rely.

(3) Every claim shall be registered in register of claims to be kept by the Tribunal in the prescribed manner and the claims shall be numbered consecutively in each year according to the order of their institution.

Cap. 21.

(4) Every claim shall be served on the other party, or, where there are more than one, on each of the other parties to the dispute and the provisions of the Civil Procedure Act as regards service of summonses shall thereafter apply.

(5) Each party upon whom a claim is served shall, unless the claim is admitted, within thirty days after service, file with the Tribunal an answer containing a reply to the matters stated in the claim and a summary of the facts upon which he wishes to rely.

(6) Within thirty days after the answer has been filed under subsection (5) the claim shall be set down for hearing by the Tribunal.

(7) The Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law, after hearing the parties to the dispute, any witness or witnesses whom they wish to call and their submissions, if any, and each party shall be afforded an opportunity to question the other party's witness or witnesses.

(8) The Tribunal shall give reasons for its decision, which shall contain a summary of the issues and the determination thereof, and which shall be dated and signed by each member of the Tribunal.

(9) Notwithstanding any other written law no magistrate's court shall have or exercise jurisdiction or powers in cases involving any issues set out in paragraphs (a) to (c) of subsection (1).

(10) In adjudicating upon claims instituted under this section the Tribunal may be assisted by the Registrar.

4. (1) There shall be established a tribunal, to be called the Land Disputes Tribunal, for every registration district.

Establishment
of tribunals.

(2) Each Tribunal shall consist of---

(a) a chairman who shall be appointed from time to time by the District Commissioner from the panel of elders appointed under section 5; and

(b) either two or four elders selected by the District Commissioner from a panel of elders appointed under section 5.

5. (1) The Minister shall, by notice published in the Gazette, appoint a panel of elders for each registration district.

Panels of
elders.

(2) If an elder on the panel becomes, in the opinion of the Minister, unfit to be selected to serve as a member of the Tribunal or incapable of performing any duties as such, the Minister shall forthwith declare his office to be vacant and shall notify the fact in such manner as he thinks fit, and thereupon the office shall become vacant.

(3) Subject to subsection (2), the appointment of a member of the panel shall be for such term and subject to such conditions as may be determined by the Minister.

(4) A person who ceases to hold office as a member of the panel shall be eligible for reappointment thereto.

Exercise of
jurisdiction
by Tribunal.

6. (1) Subject to this Act, each Tribunal shall have jurisdiction to resolve disputes instituted under section 3 (2).

(2) Whenever a dispute is being dealt with by the Tribunal—

(a) the chairman shall preside at the hearing; and

(b) the decision of the Tribunal shall be that of the majority of the members hearing the dispute.

Decision of
the Tribunal.

7. (1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter judgement in accordance with the decision of the Tribunal and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

Cap. 21.

Appeals to the
Appeals
Committee and
the High Court.

8. (1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.

(2) The appeal shall be registered in a register of appeals in the same manner as the register of claims under section 3 (3); and a notice thereof shall be served on the other party or parties to the dispute in the same manner as provided in subsection (4) of section 3.

(3) The appeal shall be in documentary form and shall contain a brief statement, to be divided into separate grounds of appeal, of the reasons upon which the party appealing wishes to rely.

(4) The appeal shall then be set down for hearing by the Appeals Committee at a date, time and place to be notified to the parties thereto.

(5) The appeal shall then be determined by the Appeals Committee, which shall consist of three members appointed under section 9.

(6) At the hearing of the appeal, the party bringing the appeal shall begin.

(7) After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision:

Provided that the Committee may in its discretion permit the party appealing to reply to the other party's submission if that submission contains any new matter not previously introduced at the hearing or on the appeal.

(8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.

(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.

(10) A question of customary law shall for all purposes under this Act be deemed to be a question of fact.

9. (1) The Minister shall establish for each Province a Land Disputes Appeals Committee which shall consist of—

Land Disputes
Appeals
Committee.

(a) a chairman appointed from time to time by the Provincial Commissioner from the panel of elders appointed by the Minister by notice published in the Gazette for purposes of appeals under this Act; and

(b) such persons, not being less than five, appointed by the Minister.

(2) For the purpose of hearing appeals from Tribunals in the Province for which the Committee is constituted the Committee shall sit in a panel of three members and in such places as may be determined by the Provincial Commissioner.

Rules.

10. (1) The Minister may make rules—

(a) prescribing the procedure of Tribunals, in particular—

(i) the form in which any decision, order or determination of a Tribunal shall be given;

(ii) the evidence which may be admitted in proceedings before a Tribunal and the taking of such evidence;

and generally for all matters in connection with the bringing, hearing and determining of disputes referred to a Tribunal to be resolved;

(b) prescribing the composition and qualifications for membership of the Tribunal and of the Appeals Committee and the terms of service of such members all of whom shall be eligible for re-appointment;

(c) prescribing any procedural requirements which the Minister may deem desirable in relation to appeals additional to the provisions set out in section 7; and

(d) prescribing generally for all other matters which may be deemed by the Minister necessary for the better carrying out of the provisions of this Act and for the payment of all such fees as may be considered necessary.

**Repeal of
No. 14 of 1981.**

11. The Magistrates' Jurisdiction (Amendment) Act 1981 is repealed.

**Amendment of
section 159 of
Cap. 300.**

12. Section 159 of the Registered Land Act is amended by deleting the words "where the disputes comes within the provisions of Part IIIA of the Magistrates' Courts Act, in accordance with Part" and inserting "where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act".

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13. (1) Where any proceedings to which section 3 (1) of this Act applies have, at the commencement of this Act, been filed in a magistrate's court, then, unless the court has at that time heard and pronounced judgement thereon, the proceedings shall be discontinued until the dispute has been referred to the Tribunal and determined in accordance with this Act.

Transitional
provisions.

(2) Where the court has, at the commencement of this Act, heard the case and pronounced judgement thereon, any appeal therefrom shall proceed as if this Act had not been enacted.

(3) For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.
