

THE SYSTEM OF LAND ALIENATION IN ZAMBIA

A critical analysis of the Legal and Institutional Framework

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THE SYSTEM OF LAND ALIENATION IN ZAMBIA:

A critical analysis of the Legal and Institutional Framework.

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DECLARATION

I, FRIGHTONE SICHONE, [Computer number: 23537485], DO HEREBY solemnly declare that the contents of this dissertation entirely represent my own work, and it has not previously been submitted for a degree at this or another University.

Signed

Date

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ABSTRACT

Since the advent of colonial rule, the system of land alienation in Zambia has not received adequate attention both in terms of legal and institutional reform in line with political and socio-economic changes, and population growth. Even with the attainment of political independence in 1964, there has been no clear legislation to govern the procedure on land alienation.

Currently, there are several statutes that have some bearing or relevance to land alienation, and there are several government Ministries and Departments that play a role in land identification, planning, surveying and title registration. Admittedly, the challenge faced with this kind of legal and institutional structure is that there is lack of co-ordination among land alienation institutions, and there are conflicting regulations in certain instances. To cope with the current demand for land, there is need for equitable access to land, as well as secure land tenure for the people of Zambia.

This dissertation is a study of the system of land alienation in Zambia in both State land and Customary land. The study critically analyses the law relating to the land tenure system in the country, and evaluates the legal framework and

institutions that are involved in land alienation. Basically, the whole study is an examination of real practices and procedures followed in the alienation of land in different categories of land.

During this study, it has been revealed that the system of land alienation in Zambia has continued to be based on and influenced by the colonial forms of tenure introduced during the colonial rule that have little relevance to the needs of the country. This study has further revealed that there is lack of institutional establishment, and technical capacity in the alienation of land. Furthermore, there is lack of rules and guidelines on the roles to be played and functions to be performed by the institutions involved in the alienation of land.

The study reveals that some indigenous forms of customary tenure are no longer suitable in light of the increasing demand for land posed by population growth, urbanisation, rural-urban migration, and other demographic factors. There is now need to devise suitable methods of land alienation to cater for various uses of land such as land for housing, agriculture, commerce, and industrial development. The study has suggested that legislation governing land holding, land acquisition, usage and delivery in both systems of land tenure should be consolidated with a view to unifying land alienation and administration. Similarly, legislation should recognise the rights of land users by

defining these rights through formal survey and registration so that everyone, irrespective of social status, gender or origin can have similar rights to land.

The study has concluded that the law relating to land alienation should be revised and the institutions involved in land alienation should be restructured and decentralised in order for them to deliver land in an efficient, effective, transparent, democratic and equitable manner for the socio-economic development of the *Zambian* people and the country.

It is hoped that the findings of this study will provide a contribution to the scholarly works on the system of land alienation and administration in *Zambia*.

DEDICATION

This work is dedicated to my late brother Joel Sichone

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PREFACE

The importance of land and its administration in every society is a subject that has been widely discussed for centuries in all parts of the world. In the words of E. Okon:

“The importance of land to man cannot be over-emphasised. It is, has been and ever shall remain an eternal resource of livelihood and everlasting of sustenance to mankind. As a principle source of wealth in both agricultural and industrial societies alike, land should be accorded its rightful place in the annals of legal history.”¹

Generally, the *Zambian* land tenure system is a remnant of the colonial legacy which divided land administration into Crown land for the occupation of white settlers, and Reserves for the indigenous people. After independence, some strides have been made with a view to reforming the land tenure system, based on the socio- economic and political exigencies of the time. Notable among the reforms were the Land Reforms of 1975, through the Land (Conversion of Titles) Act, under the One-Party State, and the 1995 Land Reforms under the Multi-party democratic system. Further to these reforms, there has been an emergence of new categories of land such as the Housing (Statutory and Improvement) Areas, Resettlement Schemes and Game Management Areas, which are all hybrid categories whose system of land alienation has not been properly addressed.

¹ Okon, E, “Land Law as an Instrument of Social Change”, in *Zambia Law Journal*, Vol. 17 1985, p.46

Furthermore, a great wind of change has blown across the country ushering in social, political and economic changes in the last two decades, especially since the Land reforms in the Third Republic, which led to the enactment of the Lands Act of 1995. Undoubtedly, some of the potent factors of change have been the recognition under the Lands Act that bare land has economic value; land under customary tenure may be converted to leasehold; the creation of the Land Development Fund for opening up new areas for development, and the establishment of the Lands Tribunal. All these provisions are aimed at improving the system of land administration. Further, the enactment of the Lands Act², and the Zambia Development Agency Act³, seeks to promote economic development by providing for the opening up of land to both local and foreign investment in State and customary areas. However, none of these reforms has adequately addressed the question of land tenure, legal structure and institutional framework to effectively deal with land alienation in the country.

Basically land development and economic development cannot be achieved in the absence of a properly organised land tenure system, coupled with an

² Chapter 184 of the Laws of Zambia

³ No. 11 of 2006

efficient institutional structure and legal framework. This is important especially for developing countries like Zambia, which are striving to make agricultural development as a priority sector in the country's economic development.

The current situation reveals that in the alienation of State land, statutory law, the common law of England, and doctrines of equity apply to this category of land. In terms of Zambian legislation, some of the statutes which apply are: the Lands Act;⁴the Land Survey Act;⁵ the Lands and Deeds Registry Act;⁶the Housing (Statutory and Improvement) Areas Act;⁷and the Town and Country Planning Act;⁸among others. There are also various institutions which are involved in land alienation in various categories of land. Some of the institutions include the Ministry of Lands, City, Municipal and District councils, and the Department of Resettlement among others.

However, despite having these statutes and institutions in place, alienation of land has remained ineffective. Scarcity of land is prevalent. Questions on the availability of land, and how to access it in both State and Customary land are often raised. For instance, a person travelling from Chipata to Zambezi or from

⁴ Chapter 184 of the Laws of Zambia

⁵ Chapter 188 of the Laws of Zambia

⁶ Chapter 185 of the Laws of Zambia

⁷ Chapter 194 of the Laws of Zambia

⁸ Chapter 283 of the Laws of Zambia

Nakonde to Mongu or from Mansa to Livingstone, would observe large tracts of land seemingly lying idle and almost unoccupied. Some of the questions that linger are: who holds that land? Why say there is shortage of land when such huge tracks of land are not occupied? What is the role of established institutions in making this land accessible in an efficient, effective and equitable manner? In answering these questions, analysis of the legal structure, and institutional framework in both State land and Customary land thus becomes compelling.

The subject of 'The system of land alienation in Zambia: A critical analysis of the legal and institutional framework; was chosen mainly because the writer holds the view that the system of land alienation in Zambia, can be improved if the laws relating to land alienation are revised, and the institutions involved are restructured so that coordination among them is improved as this would promote efficiency in land alienation.

The materials used in this study came from published and unpublished sources based on desk research through collecting, analysing and processing data on the system of land alienation in Zambia. The materials included Zambia's successive Republican Constitutions, text books, statutes, periodicals, journals, theses, dissertations, and newspaper articles. The writer interviewed officials in

the Ministry of Lands, Kitwe City Council, Kabwe Municipal Council and Lusaka City Council, Department of Forestry, Department of Resettlement, Zambia Wildlife Authority, and some traditional Chiefs. The writer also used materials obtained from conferences, workshops and seminars personally attended or attended by other persons and made available. Selected judgements were also analysed. The writer further drew from his own experience as an advocate of both the High Court and the Supreme Court of Zambia, and as former Registrar of Lands and Deeds and Commissioner of Lands.

This dissertation is a study of the system of land alienation in Zambia in both State land and Customary land. The study critically analyses the law relating to the land tenure system in the country, and evaluates the legal framework and institutions that are involved in land alienation. Basically, the whole study is an examination of real practices and procedures followed in the alienation of land in different categories of land.

Chapter 1 of this study presents the historical background of the system of land alienation, and sources of land law in the country. Chapter 2 discusses the legal and institutional framework within which land alienation under State land is governed. Chapter 3 evaluates the hybrid category of land within State land referred to as Housing, Statutory and Improvement Areas.

Chapter 4 gives an evaluation of land alienation under Customary tenure while Chapter 5 discusses land alienation in the Resettlement Schemes and examines land alienation in the National Parks, Game Management Areas, as well as Forest Reserves. In this study, these areas are referred to as Statutory Reserves, since they are created and reserved by statute. Chapter 6 explains the system of land registration with regard to registration of title to land. Chapter 7 is an appraisal of both the legal and institutional framework governing the system of land alienation in the Country and finally, Chapter 8 gives conclusions and recommendations of this study.