

CHAPTER 122.

PROTECTORATE LAND.

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CHAPTER 122.

PROTECTORATE LAND.

16 of 1927.
34 of 1928.
32 of 1933.
1 of 1935.
Rules Nos.
15 of 1930.
24 of 1933.

An Ordinance to Make Provision Relating to the Tenure of Land by Non-Natives in the Protectorate.

[1ST AUGUST, 1927.]

Preamble.

WHEREAS all land in the Protectorate is vested in the Tribal Authorities who hold such land for and on behalf of the native communities concerned:

AND WHEREAS it is expedient to make provision regulating the interests in land which such Tribal Authority may grant to non-natives.

1. This Ordinance may be cited as the Protectorate Land Ordinance, and shall be read and construed as one with the Protectorate Ordinance.

Short title and construction.
Cap. 60.

2. In this Ordinance unless the context otherwise requires—

Interpretation.

“decree book” means any book of record of such a nature as those in which, before the passing of this Ordinance, there were entered the terms on which Tribal Authorities consented to the settlement of non-natives on lands in the Protectorate; or any other form of record which the Governor shall by Order prescribe;

“deed” means an agreement under seal;

“Tribal Authority” means paramount chiefs and their councillors, and men of note, or sub-chiefs and their councillors, and men of note;

“tenancy at will” means a tenancy in which the lessee holds at the will of the lessor, and which may be determined without notice by either the lessor or the lessee;

“tenancy at sufferance” means the tenancy of a person who having originally come into possession of land by a lawful title holds such possession after the determination of his title. Such tenancy may be determined without notice by the lessor;

“term of years” means an interest in land created by lease and subject to a yearly rent payable at regular periodic intervals;

“lease” means a grant of the possession of land by the tribal authority, as lessor, to a non-native, as lessee, for a term of years or other fixed period with the reservation of a rent.

3. (1) No land in the Protectorate shall be occupied by a non-native unless he has first obtained the consent of the Tribal Authority to his occupation of such land.

Conditions on which non-natives may occupy land in the Protectorate.

(2) Any non-native who shall occupy land in the Protectorate without the approval of the District Commissioner shall be a tenant at will within the meaning of this Ordinance.

(3) Whenever any non-native shall, with the consent of the Tribal Authority and the approval of the District Commissioner, occupy land in respect of which no lease shall be executed by the Tribal Authority as lessor and the non-native as lessee, a memorandum of the terms of such occupation, consent to which shall have been given by the Tribal Authority with the approval of the District Commissioner, shall be drawn up and entered in the decree book or in such other manner as the Governor may by Order prescribe, by the District Commissioner and shall set out—

(a) the annual consideration to be paid by the non-native for occupation of the land;

(b) the area of the land to be occupied;

(c) the duration of the term, which shall in no case be for more than three years;

(d) any special conditions (such as an undertaking to establish permanent cultivation of crops, such as rubber, cocoa, etc.) with which the non-native has to comply in consideration of occupying the land without payment or at a reduced annual rental;

(e) whether or not the interest of the non-native may be assigned or, in the case of death, is intended to devolve on his executors, administrators or assigns.

Non-native
not to acquire
greater
interest than
lease for
50 years.

4. No non-native shall acquire a greater interest in land in the Protectorate than a tenancy for a term of fifty years; but nothing in this section shall prevent the insertion in any lease of a clause providing for the renewal of such lease, for a second or further terms not exceeding twenty-one years.

Revision of
rent.

5. (1) The rent reserved under any lease of land in the Protectorate shall be subject to revision by the District Commissioner—from whom there shall be a right of appeal to the Provincial Commissioner—every seven years:

Proviso.

Provided that no increase of rent shall be sanctioned by the District Commissioner by reason only of improvements made by the tenant or his predecessors in title.

Indorsement
on lease.

(2) A note of any such revision of rent shall be endorsed on the lease and entered by the District Commissioner in the decree book.

6. No tenancy for a term exceeding three years shall be created by any agreement not under seal.

Tenancy exceeding three years to be under seal.

7. No tenancy by this Ordinance required to be created by agreement under seal shall, unless it is duly made by deed and unless the District Commissioner has endorsed thereon his consent, be construed as creating a greater interest than a tenancy from year to year.

Construction of defective lease.

8. Every tenancy from year to year shall be determinable by either party giving three months' notice to the other. Such notice shall expire at the end of a current year of the tenancy.

Determination of tenancies from year to year.

9. Every deed creating a tenancy of land shall be voidable by either party, unless it—

Voidable deed.

(a) is executed in the presence of two witnesses by the lessor before the District Commissioner of the district in which the land is situated; and is executed, in the presence of two witnesses, by the lessee or his attorney or his agent before a Magistrate; and

(b) has endorsed upon it certificates of execution in their presence signed respectively by the District Commissioner and the Magistrate before whom it was executed; and

(c) provides that the lessee shall not sublet or assign his interest thereunder except with the consent of the Tribal Authority with the approval in writing of the District Commissioner, provided that such consent shall not be unreasonably withheld; and

(d) contains stipulations with regard to all the matters set out in rule 3 to the schedule to this Ordinance; and

(e) is registered within sixty days in the office of the Registrar General.

10. The terms of all leases to which his consent is required shall be recorded by the District Commissioner in the decree book, and such record shall be admissible in all courts of law in the Colony and Protectorate as *prima facie* evidence of the matters therein stated.

Record and evidence.

11. The reversion in all fixtures affixed to the land by the tenant, whether fences or of whatever other nature soever, and any building erected by him thereon, and of all economic trees, shall, whether the tenancies concerned were created before the

Fixtures, buildings and economic trees.

date of the coming into operation of this Ordinance or not, in the case of a tenant at will, or in the case of a tenant on sufferance, be in the Tribal Authority; but in the case of a tenancy created by lease, in the absence of any agreement to the contrary contained therein—

Remov-
ability.

(a) any fixture affixed to the land by the tenant, whether fences or of whatever other nature soever, and any building erected by him thereon which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the Tribal Authority, shall be the property of and be removable by the tenant before or within two months after the termination of the tenancy:

Provided that—

Rent.

(1) before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the Tribal Authority in respect to the land:

Care in
removal.

(2) in the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the land:

Making good
damage.

(3) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the land by the removal:

Notice to
Tribal
Authority.

(4) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the Tribal Authority of his intention to remove it:

Purchase by
Tribal
Authority.

(5) at any time before the expiration of the notice of intention to remove any fixture or building, the Tribal Authority, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of intention to remove and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the Tribal Authority, who shall pay to the tenant the fair value thereof to an incoming tenant of the land;

Compensa-
tion for
economic
trees.

(b) the Tribal Authority shall pay to the tenant the fair value to any incoming tenant of the land of any economic trees which shall have been planted by the tenant;

Enquiry as
to value.

(c) if there is any dispute as to the value of any fixture or building or any economic trees, the District Commissioner

shall hold an enquiry and give his decision thereon. If either the Tribal Authority or the tenant is dissatisfied with the said decision, there shall be a right of appeal to the Provincial Commissioner who shall hold a further enquiry and whose decision shall be final;

(d) for the purpose of such enquiry the District Commissioner and the Provincial Commissioner shall have all the powers conferred upon the Magistrates' Courts by the Courts Ordinance, or any Ordinance amending or substituted for the same.

Powers of District Commissioner, etc., at enquiry. Cap. 7.

12. For the purposes of the last preceding section, the term economic trees shall include all trees, shrubs and plants which are grown or cultivated for their intrinsic value.

Definition of economic trees.

13. Every non-native residing in a chiefdom who does not hold a lease of land within the chiefdom, other than a non-native employed by a person holding a lease and residing on the land held under such lease, shall, in lieu of the customary presents or contribution of labour sanctioned by native law, pay to the Paramount Chief, in respect of each year or portion of a year of such residence, a settler's fee.

Settler's fee.
*

In no case shall the wife or husband or children of a settler who resides with him or her be liable to pay any settler's fee:

Provided that it shall be lawful for a Paramount Chief, with the consent of the Provincial Commissioner, to forgo exacting payment of the whole or any part of such fee in the case of a non-native resident within the chiefdom who—

(i) by his knowledge of any special trade or calling, or by his maintenance of any school or other institution, is in the opinion of the Paramount Chief conferring a benefit on the chiefdom; or

(ii) is employed by a person engaged in any industrial undertaking.

For the purposes of this section the term "industrial undertaking" shall have the same meaning as in the Employers and Employed Ordinance.

Cap. 212.

* Section 33 of the Local Tax Ordinance, Cap. 63, enacts that this section 13, about Settlers' fees, shall cease to apply in parts of the Protectorate to which it (Chapter 63) has been applied, with provisions which save acts done, rights acquired and so on. Chapter 63 has been applied to all parts of the Protectorate except the Toli chiefdom in the Kono District (P.N. 1 of 1955 and P.N. 70 of 1959).

Saving of
Cap. 121 and
Cap. 230.

14. Nothing in this Ordinance contained shall be deemed—

(a) to affect any interest obtained or which may hereafter be obtained under the Concessions Ordinance, or the Palm Oil Ordinance; or

(b) except in so far as is expressly provided by this Ordinance, to affect any interest obtained under the Protectorate Native Law Ordinance,* 1924, before the coming into force of this Ordinance.

Registration
by District
Commissioner of
existing titles
to land.

15. (1) Every non-native claiming any title to land in the Protectorate shall, before the first day of April, 1929, produce to the District Commissioner all documents of title upon which he bases such claim, or, in the absence of such documents, a memorandum of the terms of such occupation signed by the lessor and lessee, which documents or memorandum shall be entered by the District Commissioner in the decree book or in such other manner as the Governor may by Order prescribe.

(2) The claim of a non-native to a title to any land in the Protectorate, documents of title to which or a memorandum as to which have not been produced in conformity with the last preceding sub-section, shall be disallowed by every court in the Protectorate.

Power of
Governor to
make rules.

16. The Governor in Council may make rules for any or all of the following purposes—

(a) fixing the amount payable as settlers' fees either generally or in a particular locality;

(b) prescribing the terms to be embodied in leases;

(c) directing the manner in which leases shall be recorded;

(d) prescribing the procedure in submitting deeds of lease for revision of rent;

(e) specifying the person to whom rents and settlers' fees shall be paid and the manner in which such rents and fees shall be brought to account.

(f) generally for the more effectual carrying out of the provisions of this Ordinance:

Provided that until varied or revoked by any such rules, the rules contained in the schedule to this Ordinance shall be in force.

* Since repealed.

SCHEDULE.

Section 16.
Rules
15 of 1930.
24 of 1933.
Settler's fee.

1. Every non-native residing in a chiefdom who does not hold a lease of land within the chiefdom, shall pay to the Paramount Chief a settler's fee of one pound per annum, or of two shillings per mensem at the option of the payor during the continuance of his residence in such chiefdom.

2. Settlers' fees shall fall due in advance on the first day of January in each year in the case of a yearly fee and on the first day of each month in the case of a monthly fee:

Mode of
payment of
settlers' fees.

Provided that a non-native shall not be required to pay a settlers' fee in respect of the month in which he took up his residence in the chiefdom.

3. Every lease required by this Ordinance to be by deed shall state—

Terms of
deed.

(a) the rent;

(b) the term;

(c) the purpose for which the land is to be used;

(d) whether the interest is assignable;

(e) where buildings of permanent construction are to be erected, the rights of the parties to and in respect of such buildings at the expiration or determination of the lease;

(f) in cases where the lease is for a longer period than seven years, that the rent is subject to revision every seven years by the District Commissioner subject to right of appeal to the Provincial Commissioner.

4. The terms of all leases to which the consent or approval of the District Commissioner is required shall be recorded by the District Commissioner in the decree book, in the same manner in which the term of leases have heretofore been recorded.

Decree book.

5. The District Commissioner shall keep a rent roll of all the rents due to each Tribal Authority in his district, and all rents in respect of tenancies, whether created before the date of the coming into operation of this Ordinance or not, shall be payable to him. He shall place all moneys so received by him on deposit in the Colonial Treasury pending disbursement.