

## CHAPTER 23

### LAND ADJUDICATION LAW

#### 1 Some adjudication statutes

1.1 In Chapter 15 we described in great detail the process of 'systematic land adjudication' (i.e. the official ascertainment of rights in land compulsorily effected throughout a declared area). Therefore, for this chapter, it should be necessary to do no more than choose a suitable example of the appropriate legislation and set it out for the purpose of illustration. This sort of legislation is largely self-explanatory and should need but little comment.

1.2 There are, however, many statutes which now make provision for systematic adjudication, and it is by no means obvious which to select, since they vary considerably in material particulars, and indeed are often clearly designed to fit differing circumstances. For example, in Kenya there are two modern Acts both intended for the systematic adjudication of areas of customary tenure, one with consolidation and the other without but both using the special committee system developed in Kenya; while in Malawi there is one Act (with committees) for customary areas and another (without committees) for the rest of the country. A model Act prepared for the Caribbean does not, of course, make any provision for the customary tenure which is such a problem in Africa. Nevertheless there is a substantial amount of common procedure, and we think that it should suffice to set out one representative statute augmenting it where necessary with extracts from other legislation to illustrate additional or alternative processes. The following are some relevant particulars of those statutes (listed chronologically) that we have specially considered in making our choice.

#### (1) SUDAN LAND SETTLEMENT AND REGISTRATION ORDINANCE 1925

1.3 *Part II (ss4-19) - Settlement and First Registration* is the prototype of the legislation which is the subject of this chapter. In sixteen sections it makes the basic provisions for the process described in Chapter 15. It is of more than mere historical significance, for it is still used in the Sudan where systematic settlement (i.e. adjudication) has been practised for three-quarters of a century, but some of its provisions have been improved or augmented in later statutes elsewhere, and perhaps we should look for another, precedent. Nevertheless those who are interested in the history and development of this legislation will wish to see the actual wording of the Sudan Ordinance and the relevant sections are printed at the end of this chapter.

1.4 We have also included two extra provisions which are of interest (though they do not as yet appear to have been adopted elsewhere). In 1949 section 19A made provision for what can be called 'summary adjudication', a process intended to enable Government quickly and simply to acquire a clear registered title to

unoccupied land. In 1947 Part IIA - Resettlement and Re-registration was added to the Ordinance. This is of particular significance, for it highlights what can happen if registration of title is introduced into areas where there is no dealing and nobody takes any interest in bringing the register up to date when a proprietor dies. (Thus, in the Sudan, there was land in the Gezira which had been adjudicated in the first decade of this century but which was not taken into the cotton-growing scheme until some forty years later. By that time the registers consisted mainly of the names of proprietors long since dead, and the law of prescription had also affected title in the intervening years. A process of 're-adjudication' was required to bring the registers up to date.)

## (2) KENYA LAND REGISTRATION (SPECIAL AREAS) ORDINANCE 1959

1.5 *Part II (ss5-30) - Ascertainment and Recording of Rights and Interests in Land; Consolidation, and Demarcation; and Creation of Adjudication Register* was devised by the Working Party on African Land Tenure 1957-1958 to cover the process of systematic adjudication actually being used in the Special Areas (i.e. Native Land Units held in trust under the Native Lands Trust Ordinance). It departed from the Sudan procedure in three major particulars:

(i) It provided for the appointment of a Committee which "should adjudicate upon and determine in accordance with native law and custom the claim of any individual person to any right or interest in any land within the adjudication section" (s11(1)). Neither the Demarcation Officer nor the Recording Officer has any part in this adjudication, nor has the Adjudication Officer, for, despite his name, he is only the appellate authority and has no power to adjudicate in the first instance.

(ii) It provided for the preparation (by the Executive Officer of the Committee) and publication of a 'Record of Existing Rights' and made provision for objections (ss15-20). At this stage, *adjudication* (effected exclusively by the Committee, save where an objection has been successful) is in fact complete, but no map has been made of the existing holdings.

(iii) It enabled the Committee to set land aside for public purposes and then to allocate to each landowner a single parcel consolidating his previous holdings (s21). It is not until this stage that the Demarcation Officer demarcates holdings (the process which *begins* the Sudan procedure) and prepares "or causes to be prepared" a Demarcation Plan (s23). There is no provision for the appointment of a Survey Officer, and though a Recording Officer may be appointed (s6), he is not subsequently mentioned or given any official part in the proceedings.

1.6 This statute is still in force in Kenya but is now called the Land Consolidation Act, which no more indicates its dual purpose than did its previous name - it should be called the Customary Land Adjudication and Consolidation Act if its short title is to be truly descriptive. It is of great interest because of the important part it has played in the 'customary areas', particularly in the Central Province. Sections 9-28 are set out at the end of this chapter for those who wish to see the actual provisions relating to the appointment of Committees and their

functions, though it is doubtful if they are likely to be repeated anywhere else in this form.

### (3) LAGOS REGISTERED LAND ACT 1965

1.7 *Part 1 (ss1-20) - Adjudication* is of interest because it makes provision for the following two situations either or both of which may sometimes be found when an area is declared for systematic adjudication:

(i) there may exist titles already registered and guaranteed under a previous law, and

(ii) there may be an efficient deeds register, or perhaps effective land records by a Government Lands Office.

1.8 The Lagos Act therefore specifically provides that when an area is declared for systematic adjudication the registry shall prepare a list of any titles previously registered in that area, and the Registration Officer (i.e. Recording Officer) shall examine the deeds register or any other register (e.g. the records kept in the Lands Office in respect of long leases) to see if title can be established therefrom, thus shortening the proceedings. Unfortunately this legislation has not been put into effect.<sup>1</sup>

### (4) MALAWI CUSTOMARY LAND (DEVELOPMENT) ACT 1967

1.9 The long title of this Act is *An Act to provide for the Ascertainment of Rights and Interests in Customary Land, for the Better Agricultural Development of Customary Land and for Purposes connected therewith and Incidental thereto*, and it was enacted to enable to be done in the 'customary areas' of Malawi what had been done in comparable area in Kenya. This Malawi Act, however, was based much more on the draft of the Kenya Land Adjudication Act 1968 (see (7) below) than on the existing Kenya Land Adjudication Act which in 1968 was renamed the Land Consolidation Act (see (2) above). It provided the only 'feed-in' to the Malawi Registered Land Act 1967, which was enacted at the same time and which, of course, was intended for *all* titles. It would, indeed, have been far more logical if the existing documentary titles had been brought in first to establish the system before (or at least at the same time as) tackling the much more difficult problems of titles stemming from customary tenure.

### (5) TURKS AND CAICOS LAND ADJUDICATION LAW 1967

1.10 This statute makes provision for systematic adjudication against a background of established English land law and of conveyancing by title deeds. It also provides for provisional titles. It has been repeated practically word for word (except for its appeal provisions) as a model for use in the Caribbean (see also (8) below).

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<sup>1</sup> See 21.5.12

## (6) BRITISH SOLOMON ISLANDS PROTECTORATE LAND AND TITLES ORDINANCE 1968

1.11 *Part III (ss9-29) - Settlement of Unregistered Documentary Titles* provides for voluntary application for first registration (s10) but enables the Registrar to register without application being made (s11) and makes registration compulsory on conveyance or assignment (s12). Thus the process, though very practical, is essentially 'sporadic'. *Part IV (ss30-58) - Systematic Settlement* follows the general pattern of the original Sudan procedure, but in addition it makes provision for the appointment of local committees (to advise and assist, but not to adjudicate) "if it appears expedient to the Settlement Officer" (s38). The appeal provisions (s56) are of interest, for this is their first appearance in the form which has been adopted in the Caribbean model (s23) and in the Malawi Land Adjudication Act (s24) which is set out in full below.

## (7) KENYA LAND ADJUDICATION ACT 1968

1.12 This Act (a first draft of which was prepared by the Lawrance Mission in 1966)<sup>2</sup> was very much overdue when it was enacted in 1968 for use in customary areas where no consolidation was intended. Previously adjudication in such areas had been carried out under Part II of the Act we described in (2) above (which in ten years had five different names and is now called the Land Consolidation Act)<sup>3</sup>. The new Act in the main merely reverts to the original procedure of the Sudan Ordinance. It gives the Adjudication Officer the position that his counterpart occupies in the Sudan; he is no longer merely the appellate authority, but is responsible for adjudication in the first instance. It also brings the Demarcation and Recording Officers firmly back into the picture, though it still makes provision for Committees to adjudicate if the Demarcation or the Recording Officer is unable to effect agreement. It does not provide specifically for consolidation but it enables holdings to be replanned provided the owners agree and, in any case, boundaries may be adjusted where necessary. It also makes provision for 'group ownership', which up to this time had not been allowed in Kenya.

## (8) MALAWI ADJUDICATION OF TITLE ACT 1971

1.13 This, according to its long title, is *An Act to provide for the adjudication of rights and interests in land, other than customary land, and for matters connected therewith and incidental thereto*, and it follows very closely the Turks and Caicos Land Adjudication Law 1967 (which has been adopted almost verbatim as a model Land Adjudication Law for use in the Caribbean). It therefore appears to be suitable as a representative Act and we now set it out for the purpose of illustration and comment. Perhaps we ought also to set out the Malawi Customary Land (Development) Act 1967 (see (4) above) in order to cover the whole procedure (i.e. for 'customary' as well as non-customary' area) but

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<sup>2</sup> *Lawrance Mission Report (1966)* Appendix E

<sup>3</sup> See 22.1.4

in fact the 'administrative' provisions (declaration of adjudication area, appointment of officers, notices, and so on) of that Act and this one are virtually identical - the two Acts might indeed have been combined - and we think it will be enough merely to set out in the appropriate places provisions which are needed for the appointment and functions of 'Committees' and for matters where alternative or supplementary measures are made in other Acts.

1.14 The Act is divided into seven Parts, but two of the Parts comprise only one section each. The original Sudan Ordinance in 1925 presented 'Settlement and First Registration' as a single Part of a combined Ordinance, in which 'Land Registration' was also covered by a single Part. The Kenya Land Registration (Special Areas) Ordinance 1959 followed the same pattern, and when, in 1963, Parts I and II became a separate ordinance under the name Land Adjudication Ordinance (now the Land Consolidation Act) no further division into Parts was made. Nevertheless six unnumbered 'subtitles' were inserted in the draft Land Adjudication Bill prepared by the Lawrance Mission in 1966. These (with some variation) are the basis of the six numbered and named Parts of the Turks and Caicos Land Adjudication Law and so (with the addition of the Part called Appeals) of the seven Parts of this Act. The Kenya Land Adjudication Act 1968, however, which gave effect to the Lawrance Mission recommendation, has only five Parts and does not follow quite the same arrangement or use the same names, thus showing the variation possible in the grouping of the sections of this Act. In the main, therefore, we have thought it, preferable not to comment on Parts but to go straight to the sections.

## **2 Malawi Adjudication of Title Act 1971 and commentary**

(To distinguish Act from commentary, the text of the Act is printed larger and the sections are flagged.)

### ARRANGEMENT OF SECTIONS

#### *Section*

#### PART I - PRELIMINARY AND APPLICATION

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2. Interpretation
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#### PART II-OFFICERS

4. Appointment and general powers of officers

#### PART III-CLAIMS AND DEMARCATION

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6. Notices by Adjudication Officer
7. Staying of land suits
8. Claims and attendance
9. Safeguarding of rights of absent persons and minors
10. Notice of demarcation and recording
11. Indication of land claimed
12. Special powers of Demarcation Officer
13. Duties of the Survey Officer
14. Duties of the Recording Officer
15. Disputes

#### PART IV-PRINCIPLES OF ADJUDICATION AND PREPARATION OF ADJUDICATION RECORD

16. Principals of adjudication
17. Rules to be followed in adjudication
18. Adjudication Record
19. Notice of completion of Adjudication Record

#### PART V-OBJECTIONS AND FINALITY

20. Objection to the Adjudication Record
21. Procedure in bearing objections
22. Correction of Adjudication Record
23. Finality of Adjudication Record

#### PART VI-APPEALS

24. Appeals

#### PART VII-MISCELLANBOUS

25. Fees
26. Offences
27. Indemnity of officers
28. Regulations

29. Amendment of Cap. 58:01  
Schedule

**An Act to provide for the adjudication of rights and interests in land, other than customary land, and for matters connected therewith and incidental thereto**

**ENACTED by the Parliament** of Malawi as follows—

PART I - PRELIMINARY AND APPLICATION

*Short title.*

► 1. This Act may be cited as the Adjudication of Title Act, 1971.  
In the Turks and Caicos (and the Caribbean model) this Act is called the Land Adjudication Law.

*Interpretation.*

► 2. In this Act, except where the context otherwise requires—

“adjudication area” means an area to which this Act has been applied under section 3;

“Adjudication Officer” means an Adjudication Officer appointed under section 4;

“Adjudication Record” means the Adjudication Record prepared in accordance with the provisions of section 18 in respect of an adjudication section;

“adjudication section” means an adjudication section declared under section 5;

“charge” bears the meaning ascribed to that word by the Registered Land Act;

“Deeds Registrar” bears the meaning ascribed to that term by the Deeds Registration Act;

“Demarcation Map” means a demarcation index map prepared under section 13 in respect of an adjudication section;

“Demarcation Officer” means a Demarcation Officer appointed under section 4;

“easement” bears the meaning ascribed to that term by the Registered Land Act;

“guardian ” means any person (whether under customary law or otherwise) responsible for protecting the interests of any person who

is under a disability, whether by reason of age, unsoundness of mind or any other cause;

“interest in land” means any right or interest in or over land which is capable of being recorded under the provisions of this Act;

"land" includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

“piece” means a piece of land separately shown on a Demarcation Map and thereon given a number;

“profit” bears the meaning ascribed to that word by the Registered Land Act;

"Recording Officer" means a Recording Officer appointed under section 4;

“the register”, “to register”, “registered” and “registration” bear the meanings ascribed to those terms by the Registered Land Act;

“Registrar" bears the meaning ascribed to that term by the Registered Land Act;

“Survey Officer" means a Survey Officer appointed under section 4.

The word 'piece' is used in Malawi in the place of the more familiar word 'parcel'.

*Application.*

► 3. (1) Whenever it appears expedient to the Minister that the adjudication and registration of rights and interests in land, not being customary land, in any area, should be effected the Minister may, by Order published in the *Gazette*, declare that this Act shall apply to that area and thereupon that area shall become an adjudication area.

(2) Any Order under this section shall define the situation and limits of the adjudication area to which it relates either by means of a plan or by a description, or by both, and the Minister may at any time by Order published in the *Gazette* vary the limits of the adjudication area.

Except for the words 'not being customary land', this is common form.

## PART II—OFFICERS

*Appointment and general powers of officers.*

► 4. (1) Whenever an Order made under section 3 is published, the Minister shall appoint an Adjudication Officer for the adjudication



area it declares and such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act in relation to such area.

(2) The Adjudication Officer shall, subject to the directions (whether general or special) of the Minister, be in charge of the adjudication under this Act of rights and interests in land in the area for which he is appointed and may issue such general or special directions as he thinks necessary to the other officers appointed under subsection (1) for such area, and may himself perform and exercise all or any of the duties given under this Act to Demarcation Officers and Recording Officers.

(3) The Adjudication Officer shall be competent to administer oaths and take affidavits in any inquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for carrying out the adjudication.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the adjudication area for the purpose of demarcating or surveying any piece therein and may summon any person who can give information regarding the boundaries of any such piece to point out the boundaries.

This section is derived from Sudan, but there provision is made for the Chief Justice to appoint "some named person or the holder of some office", a formula which is useful where a named person may go on leave or be transferred before the work has been completed.

In subsection (3) only the Adjudication Officer is competent to administer oaths, but in Sud 5(2) the Registration (i.e. Recording) Officer was given similar powers, thus giving him more status than he is intended to have in this Act.

In some legislation (e.g. in Kenya and the Turks and Caicos) the Adjudication Officer is empowered to appoint his own subordinate officers. This arrangement is useful because it is often necessary to appoint these officers at short notice, e.g. because of sickness; valuable time can be wasted if the appointment must be referred to the Minister.

#### *Committees*

Where it is decided to have 'Committees', it is in this Part that provision should be made for their appointment. No provision was made for them in this Act, since in Malawi a separate Act (the Customary Land (Development) Act 1967) dealt with 'Customary Land'; nor was it made in the Turks and Caicos where there was no customary tenure like that for which this sort of committee process was first devised in Kenya. Committees, however, need not necessarily be confined to

customary areas; they could be useful in any village area, or indeed anywhere where reliance must be placed upon local knowledge. For example, in the Sudan procedure the Settlement Officer "may refer the manner of partition for the decision of a board of not less than three persons" (see Sud 17(d) on page 672). The Palestine Land (Settlement of Title) Ordinance 1928 made provision for the appointment of 'village Settlement committees' "to assist in the execution of settlement within the village area when required to do so by the settlement officer" (s15(2)). In the Cayman Islands in 1971 provision was made to appoint a 'Land Adjudication Tribunal', and the relevant subsection is set out at the end of this Part on page 648.

The following sections taken from the Malawi Customary Land (Development) Act 1967 cover (A) the appointment of committees, (B) their functions, (C) their procedure, and (D) reconsideration of their decisions. (In this Malawi Act the word 'allocation' was substituted for 'adjudication' in order to emphasize the redistributive rather than the adjudicative aspect of the proceedings.) These provisions can usefully be compared with the provisions made for committees in Kenya and in the British Solomon Islands Protectorate.

#### (A) Appointment of Land Committee

##### *"Appointment of Land Committee.*

"5.—(1) For any development section or part of a development section within the development area the Allocation Officer, after consultation with the District Commissioner within whose district the development area is situated, may appoint not less than six persons resident within the development area to form a panel from which he may from time to time select not less than five persons to form a Land Committee.

"(2) The Allocation Officer shall appoint an executive officer for each Committee who shall attend, and may speak, at any meeting of the Committee, but shall not vote.

"(3) The executive officer shall keep a record of the proceedings of the Committee in such form as the Allocation Officer shall direct."

In the Kenya Land Adjudication Act 1968 (s6) the adjudication officer *shall* (not *may*) appoint a committee (of not less than ten persons), while in the BSIP Land and Titles Ordinance 1968 (s38) a committee (of not less than three persons) is appointed only "if it appears expedient to the Settlement Officer". (In the original Kenya process the *District Commissioner* was required to appoint not less than *twenty-five* persons; see s9 on page 67S.)

#### (B) Functions of the Committee

##### *"Functions of the Committee.*

"6. The Committee appointed for a development section shall have the powers conferred by section, 16 and in addition shall

"(a) advise the Allocation Officer or Demarcation Officer or Recording Officer upon any point of customary law on which he has sought their guidance;

"(b) represent the interests of absent persons, minors and persons under disability, where no guardian or other representative has been appointed;

"(c) bring to the attention of officers engaged in the allocation any potential claim which for any reason may not have been made;

"(d) assist generally in the allocation process."

*"Disputes.*

"16. (1) If in any case—

"(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

"(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Committee.

"(2) The Committee shall adjudicate upon and determine any dispute referred to them under subsection (1), having due regard to any customary law which may be applicable."

This section marks the real change in the functions of the committee. As originally devised in Kenya and set out in KLR(SA)O 11 the Committee was required to adjudicate upon and determine *every* claim. In this Act the Committee is only required to adjudicate upon questions specifically referred to it and section 16 above spells out the circumstances in which the Demarcation or Recording Officer must refer disputes to it. This formula is reduced to a single section (20) in the Kenya Land Adjudication Act 1968 which, however, leaves open what questions (if any) shall be referred to the Committee; it reads:

*"Functions of committee.*

"20. The committee appointed for an adjudication section shall—

"(a) adjudicate upon and decide in accordance with recognized customary law any question referred to it by the demarcation officer or the recording officer;

"(b) advise the adjudication officer or any officer subordinate to him upon any question of recognized customary law as to which he has sought its guidance;

"(c) safeguard the interests of absent persons and persons under disability;

"(d) bring to the attention of officers engaged in the adjudication any interest in respect of which for any reason no claim has been made;

(e) assist generally in the adjudication process."

In the British Solomon Islands Protectorate the Committee is given no power to adjudicate, but is confined to advice, i.e. BSIP Land and Titles Ordinance 1968 s38 repeats section 20 above but without paragraph (a).

(C) Procedure in Committee

*"Procedure in Committee.*

"17. (1) If a member of a Committee has an interest, direct or indirect, in any land, the subject of a claim or a dispute referred to the Committee under section 16, and is present at a meeting of the Committee at which the determination of that claim or dispute is under consideration, he shall, at the meeting as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of, or vote on any question with respect to, the determination of that claim or dispute.

"(2) Each Committee shall elect one of its members to be chairman, who shall preside at all meetings at which he is present; and if at any meeting the chairman is absent, the members present shall elect one of themselves to preside at that meeting.

"(3) (a) The quorum of a Committee where the total number of members is an even number shall be one-half of that number, and, where the total number of members is an uneven number, shall be one-half of the even number that is greater than that number by one.

"(b) In the event of an equality of votes the Chairman or other member presiding shall have a casting as well as an original vote.

"(4) Any decision of a Committee shall be signified in writing and signed by the chairman or executive officer.

"(5) A Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership; and any proceedings therein shall not be invalid by reason only that some person, who was not entitled to do so, took part in the proceedings."

The above section is necessary if Committees are to hold formal meetings and record decisions. It repeats KLR(SA) 14 (printed on page 677) which was worked out by the Kenya Working Party on African Land Tenure in 1958. It also appears as section 8 of the Kenya Land Adjudication Act 1968, with the substitution of the following subsection for subsection (3)(b) above:

"(4) The decision of three-quarters or more of the members of a committee or board who are present and vote shall be the decision of the committee or board, as the case may be."

In the British Solomon Islands Protectorate, since the Committee is given no power to make decisions, no formal procedure is provided for its deliberations.

(D) Reconsideration of Committee decisions

*"Reconsideration of decisions by Committee*

“18.—(1) Any person named in or affected by a decision of the Committee who considers himself aggrieved thereby may, within fourteen days of such decision, lodge an objection with the executive officer of the Committee concerned stating in what manner the decision is alleged to be incorrect.

“(2) Upon receipt of an objection, or if in any case the Allocation Officer so directs, the Committee shall reconsider their decision and shall thereafter submit their finding to the Recording Officer who shall make any entry in or alteration to the Allocation Record as may be required to give effect to the decision of the Committee.”

Kenya differs from Malawi in that 'Arbitration Boards' (for which provision was originally made in KLR(SA)O 10 - now section 10 of the Land Consolidation Act) have been retained under the Land Adjudication Act 1968. Their functions are set out in section 22 of that Act as follows:

*"Functions of arbitration board.*

"22. The board shall hear and determine any matter referred to it or complaint made to it under section 21 of this Act."

Section 21 reads:

*"Decision of committee.*

“21. (1) If a committee is unable to reach a decision on a matter before it, it shall refer the matter to the arbitration board for decision.

“(2) The adjudication officer may require the committee to reconsider any decision which it has made.

“(3) Any person named in or affected by a decision of the committee who considers the decision to be incorrect may, within fourteen days after the decision, complain to the executive officer of the committee, saying in what respect he considers the decision to be incorrect.

“(4) Upon receipt of a complaint under subsection (3) of this Section, the executive officer of the committee shall refer it with all the particulars of the case to the executive officer of the board, who shall submit it to the board.”

*Land Adjudication Tribunal*

The following is the provision which is made for the appointment of a Land Adjudication Tribunal in the land Adjudication Law 1971 of the Cayman Islands:

*"Establishment of a Land Adjudication Tribunal and appointment of officers*

“4. (1) On the publication of a declaration made under section 3, the Administrator shall appoint a Land Adjudication Tribunal for the Adjudication area consisting of an Adjudicator, and two Assessors having local knowledge of the adjudication area. The Adjudicator shall be in charge of the adjudication and shall preside over the Tribunal and shall himself adjudicate upon and determine the matters referred to the Tribunal but in so doing he shall consult with the Assessors and record their opinions on local matters, customs and conditions, but shall not be bound to follow them.”

### PART III - CLAIMS AND DEMARCATION

*Adjudication sections.*

► 5. The Adjudication Officer shall divide each adjudication area into two or more adjudication sections or declare the whole area to be a single adjudication section, and shall give each such adjudication section a distinctive name.

This section fills a gap in the Sudan legislation where no such specific provision was made, though it is the first action that any Adjudication Officer must take.

*Notices by Adjudication Officer*

► 6. The Adjudication Officer shall prepare a separate notice in respect of each adjudication section, and in such notice shall—

- (a) specify the situation and limits of the adjudication section;
- (b) declare that all interests in land in such section will be ascertained and recorded in accordance with the provisions of this Act;
- (c) require any person who claims any interest in land within the adjudication section to make a claim thereto in person or agent within the period, to the person, at the place and in the manner specified in the notice;
- (d) require all claimants to land, or to any interest in land, within the adjudication section to mark or indicate the boundaries of the land in such manner and before such date as shall be required by the Demarcation Officer.

(2) The Adjudication Officer shall as soon as possible after preparing a notice under subsection (1)—

- (a) cause such notice to be published in the *Gazette* and at such administrative and other offices as he thinks fit; and
- (b) cause the substance of such notice to be made known throughout the adjudication section and elsewhere in such manner as he considers to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

This section can be considered common form except for the requirement in subsection (2)(a) that the notice should be published in the *Gazette*. This is unnecessary since the original declaration by the Minister has already been gazetted, and the purpose of this subsection is merely to ensure real publicity in the neighbourhood.

Where (as in the Federal Territory of Lagos in 1965) there are in existence registered titles under a previous ordinance and/or a deeds register or records kept

in a Lands Office, then it may be necessary to add either or both of the two following paragraphs to the notice to be prepared under 6(1):

(e) state that interests and rights in land within the adjudication section which are registered under the Registration of Titles Act will be brought on to the register under this Act without requiring any formal application by persons interested;

(f) state that the claims of each person in respect of the parcel shown against his name in the schedule published with the notice will be investigated by the Recording Officer and no claim need be submitted by such person.

An addition will then be required to section 14 to augment the duties of the Recording Officer.

If, owing to inadequate survey, the boundaries of registered land are uncertain it will be necessary to insert in the first line of subsection (1)(d) after the words 'interest in land' the words 'whether or not such land has been registered under the Registration of Titles Act'.

#### *Staying of land suits*

► 7. (1) Except with the consent in writing of the Adjudication Officer, no action concerning land or any interest in land in an adjudication section shall be begun in any civil court until proceedings under this Act with regard to such land or interest have been completed.

(2) Where at the time of the publication of a notice under section an action concerning land, or an interest in land, in the adjudication section referred to in such notice is pending or in progress such action shall, where practicable, be determined before the adjudication under this Act of the land or interest therein is commenced:

Provided that it shall be lawful for the Adjudication Officer at any stage of such action to order that it shall be stayed and it shall be stayed accordingly.

This is an important provision not found in the Sudan Ordinance. It is obviously undesirable that an issue should be under consideration by two different judicial authorities at the same time (see Chapter 15.5.4), and this section avoids the possibility of any such conflict.

The following is an interesting adaptation of this section which was made for the Customary Land (Development) Act:

#### *Cesser of Powers of customary authorities*

“9. (1) As from the date of a notice under section 8, a 'mwini dziko' or other customary authority shall, in relation to land within the development section, cease to have and exercise any customary functions and the right, if any, to monetary or other payment in respect of the performance of such functions:

"Provided that, upon the Allocation Record becoming final in accordance with the provisions of section 27, such functions shall revert in the 'mwini dziko' or other customary authority in relation to land recorded as customary land in the Allocation Record.

"(2) Except with the consent in writing of the Allocation Officer, no person shall proceed with, and no customary authority shall take cognisance of, any dispute concerning any interest in land in a development section after publication of a notice under section 8:

"Provided that, upon the Allocation Record becoming final in accordance with the provisions of section 27, the provisions of this subsection shall cease to apply to any dispute concerning an interest in land recorded as customary land in the Allocation Record.

(3) The hearing of any such dispute which was begun before the publication of the notice mentioned in section 8 shall, where practicable, be determined before the allocation of the land affected by such dispute is commenced.

"(4) Any such hearing which has not been completed before such allocation is commenced shall, unless the Allocation Officer otherwise directs, be stayed."

#### *Claims and attendance*

► 8.(1) Every person claiming an interest in land within an adjudication section shall make his claim in the manner and within the period fixed by the relevant notice given under section 6.

(2) Every person whose presence is required by the Adjudication Officer, Demarcation Officer or Recording Officer, as the case may be, shall attend, in person, or by agent, at the time and place specified. If any such person fails so to attend the demarcation, recording or other proceeding may continue in his absence.

Common form.

#### *Safeguarding of rights of absent persons and minors.*

► 9.(1) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has a claim to any interest in land within the adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may, but shall not be bound to, proceed as if a claim had been made, and may call upon the Deeds Registrar to supply him with a certified copy of any document relevant thereto and registered under the provisions of the Deeds Registration Act.

(2) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that a claim might be established by a minor and no person has been appointed to represent the minor, he shall appoint a



person to represent the minor, and shall proceed as if a claim by, or on behalf of, such minor had been made.

This section 'brings forward' Sud 16(a) and (b) (two of the 'rules' to be followed by the Settlement Officer) with a view to putting earlier emphasis on the need to safeguard these rights.

In the Customary Land (Development) Act this section is combined with the previous section.

*Notice of demarcation and recording.*

► 10. Not less than seven clear days before the demarcation of land in an adjudication section is begun, the Demarcation Officer shall give notice of such demarcation and of the time and place at which it will begin, in such manner as the Adjudication Officer shall deem to be most likely to bring the notice of the demarcation to the attention of the persons likely to be affected thereby.

(2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

This is the notice that indicates that the proceedings are really about to begin - a realistic and practical provision introduced by the Kenya Working Party on African Land Tenure and now common form.

*Indication of land claimed.*

► 11. Subject to any general or particular directions issued by the Adjudication Officer, the Demarcation Officer shall within each adjudication section—

(a) ensure that the boundaries of each piece of land which is the subject of a claim are indicated or demarcated in accordance with the requirements of the notice given under section 10;

(b) indicate or cause to be indicated the boundaries of

(i) any public roads, public rights of way and other public land;

(ii) any customary land; and

(iii) any unclaimed land.

'Customary land' is specifically mentioned because in Malawi there is a separate Act for its adjudication, but otherwise this section is common form; it makes provision for the first action actually taken on the ground. It corresponds with Sud 9 which is called 'Duties of the Demarcation Officer' (set out on page 668).

*Special powers of Demarcation Officer*

► 12. The Demarcation Officer may—

(a) divide the adjudication section into blocks which shall be given such distinctive numbers or letters or combinations of numbers and letters as he may determine;

(b) with the consent in writing of all the persons having, or claiming, any interest in the land affected thereby, adjust the boundaries of any land in the adjudication section or re-allot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision thereof.

This is a very important section, for this is where provision is made for readjustment of boundaries or even for complete reparation, which in this Act is only allowed with the consent in writing of all persons affected, surely a formidable requirement since there is usually a dissentient or two even in the most popular scheme. Consent for reparation is similarly required by section 12 of the Turks and Caicos Adjudication Law 1967, but additional powers are conferred on the Demarcation Officer by that section, which reads:

*Special powers of Demarcation Officer*

“12.—(1) The Demarcation Officer may—

"(a) divide the adjudication section into blocks which shall be given distinctive numbers or letters or combinations of numbers and letters;

"(b) with the consent of the owners concerned adjust the boundaries of any land in the adjudication section or reallot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision thereof;

"(c) make any reservations he considers necessary, for the purposes of defining existing roads and paths or for the better drainage of any land;

"(d) make a declaration of such existing rights of way over any land in the adjudication section and may direct the manner in which such rights of way are to be exercised and in such case he shall direct that such rights of way be recorded in the adjudication record in respect of the dominant land and the servient land;

"(e) award such compensation as may to him appear just to any person who has suffered loss of land as the result of any adjustment of boundaries or the partition or re-allotment of any land or the declaration of any rights of way and may make an order directing by whom such compensation shall be paid: Provided that no compensation shall be awarded against the Government except with the prior written authority of the Administrator: Provided also that any award may be the subject of an objection under section 20;

"(f) determine the proportion in which the expenses of any partition shall be borne by the persons interested therein and make an order accordingly;

"(g) make an order as to costs not exceeding twenty pounds.

"(2) Any order for the payment of compensation, expenses or costs made against the owner of any land shall create a debt to be charged on such land which shall have priority over all other debts whatever except debts due to the Crown,"

The powers conferred on the Demarcation Officer in this section should be compared with those conferred in Sud 10 (set out on page 668), in which there is no mention of any consent being required from the landowners. The real contrast, however, is with section 13 of the Customary Land (Development) Act 1967, which gives the Demarcation Officer very comprehensive powers indeed and reads as follows:

*Demarcation of pieces*

"13.—(1) The Demarcation Officer shall then proceed to demarcate or cause to be demarcated any land which in his opinion should appear as a piece on the Demarcation Map, and in so doing may—

"(a) set aside out of land in the development section such land as may in his opinion be required for the present or future needs of the community as roads, sites for villages, schools, public buildings, graveyards and open places, and any detriment caused to owners of pieces by such setting aside shall be shared as equitably as possible between all owners in the development section;

"(b) effect or cause to be effected such measures as shall be required by any development scheme prescribed by the Minister;

"(c) if he considers the existing lay-out of the land to be uneconomic or inconvenient for the use of the land or inconsistent with the development scheme, prepare afresh lay-out and by exchange of land or otherwise adjust the existing lay-out;

"(d) demarcate any right of way necessary to give access to a public road or water in favour of any piece completely surrounded by other pieces;

"(e) terminate any such customary right as is referred to in section 19 (2) if he considers such right unnecessary or inconsistent with any development scheme prescribed by the Minister;

"(f) make such alignment of boundaries of land adjoining a public road as may be required in the public interest;

"(g) clear any boundary or other line which it may be necessary to clear for the purpose of such demarcation.

(2) The Demarcation Officer may request any person having an interest in any land to assist in the demarcation of such land in such manner as the Demarcation Officer may require."

The powers conferred on the Demarcation Officer by this section should be compared with those conferred on the Committee by KLR(SA)O 21 (set out on page 680).

*Duties of the Survey Officer*

▶ 13. Subject to any general or particular directions issued by the Adjudication Officer, the duties of the Survey Officer shall be—

(a) to carry out such survey work as may be required in the execution of the adjudication process; and

(b) to prepare or cause to be prepared a demarcation index map of the adjudication section on which shall be shown every separate piece of land identified by a distinguishing number, except that rivers and public roads shall not be required to be identified by a number.

Section 13(b) of the Turks and Caicos Land Adjudication Law 1967 (and the Caribbean model) specifies that the demarcation index map of the adjudication section "shall be compiled from survey data or aerial, photographs but otherwise that section is the same as this.

▶ 14. The Recording Officer shall consider all claims to any interest in land and after such investigations as he considers necessary shall prepare in accordance with the provisions of section 18 an Adjudication Record in respect of every piece of land shown on the Demarcation Map.

Common form.

*Disputes.*

▶ 15. If in any case—

(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer, as the case may be, shall refer the matter to the Adjudication Officer.

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign a brief record of the proceedings.

This section, substituting 'Adjudication Officer,' for 'Committee' repeats section 16 of the Customary Land (Development) Act 1967, with the addition at the end of subsection (2) of the words "and shall make and sign a brief record of the proceedings". These words are taken from section 15 of the Turks and Caicos Land Adjudication Law 1967 and they are inadequate. The procedure which is envisaged is that, so far as uncontested claims are concerned, the Recording

Officer shall do no more than complete the 'adjudication form' (which gives brief particulars of the basis of the claim, e.g. purchase, inheritance, etc.). But when there is a dispute which the Demarcation or Recording Officer is unable to compose, and a formal judicial hearing by the Adjudication Officer is needed, then, as required by Sud 15(3), the Adjudication Officer must make a record of the proceedings and so far as is practicable must follow civil suit procedure. Thus in the Bill (29 of 1967) prepared in the Bahamas the following subsection was added to section 15:

"(3) In hearing a dispute the Adjudication Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which could not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion."

It is important that this subsection should be included if difficulty is not to arise in the event of an appeal to the court.

#### PART IV—PRINCIPLES OF ADJUDICATION AND PREPARATION OF ADJUDICATION RECORD

##### *Principles of adjudication*

##### ► 16.(1) In preparing the Adjudication Record—

(a) if the Recording Officer is satisfied that a person—

(i) has a good documentary title to the land, not being customary land, referred to in such Record and that no other person has acquired a title to such land under any law; or

(ii) has acquired ownership of the land, not being customary land, referred to in such Record by prescription by virtue of the principles set out in Part IX of the Registered Land Act,

the Recording Officer shall record such person as the owner of the land;

(b) if the Recording Officer is satisfied that a person is in possession of, or has a right to possession of the land, not being customary land, referred to in such Record, but is not satisfied that such person is entitled to be recorded under paragraph (a) as the owner of the land, the Recording Officer may record such person as provisional owner of the land and, if he does so, shall also record—

(i) the date on which the possession, if any, of that person began, or is deemed to begin or have begun;

(ii) particulars of any deed, instrument or other document under or by virtue of which some estate, right or interest in such land adverse to or in derogation of the entitlement of that person might exist; or

(iii) any qualification which affects the title;

(c) if the Recording Officer is satisfied that any land, other than customary land, referred to in such Record is subject to any right which is registrable as a lease, charge, easement, profit or restrictive agreement under the Registered Land Act, he shall record such particulars as shall enable the right and the name of the person entitled to the benefit thereof to be registered under the said Act;

(d) if the Recording Officer is satisfied that any land, other than customary land referred to in such Record is entirely free from private rights or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to record any person as provisional owner under paragraph (b), he may record such land as public land.

(2) In performing his duties under this section the Recording Officer shall observe the rules contained in section 17.

(3) In this section, the term "good documentary title" means a title founded on documentary evidence which—

(a) consists of, or commences with—

(i) a written law;

(ii) a grant or conveyance from the State; or

(iii) a grant, conveyance, assignment or mortgage which is more than thirty years old; and

(b) establishes that a person is entitled to land as owner in freehold.

This is another very important section, and in it there is a radical departure from the 'principles' of Sud 13, under which the Registration (i.e. Recording) Officer merely has to be 'satisfied' that a person is entitled to ownership and he then 'admits' his ownership. The Sudan Ordinance does not specify what is needed to satisfy the Registration Officer, who is therefore able to exercise a wide discretion. For example, he is not bound by the period laid down in the Sudan Prescription and Limitation Ordinance 1928, but can admit ownership on the strength of a short period of possession. (This point was put beyond doubt by a case which went to the Court of Appeal in 1949.) The above section, however, follows section 16 of the Turks and Caicos Land Adjudication Law 1967 and

allows no such discretion; instead, it specifies that the Recording Officer must be satisfied that there is either a good documentary title or a full prescriptive title before he may record ownership; in other words the proof of title required is of a standard that would satisfy a conveyancer advising a purchaser. Furthermore there is provision for according a 'provisional title' if the evidence of title is not up to the required standard. Thus the proceedings under this section are likely to be slower than under the Sudan Ordinance, and slower still than under the National Land Code (Penang and Malacca Titles) Act 1963, where all (not merely substandard) titles are provisional in the first instance.<sup>4</sup> Robert Wilson's plan in 1857 for the preparation of the English register similarly envisaged that all titles would at first be provisional, ripening in due course into absolute titles.<sup>5</sup> It is for consideration if something on these lines might not be more satisfactory in areas where the conversion of customary tenure is not concerned.

As regards customary tenure (where a primary purpose of adjudication is to produce certainty) the Customary Land (Development) Act 1967 provides (in three sections) a version of what is basically the Sudan formula (though it should be particularly noted that that formula effectively covered the settlement of all titles, documentary as well as customary). Sections 19, 20, and 21 enable customary land to be sorted into three categories: (1) privately owned land, (2) land which is to remain customary (though shown on the register), and (3) Government (or public) land. They read as follows:

*"Intended private land.*

"19.—(1) If the Recording Officer is satisfied—

"(a) that any person has customary rights in a piece which entitle that person to be registered as the proprietor of land under the Registered Land Act, 1967, he shall record that person as the owner of that piece;

"(b) that two or more persons have customary rights in a piece which entitle those persons to be registered as joint proprietors or proprietors in common under the Registered Land Act, 1967, he shall record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner;

"(c) that any family has customary rights in a piece which entitle the head of that family to be registered as the proprietor of family land under the Registered Land Act, 1967, he shall record the head of such family as owner of family land.

"(2) Subject to the provisions of section 13 (1) (e), if the Recording Officer is satisfied that any piece recorded under subsection (1) is subject to a customary right which is registerable as lease, charge, easement, restrictive agreement or profit under the Registered Land Act 1967, he shall record such particulars as may be necessary to enable the right, and the name of the person entitled to the benefit thereof, to be registered, and shall so record any easement demarcated under section 13(1)(d)."

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<sup>4</sup> See 11.10.9

<sup>5</sup> See 3.12.2

This reverts to the 'principles' of Sud 13, except for the specific provision for the recording of family ownership as such, a provision which may have the effect of prolonging customary tenure and should be contrasted with the original process in Kenya which rigidly insisted on individualisation (see Chapter 11.8. 9).

It is also worth noting that the provision in KLR(SA00 15 (printed on p. 677 and now section 15 of the Land Consolidation Act) for recording as owner any person "whose right in the opinion of the Committee or Arbitration Board, should be recognized as ownership" has been changed in section 23(2)(a) of the Kenya Land Adjudication Act 1968 to recording any person who satisfies the Recording Officer that he "has, under recognized customary law *exercised* rights in or over land which should be recognized as ownership" (our italics). However, the distinction between 'having a right' and actually 'exercising' it (intended to preclude the grant of land to somebody who had never used it) is, of course, not nearly so important as the distinction that has been made in the Malawi legislation between, a documentary and customary title when it comes to establishing title for the purpose of registration under the Registered Land Act. No such distinction was contemplated in the original Sudan process.

*"Recorded customary land.*

"20. If the Recording Officer is satisfied hat any piece falls into the category of—

"(a) village residential land;

“(b) 'dambo' land;

"(c) unallocated garden land; or

"(d) land used for any other special purpose of the community, he shall record such piece as customary land, together with a note of the category of such piece:

"Provided that nothing in this section shall operate to prevent such piece being allocated at any later time under the provisions of this Act."

See Chapter 12.6(3) for a description of how this section is intended to be used.

*"Intended public land.*

"21.(1) The Recording Officer shall record any land set aside by the Demarcation Officer under the provisions of paragraph (a) of section 13 (1) for the needs of the community as intended public land, and shall specify the purpose for which the land is used or reserved.

“(2) Upon the Allocation Record becoming final in accordance with the provisions of section 27, land recorded as public land shall be deemed to have been declared public land under the provisions of section 21 (1) of the Malawi Land Act, 1965."

*Rules to be followed in adjudication.*

► 17.(1) All unoccupied land, other than customary land, shall be deemed to be public land until the contrary is proved.



(2) The exercise by person of any rights in or over one or more pieces of land shall not be taken as a presumption in his favour of any in or over any greater extent of land than that in or over which such rights are exercised.

(3) Where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Act, the Recording Officer shall record such persons as joint owners or owners in common, as the case may be, and if owners in common, the share of each such owner.

This section should be compared with Sud 16 (printed on page 671), and with section 17 of the Turks and Caicos Land Adjudication Law 1967, which reads as follows:

*"Rules to be followed in adjudication.*

"17.(1) All waste and unoccupied land shall be deemed to be Crown Land until the contrary is proved.

"(2) The exercise by any person of any rights in or over one or more pieces of land shall not be taken as a presumption in his favour of any rights in or over any greater extent of land than that in or over which such rights are exercised.

"(3) Possession or receipt of rents and profits by any person through whom a claimant derives his title shall be deemed to have been the possession or receipt of the rents and profits of the claimant.

"(4) Where from the relationship of the parties or from other special causes it appears that the person in possession of land is or was in possession on behalf of another, his possession shall be deemed to be or to have been the possession of that other.

"(5) Where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Law, 1967 the Recording Officer shall record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner.

"(6) A receipt shall be given by the Recording Officer for all documents produced by a claimant and retained."

*Adjudication Record.*

► 18.(1) "The Adjudication Record shall consist of a form in respect of each piece of land, which form shall show—

(a) the number and approximate area of the piece as shown on the Demarcation Map;

(b) either the name and description of the person entitled to be registered as the owner of the piece with particulars of his entitlement and of any restriction affecting his power of dealing

with it, or the fact that the piece is public land or customary land;

(c) Such particulars of any right registrable under the Registered Land Act as shall enable it to be registered, as a lease, charge, easement, profit or restrictive agreement, as the case may be, affecting the piece together with the name and description of the person entitled to the benefit thereof and particulars of any restriction affecting his power of dealing with it;

(d) if any person shown in the Adjudication Record is under a disability, whether by reason of age, 'unsoundness of mind or otherwise, the name of his guardian.

(e) a list of the documents, if any, produced to the Recording Officer and retained by him;

(f) the date on which the form is completed.

(2) When completed the form shall be signed by the Recording Officer and, in the case of privately owned land, shall, where possible, include an acknowledgment signed by the Owner of the piece or by his agent, and by any person recorded under the provisions of subsection (1) (c) as having an interest in such piece, that such owner and every such person accepts the Record.

There is no need for any further record in undisputed cases. This form gives not only all the particulars needed for the register but also provides all the information necessary should any query arise, the essential point being, of course, that there was no dispute. The position is quite different where there is a dispute requiring a 'judgment' by the Adjudication Officer (see s15 and comment above).

Section 18(1)(b) of the Turks and Caicos Land Adjudication Law 1967 is clearer than (1)(b) above; it reads:

(b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner in which that person acquired that parcel and of any restriction on his power of dealing with it, or the fact that the parcel is Crown Land;"

*Notice of completion of Adjudication Record.*

► 19. When the Adjudication Record in respect of any adjudication section has been completed, the Adjudication Officer shall, sign and date a certificate to that effect and shall forth with, by Notice published in the Gazette, give notice of the completion thereof and of the place or places at which the same can be inspected together with the relevant Demarcation Map.

Common form, except for the requirement that the notice shall be gazetted, which is peculiar to Malawi and can serve no practical purpose at this stage.

## PART V—OBJECTIONS AND FINALITY

The provisions of this Part can now be regarded as common form, and require no further comment or explanation.

### *Objection to the Adjudication Record.*

► 20.(1) Any person named in, or claiming an interest in any land referred to in, any Adjudication Record or Demarcation Map who considers such Record or Map to be inaccurate or incomplete in any respect may, within sixty days of the date upon which the notice of completion of the Adjudication Record is published, inform the Adjudication Officer stating the grounds of his objection.

(2) The Adjudication Officer, after giving reasonable notice to all persons affected by the objection, shall hear the objection, and shall allow or dismiss the objection or otherwise determine the matter in such manner as he thinks just.

### *Procedure in hearing objections*

► 21.(1) In hearing an objection the Adjudication Officer shall, so far as may be practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.

(2) Any proceedings conducted under this Act by the Adjudication Officer shall be deemed to be a judicial proceeding for the purposes of Chapter XI of the Penal Code.

(3) A record of all proceedings on an objection shall be made or caused to be made by the Adjudication Officer.

### *Correction of Adjudication Record*

► 22.(1) Any correction in the Adjudication Record required by a decision of the Adjudication Officer given under section 20 shall be made by the Recording Officer, and any alteration in the Demarcation Map required by such decision shall be made by the Survey Officer.

(2) At any time before the Adjudication Record becomes final the Recording Officer may—

(a) correct any error or omission not materially affecting the interests of any person; and

(b) with the consent of every person whose interest is affected, make in the Adjudication Record any alteration which in his opinion is necessary.

*Finality of Adjudication Record*

► 23. After the expiry of sixty days from the date of the publication of the notice of completion of the Adjudication Record, or on determination of all objections in accordance with section 20 whichever shall be the later, the Adjudication Record shall, subject to provisions of the Registered land Act become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the Adjudication Record and the relevant Demarcation Map to the Registrar, together with all documents received by him in the process of adjudication.

PART VI—APPEALS

*Appeals*

► 24.(1) Any person, including the Minister, who is aggrieved by any act or decision of the Adjudication Officer and desires to question it or any part of it on the ground that it is erroneous in point of law or on the ground of failure to comply with any procedural requirement of this Act, may within three months from the date of the certificate of the Adjudication Officer under section 23 or within such extended time as the High Court, in the interests of justice, may allow, appeal to that Court in the prescribed form.

(2) On any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Act, make such order or substitute for the decision of the Adjudication Officer such decision as it may consider just and may order rectification of the register, and the order or decision of the High Court shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(3) Notwithstanding the provisions of section 140 of the Registered Land Act no indemnity shall be payable to any person by reason of any rectification of the register under subsection (2).

(4) A decision of the Court on appeal under subsection (1) shall be in writing and copies of it shall be furnished by the Court to the Registrar, to the appellant and to all other parties to the appeal and, by

the Registrar, to all other parties who, in his opinion, may be affected by the appeal.

(5) Any person, including the Minister, appealing under subsection (1) shall give notice to the Registrar of his motion to appeal and the Registrar shall enter a restriction under section 131 of the Registered Land Act in every register affected by the appeal.

This section is derived from BSIP 56 and, inasmuch as it limits appeal to questions of law or procedure, might be considered too restrictive. It invites argument as to what is law and what is fact. The subject of appeal is important, and controversial, but we discussed it at length in Chapter 15.7 and we need say no more about it here.

## PART VII—MISCELLANEOUS

### *Fees*

► 25. Every person who is a party to any proceedings under section 20 shall be required to pay such fees in respect of the proceedings as may be prescribed.

This section enables a fee to be imposed where there is a dispute of a sort which otherwise could only be determined by proceedings in a civil court (where, of course, fees would be payable usually by the defeated party), but no other fees are charged.

### *Offences*

► 26. Any person who—

(a) after the delivery of a summons issued under the provisions of this Act, wilfully neglects or refuses to attend in pursuance of such summons, or, to produce any document which he is required to produce;

(b) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him under this Act by any officer;

(c) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required under this Act to do so by a Demarcation Officer,

shall be guilty of an offence and liable to a fine of one hundred Kwacha or to imprisonment for six months.

No comment.

### *Indemnity of officers*

► 27. No officer shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act.

No comment.

*Regulations.*

► 28. The Minister may make Regulations for the purpose of carrying into effect the provisions and purposes of this Act.

No comment.

*Amendment of Cap. 58:01*

► 29. The provisions of the Registered Land, Act specified in the first column of the Schedule are amended in the manner respectively specified in the second column thereof.

The Schedule makes the following amendments to the Registered Land Act:

(1) It requires the register to show whether the land is public or private, and if private whether the title is absolute or provisional (see 22.21.10).

(2) Rights, liabilities, and remedies under existing mortgages are saved (see 22.2113).

(3) The effect of registration with provisional title is set out, and provision is made for the conversion of provisional to absolute title (see 22.2.111).