

CUSTOMARY TENURE ON PUBLIC LAND.

PRIOR TO THE LAND REFORM DECREE, 1975

1. It was lawful for customary tenants to occupy without grant, lease or licence any unalienated public land in a rural area. [S.24(1) Public Lands Act].
2. A customary tenant could apply to the controlling authority for a leasehold estate in the public land occupied by him. (S.25 Public Lands Act).

The security of customary tenants on Public land.

1. A controlling authority could not make a grant of freehold or leasehold of public land occupied by customary tenants without their consent. [S.24(2) Public Lands Act].
2. An applicant for freehold or leasehold of public land occupied by customary tenants had to state that fact in the application, and to furnish evidence of the consent of the occupiers.
[S.24(3) Public Lands Act]

3. Any customary tenant in occupation of public land was entitled to be paid compensation approved by the Minister if he was to lose the land to an applicant for a grant in freehold or leasehold. [S.24(4) Public Lands Act].
4. A Minister had to give written consent to a controlling authority before it could grant a lease of Public Land in a rural area where the land was occupied by persons holding by customary tenure.

The effect of the Land Reform Decree, 1975 on occupation of public land by customary tenure.

1. The system of occupying public land under customary tenure would continue.
2. A customary occupation of public land was only at suffrance.
3. A lease of any land occupied by a customary tenant could be granted by the Commission to any person, including the customary tenant.
4. A customary tenant could be paid compensation approved by the Minister, having regard to the zoning scheme, if any, affecting the land occupied under customary tenure.

5. A holder of any customary tenure on any public land would have to give notice of not less than three (3) months to the prescribed authority before transferring by sale or gift inter vivos his/her improvements or developments carried out on the land.
6. A holder of a customary tenure on any public land could transfer such tenure by will. Also it could be transferred upon intestate succession.
7. Any agreement or transfer by a customary tenant on any public land of undeveloped land or bush [purporting to transfer a customary tenure as if it were actual title to land] would be void and of no effect, and illegal (an offence). (S.4 (2)).
8. A holder of any customary tenure on any public land could not, by any transfer whether by sale or gift inter vivos, vest any title in the land to the transferee. He only had title to the improvements or developments carried out by him on the land.
9. With effect from 1st June 1975, no person could occupy public land by customary tenure except with the permission in writing of the prescribed authority, which permission

would not be unreasonably withheld. This applied to fresh acquisition of customary tenures. (s.5(1) Decree).

A combination of Regulations 1(1) and 3 (1) of the Land Reform Regulations, 1976 (S.1. No.26 of 1976) showed that the prescribed authority was the sub-county Land Committee.

Under reg.1(1) – Any person wishing to obtain permission to occupy public land by customary tenure had to apply to the sub-county chief of the area where the land was situated.

Under reg.3(1) – an applicant under reg.1 would be registered as the customary occupant of the land by the sub-county Land Committee.

10. Under Reg.8(1) of the Land Reform Regulations, 1976 – every person who – on the commencement of the Decree, was in occupation of land by customary tenure, by virtue either of the Public Lands Act or the Decree, had within 24 months from such commencement to apply to the sub-county Land Committee, through the sub-county Chief of the area, for the purpose of being registered in respect of such occupation.

11. It was appropriate that where a holder of a customary tenure wanted to transfer it by sale or gift inter vivos the three (3) months' prior notice to the prescribed authority should have been given to the sub-county Land Committee. It was the responsibility of that committee to register changes in the occupation of land as customary tenure.

12. Any agreement or transfer purporting to create a fresh customary tenure of land in any different way was void and of no effect, and illegal (an offence).

Any person purporting to sell land to create a fresh customary tenure would have to refund anything paid as purchase price to the person by whom such payment was made.

13. Any person purporting to acquire a fresh customary tenure of public land without applying through the sub-county Chief to the sub-county Land Committee would be guilty of occupying land unlawfully. (S.6(1) and (2) of the Decree).