

## CHAPTER 00:00 LAND TRIBUNAL

### ARRANGEMENT OF SECTIONS

#### SECTION

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Act 4, 2014,  
S.I. 20, 2014.

**An Act to establish a Land Tribunal and to provide for matters incidental thereto or connected therewith.**

*[Date of Commencement: 1st April 2014]*

**PART I**  
***Preliminary [ss 1-2]***

**1. Short title**

This Act may be cited as the Land Tribunal Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

"**bailiff**" means a court bailiff of the Land Tribunal appointed in terms of section 21;

"**Chief Land Tribunal President**" means Land Tribunal President appointed under section 5 (1);

"**land dispute**" means any dispute concerning land;

"**Land Tribunal**" means the Land Tribunal established under section 3;

"**Land Tribunal President**", means a person appointed under section 4 (1) (a) and it includes the Chief Land Tribunal President appointed under section 5 (1);

"member of a Land Tribunal" means a member appointed under section 4 (1) (b) and shall not include, a Land Tribunal President;

"**public body**" means a land board established under the Tribal Land Act (Cap. 32:02), and a planning authority established under the Town and Country Planning Act (Act No. 4 of 2013); and

"Registrar" means the Registrar of the Land Tribunal appointed in terms of section 20.

**PART II**

***Establishment of Land Tribunal (ss 3-7)***

**3. Establishment of Land Tribunal**

(1) There is hereby established a Land Tribunal, which shall have such jurisdiction and powers as shall be conferred on it by this Act or any other written law.

(2) The Land Tribunal may consist of one or more divisions as the Minister may consider necessary to constitute, each headed by a Land Tribunal President.

#### **4. Constitution of Land Tribunal**

(1) The Land Tribunal shall comprise of the following members-

(a) Chief Land Tribunal President and such number of Land Tribunal Presidents appointed in accordance with the Public Service Act (Cap. 26:01); and

(b) such other members appointed on contract in accordance with the Public Service Act, holding qualifications in Land management, real estate management, physical planning or related fields.

(2) A person shall not be qualified to be appointed as a Land Tribunal President unless he or she is qualified to practise as an advocate or attorney and has been qualified for not less than ten years to practise as an advocate or attorney.

(3) Where a Land Tribunal President appointed under subsection (1) (a) and subsection (2) is unable, by reason of illness or other sufficient reason, to perform the functions of such Land Tribunal President, another person qualified in terms of subsection (1) (a) and subsection (2) of this section may be appointed to act in that Land Tribunal President's place until the substantive Land Tribunal President is able to resume duty.

(4) Where a member of the Land Tribunal appointed under subsection (1) (b) is unable, by reason of illness or other sufficient reason, to perform the functions of such member, another person qualified in terms of subsection (1) (b) of this section may be appointed to act in that member's place until the member is able to resume duty.

#### **5. Chief Land Tribunal President**

(1) The Minister shall appoint the Chief Land Tribunal President.

(2) The Chief Land Tribunal President shall rank above the Land Tribunal Presidents of the respective divisions, and other Land Tribunal Presidents shall rank according to their dates of appointment.

(3) Where the Chief Land Tribunal President is unable, by reason of illness or other sufficient reason, to perform the functions of the Chief Land Tribunal President, another person qualified in terms of section 4 (1) and (2) shall be appointed until the substantive Chief Land Tribunal President is able to resume duty.

(4) Every appointment made under this section shall be notified in the *Gazette*.

(5) The Chief Land Tribunal President, any Land Tribunal President and members may sit at any such division established under section 3 (2) where required.

#### **6. Taking of oath of office**

(1) A Land Tribunal President and a member of the Land Tribunal shall, upon assuming the duties of his or her office take and subscribe to such an oath for the execution of his or her duties of office as may be prescribed.

(2) An oath under subsection (1) shall be taken and subscribed before the Registrar of the High Court.

#### **7. Jurisdiction of Land Tribunal**

(1) A Land Tribunal shall have jurisdiction to-

(a) hear and determine a land dispute properly before it; and

(b) hear appeals and review decision of a public body concerning land.

(2) Without prejudice to the generality of subsection (1), such jurisdiction shall include the power to generally give such directions and do such things as may be necessary or expedient for the expeditious and just hearing and determination of any land dispute before it.

(3) A public body wishing to enforce any of its decisions may make an application to do so, in writing, to the Land Tribunal.

(4) A Land Tribunal, after giving all parties to the dispute an opportunity to appear before it and present arguments or evidence, may-

(a) uphold the decision of a public body;

(b) reject it or amend it as it deems fit,

and shall thereafter cause the decision of the public body, if upheld, or as amended, to be enforced as a decision of the Land Tribunal.

### PART III

#### *Proceedings of Land Tribunal (ss 8-19)*

#### **8. Proceedings of Land Tribunal**

(1) In the exercise of the jurisdiction of a Land Tribunal under this Act, the Land Tribunal President shall sit with not less than two members of the Land Tribunal.

(2) In hearing and determining an appeal, a Land Tribunal-

(a) shall have exclusive jurisdiction in respect of every matter properly before it;

(b) shall not be bound by the rules of evidence or procedure applicable in civil or criminal proceedings; and

(c) may disregard any technical irregularity which does not, and is not likely to, result in a miscarriage of justice.

(3) Matters before a Land Tribunal shall be determined-

(a) in the case of matters involving questions of law, by the decision of the Land Tribunal President alone; and

(b) in the case of matters involving questions of fact, by the decision of a majority of the Land Tribunal President and members.

(4) There shall be a right of appeal from any decision of a Land Tribunal to the High Court, within eight weeks of the delivery of such decision.

(5) The Land Tribunal shall regulate its own procedure and proceedings, and the frequency of its meetings.

(6) Where an appeal to the High Court is made under subsection (4), such appeal shall not operate as a stay of execution or of proceedings under a judgment of the Land Tribunal unless the High Court or the Land Tribunal so orders, and no intermediate act or proceeding shall be invalidated, except insofar as the Land Tribunal or the High Court directs.

(7) The Land Tribunal shall conform with and execute such judgment or order as shall be issued, made or pronounced therein by the High Court in such manner as if it were an original judgment or order issued, made or pronounced therein by the High Court.

#### **9. Witness**

(1) The parties shall inform the Land Tribunal concerned of any witnesses that they wish to be called at the hearing of the appeal, and the Land Tribunal shall where necessary cause subpoenas to be served on such witnesses and any other witnesses that it considers should be called, specifying the place, date and time when they are required to attend to give evidence or produce documents.

(2) Witnesses attending before a Land Tribunal, at the instance of the Tribunal, shall be entitled to be paid fees or allowances on the same scale as are applicable in a magistrate's court.

(3) Any person subpoenaed to attend before a Land Tribunal who, without reasonable cause, fails to attend or produce a document he or she is required to produce, commits an offence and is liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding six months, or to both, or, if the offender attends on behalf of a body corporate to a fine not exceeding P10 000.

#### **10. Power to hear evidence**

For the purpose of determining any matter before it, the Land Tribunal may order any witnesses to-

(a) furnish, in writing or otherwise, such particulars in relation to the matter as it may require;

(b) give evidence on oath or otherwise; or

(c) produce any relevant document.

#### **11. Procedure for lodging an appeal**

(1) Any person wishing to appeal to the Land Tribunal by virtue of this Act shall-

(a) lodge notice of appeal, in the form prescribed, with the Registrar of the Land Tribunal concerned, together with the prescribed fee;

(b) submit written reasons on the basis of which the appeal is lodged;

(c) give the names and addresses of the appellant and the respondent, and indicate the district and the area within which, or in respect of which, the dispute arises; and

(d) cause a copy of the notice of appeal to be served on the respondent.

(2) An appeal under subsection (1) shall be brought within one month from the date on which the appellant becomes aware of the decision.

(3) A respondent intending to defend an appeal shall, within one month, enter an appearance to respond by delivery of a notice with the Registrar that he or she intends to respond.

(4) An appearance to respond under subsection (3) must specify concisely the nature and the grounds of the defence and the relief or remedy required.

(5) The respondent shall cause a copy of the notice of defence or response to be served on the appellant.

(6) An appeal or response filed outside the period referred to in subsection (2) and (3), shall be accompanied by reasons for the late filing, and the Land Tribunal shall determine whether it will entertain the appeal or response, or whether, in all the circumstances, it should be rejected.

(7) If, in the opinion of the Land Tribunal concerned, the points at issue in the notice of appeal are not clearly enough defined to enable it to hear and determine the matter, it may remit it to the parties or the decision maker concerned, with such directions or advice as it deems appropriate or necessary.

## **12. Failure to prosecute**

If one of the parties fails, without sufficient reason, to prosecute or defend an appeal lodged with the Land Tribunal after being properly notified of the date, time and place thereof, judgment in default may be entered for the party which does attend, in such manner as the Land Tribunal concerned deems fit, and if neither party appears after being given due notice, the Land Tribunal may, in its discretion, dismiss the appeal or adjourn it to another date.

## **13. Representation**

Any interested party to the proceedings before a Land Tribunal may appear by advocate or attorney, or may be represented by any other person so authorised by that party.

## **14. Proceedings in public**

Proceedings before a Land Tribunal shall be open to the public, unless the Land Tribunal decides otherwise.

## **15. Competent jurisdiction**

Decisions of a Land Tribunal shall be enforceable in the same manner as decisions of a court of competent jurisdiction.

## **16. Referral of dispute to arbitration**

The Land Tribunal shall refer a dispute to arbitration, where the parties to the dispute have agreed to have the dispute settled by arbitration.

## **17. Costs**

A Land Tribunal shall, where it considers it appropriate to do so, award to a party to the proceedings before it such costs as the Tribunal may determine.

## **18. Decisions in writing**

Where the Land Tribunal has determined a matter, the judgment and the reasons thereof shall be recorded in writing and signed by the President, and copies thereof delivered to all parties.

## **19. Contempt of Tribunal**

A public body or any other party to an appeal before the Land Tribunal who, without reasonable excuse, fails to comply with or enforce any determination made by the Land Tribunal in relation to an appeal under this Act, commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years or to both, or, if the offender is a corporate body to a fine not exceeding P20 000.

## **PART IV**

### ***Officers of the Land Tribunal (ss 20-23)***

## **20. Appointment of Registrar of Land Tribunal**

(1) There shall be appointed a Registrar of the Land Tribunal who shall be a qualified attorney, and be responsible for the administration of the Land Tribunal and who shall perform such functions and exercise such powers as may be conferred on him or her by this Act.

(2) The Registrar shall be appointed in accordance with the provisions of the Public Service Act.

(3) There shall be appointed a Deputy Registrar and Assistant Registrars of the Land Tribunal who shall be public officers and who shall likewise be appointed in accordance with the provisions of the Public Service Act, and who shall have the power to do any act or thing which may be lawfully done under this Act or any other enactment by the Registrar.

(4) Subject to the provisions of subsection (1), the Registrar shall-

- (a) plan, co-ordinate, and manage the administrative functions of the Land Tribunal;
- (b) issue summonses, warrants and writs of execution;
- (c) register all orders and judgments;
- (d) keep records of all proceedings of the Land Tribunal;
- (e) have the custody and keep an account of all fees and fines payable or paid into or out of the Land Tribunal; and
- (f) tax bills of costs for costs awarded in accordance with prescribed tariffs.

(5) A Registrar may, where appropriate, authorise any public officer to perform any of the functions vested in him or her under this Act or any other written law, and any such officer so authorised shall perform such functions under the direction of the Registrar.

## **21. Court bailiff**

There shall be appointed such court bailiffs as may be necessary for the business of the Land Tribunal.

## **22. Functions of bailiff**

(1) The functions and powers of a bailiff of the Land Tribunal shall be-

- (a) to execute any warrant of attachment and execution issued by the Land Tribunal in the exercise of its powers;
- (b) to execute any warrant of eviction or compliance issued by the Land Tribunal in the exercise of its powers;
- (c) to execute any warrant of committal issued by the Land Tribunal in the exercise of its powers;
- (d) to serve or execute any summons, *subpoena*, writ, warrant, document or other process of the Land Tribunal; and
- (e) to serve or execute any document or process arising from the Land Tribunal in exercise of its jurisdiction under the provisions of this Act or pursuant to any other applicable law.

(2) The written return of a bailiff in respect of any process of the Land Tribunal shall be *prima facie* evidence of the matters therein stated.

## **23. Police officer and Deputy Sheriff empowered**

(1) Notwithstanding the provisions of section 20 any member of the Botswana Police Service shall be authorised and empowered to serve, execute or enforce any order or warrant lawfully issued or made by the Land Tribunal.

(2) Any Deputy Sheriff duly appointed in accordance with the provisions of the High Court Act (Cap. 04:02) shall be authorised and empowered to execute, enforce or carry out any order or warrant lawfully issued or made by the Land Tribunal.

## **PART V** **General (ss 24-26)**

### **24. Limitation of liability**

The Land Tribunal President or any officer appointed under this Act shall not be liable to any action or proceedings in respect of any act or matter done in good faith in the exercise of the powers conferred by this Act.

### **25. Regulations**

(1) The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of subsection (1), regulations may provide for-

- (a) the manner in which any matter to be heard and determined by the Land Tribunal shall be brought and continued before it; and
- (b) the fees payable in respect of the service or execution of any process of the Land Tribunal.

## **26. Saving and transitional**

On the commencement of this Act-

- (a) the legal and administrative structures of the Land Tribunal in existence immediately before such commencement shall, to the extent that their continued existence is not inappropriate or inconsistent with this Act, continue in existence;
- (b) every proceeding commenced at a Land Tribunal in existence immediately before such commencement may be continued and completed, as if the proceedings had been commenced under this Act;
- (c) a person who was a member of the Land Tribunal in existence immediately before such commencement shall, continue as a member of a Land Tribunal as if that person had been appointed under this Act and shall remain a member until the expiration of his or her membership; and
- (d) all Orders and decisions granted by the Land Tribunal prior to such commencement shall be as valid as if granted under this Act.