possession may be given upon exchange of contracts it amounts to breach of section 13(1). Breach of section 13(1) of the Land (Conversion of Titles) Act or section 5 of the Lands Act [53] makes the whole transaction null and void as per the decision in the case of Mutwale v. Professional Services Ltd.[54] This decision took a new dimension in the case of Jasuber R. Naik and Naik Motors Ltd v. Agness Chama,[55] where the court further indicated that obtaining of Presidential consent was the duty of the landlord and, therefore, the tenant is not at fault in which case he can be protected by the law.

Lastly, a completion date must be arranged so as to take into account all the circumstances of the transaction. As the contract is usually drafted before obtaining state consent to assign, the vendor's advocate should ensure that his client would be in a position to complete on the date specified. This problem can be overcome by drafting a clause, which provides for unforeseen circumstances, which does not bind the vendor to one specific date to complete. An example illustrates this point: "the date fixed for completion is within 28 days of the vendor receiving State's consent to assign and notifying the purchaser thereof."[56]

Once the purchaser's advocate receives a copy of the draft contract, a search should be carried out at the Lands and Deeds Registry. It is always necessary to conduct a search at this stage since the Advocate has to obtain definite answers to various questions relating to the title of the property and also what can be termed its administration. A good example, which illustrates this point, is whether or not the property is in fact registered in the name of the vendor or in the name of the company he owns. If it is a limited company, a further search should be carried out at the Companies Registry. In the case of a vendor's advocate, it is prudent to conduct a search if a caveat has been entered against the property. The caveat facility is provided [57] for under section 76 of the Lands and Deeds Registry Act,[58] which states that:

> Any person.....
> (a) Claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or instrument or transmission or of any trust expressed or implied, or otherwise however; or
> (b) transferring an estate or interest in land to any other person to be held in trust; or
> (c) being an intending purchaser or mortgagee of any land;
> may at any time lodge with the registrar a caveat.....[59]

In the case of Concrete Construction (Holdings) Ltd v. Mubanga,[60] grounds (a) and (c) were interpreted. In this case, the applicant company entered into a written agreement with the respondent for the sale by the former to the latter of a piece of land. The respondent paid part of the purchase price but failed to raise the balance. On being requested to pay, a cheque was drawn up and on the strength of which the applicant executed the written agreement. The cheque was dishonoured and the applicant wanted to sell to another purchaser. The respondent filed a caveat on the basis that he had acquired beneficial ownership due to the executed agreement. Chomba J. held that failure by the respondent to perform the contract would not allow him to acquire beneficial ownership. Therefore, a caveat could not be filed. The judge explained further that the term 'intending purchaser' has not been defined. In his view, however, the term should be construed to mean a party who is not only intending to purchase but who has the ability to purchase. This case can be clearly distinguished from Morgan v. Clark,[61] where a caveat was successfully lodged on the basis of beneficial ownership. The facts of the case were that the respondent accepted the applicant's offer for the sale of the farm. Acceptance of the offer was effected but soon after receipt of the same, the applicant purportedly withdrew the offer having sold the farm to another

purchaser. Finding that there was a valid contract, Palmer A.J. upheld the caveat, which remained effective.

The purchaser's advocate peruses the draft contract and notes any changes in accordance with the instructions given by his client. If the drafting is correct, the purchaser's advocate will approve the contract and return one copy of the approved contract to the vendor's advocate, making any amendments to it if necessary. Thereafter, the contract is endorsed on the front with the words "approved as amended in red," and both copies are signed. If no amendments are required, the contract is endorsed with the words 'approved' and then signed.[62]

Exchange of contracts takes place next. The vendor's advocate will engross the contract and forward a copy of the contract for signature to the purchaser's advocate. 'Engrossed' means that the vendor's advocate will have the approved draft contract typed for signature by his client and to be sent to the purchaser's advocate to do the same with his client. The contract is usually forwarded together with any deposit payable to the vendor's advocate who will hold the deposit as an agent for the vendor or a 'stake holder'.[63] At this point, both parties are committed to the transaction

and can only withdraw with all the consequences, which flow, from a breach of contract.

Proceedings after exchange of contracts include deducing of title from the vendor's advocate to the purchaser's advocate. What the vendor must actually do in deducing his title involves the delivery and proof of an abstract of title. Both a previous conveyance on sale and a deed of gift can deduce title. "By an abstract of title is meant an epitome of the documents and events which in accordance with the principles discussed below constitute the vendor's evidence of ownership."[64]

In the case of Oakden v. Pike,[65] Kindersley V. C. criticised the above definition.

> The deducing of title - the appropriate use of that expression would be this: I deduce my title from my great-grandfather. I do not deduce my title by sending you a document: nor do I deduce my title by showing you the deeds, I show you how I deduce title; but according to the strict meaning of the words `deducing title', it is stating from whom or from what source the party draws forth his title.[66]

In other words, it is the source from which the title is obtained and not the document, which deduces title.

In normal circumstances, photocopying the certificate of title in respect of the property to be sold and forwarding the same to the purchaser's advocate will suffice. Where the property in question is held under a sub-lease, and the vendor is not the original sub-lessee from the city council then the lease between the city council and the first sub-lessee together with any other assignments relating to this property and showing how the vendor came to be the owner of this property is to be sent to the vendor's advocates by way of deducing title. The situation can be presented in the following manner: -

> City Council leases to Mr. A a certain piece of property. Mr. A sells to Mr. B. Mr. B. thereafter assigns this property to Mr. C Mr. C. is now the Vendor.

In order to deduce title C's advocate will forward to the purchaser's advocate the original lease between the City Council and Mr. A, as well as the assignment from A to B and the assignment from B to C, thus showing a complete link in title. This procedure can be clearly distinguished from the

procedure in America where abstracts of titles are prepared by professional abstractors.[67]

Upon receipt of the photocopy of title deeds the purchaser's Advocate investigates title. He examines the photocopy of the title against the original title deeds to establish that the property does belong to the vendor and that title is not encumbered in any way. This is usually to ensure that the vendor's advocate is not concealing anything, and if there are doubts further evidence can be obtained.

> That an event did not happen is in many cases a matter of inference rather than of positive proof, but if the event be such that its occurrence must necessarily have rendered the title different from that stated, the purchaser is entitled to require some evidence from which its absence may reasonably be informed.[68]

Once satisfied that the title is in order, the purchaser's advocate has the responsibility of drafting a transfer by way of a deed in accordance with section 52(1),[69] which provides; "all conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed."[70]

The formalities necessary to constitute a deed were expressly stated in Goddard's Case,[71] where it was said; "..... for there are but three things of the essence and substance of a deed that is to say, writing in paper or parchment, sealing and delivery."[72]

This is further qualified by section 73,[73] which provides: "where an individual executes a deed, he shall either sign or place his mark upon the same and sealing alone shall not be deemed sufficient."[74]

Wilberforce J. qualified the point of sealing in the case of Re Stirrup,[75] where he stated that: "provided the sole formal requirement of being under seal is complied with, any document, since 1925, at any rate, is effective to pass a legal estate, provided the intention so to pass it can be ascertained."[76]

The issue in this case was that it should have been a conveyance and not an assent, which should have been used by the bank to vest the premises in the beneficiary.

In Zambia, the purchaser's advocate drafts an assignment, which is a deed

transferring over to the purchaser the remainder of the leasehold title held by the vendor. To follow the practice in calling the deed an assignment would be proper. In the case of Grangeside Properties v. Collingwoods,[77] it was stated that the practice of calling a deed by whatever name happens to be appropriate is perfectly proper. Further, it hardly matters if an inappropriate name is used, since the clearly expressed intentions of the parties will prevail over inaccurate technical words.

The deed should be dated. The rule with reference to the correct date is the presumption that the commencement date would be the date if any, appearing on the deed. This may be explained with reference to the fact that all deeds do take effect from and, therefore, have relation to the time not of their date but of their delivery and this is always presumed to be the time of their date unless the contrary does appear. Further, Astbury J. clearly explained in the case of Morrell v. Studd and Millington,[78] that the lack of a date does not affect the validity of a deed and parol evidence is admissible to show the correct date. In this case two months before the date fixed for completion, and while the method of securing the balance of the purchase-money was still in negotiation, the purchasers withdrew their offer. However, certain situations may cause problems and the

presumption was impossible to rebut in the case of Cumberland Court (Brighton) Ltd v. Taylor,[79] where a conveyance free from incumbrances was inconveniently found to be dated two days before the discharge of the then vendor's mortgage. The facts were that by a written agreement the plaintiffs agreed to sell, and the defendants agreed to buy, a certain piece of property. It appeared from the abstract of title that a previous conveyance of the property had not been made free from an outstanding legal charge.

The next important clause in the deed is the parties. The basic principle is that all necessary parties should be joined, but no unnecessary parties, even though willing to join, should be joined. This was laid down in the case of Corder v. Morgan.[80] The answer to the question which parties are necessary, depends almost entirely on the intended function of the particular deed. In the case of White v. Bijou Mansions Ltd,[81] the plaintiff was registered at the land registry as proprietor of the freehold with an absolute title, the last mentioned covenant was entered upon the charge register. The plaintiff granted a lease of the premises for a term of 28 years to lessees, who afterwards assigned it to the defendants. The lease contained a covenant by the lessees not to use the premises for any

purpose other than a private dwelling-house or private suites or flats. It was held that it is not sufficient that the deed confers a benefit on the person seeking to enforce it, but that he must fall within the scope of section 56.[82] Further, "he must be a person who falls within the scope and benefit of the covenant according to the true construction of the document in question."[83]

Earlier, in Re Ecclesiastical Commissioners'Conveyance,[84] where by a conveyance dated 21st April 1887 the house and land was conveyed to H.G.G. A covenant was included in the conveyance with the intention to bind all future owners and tenants of the said land. The said covenant referred to the land as 'adjacent' and included certain plots of land near but not adjoining to the property. The present owner of the land was entitled to enforce the covenant, although the original covenantees were not parties to the conveyance of earlier date. It was held that such person must be both identifiable and in existence at the time of the deed. Similarly, in a contract as in a deed, the parties are described by their first name and their surname when first mentioned including their address and occupation [85]

Recitals form part of the assignment. They usually begin with 'Whereas'. It should be noted from the outset that recitals are not an operative part of the

deed and that traditionally the operative part commenced after the recitals with `NOW THIS DEED WITNESSETH.....'[86] Lord Warrington stated the distinction in the case of I.R.C. v. Raphael:[87]

> The fact is that the narrative (i.e. the recitals) and operative parts of a deed perform quite different functions and intention if reference to the narrative and the same word in reference to the operative parts respectively bear quite different signification.[88]

The testator in this case died and within six months the only son of the testator executed a deed of settlement. It recited that it had been prepared in order to give effect to the desire of the settlor to settle his interest. His will provided that the settlor should not have any child.

Recitals have the general purpose of stating how the vendor holds and sells and have been classified as of two types, narrative and introductory recitals. Lord Habbury in Mackenzie v. Duke of Devonshire[89] stated that introductory recitals explain the purpose of the deed, that is, how and why the existing state of affairs is to be altered, the commonest example being a recital of the agreement for sale between the parties. In this case, a testator in the narrative of his trust disposition stated that 'in order to make and secure additional provisions' for his second son 'and the other heirs of

entail succeeding to him' and in the dispositive portion of the deed it was declared, 'that these presents in favour of my said trustees are granted in trust for the users ends and purposes.....and under the conditions provisions and declaration after written.' The general rules of construction apply when discussing the relationship of recitals to the construction of a deed. This was well stated by Sir John Romilly M.R. in Re Strand Music Hall Co. Ltd, Ex Parte European & American Finance Co. Ltd.[90]

> The proper mode of construing any written instrument is to give effect to every part of it, if this were possible and not to strike out or nullify one clause in a deed, unless it be impossible to reconcile it with another and more express clause in the same deed.[91]

In addition, certain statutory provisions give rise to particular purposes for which recitals should be included in a deed of conveyance in appropriate circumstances. One such example in Zambia would be the recital showing the conversion of Title from freehold title to leasehold title for a term of 100 years with effect from 1st July, 1975 under the Land (Conversion of Titles) Act.[92] Therefore, in the recitals of the draft assignment, the advocate has to show that the vendor held this land in freehold prior to the coming into effect of the Land (Conversion of Titles) Act[93] and by virtue of the said Act [94] the

vendor's freehold title was converted to a statutory leasehold for a term of 100 years from the 1st July 1975.

The non-operative parts of a deed have been considered, such as the commencement date and the parties clause. The operative parts are usually introduced with the words of the *testatum.* `NOW THIS DEED WITNESSETH..... 'Strictly speaking the premises are all the operative part of a deed coming before the *habendum* Clause commencing with the words 'TO HOLD.....' [95] including the implied covenants for title `As beneficial owner' the operative words 'HEREBY CONVEYS.....' [96] and the parcels clause`ALL THAT.....'[97] Lord Goddard explained the parcels clause in the case of Gardiner v. Sevenoaks Rural District Council.[98]

> It was from the habit of conveyancers when they were drawing deeds of conveyance referring to property and speaking of `parcels'. They set out the parcels in the early part of the deed and later they would refer to the said premises' meaning strictly that which had gone before and gradually by common acceptance premises became applied, as it generally is now, to houses, land, shops or whatever it may be, so that the word has come to mean generally real property of one sort or another.[99]

In Zambia, the most important distinction between assignments will be the vendor's title. Firstly, the residue of a term of 99 years under a council lease, called a City Council lease which has now been abolished under section 6 of the Land Act, No. 29 of 1995.Secondly a 14 year lease from the state where the land has not been surveyed and only a sketch plan has been attached. Unlike a diagram, a sketch plan does not contain accurate measurements of the land in question Thirdly, the residue of a term of 99 years under a Presidential lease, known as a Presidential lease.[100] Fourthly, the residue of a term of 100 years under the Land (Conversion of Titles) Act[101] being referred to as a statutory leasehold title. This was a freehold title, which has been converted to a 100 year leasehold by the Land (Conversion of Titles) Act.[102] The differences between all the different titles are outlined in the recitals.[103]

The ultimate part of every deed is the *testimonium*, which reads:

> 'IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written.' [104]

These words are usually followed by an attestation clause. The execution of a deed is witnessed by one person who subscribes to an attestation clause, 'Signed Sealed and Delivered by the said ..... in the presence of 'name, address and occupation.' It must be noted that a party to a deed is not a competent witness as was outlined in the case of Seal v. Claridge.[105] the facts of the case were that J, having executed a bill of sale, was given possession of the goods comprised in it by the grantee. The house, in which the goods were, belonged to J. and he had a key to it; he did not sleep in it, but he went in and out as he pleased. It was held that the grantee of a bill of sale, although he may be a solicitor, cannot be the attesting witness thereof. The importance of an attestation clause is obvious. If it is in proper form, even without production of the witness, it should be strong evidence of due execution as was held in the case of Hope v. Harman.[106] However, it does appear that what will amount to a signature may perhaps differ very little from a seal. Thus, in Barrett v. Brumfitt,[107] a notice of objection was raised to a rubber stamp with a facsimile signature. The court held that it was validly 'signed' as required. According to Bovill C.J. in the said case, there was no distinction between using a pen or using a stamp.

The next requirement of a seal authenticating a document is a traditional concept under English law. Nowadays, the seal is very much a legal fiction. The seal is no longer a wax impression of a man's crest or coat of arms; it is usually no more than an adhesive wafer attached when the document is engrossed. It is the party's signature, and not his seal, which in fact authenticates the document.

Once the assignment has been drafted, it is forwarded to the advocates of the vendor for approval. At this stage, the same procedure is followed as in approving a contract. To summarise, the normal practice is for the purchaser's advocate to have the assignment executed, and then forwarded to the vendor's advocate, who will have the assignment executed, and hold the same until completion.

The vendor's advocate will then draft a document called a completion statement. Completion will take place at the offices of the vendors' advocate. The completion statement will show to the purchaser exactly how much is required to be paid to the vendor upon completion. The total amount includes not only apportionments for rates but also interest payable and at what rate.[108] It is for the purchaser's advocate to verify the figures

and obtain the funds from his client to complete. At completion, the purchaser's advocate will hand over the cheque for the amount stated on the completion statement while the vendor's advocate will hand over the title deeds to the property, assignment executed by the vendor and any other documents required to effect registration. These documents include consent to assign, tax receipt and if the property is mortgaged, a discharge of mortgage. The purchaser's advocate should ensure that the title deeds are correct and that the assignment has been properly executed.

From the explanation above, it is very clear that the process of conveyancing, part of that includes registration of the documents so drafted, is a technical one. Drafting of these documents has to be done with the utmost caution not only for the contract but the assignment or the lease, especially with reference to the description of the property since an error may lead to the wrong property being sold or the entire property being sold instead of a subdivision, and this becomes of great significance in the case of a sale of a Flat.

A Lands Contract Act may provide answers to some of the technical drafting

problems in the contract itself. The standard conditions of sale should be legislated upon together with some of the usual special conditions. The only danger lies in situations where parties to the contract opt to contract out of these conditions. A provision allowing this should be added in the new statute with a proviso showing clearly that the conditions so entered into should not be inconsistent with any of the other provisions in the Act. The Act should outline the general steps for deducing title and investigating title and placing it within a time limit, giving the buyer the right to raise requisitions or make observations until the expiration of the relevant time limit. The Act should further provide that if the buyer is not already lawfully on the property and the seller agrees to let him into occupation, the buyer becomes a licensee and not a tenant, to bring out the distinction between the two clearly.

Various remedies and penalties should be provided in the Act. The main one should be where parties undervalue the property, a common practice where the value of the properties have escalated giving rise to high taxes payable. A good example would be property transfer tax, which is 2.5% of the purchase price.[109] The Act should provide that such undervaluation would amount to a fraud against government revenue and as such a fine

should be imposed upon the vendor and the purchaser to be paid equally by each party amounting to the true value of that property.

The Chairman of the Law Association of Zambia Conveyancing Committee[110] agrees that such reforms may prove workable and further adds that retention of the requirement of Presidential Consent will be inevitable since all land in Zambia is vested in the President[111] and as such cannot be transferred without the consent of the original owner. In addition, he has suggested that consent should be granted as a matter of right except in cases where the contract is against public policy and within a time limit. This view has been legislated under section 5(2) of the Lands Act Cap 184 Laws of Zambia 1995. According to him, much of the procedure in obtaining consent has been relaxed and as such obtaining consent is now a mere formality.

D. WHAT CONSTITUTES REGISTRATION ?

After completion the purchaser's advocate has to register the title deeds in the name of the purchaser. In order to do this, the purchaser's advocate draws up a lodgement schedule[112] in accordance with the Lands and

Deeds Registry Regulations,[113] enumerating the documents forwarded to the lands and deeds registry for registration and the fees payable on registering the said documents. After some time the documents are uplifted from the registry and the title deeds in the name of the purchaser are obtained.

After the documents have been executed, the Lands and Deeds Registry Act[114] provides that the documents required to be presented for registration can be lodged by either a person executing or claiming an interest, representative or agent of such person or through their advocates. All documents relating to the land in question accompanied by state consent,[115] tax receipt for payment of property transfer tax, certificate of title and any registered documents are accepted for registration unless the documents describe the land by reference to a diagram or a plan approved by surveyor general, and such diagram or plan is annexed to the document lodged for registration, or has been registered previously in which case the other prior documents are not necessary. [116] Some statutory exceptions[117] have been provided for, and registration without a diagram is valid in the case where other documents relating to the said property with a diagram

annexed have already been registered. Secondly, an indenture of mortgage without a plan annexed to it, is capable of registration.

What amounts to registration has been clearly outlined under the Lands and Deeds Registry Act section 16, which provides that:

> Registration shall consist of the filing of a copy certified by the registrar as a true copy and of the entry in a book of the following items:-
>
> (a) the names of the parties
> (b) the date of the document
> (c) the date of the registration; and
> (d) briefly, the nature of the document.
>
> Separate files and books shall be kept for each register.[118]

The above procedure takes place at the Lands and Deeds Registry, which is discussed in detail in the next chapter.

CHAPTER THREE

END NOTES

1. Sir William Holdsworth, A History of English Law, vol.11, (1966), Sweet & Maxwell, London.

2. Ibid, at 67.

3. Ibid.

4. Ibid, at 76.

5. 'Gemot' means 'according to' W. Little, H. W. Fowler and J. Coulson, The Shorter Oxford English Dictionary on Historical Principles, vol. 1, Clarendon Press, Oxford, England, at p839, ' A meeting for judicial or legislative purpose'.

6. Sir William Holdsworth, A History of English Law, supra note 1.

7. Ibid.

8. La Salle Extension University, La Salle Library, (1965), History of Real Property, USA at at 48.

9. Earl Jowitt, The Dictionary of English Law, 1st(ed) (1959), Sweet & Maxwell,London, 486.

10. Sir William Holdsworth, A History of English Law, supra note 1.

11. Ibid.

12. Ibid.

13. J.B. Sauders, Law Dictionary, 7th (ed,), (1962), London, Butterworth, 180.

14. Land (Conversion of Titles) Act, Cap 289, Laws of Zambia (repealed).

15. Second Report by the Commissioners appointed to inquire into the Law of England respecting Real Property, London, 1830.

16. Land (Conversion of Titles) Act, Cap 289, supra note 14.

17. Ibid.

18. Views expressed by Mr. Hudson when he presented a paper, Agriculture Land Planning and Use, at the National Conference on Land Policy and Legal Reform program, held at Mulungushi Conference Centre, Lusaka 19th to 23rd July 1993, He is also supported by a report on Land Utilisation, Southern African Conference of Agricultural Unions held at Swakopmund, Namibia in May 1993.

19. Williams on Vendor and Purshaser, 3rd (ed), Sweet & Maxwell, London.

20. Ibid.

21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.

25. All three members of staff, H. Shamwana, B. Hanjawa and A. Kabwe at the National Institute of Public Administration were interviewed on 22nd December, 1993, Lusaka, Zambia.

26. George Andries Johannes White v. Ronald Westerman and others, (1983) ZR 135.

27. Refer to Appendix "A".

28. Golding v. Frazer, (1967) 1WLR, 286.

29. Refer to Appendix "B".

30. Lands Act, Cap 184, Laws of Zambia, 1995.

31. Refer to Appendix "C".

32. Land (Conversion of Titles) Amendment Act, 1988.

33. Alexander Mountain & Co. v. Rumere, (1948) 2 KB 436.

34. Simmons v. Woodword, (1892) AC 100.

35. Ibid, at 105.

36. Re Sansom and Narbeth's contract, (1910) 1 CH, 741.

37. Ibid, at 749.

38. Wallington v. Townsend, (1939) CH, 588.

39. Hopgood v. Brown, (1955) 1 WLR, 213.

40. Eastwood v. Ashton, (1915) AC, 900.

41. Ibid, at 916.

42. Refer to Appendix "D".

43. Refer to Appendix "E".

44 Law Association of Zambia General Conditions of Sale, 1976, clause 5(c).

45. Ibid.

46. Francis Jackson Developments Limited v. Stemp, (1943) 2 ALL ER, 601.

47. Lands Act Cap 184, Laws of Zambia, 1995.

48. Mutwale v. Professional Services Ltd, (1984) ZR 72.

66. Ibid, at 622.

67. A. Korda, Conveyancing Textbook, 14th (ed), H L T Publications, 1993.

68. Williams on Vendor and Purchaser, supra note 19, at 121.

69. Law of Property Act 1925 England.

70. Ibid.

71. Goddard's case, (1584) 2 Co. Rep. 4b.

72. Ibid, at 5a.

73. Law of Property Act 1925, England, section 73.

74. Ibid.

75. Re Strirrup, (1961) 1 WLR 449.

76. Ibid, at 454.

77. Grangeside Properties v. Collingwoods, (1964) 1 WLR 449.

78. Morrell v. Studd and Millington, (1913) 2 CH 648.

79. Cumberland Court (Brighton) Ltd v. Taylor, (1964) CH 29.

80. Corder v. Morgan, (1811) 18 Ves. 344.

81. White v. Bijou Mansions Ltd, (1937) CH 610.

82. Law of Property Act 1925, section 56.

83. White v. Bijou Mansions Ltd, supra note 81, at 624.

84. Re Ecclesiastical Commissioners Conveyance (1936) CH, 439.

85. For an example of an Assignment refer to Appendix "E".

86. Ibid.

87. I.R.C. v. Raphael (1935) AC 96.

88. Ibid, at 135.

89. Mackenzie v. Duke of Devonshire, (1896) AC 400.

90. Re Strand Music Hall Co. Ltd; ex parte European & American Finance Co. Ltd.
35 Beav. 153.

91. Ibid, at 159.

92. Land (Conversion of Titles) Act, supra note 14.

93. Refer to Appendix "E" for recital.

94. Land (Conversion of Titles) Act, 1975 supra note 14.

95. Refer to Appendix "F".

96. Ibid.

97. Ibid.

98. Gardiner v. Sevenoaks Rural District Council, (1950) 2 ALL ER 84.

99. Ibid, at 85.

100. Refer to Appendix "F".

101. Land (Conversion of Titles) Act, supra note 14.

102. Ibid.

103. Refer to Appendix "F".

104. Ibid.

105. Seal v. Claridge (1881) 7 QBD 516.

106. Hope v. Harman (1847) 16 QB 751.

107. Barrett v. Brumfitt (1867) LR 3.

108. Refer to Appendix "G".

109. Property Transfer Tax Act, No. 12 of 1984.

110. Interview with Mr. Solly Patel, Chairman of the Conveyancing Committee, on 22/03/94.

111. Land (Conversion of Titles) Act, supra note 14.

112. Refer to Appendix "G".

113. Lands and deeds, (Amendment) Regulations.

114. Lands and Deeds Registry Act, Cap. 185, Law of Zambia, 1995.

115. Refer to Appendix 'H'.

116. Lands and Deeds Registry Act, supra note 103.

117. Ibid, Sec.12(i) (ii).

118. Ibid.

CHAPTER FOUR

PRACTICAL ADMINISTRATION

A. LANDS AND DEEDS REGISTRY, PRACTICE AND PROCEDURE OF REGISTRATION.

The machinery of land registration in Northern Rhodesia was established under proclamation No. 57 of 1910. This proclamation among other things provided:

> There shall be an office styled the registry of deeds (hereinafter termed 'the registry') in Livingstone for the registration of deeds..... [1]

It also provided for division of land and outlined that separate registers shall be kept for:

(1) Lands

(2) Township land. [2]

The Land Registry was later transferred to Lusaka and established under the Lands and Deeds Registry Act, section 3(1).[3]

> For the registration of documents required or permitted by this Part or any other Act or by any law to be registered, there shall be an office styled the registry of deeds..... in Lusaka and the Minister may from time to time direct by gazette notice that there shall be a district registry.....[4]

you are lying, what about the one at Ndola?

Even though there is a provision under legislation to establish a district registry, in practice no such registry has yet been established. Therefore, all transactions requiring the registration of documents have to be carried out at the central registry in Lusaka. This obviously poses a problem especially with reference to land in other districts of Zambia situated far away from the central registry. For example, land held under customary tenure in the district of Mpika, which is subject to registration when title is converted to statutory leasehold,[5] would prove difficult to register owing to distance and costs. In addition, the practical difficulty would be surveying the land, a pre requisite to registration. It is for the above reasons that until recently the registration of documents relating to grants of land was mainly restricted to state land, which comprises only 6% of all land in Zambia, out of which only 4% has been placed on the register as opposed to the 96% which remains to be registered. This can be compared with England where almost all land is registered.

The distinction made under the proclamation is still evident under the Lands and

Deeds Registry Act because it maintains two registers, one being the land register[6] for farms, lots and plots, and the other being the township register for stands.[7]

The keeping of records originates from the register itself. It is only when the property is registered that information about it is obtained easily. In the ordinary sense a 'register' is used to refer either to the record of the title to a single piece of property or to the complete record of all registered properties; in other words, all the individual records collectively. Further, in the English system the meaning is extended to the correction of the register, which may be effected merely by making an alteration to the plan without altering the typewritten record in the property register. In this way, the word 'register' describes not only the typewritten record but also the filed plan referred to in the record. Each individual leaf [8] of the register is usually referred to as 'folio':

> Folio is a term of art to English lawyers meaning a certain number of words (seventy-two or ninety) taken as a unit in reckoning the length of a legal document, a matter of some importance when lawyers were paid by the length of the documents they prepared, as they were in the days when Dickens wrote of conveyancers toiling by candle light.[9]

This concept is of little use today owing to modern technology in producing the said

documents. In the Zambian context the Lands and Deeds Registry Act[10] defines a register as: "the township lands register or the lands register, as the context may require."[11]

Section 9 of the said Act[12] explains the above definition by clarifying the functions of each register.

Separate registers shall be kept for :-

(a) documents affecting land within any area hereafter declared by law to be a township. This register shall be known as the `township lands register;[13]

(b) documents.....not being land within a township..... This register shall be known as the lands register;[14]

(c) other documents. This register shall be known as the miscellaneous register.[15]

At the deeds registry in Lusaka, the miscellaneous register has records of various documents registered[16] in accordance with section 10,[17] which permits the registry to record any documents requiring registration in respect of which no special registry office is maintained.

The lands and deeds registry does not maintain what can be termed a "register of ownership"; therefore, the system in existence is called registration of deeds and not of title. In other words, there is no separate register prepared in respect of every parcel of land showing its ownership, whether the owner is an individual, a partnership or a company.

Under section 4 of the Lands and Deeds Registry Act,[18]

> Every document purporting to grant, convey or transfer land or any interest in land, or to be a lease or agreement for lease or permit of occupation of land for a longer term than a year..... must be registered within the times hereinafter specified in the registry.[19]

The Act clearly stipulates that all the various kinds of deeds have to be registered (even a licence to occupy premises) so long as it is for a period exceeding one year. In practice, the views of the chairman of the conveyancing committee [20] shed more light on how parties to a lease may evade the provisions requiring registration and the payment of all the fees, such as registration fees. He stated that this used to be common when it was difficult to obtain state consent and the delay in obtaining state consent would place the parties to a lease in a difficult position as the lease would

expire before consent was obtained. Therefore, although the lease was drawn up and executed it would not be registered for want of state's consent. As a result the parties entered into a lease agreement for a term of one year only with an option to renew, and so registration did not become compulsory. Since this was common when renting out property, to avoid such evasion the new legislation should allow what can be termed an "occupancy license or permit of occupation" for a period of a longer term than five years requiring registration. The remaining documents can be maintained for a longer term than one year. The Lands Act has provided the solution to this problem under section 5(2) by stating that consent will be deemed to have been granted within 45 days of the application being made.

The content of the register is important in showing as accurately as possible the correct information on any given parcel of land. So far as title registry is concerned the register, if it is to be effective, should show what is owned, who owns it, and incumbrances and rights adversely affecting it. It, therefore, becomes logical to divide the register into three main sections to achieve the best possible results. Firstly, the property section, which should clearly define the parcel of land and identify the nature of the right owned, that is whether it is outright ownership, being freehold, or a leasehold interest, in which case particulars should be given of the names of the parties and the period of the lease and the amount of rent. The parcel of land is usually defined either by reference to a main map or a filed plan.

Secondly, the proprietorship section, which shows the names and addresses of the owners. Lastly, the incumbrance section, showing all the rights and interests adversely affecting the property, such as a mortgage. The content of the register explained above refers to a title register, such as the one found in British Virgin Island.[21] In addition, in Zambia the deeds registry records each deed showing the parties, the nature of each deed, the document, description of the property, all on one single page.

The manner in which these records are kept contributes to the convenience and systematic approach to the availability of these records, both to the members of staff at the registry and the public as a whole. Since the registry is termed a public registry anyone is allowed to inspect the records. The distinction between the four different types of ledger books used as registers will clarify the above statement. The first one being the bound books in which entries are made by hand as and when they arise, each property being given a separate page. This system, which was used in England, has been criticised as being inconvenient to handle mainly because once a page is full, continuation sheets cannot be inserted and would have to appear in later volumes and as such a record of one piece of property may stretch over several volumes. The same ledgers are being used in Zambia at the council registries not only for records of title but for deeds also. The bound volume is the second system, where the duplicate of the grant or the certificate of title is bound in

volumes of fifty or more titles. The result of the system has been described in the following terms,

> binding is an administrative technique only, aimed at securing folios of the register from damage and loss, and does not qualify as an essential ingredient of the Torrens system. As a security technique it is quite effective, but the security it offers is purchased at the price of operational efficiency.[22]

The loose-leaf binder resolves the above problems since leaves can be quickly inserted or withdrawn from binders which can be varied in thickness to contain as many titles as may be desirable in one volume. As a security measure, however, it may well be desirable to arrange for the blank leaves to be serially numbered so that each one can be properly accounted for. The lands and deeds registry uses loose-leaf binders when recording the documents.

Lastly, the card or loose page system is the most convenient since registers are kept loose on cards which are filed in drawers. Here the problem of misfiling is fairly apparent. Each system has its setback but the card or loose page system seems to be producing greater efficiency in the registers where it is being used. New Zealand is a good example where all the bound-up registers have recently been changed to loose registers. However, with the introduction of the latest technology in computers and the advancement in the keeping of records and material on computer diskettes,

there has been a reduction in the keeping of manual records. In developing countries this is a recent innovation and, therefore, its implementation to achieve the desired goals may be a long way off.

At the lands and deeds registry in Lusaka a computerised form of records has been introduced but it has not been extended to the council registries, even in Lusaka. The overall effect of the system can only be analyzed when it is extended over the whole country. At this stage, a written form of record, being the card or loose page system, would provide a secured back-up system to a computerised form of recording. For, in its initial stage, documents may be erased or wrongly entered. This new development will no longer require the advocate or the intending purchaser to inspect or handle the register itself. A computer print-out giving up-to-date information on any parcel of land will suffice. The only problem would be if the data fed into the computer was incorrect then it might not be possible to check the error. Provision of a back-up system, such as a card or loose page system would provide valuable assistance in resolving such problems. As an alternative back-up system, a parcels file in respect of each registered parcel of land can be kept. The parcels file in England consists of an open-ended envelope bearing the same reference number as a parcel to which it refers. In it are placed all the documents affecting that parcel of land. If such a system were introduced into Zambia the position of the lands and deeds registry will alter from being a deeds registry only to

that of being a deeds and titles registry. This system will no doubt provide a secured back-up system as well as reduce the work of a conveyancing lawyer who will have everything he needs on a particular piece of property by merely examining one envelope.

It may also prove efficient if the existing system of the registry is maintained as a back-up with a good computerised system. The current technology will speed up the entire process of registration and reduce certain errors. No doubt this would be a cost saving measure since the old system still remains, as opposed to changing the entire system to a new one.

The type of register will affect the manner in which the entry is made. At the lands and deeds registry documents presented for registration are first entered in the day book [23] and later transferred to the various registers. All these records are handwritten since the bound ledger does not allow for the keeping of type-written records. One of the other advantages of the loose page or card system would be the use of type-written records.

When focusing the attention on the institution itself, the obvious thing is that there is only one lands and deeds registry situated in Lusaka for the entire nation. The only exception being land comprised in a statutory housing area or an improvement area

under the Housing (Statutory and Improvement Areas) Act.[24] To clarify the point in terms of areas, in Lusaka the council registry deals with the following areas: -

STATUTORY HOUSING AREA

1. SITE AND SERVICES AREA	DATE OF DECLARATION
Kabanana	31.10.80
Chawama West	01.05.86
Matero East	01.04.85
Kamwala/Kabwata	01.10.80
Emmasdale Site	01.10.79
2. COUNCIL ESTATE AREA	
Chilenje South	01.3.77
Libala Stage 1	01.10.82
Helen Kaunda	01.08.78
Emmasdale Bank Houses	01.06.86
3. IMPROVEMENT AREAS	
George	01.01.76
Chawama	01.06.75
Chaisa	01.01.79

Kalingaga	01.04.86
Mtendere	26.02.90
Chipata	01.01.90

For the above areas, title deeds for each main area are issued by the lands and deeds registry, but individual titles to members of the public are then issued by the council registry within whose ambit the land falls. The distinction between the two registries is clear. Under section 11 of the Housing (Statutory and Improvement Areas) Act [25] in every council the registrar shall maintain a register of titles and each certificate of title shall constitute a separate folio of such register. In addition, all documents have to be recorded as well. The council registry becomes both a title as well as a deeds registry. The council register can also be searched and it is a public register [26] similar to the lands and deeds registry. A certificate of title issued by the council registry is for a period of 99 years [27] on terms and conditions provided under a lease, which can be renewed. The council registry is a section within the legal services department of the council, and in Lusaka was established in 1980. The registry deals mostly in conveyancing matters for participants from statutory housing areas and improvement areas. In a statutory housing area there is usually a site and service scheme which is developed and planned for by the council itself, or a council housing estate. These properties are developed with a view to renting

them out to the public or public organisations. The tenants are issued with a council certificate of title [28] for 99 years subject to the conditions in a lease specified under the 3rd schedule, regulation 29 of the Act.[29]

On the other hand, in an area declared an improvement area the council grants land rights to the inhabitants. Tenants of land in an improvement area are granted an occupancy licence for a period of 30 years.[30] Such a licence is registered at the council registry. The terms of the licence can be extended or renewed in accordance with the terms of occupancy [31] specified in the regulation 32, and the 5th schedule of the Act.[32] The licence does not provide any tenancy or lease agreement but only permission or right to occupy that particular parcel of land.

The administrative procedure adopted by the councils [33] is that a interested person should approach the site and service office to get a letter stating that he or she requires a certificate of title or an occupancy licence, depending on whether the area is declared as a statutory housing area or an improvement area. The tenant or occupier should then ensure that all services charged, e.g. charges for water, sewage, etc are paid up to date. If anything is outstanding, it is the tenant's duty to

pay the arrears and the collection unit within the council then issues a certificate of clearance. With this in hand the person proceeds to the deeds registry within the council, where a further payment of K5,000.00 for a certificate of title, and K4,000.00 for an occupancy licence is made. The Registrar then issues the relevant documents in the name of the tenant or the occupier, thus creating a title register.

Another major difference between the Lands and Deeds Registry Act [34] and the Housing (Statutory and Improvement Areas) Act [35] is that general conditions of sale are part of the latter Act and described under regulation 28 and second schedule.[36]

No such provisions are stipulated under the Lands and Deeds Registry Act[37] and transactions are subject to the Law Association of Zambia General Conditions of Sale.

Administratively, the lands department at the lands and deeds registry is divided into two separate units comprising the office of the Commissioner of Lands, and the deeds registry itself.[38] The powers of the Commissioner to allocate land are not clearly spelt out under the Land (Conversion of Titles) Act,[39] where reference is

made to the President of the Republic. Under section 12 and section 13,[40] however, the powers of the Commissioner can be traced back to Statutory Instrument No.7 of 1964, where such powers are conferred upon the President by Article 10A of the Zambia (State Lands and Reserves) [41] and section 10A of the Zambia (Trust Land)[42] to authorise the public officer to execute the duties of the Commissioner of Lands. Both of the above pieces of legislation have been repealed by the Lands Act, No. 29 of 1995 section 32(2) and the schedule. The Commissioner's power is subject to the special or general directions of the Minister charged with the responsibility for land matters. Such delegation of power does not create independence within the institution since it can be interfered with by political decisions and policies. To avoid vagueness, the statute should stipulate functions of the Commissioners office. These new functions should not be centred on allocation of land and granting of consents, which should be placed under the chief registrar's powers. The repeal of the Zambia (State Lands and Reserves) Order-in-Council[43] and Zambia (Trust-Land) Order-in-Council [44] has created a dispute as to the delegation of the powers from the President to the Commissioner, which is one more reason why statute should provide for the powers of the Commissioner. These powers should include quasi-judicial functions allowing the Commissioner to conduct investigations on various land issues and disputes and to grant relief to aggrieved parties. In order to

perform this task effectively, the Commissioner's office has to be equated to a tribunal. In the same vein, the Commissioner must be qualified to be a judge of the High Court. His decision should be subject to the appellate system of the courts of law.

The powers of the registrar on the other hand are clearly outlined under the Lands and Deeds Registry Act,[45] which include registering of documents and the issuing of certificates of title. The registrar also regulates various other administrative matters. One such example is section 8[46] which clearly states that the registrar may direct which documents require registration. There is need to emphasise the role of the registrar as a revenue collector and powers should be vested in him to impose fines on defaulters, or where parties undervalue the property, to reduce the various fees and taxes payable. To deter such practices, the fine should be the actual value of the property divided between the buyer and the seller. The registrar believes he should have the authority to cancel a caveat where it is shown the entry does not protect a legitimate interest. The registrar [47] further feels that he should have power to cancel an entry of caveat on representation by a registered owner or other interested party if satisfied that there was no sufficient interest shown in the caveat placed with him. In the alternative, it can be argued that this power should be placed more aptly in the revised role of the Commissioner, since it is more of a quasi-

judicial function. To make the existing caveat facility more effective the new Act should provide that a person lodging a caveat should produce a statutory declaration and an affidavit as evidence clearly showing the interest the caveator intends to protect. This is to prevent just anyone from placing a caveat on a particular parcel of land.

The procedure adopted at the lands and deeds registry, once the documents are lodged, is that particulars are entered in the day book of all the documents.[43] The documents are stamped with a date and the time is noted. This is done manually by the clerk at the counter. The senior lands officer then forwards all the documents to the registrar or the assistant registrar for vetting or examination. If a mistake is detected at this stage then a query is raised in which case the documents are sent back. If there is no query raised, an entry of the documents is made in the register, or more recently, on the computer, according to the town in which the property is situated. If the transaction involves the sale of a piece of property the typist then prepares and types out a new certificate of title in the name of the new owner. The new certificate of title is verified and signed by the registrar. A senior lands officer who signs for them in the register as well usually does uplifting of documents from the registrar's office. The documents are then returned to the advocate who lodged them. Each legal firm has a locker into which these documents are placed before

collection. A book recording all the documents brought for registration and collected after registration are kept by all the advocates. This administrative framework will be greatly enhanced with the introduction of computers as the tedious task of manual recording will be done away with but the maintenance of a day book as a source of all the documents received for registration may prove inevitable.

B. PROBLEMS FACED BY THE LANDS AND DEEDS REGISTRY AND THE COUNCIL REGISTRY.

Looking at the institutions themselves, the lands and deeds registry and the council registry are both established under statutes, the Lands and Deeds Registry Act,[49] and the Housing (Statutory and Improvement Areas) Act,[50] respectively. For administrative purposes, the former is placed under the Ministry of Lands, while the latter is placed under local government and, thus, has a more political role to play. Their primary function includes the maintenance of the constituency they represent. Little attention is paid to the allocation of land and issuing of certificates of title, which are carried out by a small section within the legal department of the council. This role should be reinforced since rural and township councils will play an important part in registering land rights held under customary tenure, which at this moment is only subject to the process of conversion.[51]

The main problems faced by the lands and deeds registry can be linked to the general problems faced by the Ministry of Lands. In order to understand the nature of these problems comparison of the land brought under the registry currently being 4% as compared with the remaining 96% of the country, brings out a realistic picture. State land comprising only 6% of all the land in Zambia, in terms of figures amounts to 4.5 million hectares,[52] is subject to registration at the central registry. Of this, only 4% has currently been placed on the register, a total of a thousand parcels. Until about five years ago there were only about seventy thousand pieces of property entered on the register. Faced with such a situation, when turning to the entire country it would mean bringing the remaining 96% onto the register, a task that would prove impossible for one centralised registry. The starting point of the problem would be an accurate diagram to describe a parcel of land before registration can be effected. Various problems and advantages of adopting one system and not the other have been discussed under chapter two. Administratively, for any system to be effective there has to be a close link between the survey department and the various registries.

The next stage would involve decentralisation of the registry. The need to have at least three more regional offices, each catering for a number of provinces based within a central area of these provinces and easily accessible, is a must. The most important aspect of this decentralised system would be the administrative linkage

between these registries. A good interconnected system would produce the desired results whereas a lack of it would amount to disarray. The council registries are a good example of a decentralised system but the problem of restricting them to areas of statutory housing and improvement areas only reduces the efficiency of the entire system. The various council registries are constituted under the Act avoiding the provisions of the Lands and Deeds Registry Act [53] and related legislation under section 48.[54] The main advantage of the system provided for under the Housing (Statutory and Improvement Areas) Act [55] is that the accurate surveying and producing of a diagram for each parcel of land is relaxed. Instead, a general plan relating to either type of area under the Act suffices as an accurate description of any parcel of land. In other words, the system can be extended to cover areas where surveying may prove impracticable.[56] Such a system is not extended to the lands and deeds registry. The general plan scheme has to be approved by the surveyor general to increase accuracy and should contain the name and description by which the area is known or is to be known, with an indication of any existing or intending public facilities for common use. There is only one significant difference in the requirement relating to the description of a building in the two areas. In the case of a statutory housing area, the plan should indicate the dimensions of each piece or parcel of land with a serial number identifying the building. In case of an

improvement area, on the other hand, it suffices to identify the location of each building by a serial number. This difference has its origin in the background of the respective areas. Improvement areas, it should be noted, have arisen out of what were termed "shanty compounds", the development of which has been unplanned and unregulated by any statute. In such areas, to insist on dimensions with precise measurements is not practically viable. Statutory housing areas, on the other hand, have received the benefit of planned and orderly growth since they form part of the estates under the local authorities. In these areas, the dimension of any piece of land can be obtained but with some difficulty. The most important advantage of a general plan is that it provides a grant of a registrable interest and that such a grant need not be accompanied with a diagram; a general plan will suffice. In other words, the Act [57], in respect of a statutory housing area, requires only the particulars identifying the house, building or plot in question by reference to its appropriate number on the plan.[58] This procedure is not applicable to improvement areas. With reference to these areas, the law allows the issuing of an occupancy licence for a term of thirty years, which interest is registerable without any reference to a general plan.[59] The only purpose for which the general plan is drawn up for those areas is for administrative management of registered occupancy licences, not for the purpose of registration of land held under customary dominion, where demarcation may be practically impossible and an accurate survey diagram a main hinderance to

registration. With the distinction between stateland, trustland and reserves now abolished, the decentralisation scheme of the registry can be put in place using the existing system of registration at the councils; registration of customary tenure may prove workable. The council registries within a particular province will be responsible for all the land in that province. This would entail the repeal of the Housing (Statutory and Improvement Areas) Act [60] and incorporation of the council registries under the Lands and Deeds Registry Act.[61] In order to achieve the best results, various provisions from both should be incorporated into one. In other words, codification of the legislation is the best answer.

There are a number of other useful comparisons that can be made relating to the registration of documents and title under both Acts.[62] There is a requirement under the Housing (Statutory and Improvement Areas) Act[63] to register, any document relating to any dealing with land.[64]

However, under the Lands and Deeds Registry Act [65] duration of the interest is of essence; in other words, a document for less than one year period need not be registered.

The consequence of want of registration under both the Acts is to render an unregistered document 'null and void'. This was held in the case of Sundi v. Ravalia.[66] There is, however, a proviso under the Housing (Statutory and Improvement Areas) Act which, distinguishes it from a similar provision under the Lands and Deeds Registry Act.[67] The proviso states: "provided that nothing herein contained shall apply to the case of any person who has notice of any such document."[68]

Any person who has notice of an unregistered document cannot state that the document is null and void.

Further, under the Lands and Deeds Registry Act [69] there is provision for extension of time within which to register a document but no such provision exists under the Housing (Statutory and Improvement Areas) Act. This may cause hardship where failure to register was inadvertent.

As for priority of documents under the said Act, priority is to be determined by the time of registration and not execution of the document. The provision in the Act does not provide a clear answer. The relevant provision merely states: "...any document

required or permitted to be registered under this Act ..... shall be registered in the order of time in which it is presented for that purpose." [70]

With regard to the caveat facilities, provisions in both Acts are similar. The grounds and procedure for lodging a caveat are the same and so is the remedy for compensation where a caveat is lodged "without reasonable cause".

In light of the above discussion, a unified system of registration taking the best provisions from both Acts to combine into a suitable registration scheme applicable to all the land in Zambia supporting the decentralised process using the already existing systems and institutions, would provide the best solution. The only additional need would be the establishment of regional registries linked with the central registry in Lusaka.

The above changes would resolve two main problems encountered by the lands and deeds registry, that is, delays in applications from the district councils to the central registry and the delays and costs associated with channelling leases through one central registry in the country. Implementation of the new system will require personnel, training and retention of the skilled manpower once trained.

Another major change, which can be termed 'unification', would be the provision of only one form of title: a leasehold title for a standard number of years. For example, a leasehold tenure for 99 years without the distinction of presidential lease or a statutory lease under the Land (Conversion of Titles) Act [71] or a 14 year lease from the council, where the area is not surveyed and a sketch plan is enclosed.[72] Further, even the granting of an occupancy licence could be for a duration of 99 years to avoid the elaborate procedure of renewal after every 30 years. Such unification would simplify the conveyancing transactions to standard forms and encourage an individual to conduct the transfer of the property himself without having to go through an advocate, thus reducing costs.

C. THE LEGAL PRACTITIONER'S TASK OF REGISTERING LAND TRANSACTIONS.

As discussed in Chapter Three the final stage of the conveyancing transaction would be lodging of the following documents [73] at the lands and deeds registry: -

1. State Consent
2. DR 53
3. Tax Receipt
4. Certificate of Title
5. Assignment/Mortgages

together with the payment of various fees, such as the registration fee, calculated in accordance with the statutory instrument in force. On lodging these documents at the counter, the Advocate should ensure that the documents are stamped with a date stamp and insist that the time is noted.[74] This is because the rule of priority of documents applies. So, in the case of registration of documents, the important consequence to note is with regard to priority of documents. The Lands and Deeds Registry Act provides under section 7(1) and (2): [75]

> All documents required to be registered shall have priority according to date of registration, notice of a prior unregistered document required to be registered.....shall be disregarded in the absence of actual fraud. The date of registration shall be the date upon which the document shall first be lodged for registration in the registry..... [76]

It is important to note that in accordance with this provision if there are two competing claims, the first registered document has priority notwithstanding the presence of notice of the other document, which might be earlier in time of execution. Therefore, the doctrine of notice is expressly excluded. This can be compared with the decision in the case of Crayem v. Consolidated Trust Ltd, [77] where the owner of premises first leased his property to the respondent for a series of five year periods with an option to renew. Under deed, which was the subject of this case, the respondents sought to exercise their rights of renewal at the end of a

five year period. Before the option was exercised, the owner had leased the same property to someone else on better conditions. The deed under which the respondents sought renewal was not registered. On failing to obtain possession from the respondents who refused to quit on account of their option to renew, the appellants commenced proceedings to recover possession. The issue was solely whether registration conferred absolute priority as between competing claims notwithstanding notice of an earlier unregistered deed. The Gold Coast land Registry Ordinance stated under section 20,

> Every instrument executed on or after the 24th day of March 1883..... shall so far as regards any land affected thereby, take effect as against other instruments affecting the same land from the date of its registration.....[78]

Levey J. A. held that a later instrument can, by registration, obtain priority over an earlier one only if it was obtained without fraud and without notice of the earlier unregistered instrument. Finding that the appellants had notice of the respondents lease, the court took the view that they should have been put on enquiry by reason thereof and hence would have been able to discover that the respondent's had an option to renew.

The specific reference to notice in the Zambian provision renders notice not a material consideration affecting the priority of a registered document. Thus, priority

is only subject to actual fraud.

Once the documents are lodged the Advocate then has to wait for uplifting when the documents are ready for collection. Advocates have frequently complained of the delay in processing the papers by the registry. Two Advocates, Mr. Justin Chashi and Mr. A. Wood, working for different Law firms, [79] where 50% of the work involves conveyancing transactions, complained about the delay which in some cases went beyond three months. This, according to them, was a great embarrassment to the Advocate who had to explain to his client. This complaint has been made by members of the public as well.[80] Further complaints of malpractice involving officials and councillors in the district councils throughout the republic and also at the deeds registry have increased. The ministry of Lands has issued a memorandum explaining these problems:

> as regards malpractice, it is possible some officials under the present system would receive bribes for facilitating the allocation of land to those who want to jump the queue or those who may not have adequate financial means to develop the plots allocated within the stipulated period.....[81]

Improved conditions of service may provide the necessary incentive to minimise these practices.

Both Advocates supported the creation of a decentralised registry system and stated that it was long overdue. Computerisation of the deeds registry also received support from both lawyers, in that it would increase efficiency and reduce human error. With reference to a simplified conveyancing transaction, Mr. A. Wood [82] supported the idea but expressed fears at the reduction of financial gain for the law firms. Mr. J. Chashi supported the idea and explained that the task of the conveyancing lawyer would be made easier if all the traditional concepts are done away with. He [83] saw no problem as long as the new legislation provided that the transaction could be completed by the owner himself or by his Advocate. He further added that few Advocates ever explained the entire transaction to their clients, who would feel more confident if they are represented even if the procedure is simplified.

The chairman of the Conveyancing Committee supports the above views [84] but adds that if simplified conveyancing transactions are to work well the public should be well informed of their rights. In practice, cases of fraud will no doubt increase and, according to him, [85] even though the system may prove a success in England, a developed country, it may have its set backs in a developing country like Zambia where policies have to be well thought through before implementation.

CHAPTER FOUR

END NOTES

1. Proclamation No. 57 of 1910, paragraph 4.

2. Ibid, paragraph 10.

3. Lands and Deeds Registry Act, Cap 185, Laws of Zambia 1995, Sec. 3(1).

4. Ibid, at Sec. 3(1).

5. Procedure on Land Alienation provided for in Circular No.1 of 1985, Ministry of Lands and Natural Resources as amended by CAB (92) 29 of copy No. 16 on 27th March 1993. Memorandum by Minister of Lands: New Administrative procedures for the allocation of land in Urban and Rural Areas and now S.1. No. 17 of 1995.

6. Appendix " A".

7. Appendix " B".

8. Refer to Appendix "A".

9. S.R. Simpson, Land Law and Registration, (1976), Cambridge University Press, at 305.

10. Lands and Deeds Registry Act, supra note 3, section 2(h).

11. Ibid, sect. 2.

12. Ibid, sect. 9.

13. Refer to Appendix "B".

14. Refer to Appendix "A".

15. Refer to Appendix "C" and Land and Deeds Registry Act, supra note 3.

16. Refer to Appendix "D".

17. Lands and Deeds Registry Act, supra note 3.

18. Ibid.

19. Ibid, sec. 4.

20. Interview with the Chairman of the Conveyancing Committee of the Law Association of Zambia, Mr. Solly Patel, on 22nd March 1994 at 14.30pm, Lusaka, Zambia.

21. Refer to Appendix "E".

22. B.R. Davies, 'A New look for the Torrens System in New South Wales', Vol.34. The Australian Law Journal, (January 1961), p259.

23. Refer to Appendix "F".

24. Housing (Statutory and Improvement Areas) Act, Chapter 194 of the Laws of Zambia, 1995.

25. Ibid, sec. 11.

26. Ibid , sec. 19.

27. Refer to Appendix "G".

28. Refer to Appendix "G" and 5th Schedule (Regulation 32) of the Housing (Statutory & Improvement Areas) Act, Cap 194 , Sec.7.

29. Ibid.

30. Ibid, sec. 39.

31. Refer to Appendix "H".

32. Housing (Statutory & Improvements Areas) Act, supra note 24.

33. Interview held with the Council Advocate, Mr. M.M. Chaiwila at the Council Registry on 31st March 1994, Lusaka, Zambia.

34. Lands and Deeds Registry Act, supra note 3.

35. Housing (Statutory & Improvement Area) Act, supra note 24.

36. Ibid.

37. Lands and Deeds Registry Act, supra note 3.

38. Ibid.

39. Land (Conversion of Titles) Act, Cap 289, Laws of Zambia (repealed).

40. Ibid, sec.12 and sec. 13.

41. Zambia (State Lands and Reserves) Order-in-Council 1928-1964 (Repealed).

42. Zambia (Trustland) Order-in-Council 1947 to 1964 (Repealed).

43. Zambia (State Lands and Reserves) Order-in-Council 1928 - 1964 (Repealed).

44. Zambia (Trustland) Order-in-Council 1947-1964 (Repealed).

45. Lands and Deeds Registry Act, supra note 3.

46. Ibid, sec. 8.

47. Paper presented by A.M. Khan, Chief Registrar of Lands and Deeds on "Land Registration" at the National Conference on Land Policy and Legal Reforms held on the 19th-20th July, 1993, Lusaka, Zambia, p10.

48. Refer to Appendix "F".

49. Lands and Deeds Registry Act, supra note 3.

50. Housing (Statutory and Improvement Areas) Act, supra note 24.

51. Circular No.1 of 1985, supra note 5.

52. Paper presented by A.M. Khan, supra note 47.

53. Lands and Deeds Registry Act, supra note 3.

54. Housing (Statutory and Improvement Areas) Act, supra note 24.

55. Ibid.

56. Ibid, sec. 54(2) and sec. 37(2).

57. Ibid.

58. Ibid, sec. 13(2).

59. Ibid, sec. 39(4).

60. Ibid.

61. Lands and Deeds Registry Act, supra note 3.

62. Ibid.

63. Housing (Statutory and Improvement Areas) Act, supra note 24.

64. Ibid, sec. 39(4).

65. Lands and Deeds Registry Act, supra note 3.

66. Sundi v. Ravalia, (1963) 5 NRLR, 345.

67. Lands and Deeds Registry Act, supra note 3.

68. Housing (Statutory and Improvement Areas) Act, supra note 24 sec. 16.

69. Lands and Deeds Registry Act, supra note 3.

70. Housing (Statutory and Improvement Area) Act, supra note 24 sec. 14(1).

71. Land (Conversion of Titles) Act, supra note 39.

72. Refer to Appendix "H".

73. Refer to Appendix "I".

74. The views expressed by the Chairman of the Conveyancing Committee of the Law's Association of Zambia, Mr Solly Patel, Lusaka, Zambia.

75. Lands and Deeds Registry Act, supra note 3, section 7(1)&(2).

76. Ibid, sec. 7(2).

77. Crayem v. Consolidated Trust Limited, (1949) 12 WACA, 443.

78. The Gold Coast Land Registry Ordinance, Cap 112, Laws of the Gold Coast, S20.

79. Interviews with Mr. A. Wood of D.H. Kemp & Company and Mr. Justin Chashi of Muponda Chashi & Partners, on 7/4/94, Lusaka, Zambia.

80. Document No. Cab(92) 29 copy No 16 27th March 1992 on Land; New Administrative procedures for the allocation of land in Urban Areas, memorandum of the Ministry of Lands.

81. Ibid, at 6.

82. Interviews with Mr. A. Wood of D. H. Kemp & Company supra note 79.

83. Ibid.

84. Interview with the Chairman of the Conveyancing Committee of the Law Association of Zambia, Mr. Solly Patel, Lusaka, Zambia.

85. Ibid.

CHAPTER FIVE

CUSTOMARY TENURE

(A) INTRODUCTION

The concept of ownership under customary law differs from English Law. The basic land laws were, until the arrival of British rule, the differing customary laws of the various indigenous communities. In the Nigerian case of Nwangwu v. Nzekwu,[1] the question before the court was whether an agreement by persons subject to customary law to convey a fee simple was a nullity because a fee simple was unknown to customary law and they could not convey what they did not possess. It was held that it is a fact that 'fee simple' does not exist under Native Customary Law, but the claimants to the land in question were Africans and they intended the lease to be granted by the party which is clearly referred to in the recitals to the agreement. Therefore, when applying English concepts of land law to customary tenure great caution should be exercised to determine the exact effect of its application.

Further, the Privy Council in the case of Oshodi v. Balogun,[2] where the issue was that in 1913 one of the headmen, a recipient of an allocation and grant, purported (without reference to the Oshodi family), 'to convey and transfer as absolute or fee

simple interest', in relation to the part of the compound so allotted to him. The Privy Council considered the phrase, 'the paramount chief is the owner of land;' it explained that he was not the owner in the sense in which owner is understood. He has no fee simple, but only a usufructuary title. Therefore, the headmen could only pass on the same title of native customary tenure to the compound heads. This supports the view that, under native customary tenure an individual cannot alienate the land he occupies; consequently, the rights of his descendants are safeguarded and cannot be realised by him.

The definition of ownership under English Law can be compared with the concept of ownership under customary law in various region of Africa. Under customary tenure individuals clearly have the right to use and take the fruits of land they are working on, including the disposal of land freely but do not own it as under English Law. As Gluckman rightly pointed out with reference to customary rights, "most importantly, these rights of the individual cannot be extinguished against his wishes, hence we can speak of these rights as perpetual."[3]

Some portion of land remains in the control of the community and members can use it to pasture, to hunt, and to collect wild products. The superior rights to allocate land, and control its use, to restrict its disposal are usually vested in the chief or the ruler, while the right to use the land remains with the individual. Therefore, under

customary law the term 'estate' could be used to mean 'interest.'[4] A plot of grazing ground may be held by an individual, a family or a group of persons who have agreed to herd their cattle together. The community in this case may have the possessory title to the common enjoyment of the land permitted under the customs of that individual. In every instance, the possessor of land is entitled merely to its use and not to absolute ownership. Land passes by way of gift, inheritance or gratuitous loan. It is not considered as a commodity, which can be sold or hired out, and the amount which one person can hold is limited. The descendants of the original occupying families are considered to have a special degree of 'ownership'. The Kikuyu of Kenya bought out the original occupiers, the *Dorobo,* because of the great respect for the right of first use in order to propitiate the ancestors who are believed to be immanent in the locality.[5] Another feature common to most types of customary tenure, is the absence of a time limit within which claims over land can be asserted or enforced. It should be emphasised that voluntary abandonment of the use of any land extinguishes all prescriptive claims.[6]

Generally, under customary law land is held on a kinship and group basis. Individuals have definite rights but these are qualified with the customs of that particular region. Title, therefore, has a community character and it is not absolute.

Land is passed on under conditions, which do not conflict with the right of the kin or local group. The chief is the custodian of land, but not its owner.[7] Land, once granted to a family, remains the property of that family and the chief has no right to any say in its disposal.

In Africa the term 'ownership' is qualified and the ascription of ownership of land to a chief is only accurate if the term is used in that sense. The precise meaning of ownership is different in every culture, varying according to custom, tradition, and the relative social status of those who enjoy its privileges.[8]

(B) CUSTOMARY TENURE OF THE VARIOUS TRIBES

Under customary law, the terms 'land' and 'ownership' can only be discussed intelligibly with reference to the various tribes each of whom may follow a different set of customs. A good comparison can be made between the Lozi, the Tonga, the Bemba and the Ngoni.

LOZIS

" Lozi means not only a member of the dominant tribe, but any man who is subject to the King."[9] The Lozi identify their kingship with their land and that each King, at his installation, is brought into contact with the supernatural powers of the land, and after death enters into these. All the land and its produce belongs to the village through the King, which is the reason why tribute and service is given to the King in form of gifts.[10] The King is the owner (*munga, kololo: minyo, lozi*) of the land and its cattle, wild game, fish, birds and trees, in the sense that ultimately he has a right in every piece of land in the Lozi Kingdom. On the other hand, even though he is the owner he is obliged to give everyone of his subjects land to live on, and land to cultivate. "The King's rights are to claim the allegiance of everyone living on his land, to demand tribute from their produce, to control the building of villages and to pass laws about the holding and use of land." [11]

The King, thus, holds the land as trustee for his people. Besides, the King's ritual guardianship of land, his secular ownership is always manifest to the Lozi in his own villages and sites. A sign of ownership is the digging of canals by each King.

Once the King has given land to a Lozi subject, the latter has in it rights which are protected against everyone else and the King himself. In this way, the Lozis have

what can be termed security of tenure within a well established and defined system of customary law. However, it is noted with interest that even though the King may give a piece of land to an individual, in practice all land is held by villagers in the name of their village headman.[12] If a man leaves a village he loses his rights in all the land which he worked on as a member of that village. So the land within each village is distributed by the headman among his people. The holder or the person in possession, on the other hand, cannot give his rights to anyone and if he leaves the homestead the land reverts to the headman.

The Lozis have always been in favour of fathers rights but in practice a man can claim the right to settle in the village of any of his ancestors. When it comes to partitioning of land inside the village, the headman distributes land to the head of each household, who in turn distributes to his subordinates in the household. In return for the land, each holder accepts obligations to obey and respect the headman and help him in his work. This hierarchy has many elements in common with the feudal tenure under common law.[13] Therefore, what has been described above is in fact a land tenure system with a series of estates embracing similar patterns of rights and obligations.

Intermarriages amongst different tribes are common and almost everyone is related

in some way to each other. However, in landholding a villager here has rights because he is attached in a political sense to the headman and because he is kin to the headman. The above explanation can be summed up with regard to the concept of ownership under customary as follows:

> In approaching the problem of what is better called tribal tenure..... We must bear in mind that what a person owns is a right in or over a thing or piece of land, rather than the thing or land itself.....In describing a system of African land tenure it is therefore necessary to describe the right which each social group, or each social personality has in land.....[14]

TONGAS

The Tongas, on the other hand, are matrilineal people based in southern province of Zambia. Unlike the Lozi who have a political system, the Tongas have a stateless society with no political system which could weld them together into a common body.[15] Tongas are generally farmers and herdsmen.

Each village consists of a varying number of people who owe allegiance to a headman recognised by themselves and accepted as a leader. Occasionally, even strangers who can claim no ties of kinship whatsoever can settle in the village. This is in accordance with the Tonga rule that a man has a right to settle where he wills

and change his residence as often as the spirit moves him. The only restriction on this movement lies in the power of the headman to reject a new comer. He does not exercise this power unless the man has a bad reputation.[16] Shifting from one cluster of huts to another is common every five or six years. There are numerous instances of villages being headed by a woman, who then becomes 'headman.' The position of the headman is further recognised by the fact that he is the owner of the cattle kraals of his village.

When a villager first moves into a new area, the previous inhabitants in the surrounding villages are questioned about the sites which are unclaimed. Once the site is decided upon, each man proceeds to build his own hut and seek for fields, which he obtains either by clearing unclaimed bushland, or by begging cleared land from those who had cleared such land. Thus, land may be transferred from the original users to someone living in another village for the right to cultivate the soil is not vested in the residents of a given village.[17]

The headman, in fact, cannot allocate land, for he possesses none save that which he has cleared himself. He can only show the new comer land, which has no previous claim upon it. What he can give is a few acres of his own fields. This system of land holding gave few problems since land rights were of a limited

character. In other words, the villagers had a right to clear unoccupied land and to cultivate it and to harvest their crops. The Headman had a further right to give or lend his cleared land to someone-else or to leave the land barren to recover fertility. The right of private ownership was extended to building his huts and other buildings on it as well. The rest of the rights, such as the digging of clay for pottery, the right to the water holes, were held communally and, therefore, open to all. This could be well illustrated by an example. A person held a legal right to the maize he grew on his field, which right he was able to enforce even against his fellow villagers. In effect, individual ownership was of a limited nature and all residual rights were common neighbourhood property and not village property.[18]

The man (head of a household) usually provided a field for each of his wives and left a field for himself. The woman stored her crop and used it to provide for her children and her husband; she was allowed to sell the surplus and keep the money herself.[19]

In comparison the two tribes have two different systems of allocation of land. The Lozi have transferred such powers from the King to his headman while the Tonga headman has no such powers of allocation and distribution of land. Individual ownership is more acceptable to the Tongas, as compared with the Lozis.

BEMBAS

The dominant institution among the Bembas is the Paramount Chief himself, who is at the apex, followed by territorial chiefs and sub-chiefs. The real wealth of the chief lay in the number of villages he ruled, which provided the labour for his gardens and the young men for his army. Gardens for the rest of the subjects were grouped together on kinship principles. The headman does not allocate fields for cultivation.[20] As a matter of fact land is not scarce enough to make rules of distribution necessary. Fishing and hunting became communal village activities and joint labour was performed. A Bemba man belongs to the village of his mother or maternal uncle. In conclusion Bemba's have little knowledge of individual ownership; everything for them is based on communal ownership. What is described as 'tribal' or 'communal ownership' is not that the land is usually owned or worked by a large group of people. In fact, there are individual rights, that is to say, a single individual or two or more close relatives have definite rights to a particular plot of land and to its produce. However, these rights are qualified by membership of a family, clan or local group of people. In fact the effective period of occupation is limited and there is restriction on succession and transfer. This clearly shows that individual rights may be no more than a pre-emptive possessory right.[21]

NGONIS

Ngonis consider themselves different from the rest of the tribes in that they have a centrally organised system of chieftainship. Members of the royal lineage occupy all important positions. The village set up comprises clusters of dwellings separated from each other by uninhabited stretches of garden-land and bush. From time to time some break away from the parent village and form new villages.

Five types of villages could be distinguished: the royal village for the King followed by the capital and chiefs village and between the two fell the regal village. The regal villages usually accommodated a group of wives for the chief or other members of the royal lineage. The other village is called a cadet village for the junior members of the royal lineage. All the cattle belonged in one sense to the Paramount Chief and he is the owner under customary tenure of the land. When a village has to move for whatever reasons the new village site is a matter for discussion between the chief and the village headman. The site is chosen and notification is sent to the chief for his approval. The first structure to be built on the new sites is a cattle byre. The bulk of the huts in the village do not belong to any particular cluster but merely to the village as a whole. Rights in land cannot be sold but only given away and no presents are given to the donor by the recipient of a garden or garden site. So rights are inherited by the relatives of the persons as a sign of continuity. All the

land belongs to the chief and he controls the allocation of that land.[22]

There are no definite pastures associated with one village and cattle are herded together from all the byres. Members of the household carry out harvesting of crops. The Ngonis are traditionally patrilineal people.[23]

SUMMARY

In summary, under Lozi customary tenure the king is the owner of the land and he holds it on trust for his people whilst it is the headman who distributes the land. In other words, allocation of land is delegated to the headman and from him to the head of the household. The Tongas provide a good contrast. The headman does not allocate land since he does not possess any. A man has a right to clear unoccupied land and cultivate it and this right could be transferred without the authority of the headman. Individual ownership is encouraged and the residual rights are common neighbourhood and not village property and therefore, individual rights are qualified by membership of a family, kindred, and village. Under Bemba customary tenure, the headman allocates land but everything is based on communal ownership. The Ngonis consider the Paramount chief as the owner of the land but allocation has to be discussed between the chief and the headman. Rights in land

could not be transferred or given away.

Abandoned land, both among the Ngoni and the Tonga usually reverted back to a pool of unclaimed land and not any land administering authority like the headman. In Haluba v. Headman Hingombe [24] the plaintiff, a Tonga, left his vacant land when living in town. On return he found the defendant, who was the headman, cultivating the land without his permission. The court held that the headman had no kind of ownership whatsoever in land that belonged to an individual village resident. The case can be compared with the decision in Mwiinda v. Gwaba, [25] where again a Tonga plaintiff had applied and was granted an injunction by the High Court. The injunction was to restrain the defendant, who was the Headman, from continuing ploughing his land. The defence was that the plaintiff had left the village and, therefore, his land reverted back to the headman. Supporting this evidence one of the assessors called by the court said: "..... when a man moves from a village the land he was ploughing or the land he was given to settle.... remains the property of the Headman. It is the Headman who is going to be approached to allocate land." [26]

(C) SUITABLE REGISTRATION SCHEME FOR INTERESTS HELD UNDER CUSTOMARY TENURE.

It would be wrong to believe that there was no system of registration with reference to rights existing under the customary domain. Traditional societies did follow a ritual, which could be considered a form of registration. This was clearly outlined by Sir Bernard O. Binns when he said that, "It is true that in many traditional societies what may be called the public memory, often assisted by a high degree of publicity, ceremony and even ritual is in itself a form of record which may take the place of a written record.[27]

In other words, the process of registration did not require the use of any written documents and most of the time it did not refer to any public authority. Thus, a 'Memory Register' arose due to the ceremony and publicity, which was part of the land transaction. The procedure was simple and the parties met on the land in question, together with their witnesses to perform certain rituals, which were expressive of their intentions to convey that land. In this manner, registration was placed in the memory of the general public who attended the ceremony, and in particular, in the memory of certain elders who are traditionally trained to remember all the details of transactions in land.

As society grew more complex and developed, the above oral system of registration symbolism proved unsuitable. This brought about the implementation of circular No. 1 of 1985 [28] and Statutory Instrument No. 17 of 1995, which allowed for converting customary rights to leasehold property. This has not proved very effective since much of the land has not yet been converted and remains under customary tenure.

To reconcile the customary law rights and interest held in land with any legislative provision would pose a number of difficulties. This was clearly highlighted in the ministerial statement in Parliament on 4th August, 1987 [29] on land alienation in reserves and trust land, which clarifies the role of chiefs with reference to leasehold property. The position is that under circular No. 1 of 1985 [30] and statutory Instrument No. 17 of 1995, it is the district council, which plays a major role when converting customary title to leasehold, rather than the chief. However, since the chief can make a grant or play a vital role in allocating land under customary law, consultation with him is inevitable. To avoid the infringement of customary rights, recognition should be made of the fact that in most tribes the chief is the custodian of land exercising superior rights of allocation and control of its uses. His knowledge of the facts about each member in the village in relation to land, including communal usage of land, can be used to foster a suitable system for land held under customary tenure.

To achieve such results, the system established should include records of land revenue, survey and classification of land. Such a system has been in force in India, where the record of rights maintained in each village is based on the right to occupancy and eventually provides a leasehold interest. Section 148 of the Bombay Land revenue (Amendment) Act [31] provides; "A record of rights shall be maintained in every village and such record shall include the following particulars: -

(a) names of all persons (other than tenants) who are holders, occupants....."[32]

The first preparation of a record of rights would involve the publication of a notice. The public notice would be published by beating of drums and of affixing copies in various prominent places such as churches and rural council offices. The notice would call upon all the village people to furnish orally or in writing, within a limited period of time, information regarding particulars of the land occupied by them, the nature of the interest, the tenure on which land is held and any other relevant information.

On the basis of this information, the local councils would be able to prepare a rough copy of the record of rights from information supplied by each individual with regard

to land held under customary tenure in each village. A card index system in simple form would prove suitable. Conflicting claims and disputed cases would be recorded separately. The district councils would then be responsible for checking these rough records and dealing with the disputed cases. The disputes would be discussed at this level, giving the individual a right to be heard. Once a decision is arrived at, the rough entries would be corrected and the corrections would be authenticated by the individuals who are the parties to the dispute. The rough records would then be verified, and a true record of rights duly approved would be ready for maintenance. The record of rights once prepared would be maintained by updating on regular intervals.

This system could prove workable for customary land tenure using the institutions already in existence. The chiefs and headmen should have power to allocate, but only in relation to 'lawful possession.' Ownership is still vested in the state.

The card index system may provide the answer with reference to the manner in which these records are written. The point to be emphasised is that the record of rights will present a written system for customary tenure thus reconciling both customary law and legislation, which should provide for the registration of the right to possession or an occupancy licence as against the existing conversion of title.

CHAPTER FIVE

ENDNOTES

1. Nwangwu v. Nzekwu (1957), 2 F. S. C. 36.
2. Oshodi v. Balogun (1936). 4 W.A.C.A. 1.
3. M. Gluckman, Ideas and Procedures in African Customary Law. (1969), Oxford, London, at 56.
4. Ibid.
5. C. K. Meek, Land Law and Customs in the Colonies, 2nd(ed), (1968), London.
6. E. Colson and M Gluckman : Seven Tribes of Central Africa (1959), Manchester, University Press, at 15.
7. Ibid.
8. Ibid.
9. Ibid, at 24.
10. Ibid, at 62.
11. Ibid.
12. Ibid, at 64.
13. Refer to Appendix "A" in Chapter 1.
14. M. Gluckman, `Studies in African land Tenure', African Studies, Vol 3, (1944) at 18-19.
15. E. Colson and M. Gluckman, supra note 6.
16. Ibid, at 112.

17. Ibid.

18. Confirmed by Mr Harry Shamwana in an interview held on 25th April 1994 at NIPA who is Ila by tribe, Lusaka, Zambia.

25. E. Colson and M. Gluckman, supra note 6 at 124.

20. Ibid.

21. *Ibid, at 168.*

22. Ibid, at 205.

23. Ibid.

24. Haluba v. Headman Hingombe, Local Court Grade B Case No. 19 of 1975 (unreported).

25. Mwiinda v. Gwaba, (1974), ZR 186.

26. Ibid, at 193.

27. Sir B O Binns, Cadastral Survey and Record of Rights in Land, FAO No 18 Rome, Italy March, 1958.

28. Circular No.1 of 1985 and Statutory No. 17 of 1995.

29. M. Roth, J. Bruce and S. Smith, Land Tenure, land markets and institutional transformation in Zambia, University of Wisconsin - Madison, at 18.

30. Circular No. 1 of 1995.

31. Bombay Land Revenue (Amendment) Act, 1913 Sec.148 (India).

32. Ibid.

CHAPTER SIX

CONCLUSION

(A) SUMMARY

The fact that land has remained the most important factor of human and economic development of any nation is now being universally acknowledged. Therefore.the availability of land and its uses are a vital part of human existence.[1] A sound national Land tenure policy supported by effective Land legislation regulating title and ownership of Land is the basis of economic growth of every country.

This dissertation has not only described the substantive Land legislation and its development through the various stages but has also discussed how government policy and procedure affect the implementation of these laws. The process of conveyancing has developed independently from that of land laws but both are linked together because they deal in Land. The relationship between them clearly emphasises the need to consider the policies and administrative changes in each one as the basis of future Land reform programmes.

This work has been divided into six chapters with the last chapter summarising the research and outlining the recommendations. Chapter one described the

development of Land laws in Zambia. It has shown how complex Land laws based on the English legal system of feudal origin were introduced and applied into the territory of Northern Rhodesia. Historically, the feudal system can be traced back to the Norman Conquest, followed by the process of 'sub-infeudation', that is to say, ownership being traced to the crown and the tenant holding Land for the services rendered.

Independent of the development of Land laws was the introduction of the procedures and practices to implement these laws. The Torrens system for registering title to Land originated in Australia and spread to the various countries including England. The system was far from being satisfactory due to its complex nature. In addition, the existing indigenous laws posed a further problem and this created two systems of Land laws, thus proving to be cumbersome and unsuitable in many countries.

Zambia is also faced with the problems of the dual Land tenure system, the traditional of customary law and the imported English Land laws. The process of implementation thus becomes distinct and the two systems operate side by side. The local Zambian Land legislation is also based on English Land laws but has evolved through different stages resulting in the new Lands Act.[2]

Chapter two focused on the practical concepts relating to the system of registration of title to Land. The benefits of the Torrens system when competently established and efficiently operated are outlined. The registration of interests in Land cannot be discussed without reference to the surveying technics. The precise measurements showing the accuracy of the description of the registered Land are practically not always possible, although they are of great importance. Customary Land tenure poses further difficulties because of the need to define accurately the boundaries of family, village or tribal holdings in relation to the communal rights enjoyed over them. The need to introduce a simple, less cumbersome and inexpensive system is emphasised.

(B) RECOMMENDATIONS

Land policy in any given country should depend on the country's social, cultural, economic and historical developments. The importation of complex foreign land laws as well as principles may not be suitable for the society where they are made applicable. Law reform and consolidation of legislative provisions should be the starting point for the basis of forming a new land policy. In Zambia the current government is calling for the institutionalization of a modern, coherent, simplified and relevant land code and land administration system.[5] The need to simplify and codify them has always been emphasised.

In each country the Commissioner of Lands Office, together with policy makers, should identify all statutes related to land and review them for the purpose of amending and revising them. The amended law should take into consideration modern issues, such a computerized land recording and titling systems.

On the subject of land policy and legal reform, it is important to adopt short term and long term approaches. The current and urgent problems should be tackled immediately on short term basis, while all complex and pertinent issues should be addressed on long term basis. Once the recommendations and resolutions are accepted and the legislative provisions so revised, there is need to monitor and supervise their implementation. A permanent body, such as the land tribunal, should be vested with the powers to monitor and supervise the recurrent issues relating to land legislation and policy on a periodic basis.

Legislative reforms alone will not provide the answer to all the problems, the dual nature of the entire system which is based on historical and colonial concepts has to be revised. In other words, the reclassification of land to serve contemporary needs and requirements of the country should be taken into consideration.

Unifying the land classification into one category applicable to the entire country will

form the basis of such reform. The nature of interest in the reclassified land tenure system should reflect customary as well as state interest. The position in Uganda can be compared with that of Zambia. While it is recommended by the Acting Commissioner of Land Registration in his report [6] that freehold interest should be the principal and uniform land tenure system throughout Uganda, this may not prove suitable for Zambia. The support for the re-introduction of freehold tenure in Zambia is limited.[7] Fear that the freehold system could create dispossession of the poor, excessive concentration of land holdings and uncontrolled underutilization form the basis of counter arguments.

The concept of duality is also evident in the two classes of land, namely state land and customary land, each being subject to their own rules and regulations regarding interest held in land. A ninety-nine (99) year lease with the provision of automatic renewal for both state land and customary tenure will no doubt pose practical problems, mainly due to the fact that customary tenure has not yet been recorded in any form.

Some form of initial recording is therefore essential. As in India, [8] the establishment of a record of rights for land held under customary tenure can be a starting point. Instead of establishing a new institution, it is recommended that the possibility of using the

already existing institutions, such as the rural councils who can play an important role in providing the recording of these rights should be considered. Therefore, at both district and provincial levels, the role of the chiefs and their participation in formulating, as well as maintaining these records, should be enhanced. The system itself should remain simple so that the chiefs could contribute effectively at the policy formulation stage, as well as in allocation of land in the customary sector. The provision of conversion from customary tenure to leasehold tenure of 99 years would be the next issue to address. Currently, the method of conversion is available but it is provided for under a ministerial circular and the procedure itself is tedious and cumbersome. Once a record of rights is established, the conversion of 'itle in a simple form should be provided for under the new legislation. The Lands Act [9] has only recognised customary tenure under section 4, but it has not made any other provisions regulating the interest so held.

Once policy issues have been tackled, the practical systems of implementing these policies have to be revised to meet the new challenges. The entire system of conveyancing needs simplification and this need has been identified even in developed countries where it commenced. Conveyancing practices have evolved due to usage. This problem can be addressed by enacting legislation regulating the contractual relationship. A Lands Contract Act clearly outlining all the standard

conditions and the main special conditions may simplify the transaction as far as the contract is concerned. Drafting of the deeds also needs simplification, both in form and content. The process of registration of these documents requires streamlining in that the Torrens system of registration of titles, instead of deeds, should be adopted. It has many advantages and benefits, but it should be noted that the system is dependent on an accurate cadastral survey. It has been recognised that aerial surveying is cost effective, especially in cases of rural areas. It is also recommended that the use of general boundaries should be implemented for these areas.

As a long term measure the government should support and encourage private surveyors to do the work while the government surveyors should control and supervise the whole process of cadastral survey for accuracy. For the rural areas in respect of the records of rights a very high accuracy rate should not be considered of great importance since it may prove impracticable due to the nature of village demarcations.

The registration process should also be decentralized; this would help to increase the supply of titles to people living in the different provinces of Zambia. This, in turn, will help reduce the costs and delays associated with the registration system at present in Zambia. Factors such as staffing, equipment and buildings need to be addressed, since they are not sufficient to provide for the entire country. The manner in which the

records are kept links up with the security of land records. In Zambia land records are physically exposed to risks of weather, fire, theft and uttering. Buildings should be renovated, refurbished and redesigned to avoid the above stated problem. Microfilming can be another alternate to save deterioration of paper and minimise or eliminate the above risks. To be effective, the system no doubt requires computerization but with adequate back-up records in physical form for security and verification purposes.

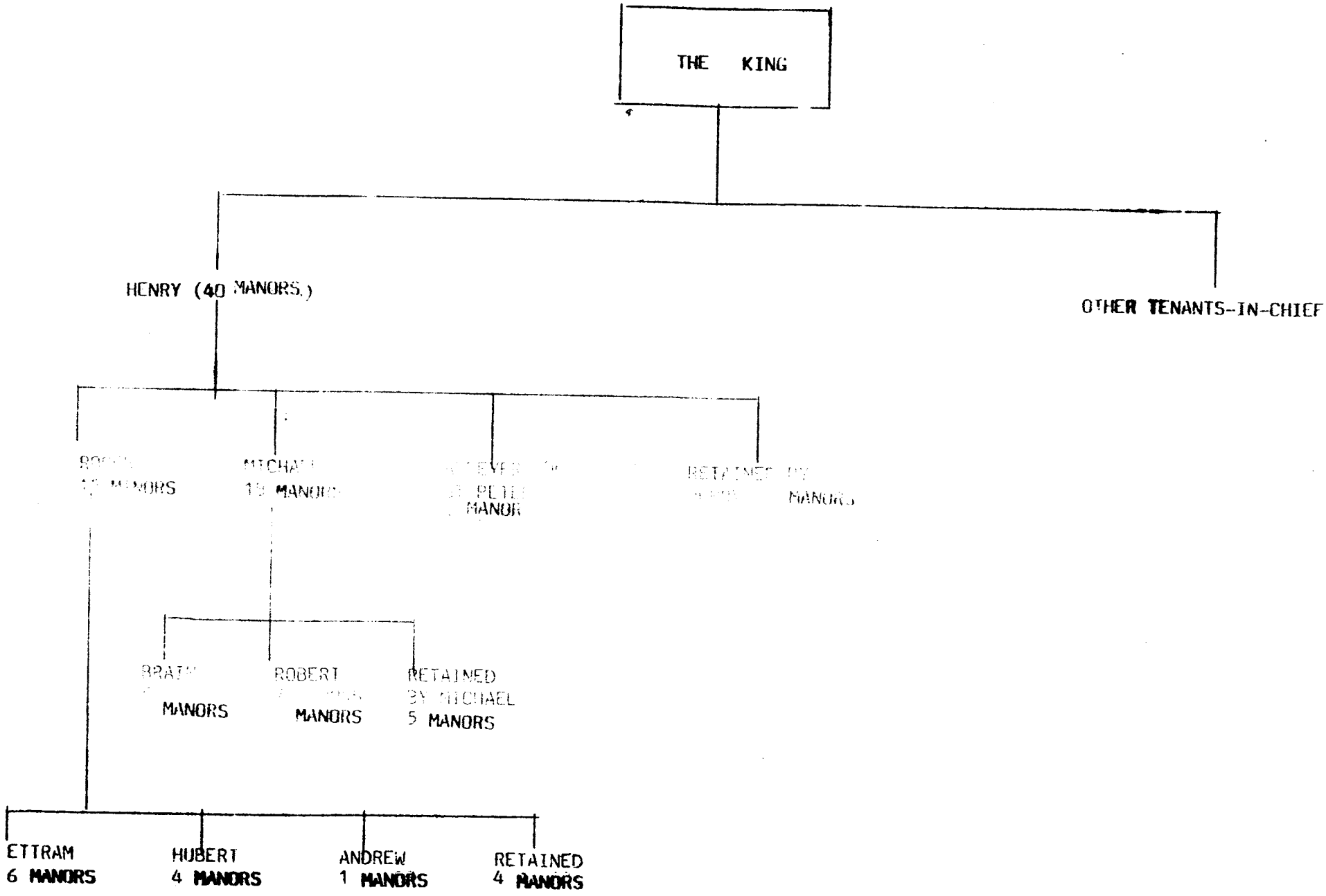
For customary tenure, the simplest form of card index system would prove suitable, computerization being a long way off.

CHAPTER SIX

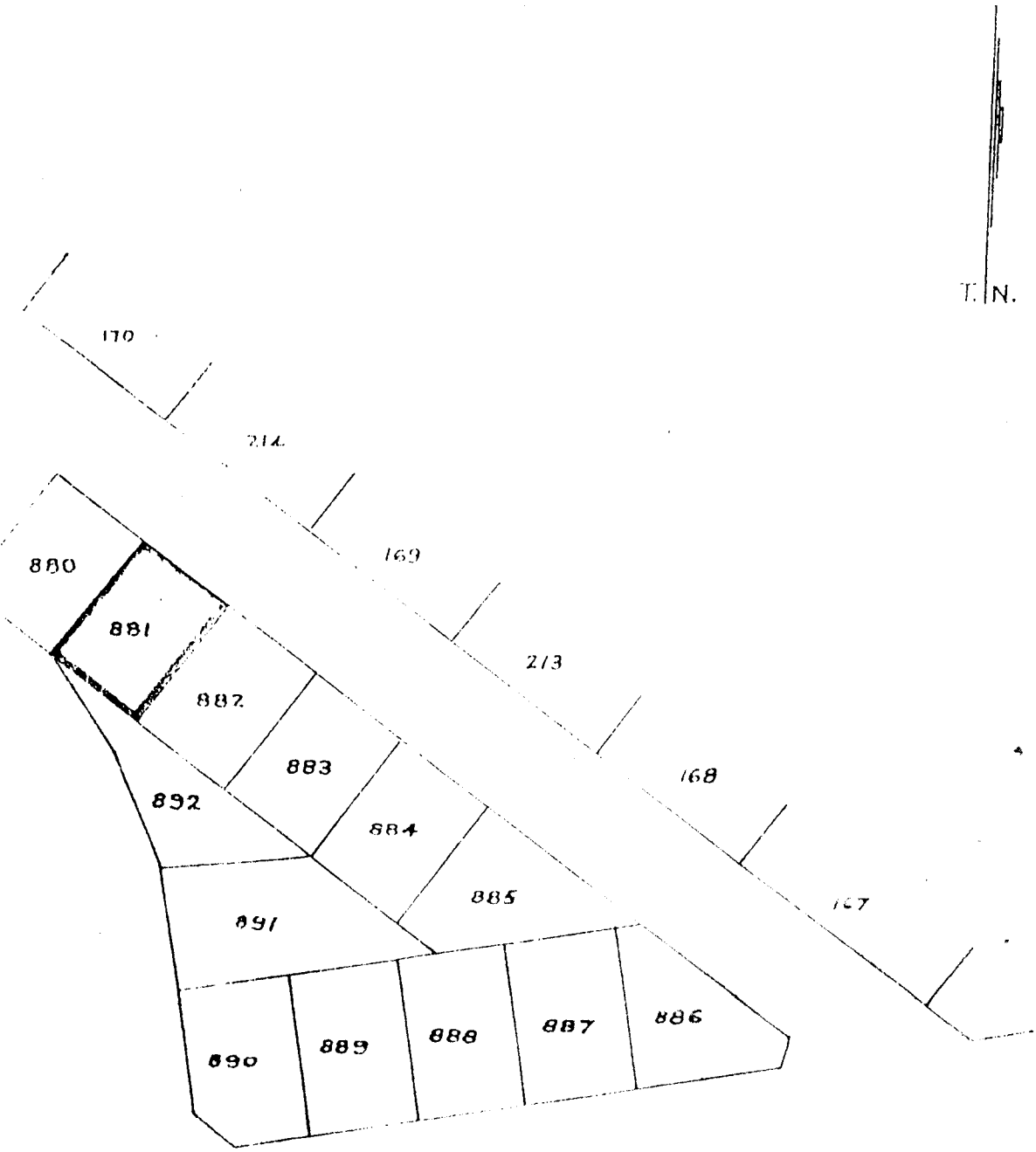
END NOTES

1. S. R. Simpson, Land Law and Registration, Surveyor's Publications, London, 1984.
2. Sir William Holdsworth, A History of English Law, Vol.11, Sweet & Maxwell, London, 1966.
3. Ibid, at 221.
4. Ibid, at 225.
5. M. Roth, J. Bruce & Smith, Land Tenure, Land Markets, and Institutional Transformation in Zambia, Land Tenure Centre, University of Wisconsin, Madison USA.
6. J. N. Tibisaasa, Rehabilitation and Development of the Land Registration System in Uganda, Rebublic of Uganda, 1993, at 5.
7. M. Roth, J. Bruce & Smith, Land Tenure, Land Markets and Institutional Transformation in Zambia, supra note 1.
8. R. V. Bhuskute, Record of Rights and Investigation of Title, (1991), Pune, India.
9. Lands Act, Cap 185, Laws of Zambia, 1995.

APPENDIXES


THE KING
HENRY (40 MANORS)
OTHER TENANTS-IN-CHIEF
MICHAEL
MANORS
RETAINED
MANORS
ROBERT
MANORS
RETAINED
BY MICHAEL
5 MANORS
ETTRAM
6 MANORS
HUBERT
4 MANORS
ANDREW
1 MANORS
RETAINED
4 MANORS

APPENDIX 'A'



Sketch Plan showing Land affected

STAND 881 CHIPATA

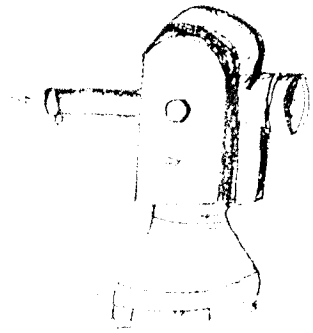
Area 446 Sq Metres

Scale 1:1000

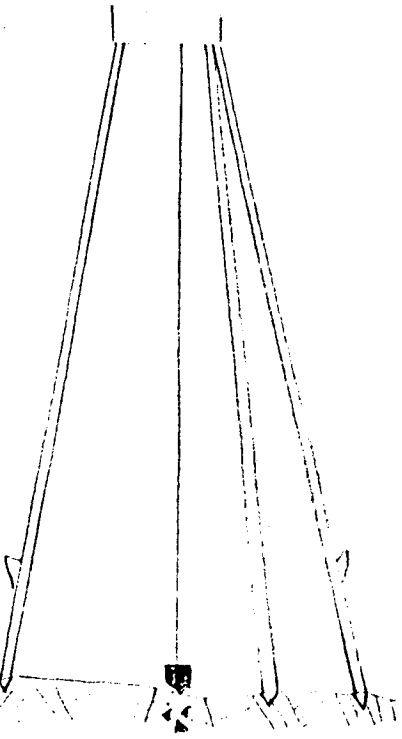
Approved for a period not exceeding 14 days

12.11.1971.

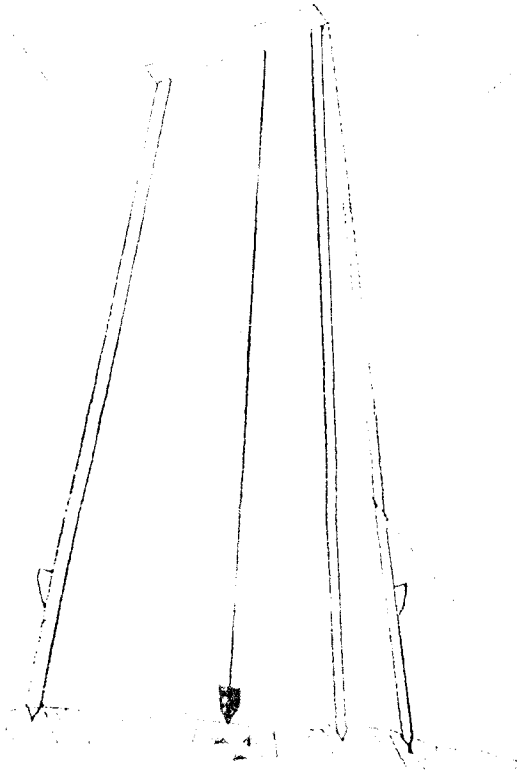
THEODOLITE



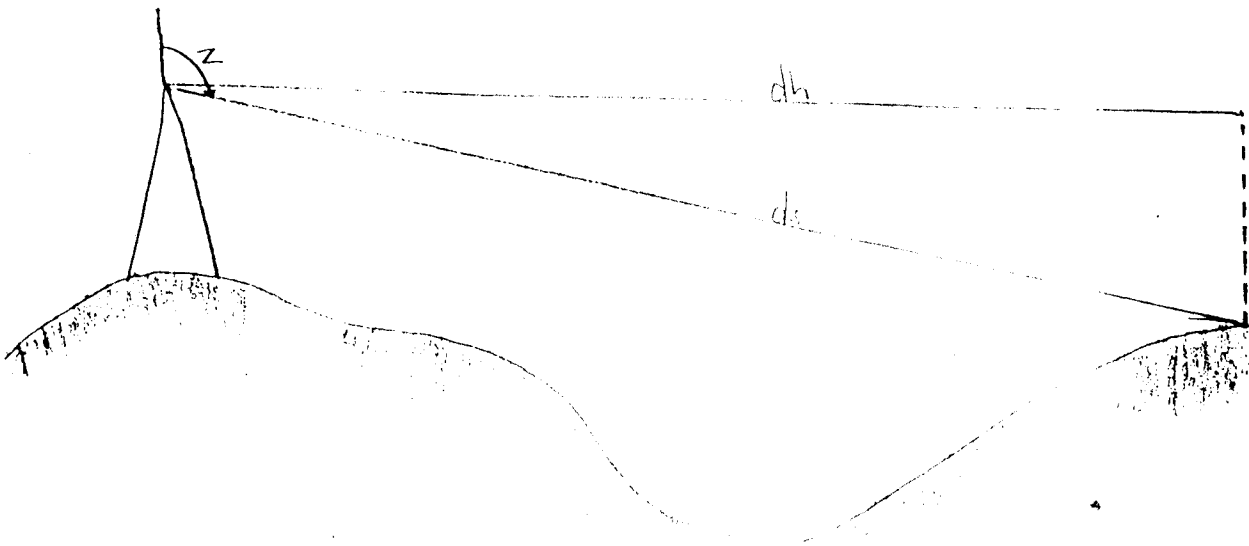
THE TRIFOL



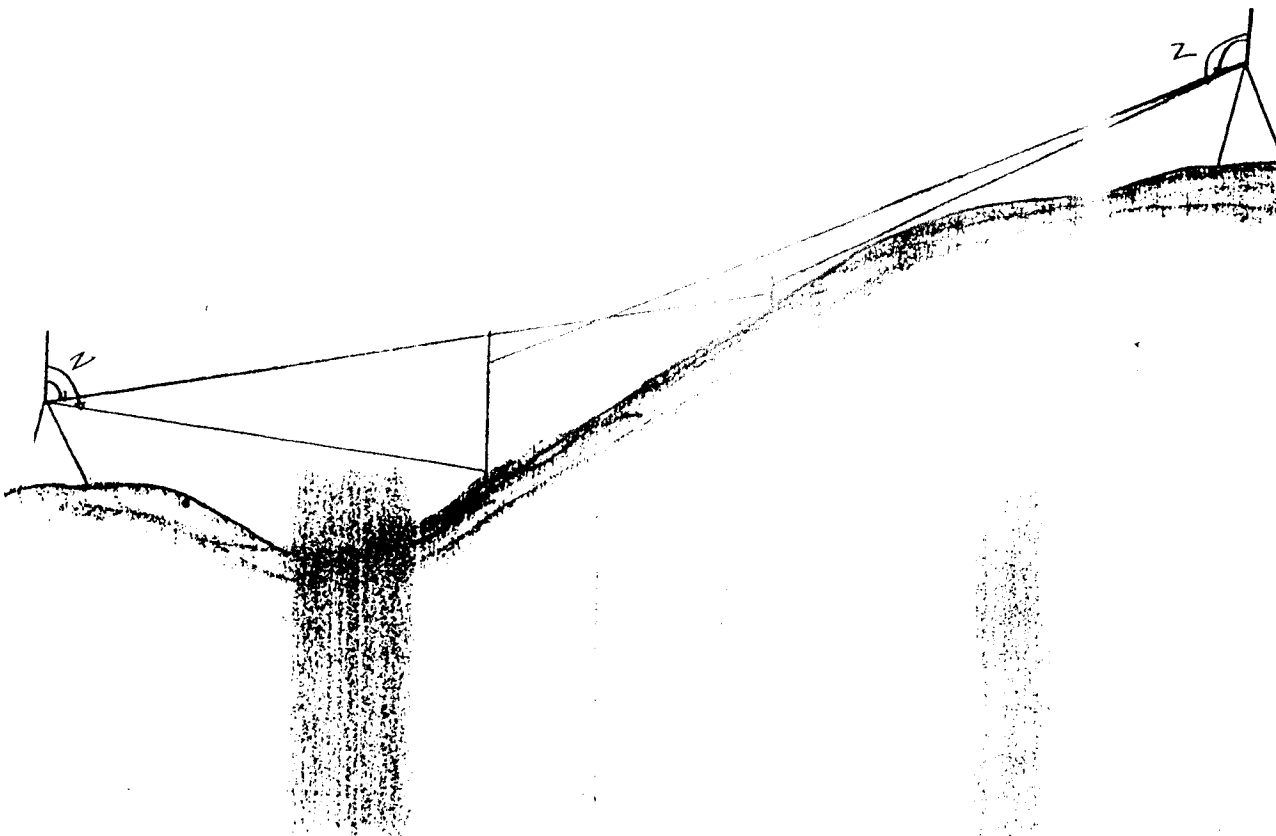
CORRECT POSITION



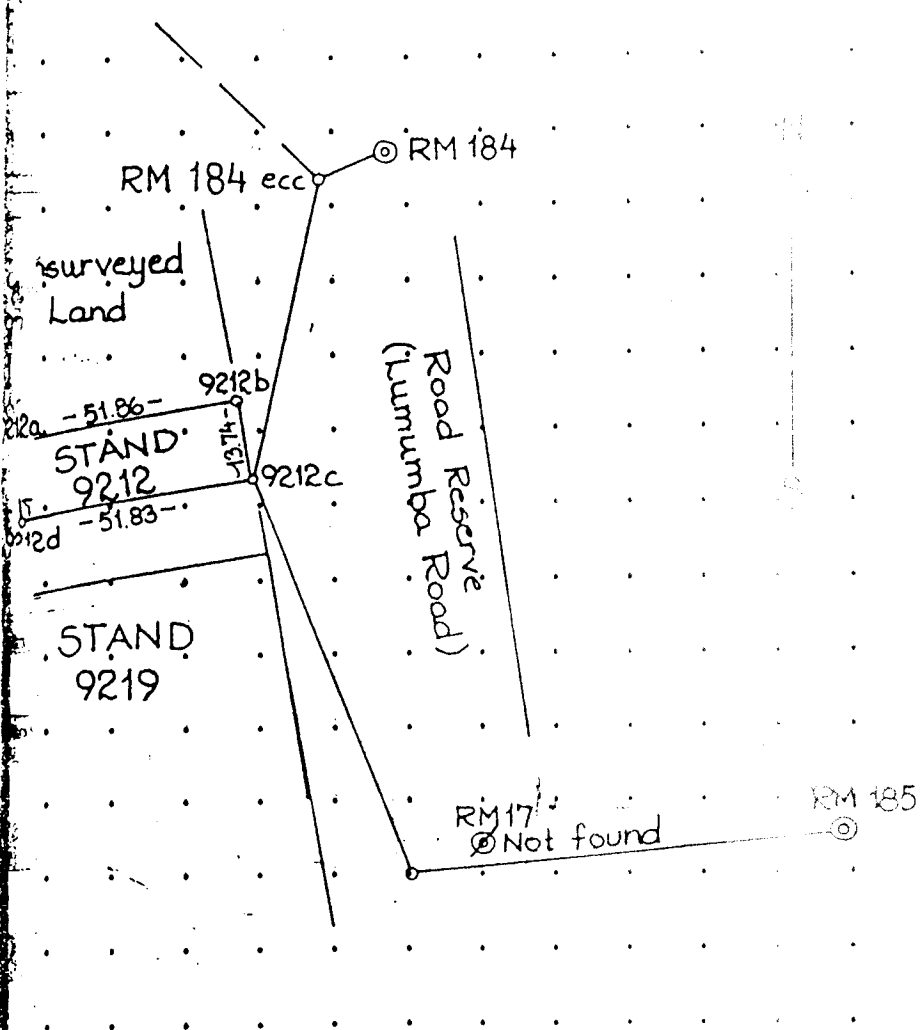
MEASUREMENT



DISTANCE LONGER THAN TAPE



SURVEY DEPARTMENT	FIELD BOOK POLAR - SKETCH		Date 30/11 86	Page 1
Survey of ND 9212 Lusaka	Instrument AGA 6345	Theodolite WILD T2 136915	Observer K.T	Booker S.M



SURVEY DEPARTMENT

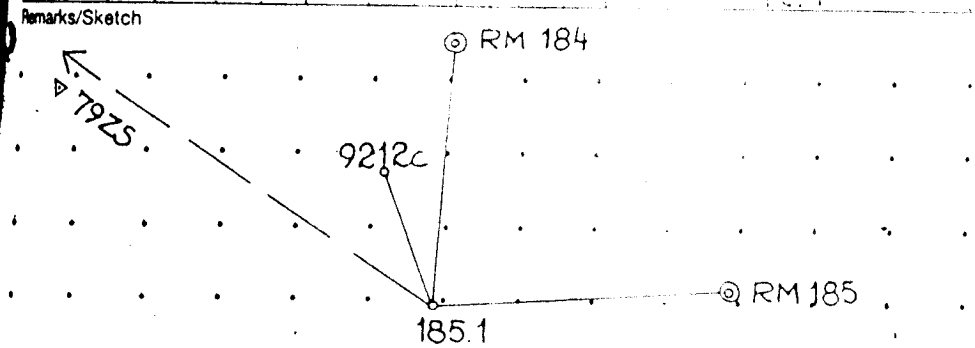
FIELD BOOK
Horizontal Angles

Date: 30/11 86 | Page: 2

Survey of: STAND 9212 Lusaka | Theodolite: WILD T2 136915 | Observer: K T | Booker: S.M

Horizontal reading CL ° ′ ″	Horizontal reading CR ° ′ ″	Mean of CL + CR or Reduced CL ° ′ ″	Reduced mean or Reduced CR ° ′ ″	Station	Desc	Object	Station mean or Mean of reduced CL + CR ° ′
				185.1	Ipo		
0 09 53	180 09 53	0 09 52	0 00 00	[illegible]	[illegible]		0 00 0[illegible]
8 04 24	188 04 24	8 04 24	7 54 3[illegible]	9212c	Ipc		7 54 3[illegible]
27 07 24	207 07 22	27 07 23	26 57 29	RM 184	Ipc		26 57 2[illegible]
112 40 14	292 40 08	112 40 11	112 30 17	RM 185	Ipc		112 30 1[illegible]
0 10 00	180 09 52	0 09 56	0 00 00	R[illegible]			0 00 0[illegible]
		4					22 17
11 55	11 39	11 46	22 16				
	11 47		49 3[illegible]				
			11 4[illegible]				
		8					
90 03 50	270 03 48	90 03 49	0 00 00				
97 58 23	277 58 18	97 58 20	7 54 32				
117 01 14	297 01 15	117 01 14	26 57 2[illegible]				
202 34 13	22 34 05	202 34 09	112 30 21				
90 03 51	270 03 44	90 03 48	0 00 00				
41 31	41 10	41 19	22 19				
	41 20		19 0[illegible]				
			41 19				

Remarks/Sketch



SURVEY DEPARTMENT

FIELD BOOK
EDM

Date	Page
30/11/86	3

Survey of	Instrument	Theodolite	Observer	Booker
STAND 9212	AGA 120 6345	WILD T2 136915	K.T	S.M

Station	Desc	Object	Desc	Horizontal distance	Projected distance	Computed by
185.1	Ipo	RM 185	Ipc	150.141 m	150.130 m	K.T

Slope distance Metres			Vertical reading	° ′ ″	° ′ ″	° ′ ″	° ′ ″
1	150	141	CL				
2	150	141	CR	90 00 00			
3	150	142	Sum				
Mean	150	141	Mean				

Pressure		Temp C°
1=inch	X	
2=mm		25.7 + 28
3=mbar		

Final mean

Sketch

Theod height = m

Target height = m

Edm height = m

Refl height = m

Height diff = m

Atm corr applied: Yes [ ] No [X]

Type of prism

Remarks

Station	Desc	Object	Desc	Horizontal distance	Projected distance	Computed by
185.1	Ipo	RM 184	Ipc	303.815 m	303.792 m	K.T

Slope distance Metres			Vertical reading	° ′ ″	° ′ ″	° ′ ″	° ′ ″
1	303	815	CL				
2	303	816	CR	90 00 00			
3	303	815	Sum				
Mean	303	815	Mean				

Pressure		Temp C°
1=inch	X	
2=mm		25.7 + 28
3=mbar		

Final mean

Sketch

Theod height = m

Target height = m

Edm height = m

Refl height = m

Height diff = m

Atm corr applied: Yes [ ] No [X]

Type of prism

Remarks

SURVEY DEPARTMENT

FIELD BOOK
Horizontal Angles

Date: 30/11/8
Page: 4

Survey of: STAND 9212 Lusaka
Theodolite: WILD T2 136915
Observer: K.T
Booker: S.M

Horizontal reading CL ° ' "	CR ° ' "	Mean of CL + CR or Reduced CL ° ' "	Reduced mean or Reduced CR ° ' "	Station 9212c	Desc Ipc	Station mean or reduced CL ° ' "
				Object		
0:00:04	179:59:59	0:00:02	0:00:00	185.1	Ipo	0:00:00
211:31:43	31:31:40	211:31:42	211:31:40	RM184ea	Ipo	211:31:40
0:00:03	179:59:59	0:00:01	0:00:00	R.O		0:00:00
		2				
31:50	31:38	31:46	[illegible]			
	31:46		[illegible]			
			[illegible]			
		18				
90:55:16	270:55:18	90:55:17				
302:26:57	122:26:58	302:26:58	[illegible]			
90:55:19	270:55:19	90:55:19	[illegible]			
		18				
17:32	17:35	17:34	[illegible]			
	17:34		45:54			
			17:34			
				Checked by	K.T	

Remarks/Sketch

SURVEY DEPARTMENT · FIELD BOOK EDM

Date	Page
30/11 86	5

Survey of	Instrument	Theodolite	Observer	Booke
STAND 9212	AGA 120 6345	WILD T2 136915	K.T	S.N

Station	Desc	Object	Desc	Horizontal distance	Projected distance	Comp by
185.1	Ipo	9212c	Ipc	126.062	126.052 m	K

Slope distance Metres			Vertical reading		
1	126	062	CL		
2	126	066	CR	90 00 00	
3	126	059	Sum		
Mean	126	062	Mean		
			Final mean		

Pressure		Temp C°
1=inch	X	
2=mm		
3=mbar	25.7	+28

Atm corr applied: [ ] Yes [X] No

Type of prism

Theod height =
Target height =
Edm height =
Refl height =
Height diff =

Remarks

Station	Desc	Object	Desc	Horizontal distance	Projected distance	Comp by
RM184ecc	Ipc	9212c	Ipc	178.855 m	178.841 m	K

Slope distance Metres			Vertical reading		
1	178	852	CL		
2	178	857	CR	90 00 00	
3	178	855	Sum		
Mean	178	855	Mean		
			Final mean		

Pressure		Temp C°
1=inch	X	
2=mm		
3=mbar	25.7	+28

Atm corr applied: [ ] Yes [X] No

Type of prism

Theod height =
Target height =
Edm height =
Refl height =
Height diff =

Remarks

SURVEY DEPARTMENT

FIELD B
Horizont ues

Date 30/11 86 | Page 6

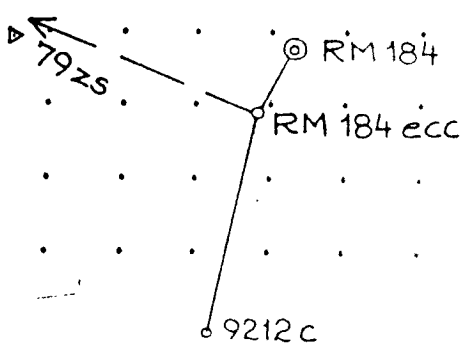
Survey of: STAND 9212 Lusaka

Theodolite: WILD T 915 | Observer: K.T | Booker: S.M

Horizontal reading CL ° ′ ″	CR ° ′ ″	Mean of CL + CR or Reduced CL ° ′ ″	Reduced me or Reduced CR ° ′	Desc	Station mean o Mean of reduce CL - CR ° ′
0:00:11	180:00:02	0:00:06	0:00	12c Ipc	0:00:00
138:28:49	318:28:41	138:28:45	138:28	zs pillar	138:28:38
181:38:21	1:37:19	181:37:50	181:37	184 Ipc	181:37:40
0:00:07	180:00:04	0:00:06	0:00		0:00:00
07:28	06:06	06:47	06		06:18
	06:47		00		
			06:47		
90:32:19	270:32:19	90:32:19	0:00:00		
229:01:02	49:00:51	229:00:56	138:28:37		
272:10:37	92:09:14	272:09:56	181:37:37		
90:32:17	270:32:19	90:32:18	0:00:00		
		19			
16:15	14:43	15:30	06:14		
	15:29		09:16		
			15:30		

Recorded: K.T

Remarks/Sketch



SURVEY DEPARTMENT

FIELD BOOK
EDM

Date: 30/11

Page: 7

Survey of: STAND 9212 Lusaka

Instrument: AGA 120 [illegible] Theodolite: WILD T2 136915

Observer: K.T

Booker: S.M

Station	Desc	Object	Desc	Horizontal distance	Projected distance	Computed by
RM 184ecc	Ipo	RM 184	Ipc	10,342 m	10,341	K.T

Slope distance Metres		Vertical reading	
1	10 : 342	CL	
2	10 : 352	CR	90 00 00
3	10 : 333	Sum	
Mean	10 : 342	Mean	

Pressure: 1=inch [X] 2=mm [ ] 3=mbar [ ] 25.7

Temp C°: +28

Final mean:

Sketch

Theod height = m

Target height =

Edm height =

Refl height =

Height diff =

Atm corr applied: [ ] Yes [X] No

Type of prism:

Remarks:

Station	Desc	Object	Desc	Horizontal distance	Projected distance	Computed by
				m	m	

Slope distance Metres		Vertical reading	
1		CL	
2		CR	
3		Sum	
Mean		Mean	

Pressure: 1=inch [ ] 2=mm [ ] 3=mbar [ ]

Temp C°:

Final mean:

Sketch

Theod height =

Target height =

Edm height =

Refl height =

Height diff =

Atm corr applied: [ ] Yes [ ] No

Type of prism:

Remarks:

SURVEY DEPARTMENT

FIELD BOOK
POLAR - 300 m distance

Date: 30/11/8[illegible]
Page: 8

Survey of: STAND 9212 Lusaka
Instrument: AGA 120 6345
Theodolite: WILD T2 136915
Observer: K.T
Booker: S.M

Station	Desc	Pressure	Temp C	Atm. corr. applied	Computed by
9212c	Ipc	1 = inch 2 = mm X 3 = mbar 857	+28	No	K.T

Object	Desc	Slope distance Metres	Vertical reading ° ′ ″	Horizontal reading ° ′ ″	Horizontal distance Metres	Projected distance Metres	Remarks
185.1	Ipo			110 [illegible] 06			
9212d	Ipc			215 23 04	51.84	51.83	
9212a	Ipc			230 13 29	53.64	53.63	
9212b	Ipc			305 26 05	13.75	13.75	

Remarks

Station	Desc	Pressure	Temp C	Atm. corr. applied	Computed by
		1 = inch 2 = mm 3 = mbar		No	

Object	Desc	Slope distance Metres	Vertical reading ° ′ ″	Horizontal reading ° ′ ″	Horizontal distance Metres	Projected distance Metres	Remarks

Remarks

APPENDIX 'E'

EXAMPLE: REPORT ON SURVEY

LAND SURVEYOR

DATE OF SURVEY:

1.	PURPOSE	- Unsurveyed land subdivision - replacement of beacons
2.	METHOD	Whatever adopted method; triangulation, resection, intersection, free set-up.
3.	BASIS OF CALCULATIONS	- Co-ordinates in - a system previous survey local systems
4.	FOUND BEACONS	- Draw attention to unusual circumstances e.g. scattered stone, no peg, fence post, corner of buildings, and so on. - Full details of alignment tests and results of the same, state what lines adopted and why
5.	PLACED BEACONS INCLUDING REPLACEMENTS	- Calculation - fixed on main survey on what lines? how checked? - Field work - fixed on previous survey - Direct observation subsidiary method - how checked?
6.	COMPARISON OF DATA	- Give sketch showing original data in black and survey data in red
7.	REPLACED BEACONS	- Give details as for (5) above and state reasons for choice of position. Include sketch specially if complicated e.g. in townships.
8.	CURVILINEAR BOUNDERIES	Field control - state what controls are done - Calculations - state misclosures
9.	UNUSUAL OCCURENCES	Field - give details of mishaps to signals, instruments, alterations etc.
10.	CONCLUSION	

LANDS AND DEEDS REGISTRY
The Lands and Deeds Registry (Amendment) [illegible], 1994
The Common Leasehold Schemes Act, 19[illegible]

COMMON LEASEHOLD DECLARATION
Phased Development

Application for a Common Leasehold Scheme under Section 4 (1) of the Common Leasehold Schemes Act, 1994

REGISTERED NO.

NAME OF REGISTERED PROPRIETOR

PROVINCE/DISTRICT

TITLE NUMBER(S)

Date".....19.....

The Property (shown edged red [illegible] which is part of the property) comprised in the above title(s) [illegible] to be subject to the Common Leasehold Schemes Act, 1994, on the following terms:

1. The number of phases proposed is..... .....

2. The units and common parts comprised in each phase are shown on the attached plans.

3. The dates of commencement and completion of each phase are as follows:

	Commencement	Completion	Unit Nos	To
(a)	Phase 1.....	.....	.....	.....
(b)	Phase 2.....	.....	.....	.....
(c)	Phase 3.....	.....	.....	.....
(d)	Phase 4.....	.....	.....	.....

4. Votes, Ownership shares and contributions

The rates, ownership shares and service contribution properties of the holders of each unit are:

(a)	Phase 1 - Unit	Votes	Ownership	Shares	Contribution
(b)	Phase 2 - "	"	"	"	"
(c)	Phase 3 - "	"	"	"	"
(d)	Phase 4 - "	"	"	"	"

6. The promoter reserves the following rights until completion of the development

7. Rights and obligations: The body corporate and the holders of the units have the rights and obligation set out in Sections 9, and 10 of the Act, the subject to mandatory by-laws as contained in Part 1 of the Schedule (Section 5 and 11 of the Act) and as contained in Part 1 of the schedule (with the following variations):

SIGNED BY of
The Registered Proprietor
in the presence of:

LANDS AND DEEDS REGISTRY ACT
The Lands and Deeds Registry (Amendment) Act, 1994
The Common Leasehold Schemes Act, 1994

COMMONLEASEHOLD DECLARATION

Application for Registration of a Common Leasehold Scheme under Section 4(1) of the Act

REGISTERED NO.

NAME OF REGISTERED PROPRIETOR

PROVINCE/DISTRICT

TITLE NUMBER(S)

DATE: 19

The Property (shown edged red on the attached plan which is part of the properties comprised in the above title(s) is to be subject to the Common Leasehold Schemes Act 1994, on the following terms:

1. Units

The .....(number) are identified on the attached plan with the identifying number provided or to be provided by the Surveyor General.

Name

2. The name of the body corporate is "The Owners of Common Leasehold Scheme Registered Number "CLR" or the name as approved by the Registrar.

3. Votes, ownership shares and contributions

The votes, ownership shares and service charge contribution proportions of the owners of each unit are:

Unit	Votes	Ownership	Shares	Contribution

4. Rights and obligations

The body corporate and of the units have the rights and obligations set out in the sections 9, and 10 of the Act, be subject to mandatory by-laws as contained in Part 1 of the schedule (sections 5 and 11 of the Act) and as contained in Part II of the Schedule (with the following variations):

5. The Address for Service
.....
.....
.....
.....

SIGNED BY.....of
the registered proprietor
in the presence of:

☐ OUTLINE OF PROCEDURE FOR THE SALE AND PURCHASE OF PROPERTY IN ZAMBIA

VENDOR'S ADVOCATE

1. Receive full and proper instructions. Obtain particular necessary to complete application for state consent to assign. Use this information to draft the contract of sale.

2. Draft the contract using the standard Law Association of Zambia General Conditions of sale, 1976. Submit the draft contract for Approval to the Advocates for the purchaser. Two copies have to be sent in case of any amendments.

3. Answer preliminary inquiries

4. Engross the contract; obtain the vendors's signature to it and exchange contracts on receiving the part signed by the purchaser.

5. After exchange of contracts the vendor's Advocate should deduce title. Show to the purchaser's Advocate the title that the vendor holds. Photocopy for Certificate of Title will suffice if sub-lessee, copy of the lease will suffice.

6. On receiving draft transfer, make any necessary amendments and return to purchaser's Advocate.

7. Transfer to be executed and held until completion.

8. Draft completion statement and forward to the purchaser's Advocate. It should outline how much is to be paid to be Paid to the vendor upon completion.

9. Completion takes place when the purchaser's Advocate hands over the cheque. Vendor's Advocate to hand over the title deeds and other documents required to effect registration.

10. Draw up the Bill for the Vendor.

PURCHASE'S ADVOCATE

1. On receiving instructions make official searches and and any inquiries about the property in general.

2. Send preliminary inquiries to Vendor's Advocate.

3. Subject to the searches and preliminary inquiries proving satisfactory, approve the Draft contract; if no amendments are necessary; engross it and obtain the purchaser's signature to it.

4. Exchange contracts.

5. Upon receipt of the photocopy of Certificate of Title, Purchaser's advocate will investigate title. Peruse documents to ensure that the property does belong to the vendor and that the title is not encumbered in any way.

6. If satisfied with the title submit draft transfer for approval.

7. Engross the transfer and it is ready for execution. Execute the transfer and forward to Vendors's Advocate.

8. If completion statement is correct arrange for funds from the purchaser.

9. Make an appointment with Vendor's Advocate. Completion takes place at the vendor's Advocate's transfer office

10. Register the Title Deeds in the name of the purchaser. Draw up a lodgement schedule showing stamp duty and registration fees payable to the Lands & Deeds Regstry.

11. Draw up the Bill for the purchaser.

12. Upon receipt of the new Title Deeds in the name of the purchaser after registration, forward to the purchaser and obtain acknowledgement of receipt.

Law Association of Zambia
Contract and Conditions of Sale

AN AGREEMENT made the
day of One thousand nine hundred and
BETWEEN
of (hereinafter called "the Vendor") of the one part and
of (hereinafter called "the Purchaser") of the other part WHEREBY IT IS AGREED that the Vendor will sell and the Purchaser will purchase the property referred to in the accompanying particulars at the price of
Kwacha
(K) upon the accompanying terms and conditions and the Vendor and the Purchaser do on their respective parts agree to complete the said purchase on the said terms and conditions.

AS WITNESS the hands of the parties hereto or their duly authorised agents the day and year first before written

SIGNED by)
)
)
)
)
)
in the presence of:)

SIGNED by)
)
)
)
)
)
in the presence of:)

SPECIAL CONDITIONS

1. The property is sold subject to the Law Association of Zambia General Conditions of Sale 1976 so far as the same are not inconsistent with or varied by these Special Conditions.

2. The Vendor's Advocate is

   of

   and the Purchaser's Advocate is

   of

3. The period fixed for obtaining the State's consent and any other necessary licence to assign shall be weeks from the date of the Contract.

4. The date fixed for completion is

5. The Vendor is selling as

6. The title shall commence with

7. The property is sold subject to

Dated 19

and

Law Association of Zambia
Contract and Conditions of
Sale relating to:

Vendor's Advocates:

Purchaser's Advocates:

Form 1
Regulations 3 (a)
40m L 902 9 93 2B

REPUBLIC OF ZAMBIA

MINISTRY OF LANDS

THE COMMISSIONER OF LANDS
P.O. Box 30069
LUSAKA

PART 1

(To be completed by the lesse in triplicate)

Application for Consent to Assign/Transfer

1. Property: Stand/Plot/Farm/Subdivision No..... Town/District.....

2. Area (hectares)..... Zoning: Residential/Commercial/Industrial/Agricultural/Other Use

3. Name of Lessee.....P.o. Box.....

4. Residential address.....

PROPOSED ASSIGNEE/TRANSFEREE

5. Name in full.....

6. Address.....

7. Details of Unexhausted Improvements : Gross External Areas : Hectares of cleared land e.t.c.

	Value K	n
(a) Dwelling House - G.E.A (metre squared)		
(b) Servant's Quarters - G.E.A (metre squared)		
(c) Other buildings		
(i)		
(ii)		
(iii)		
TOTAL		

8. Proposed Price Consideration Payment.....

Signature of Applicant..... Date.....

PART II

(For official use only)

9. Lease Rent paid up to..... Last Receipt No..... Date.....

10. Details in Part I have been checked and the following are relevant comment.....

.....

.....

.....

Checked by:.....

Position: .....

for Commissioner of Lands

DR. 61a

THE LANDS AND DEEDS REGISTRY ACT

(Section 76)

CAVEAT

To the REGISTRAR OF LANDS AND DEEDS
NOTICE IS HEREBY GIVEN that I (a)

of (b)

claiming an estate or interest namely; (c)

in (d)

forbid the registration of any transfer or mortgage or other instrument whatsoever affecting the said land until this caveat is withdrawn by me or by order of the High Court or some judge thereof AND I appoint (e) as the place at which notices relating hereto may be served.

DATED this day of 199

(f)

SIGNED by the said (g)

in the presence of:-

Name: (h)

Address :

Occupation :

NB-
(a) Insert full names in capital letters
(b) Insert address
(c) State clearly nature of the estate or interest claimed and on what ground the claim is founded
(d) Describe land quoting Farm, Plot or Subdivision number
(e) State address where notices are to be served
(f) Signature
(g) Insert full names in capital letters
(h) Signature of witness

TOWNSHIP LANDS REGISTER

TOWNSHIP BANCROFT

APPENDIX "A" & "B"

Reg. No. of Doc.	Date of Doc.	Date of Registration	Sub Division NO.	F PARTIES		CONSIDERATION	NATURE OF DOCUMENTS	ACREAGE	DESCRIPTION OF PROPERTY	REFERENCE NO.	
				Assignor Grantor 1st Party	Assignee Grantee 2nd & Subsequent Purchaser					BACK	FORWARD
10/4	21.10.63	29.10.63		Ramabhai Hirabhai Patel	Purushottam Rambhai Patel	£3500	Assignment	0.092	Stand No.10 Bancroft		

APPENDIX "C"

MISCELLANEOUS REGISTER

GENERAL

REGISTER NO. OF DOCUMENT	DATE OF DOCUMENT	DATE OF REGISTRATION	NAME OF PARTIES	NATURE OF DOCUMENT	FORWARD REFERENCE NUMBER
6830	26.05.89	1.06.89	POLYSTYRENE ZAMBIA LTD. AND FINANCE BANK LTD	DEBENTURE TO SECURE K500,000 AND INTEREST	

APPENDIX"C"

MISCELLANEOUS REGISTER

(POWER OF ATTORNEY)

REGISTER NO. OF DOCUMENT	DATE OF DOCUMENT	DATE OF REGISTRATION	NAME OF PARTIES	NATURE OF DOCUMENT	FORWARD REFERENCE NUMBER
763		13.05.1977	RAOJIBHAI LALLUBHA AND DINESHBHAI DAHYABH		

APPENDIX "C"

MISCELLANEOUS REGISTER

(CERTIFICATE OF INCORPORATION)

REGISTER NO. OF DOCUMENT	DATE OF DOCUMENT	DATE OF REGISTRATION	NAME OF PARTIES	NATURE OF DOCUMENT	FORWARD REFERENCE NUMBER
C144	29.09.61	4.10.61	REGISTERED TRUSTEE	CERTIFICATE OF INCORPORATION	

APPENDIX " E"

BRITISH VIRGIN ISLAND LAND REGISTER

Edition .....

Opened .....

A- PROPERTY SECTION

REGISTRATION SECTION SOUTH CENTRAL	APPURTENANCES	DESCRIPTION OF LAND/ PRIVATE
BLOCK 3641A / PARCEL NO. 99		
APPROX AREA 24 ACRES	A RIGHT OF WAY OVER PARCEL NORTH CENTRAL A 106 AS INDICATED ON THE REGISTRY MAP IN RESPECT OF THAT PARCEL.	NATURE OF TITLE ABSOLUTE/PROVISIONAL
		PARTICULARS RECORDED IN PARA. 7 OF ADJUDICATION RECORD. (PROVISIONAL TITLES ONLY)
		ORIGIN OF TITLE FIRST REG. 9.8. 1972

B-PROPRIETORSHIP SECTION

ENTRY NO.	DATE	INSTRUMENT NO.	NAME AND ADDRESS OF PROPRIETOR(S)	SIGNATURE OF REGISTRAR
1			GEORGE BROWN 15 WEST STREET ROADTOWN TORTOLA	XXX
2			JOHN SMITH, P. O. BOX 324 BRIDGETOWN BARBADOS	XXX

C- INCUMBRANCES SECTION					
ENTRY NO.	DATE	INSTRUMENT NO.	NATURE OF INCUMBRANCE	FURTHER PARTICULARS	SIGNATURE OF REGISTRAR
1			CHARGE	CHARGE TO SECURE $4000 REPAYABLE ON 14.11.1977 PROPRIETOR:DASHAM BUILDING SOCIETY BOX 392	
2				ROADTOWN TORTOLA	
3			LEASE	SOUTH CENTRAL 3641 A 99/1	

PAGE NO.....

DAY BOOK

LAND AND MISCELLANEOUS

DATE.....

AGRICULTURE CHARGES REGISTER

WATER ORDER REGISTER

SERIAL NUMBER	TIME	NATURE OF TRANSACTION	PROPERTY NUMBER	LODGED BY	QUERY DATE	DATE UPLIFTED	UPLIFTED BY	REMARKS
L5706	09:12	ASSIGNMENT	NDO / 1025		5 .1 .1993			COMPLETE DR 53
		ASSIGNMENT	MUM / 305	MUNYINDA & CO.		6.10.1993	P.H.N	
							Y.M.	

MISCELLANEOUS REGISTER

LIST OF DO DOCUMENTS

1. DEED POLL
2. WILL
3. DEBENTURE
4. SPECIFIC CHARGE ON VEHICLE
5. SUPPLEMENTAL DEBENTURE
6. APPOINTMENT OF RECEIVER
7. DEED OF REVOCATION
8. TRUST DEED
9. FLOATING CHARGE & GUARANTEE
10. LOAN AGREEMENT
11. MORTGAGE OF CHATTELS
12. LOAN GUARANTEE
13. FURTHER CHARGE
14. AGREEMENT TO SHARE PROPERTY
15. MEMORANDUM OF DISCHARGE
16. JOINT DEBENTURE
17. RELEASE OF COLLATERAL
18. LETTER OF SET-OFF
19. TENANCY AGREEMENT
20. POWER OF ATTORNEY
21. AGREEMENT
22. PARTNERSHIP AGREEMENT
23. MEMORANDUM OF SATISFACTION
24. PROBATE OF THE WILL
25. SHARE PURCHASE AGREEMENT
26. COURT ORDER
27. ORDER TO ALLOW LATE REGISTRATION
28. GRANT OF EASMENT
29. DEED OF ADJUSTING PRIORITIES
30. DEED OF ARRANGEMENT OF SECURITY
31. DEED OF GIFT
32. ATEMPTIAL CONTRACT
33. DEED OF GUARDIANSHIP
34. MEMORANDUM OF ASSOCIATION

ASSIGNMENT-FORMER CITY COUNCIL LEASE

THIS INDENTURE made the day of One Thousand Nine Hundred and Ninety **BETWEEN** a Company registered office at Lusaka (hereinafter called "the Vendor") of the one part and a Company incorporated in Zambia and having its registered office at Lusaka (hereinafter called "the Purchaser") of the other part.

WHEREAS

1. Immediately prior to the commencement of the Lands Act 1995 (hereinafter called "the Act") the property described in the Schedule hereto was demised to the Vendor for a term of 99 years (less the last 3 days thereof) from the 8th day of July, One thousand Nine Hundred and Sixty-nine Subject to the payment of the rent and covenants and conditions contained in a Lease (hereinafter called "the Lease") dated the 20th day of May One thousand Nine hundred and Sixty-nine and made between The City Council of Lusaka of the one part and..... of the other part.

2. The said piece of land comprised in and demised by the Lease is now vested in the Vendor for the residue of the term of years created by the Lease.

3. By virtue of section 6 of the Act the Vendor is deemed to hold the said property from the President for the term of 99 years from the said date and upon the same covenants and conditions as mentioned in the Lease.

4. The Vendor has agreed to sell the premises comprised in and demised by the Lease to the Purchaser for the residue of the term of years created by the Lease at the Price of ninety Million Kwacha (K90,000,000.00).

NOW THIS DEED WITNESSETH as follows:

1. In consideration of the sum of Ninety Million Kwacha (K90,000,000) paid to the Vendor by the Purchaser (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner **HEREBY ASSIGNS** unto the Purchaser **ALL AND SINGULAR** the piece of land comprised in and demised by the Lease together with all buildings erected thereon **TO HOLD** the same unto the Purchaser all the residue of term of years created by the Lease **SUBJECT** to the payment of the rent and to the covenants on part of the Lessee and the conditions and stipulations in the Lease reserved and contained and henceforth on the part of the Lessee to be paid performed and observed.

2. The Purchaser **HEREBY COVENANTS** with the Vendor henceforth during the continuance of the said term to pay the rent reserved by and to perform and observe the said covenants and conditions and stipulations contained and observed and keep indemnified the Vendor against all actions claims and demands whatsoever in respect of the said rent covenants and conditions or anything relating thereto.

3. The necessary consent in writing to the Assignment hereby made has been duly obtained and Property Transfer Tax paid to the Collector of Taxes.

4. It is hereby certified that for purposes of any Duty payable the aggregate amount or value of the consideration for this transaction does not exceed Ninety Million Kwacha (K90,000,000.00).

IN WITNESS whereof the parties hereto have caused their Common Seals to be hereunto affixed the day and year first before written.

THE SCHEDULE hereinbefore referred to:-

ALL THAT piece of land in extent.....more or less being Farm No.....situate at Lusaka in Lusaka Province of Zambia which piece of land is more particularly delineated and described on Diagram No.....of.....annexed to the Certificate of Tittle relating to the said land except and reserved all minerals oils and

precious stones whatsoever.

THE COMMON SEAL of	)
was hereunto affixed	)
in the presence of:	)
	DIRECTOR:
	SECRETARY:

THE COMMON SEAL of	)
PROPERTIES LIMITED was	)
hereunto affixed in the presence of	)

DIRECTOR:

SECRETARY:

THE HOUSING (STATUTORY AND IMPROVEMENT AREAS) ACT, 1974

TERMS OF OCCUPANCY

1. During the terms of the licence and any extension or renewal thereof the Occupant shall for such licence pay to the Council on or before the last day of each month commencing with the month next following the date of the licence such fee as shall be declared by the Council (with the approval of the Minister responsible for housing) with respect to the following components:

   (a) a charge for water supplied to the Improvement Areas;

   (b) a charge for sewage service if any supplied to the Improvement Areas;

   (c) a charge in lieu of rates based on the value of the average or normal dwelling and out buildings within the Improvement areas;

   (d) a charge for a fair share of the cost of any service provided especially for such Improvement Areas;

2. (a) The Council shall not be liable to the occupant for any personal injury damage loss or inconvenience however or where person upon the premises, it being the intention of an agreed between the parties hereto that the Occupant and any other person exercising the rights at the invitation of the Occupant shall do so at the risk of the Occupant: and accordingly the Occupant agrees to indenmfiy the Council against all claims by any vister to the premises whether with or without the permission of the Occupant.

   (b) By "Claims" in the preceding sub-clause is meant a claim or claims in respect of the condition of the premises or for breach of the statutory or common duty of care or for the negligence of the Council or of the Occupant or of those for whose negligence the Council could or might otherwise be responsible.

3. The Occupant convenants with the Council as follows:-

   (1) To make the payments in accordance with the foregoing provisions and with the licence whether the same be demanded or not.

   (2) Where the building is a dwelling and its outbuildings to occupy the premises as a residence for himself and his immediate family only, and to use his best endeavours to expel and person or persons poaching to trespassing on the premises; and in particular not to take in any lodger or other occupant without the consent of the Council; and not to do or permit or suffer to be done anything which shall cause annoyance inconvenience or disturbance to any adjoining occupant.

   (3) Not to use the premises for any purposes other than the permitted use and not to do any damage to the premises or any part thereof; and to observe and perform all statutory requirements and give promot and sufficient effect to all orders directions notices and requests of any competent authority; and in particular not to do

permit or suffer to be done any addition to or change in the structure any of such building without previously having obtained a permit from Council.

To exercise the rights hereby granted in such manner as to do as little damage as possible and to make adequate compensation for any damage nevertheless caused.

To keep the premises clean and tidy and clear of litter and in good state or repair, and not to pollute the premises or allow and pollution to escape therefrom.

Not to sublicence or assign the benefit or part within the rights hereby granted over the premises or any thereof except with the express approval of the Council; but upon the death or mental incapacity of Occupant during the terms of this licence or any extension or renewal thereof the person entitled by law to succeed the occupant shall be entitled to continue to occupy the said building during the unexpired period of such term.

To keep the Council and all those authorised by them to use the premises indemnified against all damage loss and injury of every description ch may occur to or affect the Council or such other persons as aforesaid or their property and which may arise from or throught the exercise of the rights by any authorised person including any person invited or permitted by the occupant or the non observation of any of the items of this licence however expressed or implied.

Within three calendar months of the termination of this licence or any renewal or extension thereof by effluxion of time or for any other reasons whatsoever on an appropriate written request being served by posting on the premises such request to be made either before or within three calender months thereafter to remove all buildings fixtures or other works consructed on the land before or after the date thereof, and to leave the site clean and tidy to the reasonable satisfaction of the Council.

This licence may be determined forthwith by notice given by the Council.

(a) By the effluxion of time.

(b) If at any time any payment due hereunder is unpaid for three calender months after becoming due whether demanded or not.

(c) If the Occupant shall have failed for a period of three calender months to remedy any breach capable of remedy of the stipulations and conditions herein contained after being required to remedy the same by notice in writing from the Council specifying the breach and requiring the same to be remedied.

13.....

4. (d) On any breach by the occupant of the stipulations and conditions herein contained which is in the opinion of the Council incapable of being remedied and is stated so to be in the notice given by the Council and upon the determination of the within licence the occupant shall immediately vacate the land upon which such buildings are situated and shall remove such buildings from such land and shall reinstate level off and restore such land to its former state and condition.

In default such removal and restoration being effected within ninety days of the determination of this licence it shall be lawful for the Council to effect the same themselves and there shall be no right of action against such Council for so doing.

5. Upon failure of the Occupant to pay within three calender months next following its due date anyone or more of the monthly instalments of fees enumerated in paragraph 2 above the Council shall have the right to discontinue the supply of water to the part of the Improvement Area within which the building or building s of the Occupant are situated.

6. Nothing herein contained shall prevent the Occupant upon receiving the proper consent of the Council and only then, from using all or part of the licenced premises for the purpose of operating a shop or of conduction artisanal activities upon or within the said building as the Council may permit, provided that such operation does not in any respect violate the provisions of this licence.

7. The licence shall confer no tenancy upon the Occupant, and possession of the premises shall be retained by the Council shall at anytime have the right to create by this licence, and the Council shall at anytime have the right to enter upon the lands and inspect the buildings upon such lands or to instal or erect any works thereon which the Council deems to be in the general interest of the Improvement Area or its Occupants. If the medical Officer of health considers that the dwelling or any out building thereof is unfit for human habitation or use, he shall be entitled to serve notice of such decision on the Occupant and the Occupant shall do or cause to be done such alteration (including demolition if such notice as prescribes) as such notice shall order.

8. The cost charges and expenses in connection with this licence including any charges for registration thereof in the Council Registry shall be paid by the Occupant.

9. Any notice to be given to the Council under or pursuant to the licence shall be sufficiently given by mailing such notice postpaid to the Council at P. O. Box .....: and any notice to be given to the Occupant shall be sufficiently given by posting the same upon the dwelling or other building on the licenced premises.

ASSIGNMENT 100 YEARS

THIS INDENTURE made the day of one thousand nine hundred and ninety

BETWEEN

a company incorporated in Zambia and having its registered office at Lusaka in the Republic of Zambia (hereinafter called "the Vendor") of the one part and

a company incorporated in Zambia and having its registered office at Lusaka aforesaid (hereinafter called "the Purchaser") of the other part.

WHEREAS

1. The Vendor is the tenant or lessee of the hereditaments more particularly described in the Schedule hereto (hereinafter called "the Property") for the residue now unexpired of the term of One Hundred (100) years from the 1st day of July One thousand Nine Hundred and Seventy Five created by the Land (Conversion of Titles) Act 1975 (hereinafter called "the Act") at the rent reserved and **SUBJECT** to the Covenants and conditions contained in Part 1 of the First Schedule to the Land (Conversion of Titles) Regulations 1975 **AND SUBJECT TO** the exceptions reservations restrictions restrictive covenants and conditions contained in an indenture of Grant Final Title made between his Majesty of the one part and Lionel James Marston of the other part and dated the 31st day of March 1975 so far as the same are still subsisting and affect the said property **AND SUBJECT ALSO** to the restrictive covenants and the right of way and with the benefit of the right of way contained in an indenture of conveyance made between Jacobus Johannes Porgieter of the of the first part Alexander Pretorius of the second part and Dales Motors Limited of the third part and dated the 15th December, 1955.

AND WHEREAS the Vendor has agreed to sell the said piece of land to the Purchaser for the sum of One Million Two Hundred Thousand Kwacha

(K1,200,000.00).

AND WHEREAS the necessary consent in writing to the Assignment hereby made has been duly obtained.

NOW THIS DEED WITNESSETH as follows:-

In pursuance of the said agreement and in consideration of the sum of One Million Two Hundred Thousand Kwacha (K1,200,000.00) paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as Beneficial Owner **HEREBY ASSIGNS** unto the Purchaser **ALL THAT** the property described in the schedule hereto **SUBJECT TO** the right of way and with the benefit of the right of way contained in the said Indenture of Conveyance made between Jacobus Johannes Potgieter of the first part Alexander Pretorius of the second part and Dalex Motors Limited the third part and dated the 15th December, 1955 **TO HOLD** the same unto the Purchaser for the residue of the said term of One hundred (100) years **SUBJECT** to the payment of the yearly rent and the lessees covenants and conditions prescribed in respect thereof.

2. The Purchaser **HEREBY COVENANTS** with the Vendor that the Purchaser will at all times henceforth during the continuance of the said term pay all such rent becoming due and observe and perform the said covenants and conditions on the part of the lessee and conditions which may now or hereafter be prescribed in respect of the properties and will at all times keep the Vendor effectually indemnified against all proceedings costs claims and expenses damages and demands whatsoever by reason of an account of any omission to pay the said rent or any breach of the said covenants and conditions.

IN WITNESS whereof the parties hereto have caused their Common Seals to be hereunto affixed the day and year first before written.

THE SCHEDULE hereinbefore referred to:

ALL THAT piece of land in extent 0.4647 hectares more or less being the remaining extent of Subdivision No. 7 of Farm No. 397a "Chipwepwenu" situate in the Lusaka Province of

Zambia which piece of land is more particularly delineated and described on Diagram No.

1727 of 1955 annexed to the Certificate of Title issued in respect of this piece of land **EXCEPT** and **RESERVED** all minerals oils and precious stones whatsoever upon or under the said land.

THE COMMON SEAL of)
in the presence of:)

DIRECTOR:

SECRETARY:

THE COMMON SEAL of)
hereunto affixed in the presence of)

DIRECTOR:

SECRETARY:

ASSIGNMENT

PRESIDENTIAL LEASE

THIS INDENTURE made the day of one thousand nine hundred and Ninety

BETWEEN and both of Lusaka in the Republic of Zambia (hereinafter called "the Vendor") of the one part and also of Lusaka aforesaid (hereinafter called "the Purchaser") of the other part

WHEREAS

1. By a Lease (hereinafter called "the Lease") dated the Twenty Seventh day of September, One Thousand Nine Hundred and Eighty-Nine and made between The President of the one part and Five Car Hire Zambia Limited of the other part **ALL THAT** the hereditaments and premises more particularly described in the schedule hereto (hereinafter called "the Premises") were demised to the said Five Car Hire Zambia Limited for the term of 99 years from the 1st day of September One Thousand Nine Hundred and Eighty-Nine at the rent reserved and the covenants conditions and stipulations contained in the said Lease

2. The premises comprised in and demised by the Lease are now vested in the Vendors for the residue of the term of years created by the Lease subject to the rent covenants and conditions contained in the Lease

3. The Vendors have agreed with the purchaser for the sale to the Purchaser of the said premises subject as aforesaid but otherwise free from encumbrances at the price of Five Million Five Hundred Thousand Kwacha (K5,500,000.00)

NOW THIS DEED WITNESSETH as follows:

1. In pursuance of the said agreement and in consideration of the sum of Five Million Five Hundred Thousand Kwacha (K5,500,000) paid to the Vendors by the Purchaser

(the receipt whereof the Vendors hereby acknowledge) the Vendors as Beneficial Owners **HEREBY ASSIGN** unto the Purchaser **ALL AND SINGULAR** the piece of land comprised in and demised by the Lease together with all buildings erected thereon **TO HOLD** same unto the Purchaser for the residue of the term of years created by the Lease **SUBJECT** to the payment of the rent and to the covenants on the part of the Lessee and the conditions and stipulations in the Lease reserved and contained and henceforth on the part of the Lessee to be paid performed and observed.

2. The Purchaser with the object and intention of affording to the Vendors and their successors a full sufficient indemnify in respect of the rent covenants and conditions reserved and contained in the Lease but not further or otherwise covenant with the vendors as follows:

(a) to pay the reserved rent henceforth to become payable in respect of the premises

(b) to perform and observe all the covenants and conditions henceforth on the part of the Lessee to be performed and observed

3. The necessary consent in writing to the Assignment hereby made has been duly obtained and Property Transfer Tax paid to the Collector of Taxes

4. It is hereby certified that for the purpose of any duty payable the aggregate amount or value of the consideration for this transaction does not exceed Five Million Five Hundred Thousand Kwacha (K5,500,000)

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

THIS SCHEDULE hereinbefore referred to :

ALL THAT piece of land in extent 0.3730 hectare more or less being Subdivision 1 of Subdivision A of stand No. 74 situate in the Lusaka Province of Zambia which piece of land is more particularly delineated and described on Diagram No. 39 of 1991 annexed to the Certificate of Title issued in respect of this piece of land **EXCEPT and RESERVED** all minerals oils and precious stones whatsoever upon or under the said land

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Name:

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Occupation:

IGNED SEALED and DELIVERED)

in the)

presence of:)

WITNESS:

Name:

Address:

Occupation:

REPUBLIC OF ZAMBIA

MINISTRY OF LANDS AND NATURAL RESOURCES

Procedure on Land Alienation

LAND CIRCULAR

No. 1 of 1985

CONTENTS

	Page
Introduction	1
Preparation of Layout Plans	1
Allocation of Stands	1
Unscheduled Agricultural Lands	2
Reserves and Trust Lands	2
Applications for Land by Non-Zambians	3
Consultations	3
Decentralisation of the Lands Department	3
Reserve Powers	3

INTRODUCTION

is Circular is intended to lay down general policy guidelines regarding the procedure all District s are expected to follow in the administration and allocation of land.

Your attention is drawn to the fact that all land in Zambia is vested absolutely in His Excel- he President who holds it in perpetuity for and on behalf of the people of Zambia. The powers Excellency the President to administer land are spelt out in the various legislations some of are; The Zambia (State Land and Reserves) Orders, 1928 to 1964, the Zambia (Trust Land) 1947 to 1964, the Zambia (Gwembe District) Orders, 1959 and 1964 and the Land (Conversion es) Act No. 20 of 1975 as amended. His Excellency the President has delegated the day-to- ministration of land matters to the public officer for the time being holding the office or exe- the duties of Commissioner of Lands. Under Statutory Instrument No. 7 of 1964 and Gazette No. 1345 of 1975, the Commissioner of Lands is empowered by the President to make grants ositions of land to any person subject to the special or general directions of the Minister sible for land matters.

Pursuant to the policy of decentralisation and the principle of participatory democracy decided that District Councils should participate in the administration of land. To this effect, rict Councils will be responsible, for and on behalf of the Commissioner of Lands, in the proces- applications, selecting of suitable candidates and making recommendations as may be decided y them. Such recommendations will be invariably accepted unless in cases where it becomes nt that doing so would cause injustice to others or if a recommendation so made is contrary onal interest or public policy.

Accordingly, the following procedures have been laid down and it will be appreciated if you sure that the provisions of this Circular are strictly adhered to.

A. PREPARATION OF LAYOUT PLANS

(i) The planning of stands for various uses is the responsibility of the appropriate planning authority of the area concerned. Once a chosen area has been properly planned, the planning authority shall forward the approved layout plans to the Commissioner of Lands for scrutiny as to the availability of the land.

(ii) Upon being satisfied that the layout plans are in order, the Commissioner of Lands shall request the Surveyor-General to number and survey (or authorise private survey) the stands.

iii) Thereafter, a copy of the layout plan showing the order of numbering, shall be sent back to the District Council and the planning authority concerned.

B. ALLOCATION OF STANDS

(i) Stands recommended for allocation to the Commissioner of Lands will be assumed to have been fully serviced by the District Council concerned. If the stands are not serviced, the District Council shall give reasons for its inability to provide the necessary services before the recommendations can be considered

(ii) Before stands are recommended, the District Council concerned may advertise them in the national press inviting prospective developers to make applications to the District Council in the form appended hereto and numbered as Annexure A.

iii) On receipt of the applications the District Council concerned shall proceed to select the most suitable applicants for the stands and make its recommendations in writing to the Commissioner of Lands giving reasons in support of the recommendations in any case where there may have been more than one applicant for any particular stand, or where an applicant is recommended for more than one stand.

iv) On receipt of the recommendation(s) from the District Council(s), the Commissioner of Lands shall consider such recommendation(s) and may make offer(s) to the successful applicant(s), sending copies of such offer(s) to the District Council(s) concerned.

(v) Where the District Council is not the planning authority, an applicant w mendation has been approved by the Commissioner of Lands shall be di letter of offer in principle, to apply for and obtain planning permission from t planning authority before a lease can be granted.

(vi) If the District Council is aggrieved by the decision of the Commissioner of matter shall be referred to the Minister of Lands and Natural Resources witl of thirty days from the date the decision of the Commissioner of Lands is k will consider and decide on the appeal. The Minister's decision on such an app final.

(vii) No District Council shall have authority in any case to permit, authorise permit or authorise any intending developer to enter upon or occupy any st and until such developer shall have first received the letter of offer, paid lea the development charges, and has obtained planning permission from th planning authority.

(viii) Prior to the preparation of the direct lease, the District Council concerned sh the Commissioner of Lands the minimum building clause to be inserted in

(ix) Prompt written notification of the relevant particulars upon the issue of a of title shall be given by the Commissioner of Lands to the District Council c

C. UNSCHEDULED AGRICULTURAL LANDS

(i) Any State Land required for agricultural use shall be notified to the Commis Lands so that its status and availability can be determined. Once the Commis Lands is satisfied that the land in question is available the Department of Ag in consultation with the District Council shall be requested to plan the area into agricultural units. The layout plans duly approved by both the Department culture and the District Council concerned shall be submitted to the Comm of Lands for survey and numbering.

(ii) Once the District Council is in possession of information from the Commissioner c regarding the numbered farms or small-holdings the procedure outlined in pa 4B (ii) (iii) (iv) and (vi) above shall apply. And the application form to be compl the applicants shall be as per Annexure 'C'.

(iii) No District Council shall have authority in any case to permit, authorise, or s permit, or authorise any intending developer, to enter upon or occupy any agric farm or small-holding unless and until such developer shall have first received th of offer and has paid the lease fees.

D. RESERVES AND TRUST LANDS

(i) In the Reserves and Trust Lands, the powers of the President, in making grants or sitions of land, are limited by the requirement to consult the local authorities a by such grants or dispositions of land.

(ii) Local authority, in the Orders, has been administratively understood to mean the and the District Council. This means, therefore, that the consents of the Chiefs District Councils shall continue to be the basis for any approval of applications for in the Reserves and Trust Lands.

(iii) As has been the practice before, to ensure that a local authority has been consulted Commissioner of Lands will insist that each recommendation is accompanied by following:

(a) written consent of the chief under his hand;

(b) extracts of the minutes of the Committee of the Council responsible for land ma embodying the relevant resolution and showing who attended, duly authentic by the Chairman of the Council and the District Executive Secretary;

(c) extracts of the minutes of the full Council with the relevant resolution and show who attended, duly authenticated by the Chairman of the Council and the Dist Executive Secretary;

(d) four copies of the approved layout plan showing the site applied for, duly endorsed and stamped by the Chief, Chairman of the Council and the District Executive Secretary.

(iv) The preparation of the layout plan showing the area applied for, should be done by persons possessed with the catographic know-how. At Annexure 'B' of this circular is a model layout plan which provides the necessary details for an acceptable layout plan.

(v) It has been decided. for the time being, not to allocate more than 250 hectares of land for farming purposes in the Reserves and Trust Land areas. The District Councils are, therefore, advised not to recommend alienation of land on title in such areas in excess, of 250 (two hundred and fifty) hectares as such recommendations would be difficult to consider.

(vi) In each case recommended to the Commissioner of Lands, the recommending authority shall certify that it has physically inspected the land applied for and confirm that settlements and other persons' interests and rights have not been affected by the approval of the application.

E. APPLICATIONS FOR LAND BY NON-ZAMBIANS

(i) You are now aware that under the Land (Conversion of Titles) (Amendment) (No. 2) Act of 1985 no land can be alienated to a person who is not a Zambian. However, under the same Amendment, a non-Zambian can be granted a piece of land if his application has been approved in writing by His Excellency the President.

(ii) To obtain the approval of His Excellency the President, a non-Zambian wishing to own a piece of land will be required, in the first place, to submit his application to the District Council concerned for scrutiny. In considering the application, the District Council will be at liberty to solicit for as much information as possible from the applicant about the intended development.

(iii) When recommending the application to the Commissioner of Lands, the District Council shall be required to give full back-up information in support of or against the applicant in addition to the following:

(a) extracts of the minutes of the Committee of the Council responsible for land matters, embodying the relevant resolution and showing who attended the meeting duly authenticated by the Chairman of the Council and the District Executive Secretary;

(b) extracts of the minutes of the full Council, with the relevant resolution and showing who attended the meeting, duly authenticated by the Chairman of the Council and the District Executive Secretary; and

(c) four copies of the approved layout plan, showing the site applied for, duly stamped and endorsed by the Chairman of the Council and the District Executive Secretary where the site has not been numbered.

5. *Consultations*—Development projects of great significance both to the District and the nation, shall be referred to the Provincial Authority for guidance before communicating the decision to the Commissioner of Lands.

6. *Decentralisation of Lands Department*—Necessary plans to further decentralise the various aspects of land administration and alienation to the Provincial Headquarters have been made. These plans will be operational as soon as funds are available.

7. *Reserved Powers*—The Minister responsible for lands shall have the right in any case or cases or with respect to any category or categories of land, to modify, vary, suspend or dispense with the procedure outlined above or any aspect of same as he may see fit in the circumstances.

F. CHELA,

Minister of Lands and Natural Resources

cc The Rt Hon. Prime Minister.
cc Hon. Chairman of the Rural Development Committee.
cc Administrative Secretary, Freedom House.

cc All Hon. Members of the Central Committee in charge of provinces.
cc Hon. Minister, Ministry of Decentralisation, Lusaka.
cc Hon. Minister, Ministry of Agriculture and Water Development, Lusaka.
cc Hon. Minister, Ministry of Legal Affairs, Lusaka.
cc All Chairmen of District Councils.

ANNEXURE 'A'

Government of the Republic of Zambia

LANDS DEPARTMENT

cation for Residential/Commercial/Industrial/Special User Stand in the.....
..... council area.

e completed in duplicate and both copies submitted to the District Executive Secretary,
.....*District Council).*

First choice: Stand No.....Town.....

Other choices: Stand No.....

If more than one stand is required because of the scale of the proposed development give details here.....

.....

If the area applied for is not numbered, provide four copies of the approved layout plan.

A. APPLICATIONS BY INDIVIDUALS

Name (in block letters).....

Address.....

Age.....birth place.....

Nationality.....

National Registration Card Number.....

Date and place of issue.....

Residence in Zambia (non-Zambians) from.....

Passport No. (non-Zambians).....

Date and place of issue.....

The name of the mortgagees.....

If you do not intend to borrow, state your sources of income with which to finance development.

Provide evidence).....

.....

.....

Occupation.....

Full description of type of development proposed on the stand applied for.....

.....

.....

Will the proposed building be owner occupied?.....

Estimated cost of proposed development: K.....

16. Particulars of land owned by or leased to applicant or husband/wife of applicant.

Property	Stand No.	User Clause	District	Term

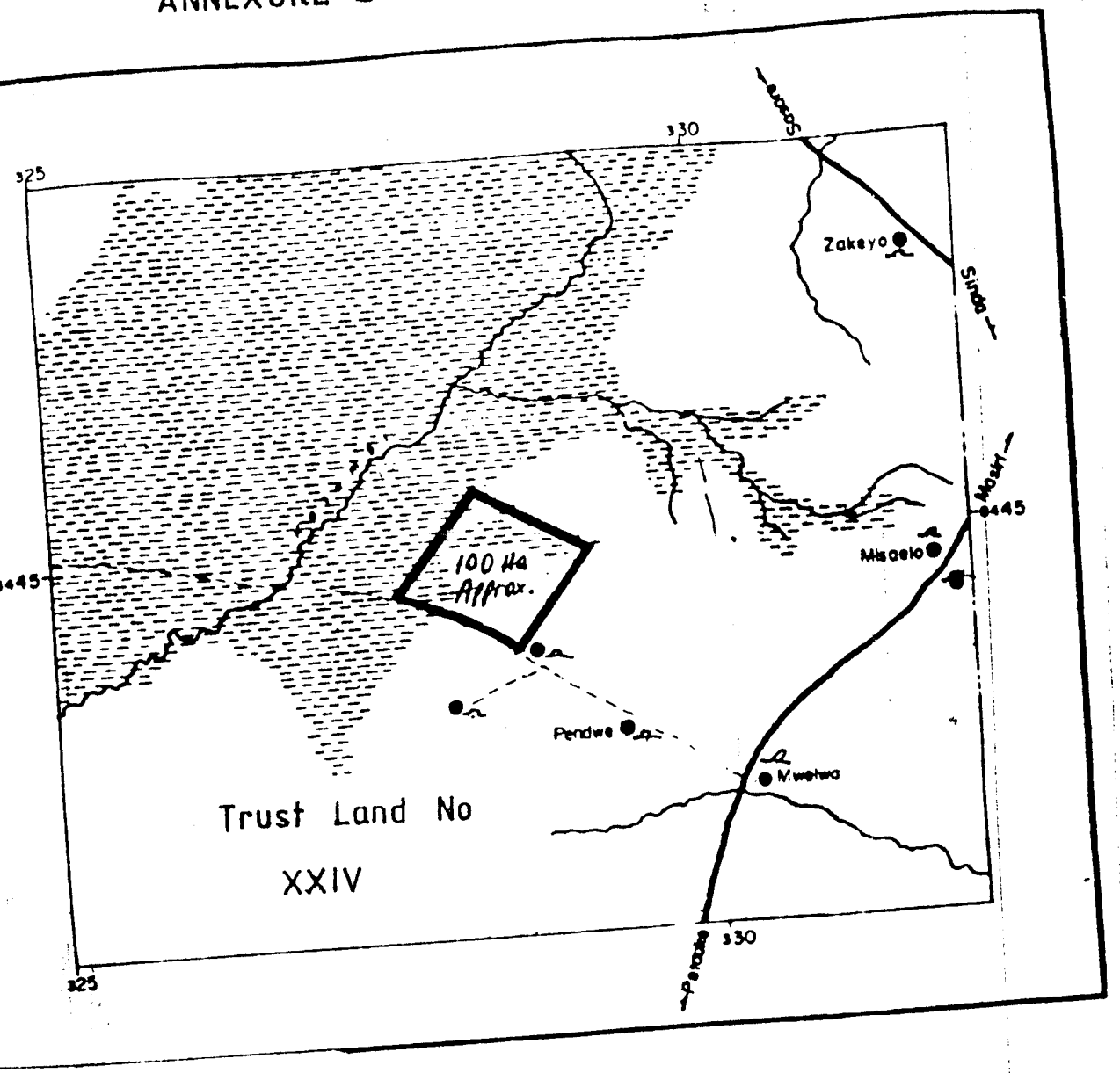
B. APPLICATIONS BY COMPANIES AND ORGANISATIONS

1. Name.....
2. Address.....
3. Is the company incorporated or organisation registered under Zambian laws?
   .....
4. Is the company or organisation legally competent to hold land in Zambia?.....
5. Issued and paid up capital: K.....
6. Name, usual country of residence and nationality of shareholders, trustees etc.
   (i) .....
   (ii) .....
   (iii) .....
   (iv) .....
   (v) .....
7. Full description of type of development proposed on stands applied for.....
   .....
   .....
8. Particulars of land owned by or leased to company or organisation.

Property No.	Stand No.	User Clause	District	Term

9. Estimated cost of proposed development: K.....
10. Do you intend to sell or let the completed development?.....
    .....
    .....
11. If yes, have you a purchaser/tenant in mind?.....

ANNEXURE B MODEL LAYOUT PLAN



Scale 1:50,000

LEGEND

Main road .....

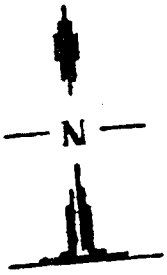
Farm boundary.....

River or stream .....

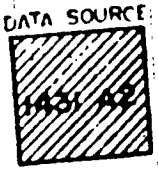
Foot path.....

Village.....

Dambo.....



DATA SOURCE:



C. APPLICATIONS BY NON-ZAMBIANS

dditional information in support of the proposed development should be given here. The applicant advised to write as much as possible about himself and the intended project. Additional paper ay be used if this space is not adequate).

D. STATUTORY DECLARATION

I, ...do solemnly and sincerely declare that t particulars given in this application form are true and correct and that I have not withhe any information which might affect my application AND I make solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration A-t, 1835.

Signature .....

E. FOR USE BY THE DISTRICT COUNCIL

1. The application under A/B is recommended for the following reasons:

   .....

   .....

   .....

2. The application under A/B is not recommended for the following reasons:

   .....

   .....

   .....

CERTIFICATE

I hereby certify that this application was approved by the full Council under item No. .....

on the .....

.....

District Executive Secretary
(The District Executive Secretary should sign the certificate personally)

Official Date Stamp

ANNEXURE 'C'

GOVERNMENT OF THE REPUBLIC OF ZAMBIA

LANDS DEPARTMENT

ication for a farm or small-holding in.....council area.
be completed in duplicate and both copies submitted to the District Executive Secretary,
....*District Council*).

First choice: Farm/Lot No..... .....Town.....
Other choices: Farm/Lot No. .....
If more than one farm or small-holding is required because of the scale of the proposed development give details here.....
.....
.....
.....
If the area applied for is not numbered, provide four copies of the approved layout plan.

A. APPLICATIONS BY INDIVIDUALS

Name (in block letters).....
Address.....
Age..... .....Birth place.....
Nationality.....
National Registration Card Number.....
Date and place of issue.....
Residence in Zambia (non-Zambians) from..... .....
Passport No. (non-Zambians).....
Date and place of issue.....
The name of the mortgagees.....
If you do not intend to borrow, state your sources of income with which to finance development (Provide evidence)..... .....
....
.....
.....
Married or single..... .....
If married, number, sex and age of children.....
....
Present occupation.....
Full description of type of development proposed on the farm or small-holding applied for:
.....
.....

16. Will the farm or small-holding be owner occupied?

.....

17. Estimated cost of proposed development: K.....

18. Particulars of land owned by or leased to applicant of husband/wife of applicant.

Property	Farm/Lot No.	User Clause	District	Term of Lease

B. APPLICATIONS BY COMPANIES AND ORGANISATIONS

1. Name.....
2. Address.....
3. Is the company incorporated or organisation registered under Zambian laws?

.....

4. Is the company or organisation legally competent to hold land in Zambia?

.....

5. Issued and paid up capital: K.....
6. Name, usual country of residence and nationality of shareholders, trustees etc.

   (i) .....

   (ii) .....

   (iii) .....

   (iv) .....

   (v) .....

7. Full description of type of development proposed on the farm or small-holding applied for.

.....

.....

8. Particulars of land owned by or leased to company or organisation.

Property No.	Farm/Lot No.	User Clause	District	Term of Leas

9. Estimated cost of proposed development: K.....
10. Do you intend to sell or let the completed development.....
11. If yes, have you a purchaser/tenant in mind?.....

C. APPLICATIONS BY NON-ZAMBIANS

(Additional information in support of the proposed development should be given here. The applicant is advised to write as much as possible about himself and the intended project. Additional paper may be used if this space is not adequate).

D. STATUTORY DECLARATION

I,.....do solemnly and sincerely decl
the particulars given in this application form are true and correct and that have not
any information which might affect my application AND I make solemn declaration conscie
believing the same to be true and by virtue of the provisions of the Statutory Declarati
1835.

Signature.....

E. FOR USE BY THE DISTRICT COUNCIL

1. The application under A/B; is recommended for the following reasons:

   .....

   .....

   .....

2. The application under A/B; is not recommended for the following reasons:

   .....

   .....

   .....

CERTIFICATE

I hereby certify that this application was approved by the full Council under item No.....
on the.....

.....
District Executive Secretary
(The District Executive Secretary should
the certificate personally)

Official Date Stamp

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L320 - DR. K. HANSUNGULE

(THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA).

CAB (92).....29..... COPY NO. .....16.....
27th MARCH, 1992.

C A B I N E T.

LAND; NEW ADMINISTRATIVE PROCEDURES FOR THE ALLOCATION OF LAND IN URBAN AND RURAL AREAS.

(Memorandum by the Minister of Lands)

I recommend to Cabinet that Government adopts the new land allocation procedures as contained in paragraph 5(A) to (E) in order to contribute towards economic recovery, especially through improved Agricultural performances.

2. Until recently the procedure on land alienation in Stateland, Reserves and Trustland is contained in the Land Circular No. 1 of 1985, which is intended to lay down general policy guidelines regarding the procedure all District Councils are expected to follow in the Administration and allocation of land.

3. The land circular in question states that all land in Zambia is vested absolutely in the President who holds it in perpetuity for and on behalf of the people of Zambia. The powers of the President to administer land are spelt out in the various legislations some of which are; The Zambia (State Land and Reserves) Orders, 1928 to 1964 the Zambia (Gwembe District) Orders, 1952 to 1964 and the Land (Conversion of Titles) Act No. 20 of 1975 as amended. The former President had delegated the day-today administration of land matters to the public officer for the time being holding the office or executing the duties of Commissioner of Lands. Under Statutory Instruments No. 7 of 1964 and Gazette Notice No. 1345 of 1975, the

Commissioner of Land is empowered by the President to make grants or dispositions of land to any person subject to the special or general directions of the Minister responsible for land matters.

4. Pursuant to the policy of decentralisation and the principle of participatory democracy it was decided that District Councils should participate in the administration of land. To this effect, all District Councils will be responsible for and on behalf of the Commissioner of Lands, in processing of applications, selecting of suitable candidates and making recommendations are invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy.

5. Accordingly, the following procedures have been laid down and it will be appreciated if you shall ensure that the provisions of this Circular are strictly adhered to.

A. PREPARATION OF LAYOUT PLANS

(i) The planning of stands for various uses is the responsibility of the appropriate planning authority of the area concerned. Once a chosen area has been properly planned, the planning authority shall forward the approved layout plans to the Commissioner of Lands for scrutiny as to the availability of the land.

(ii) Upon being satisfied that the layout plans are in order, the Commissioner of Lands shall request the Surveyor-General to number and survey (or authorise private survey) the stands;

(iii) Thereafter a copy of the layout plan showing the order of numbering shall be sent back to the District Council and the planning authority concerned.

B. ALLOCATION OF STANDS

(i) Stands recommended for allocation to the Commissioner of Lands will be assumed to have been fully services by the District Council concerned. If the stands are not serviced, the District Council shall give reasons for its inability to provide the necessary services before the recommendations can be considered.

(ii) Before stands are recommended, the District Council concerned may advertise them in the national press inviting prospective developers to make applications to the District Council in the form appended hereto and numbered as Annexure A.

(iii) On receipt of the applications the District Council concerned shall proceed to select the most suitable applicants for the stands and make its recommendations in writing to the Commissioner of Lands giving reasons in support of the recommendations in any case where there may have been more than one applicant for any particular stand, or where an applicant is recommended for more than one stand,

(iv) On receipt of the recommendation(s) from the District Council(s), the Commissioner of Lands shall consider such recommendation(s) and may make offer(s) to the successful applicant(s) sending copies of such offer(s) to the District Council(s) concerned.

(v) Where the District Council is not the planning authority an applicant whose recommendation has been approved by the Commissioner of Lands shall be directed, in a letter of offer in principle, to apply for and obtain planning permission from the relevant planning authority before a lease can be granted.

(vi) If the District Council is aggrieved by the decision of the Commissioner of Lands, the matter shall be referred to the Minister of Lands within a period of thirty days from the date the decision of the Commissioner of Lands is known, who will consider and decide on the appeal. The Minister's decision on such an appeal shall be final.

(vii) No District Council shall have authority in any case to permit, authorise or suffer to permit or authorise any intending developer to enter upon or occupy any stand unless and until such a developer shall have first received the letter of offer, paid lease fees and the development charges. and has obtained planning permission from the relevant planning authority.

(viii) Prior to the preparation of the direct lease, the District Council concerned shall inform the Commissioner of Lands the minimum building clause to be inserted in the lease.

(ix) Prompt written notification of the relevant particulars upon the issue of a certificate of title shall be given by the Commissioner of Lands to the District Council concerned.

C. SCHEDULED AGRICULTURAL LANDS

(i) Any State lands required for agricultural use shall be notified to the Commissioner of Lands so that its status and availability can be determined. Once the Commissioner of Lands is satisfied that the land in question is available the Department of Agriculture in consultation with the District Council shall be requested to plan the area into suitable agricultural units. The layout plans duly approved by both the

Department of Agriculture and the District Council concerned shall be submitted to the Commissioner of Lands for survey and numbering.

(ii) Once the District Council is in possession of information from the Commissioner of Lands regarding the numbered farms or small holdings the procedure outlined in paragraph 49 (ii), (iii), (iv) and (vi) above shall apply. And the application form to be completed by the applicants shall be as per Annexure 'C'.

(iii) No District Council shall have authority in any case to permit, authorise, or suffer to permit or authorise any intending developer to enter upon or occupy any agricultural farm or small holding unless and until such developer shall have first received the letter of offer and has paid the lease fees.

D. RESERVES AND TRUST LANDS

(i) In the Reserves and Trust Lands, the powers of the President in making grants or dispositions of land, are limited by the requirement to consult the local authorities affected by such grants or dispositions of land.

(ii) Local authority, in the order has been administratively understood to mean the Chief and the District Council. This means, therefore, that the consents of the Chiefs and District Councils shall continue to be the basis for any approval of applications for land in the Reserves and Trust Lands.

(iii) As has been the practice before to ensure that a local authority has been consulted, the Commissioner of Lands will insist that each recommendation is recom[illegible] accompanied by the following:-

9. As Cabinet may be aware the allocation of land is the prerogative of the state through the Commissioner of Lands whom the powers of the President have been delegated subject to my special or general directions. The Commissioner of Lands, therefore administers the allocation of land and registration of titles.

10. Cabinet may wish to know that there have been complaints by members of the public against the Department of Lands for failing to speed up the processing of title deeds. There have also been complaints of malpractices involving officials and Councillors in the District Councils throughout the Republic and also at the Department of Lands Headquarters.

11. The delay in the processing of titles deeds contributes to the delay in the development of the country as most applicants cannot borrow money from lending institutions until they obtain title deeds. This has been especially so in respect of the emergent farmers in most parts of the country.

12. As regards malpractices, it is possible some officials under the present system would receive bribes for facilitating the allocation of land to those who want to jump the queue or those who may not have adequate financial means to develop the plots within the stipulated period. This has led to the current situation where land has remained undeveloped, while the need for land on which potential developers would build houses for rent has continued to become scarce. The escalating rental charges on housing in many urban centres are partly due to this situation.

13. In order to improve the housing situation especially in the urban centres, and in order to increase food and agricultural production it is necessary that measures are taken to ensure that land is made available to those with the means to develop it. It is also necessary to re-organise procedures for [illegible] the incidence of curruptio

14. Cabinet may wish to note that in this regard on 20th November, 1991, I suspended allocation of land by all concerned until our new procedures for land allocation are marked out. The new procedures have now been finalised and will be effective from 1st April, 1992, details of which are contained in the circular minute addressed to all Provincial Permanent Secretaries, District Executive Secretaries and Provincial Lands Officers which reads as follows:-

LAND SITUATED WITHIN THE CITY, MUNICIPAL AND DISTRICT TOWNSHIP

15. Because it has been observed that many lessees have not developed land within a stipulated period, the emphasis from now on will be on ability of the applicants to commence development immediately. With this in mind, the Committee must insist on evidence of money being available for development. Once the application has been approved an offer in principle will be made valid for one month within which evidence of the availability of funds sufficient for the intended developments must be submitted before the actual officer will be made.

16. Once the offer has been made and title deed issued, the lessee must within six months commence development and within eighteen months produce evidence of occupation.

If at the end of the eighteen months evidence of [illegible] occupation is not produced, the land will be re-entered upon without notice.

LAND SITUATED OUTSIDE THE CITY AND MUNICIPAL COUNCIL BOUNDARIES BUT WITHIN TWELVE KILOMETRES OF SUCH BOUNDARIES

Same procedure and conditions as in 'A' above, Evidence of occupation to be produced within two years.

LAND SITUATED OUTSIDE BOUNDARIES OF OTHER DISTRICT COUNCILS

Same procedure as in 'A' and 'B' above, and evidence of occupation to be produced within two years.

AGRICULTURAL/COMMERCIAL FARMS

Same procedures and conditions as in 'A' and 'B' above and evidence of occupation to be produced within two years.

AGRICULTURAL /EMERGENT FARMS

17. As it is the policy of the Government to encourage emergent farmers in rural in rural areas to obtain title titles deeds, an offer in principle will be made to an applicant for title deeds only when suxh application is supported by a recommendation from an Agricultural Officer or other similar officers from the District where the land is situated to the effect that the applicant is a bona fide farmer, has implements and tools necessary for farming. This offer will state clearly that at the end of the two years, title deeds will be issued on confirmation by the officer that reasonable development has been carried out. On receipt of application, it will be made clear to the applicant that the new conditions will be contained in both the offers and lessees. The new conditions will stipulate clearly that at the end of the stipulated period, the burden will be on the lessee to produce evidence of developments and failure to produce such evidence may lead to the forfeiture of the land to the State without.

NOTICE. Further, District Councils will be required to ensure that the land leased is developed and as matter of priority inform the Department of Lands through the Provincial Lands Officers of undeveloped land so that the entry procedures are immediately instituted.

19. As there is an urgent need to make more land available for development in all sectors of the economy, the Councils shall be required to identify land for future developments, have it numbered and serviced so that it can be recorded and easily identified for allocation to would be developers.

20. The Commissioner of Lands will accept approvals by these committees and take offers accordingly except in cases where either because of dispute or other interests, it is necessary for him in the interest of justice and development, to withdraw the offer or make a direct offer from his office.

The Ndola Regional Office will cater for four provinces namely:-

Copperbelt
Northern
North Western
Luapula

While Lusaka Office will cater for the other five provinces.

21. The processing of title deeds for offers made after 1st April, 1992 shall be done at Ndola and Lusaka respectively. The copies of the offers and payments received shall be sent to the respective offices at Lusaka and Ndola.

27. Subject to the availability of trained manpower, land available for potential development should be identified/ planned according toits general use, numbered and surveyed throughout the country. Potential developers should be able to know where this land is Normal allocation procedure should apply.

28. The delays encountered by the Survey Department in executing Cadarstral Surveys subsequently allowing the issue of Title Deeds are as a result of lack of adequate resources not so much due to administrative procedures. This contribution should be considered in line with the need to increasing the current establishment of Surveyor-General's office. Above all I would like to suggest that a national conference be organised, at which all interested parties, organisations and individuals shall review and adopt acceptance of the procedures. Meanwhile until then the current rules and procedures should continue to apply and the (existing ban on land alienation process be lifted).

29. The Minister of Defence has been consulted and has not commented.

30. The Minister of Foreign Affairs has been consulted and has not commented.

31. The Minister of Home Affairs has been consulted and has not commented.

32. The Minister of Local Government and Housing has been consulted and has not commented.

33. The Minister of Health has been consulted and has not commented.

34. The Minister of Education has been consulted and has not commented.

35. The Minister of Commerce, Trade and Industry has been consulted and has not commented.

36. The Minister of Community Development and Social Service has been consulted and has not commented.

37. The Minister of Labour and Social Security has been consulted and has not commented.

38. The Minister of Communications and Transport has been consulted and has not commented.

39. The Minister of Energy and Water Development has been consulted and has not commented.

40. The Minister of Agriculture, food and Fisheries has been consulted and has not commented.

41. The Minister of Legal Affairs has been consulted and has not commented.

42. The Minister of Environment and Natural Resources has been consulted and has not commented.

43. The Minister of Information and Broadcasting Services has been consulted and has not commented.

44. The Minister of Mines and Minerals Development has bee consulted and comments as follows:

"I support the recommendations to change the Land Law, However, I reserve my comments on 1 (b). Law is a vit issue which will require broad consultations to avoid misunderstandings among the people of this land and th heirs on one hand and the investors and their successo on the other. We are withnessing land rows in Zimbabw and soon it will be in the Republic of South Africa. A review to dismantle the colonial and post colonial land administration require very careful study. For example 3 (b) needs correct interpretation".

45. *The Minister of Science, Technical Education and Vocational Training has been consulted and comments as follows:-*

"I support the Memorandum in as far as the land allocation procedures are concerned. However, I do not support the idea of a conference on land procedures, my view is that a national conference on land use and ownership procedures would be a good idea."

46. The Minister of Sport, Youth and Child Development has been consulted and comments as follows:-

"I support the memorandum".

47. The Minister of Tourism has been consulted and has not commented

48. The Minister of Works and Supply has been consulted and has not commented.

49. Cabinet is requested to advise whether it accepts the recommendations contained in this Cabinet Memorandum.

(a) Written consent of the Chief under his hands;

(b) extracts of the minutes of the Committee of the Council responsible for land matters embodying the relevant resolution and showing who attended, duly authenticated by the Chairman of the Council and the District Executive Secretary;

(c) extracts of the full Council with the relevant resolution and how who attend duly authenticated by the Chairman of the Council and the District Executive Secretary;

(d) four copies of the approved layout plan showing the site applied for duly endorsed and stamped by the Chief, Chairman of the Council and the District Executive Secretary.

(iv) The preparation of the layout plan showing the area applied for, should be done by persons possessed with cartographic know-how. At Annexure 'D' of this circular is a model layout plan which provides the necessary details for an acceptable layout plan.

(v) It has been decided, for the time being not to allocate more than 250 hectares of land for farming purposes in the Reserves and Trust lands areas. The District Councils are therefore, advised not to recommend alienation of land on title in such areas in excess of 250 (two hundred and fifty) hectares as such recommendation would be difficult to consider.

(vi)

(vi) In each case recommend to the Commissioner of lands, the recommending authority shall certify that it has physically inspected the land applied for that settlements and other persons interests and rights have not been affected by the approval of the application.

E. APPLICATIONS FOR LAND BY NON ZAMBIANS

(i) Cabinet may be aware that under the Land (conversion of Titles) (Amendment) (No.2) Act of 1985 no land can be alienated to a person who is not a Zambian. However, under the same Amendment, a non-Zambian can be allocated a piece of land if his application has been approved in writing by His Execellency the President.

(ii) To obtain the approval of his Excellency the President, a non-Zambian wishing to own a piece of land will be required in the first place, to submit his application to the District Council concerned for security. In considering the application, the District Council will be at liberty to solicit for as much information as possible from the applicant about the intended development.

(iii) When recommending the application to the Commissioner of lands, the District Council shall be required to give full back-up information in support of or against the applicant in in addition to the following:

(a) extracts of the minutes of the Committee of the Council responsible for land matters, endorsing the relevant resolution and showing who attended the meeting duly authenticated by the Chairman of the Council and [illegible] District Executive.

(b) extracts of the minutes of the full Council, with the relevant resolution and showing who attended the meeting duly authenticated by the Chairman of the Council and the District Executive Secretary; and

(c) four copies of the approved layout plan, the site applied for, duly stamped and endorsed by the Chairman of the Council and the District Executive Secretary where the site has not been numbered.

6. Consultation- Development projects of great significance both to the District and the nation, shall be referred to the provincial Authority for guidance before communicating the decision to the Commissioner of lands.

7. Decentralisation of land Department- necessary plans to further decentralise the various aspects of land administration to the provincial Headquaters have been made.

8. Reserved powers- The Minister responsible for lands shall have the right in any cases or with respect to any category or categories of land, to modify vary, suspend or dispense with the procedure outlined about or any aspect of same as he may see fit in the circumstances.

SOLLY PATEL
ADVOCATE
P.O. BOX 30605
LUSAKA

The Law Association of Zambia

General Conditions of Sale 1976

The Law Association of Zambia General Conditions of Sale 1976

Interpretation

1. (a) These conditions shall be known as "the Law Association of Zambia General Conditions of Sale 1976".

(b) In these conditions where the context admits:-

(i) "Abstract of Title" shall include copies of deeds and documents which would normally be abstracted.

(ii) "The Contract" means any contract incorporating these Conditions or any of them, by reference thereto, and includes the Particulars and Special Conditions, if any, used in connection with the contract.

(iii) Words importing the masculine gender include the feminine and neuter genders, words importing the singular include the plural and where there are two or more persons included in the expressions "the Vendor" and "the Purchaser" any covenant or agreement made or to be made by either the Vendor or the Purchaser by virtue of these conditions shall be made jointly and severally.

(iv) The expressions "the Vendor" and "the Purchaser" include the persons deriving title under them respectively.

(v) References to the Special Conditions include references to the Particulars.

(c) Where the last day for doing any act or taking any step would but for this provision be a Public Holiday, Sunday or Saturday then such last day shall be the next following working day.

(d) The marginal notes hereto shall not affect the construction hereof.

eposit

2. (a) Unless the Special Conditions otherwise expressly provide a deposit of ten per centum of the purchase money shall be paid on the exchange of contracts.

(b) Such deposit is to be paid to the Vendor's Advocate as stakeholder for the parties.

mpletion

3. (a) The purchase shall be completed on the date fixed by the Special Conditions or, if no date is so fixed, the date six weeks from the date of the Contract.

(b) Completion shall take place at the office of the Vendor's Advocate mentioned in the Contract, or if so required by the Vendor at the office of the Vendor's Mortgagee's Advocate, if any. If there is no such Advocate, completion shall take place at the office of the Purchaser's Advocate.

(c) (i) On actual completion of the purchase the Purchaser shall be entitled to possession or receipt of the rents and profits of the property as from the day fixed for completion and shall be liable to all outgoings as from that date, such rents profits and outgoings to be apportioned if necessary subject to the following provisions hereof;

(ii) insurance premiums shall not be apportioned except as hereinafter provided;

(iii) rates shall be apportioned according to the period for which they are intended to provide wherever possible;

(iv) where completion takes place after the end of the period for which the last rate was made and before the new rate has been ascertained, the rate to be apportioned shall be deemed to be at the same rate per Kwacha as was the last rate;

(v) where a rates clearance certificate is required the same shall be obtained by and at the expense of the Vendor;

(vi) where completion takes place at the office of the Vendor's Advocate, the purchase money or any part thereof shall be paid free of any bank commission or other charges but if such commission or charges become payable or are increased by reason of the fact that the completion takes place otherwise than at such office, the same or such increase, as the case may be, together with the Purchaser's reasonable costs and expenses of attending such completion shall be borne by the Vendor.

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4. (a) Except in a case to which Condition 5 applies, if from any cause whatever (save as hereinafter mentioned) the completion of the purchase is delayed beyond the date fixed for completion, the purchase money (or if a deposit has been paid, the balance thereof) shall bear interest at the rate (if any) specified in the Special Conditions, and if no rate is so specified at the rate of eight per centum per annum from the date fixed for completion to the date of actual payment thereof,

Provided that, unless the delay in completion is attributed solely to the Purchaser's own act or default, the Purchaser may:-

(i) at his own risk deposit the purchase money, or where a deposit has been paid the balance thereof, at any bank in Zambia and

(ii) forthwith give to the Vendor or his Advocate notice in writing of such deposit and in that case the Vendor shall (unless and until there is further delay in completion which is attributable solely to the Purchaser's own act or default) be bound to accept the interest, if any, allowed thereon, as from the date of such deposit instead of the interest accruing after such date which would otherwise be payable to him under the foregoing provisions of this Condition.

(b) No interest under paragraph (a) of this Condition shall become payable by a Purchaser if and so long as delay in completion is attributable to:-

(i) default by the Vendor in deducing title in accordance with the Contract;

(ii) any other act or default of the Vendor or his Mortgagee.

(c) In respect of any period during which interest is payable under paragraph (a) of this Condition the Vendor shall, instead of any similar right at law or equity, have the option of taking, instead of the said interest, the rents and profits or an apportioned part thereof (as the case requires) less the outgoings or an apportioned part thereof.

ccupation efore ompletion

5. If the Purchaser, not being in occupation as a tenant or lessee, is let into occupation before completion takes place then, in the absence of agreement to the contrary, from the date of his going into occupation the following shall apply:-

(a) the Purchaser shall be the licensee of the Vendor and not the tenant,

(b) the Purchaser shall keep the property in as good repair and condition as when occupation was given,

(c) the Purchaser shall pay interest at the rate of eight per centum per annum upon the Purchase-money or the unpaid balance thereof and pay or indemnify the Vendor against all outgoings and expenses, including the cost of insurance, in respect of the property,

(d) the Purchaser shall not be deemed thereby to have accepted the Vendor's title,

(e) if the contract is rescinded or discharged, the Purchaser shall give up possession forthwith in as good repair and condition as aforesaid.

ostract

6. (a) The Vendor shall deliver to the Purchaser an Abstract of Title within ten days of the date of the date of the Contract.

(b) The Purchaser shall deliver in writing all requisitions or objections upon or to the title, the Abstract and the Contract, as regards matters not thereby specifically provided for, within fourteen days of the delivery of the Abstract and, subject to such requisitions and objections, the title shall be deemed to be accepted.

(c) The Abstract, though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions which could not have been taken or made on the information therein contained.

(d) Replies to any such requisition or objection shall be answered in writing within seven days of the date of delivery of such requisitions or objections and if not so answered the Vendor shall be deemed to agree to the requisition or to accept the objection.

(e) A reply to any objection or requisiton shall be answered in writing within seven days after the delivery thereof and if not so answered shall be considered satisfactory.

(f) Time shall be of the essence of this Condition in all respects.

scission

7. (a) If the Purchaser continues to make any requisition or objection as to title which the Vendor shall be unable or on the grounds of unreasonable expense unwilling to remove or comply with and does not withdraw the same within ten days of being required in writing so to do the Vendor may rescind the Contract.

(b) Upon such rescission the Vendor shall return the deposit but without interest and the Purchaser shall return the Abstract and all papers belonging to the Vendor and shall have no claim against the Vendor for costs, compensation or otherwise..

Leaseholds

8. (a) The title to leasehold (other than statutory leasehold) property shall commence with the lease or underlease creating the term or interest sold.

(b) Such lease or underlease having been made available for the inspection of the Purchaser, the Purchaser (whether he has inspected the same or not) shall be deemed to have notice of all the contents and such notice shall not be affected by any partial, incomplete or inaccurate statement in the contract.

(c) Where the term or interest sold is created by an underlease the Purchaser shall make no objection on the ground that the conditions and covenants in the underlease do not correspond with those in the superior lease provided that the provisions of the underlease substantially give effect to the provisions of the superior lease.

(d) The Vendor shall apply for the consent of the State and any other necessary licence to assign immediately after the Contract is made and shall pay any fee necessary to obtain the same and shall use his best endeavours to obtain such consent and licence at the price stated in the Contract free from any condition which either the Vendor or the Purchaser is not already bound by law or the Contract to comply with; in the event of the Vendor being unable to obtain such consent or licence to assign within the period fixed by the Special Conditions or, if no period is so fixed, eight weeks from the date of the Contract, either party may rescind the Contract and thereupon the provisions of Conditions 5 (e) and 7 (b) shall apply.

(e) The Purchaser shall give to the reversioner at his own expense any notice required to be given after completion.

Acknowledgement for production

9. The Purchaser shall not object to the absence or insufficiency of any covenant or acknowledgement or undertaking for the production of documents.

Diagrams and Beacons

10. (a) The Purchaser shall accept the identity of the property as shown on the diagram or other approved plan relating to the same and shall, if he so requires, have the beacons and boundaries pointed out to him at his own expense by a land surveyor. Any missing beacons shall be replaced at the expense of the Vendor.

(b) A Purchaser shall be deemed to purchase with full notice of the actual state and condition of the property, whether as to the state of repair, means of access, enjoyment of light and air or otherwise, and shall take the same as it stands.

Requirements of Authorities

11. (a) Where before the date of the contract the Vendor has notice of any requirement of any local or public authority or other person or body lawfully making the same which will or may involve the expenditure of money then (unless the contract is made subject thereto) if the Vendor fails the expenditure of money then (unless the contract is made subject thereto) if the Vendor fails to show that before the contract was made the Purchaser received (whether by the contract or otherwise) notice in writing of any such requirements, the Purchaser may by notice in writing given to the Vendor or his Advocate rescind the contract and thereupon Conditions 5 (e) and 7 (b) shall apply.

(b) Where notice of any such requirement is received by the Vendor after the date of the contract then:-

(i) the Vendor shall forthwith give notice thereof to the Purchaser and give him the opportunity of satisfying the same so as it may be practicable to do so without giving possession before completion.

(ii) if the Vendor has expended money for the purpose of satisfying such notice or requirement before completion the Purchaser shall on completion pay to the Vendor the money so expended with interest at the rate of eight per centum per annum from the date of such expenditure.

(iii) If and so far as the requirement has not been satisfied before the completion of the purchase the Purchaser shall keep the Vendor indemnified against all liability for the payment of any money payable as a result of the same and the Purchaser shall give a covenant for such indemnity.

Vacant possession

12. Except as otherwise stated in the particulars or the special conditions vacant possession of the property will be given upon completion.

Subdivision

13. Where the property is a subdivision of a piece of land owned by the Vendor:-

(a) all expenses of the subdivision and survey of the property and the approval of any diagram or plan and the marking-off fees and the application for a Provisional Certificate or Certificate of Title in respect of any other portion of such piece of land shall be borne by the Vendor;

(b) the diagram or (where the same is permitted to be used by the responsible authority) the approved plan shall be available for inspection at the offices of the Vendor's Advocate and shall be delivered on loan to the Purchaser with the Abstract;

(c) where an approved plan is used to complete the Contract any expenditure in connection with the substitution of a diagram for such plan incurred after the date of completion shall be borne by the Purchaser unless the use of such plan is caused by delay on the part of the Vendor or his surveyor in carrying out the survey and obtaining approval of the diagram;

(d) the Purchaser shall not object to the use of an approved plan instead of a diagram.

Town planning Schemes

14. Where the property is subject to a Notice or Order made or deemed to have been made under the Town and Country Planning Act (Cap. 475 of the Laws) the Purchaser shall be deemed to have notice of the same and all conditions imposed from time to time thereon under the provisions of that Act.

Preparation of Assignment

15. (a) The Assignment to the Purchaser shall be prepared by him or on his behalf, and at his own expense, and the draft thereof shall be delivered to the office of the Vendor's Advocate at least ten days before the date fixed for completion for perusal and approval on behalf of the Vendor or other necessary parties (if any).

(b) The engrossment of such Assignment for execution by the Vendor and other necessary parties (if any) shall be left at the said office within four days after the draft has been returned approved on behalf of the Vendor or such other parties (if any).

(c) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition..

Easements

16. Where the property or any part thereof adjoins or faces or is neighbouring to any other land of the Vendor (whether intended to be retained or sold by him), a Purchaser of the property shall not become entitled to any easement or right of light or air or other easement or right, which would restrict or interfere with the free use of such other land by the Vendor or any person deriving title under him for building or any other purpose. The Assignment shall contain a reservation or provision for giving effect to this condition.

Documents of Title

17. (a) Documents of title relating to land to be retained by the Vendor shall be retained by the Vendor.

(b) In relation to documents of title retained by the Vendor the Vendor shall give or procure the usual statutory acknowledgement and undertaking at the expense of the Purchaser.

(c) Where a document is retained in the possession of a mortgagee, trustee or personal representative, the Purchaser shall be satisfied with an acknowledgement of the right to production and to delivery of copies from the Vendor, without any undertaking or covenant for safe custody from him or any other person, save that if a mortgagor, not being in a fiduciary position, is a vendor or concurs in an assignment, he shall, if so required, covenant that if and when he receives the document he will, at the cost of the person requiring it, give an undertaking for the safe custody thereof.

Insurance

18. (a) As between the Vendor and the Purchaser, the Vendor shall be bound to keep on foot any insurance of the property against damage or destruction and give the Purchaser notice of any premium being or becoming due.

(b) The Purchaser may require the Vendor to use his best endeavours to obtain the consent of the insurers to the name of the Purchaser being endorsed on the policy or recorded by the insurers as being interested in the policy and in such case the Purchaser shall on completion pay to the Vendor a proportionate part of the premium from the date of the Contract up to the expiration of the current period of insurance and any insurance moneys received by the Vendor pursuant to such insurance shall be held by the Vendor upon trust for the Purchaser and any moneys received by the Vendor's mortgagee not expended in reinstatement of the property shall be deducted from the purchase price.

(c) If the Contract is rescinded the Vendor may require the endorsement or record of the Purchaser's interest to be cancelled.

Misdescription

19. (a) Subject to Condition 20, no error, mis-statement or omission in the particulars or in the special conditions shall annul the sale but if there shall be any such error mis-statement or omission which materially affects the quantity description or value of the property and which is discovered by the Vendor or the Purchaser before completion but not otherwise, the same shall form the subject of compensation to or by the Purchaser as the case may be, provided that the party against whom compensation is claimed may if he so wishes and within seven days of the receipt of notice of such claim in writing rescind the contract and the deposit shall be returned to the

Purchaser and the Abstract of Title and all other documents shall be returned to the Vendor but the person so claiming compensation may within seven days of the receipt of such notice withdraw the claim for compensation and such notice of rescission shall thereupon be deemed to be withdrawn, time being of the essence of this condition.

(b) The amount of compensation (if any) shall be determined by the person agreed on or nominated to settle disputes as provided in Condition 26 and the decision of such person thereon shall be conclusive and binding on the Vendor and the Purchaser and his costs shall be paid by the party against whom the decision of the person is made or as he shall direct.

Unsurveyed land

20. Where the particulars of the property do not describe the property by reference to an approved plan or diagram, and subject to anything to the contrary contained in the special conditions:-

(a) the parties shall appoint a land surveyor to undertake the survey and demarcation of the property and the beacons thereof and and in default of agreement between the parties a land surveyor shall be appointed by the person agreed or nominated to settle disputes as provided by Condition 26;

(b) all parties shall be deemed to have agreed to the instructions given to the land surveyor so appointed and any discrepancy between the description of the property in the Particulars and the area calculated as a result of the beacons made and the boundaries demarcated by him shall not annul the sale but the area so calculated by the land surveyor so instructed or appointed shall be deemed to be the piece of land agreed to be sold;

(c) no adjustment shall be made to the purchase price by virtue of any discrepancy between the quantity of property as shown in the particulars and that apparent from such survey.

Purchaser's default

21. (a) If a Purchaser shall fail to perform his part of the Contract the Vendor may give to the Purchaser or his Advocate at least fourteen days' notice in writing specifying the default complained of and requiring the Purchaser to make good the same before the expiration of such notice.

(b) If the Purchaser does not comply with the terms of such notice the deposit (if any) shall be forfeited to the Vendor; the Vendor may resell the property without previously tendering an assignment to the Purchaser; and the Contract shall, without prejudice to the Vendor's right to resume possession (if given up) and recover documents belonging to him, become void but the following provisions of this Condition shall apply;

(c) Any resale, however effected, may be made at such time and subject to such conditions and in such manner as the Vendor may think proper;

(d) If within one year from the expiration of such notice the Vendor shall suffer a loss as a result of such resale by reason of diminution of price, the Purchaser shall pay to the Vendor the amount of such loss as liquidated damages, after receiving credit for the deposit, but any surplus on such resale shall be retained by the Vendor;

(e) On any resale or attempted resale by auction the property may be bought in by or on behalf of the Vendor;

(f) On any resale or attempted resale made in good faith within such year the Purchaser shall pay to the Vendor all expenses and disbursements reasonably incurred in such resale or attempted resale as liquidated damages, after receiving credit for the deposit;

(g) In favour of a purchaser for value acting at the time of the contract of resale in good faith any resale by the Vendor appearing to the Purchaser thereunder to be made in good faith under the provisions of this Condition shall be valid and effective notwithstanding that as between the parties to this Contract the Vendor may not be entitled to resell under this Condition or that the Purchaser on the resale may have made no inquiry as to the Vendor's right to resell or that

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