

Statutory Instrument No. 59 of 1995

TRIBAL LAND ACT
(Cap. 32:02)

TRIBAL LAND (ESTABLISHMENT OF LAND TRIBUNALS) ORDER, 1995
(Published on 22nd September, 1995)

ARRANGEMENT OF PARAGRAPHS

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IN EXERCISE of the powers conferred by section 40 of the Tribal Land Act, the Minister of Local Government, Lands and Housing hereby makes the following Order —

1. This Order may be cited as the Tribal Land (Establishment of Land Tribunals) Order, 1995. Citation
2. There is hereby established a Land Tribunal for the purposes of section 40 of the Act. Composition of Land Tribunals
3. (1) A Land Tribunal shall be comprised of the following members — Establishment of Land Tribunal
 - ✓(a) a Chairman so appointed by the Minister, who shall be a qualified attorney or advocate, of not less than five years standing, employed in the public service; and
 - ✓(b) two other members appointed by the Minister who are persons suitably mature, qualified and knowledgeable.
- (2) When the Chairman of a Land Tribunal is unable, by reason of illness or other sufficient reason, to perform the functions of Chairman, the Minister shall appoint another person qualified in terms of subparagraph (1)(a) to act as Chairman until the substantive Chairman is able to resume duty. shall be replaced
- (3) When one of the members of a Land Tribunal appointed under subparagraph (1)(b) is unable, by reason of illness or other sufficient reason, to perform the functions of such member, the Minister shall appoint another person qualified in terms of that subparagraph, to act as a member in his place until he is able to resume duty.
- (4) (a) In respect of cases heard by a Land Tribunal, the Land Board Selection Committee may, where the Chairman of the Land Tribunal considers it desirable, co-opt two additional members to the Tribunal from among suitably mature, qualified and knowledgeable persons from the district within the jurisdiction of which the lands or matters in dispute lie, and where either of such additional members is unable, by reason of illness or other sufficient reason, to continue to perform the functions of such member, the Land Board Selection Committee may, at the request of the Chairman, appoint any other similarly qualified person to act as a member in his place until he is able to resume duty.

(b) Members co-opted in accordance with paragraph (a) may be asked to tender advice in respect of any matter before the Land Tribunal, but shall not be entitled to vote in respect thereof.

(5) The members appointed by the Minister under subparagraph (1) shall hold office for three years, unless they earlier resign or the Minister for good and sufficient cause earlier terminates their appointments, but shall be eligible for reappointment for not more than two further terms of office.

(6) The persons appointed under subparagraph (1) and the persons co-opted under subparagraph (4) shall be paid such allowances as may be determined by the Minister.

(7) Any person who is declared insolvent or adjudged or otherwise declared bankrupt under any law in force in Botswana or elsewhere and has not been discharged, or has made a composition with his creditors and has not paid his debts in full, or is convicted of any offence involving dishonesty, shall not be eligible to be appointed as Chairman or a member of a Land Tribunal, or if already appointed, to remain as the Chairman or a member of a Land Tribunal, and his office as such shall become vacant with effect from such declaration or adjudgement or failure to pay or conviction, as the case may be.

Procedure for
lodging appeals

4. (1) Any person wishing to appeal against a decision of a land board shall —

- (a) lodge notice of appeal, in the form prescribed, with the clerk of the Land Tribunal concerned, together with the fee of P10;
- (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 should be brought within four months from the date on which the appellant becomes aware of the decision of the land board, but an appeal lodged outside the period of four months, shall be accompanied by reasons for the late delivery, and the Land Tribunal shall determine whether it will entertain the appeal, or whether, in all the circumstances, it should be rejected.

(3) 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 land board concerned, with such directions or advice as it deems appropriate or necessary.

Witnesses

5. (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 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 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 to produce a document he is required to produce, shall be guilty of an offence and liable to a fine of P100 and to three months' imprisonment.

6. (1) Subject to the provisions of this Order, a Land Tribunal of appeals shall regulate its own procedure, and the frequency of its meetings.

Determination

(2) For the purpose of determining any matter before it a Land Tribunal may order any witnesses —

- (a) to give evidence on oath or otherwise;
- (b) to produce any relevant document;
- (c) furnish, in writing or otherwise, such particulars relating to the matter in question as it may require.

(3) In hearing and determining an appeal, a Land Tribunal shall have exclusive jurisdiction in respect of every matter properly before it and shall not be bound by the rules of evidence or procedure applicable in civil or criminal proceedings, and may disregard any technical irregularity which does not, and is not likely to, result in a miscarriage of justice.

(4) Matters before a Land Tribunal shall be determined —

- (a) in the case of matters involving questions of law, by the decision of the Chairman alone; and
- (b) in the case of matters involving questions of fact, by the decisions of a majority of the members thereof appointed under paragraph 3(1).

(5) The provisions of section 7(5) of the Act shall apply to meetings of a Land Tribunal as they apply to meetings of a land board, and in such event the Minister shall exercise his powers under paragraph 3(3) to appoint a person to act as a member of the Land Tribunal in place of the member concerned for that meeting or for the determination of that matter.

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

(7) Proceedings before a Land Tribunal shall be open to the public, unless the Tribunal, for good and sufficient reason, decides otherwise.

(8) A Land Tribunal may, from time to time, adjourn the hearing of an appeal for suitable periods not, except in exceptional circumstances, exceeding 14 days, and shall inform all the parties concerned of the date and time when the hearing will be resumed.

(9) If one of the parties fails, without sufficient reason, to prosecute or defend an appeal 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.

(10) When a Land Tribunal has determined whether an appeal shall be upheld or dismissed, the judgment, and the reasons therefor shall be recorded in writing, signed by the Chairman, and copies thereof delivered to all the parties.

Appeals lodged
prior to
commencement
of Order

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

7. Any appeal lodged with the Minister or a district commissioner, as the case may be, prior to the commencement of this Order may be heard and determined by the Land Tribunal concerned in accordance with the provisions of section 40 of the Act and this Order.

MADE this 11th day of September, 1995.

P.K. BALOPI,
*Minister of Local Government,
Lands and Housing.*

L2/7/162 IV