

CHAPTER 32:10 ACQUISITION OF PROPERTY

ARRANGEMENT OF SECTIONS

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Schedule - Forms

Proc. 80, 1954,
Cap. 118, 1959,
HMC Order 1, 1963,
L.N. 28, 1965,
Law 26, 1966,

An Act to make provision authorizing the acquisition of property for public and other purposes, and for settling the amount of any compensation to be paid, or any matter in difference.

[Date of Commencement: 28th January, 1955]

1. Short title

This Act may be cited as the Acquisition of Property Act.

2. Interpretation

In this Act, unless inconsistent with the context-

"Board" means a Board of Assessment constituted in terms of section 11;

"judge in chambers" means the Chief Justice or any judge of the High Court sitting in chambers;

"real property" and **"property"** mean any real right in immovable property in Botswana other than a mortgage bond over immovable property, and include any lease of immovable property, any rights to the use of public water whether derived from the common law or from statute, any servitude, or the creation of any servitude, and any land granted or ceded to any corporation, company or person; but shall not include Tribal Territories as defined by the Tribal Territories Act.

3. Power of the President to acquire property

(1) The President may acquire any real property where the acquisition of such property is necessary or expedient-

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement; or
- (b) in order to secure the development or utilization of that or other property for a purpose beneficial to the community,

paying such compensation therefor as may be agreed upon or determined under the provisions of this Act.

(2) The President may agree with the owner of any real property required for public purposes for the purchase of such property, or such portion thereof as he thinks proper, for such consideration or compensation as may be agreed upon or determined under the provisions of this Act; and may in like manner acquire leasehold title.

4. Preliminary investigations

(1) Whenever it appears to the President that real property in any locality is likely to be needed for any public purpose it shall be lawful for any person either generally or specially authorized by the President in this behalf and for his servants and workmen to do all or any of the following things-

- (a) to enter upon and survey and take levels of any property in such locality;
- (b) to dig or bore under the subsoil;
- (c) to do all other acts necessary to ascertain whether the property is adapted for such purpose;
- (d) to clear, set out and mark the boundaries of the property proposed to be taken and the intended line of the work (if any) proposed to be made thereon:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice of his intention to do so.

(2) As soon as conveniently may be after any entry made under subsection (1) the person so authorized as aforesaid shall pay for all damage done, and in case of dispute as to the amount to be paid either such person or the person claiming compensation may refer such dispute to a magistrate's court presided over by a Magistrate Grade I or over having jurisdiction in the area, whose decision shall be subject to an appeal to the High Court.

5. Notice of intention to take property

Whenever the President resolves to acquire any property in terms of section 3 the Minister shall give notice to the persons interested or claiming to be interested in such property or to the persons entitled by this Act to sell and convey or lease the same or to such of them as shall after reasonable inquiry be known to him (which notice shall be in Form A in the Schedule or to the like effect).

6. Powers of persons under disability to sell and convey

It shall be lawful for any person who is the registered owner of any property or entitled to any real rights or any estate or interest therein, to sell and convey or lease the same to the President, and particularly it shall be lawful for all or any of the following persons to sell and convey or lease, that is to say, fiduciary heirs, fideicommissary heirs, guardians, tutors testamentary or dative, curators nominate or dative, curators appointed to lunatics, idiots or prodigals, trustees under antenuptial contracts or for charitable or other purposes, executors and administrators, and trustees in insolvent estates; and the power so to sell and convey or lease as aforesaid may lawfully be exercised by such persons not only on behalf of themselves, but also for and on behalf of every person entitled in reversion or remainder after them, and to such tutors or curators or trustees on behalf of their *cestui que* trusts respectively to the same extent as such wards or *cestui que* trusts could have exercised the same powers

under this Act if they had respectively been of no disability.

7. Notice of intention to take over and power to take possession

(1) The President may, by such notice as is prescribed in section 5 or by any subsequent notice, direct the persons aforesaid to yield up possession of such property after the expiration of the period specified in the notice, which period shall not be less than two months from the service of such notice, unless the property is urgently required for the public purpose.

(2) At the expiration of the period specified in subsection (1) the President and all persons authorized by him shall be entitled to enter into and take possession of such property accordingly.

8. Service of notices

(1) Every notice under sections 5 and 7 shall either be served personally on the persons to be served or be left at their last usual place of abode or business, if any such place can after reasonable inquiry be found, and in case if any such persons are absent from Botswana or, if such persons or their last usual place of abode or business after reasonable inquiry cannot be found, such notice shall be left with the occupier of such property or his agent, or, if there is no such occupier or agent, shall be affixed upon some conspicuous part of such property.

(2) If any such person be a corporation, company or firm, such notice shall be left at the principal office of such corporation, company or firm in Botswana or, if no such office can after reasonable inquiry be found, shall be served upon some officer (if any) or agent (if any) of such corporation, company or firm in Botswana, or if there is no such officer or agent, or such officer or agent cannot after reasonable inquiry be found, shall be affixed upon some conspicuous part of such property.

(3) All notices served under the provisions of this Act shall be inserted once at least in the *Gazette* and in a newspaper circulating in Botswana.

9. Disputes as to legality of acquisition, etc.

If any person holding or claiming any interest or title in any property described in any notice under section 5 or 7 disputes the legality of the proposed acquisition or entry into possession of such property he may apply to the High Court to determine the same.

10. Disputes as to compensation and title to be settled in terms of this Act

If for three months after the service and publication as aforesaid of such notice no claim is lodged with the President in respect of such property, or if the person who has lodged any claim and the President do not agree as to the amount of the compensation to be paid for the estate or interest in such property belonging to such person, or which he is by this Act enabled to sell and convey or lease, or if such person has not given satisfactory evidence in support of his claim or if separate and conflicting claims are made in respect of the same property, the amount of compensation due, if any, and every such case of disputed interest or title shall be

settled as provided for in this Act.

11. Disputes to be settled by a Board of Assessment

(1) Any dispute, whether as to the amount of compensation or as to interest or title, shall be determined by a Board of Assessment to be constituted of-

- (a) a person nominated by the Chief Justice who holds or has held or is qualified to hold judicial office in terms of the High Court Act, who shall be appointed by the President and who shall be chairman of the Board;
- (b) a member to be appointed by the President; and
- (c) if the dispute is as to-
 - (i) the amount of compensation, a member to be nominated by the person claiming compensation, or
 - (ii) the interest or title, a member or members to be nominated by each person claiming interest or title.

(2) The names of the persons so appointed or nominated, as the case may be, shall be lodged in writing with the Minister.

(3) Where in any case the President is satisfied that any person claiming compensation or interest or title has refused to exercise his right to nominate a member, or has unreasonably delayed such nomination, he may by order in writing direct the chairman of the Board to proceed with an inquiry notwithstanding that there has been no such nomination; and in every such case the Board shall be deemed to be lawfully constituted by the chairman and the member appointed by the President and (if that be the case) any member or members nominated in terms of subsection (1)(c)(ii).

(4) If for any reason the number of members constituting a Board is even in number, the chairman, in addition to his deliberative vote, shall have a casting vote.

(5) Proceedings before a Board shall be initiated by a summons issued by the Minister or any person making claim to compensation or claim to any title or interest in any property named in any notice under section 5.

(6) The summons shall be as in Form B in the Schedule or to the like effect.

12. Procedure at inquiry by Board

(1) The Board shall hear any persons, by themselves or their counsel, attorney or representative, who claim to own, or to have any title or interest in, the property which is to be acquired or leased, and may by notice require the attendance of any person as a witness, and the production of any documents.

(2) Any person who without reasonable excuse refuses or neglects to attend before the

Board as a witness or to produce any document when required to do so by the Board shall be guilty of an offence and liable to a fine not exceeding P50 or, in default of payment thereof, to a term of imprisonment not exceeding three months:

Provided that in any prosecution under this subsection a certificate purporting to be under the hand of the chairman shall be *prima facie* proof that the accused has refused or neglected to attend as a witness or to produce any document or documents specified in such certificate.

(3) In any inquiry before a Board evidence shall be taken on oath, or on affirmation as prescribed by section 220 of the Criminal Procedure and Evidence Act, administered by the chairman in the form required in judicial proceedings, and any person who knowingly gives false evidence in any such inquiry shall be guilty of an offence, and liable to the penalties prescribed by law for perjury.

13. Decision in absence of parties

Where any person upon whom a summons has been served does not appear at the time appointed, a decision may be given *ex parte* upon hearing the evidence adduced; and such decision shall be as effectual as if given after hearing in the presence of such person.

14. Report of government officers and sworn appraisers as to value to be evidence

(1) The written report of any officer of the Public Works, Roads and Buildings Branches, Ministry of Works, Transport and Communications, of the Department of Surveys and Lands, of the Ministry of Agriculture, or the sworn appraisal of a sworn appraiser, as to the value of the property or of any buildings or trees or crops thereon shall be evidence thereof.

(2) Such officer or sworn appraiser may, on giving three days' notice in writing to the occupier, enter upon any such property or into any buildings thereon for the purpose of ascertaining the value of such property and the buildings, trees and crops thereon.

(3) Any party in the proceedings or the representative of the President may call such officer or sworn appraiser as a witness, and may also adduce any other evidence as to value.

(4) The report of such officer or sworn appraiser may be proved by a copy thereof under his hand.

(5) Proof of the signature of such copy shall not be required, unless the Board sees reason to doubt the genuineness thereof.

15. Party not to be compelled to sell or convey part of a house

No person shall at any time be required to sell and convey to the President a part only of any house or other building if such person is willing and able to sell and convey the whole thereof.

16. Matters to be considered in determining compensation

(1) In determining the amount of compensation to be given for property acquired or to be acquired under this Act, a Board shall assess what is adequate compensation therefor, and for such purpose shall have regard to-

- (a) the market value of the property at the date of service of the notice of acquisition under section 5;
- (b) any increase in the value of any other property of any person interested likely to accrue from the use to which the property acquired will be put;
- (c) the damage, if any, sustained by any person interested, by reason of the severing of any land from any other land of such person;
- (d) the damage, if any, sustained by any person interested, by reason of the acquisition injuriously affecting any other property of such person; and
- (e) the reasonable expenses, if any, incidental to any change of residence or place of business of any person interested which is necessary in consequence of the acquisition:

Provided that the Board shall not have regard to-

- (i) the fact that the acquisition is compulsory;
- (ii) the degree of urgency which has led to the acquisition;
- (iii) any disinclination of any person interested to part with the property to be acquired;
- (iv) any damage sustained by any person interested which, if caused by a private person, would not be a good cause of action;
- (v) any increase in the value of the property to be acquired which is likely to accrue from the use to which it will be put when acquired; or
- (vi) any outlay on additions or improvements to the property to be acquired, which has been incurred after the date of service of the notice of acquisition under section 5 unless such additions or improvements were in the opinion of the Board necessary.

(2) If the market value of the property has been increased by means of any improvements made within one year immediately preceding the service of the notice of acquisition under section 5, such increase shall be disregarded unless it is proved that the improvement was made *bona fide* and not in contemplation of such property being compulsorily acquired under the provisions of this Act.

17. Compensation for loss of rents and profits

When the President has in pursuance of a notice under section 7 entered into possession of any property, the Board may award compensation to the owner of such property and to all parties entitled to any title or interest therein for loss of rents for the period between the time

the President so entered into possession, and the time when the consideration due under an agreement has been paid to the persons entitled thereto, or compensation has been paid under the provisions of this Act.

18. When the President may withdraw from the acquisition of property

(1) Nothing in this Act shall be taken to compel the President to complete the acquisition of any property unless he has entered into possession of the property or has failed within one month of the award of the Board to intimate to the Board that he does not intend to proceed with the acquisition:

Provided, however, that the owner of the property and all persons entitled to any title or interest in the land shall be entitled to receive from the Government all such costs as may have been incurred by them by reason or in consequence of the proceedings for acquisition, and compensation for the damage (if any) which they may have sustained by reason or in consequence of the notice of intended acquisition.

(2) The amount of such costs shall be determined in the manner set out in section 19, and the amount of such compensation, if not agreed upon, shall be determined by the Board.

19. Costs

(1) In any proceedings under this Act, to which the Government is a party, the parties thereto may be awarded costs against each other on the same principles as would be applied in a trial action in the High Court, and on the tariff contained in the Rules of the High Court.

(2) Any bill of costs due under subsection (1) and not agreed upon by the parties shall be taxed by the Taxing Master of the High Court.

(3) Every sum payable by the Government as costs shall upon production of the *allocatur* of the Taxing Master be paid by the Accountant-General.

20. Decision of the Board to be final

The decision of the Board respecting any compensation or any question of disputed interest or title shall be final and conclusive as respects all parties upon whom notices have been served in terms of section 8, or who have appeared and claimed or on whose behalf any person having authority thereto has appeared and claimed any compensation, interest or title:

Provided that any person who is aggrieved by any such decision may, within 30 days after the date thereof, appeal to the High Court against such decision.

21. Filing of award and time for payment

In every case where an award has been made under this Act-

- (a) the award of the Board, signed by the chairman, shall be transmitted to the Registrar of the High Court, who shall cause the award to be filed in the records of the High

Court and shall transmit a certified copy thereof to the Minister and to all parties upon whom notices have been served in terms of this Act, or who have appeared before the Board and claimed any compensation, interest or title;

- (b) if by such award any person is entitled to compensation, the amount of such compensation shall be payable on registration of conveyance of title to the President by the Registrar of Deeds if such registration is necessary, or otherwise within two months of the receipt of the certified copy of the award by the Minister, and such payment shall operate as a full and legal discharge and acquittance of the President of all claims in respect of any property the subject of such award.

22. Payment of compensation to the Ministry of Finance and Development Planning

(1) When property is compulsorily acquired under this Act and there is no person competent to receive any compensation awarded or any portion thereof, by reason of absence from Botswana or not being there represented by a duly authorized agent, or such person, after diligent inquiry, cannot be found, the Minister shall apply by motion supported by affidavit to a judge in chambers for an order authorizing the President to deposit in the Ministry of Finance and Development Planning to the credit of such person the amount awarded as compensation, and any judge shall have power to make such an order.

(2) Any moneys deposited in pursuance of subsection (1) which are not claimed within 10 years of the date of such deposit shall lapse to the State.

(3) Nothing in this section shall be construed as affecting the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

23. Conveyance of title

(1) If the compulsory acquisition of property under this Act necessitates registration by the Registrar of Deeds of any conveyance of title thereto, and the person required to complete the necessary documents for the purpose of effecting such conveyance fails, neglects or refuses to complete such documents within a reasonable time, or if such person cannot after diligent search be found, the Registrar of the High Court is hereby authorized to complete and sign such documents in the name of the person so failing, neglecting, refusing or being absent; and the Registrar of Deeds shall register such conveyance on receipt of the documents completed and signed by the Registrar of the High Court together with an affidavit by the Minister setting out the full facts.

(2) Notwithstanding anything contained in any other law, no transfer duty shall be payable in respect of any conveyance of title consequent upon acquisition of property in terms of this Act.

24. Parties in possession as owners to be deemed entitled to property

If any question arises respecting the title to occupation or possession of any property to be acquired under this Act, the parties in occupation or possession thereof, or in respect of any

rents lawfully payable in respect thereof, shall be deemed to have been lawfully entitled to such occupation or possession, unless the contrary is shown to the satisfaction of the Board; and they and all parties claiming under them or consistently with their possession shall be deemed entitled to the consideration or purchase money, but without prejudice to any subsequent proceedings against such parties at the instance of any person claiming to have a better right thereto.

25. President exonerated upon payment

The payment in pursuance of this Act of any consideration or compensation to any person, or the payment into the Ministry of Finance and Development Planning in terms of section 22(1) shall effectually discharge the President from seeing to the application or being answerable for the misapplication thereof:

Provided that where any person is in possession in any fiduciary or representative capacity, the President may pay such consideration or compensation to such persons and in such proportions and instalments and after such notices as the Board may direct.

26. Delay in payment of compensation

Any person aggrieved by any delay in the payment of compensation due to him under this Act may apply to the High Court for the purpose of obtaining prompt payment thereof.

27. Effect of registration of conveyance

Every conveyance of title into the name of the President resulting from acquisition of property under this Act shall confer on the President in trust for Botswana, the title or interest comprised or referred to therein against all persons, free from all adverse or competing rights, title, interests, trusts, claims and demands whatsoever, subject to the terms and conditions, if any, therein mentioned.

28. Proceedings where possession of property withheld

If any person hinders or obstructs any person duly authorized by the President from entering upon and taking possession of any property the possession of which he may lawfully claim in pursuance of this Act, the President may apply *ex parte* at any time to the High Court for a writ of possession and that court may thereupon, upon proof of the service and publication of the notices mentioned in sections 5 and 7, issue a writ of possession (which shall be in Form C in the Schedule), addressed to the Sheriff under which any officer of the Sheriff or police officer may forthwith eject any person so withholding possession.

29. Penalty for hindering the taking of possession of property

Every person who wilfully hinders or obstructs any person duly authorized by the President from entering upon or taking possession of or using any property in pursuance of the provisions of this Act; or who molests, hinders or obstructs such person when in possession of such property, or hinders or obstructs any officer of the Sheriff or police officer when executing

a writ of possession shall be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

30. Amount President is willing to pay to be stated in summons

Every summons issued in terms of section 11(5) shall state the sum which the President is willing to pay for the property to which the summons relates, and when part only of the property belonging to any person is required such summons shall also state the sum, if any, allowed in estimating such an amount for enhancement of the value of the residue of such property.

31. Rules of procedure

(1) The Chief Justice may make rules not inconsistent with the provisions of this Act for regulating the proceedings before a Board or the High Court under this Act.

(2) No court fees shall be payable in respect of any summons, pleading or form required by this Act or by the rules made in terms of subsection (1).

32. Effect of notice of intended acquisition of property

The fact that a notice has been served upon any person under section 5 or 7 shall not be taken as an admission by the President that the person on whom such notice has been served or any other person has any estate or interest in the property or any part of the property specified in the notice, or debar the President from alleging in any proceedings under this Act or otherwise that such property is owned by the State.

33. Interest

If any award of compensation made in terms of this Act exceeds the amount of compensation offered by the President, there shall be added to such compensation interest at the rate of five per cent per annum calculated from the date upon which the President took possession of the property concerned to the date of the payment of the amount of compensation awarded:

Provided that no interest whatsoever shall be payable in respect of compensation paid to the Ministry of Finance and Development Planning in terms of section 22.

34. Power of Minister to call for statements

(1) The Minister may require the owner, occupier or person in possession, or any person known or believed to be interested in any property of which the President has taken possession or which is to be acquired compulsorily under this Act, to deliver to him (within a time to be specified by him) a statement in writing containing, as far as may be practicable, the name of every other person possessing any interest in the property, or any part thereof, as co-owner, mortgagee, lessee, sub-lessee, tenant or otherwise, and of the nature of such interest, and of the rents and profit, if any, received or receivable on account thereof for the

period of three years next preceding the date of the statement.

- (2) Every person who is required under this section to deliver a statement and who-
 - (a) without reasonable excuse refuses or neglects to do so, shall be guilty of an offence and liable to a fine not exceeding P20, or, in default of payment thereof to imprisonment for a term not exceeding 14 days; or
 - (b) wilfully makes a false statement shall be guilty of an offence and liable to a fine not exceeding P100.

35. Expenses of Board

The President may by statutory instrument prescribe the amounts to be paid to the chairman and members of any Board-

- (a) in respect of travelling expenses and subsistence allowances; and
- (b) in respect of fees.

SCHEDULE FORMS

Form A

NOTICE OF INTENTION TO TAKE PROPERTY

ACQUISITION OF PROPERTY ACT

(Section 5)

Notice is hereby given that the following property (*describe property, and in case of immovable property give reference to title deed, and the measurements and boundaries of area to be acquired, where practicable*) is required by the President for public purposes absolutely (*or for a term of years as the case may be*).

Any person claiming to have any title or interest in the said property is required within two months from the date of this notice to send to the Minister a statement of his title thereto or interest therein and of the evidence thereof, and of any claim made by him in respect of such title or interest.

The President is willing to treat for the acquisition of the said property.

And Notice is also hereby given that the President intends to enter into possession of the said property at the expiration of weeks from the date of this notice.

Any person who wilfully hinders or obstructs any person employed by the President from entering upon or taking possession of the said property or who molests, hinders or obstructs such person when in possession of the said property, is liable under the provisions of the Act to a fine not exceeding P50 or to imprisonment for a term not exceeding three months.

Dated at this day of , 20

.....
Minister

Form B
FORM OF SUMMONS

ACQUISITION OF PROPERTY ACT

(Section 11(5))

WHEREAS the President has resolved that the following property is required for public purposes, viz.-(*here describe the property as described in Form A*).

Take Notice that a Board of Assessment will sit at (place) at (time) on the day of , 20 to hear and determine the following dispute arising out of the said acquisition (*here state dispute, e.g. the amount of compensation payable therefor, or the title or interest of AB and XY in the said property, etc.*)

Where the summons is issued by the Minister, and one of the questions to be decided is the amount of compensation to be paid, the following should be added:

The President is willing to pay as compensation the sum of P

And where such property is part only of the property belonging to any person claiming title or interest therein:

The said sum of P is made up as follows:

Gross value of the above-mentioned property P

Deduction for enhancement of the value of the residue P

Compensation which the President is willing to pay P

NOTE-If the person entitled or claiming to be entitled to the property is willing to accept the compensation above-mentioned, he shall notify his assent to the Minister on or before the day of, 20

If such person is unwilling to accept such compensation, he shall on or before the said day inform the Minister of the amount which he is willing to accept, and whether, in estimating such amount, he has allowed any sum for enhancement of any residue of the property, and, if so, the amount of the sum allowed.

If any person fails to comply with these instructions, the Board may order him to pay the costs of the proceedings.

Dated at this day of , 20

.....
Signature of person issuing summons, and
locus standi (e.g. Minister, owner of freehold title,
lessee, etc.)

To (*insert names of all parties interested in the dispute*)

Form C
WRIT OF POSSESSION

ACQUISITION OF PROPERTY ACT

(*Section 28*)

To the Sheriff,

WHEREAS according to the provisions of the above-mentioned Act, the President is entitled to enter upon and take possession of the following property (*describe property*):

These are therefore to command you to put the President or any person duly authorized by him in possession of the said property.

.....
Registrar of the High Court