

Malawi

Africans on Private Estates Act Chapter 33:01

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Africans on Private Estates Act
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Malawi

Africans on Private Estates Act

Chapter 33:01

Commenced on 17 August 1962

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to regulate the conditions on which Africans may reside on Private Estates, the Orderly Development of Agricultural Land and Matters connected therewith

1. Short title

This Act may be cited as the Africans on Private Estates Act.

2. Application of the Act

- (1) This Act shall apply to such part or parts of Malawi as the Minister may, by notice published in the *Gazette*, direct.
- (2) This Act shall not apply to any African who is in occupation of land on an estate by virtue of a valid lease or tenancy agreement for a period of not less than two years.
- (3) The Minister may by notice published in the *Gazette* suspend or rescind the application of this Act to any part or parts of Malawi to which it has been applied.

3. Interpretation

In this Act, unless the context otherwise requires—

“**African**” means any person who is a member of an African community indigenous to Malawi, Tanzania, Zambia or Mozambique;

“**economic crops**” means such crops as are grown for sale and not for the consumption of the grower or his family;

“**estate**” means an undivided area of land, the legal right to occupy which is vested in some person other than the Government;

“**exempted African**” in relation to an estate means any African employee serving the owner of such estate otherwise than under this Act and living in a dwelling constructed at the expense of the owner and, during the registration period referred to in [section 5](#), includes an African residing on an estate in pursuance of a contract which was a special agreement under the Africans on Private Estates Ordinance, 1952 (now repealed);

[8 of 1952]

“**operative date**” means the date upon which this Act comes into operation in relation to any estate by reason of its application to such estate under [section 2](#) (1);

“**owner**” means any person, other than the Government, having a legal right, otherwise than under this Act, to occupy the estate in respect of which such term is used;

“**resident African**” means any African who is entitled to be registered as such under this Act;

“**Tribunal**” means the Africans on Private Estates Tribunal established under [section 18](#);

“**special agreement**” means a written agreement made in accordance with [section 25](#);

“**unmarried woman**” means a woman who has not married and includes—

- (a) a widow who has not remarried;
- (b) a divorced woman who has not remarried;
- (c) a woman whose husband has been absent from Malawi for a continuous period of two years or upwards and is still absent;
- (d) a woman the whereabouts of whose husband have been unknown for a continuous period of two years or upwards and whose whereabouts are still unknown.

4. Registers to be kept

- (1) Every owner shall register all resident Africans on his estate in a register which shall be in such form and contain such particulars as the Minister may prescribe.
- (2) Every resident African registered under subsection (1) shall be supplied by the owner with a document in the form prescribed by the Minister certifying his registration.
- (3) Every owner shall keep a separate register, which shall be in such form and contain such particulars as the Minister may prescribe, of all Africans who enter his estate under a special agreement.
- (4) Every owner who contravenes this section shall be guilty of an offence.

5. Who may apply for registration

- (1) Every male African over the apparent age of 18 years and every unmarried African woman over the apparent age of 18 years who, on the operative date, was resident on an estate, shall be entitled, on application to the owner of the estate, to be registered as a resident African. Every application for registration shall, subject as hereinafter provided, be made within the period (hereinafter referred to as the registration period) of six months after the operative date:

Provided that—

- (a) an exempted African shall not be entitled to apply for registration;
 - (b) an African, who was party to an agreement, in force on the operative date, for which approval was applied under [section 25](#) but which was not approved before the expiration of the registration period, may apply, within one month after such expiration, for registration as a resident African.
- (2) No African shall be deemed to be resident on any estate for the purposes of subsection (1) unless he was, on the operative date, residing in a dwelling on the estate constructed by him while he was not employed by the owner, or was residing on the estate with the knowledge of the owner.
 - (3) Any African who satisfies the Tribunal that he has resided on an estate continuously since the 1st day of January, 1962, shall be deemed to have been residing on that estate with the knowledge of the owner on the operative date.
 - (4) Any person applying for registration shall supply full particulars of the members of his family residing with him on the estate, including wives, children and any other dependants and the approximate ages of such children and dependants and of the dwellings and other buildings occupied or used by him.

6. Newcomers and trespassers

- (1) Any owner who consents to any African, other than an exempted African, residing, after the expiration of the registration period, on his estate, for the purpose of growing any economic crop for sale to, or performing any agricultural work for, that owner shall be guilty of an offence, unless

such African is a person in respect of whom particulars have been registered under this Act, or in respect of whom application for registration or for approval of a special agreement is pending.

- (2) After the operative date, any African who resides on or cultivates any estate or part thereof or exercises any rights conferred by [section 10](#) (2) on resident Africans over or in relation to any estate shall be a trespasser, and guilty of an offence, unless he is a person of whom particulars have been registered under this Act or in respect of whom application for registration or for approval of a special agreement is pending.

7. Applications to Tribunal

- (1) Any African who has applied unsuccessfully to an owner for registration may, within one month after refusal of registration, apply to the Tribunal for an order that the owner grant his application.
- (2) An application for registration shall, for the purposes of [section 6](#), be deemed to be pending from the time when it is made until it is granted or refused by the owner and, if refused, until the time for application to the Tribunal under subsection (1) has expired and, if application is so made to the Tribunal, until the Tribunal has given its decision on such application.

8. Additions to register

Any African who, after the operative date, comes to reside on an estate, in pursuance of a valid marriage to an unmarried woman who is registered as a resident African, shall apply to the owner for and shall be entitled to registration as a resident African. No other person shall be entitled to registration as a resident African after the expiration of the registration period except in pursuance of an order of the Tribunal, or in accordance with proviso (b) to [section 5](#) (1). A child, or other dependant brought up as a child, of a registered resident African may on attaining the age of 18 years apply to the owner for the occupation of land on the estate under a special agreement and such application shall be granted.

9. Right of Minister to enter and obtain information

- (1) The Minister or any other person duly authorized by him in that behalf shall have the right to enter upon any estate at all reasonable times for the purpose of inspecting the registers and enforcing this Act, and investigating the conditions of Africans residing or working on the estate.
- (2) The owner of every estate shall furnish, on demand, to the Minister or any person duly authorized by him, full information regarding entries in the registers maintained by him and regarding matters which are required to be entered in such registers.
- (3) Any owner who fails to comply with the requirements of this section shall be guilty of an offence.

10. Allocation of land

- (1) Every registered resident African shall be entitled to the continuous use, on the estate in respect of which he is registered, of a suitable site for a dwelling and reasonable outbuildings for himself and each registered wife and, if practicable, of an area of land for cultivation adequate for growing the usual food crops for the sustenance of himself and those of his wives and dependants whose particulars have been registered, and at a reasonable distance from his dwelling.
- (2) Every registered resident African and every member of his family or other dependant of whom particulars have been registered shall be entitled to cut or remove grass, firewood (if available) and other materials necessary for his domestic purposes (including the erection and maintenance of buildings) from land allocated to him for cultivation and from any part of the estate which has not been set aside by the owner for the protection of streams and water supplies or for the protection of land from soil erosion, and which has not been cultivated, re-afforested or set aside for controlled cutting under a silvicultural management scheme.
- (3) The operation of this section shall be subject to any other written law for the time being in force in Malawi.

11. Liability to pay rent

- (1) Subject to subsections (2), (3) and (4), every registered resident African shall be liable to pay to the owner of the estate, in respect of which he is registered, a rent of £1 per annum in respect of each dwelling occupied by him on the estate. For the purposes of this section a dwelling shall be deemed to include a group of buildings occupied by a wife.
- (2) The following persons shall be exempt from the payment of rent under the provisions of subsection (1)—
 - (a) an unmarried woman;
 - (b) a married woman whose husband is registered as a resident African in respect of the same estate;
 - (c) a person exempt from payment of tax by virtue of the Taxation Act;
[C. 41:01]
 - (d) a person who on the 30th day of June, 1942 was a resident native on the estate under the Natives on Private Estates Ordinance, 1928 (now repealed) or is a descendant according to customary law, of such a person;
[15 of 1928]
 - (e) a resident African who, in the opinion of the Tribunal, is without the means to pay rent and is unable to acquire the means due to sickness, age, infirmity or preoccupation with the care of infant children.
- (3) A male resident African who has two wives who live in separate dwellings on the same estate shall be liable to pay rent in respect only of one dwelling:
Provided that—
 - (a) any male resident African who has more than two but not more than three wives who live in separate dwellings on the same estate shall be liable to pay rent in respect of the third dwelling at the rate of six shillings and eightpence per annum;
 - (b) a resident African who has more than three wives living in separate dwellings on the same estate shall be liable to pay additional rent in respect of each dwelling after the first two at the rate of ten shillings per annum.
- (4) Every male resident African, who has wives living on separate estates belonging to different owners, shall be liable to pay rent in respect of the dwellings on each separate estate in accordance with subsections (1), (2) and (3).

12. When rent is due and recoverable

Rent shall be due in advance on the 1st day of January in each year and shall become recoverable from the 1st day of July next after it becomes due:

Provided that no rent shall be payable in respect of the period from the 1st day of July until the 31st day of December, 1962.

13. Receipts for rent paid or certificates

- (1) Every owner who receives rent from a resident African shall give to such resident African a written receipt therefor specifying the period in respect of which rent was received.
- (2) Every owner for whom any resident African has worked for wages in accordance with this Act shall give to such resident African a certificate specifying the period of work and stating the amount deducted from his wages in respect of rent payable under this Act.

14. Resident Africans may work for wages

- (1) Notwithstanding anything hereinbefore contained, a resident African may elect to work for wages for the owner of the estate upon which he resides.
- (2) Every resident African who is liable to pay rent under this Act shall before the 30th day of September in each year inform the owner of the estate whether he desires to pay his rent or whether he desires to offer to work for such owner for any and, if so, what period during the next year.
- (3) Where such resident African has elected to offer to work for wages for the owner of the estate, the owner shall offer such resident African suitable work on the estate within a reasonable distance from his dwelling for a period sufficient to enable such resident African to pay his rent in accordance with [section 15](#), or such lesser period as the resident African may elect, or shall provide such resident African with such reasonable facilities for growing economic crops in accordance with [section 16](#) as may be expected to produce sufficient cash return to pay the rent.
- (4) Where a resident African has elected to work for wages for the owner of the estate upon which he resides, he shall not be liable to pay the rent if the owner has failed or is unwilling to offer such resident African suitable work within a reasonable distance of his dwelling during the months in which he has elected to work or to provide facilities for growing economic crops.
- (5) Every resident African who works for the owner of the estate in accordance with this Act shall be entitled to be paid wages at not less than the rate prescribed by any law for the time being in force in Malawi regulating the payment of wages.

15. Owner to deduct rent from wages

- (1) There shall be deducted from the wages payable to any resident African who works for the owner of the estate on which he resides an amount in respect of rent payable under this Act not exceeding one-third of such wages in any month; but a resident African may pay rent from his wages to an extent greater than one-third thereof if he so desires.
- (2) Save in accordance with [section 25 \(2\)](#), it shall be unlawful for the owner of an estate to demand work or exact services from any resident African on any estate.
- (3) Every owner who contravenes this section shall be guilty of an offence.

16. Economic crops

- (1) No resident African shall grow economic crops on the estate on which he resides without the written consent of the owner and the approval of the Minister or other person approved by him in that behalf.
- (2) Where the owner has consented and given reasonable facilities to a resident African, who is liable to pay rent under this Act, to grow economic crops for the purchase of the owner of the estate, the owner of the estate shall be entitled to deduct from the purchase price an amount equal to the rent payable to the owner of the estate under this Act.
- (3) The conditions upon which resident Africans may grow economic crops on any estate shall be subject on each estate to the approval of the Minister or other person authorized by him in that behalf.
- (4) The Minister may make regulations under this section prescribing the conditions on which economic crops may be grown on any estate by resident Africans.
- (5) The Minister or any other person authorized by him in that behalf shall be entitled to enter upon any estate where resident Africans are permitted to grow economic crops, for the purpose of inquiring into the conditions under which such economic crops are grown, and he may appoint a public officer to supervise the grading or purchase of such crops. Any expense of such supervision shall be borne by the owner:

Provided that notwithstanding that this Act has not been applied to any estate or part of Malawi the Minister may by notice published in the *Gazette* apply to any such estate or part of Malawi this subsection so modified as though the subsection applied to crops grown on any estate by any African and, if this subsection is so applied, [section 28](#) (6) and (7) shall also apply, and the owner shall not refuse to purchase, at a fair price, any crop so grown and remaining for sale after this subsection has been so applied.

- (6) Where there is a dispute between resident Africans and any owner of the estate as to any conditions in respect to the growing of economic crops, marketing, price or grading or any other matter, the Minister may himself inquire into the dispute or refer it to the Tribunal. The Tribunal shall report the result of such inquiry to the Minister who shall have power to make such order as he deems fit.
- (7) Any person who wilfully ignores or neglects or disobeys the order of the Minister made under subsection (6) shall be guilty of an offence.

17. Disputes between resident Africans and owners

If any other dispute shall arise as to the liability or rights of resident Africans or liability and rights of the owners of any estate under this Act, such dispute shall be referred to the Tribunal for its determination.

18. Establishment of the Tribunal

- (1) There shall be established by the Minister a Tribunal, to be known as the Africans on Private Estates Tribunal, whose function it shall be—
 - (a) to determine any matter which, under this Act is to be, or may be, determined by such Tribunal;
 - (b) to determine any other matter or dispute which under this Act the Minister may refer to such Tribunal;
 - (c) to determine whether it is practicable for a special agreement to be given to the child or other dependant of a registered resident African under [section 8](#);
 - (d) to make and enforce orders for ejection and any other orders in accordance with this Act;
 - (e) subject to the approval of the Minister to employ and remunerate suitable officers to enforce the orders of the Tribunal.
- (2) The Tribunal shall consist of a Chairman and four other members to be appointed by the Minister.

The Minister shall appoint a public officer to be the secretary of the Tribunal, who shall be entitled to speak at the meetings of the Tribunal, but not to vote thereat.
- (3) The Tribunal may, with the approval of the Minister, make rules governing the manner of making applications, the conduct of its own proceedings, the convention of its meetings, the quorum thereof and the allowances payable to its members:

Provided that rules governing the allowances payable to its members shall require approval by the Minister.
- (4) The Chairman shall preside at all meetings of the Tribunal unless incapacitated by sickness or absent from some other cause, and in the event of the absence of the Chairman from any meeting, the members present shall choose one of their number to act as Chairman at the meeting.
- (5) Before any determination of the Tribunal is made, opportunity shall be given to every person having an interest therein, or his representative, to be heard.
- (6) Except where under this Act it is otherwise provided, any person aggrieved by a decision or determination of the Tribunal, and having an interest therein, may, within forty-five days of notification of such a decision or determination, appeal to the Minister who may refer such appeal to an Appeal Advisory Board.

- (7) The Appeal Advisory Board shall consist of such members as may from time to time be appointed by the Minister and shall advise the Minister in respect of any appeal referred to it. The Minister, whose decision in any appeal shall be final, shall not be bound by any advice given to him by the Appeal Advisory Board.
- (8) The appointment of any member to the Tribunal may be revoked by the Minister.

19. Resident Africans not to quit estate except on lawful order

- (1) Subject to this Act, no resident African shall be required to quit the estate on which he resides except in accordance with the order of the Tribunal lawfully made under this Act.
- (2) No order of the Tribunal requiring any resident African to quit the estate on which he resides shall have any effect unless and until it has been approved by the Minister.

20. Order to quit

- (1) Any owner may apply to the Tribunal for an order requiring a resident African, or any African, to quit the estate on which he resides on the ground—
 - (a) that the owner has not received the rent for one year since it became due and that the resident African has not offered to work for him for wages during the same period, or, having offered to work, has failed to do so;
 - (b) that the resident African has been convicted or guilty of an offence of such gravity as to render him undesirable as a resident African;
 - (c) that the African is a trespasser;
 - (d) that the African is a member of the family or other dependant of a registered resident African, who has attained the age of 18 years and who has been offered land for occupation on the terms of an agreement in a form approved by the Minister, but has been unwilling to enter into such an agreement, or who, having entered into such an agreement, has not acted in accordance therewith.
- (2) Any owner may apply to the Tribunal for a declaration that any resident African is liable to pay rent or to do anything which, under this Act, he is liable to do.
- (3) Any resident African may apply to the Tribunal for—
 - (a) an order that the owner of an estate shall register him as a resident African, or to restrain the owner of the estate on which he resides or works from in any way interfering with his rights under this Act;
 - (b) a declaration that he is not liable to pay rent under this Act, or that he is entitled to any other right thereunder;
 - (c) a declaration regarding the amount and situation of land which he is entitled to use under this Act.

21. Power to make orders

- (1) The Tribunal may, at its discretion, grant or refuse any application made under this Act, and may make such order as it thinks fit, including the award of compensation to either party.
- (2) In making such order the Tribunal shall have regard to all the circumstances of the case in so far as they may be relevant to the issue.
- (3) Every order of the Tribunal requiring any resident African to quit the estate on which he resides shall specify—
 - (a) the date on or before which the resident African is required to quit the estate;

- (b) the amount of compensation which shall be paid by the owner of the estate to the resident African in respect of crops, buildings and other improvements and for disturbance;
 - (c) whether the owner of the estate shall be responsible for the cost of transportation of the resident African to the new place selected for the resident African by the Minister,
- and when the cost of transportation can be ascertained the Tribunal may fix the amount of such cost.
- (4) Where the Tribunal has ordered a resident African to quit the estate on which he resides and has ordered that compensation shall be paid, such resident African need not quit the estate until the amount of compensation which the Tribunal has ordered to be paid to him has been paid in full.

22. Compensation for disturbance

- (1) Every resident African who has been ordered by the Tribunal to quit the estate on which he resides shall be entitled to compensation for disturbance.
- (2) Compensation for disturbance shall be assessed by the Tribunal and shall be of such amount as the Tribunal considers just and reasonable. The Minister may in his discretion reduce or increase the amount of compensation assessed by the Tribunal.
- (3) In cases where there is disagreement between members of the Tribunal as to the amount payable as compensation, the matter shall be referred to the Minister who may appoint an independent valuer to arrive at an independent assessment, or may himself assess the compensation. The amount assessed by an independent valuer shall be deemed to be an assessment by the Tribunal approved by the Minister.

23. Offence to disobey order

Any person who wilfully ignores or neglects or disobeys an order of the Tribunal made in accordance with this Act shall be guilty of an offence.

24. Resettlement of evicted resident Africans

Where a resident African has, under this Act, been ordered to quit the estate on which he resides, the Government shall afford such resident African such assistance as may be necessary to enable him to obtain a suitable site for his dwelling and cultivable land on customary land or public land.

25. Special agreement

- (1) Any owner may enter into a written special agreement with any African whereby such African, together with his wife or wives (or her husband) and family, is entitled to reside on the estate of such owner.
- (2) Such written agreement may provide that an African who enters into such agreement shall be required to work for the owner of the estate for such period during the year as may be agreed upon:
Provided that—
 - (a) no such special agreement made after the operative date shall be valid unless it has been approved in writing by the Minister with whom a written copy thereof shall be filed;
 - (b) any agreement which was a special agreement for the purposes of the Africans on Private Estates Ordinance, 1952 (now repealed), and which was in force on the operative date, shall cease to have any effect at the expiry of six months thereafter, unless it has been approved by the Minister in writing as a special agreement and a copy thereof filed with him;

[8 of 1952]

- (c) no agreement shall be approved by the Minister as a special agreement, unless he is satisfied that it provides for adequate security of tenure, adequately controls the types of crops which may be grown and is fair and equitable in all the circumstances;
 - (d) if any agreement ceases to have effect by reason of proviso (b), the African who was a party to the agreement may apply for registration as a resident African under [section 5](#).
- (3) Reference to every special agreement approved under this section shall be made in a register kept in accordance with [section 4](#), and copy thereof shall be supplied by the owner to the African with whom it is made.
- (4) Notwithstanding section 6 of the Deeds Registration Act, no special agreement shall be subject to compulsory registration in the Deeds Registry Office.
- [Cap. 58:02]*
- (5) Every special agreement shall be free of stamp duty.
- [8 of 1952]*

26. Minister may make schemes

- (1) Subject to subsection (4) the Minister may, after consultation, with the owner, prescribe a scheme for the orderly development of any estate which comprises undeveloped land or land occupied by resident Africans.
- (2) Such scheme shall as the Minister may see fit, be prepared by or with the assistance of the Commissioner for Town and Country Planning and may provide for—
- (a) the setting aside of a defined area of the estate for occupation by Africans pursuant to special agreements and may limit the number of families who may so occupy such area;
 - (b) the delimitation of areas on the estate which may be occupied or used by resident Africans;
 - (c) the removal of resident Africans from land occupied by them to another part of the estate or to public land, to facilitate an approved scheme of development, and the payment of the cost of such removal and compensation;
 - (d) penalties for infringements of the scheme.
- (3) Any owner whose estate is affected by a scheme prescribed or proposed to be prescribed under subsection (1) may by notice in writing inform the Minister that he desires any land so affected to be acquired by Government.
- (4) In any case in which the owner has expressed a desire under subsection (3)—
- (a) the land specified in the notice of such desire shall be deemed to be required for a public purpose;
 - (b) the Minister may cause steps to be taken for the acquisition of such land;
- [26 of 1971]*
- (c) the scheme shall not take effect until the land has been so acquired.
- [26 of 1988]*

27. Effect of Act

This Act shall have effect notwithstanding any condition to the contrary, express or implied, in any past grant or lease of public land.

28. Penalty

Any person who is guilty of an offence under this Act shall be liable to a fine of K200 and to imprisonment for six months.

29. Regulations and rules

The Minister may make regulations—

- (a) prescribing any thing which by this Act may be or is to be prescribed by him;
- (b) providing for the appointment of officers or other persons with power to enter upon any estates for the purpose of enforcing this Act and for investigating the condition of Africans residing or working thereon;
- (c) generally for the purpose of carrying this Act into effect.