

School of Law
oblig. Essay
1993/94

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

**I RECOMMEND THAT THE OBLIGATORY
ESSAY PREPARED UNDER MY SUPERVISION**

BY

STANDWELL JEREMIAH MTONGA
LT COL

SAR
L/E
M/D
1994
201

ENTITLED

**INSTITUTIONAL HARMONIZATION OF
LAND ADMINISTRATION IN ZAMBIA:
A LEGAL STUDY**

**BE ACCEPTED FOR EXAMINATION. I HAVE
CHECKED IT CAREFULLY AND I AM SATISFIED
THAT IT FULFILLS THE REQUIREMENTS RELATING
TO FORMAT AS LAID DOWN IN THE REGULATIONS
GOVERNING OBLIGATORY ESSAYS**

29 - 11 - 94
.....
DATE

.....
SUPERVISOR

(i)

**INSTITUTIONAL HARMONIZATION OF
LAND ADMINISTRATION IN ZAMBIA:
A LEGAL STUDY**

BY

**STANDWELL J. MTONGA
LT COL**

An Obligatory Essay submitted to the
University of Zambia in partial
fulfilment of the requirements for
the degree of Bachelor of Laws (LL.B)

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

OCTOBER, 1994

(ii)

DECLARATION

I, *S-J. Mtonga*.....solemnly declare that this work represents my own ideas and is not a reproduction of any other work produced or submitted by any person to the University of Zambia or to any other institution.

(iii)

DEDICATION

I dedicate this paper to my father MR JEREMIAH S.K. MTONGA, my mother MRS DORIS ZYAMBO MTONGA, my wife SERAPHINE and our five children, my brothers and sisters as well as the rest of my relatives for their cherished love, faith and understanding.

ACKNOWLEDGEMENTS

This work would not have been possible without the help of many people. For that reason, I would like to acknowledge my supervisor DR K. M. HANSUNGULE, Assistant Dean Post-Graduate, School of Law, University of Zambia, for his tireless assistance, suggestions and meticulous guidance in the writing of this work.

I cannot forget to thank MRS MWANZA, Legal Officer in the Ministry of Lands, who answered many of my questions and gave me valuable advice and information and availed me vital documents and materials.

I am indebted to the Department of Human Resources and Development at Cabinet Office, for kindly sponsoring me and the Zambia National Service for allowing me a study leave.

I also would like to extend my indebtedness to my cousin DR HARRY L NTONGA, Permanent Secretary, Eastern Province and my brother-in-law Colonel ROY R MALATA for their guidance, urging, prodding and encouragement which in many ways has been a source of inspiration I shall always remember.

Finally, many thanks also go to my dear wife SERAPHINE and our precious children NDEKAZI, CHISHIMBA, JUMBE, MWAMBA and JANE for their discipline, perseverance, support and love I needed at all times during my long absence from home.

Special thanks go to MRS JUDITH MUNGO for typing this manuscript.

(v)

METHODOLOGY

A number of sources were referred to in the writing of this paper. These include Books, Statutes, Law Reports, Journals, Publications both by students and lecturers and personal interviews with the relevant officials and some landholders.

CONTENTS

	<u>PAGE</u>
SUBMISSION.....	(i)
DECLARATION.....	(ii)
DEDICATION.....	(iii)
ACKNOWLEDGEMENTS.....	(iv)
METHODOLOGY.....	(v)
CONTENTS.....	(vi)
LIST OF CASES.....	(vii)
LEGISLATION REFERRED TO.....	(viii)
ABSTRACT.....	1-3
CHAPTER ONE: INTRODUCTION.....	4-12
CHAPTER TWO: LAND ACQUISITION: PROCEDURE AND INSTITUTIONS	13-26
CHAPTER THREE: LAND USE AND CONTROL.....	27-38
CHAPTER FOUR: CONCLUSIONARY REMARKS AND..... RECOMMENDATIONS	39-43
BIBLIOGRAPHY.....	44-45

(vii)

LIST OF CASES

Attorney-General V Zambia Sugar Company Ltd & Nakambala
Estate Ltd 1977 Z.R. 273

George AndriesJonannes White V Ronald Westerman & Others

LEGISLATION REFERRED TO

Agricultural Lands Act, Cap. 292

Appendix 4 of the Laws of Zambia

Lands Acquisition Act, Cap. 296

Lands (Conversion of Titles) Act, No 20 of 1975, Cap. 289

Land (Conversion of Titles) (Amendment) Act, No 2 of 1985

Lands (Conversion of Titles) Regulations: S.I. No 187 of 1975

Lands (Conversion of Titles) (Amendment) Act, 1994

Lands and Deeds Registry Act, Cap. 287

Land Survey Act, Cap. 293

ABSTRACT

Land is an important asset in all aspects of development initiative of any nation, be it agricultural or industrial. Whether or not a nation will achieve its development plans especially where agricultural development is concerned, will depend on the effectiveness of its land policies, and ultimately its land tenure system. The land tenure will normally reflect the process concerning land acquisition, land control and administration.

Zambia's land policy is such that there are various categories of land and this is a result of the colonial legacy, whereby some land was reserved for white settlers and the other was set aside for natives. These categories still exist even today and thus there is State Land, formerly Crown Land and Reserves and Trust Land (sometimes referred to as Traditional Land)¹. The land tenure in these categories of land differ from one another. Tenure in State Land is governed by legislation and common law whilst that in Reserves and Trust Lands though not specifically provided for in any statute is basically held under customary law.

A characteristic feature in all these categories of land, however, is the several land administration authorities involved in the process of land acquisition and land control. These include inter alia traditional Chiefs, Councils and Ministries of Lands and Local Government. But in customary land, there is only one form of control and land administration, that is, custom. However, the very factor of having such several institutions has its own contribution to the lack of land development in the country. For instance, only a few people have access to good land for development as the procedures are too elaborate and expensive involving moving from one place to another and dealing with so many different bodies. A number of good investors are discouraged by the requirements of tradition and custom from settling in developing land in Reserves and Trust Lands more so if they have no ethnic

ties within the areas. Further, the duties and powers of the various institutions are not really clearly stated, resulting in the bodies performing almost the same functions. Would-be settlers are, therefore, forced to visit several institutions which perform almost the same duties and eventually making the whole procedure lengthy and cumbersome.

The overlap in the roles the several institutions play is not only in land acquisition but also in land control vis-a-vis enforcement of developmental covenants pertaining to land. The non-harmonization of the institutions and their lack of decentralisation has resulted in the non-enforcement of the covenants, with some of the bodies not even being aware of their roles in land inspection.

It is axiomatic that problems such as those outlined are due to the existence of such several Institutions involved in land acquisition and land control. Further it is due to the non-harmonization of the Institutions so that as few bodies as possible perform the functions currently being undertaken by so many bodies. This will not only enhance their effectiveness and competence but will reduce the complications in procedure investors and settlers currently go through in acquiring land. In the long run land development especially agricultural development will be encouraged and ultimately boosted.

FOOTNOTE

1. Other terms for this tenure are customary, tribal, communal land, etc.

CHAPTER ONE

INTRODUCTION

Land is one of the most important resources to man in that it plays a pivotal role in his continued existence. Hence all countries focus considerable attention on it. In order to regulate the use of land, each country has developed its own legal system providing for categorisation of land, land practices and its administration. Zambia is no exception. In this country we have various categories of land. These categories are being administered by different bodies or institutions. Thus land in Zambia is divided into State Lands (formerly Crown Lands), Trust Lands and Reserves as well as park reserves. These categories originate from the colonial era and are a colonial legacy. As a result at present Zambia practices a dual legal system as regards State Land and Traditional Land. The term 'traditional land' refers to Reserves and Trust Land.

As far as State Land is concerned, historically, this land then Crown Land, was appropriated by the colonial powers for settlement of whites. It formed most part of land with rich soils and along the line of rail. It is now administered by the Commissioner of Lands. The entire State Land amounts to less than six percent of the total land area of Zambia.

It must be noted that there are two sub-categories of land within State Land, namely Scheduled and Non-scheduled Land. Scheduled State Land is that agricultural land that appears in the

Agricultural Lands Act, Cap 292 of the Laws of Zambia. This land was created to encourage new settlements and to promote agricultural production. Non-scheduled State Land, on the other hand, converts the rest of State Land that does not appear in the Schedule to the Agricultural Lands Act. There are a number of differences between the two sub-categories of land. The first difference lies in whether or not a particular piece of land was so stated as agricultural land in the Schedule to the Agricultural Lands Act.³ Secondly, the tenure in these two types of land differed before 1970. Whereas the tenure in Scheduled Land was leasehold with certain pieces of land therein being held as freehold, the tenure in Non-scheduled State Land was mainly freehold.

However, this difference in tenure is no longer applicable today since the enactment of The Land (Conversion of Titles) Act⁴ which has converted all freehold in Zambia to leasehold to be held for a period of one hundred years. In Zambia today, therefore, a person can hold land only under leasehold for a period of ninety-nine years. This covers both Scheduled and Non-scheduled Land since The Land (Conversion of Titles) Act, No 20 of 1975 applies to all land in Zambia.⁵ Only those freehold existing prior to 1975 have been converted to Statutory leases for a period of one hundred years.

The Non-scheduled State Land also included land within Reserves and Trust Land to which persons had non-customary interests in the form of reserve leases and rights of occupancy respectively.⁶

Thirdly, the procedure of land acquisition also differs as well as the categories of potential landholders. In Scheduled Land, applications for land are made to the Agricultural Lands Board who have full powers of investigating suitability of applicant and allocation of land. It will be the contention in this paper, however, that most of these powers of the Board (tabulated below) have been interfered with by the Minister who has relegated the Board to merely an Advisory Board. On the other hand, in Non-scheduled State Land the Commissioner of Lands is empowered to approve or refuse applications for leases and dealings in leaseholds. However, various institutions are involved when an application for land has been made. These include the Department of Agriculture, the District Council, the Ministry of Lands and the Ministry of Local Government and Housing. All these institutions carry out various functions prior to an applicant being allocated a piece of land. The procedure is both cumbersome and expensive.

Fourthly, and more importantly for our purposes, the institutions involved in land administration and control differ in the two types of land. In Scheduled Land as mentioned earlier on, the Agricultural Lands Board is the main institution involved in land administration and control, although, of course on several occasions the Minister has intervened. However it is important to state that the Minister has powers, inter alia, under the Agricultural Lands Act of 1960, to appoint the Chairman and members of the Agricultural

7

Lands Board. He is also empowered to review any decision of the Board on grounds that either the decision is contrary to the provisions of the Act or is contrary to public policy or on the ground that the decision is an improper exercise of a discretion entrusted to the Board. The Minister is further empowered to direct the Board to prepare proposals for the alienation of Scheduled Land in economic agricultural units and for matters connected therewith. He may also order the Board to prepare allotment plans for the land concerned or for any part of it. In addition, the Minister has powers under the Act, by statutory instrument, to make rules providing for the annual rent and other charges to be paid on leases in Scheduled Lands as well as to make rules providing for the forms to be used for the purposes of the Agricultural Lands Act.

8

9

10

11

On the other hand, the Agricultural Lands Board has powers and duties, inter alia, to do the following:-

- a. keep under review the use that is being made by the President of State Land outside urban and peri-urban areas and to make such recommendations to the Minister thereon as it may deem fit.
- b. carry out such other duties in relation to the alienation of State Land outside urban and peri-urban areas as the Minister may place upon the Board.
- c. keep under review the general operation of the Agricultural Lands Act and to make such recommendations to the Minister thereon as it may deem fit.

d. to comply with any general or special directions of policy given by the Minister.

e. make decisions in the exercise of powers conferred upon it by the Act or by the Minister and its decisions shall be final in respect of any matter on which the Board is empowered to decide.

12

It is axiomatic from the above that the Minister has on many occasions interfered with the powers of the Board by assuming powers and duties assigned to the Board. As regards enforcement or implementation of land development, the Board still is empowered with such duties. However, the Commissioner of Lands is in practice carrying out these duties.

In Non-scheduled Land, on the other hand, it is obvious that various bodies are involved in the administration and control of land. The local authorities who include the Chiefs and local Councils are responsible for administration, whereas control of land is the prerogative of the Commissioner of Lands. Nevertheless the fact that the above functions have been allocated to different bodies is one of the factors that has led to many landholders not having documentary titles to their pieces of land.

The second category of land in Zambia is Traditional Land. This comprises that land in Reserves and Trust Lands and which comprises the largest percentage. The tenure in this land is primarily held under customary law despite the absence of a specific mention in the relevant instruments creating the lands.

However, rights in these lands have no legal basis whatsoever since they are not codified in any form and traditional courts rarely enforce them. But it is trite to observe that land in these Reserves and Trust Lands is either utilised by individuals or by the whole community as grazing land, river or a right of way to another village.
13

The main land administering authorities in Traditional Lands are the Chiefs, since the tenure is basically according to the particular customary law. The legislation that creates Reserves and Trust Lands, however, makes provision for the holding of non-
14
customary interests in these lands. These interests can only be granted by the President to a Zambian or non-Zambian and they differ in certain aspects. Zambians are entitled to grants of leases and licences in the Reserves and Trust Lands respectively
15
but which should not exceed a hundred years. As for non-Zambians, the duration of a grant in a Reserve could not exceed five years. In a Trustland, the duration of a grant to a non-native or Council is for a term not exceeding ninety-nine years or for thirty-three years if made to a Missionary Society. In addition, a grant to a non-Zambian is only made under a special permission given under the regulations issued by the President because under the Zambian law,
16
no land can be alienated to a person who is not a Zambian. It is also important to note that the President has powers to acquire
17
land for public purposes and once it is acquired, such land ceases to be held under customary law.

When it comes to the procedure on acquiring a grant of a Reserve lease or a Trust Land licence, the President has to consult the Chief and the District Council in the area in which the land to be acquired is situated implying that even here, various bodies are involved in the acquisition of these lands. It will be argued in this paper that many different bodies involved in the process of acquiring land have discouraged would be title landholders to acquire deeds to their pieces of lands. The process is cumbersome and involves a great number of persons from different Ministries, as is the case with State Land.

There are a number of covenants and conditions which are attached to the grants in leases and licences. Most of these were meant to promote agricultural development and to control land use in general. Various bodies have been charged with the implementation of these conditions. This paper sets out to prove that lack of decentralising functions of such bodies has resulted in the non-implementation of these conditions. Further, the absence of harmonization of the various institutions has also contributed greatly to the non-implementation of these conditions. This paper examines the various institutions that are involved in land administration in Zambia. Land administration authorities in this context are looked at from two perspectives, namely, the institutions involved in the process of land acquisition and those charged with land control. A number of legislation exist which empower these various institutions to control land use and administer land allocation (alienation).

The next chapter, therefore, discusses the procedure involved in the application for land, the bodies that are involved, their various functions and the legislation that empower these institutions or bodies to carry out such functions. In discussing the procedure and various institutions, the focus will be on different categories of land in the country, so that contrasts and similarities are highlighted.

Thereafter, the other chapter will attempt to discuss the methods of land control in the various categories of land. The institutions charged with implementation of developmental conditions in the categories of land will be highlighted and the effectiveness or otherwise of such bodies and conditions will be the focus.

The last chapter contains conclusionary remarks and proposals for reform, one of which will be the need for decentralisation of certain institutions like the Office of the Commissioner of Lands, the harmonization of these institutions and their functions so that as few bodies as possible are involved in the procedure for land acquisition and land control.

FOOTNOTES

1. J. Bruce, F. Kachamba, and M. Hansungule, "Land Administration Processes and Constraints", in M. Ross, et al, Land Tenure, Land Markets and Institutional Transformation in Zambia, (Land Tenure Centre, University of Wisconsin - Madison) Research Paper, p.45.
2. Ibid.
3. Section 10 of the Agricultural Lands Act of 1960, Chapter 292.
4. Section 5 of the Land (Conversion of Titles) Act, No 20 of 1975, Chapter 289.
5. Ibid, Section 4.
6. L. Muleya, The Effect of the Zambian Land Tenure System on Agricultural Development, LLM Thesis, (University of Zambia, 1989), p.99, (Unpublished).
7. Op. Cit., Section 4 of Act of 1960.
8. Ibid, Section 9.
9. Ibid, Section 13.
10. Ibid, Section 44 1(a) and (d).
11. Ibid, Section 8.
12. Ibid, Section 9.
13. L. Muleya, op. cit., p.53.
14. See Order 6A(1) of The Zambia (State Lands and Reserves) Orders, 1928 to 1964 and Order 5(1)(b) of The Zambia (Trust Land) Orders, 1947 to 1964, Appendix 4.
15. Op. cit., Section 12 of Act of 1975.
16. The Land (Conversion of Titles) (Amendment) Act, No 2 of 1985, prohibits the alienation of land to non-Zambians unless the application has been approved in writing by the President.
17. Op. cit., Order 5(7) of the Trust Land Orders.

CHAPTER TWO

LAND ACQUISITION: PROCEDURE AND INSTITUTIONS

In discussing the procedure involved in the alienation of land, the various categories of land in Zambia must be borne in mind. This is because a different procedure is employed for each category. This Chapter, therefore, examines the procedure in the application for land under the headings of Reserves and Trust Lands, Non-scheduled State Land and Scheduled State Land.

TYPES OF LAND

1. RESERVES AND TRUSTLANDS

This comprises land which is today referred to as Traditional Land and forms the largest percentage of the land in Zambia. The tenure in this type of land system is basically customary land tenure. This is so despite the fact that the legislation that creates the land makes no mention of the type of tenure applicable to the land. Interests in these lands are held under customary law and an African holding such land under customary law enjoys customary interests irrespective of whether it is in a Reserve or Trust Land.

These interests, however, are referred to as de facto land rights exercised by individual Africans. Many reasons have been advanced for this. The reasons are inter alia that they are not codified in any form and furthermore although the lands have been vested in the President, no individual titles have been conveyed to Africans. In Reserves, for instance, The Order-In-Council grants the land to tribes or portions of tribes but not to individual Africans. To this extent, therefore, the existing land rights have no legal basis and hence merely de facto.

In so far as the tenure in Reserve and Trustlands is being administered under customary law, an appraisal of the procedure involved in acquisition of land in Reserves and Trust Lands becomes important.

a. ACQUISITION OF CUSTOMARY INTERESTS IN RESERVES AND TRUST LANDS

It has been contended by White⁵ that specific land rights in Reserves and Trust Lands are acquired and exercised by individuals. The only exception is in societies where lineages are the land-holding units in which individual land rights will be overshadowed by the rights of the lineage.

In so far as original acquisition of land is concerned, an individual establishes land rights by opening up land over which no prior individual has already established rights. The powers of the local Chief in this regard are basically administrative. Being the administrator of the whole area, he has to be consulted to ascertain if there are any prior interests on the piece of land one intends to settle. This is more so where the intending settler is not a member of the village community.

The right to the use of land, however is conditional on an individual's acceptance of the political and traditional control of the Chief, customs and institutions. Once this is done, the individual will have the right to settle any area within the jurisdiction of the Chief, of course as long as no other individual has any prior interest on such land. The rights once established remain permanent and he only loses them if either he transfers them to another, abandons them or terminates them by his own death.⁶ It is evident from the foregoing that this form of land acquisition only involves an intending settler, and the Chief through the village Headman concerned. Of course the Local Council may be informed where the individual is from a different locality for instance a District or Province. But this will just be for administrative purposes and it has got nothing to do with obtaining of permission or otherwise to acquire land rights.

Other modes of acquiring land rights include grant of land from one person to the other, transfers of land, and loaning of land. In all these modes the local Chief will merely be informed (as the administrator) of the transaction so that he is made aware of who has settled where.

As regards sale of land, indications⁷ are that what is sold is actually improvements on the land for instance buildings on the land. To this extent, therefore, Customary Land tenure conforms to provisions of The Land (Conversion of Titles) Act, No. 20 of 1975, Chapter 289 of The Laws of Zambia, that states that land in Zambia has no value and hence cannot be sold.⁸

b. ACQUISITION OF NON-CUSTOMARY INTERESTS IN RESERVES AND TRUST LANDS

The above procedure concerning acquisition of customary land rights has to be differentiated from the procedure involved in acquiring non-customary interests in Reserves and Trust Lands. The Legislation creating Reserves and Trust Lands makes provision for the acquisition of non-customary interests in such land.⁹ These interests may be granted by the President to either Zambians or non-Zambians. A grant in a Trust Land is for less than 99 years or for 33 years if made to a Missionary Society. Of course as per the requirements of The Lands and Deeds Registry Act,¹⁰ there must be production of survey diagrams in the absence of which the duration of the interest would be for 14 years only pending its preparation.

A lease in a Reserve to a non-native on the other hand, is for a period not exceeding 5 years.¹¹ It must be remembered that grants to non-Zambians are only made under special permission given under the regulations issued by the President. No land can be alienated to a person who is not a Zambian unless the President has approved an application made to that effect.¹² Usually the application is first submitted to the Council concerned for scrutiny and it is only after recommendation from the Council that the Commissioner of Lands will forward to the President.

Thus where a non-Zambian wishes to acquire non-customary land rights in Reserves or Trust Lands, he has to firstly apply to the President for approval. The application will be sent to the Local Council involved, who together with the Local Chief will scrutinise the application and then make recommendations to the Commissioner of Lands. The Commissioner of Lands will, however, only issue title deeds where survey diagrams have been produced, failure to which a provisional certificate for 14 years will be issued pending the production of the diagrams.

It is axiomatic that the procedure is lengthy and involved a number of bodies who are not in the same area. An intending settler has to shuttle between the local district involved and Lusaka, the centre, especially that the various Governmental Departments lack transport.

Africans (Zambians) on the other hand can obtain grants of leases and licences in Reserves and Trust Lands respectively for terms not exceeding a hundred years. Previously they were conferred fee simple estates but this has now been reduced by The Land (Conversion of Titles) Act, of 1975.¹³

Regarding the procedure involved on acquiring a grant, the President has to consult the Rural Council and the Chief in the area in which land to be acquired is situated. This is meant to verify boundaries and protect interests of villagers. The Council conducts a physical inspection of the land and consults the Chief. The role of the Chief is to verify any existing interests in the particular piece of land and the customary rules.

The consents of the Chief and the Council form the basis of any approval of applications for land. Each recommendation from a Council has to be accompanied by written consent of the Chief and extracts of minutes of the council.¹⁴

It has been stated that compliance with the process of obtaining extracts of minutes and the inspection of land cause a delay in this procedure.¹⁵ It has also been stated that the requirement of obtaining consent from the Chief and the Rural Council may discourage persons without ethnic ties with the area in question. Only those born within such areas may be favoured in these circumstances.¹⁶ However, this situation has changed dramatically that as of now, there is ethnic diversity in land allocatees as shown, for example, in Chief Nkhomesha's area.

Land in Reserves and Trust Lands is in an unsurveyed state and thus a person or company who wants to develop the land will face lots of delays and problems in obtaining immediate title for loan purposes. He would thus prefer to obtain title deeds to State Land which is already surveyed.¹⁷

It must be pointed out that there are scattered leaseholds in Reserves and

Trust Lands as opposed to a systematic conversion of tenure in an area. This is attributed to the fact that the Commissioner of Lands only makes leases and licences in these lands in response to a request from a particular applicant for a particular piece of land. Most applicants to the grants are individuals who already hold pieces of land under customary law and all they are doing is obtaining title deeds for their pieces of land. New settlers are few and it has been contended¹⁸ that this may be because they are discouraged by the various factors mentioned above from acquiring land in these areas.

2. NON-SCHEDULED STATE LAND

This is that part of State Land which does not appear in the Schedule to the Agricultural Lands Act. The procedure involved to acquire this land is lengthy and cumbersome and it is under the power and determination of the Commissioner of Lands who handles all applications to acquire it. The land may either be virgin land or non-virgin land.

a. VIRGIN LAND

Once this land is identified by the Commissioner of Lands, he requests the District Council and the Department of Agriculture, in the District in which the land is situated, together to coordinate, plan and sub-divide the virgin land into appropriate agricultural units. Once this is done, the Commissioner of Lands does the numbering and carries out surveys.

b. NON-VIRGIN LAND

As for this type of land, it will also be first determined by the Commissioner of Lands. It must be pointed out that if the land is bare, it cannot attract any price or be transferred. But if it has some unexhausted improvements,¹⁹ these are to be valued by the valuation Department of the Ministry of Local Government and Housing and compensation is to be paid for it.²⁰

After the completion of all formalities, regard is to be had to the provisions of the Lands and Deeds Registry Act, Chapter 287. Section 4 of this Act states that:

"..... Every lease for a period of more than one year must be registered as must any assignment, mortgage or charge upon such lease."

In the case of Attorney-General V Zambia Sugar Company and Nakambala Estate Limited: ²¹

The respondents applied to the High Court for a declaratory order that prior written consent of the President was not required for a debenture creating a floating charge over assets which included land. It was contended that a floating charge is not within Section 13 (1) of the Land (Conversion of Titles) Act, 1975, because it does not affect any particular piece of land at present, and there is only a possibility that it may affect land in future if anything occurs which causes the floating charge to crystallise. It was held that a floating charge operates as an immediate and continuing charge on the property charged and has the effect of charging all the property in the hands of the borrower at the date of the charge. Hence, Presidential consent under Section 13 (1) is required.

In addition, Section 6 of the Lands and Deeds Registry Act states that:

"..... Any document required to be registered and is not registered in the designated period is null and void and hence unenforceable."

In the case of George Andries Johannes White V Ronald Westerman and Others: ²²

The plaintiff brought an action for recovery of his property, and for mesne profits, on the grounds that the first defendant, a prospective purchaser, had failed to pay the full purchase price and rent agreed. He contended that the first defendant had in fact further surveyed and sub-divided the property, eventually attempting to pass title to the second defendant, who in his turn, obtained a mortgage on the property from the

third defendants. It was held that:

- (i) The deed of assignment was signed only by the purported purchaser and was therefore improperly executed, null and void ab initio and should never have been registered.
- (ii) The first defendant therefore, derived on title to the land from the provisional certificate and could not assign any title to the land to the second defendant.
- (iii) The second defendant could not mortgage the property to the third defendant since he had no proper title to the land; the title having remained at all times in the hands of the plaintiff.
- (iv) A provisional certificate of title is subject to a claim of a better title which, if proved may serve to cancel, or amend the provisional certificate.

The next stage is to obtain a certificate of Title. And to do this, an applicant must submit a survey diagram in conformity with the provisions of the Lands Survey Act, Chapter 293. But it is important to point out that for an applicant to acquire a fourteen year lease, he or she need only submit a sketch plan.

From the foregoing, it is obvious that the procedures involved in acquiring land are indeed lengthy, cumbersome and time-consuming. This view is supported by Bruce and Dorner who aptly observed that:

".... These procedures, involving as they do five different sections in three different Ministries, namely, The Commissioner of Lands, The Land Registry Section and The Land Survey Section (all in The Ministry of Land and Natural Resources), the Land Use

Planning Branch of The Ministry of Agriculture and Water Development, and The Valuation Section of The Ministry of Local Government and Housing, are far more complex than can be justified. This complexity coupled with severe understaffing of the relevant sections, results in extended delays in leasehold transactions, generating uncertainty and interruptions²³ of cultivation.

The various bodies, therefore, involved in the application for land are The Commissioner of Lands, The Land Registry and The Land Survey Section in The Ministry of Lands and Natural Resources; The Land Use Planning Branch of the Ministry of Agriculture and The Valuation Section of The Ministry of Local Government and Housing.

Apart from the procedure itself being complex and cumbersome, there is severe understaffing in these Departments rendering the whole procedure difficult and expensive.

It has been suggested elsewhere²⁴ that one way of alleviating delays in processing applications under the Act, is to create posts of Valuation Surveyors in the Ministry of Lands. In other words, most of the functions done by various Departments in the different Ministries should be harmonized and made to fall in the same Ministry. This can be done through creating various posts in a single Ministry and thereafter decentralising these Departments of the Ministry in various local districts.

3. SCHEDULED STATE LAND

This is State Land specially reserved for agricultural purposes and it is so prescribed in the Schedule to the Agricultural Lands Act of 1960, Cap 292. The land is of utmost importance to the economy of the country in that it has great agricultural potential and better transport and marketing infrastructure. The basic aim of creating this category of land, apart from boosting agricultural development through the imposition of developmental conditions, was to convert leasehold tenure to freehold tenure. That way it was felt there would be more security and hence more investment. One member of the Legislative Council remarked:

"This legislation would go far to end the period of stagnation (in agricultural development) which without doubt has beset Northern Rhodesia ever since freehold was so stupidly converted to leasehold."²⁵

INSTITUTIONAL CONTROL

Matters related to land control and application for land in these lands are a responsibility of the Agricultural Lands Board which is appointed by the Minister of Agriculture.²⁶ An application for land is made to the Board, which will examine the applications. The Board requires that the applicant gives full details about himself/herself in order for it to determine his/her suitability. The Board takes into account the general Government policy²⁷ and will prefer applicants with sober character, clean record and of mature age, and who will be willing to personally occupy and develop the holding as well as the fact that the applicant does not already hold State Land.²⁸ The Board's aim is to ensure that land is not abandoned after a short time by seeing to it that only applicants who have material and financial resources and those who have some experience in farming are allotted Scheduled farms.

It must be pointed out that the Board has not strictly applied the requirement that an applicant must be will to personally occupy the holding.²⁹ In the case of a company once it has been allotted a farm, it must be willing to employ a Manager who will personally take occupation of the farm on its behalf.³⁰ In practice, some activities of individuals are contrary to the Agricultural Lands Act in that they too employ managers. Hence it is obvious to all concerned that the Board finds it very difficult to religiously observe the provisions of the Act due to various factors notably economic constraints and the high demand for farms.

The Board attaches special attention and importance to an applicant's capability to raise financial resources to manage his holding and fully utilise it. In pre-independence days the amount of money required was prescribed.³¹ But the post-independence period saw the discarding of this requirement. Capital in

this context includes either funds, promissory notes from financial institutions or assets such as stock which may be converted into cash.³² It is interesting to note however, that one still qualified to apply for a holding if he had farming experience but not capital. But we must also hasten to add that if an applicant engages a trained or professional manager to run the farm for him, he too can be given land despite his lack of experience.

It must also be mentioned that the Board does not spell out specific qualifications which an applicant must have. It practically accepts anything, that is, a Diploma from a farming institution or farm experience obtained from working either in commercial farms, or in traditional lands in Reserves and Trust Lands.

In order to effect a fair dispensation of land and serve the maximum number of the Zambian populace, the Board gives preference to those applicants who do not already hold State Land. This is an old practice³³ designed to foster agricultural development by attracting new farmers. Section 18 (2) of the Agricultural Lands Act provides as follows:

"..... In allocating any holding the Board shall, all other things being equal, give preference to an applicant who is not already the owner of agricultural land."

It is to be observed that this provision has, however, failed to prevent rich individuals from accumulating land, principally because it is rare that two persons may be of equal financial standing. The Board has thus subsequently taken other procedural measures regarding land accumulation without inhibiting companies that may want to invest heavily in farming.

Although the Act provides that the Board's decision in matters relating to application for land³⁴ and the grant of consent to assignments or dealings in land are final,³⁵ there is evidence to indicate that the Minister has on several occasions intervened in the Board's exercise of its duties.³⁶

The implication, therefore, is that even in Scheduled Land where the Act

specifically empowers the Board to be final authority on some matters, this has not been so in practice since some other body, in this case the Minister, has intervened to relegate the powers.

FOOT NOTES

1. The Zambia (State Lands and Reserves) Orders, 1928 to 1964 and The Zambia (Trust Land) Orders, 1947 to 1964, Appendix 4 to The Laws of Zambia.
2. L. Muleya, The Effect of The Zambian Land Tenure System on Agricultural Development, LLM Thesis (University of Zambia, 1989), p35 (Unpublished)
3. Op. Cit., Order 6 of The Reserve Orders.
4. Ibid., Order 7
5. C.M.N. White, A Survey of African Land Tenure in Northern Rhodesia, Journal of African Administration, Vol.11, No.4, (1959), p.174.
6. Ibid., p.175.
7. M.P Mvunga, Land Law and Policy in Zambia, (Mambo Press, Gweru, 1982), p.37.
8. See Section 13 (3) of The Land (Conversion of Titles) Act, No. 20 of 1975, Chapter 289.
9. Op. Cit., Order 6 A(1) of The Reserve Orders.
10. Section 12 of The Lands and Deeds Registry Act, Chapter 287.
11. Op. Cit., Order 6 A(1) (d) of The Reserve Orders.
12. See Section 13A of The Land (Conversion of Titles) (Amendment) Act, No. 2 of 1985.
13. Op. Cit., Section 4 of Act of 1975.
14. Land Circular No. 1 of 1985, paragraph D.
15. A.C. Mulimbwa, The System of Grants of Land in Reserves and Trust Land and Agricultural Development in Zambia, PhD Thesis (University of Zambia, 1989), p.46.
16. L. Muleya, Op. Cit., p.55
17. M.P. Mvunga, Op. Cit., p.69
18. L. Muleya, Op.Cit., p.56
19. "Unexhausted improvements" have been defined in Section 3 of The Land (Conversion of Titles) Act, No. 20 of 1975, as, inter alia:

"..... anything resulting from the expenditure of capital or labour and includes carrying out of any building, engineering or other operations in, on, over or under land, or the making of any material change in the use of any building or land."

20. Ibid., Section 16.
21. (1977) ZR 278.
22. (1983) ZR 135.
23. J.W Bruce and P.D Dorner, Agricultural Land Tenure in Zambia, Perspectives, Problems and Opportunities (Land Tenure Centre, University of Wisconsin-Madison) Research Paper No. 76, October, 1982 p.17.
24. Law Development Commission Report of August , 1981, on The Land (Conversion of Titles) Act, No. 20 of 1975, p.47, p.64 and p. 103.
25. This was a statement made by a Mr Watmore a member of The Legislative Council quoted from Northern Rhodesia Hansard No. 89, 1956, column 23.
26. Section 4 of The Agricultural Lands Act of 1960.
27. Interview with Permanent Secretary, Ministry of Lands, 2nd August, 1994, Mulungushi House, Lusaka.
28. Op. Cit., Section 17 of Act of 1960.
29. Interview with the Legal Counsel for the Lands Department 24th August, 1994, Mulungushi House, Lusaka.
30. Op. Cit., Section 21 of Act of 1960.
31. The initial capital required was four thousand pounds, as reflected in The Report of the Commission of Inquiry into the future of the European farming industry in Northern Rhodesia on the issue of the tenure of Agricultural Land. Government Printer, Lusaka, 1954. The current annual ground rent for agricultural land including small holdings situated within twelve kilometres from City Centre of Lusaka, Ndola and Kitwe is twenty thousand kwacha, as reflected in Part IV and V of the Land (Conversion of Titles) (Amendment) Act, 1994.

32. L. Muleya, Op. Cit., p. 82.
33. Annual Report of The Land Board for the year 1948, (Government Printers, Lusaka, 1949), p.2.
34. Op. Cit., Section 17 of Act of 1960.
35. Ibid., Section 9.
36. A.C.Mulimbwa, Op. Cit., p.46.

CHAPTER THREE

LAND USE AND CONTROL

The Land (Conversion of Titles) Act of 1975¹ vests all land in the President. As such a person can only hold interests in land of a lesser duration than fee simple. Thus the same Act² converts all freeholds into lease holds for a term of one hundred years subject to prescribed conditions in covenants. These conditions are actually aimed at land development and control. Such developmental conditions are to be found in the various categories of land. This Chapter attempts to examine the bodies responsible for the implementation and enforcement of the various developmental conditions applicable to the various categories of land.

1. NON-CUSTOMARY INTERESTS IN LAND IN RESERVES AND TRUST LANDS

Both The Zambia (State Lands and Reserves) Orders³ and The Zambia (Trust Land) Orders⁴ contain provisions that empower the President to grant non-customary interests in the form of Reserve Leases and Rights of Occupancy in Trust Land. In case of a Reserve Lease, this may be for a duration of ninety-nine years if it is acquired for public purposes⁵, thirty-three years if the grant is to a missionary society or charitable organization. To a non-native or a Council the disposition will be for only five years. It has been contended⁶ that a period of five years is not adequate enough to encourage serious investment from would-be land developers. As regards grants in Trust Lands, the duration to a non-native or a Council was for a term not exceeding 99 years or for 33 years if made to a missionary society.

In both Reserves and Trust Lands, indigenous people could be granted leases and licences respectively that previously conferred fee simple estates⁷. This, however, has now been reduced by the 1975 Act to terms less than a hundred years.

Once a Reserve Lease or a Trust Land Licence has been granted or acquired the land ceases to be held under customary law⁸ and prescribed developmental conditions will apply to it. Most of the conditions are aimed at land control. To begin with, there is a requirement that the lessee must personally reside

on the land or engage a competent manager who should be more qualified and/or experienced.⁹ This discourages individuals in employment in urban areas from acquiring such land because it would mean they have to bear the additional expenses of employing a qualified manager to manage the estate before they retire and settle on the land.

The lessee is restricted from abandoning the land or permitting it to remain idle for over three years except with the written consent of the President.¹⁰ This requirement discouraged the traditional methods of cultivation, for instance, the system of Chitemene among the Bemba where land used for some time is "abandoned" and the farmer shifts to another piece of land. It would seem, therefore, that the rule was partly intended to change the system of agriculture among the Africans, although without providing them with an alternative method. However, with current developments and the new methods of cultivation, shifting cultivation is slowly fading and the requirement may effectively and rightly be implemented.

Another requirement is that within twenty-four months of the grant of title, substantial buildings at a determined value must be erected to the satisfaction of the President. The value is determined by the President at the time of the grant.¹¹ Infact over the years, the value once determined has not been revised. This clause can be contrasted to conditions that bind statutory lessees where the period during which buildings must be erected is limited to three years and there is no requirement for determining the value of the buildings.¹² The draw back of the requirement, however, is in its non-implementation since no inspection takes place to ensure that buildings have been erected as per specification. But despite the non-implementation of the condition, it seems most farmers would still erect substantial buildings for safe custody of their produce and machines and for residence. Further, the relevance of determining the value of the building at the time of the grant is questionable .

Another condition to be complied with is that the lessee must cultivate a

reasonable size of arable land within twenty four months from the date of acquiring title deeds to the land.¹³ The condition does not take into account the fertility of the soil and the modes of cultivation. Certain pieces of land can only be cultivated at particular times of the year depending on the changes in the climatic conditions. A contrast can be made to statutory leases where there is no similar condition and to Scheduled Lands¹⁴ where there is a requirement to comply with the orders of the Agricultural Lands Board which fixes the proportion of land to be cultivated annually.¹⁵

Further, the lessee must comply with the practice and accepted methods of good husbandry,¹⁶ and he must not keep more stock than the reasonable carrying capacity of the land.¹⁷ Whether the lessees will comply with the accepted methods of husbandry will depend on whether or not they are informed of what amounts to "accepted methods of good husbandry."¹⁸ It has been discovered that the farmers are, in practice, not educated on the accepted methods of cultivation when obtaining title deeds. Usually they have to use their own initiative and learn modern methods of cultivation. Thus even without the covenant, it seems farmers would voluntarily learn about husbandry.

The President through the Commissioner of Lands is entrusted, having overall land ownership, to enter the Reserves and Trust Lands to examine compliance with the covenants. This, however, is rarely done more so in rural areas as the Land Inspectors are hard-hit by transport problems and lack of manpower.

It is interesting that Rural Councils and Chiefs who have a role to play in the acquisition of such land by consultative roles have no responsibilities of implementing compliance with the covenants for converted land within their jurisdiction.¹⁹ It has been suggested that inclusion of such a provision entrusting Councils and Chiefs with jurisdictions of implementation would be effective and desirable. Although, in some cases, the Office of the Commissioner of Lands has delegated its powers to Councils, an express provision empowering Councils to execute such duties will compel Councils to be effective.

2. NON-SCHEDULED STATE LAND-CONDITIONS AND THEIR IMPLEMENTATION

The Minister is empowered by the Act to make regulations that specify terms

and conditions of statutory leases.²⁰ By virtue of these powers, the Land (Conversion of Titles) Regulations, 1975 (Statutory Instrument No. 187 of 1975) was passed, which provided for conditions attaching to Non-Scheduled State Land.

Although no period is prescribed for taking effective personal residence, like in Scheduled Land where this must be done within six months of the lease,²¹ the lessee for Non-Scheduled Land must occupy the land personally or through a manager.²²

Similar to a condition applying to Scheduled land is the condition that the lessee of Non-Scheduled Land must cultivate and develop the land in accordance with principles of good husbandry.²³ It must, however, be noted that the requirements applying to Scheduled Land are laid down by the Agricultural Lands Board prior to the grant of the lease. However, whilst the Board deals with Scheduled Lands, the Commissioner of Lands is responsible for Non-Scheduled Lands and the Act does not state whether or not the requirements have to be laid down on the grant of the lease.

Another condition is one that prohibits the allowance of land to remain idle for over three years without the consent of the lessor.²⁴ This condition may be likened to the one applying to Scheduled Land which provides that land not occupied for over three years will be deemed to have been abandoned and thus likely to be forfeited after due notice has been given and there has been no compliance.²⁵

It is submitted here that the duration in which land may remain vacant, namely, for up to three years, is too long that it contributes to the problem of squatting which is prohibited by the Act.²⁶ This is very likely especially given the fact that arable land is scarce. A shorter period would be desirable, of course bearing in mind that a new occupant needs time to develop the land especially if it is virgin land. A period of one and half years to two years would be much conducive as this would ensure that land is developed faster and the problem of squatting is avoided.

Unlike in Scheduled Land, the lessor of Non-Scheduled Land has the right, at any time, to take and use a strip of land of uniform width of sixty metres for the purpose of a road.²⁷ Compensation is payable only for the damage to unexhausted improvements existing thereon at the time.

Apart from these slight differences, the conditions applying to Scheduled and Non-Scheduled State Lands are almost similar. Hence, there seems to be no logical rationale for the distinction between "Scheduled" and "Unscheduled" State Land. As has been suggested elsewhere, consolidation into a single category with a single administrative body is preferable to avoid any inconsistencies that may inevitably arise.²⁸

The machinery responsible for implementing the conditions is basically the Commissioner of Lands who has in certain cases delegated his powers to local authorities. Both bodies have, however, been ineffective due to insufficient manpower and reluctance on the part of Councils who have felt that they are executing duties for which the Commissioner of Lands is responsible.

It must be noted that the non-compliance with the conditions may result with the lessor forfeiting the lease after six months of notice to remedy the breach.²⁹ In the circumstances no compensation will be paid at all. Where the lease is determined by effluxion of time³⁰ and where it is not renewed,³¹ compensation will not be paid even for the unexhausted improvements should there be non-compliance.

As has already been mentioned, however, it is rare that the Office of the Commissioner of Lands has resorted to these penalties. This is because it has been ineffective in the implementation of conditions. Establishment of a separate body altogether within the Office of the Commissioner of Lands to deal with the aspect of enforcement of conditions could be one solution. This, however, would entail having so many small bodies to deal with several functions when one single mother body could easily and effectively do so. Entrusting the powers through a provision in the Act to Councils and Chiefs could be a better solution as they are decentralised because as of now the powers of both of them (Chiefs and Councils) are not provided for by legislation and hence both of them are not really obliged to exercise them.

3. SCHEDULED STATE LAND - CONDITIONS AND THEIR IMPLEMENTATION

A number of conditions are imposed on every agricultural lease falling under this category as a way of effecting development. There is an undertaking by every lessee to comply with these conditions and non-compliance may result in forfeiture of the lease.

The most important one of these conditions is that the lessee shall take up effective personal residence within six months of the lessee and shall beneficially occupy the land. Beneficial occupation is defined by Section 21 (2) of The Agricultural Lands Act of 1960, which states:

" (2) Beneficial occupation in respect of any holding shall mean -

(a) from the date of taking up effective personal residence as required by sub section (1) of this section -

(i) in the case of an individual lessee, personal residence on the holding, and in the case of a company, personal residence on the holding by a manager who is in charge of farming operations and who is approved for that purpose by the Board.

(ii) the practice of sound methods of good husbandry;

(iii) the proper care and maintenance of all improvements effected on the holding;

(b) before the expiration of a period of three years after the date of the lessee taking up effective personal residence as required by sub section (1) of this section -

- (i) the annual cultivation of such proportion of the area of the holding as may be laid down by the Board;
- (ii) the maintenance of stock as laid down by the Board
- (iii) the provision for the numbers of stock maintained under the provisions of sub paragraph (ii) of dipping or stock spraying facilities, paddock fencing or ring fencing and water supplies, in each case considered adequate by the Board;
- (iv) the provision of a habitable house and such farm buildings as may be reasonably necessary for the purposes of the proper working of the holding;
- (v) the provision of permanent improvements, whether required by or under the preceding provisions of this section or not, valued by the Board at no less than such sum as may have been laid down by the Board."

The lessee is required before the expiration of three years from the date effective personal residence is taken up to cultivate annually a proportion of the holding as laid down by the Board and maintain stock therein. This requirement may be contrasted to a similar condition applying to land in Reserves and Trust Lands held by title-holders where the requirement is cultivation of a reasonable size of land within twenty-four months from the date of acquiring title.

The lessee enjoys certain rights on his land and one such right is the lessee's right to cut down and use trees on his holding as required for farming and domestic purposes.³² He is not entitled, however, to sell or remove any timber without the consent of the President. The rationale for the prohibition is for conservation of the soil and protection from soil erosion that may inevitably result from the

wanton cutting down of trees. However, the only difficulty lies in the implementation of the condition as is evidenced by the rate at which timber is being felled for charcoal.

The Act contains provisions that prohibit the lessee from doing certain acts. Firstly, the lessee is prohibited from assigning, sub letting or parting with possession of the holding or any part of it without the consent of the President.³³ Consent of the President in writing must be sought prior to any dealings in the land, failure to which the Board has the power to serve a notice setting a period during which the lessee must remedy the breach.³⁴ Further, failure to comply with the notice will result in the State determining the lease.

The lessee is also prohibited from abandoning the land. The Act lays down circumstances when land is deemed abandoned.³⁵ Land will be deemed to have been abandoned if the owner fails for over three years to maintain occupation of the land in person, through a tenant or a manager. It will also be deemed to have been abandoned if for over three years the owner fails to maintain on the land a reasonable standard of agricultural production having regard to the character, extent and situation of land and the general level of agricultural production being maintained at the time on agricultural holdings of similar character in the the neighbourhood.

The enforcement of the developmental conditions is vested in the Agricultural Lands Board. The same Board has power to monitor the use being made of the land. Despite this provision, however, in practice enforcement is done by the Office of the Commissioner of Lands. The Office of the Commissioner of Lands is supposed to inspect farms to ensure there is compliance with the conditions. However, the usual transport problems and staff shortage is hampering their operations and to this effect complaints have been voiced by the Board against the Office's inactivity in carrying out farm inspections to enforce the conditions.³⁶

The inactivity and ineffectiveness on the part of the Office of the Commissioner of Lands has resulted in the Lands Department delegating their powers to local authorities to enforce the conditions. This, however, has not borne any

results at all since the Councils having other administrative functions than land matters, have been reluctant to enforce the conditions. Besides, Councils too have transport problems which contribute to their ineffectiveness.

It has been suggested by some academicians³⁷ that the establishment of an independent body, though working together with the Commissioner of Lands, to specifically monitor compliance with the conditions could be a better solution. Alternatively either the Commissioner of Land's Office or the Agricultural Board itself should be decentralised so that officers are stationed in all districts to enforce compliance with the conditions.

In conclusion, it must be stated here that the Government policy of imposing developmental conditions on all leases was well intentioned. It sought to promote land development and control. A perusal through most of the conditions imposed on the various categories of land reveal that they are basically aimed at encouraging agricultural development and avoiding misuse of the land.

That conditions are imposed on land, however, does not imply that they are being implemented. The problem with the conditions has always been their non-implementation. Various bodies have been empowered to enforce the conditions. The body responsible for enforcing the conditions, for instance, in Reserve Leases and/or Trust Land Licences is the Office of the Commissioner of Lands. The Office, however, is ineffective and the Councils to whom powers have been delegated by the office are reluctant in enforcing the conditions. A suggested solution could be the inclusion of a provision specifically vesting powers of enforcement in the Councils and local Chiefs.

As regards Non-Scheduled State Land, the Office of the Commissioner of Lands is again responsible for implementing the conditions. The same problem of shortage of staff and lack of transport also hampers their operations in these lands. Thus a similar solution of empowering Councils to enforce the conditions is relevant also in this regard.

As for Scheduled Land, the powers of enforcement previously vested in the Agricultural Lands Board now vests in the Office of the Commissioner of Lands. As such similar problems relating to enforcement as those in Reserves and Non-

Scheduled State Land do apply.

The overall conclusion one arrives at is that there is ineffective implementation of the conditions because the body primarily responsible lacks manpower, and transport to do so. Empowering Rural Councils and Local Chiefs through legislation to enforce the conditions could be the most effective solution. That way these bodies, who are directly involved or related in the process of land acquisition will also have a say in its control and use.

FOOTNOTES

1. Section 5 of The Land (Conversion of Titles) Act, No. 20 of 1975, Chapter 289.
2. Ibid.
3. Order 6A (1) of The Zambia (State Lands and Reserves) Orders, 1928 to 1964, Appendix 4.
4. Order 5 of The Zambia (Trust Land) Orders 1947 to 1964, Appendix 4.
5. Op. Cit., Order 6A(1) (a) of The Reserve Orders.
6. L. Muleya, The Effect of the Zambian Land Tenure System on Agricultural Development, LLM Thesis, (University of Zambia, 1989), p. 55.
(Unpublished)
7. Op. Cit., Order 5 and 6A of The Reserve Orders and Order 5 of The Trust Land Orders.
8. Ibid, See Order 5 (7) of The Trust Land Orders.
9. Reg. 9 of The Reserve Grants Regulations, GN No. 497 of 1964.
10. Ibid, Reg. 14.
11. Ibid, Reg. 4.
12. Reg. 6 of The Land (Conversion of Titles) Regulations, 1975.
13. Op. Cit., Reg. 4.
14. These are lands falling under the Agricultural Lands Act, Cap 292 as defined by Section 3.
15. Section 21 (2) (b) (i) of The Agricultural Lands Act, Cap 292.
16. Op. Cit., Reg 6, GN No. 497 of 1964.
17. Ibid, Reg. 8
18. Some farmers I talked to stated they learnt of new methods of agriculture after attending seminars and inviting experts to visit their farms and seek advice from them.
19. A.C. Mulimbwa, The System of Grants of Land in Reserves and Trust Lands and Agricultural Development in Zambia, Ph D Thesis, (University of Zambia, 1987) p.56.
20. Op. Cit., Section 21 of Act No. 20 of 1975.

21. Op. Cit., Section 21 of Act of 1960.
22. Op. Cit., Reg. 7 of 1975.
23. Ibid, Reg. 5.
24. Ibid, Reg. 6.
25. Op. Cit., Section 36 of Act of 1960.
26. Op. Cit., Section 20 of Act No. 20 of 1975.
27. Op. Cit., Reg. 14 of 1975.
28. L. Muleya, Op. Cit., p. 134
29. Op. Cit., Reg 15 of 1975.
30. Op. Cit., Section 16 of Act No. 20 of 1975.
31. Ibid, Section 7.
32. Op. Cit., Section 23 of Act of 1960.
33. Ibid, Section 24.
34. Ibid, Section 31 (2)
35. Ibid, Section 36.
36. L. Muleya, Op. Cit., p.92.
37. Ibid, p.93.

CHAPTER FOUR

CONCLUSIONARY REMARKS AND RECOMMENDATIONS

The land policy in Zambia provides for various categories of land which are being administered by different bodies. These categories are basically State Lands which are either Scheduled or Non-Scheduled State Lands and Reserves and Trust Lands. Different bodies or institutions are involved in the acquisition and control of land falling under these various categories. The different categories of land are a result of the dual legal system introduced during the colonial period. State Lands, then Crown Lands, were intended for White settlers and Reserves and Trust Lands for indigenous natives. At independence and thereafter these categories were recognised and hence the various categories today.

The tenure in these categories of land also differs. In State Land the tenure is basically leasehold whereas land in Reserves and Trust Lands is held under Customary Law. A person may also acquire non-customary interests in the form of Reserve Leases and Trust Land Licences in Reserves and Trust Lands. Such interests are basically leases like those held in State Lands.

The procedure of land acquisition and the bodies involved differ from one category of land to another. In Reserves and Trust Lands, acquisition of such land is in various ways; the most common one being an individual establishing land rights by opening up land. This is so especially where the land is virgin land and there are no other established rights over the piece of land.

Other modes of acquisition include grant of land from one individual to another, transfer of land and loan of land for a short period of time. This dissertation has shown that the only bodies involved in the process of acquisition of land rights in this category of land are the local authorities and the local Chiefs through their Village Headmen. However, these merely perform administrative functions and do not grant or refuse permission as such. They merely have to be informed so that they become aware of who has settled in their jurisdiction.

The above procedure, however, does not apply where one intends to acquire non-customary interests in these lands. Acquisition of these interests requires

the production of survey diagrams normally done by the Land Survey Department of the Ministry of Lands. The Commissioner of Lands to whom the application is normally made, has to consult the local Chief and the District Council where the land is situated. Approval of the application is based on the consents of the Chief and the Council.

It is apparent that this procedure is lengthy and cumbersome and it involves different Departments as well. The obvious solution is to lessen the number of bodies involved in the procedure by empowering the District Councils and Chiefs to have the final say in the application for such land rights. Further, only one Ministry should be decentralised. Moreover, the Land Survey Department should undertake a nation wide survey of these lands as a pre-emptive measure instead of only doing so after an application has been made.

It must be pointed out here that most land in Zambia falls under this category of land and it is important, therefore, for the Government to take serious steps to ensure land is developed both agriculturally and otherwise. Land development can, however, only be achieved if the procedure involved in acquiring the land is modified and made less cumbersome. Would-be settlers and investors should be encouraged to obtain title deeds to the land so that it is easier to get loans from lending institutions.

In Non-Scheduled State Land, on the other hand, this dissertation has shown that the procedure involved to acquire land is both lengthy and cumbersome. The initial step is taken by the Commissioner of Lands who requests the District Council and Department of Agriculture to plan and sub-divide the land into units which are then numbered. The applicant will then submit a survey diagram if the intention is to obtain a certificate of title. An acceptable sketch plan may be submitted for a provisional certificate of a fourteen years lease.

The bodies involved in this process include the Commissioner of Lands, the Land Registry and the Land Survey Section in the Ministry of Lands and Natural Resources, the Land Use Planning Department of the Ministry of Agriculture, Food and Fisheries and the Valuation Section of the Ministry of Local Government and Housing. The procedure is complex and time consuming since it involves so many

different Departments in the various Ministries. These Departments are understaffed and hence rendering the whole procedure expensive and cumbersome. It has been suggested here that one way of alleviating the inevitable delays is to harmonize the various Departments in the different Ministries so that they all fall under the same Ministry. Various posts should be created in a single Ministry and then the Department be decentralised in the local districts.

As for Scheduled State Land, the Agricultural Land Board is vested with the responsibility of dealing with matters related to land control and administration. The Board receives the applications for land, reviews them and either rejects or accepts such applications, of course, after taking into account all the necessary considerations. The Agricultural Lands Act makes provision to the effect that the Board's decision in matters relating to application for land is final. The Minister has, however, on some occasions interfered with the Board's exercise of its powers.

Now that the Board has been dissolved, its responsibilities have been taken over by the Office of the Commissioner of Lands who are exercising de facto powers since the Agricultural Lands Act has not been repealed or amended.

The vesting of all land in Zambia in the President implies that a person can only acquire interests in land of a less duration than freehold. Thus there are only leaseholds in Zambia with effect from July 1975. A person, however, can only hold these leaseholds subject to covenants and conditions of landholding. These conditions are basically aimed at land development and control. They differ according to the various categories of land and are implemented by different bodies altogether.

In Scheduled State Land, some of the conditions which are aimed at land development and control include inter alia effective personal residence by the individual lessee or a farm manager if the lessee is a Company. Within three years of taking residence a proportion of the holding as laid down by the Agricultural Lands Board must be cultivated and stock maintained.

This condition may be contrasted to a similar one applying to Reserves and Trust Lands where the title holder has to cultivate a reasonable size of land

within twenty-four months from the date of acquiring land. It is submitted here that the condition applying to Scheduled Land is more reasonable since it gives the land holder enough time to cultivate a large proportion of the land.

Other conditions which apply to all the categories of land include one that prohibits the lessee from assigning, subletting or parting with possession of the land without the Presidential consent. This provision since it is to be found in the Agricultural Lands Act and the Land (Conversion of Titles) Act does apply to Scheduled and Non-Scheduled State Lands and to leases and licences in Reserves and Trust Lands respectively. This paper has shown that strict adherence to the implementation of this condition suppresses the development of land. There must be laxity in its implementation of investment in land is to be encouraged.

Yet another condition prohibits the lessee from abandoning the land for a period of three years. This condition applies to leases in the various categories of land. It has been argued in this dissertation that the period of three years during which land may remain idle and unproductive is too long. This period should be lessened. Despite the good intentions behind the imposition of these developmental conditions, however, the problem has been with their implementation. There are various bodies responsible for the implementation of the conditions in the different categories of land. In leases in Reserves and Trust Lands the responsibility of enforcing the conditions lies with the Commissioner of Lands, acting on behalf of the President. The Commissioner of Lands, however, has not been able to effectively carry out the responsibilities because of numerous problems which include inter-alia transport problems and shortage of staff.

The same body has the duty also to implement conditions in Non-Scheduled State Lands and thus even in this category of land it is hit by the same problems. There is thus no effective implementation of the conditions. In both categories of land, however, the Commissioner of Lands has delegated his powers to local authorities. The Councils have, however, been reluctant to enforce the conditions in so far as there is no provision in any legislation that empowers or obliges them to do so. It has been suggested here that inclusion of such a provision in legislation would compel Councils to effectively enforce the conditions. Moreover empowering local

Chiefs through an Act of Parliament, to enforce conditions in leases in Reserves and Trust Lands within their jurisdiction would solve a number of problems. Besides these Chiefs are involved in the whole process of land acquisition.

Alternatively establishment of one body to both deal with applications for land and to implement the development conditions will be more effective. The body should be decentralised in all districts in the country.

As for scheduled State Land, the Act empowers the Agricultural Lands Board to implement the conditions. The Board, however, is no longer in existence and as such its responsibilities now lie with the Commissioner of Lands. Thus the same problems the Commissioner of Lands is facing in enforcing conditions in the other categories of Land also do apply to Scheduled State Land. Inevitably the same suggested solution of decentralising the Office of the Commissioner of Lands and the provision of funds to improve its operations apply even here.

BIBLIOGRAPHY

BOOKS

- Megary, R.E., A Manual of The Law of Real Property, 3rd Ed., (London, Stevens and Sons Ltd., 1962).
- Mvunga, M.P., Land Law and Policy in Zambia, (University of Zambia, Institute of African Studies, Mambo Press, Gweru, 1982).
- Mvunga, M.P., The Colonial Foundations of Zambia's Land Tenure System, (National Education Company (Z) Ltd., Lusaka, 1980).
- Riddall, J.G., Introduction to Land Law, 4th Ed., (London, Butterworths, 1988).

JOURNALS AND PUBLICATIONS

- Malunga, J., Land Control Under S13(1) of Land (Control of Titles) Act, No. 20 of 1975, Obligatory Essay, University of Zambia, 1989, (Unpublished).
- Muleya, L., The Effect of The Zambian Land Tenure System on Agricultural Development, LLM Thesis, University of Zambia, 1989, (Unpublished).
- Mulimbwa, A.C., The System of Grants of Land in Reserves and Trust Lands and Agricultural Development in Zambia, Ph.D. Thesis, University of London, 1987, (Unpublished).
- Ross, M., et al, Land Tenure, Land Markets and Institutional Transformation in Zambia, (Land Tenure Centre, University of Wisconsin-Madison), Research Paper.
- White, C.M.N., A Survey of African Land Tenure in Northern Rhodesia, J.A.A. 1959-60, Vols. 11 and 12, Nos. 1 and 4.
- Zambia Law Journal, Vol. 16 1984, Lusaka.

GOVERNMENT DOCUMENTS AND REPORTS

- Northern Rhodesia Native Reserves Commission Report, 1913, Vol.I.
- Northern Rhodesia Land Tenure Committee Report, 1943.
- Report of The Law Development Commission on The Land (Conversion of Titles) Act, No. 20 of 1975, 1981.

Ministry of Lands and Natural Resources, Procedures on Land Alienation, Land Circular No. 1 of 1985.

Ministry of Lands, Land: New Administrative Procedures for the Allocation of Land in Urban and Rural Areas, Cabinet Circular No. 29 Copy No. 16 of 27th March, 1992.