

CHAPTER 20:07

FINGO LOCATION (DISTRIBUTION OF LAND) ACT

Acts 7/1940, 29/1951 (s. 2), 43/1953, 24/1962 (s. 2), 22/2001 (s. 4). R.G.N.s 153/1963, 216/1970, 923/1972, 507/1973.

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AN ACT to provide for the extinguishment of certain rights to land in the Fingo Location; to declare that certain persons are entitled to the award of land in the said Location; to provide for the appointment of a commission to determine which persons are entitled to such award; for the survey of such land; for the award of the land so surveyed and the grant of title thereto; for the grant of usufructs; for the control and use of commonage in the said Location and other matters connected with the foregoing.

[Date of commencement: 1st August, 1940.]

1 Short title

This Act may be cited as the Fingo Location (Distribution of Land) Act [*Chapter 20:07*].

2 Interpretation

In this Act—

“commission” means the commission appointed in terms of section *five*;

“commonage” means that portion of the Location which remains vested in the President after the deeds of grant of plots of land awarded in terms of this Act have been issued;

“irrigation works” means a canal, channel, reservoir, embankment, weir, dam, borehole or other work constructed for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, or the use of water, or the conservation of rainfall;

“Land Board” means the Native Land Board constituted in terms of the Land Apportionment Act [*Chapter 240 of 1939*];

“Location” means the area of land situated east of the Ntabasinduna Reserve and known as the Fingo Location, being the remaining extent of the Battlefield Block, which was registered in the Deeds Office under title deed No. 5804 until the 8th July, 1927, upon which date cancellation of the title deed to the said remaining extent was effected;

“migrant” means a male African of the Fingo tribe who—

- (a) entered Southern Rhodesia from the Colony of the Cape of Good Hope between the 1st January, 1898, and the 31st December, 1902, on the understanding that he was to receive a grant of land in Southern Rhodesia from the British South Africa Company; and
- (b) had attained the age of fourteen years at the date of such entry; and
- (c) is not an owner;

“Minister” means the Minister of Lands and Water Resources or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“original holding” means an area of land in the Location held under provisional title issued by the British South Africa Company and registered in the Deeds Office;

“owner” means the person registered in the Deeds Office as the owner of an original holding.

3 Location to revest in Governor

(1) On the 1st August, 1940, the whole of the Location shall revest in the Governor and every original holding in the Location shall be deemed to be surrendered to the Governor, and every right, title or interest in any such original holding shall be extinguished.

(2) The Registrar of Deeds shall make all such entries in the registers and records kept by him as may be necessary to record such revesting.

4 Persons entitled to award of land in Location

Any person who—

- (a) was the owner of an original holding prior to the 1st August, 1940, and is ordinarily resident in Southern Rhodesia on that date; or
- (b) is a migrant and is ordinarily resident in Southern Rhodesia on the 1st August, 1940; or
- (c) is the heir at customary law of a deceased owner and is ordinarily resident in Southern Rhodesia on the 1st August, 1940; or
- (d) is the heir at customary law of a deceased migrant and is ordinarily resident in Southern Rhodesia on the 1st August, 1940; or
- (e) having made a claim to a plot of land in the Location at an inquiry held by the Land Board at the Location on the 14th, 15th and 16th September, 1938, or subsequently, has been informed by the Land Board that his claim to a plot of land has been approved by the Government; or
- (f) is the heir at customary law of any person referred to in paragraph (e) who has died prior to the issue of a grant in terms of section *twenty-two*; or
- (g) is recommended by the commission for the award of a plot of land in the Location by reason of long residence in the Location or for any other reason deemed sufficient by the commission;

shall, subject to this Act, be entitled to the award of one plot of land, four comma nought four six eight hectares in extent, situated in the Location:

Provided that—

- (i) on the recommendation of the commission, a person whose claim to the award of a plot of land has been approved in terms of section *fifteen* may be awarded another plot of land, not exceeding nought comma four nought four in hectare in extent, as a residential site;
- (ii) on the recommendation of the commission, a chief or male descendant of any deceased chief, whose claim to the award of a plot of land has been approved in terms of section *fifteen*, may be granted a plot of land not exceeding eight comma nought nine three six hectares in extent;
- (iii) nothing in this section contained shall be deemed to confer any right to a plot of land in the Location upon any person who before the 1st August, 1940, had waived or ceded to the Government his right in any original holding or to the grant of land in the Location.

5 Appointment of commission

(1) The Land Board is hereby appointed the commission to perform the functions entrusted to the commission by this Act.

(2) The Chief Native Commissioner shall be the chairman of the commission.

6 Sitzings of commission

(1) The place and time of the first sitting of the commission shall be determined by the chairman thereof, and notice thereof shall be published in three issues of the *Gazette* and three issues of a newspaper circulating in Zimbabwe, the last of such publications being not less than two months prior to the date stated in such notice as the date for the holding of the first sitting of the commission.

- (2) The place and time of subsequent sittings of the commission shall be determined by the commission.
- (3) All the evidence heard by the commission shall be heard in public.
- (4) The commission may in its discretion hold inspections and take evidence *in loco*.

7 Meeting of residents of Location

(1) The native commissioner of the Bubi district shall convene a meeting of persons residing in the Location on the 1st August, 1940, at which he shall explain to the persons attending such meeting the functions of the commission and the procedure to be followed by any person claiming to be entitled to the award of a plot of land who wishes to establish his claim before the commission.

(2) Such meeting shall be held not later than one month prior to the date fixed under section six for the holding of the first sitting of the commission

8 Lodging of claims

(1) Every claim to the award of land under this Act shall be lodged with the chairman of the commission before the first sitting of the commission.

(2) Every such claim shall be in writing setting forth clearly and concisely the facts upon which it is based.

(3) Subject to subsection (2) of section *fifteen*, no person who has not lodged a claim, or on whose behalf a claim has not been lodged, in accordance with this section, shall be entitled to the award of land under this Act.

(4) The native commissioner of the district in which any person resides who desires to lodge any such claim shall, upon the request of such person, write out such claim.

(5) No compensation shall be payable to any person whose right to the award of a plot of land in the Location has been extinguished in terms of this section.

9 Commission's power to summon witnesses and privileges of witnesses

(1) The commission shall have the powers which a magistrates court has to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of documents.

(2) A subpoena for the attendance of a witness or for the production of any document before the commission shall be signed and issued by the chairman of the commission and shall be served in the same manner as a subpoena for the attendance of a witness at a criminal trial in a magistrates court.

(3) Any person subpoenaed to give evidence or to produce any document or giving evidence before the commission shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a trial in a magistrates court

10 Witness failing to attend or refusing to be sworn or to give evidence

(1) If any person who has been subpoenaed to give evidence or to produce any document before the commission fails to attend or to remain in attendance until duly excused by the commission from further attendance, the chairman of the commission may, upon being satisfied upon oath or by the return of the officer charged with the service of the subpoena that the subpoena was duly served upon such person, and in case no sufficient cause for such failure seems to him to exist, issue a warrant, signed by him, for the apprehension of such person, and he shall thereupon be apprehended by any police officer to whom such warrant is delivered and shall be brought before the commission to give his evidence or to produce the document. Every such person shall be guilty of an offence and liable to a fine not exceeding forty dollars.

(2) If any person who has been subpoenaed to give evidence or to produce any document before the commission refuses, without sufficient cause (the onus of proof whereof shall rest upon him), to be sworn as a witness, or, having been sworn, to answer fully and satisfactorily a question lawfully put to him, or to produce any such document, the chairman of the commission may order that person to be detained in custody as if he were a prisoner awaiting trial until he consents to be sworn or answers fully and satisfactorily all questions lawfully put to him, or produces such document, as the case may be. Every such person shall be guilty of an offence and liable, in addition to such detention, to a fine not exceeding forty dollars.

11 Witness giving false evidence

Any person who, after having been sworn, gives false evidence before the commission on any matter, knowing such evidence to be false, shall be deemed to be guilty of perjury.

12 Contempt of commission

If any person wilfully insults the commission or any member thereof during any sitting of the commission, or wilfully interrupts the proceedings of the commission, or otherwise wilfully disturbs the peace or order of such proceedings, or misbehaves himself in the place where the commission is sitting, the chairman of the commission may order that person to be removed and detained in custody until the rising of the commission. Every such person shall be guilty of an offence and liable, in addition to any such removal and detention, to a fine not exceeding forty dollars.

13 Majority decision of commission

The decision of the majority of the members of the commission shall be the decision of the commission.

14 Claimants and persons opposing claims to be allowed to give and adduce evidence

(1) The commission shall not reject the claim of any person claiming to be entitled to the award of a plot of land under this Act unless it has afforded that person an opportunity to give evidence or adduce evidence in support of his claim.

(2) The commission shall afford every person who wishes to contest the claim of any person claiming to be entitled to the award of a plot of land under this Act an opportunity to give evidence or adduce evidence in support of his opposition to such claim.

15 Commission to determine rights of claimants

(1) The commission shall determine which claimants are, in terms of this Act, entitled each to the award of one plot of land, and which of them should be awarded a residential plot in addition.

(2) The commission shall endeavour to ascertain whether there is in Zimbabwe any person who is entitled in terms of this Act to be awarded a plot of land and by whom or on whose behalf no claim has been lodged, and, if the commission ascertains that such a person exists, it shall record the facts showing that he is entitled to such an award, and shall deal with him as though he had duly lodged a claim.

(3) The decision of the commission on the matters referred to in this section shall be final.

16 First report by commission

(1) The commission shall frame and transmit to the Minister a report setting forth its findings on the matters referred to in section *fifteen*.

(2) The report shall show the reason for the commission's findings as to why any claimant is entitled to receive an award of land.

17 Survey of plots

(1) The Minister shall cause to be surveyed as many plots of land as may be necessary to give effect to the findings of the commission under section *fifteen*.

(2) The surveyor making the survey shall consult the commission thereon.

18 Further report by commission

After the survey made under section *seventeen* has been completed, the commission shall frame and transmit to the Minister a further report containing the commission's recommendations as to which of the plots ought to be awarded to each person found by the commission to be entitled to the award of a plot of land and the reasons for its recommendations.

19 Records to be submitted to Minister

The commission shall keep a record of its proceedings and shall, when transmitting to the Minister the report framed by it in accordance with section *eighteen*, also transmit to him such record and all claims and other documents submitted to it.

20 Award of plots

After consideration of the recommendations contained in the report framed by the commission under section *eighteen*, the Minister shall, by notice in the *Gazette*, award one plot of land four comma nought four six eight hectares in extent so surveyed to each of the persons found by the commission to be entitled thereto and a residential site to any person recommended therefor by the commission:

Provided that a chief or male descendant of any deceased chief shall be awarded one plot of land of such area, not exceeding eight comma nought nine three six hectares in extent, as the commission may have recommended.

21 Persons to whom plots awarded may occupy same

(1) After publication in the *Gazette* of the notice referred to in section *twenty* every person to whom by such notice any plot of land has been awarded or, if any such person has died, his heir at customary law, shall be entitled to occupy such plot of land:

Provided that such right of occupation shall be subject to any life usufruct established in terms of section *twenty-three*.

(2) The native commissioner of the Bubi district may, at the request of any person who is entitled to occupy any such plot of land, and after informal inquiry, forcibly remove from such plot any person found by him not to be entitled to occupy such plot.

22 Deeds of grant

(1) The person to whom any plot of land has been awarded in terms of this Act or, if he has died, his heir at customary law shall, subject to regulations made under the Land Apportionment Act [*Chapter 257 of 1963*], be entitled to a deed of grant of such plot of land.

(2) Every such deed of grant shall be made on the conditions prescribed for the issue of grants of land in the Native Area under the Land Apportionment Act [*Chapter 257 of 1963*].

(3) Every such deed of grant shall be exempt from payment of stamp duty and of registration fees and charges.

23 Usufructs

(1) The commission shall consider whether any plot of land awarded in terms of this Act should be burdened with a life usufruct in favour of the widow of any deceased owner or deceased migrant.

(2) On the recommendation of the commission, the Minister may direct that any plot of land granted in terms of this Act shall be subject to a life usufruct in favour of the widow of a deceased owner or deceased migrant.

(3) The Registrar of Deeds shall make such entries in the registers and records kept by him as may be necessary to record the imposition of such usufruct.

24 Plotholders may use commonage

(1) Subject to section *twenty-five*, the commonage shall be reserved as common pasture land for the use of persons to whom awards of plots of land in the Location are made in terms of this Act.

(2) The use of the commonage shall be subject to such regulations as may be made under this Act.

25 Minister may authorize commonage to be used for various purposes

Subject to the condition that the total area of the commonage available as common pasture land is not reduced below eight thousand hectares, the Minister may—

(a) permit persons to occupy portions of the commonage—

(i) for educational, religious or such other purposes as he may consider to be for the benefit of the persons residing in the Location;

(ii) for administrative purposes of the State or for trading or any other like purposes;

and

(b) authorize—

(i) the construction of irrigation works on the commonage;

(ii) the taking of such measures as may be necessary to prevent soil erosion;

(iii) afforestation schemes to be instituted on the commonage;

and

(c) reserve any of the commonage for the protection of any irrigation works or afforestation schemes.

26 Outstanding quitrent waived

The obligation to pay any quitrent which was outstanding on the 1st August, 1940, in respect of any original holding is hereby extinguished.

27 Prohibition of subdivision

It shall not be lawful to subdivide any plot of land awarded in terms of this Act.

28 Restriction on alienation of residential site

It shall not be lawful to lease, alienate or transfer a residential site granted in terms of this Act to any person who is not the registered owner of land in the Location.

29 Regulations

(1) The Minister may make regulations for the due management and use of the commonage and the regulation and protection of the privilege of pasture thereon.

(2) Regulations may—

(a) regulate and control the manner of watering, pasturing and movement of stock;

(b) provide for de-stocking and limitation of stock, the culling of inferior stock, the control of grazing and the introduction of pasture management;

(c) authorize a prescribed administrative officer to order persons residing in the Location to provide or assist in providing fireguards.

(3) A person who grazes a larger number of stock on the commonage than the number prescribed may be given an order by the prescribed administrative officer to remove the excess stock from the commonage within a period of two months calculated from the date on which such order is given. If after the expiration of the period of two months such person has failed to remove such excess stock from the commonage such officer may seize such excess stock and cause it to be sold and pay to the owner thereof the amount realized less the costs of realization.

(4) Any person who contravenes any provision of any regulation made in terms of this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(5) For the purposes of this section—

“large stock” means bovines, horses, asses and mules over the age of twelve months;

“small stock” means sheep and goats over the age of six months;

“stock” means large and small stock.

(6) Any regulations which were in force immediately before the 18th December, 1953, shall be deemed to have been made under this section as amended by the Fingo Location (Distribution of Land) Amendment Act, 1953 (No. 43 of 1953).