

LAWS OF FIJI

[Ed. 1978]

CHAPTER 133

NATIVE LANDS

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NATIVE LANDS

Ordinances Nos. 11 of 1905, 9 of 1907, 3 of 1909, 4 of 1909, 3 of 1912, 23 of 1916, 8 of 1919, 36 of 1921, 24 of 1923, 14 of 1925, 11 of 1930, 27 of 1932, 6 of 1936, 12 of 1940, 2 of 1945, 7 of 1959, 11 of 1961.

AN ACT RELATING TO NATIVE LANDS

[19th May, 1905]

Short title

1. This Act may be cited as the Native Lands Act.

Interpretation

2. In this Act-

"Commission" means the Native Lands Commission appointed by the Minister under the provisions of this Act;

"dependants" means native Fijians who at the time of the erection of the Fiji Islands into a British Colony had become separated from the tribes to which they respectively belonged by descent and had by native custom lost their rights in the tribal lands and were living in a state of dependence with other tribes, and includes their legitimate issue;

"native lands" means lands which are neither Crown lands nor the subject of a Crown grant;
(36 of 1921, s. 2.)

"native owners" means the mataqali or other division or subdivision of the natives having the customary right to occupy and use any native lands;

"prescribed" means prescribed by the Minister;

"rental" and "rents" include any premium on the sale of any lease.
(36 of 1921, s. 2.)

Tenure of native lands by Fijians

3. Native lands shall be held by native Fijians according to native custom as evidenced by usage and tradition. Subject to the provisions hereinafter contained such lands may be cultivated, allotted and dealt with by native Fijians as amongst themselves according to

their native customs and subject to any regulations made by the Fijian Affairs Board, and in the event of any dispute arising for legal decision in which the question of the tenure of land amongst native Fijians is relevant all courts of law shall decide such disputes according to such regulations or native custom and usage which shall be ascertained as a matter of fact by the examination of witnesses capable of throwing light thereupon.
(*Substituted by 9 of 1907, s. 2, and amended by 12 of 1940, s. 35.*)

Native Lands Commission

4. The Minister shall appoint a Native Lands Commission consisting of one or more commissioners, each of whom shall have the powers of the Commission, who shall be charged with the duty of ascertaining what lands in each province of Fiji are the rightful and hereditary property of native owners, whether of mataqali or in whatever manner or way or by whatever divisions or subdivision of the people the same may be held.
(*3 of 1912, s. 2, amended by 7 of 1959, s. 2.*)

Roko of each province a member

5.-(1) The roko of each province in which the said Commission is conducting an inquiry shall be *ex officio* a member of the Commission whilst the said Commission is sitting for the conduct of the said inquiry in his province.

Assessors

(2) Before the sitting of the Commission in any province for the conduct of inquiries a special meeting of the provincial council shall be convened by the Commissioner of the Division or the roko. The said council shall elect at the said meeting one or more persons to sit as assessors at the sittings of the Commission for the purpose of conducting inquiries in the said province.
(*3 of 1912, s. 2, amended by 24 of 1923, s. 2.*)

Commissioners to enquire into titles and describe boundaries of lands claimed

6.-(1) The Commission shall institute inquiries into the title to all lands claimed by mataqali or other divisions or subdivisions of the people and shall describe in writing the boundaries and situation of such lands together with the names of the members of the respective communities claiming to be owners thereof.
(*Amended by 7 of 1959, s. 3.*)

Rules re procedure

(2) The Commission shall, with the approval of the Minister, make rules for regulating the procedure to be followed and prescribe forms to be adopted at any such inquiry.

Owners to mark out land

(3) When any inquiry is to be held in any tikina of which notice in accordance with the rules of the Commission has been duly given it shall be the duty of the persons claiming to own lands in that tikina to mark out and define in such manner as the buli of the tikina may direct the boundaries of the lands of which they claim to be the respective owners. Every such person failing to comply with this provision shall be liable to a fine not exceeding two dollars or to imprisonment for one month and shall defray any expense in marking out and defining the boundaries caused by his default.

Commission to record boundaries where no dispute

(4) If there is no dispute as to the ownership of any lands marked out and defined as aforesaid and the Commission is satisfied that the claim is bona fide and that all conditions as to notice of the inquiry and the claim made have been duly complied with and that full opportunity of objecting to the ownership claimed has been given to all interested in the Commission shall record the boundaries of such lands and the names of the owners.

Disputes to be decided by Commission

(5) If there is a dispute as to the ownership of any lands marked out and defined as aforesaid the Commission shall inquire into it and, after hearing evidence and the parties to the dispute, decide the question of ownership and record its decisions:

Provided that if the parties to the dispute agree in writing in the presence of the chairman of the Commission to a compromise the Commission shall record the boundaries of the lands and the names of the owners in accordance with such compromise.

Record of encumbrance, etc.

(6) When recording the owners of any lands the Commission shall ascertain and record the name of any person who holds with respect to that land any customary title or office and shall also record any encumbrance or easement to which the land may be subject.

Announcement of decision

(7) On the conclusion of the proceedings recording the ownership of any piece of land the Commission shall announce its decision to the parties concerned:

Provided always that the Commission may adjourn to such date as it may think fit for the purpose of considering such decision.

Power to summon witnesses, etc.

(8) For the purposes of any inquiry the Commission shall have the same powers as those vested in magistrates to summon and examine on oath any person whom they may think able to give relevant evidence and to require the attendance of all claimants to any land the title of which is being inquired into and of all persons likely to be interested in the title to such land.

Other powers

(9) In the event of the persons claiming to own any native lands refusing or neglecting when called upon to give such full and proper information to the Commission as will enable it to carry out the provisions of section 4, the Commission shall have the power to make such division of the lands as may seem to it just and equitable.

Powers of Minister

(10) Pending such division it shall be lawful for the Minister to direct that no rents accruing from such lands be paid to any native claimant.

(3 of 1912, s. 2, amended by 8 of 1919, ss. 6 and 7, 14 of 1925, s. 6, and 7 of 1959, s. 3.)

Appeal

7.-(1) There is hereby constituted an Appeals Tribunal consisting of a chairman and two other members all to be appointed by the Minister. It shall be the duty of the Appeals Tribunal to hear and determine appeals from decisions of the Commission under section 6 and from a commissioner under section 16, and any such determination by the Appeals Tribunal shall be final.

(2) Any person aggrieved by any such decision of the Commission or of a commissioner shall within ninety days of the announcement thereof give notice of his desire to appeal, which shall be signed by the appellant or his duly authorised agent, to the Commission. The notice shall contain the grounds of appeal.

(3) For the purpose of determining an appeal the Appeals Tribunal shall have power to hear further evidence, but only if all of the three following conditions are satisfied:-

(a) if it is shown that the evidence could not have been obtained with reasonable diligence for use at the inquiry before the Commission or commissioner;

(b) if the further evidence is such that, if given, it would probably have an important influence on the decision;

(c) if the evidence is such as is presumably to be believed.

(4) If no notice of appeal is given the record of the Commission or commissioner, as the case may be, shall be final.

(Section inserted by 7 of 1959, s. 4.)

Registration of the boundaries and the placing of boundary marks

8. The Commission shall cause the description of the boundaries and situation of land recorded and settled in the manner aforesaid to be entered in a register denominated the "Register of Native Lands" and shall have power to order the owners of the land to mark off the boundaries upon the ground where there is no natural boundary by planting lines of trees or placing boundary stones or in any such other way as the Commission may order so that the written description given in the register can be followed without difficulty, and . any person who fails to comply with such order or tampers with, destroys or removes any such boundary-mark set up by the orders of the Commission shall on conviction be liable to a fine not exceeding twenty dollars and in default of payment to a term of imprisonment not exceeding six months.

(3 of 1912, s. 2.)

Boundaries of land and names of owners to be recorded and surveyed

9.-(1) In all cases in which the Commission decides the ownership of any land it shall record the boundaries of such land and in all cases in which the land is decided to be the property of a native Fijian it shall record the names of the persons comprising the proprietary unit in respect of that land. The boundaries of the land shall be surveyed by surveyors employed by the Government. The cost of survey shall be borne by the proprietary unit owning the land and shall be in accordance with the scale to be prepared by the Surveyor-General and approved by the Minister responsible for land matters, and in the event of such costs not being paid within six months after demand the same shall be recoverable before the courts as any other debt due to the Crown unless it is proved to the satisfaction of the Minister responsible for land matters that the proprietary unit owning the land is unable to pay, whereupon the Minister responsible for land matters may, in any such case, make such order as to him shall seem fit and just. In any proceedings before the courts for the recovery of any costs of survey as aforesaid it shall be necessary only to proceed against the head of the proprietary unit.

Boundaries to be indicated by owners

(2) Any person or persons comprising a proprietary unit shall, when required by any surveyor employed as aforesaid, attend on the land and point out the boundaries of their land recorded by the Commission.

(3) Any person or persons failing to comply with the provisions of subsection (2) shall be liable to a fine of not exceeding two dollars or to imprisonment for a period not exceeding one month.

(8 of 1919, s. 5, amended by 2 of 1945, s. 34.)

How register shall be kept

10.-(1) The volumes of such register according to the provinces, tikinas, towns or in whatever way the Commissioner may determine shall from time to time be transmitted to the Registrar of Titles who shall preserve the Register of Native Lands with the same care as the registers of land granted by the Crown.

(2) When it is found that an error has been made in the preparation of such register or that any Fijian has been recorded and registered in any proprietary unit other than the proper unit or that the name of any Fijian has been inadvertently omitted from the register recording the proper unit of such Fijian, it shall be lawful for the Registrar of Titles on the receipt of an order under the hand of the chairman of the Native Lands Commission to correct the same or delete or add the names of such persons as the case may be.
(3 of 1912, s. 2, amended by 6 of 1936, s. 2, and incorporating 27 of 1932, s. 6.)

Previously registered leases containing error in respect of ownership may be altered

11. Whenever upon the registration of the boundaries and situation of any land it appears that any previously registered lease for any portion of such land contains an error in respect to the ownership thereof, the Registrar of Titles shall, upon the order of the Minister, make such alterations affecting ownership in the register of such lease as may be directed in such order. And the Registrar shall forthwith require the lessee of such land to produce his copy of such previously registered lease for the alteration so directed as aforesaid.

(3 of 1912, s. 2.)

Validity of agreements to lease and surrenders of control

12. No agreement made in tikina council for the leasing of native land nor any resolution made in tikina council by Fijians purporting to be the owners placing land at the disposal of Government for the purpose of leasing or otherwise dealing with such land on their behalf under the provisions of this or any other Act relating to the leasing of native land shall be affected by any finding subsequently recorded by the Commission that the persons who so agreed or resolved or any of them were not the owners of such land, but such agreement or resolution shall be as valid and effective for all purposes as if made by the true owners of such land:

Provided that, notwithstanding the foregoing provisions of this section, from and after the date of the transmission to the Registrar of Titles of the register recording any finding of the Commission varying the ownership of such land all rent payable in respect of any such land shall be paid to such persons as shall be recorded in such register by the Commission as the true owners of the land.

(27 of 1932, s. 2.)

Indemnity

13.-(1) No action or other legal proceeding whatsoever whether civil or criminal shall be instituted in any court of law in Fiji in respect of any act, matter or thing done by any public officer if done bona fide and done or purported to be done under the provisions of this or any other Act relating to the leasing of native land in pursuance to any such agreement or resolution as in section **12** mentioned, and no action shall lie for the recovery of any rent paid to the reputed owners of any native land by any such public officer before the transmission to the Registrar of Titles of the registers recording any finding of the Commission varying the ownership of such land.

(2) Any such action or other legal proceeding instituted whether before or after the commencement of this Act shall be discharged and made void.

(27 of 1932, s. 3.)

Copies of registers to be deposited

14. A copy of the volumes of the said register in the Fijian language so far as applicable to each province shall be deposited with the scribe of the province, and a copy of the register so far as it affects each mataqali or division or other subdivision of the people shall be given to each for public use whenever the boundaries of the land of such mataqali or division or subdivision have been finally fixed and determined:

Provided that no copy of the register shall be given as herein provided save and except all the costs of survey shall have been first paid.

(3 of 1912, s. 2 and 8 of 1919, s. 5 (2), and amended by 7 of 1959, s. 5.)

Penalty upon person insulting or interrupting commissioner

15. [missing]

Settlement of disputes between Fijians in special cases

16.-(1) In the event of any dispute arising the parties to which are Fijians in connection with land in a province or tikina in which the proprietorship of the Fijian owners has been ascertained by the Commission or in a province or tikina which it may be inconvenient or inexpedient for the Commission to visit without delay or in any other case when he may deem it expedient, the Minister may delegate a member of the Commission or some other proper person to inquire into the same.

(Amended by Legal Notice 112 of 1970.)

Assessors

(2) It shall be lawful for the Minister to appoint one or more persons being native Fijians to sit as assessor or assessors with the commissioner appointed as aforesaid.

(Amended by Legal Notice 112 of 1970.)

Powers of special lands commissioner

(3) For the purpose of holding an inquiry under subsection (1), the commissioner shall have the same powers as those vested in the Commission and shall follow the same procedure as is laid down for the Commission in inquiries.

Proceedings to be in writing

(4) During such inquiry the commissioner shall take or cause to be taken a full account in writing of all proceedings and of the evidence.

Parties to be informed of decision

(5) On the conclusion of any inquiry held under subsection (1) the commissioner holding it shall inform the parties interested of his decision and shall transmit a copy of his decision to the scribe of the province in which the land is situate and such decision shall be publicly read at the next meeting of the provincial council.

Disputes as to headship of mataqali, etc.

17.-(1) In the event of any dispute arising between native Fijians as to the headship of any division or subdivision of the people having the customary right to occupy and use any native lands, the Commission may inquire into such dispute and after hearing evidence and the claimants shall decide who is the proper head of such division or subdivision, and such person shall be the proper head of such division or subdivision:

Provided that if the claimants agree in writing in the presence of the Chairman of Commission as to who is the proper head of such division or subdivision it shall not be necessary for the Commission to hear evidence or further evidence as the case may be.

(2) On the conclusion of any inquiry held under subsection (1), the Chairman of the Commission shall inform the parties of the decision and shall transmit a copy of such decision to the scribe of the province in which the land belonging to such division or subdivision is situate and such decision shall be publicly read at the next meeting of the provincial council of that province.

(Inserted by Ordinance 11 of 1961, s. 2.)

Power to allot land to dependants

18.-(1) Notwithstanding anything contained in this Act it shall be lawful for the Commission with the consent of the Fijian owners to allot at its discretion to any dependants either individually or collectively a sufficient portion of land for their use and occupation:

Provided that any dependant to whom such portion of land has been allotted and who thereafter ceases to reside with the mataqali from whose lands the said portion was allotted shall thereupon lose his interest in the said portion.

Land to revert to Fijian owners on cessor of occupation

(2) Whenever through any cause such portion of land ceases to be used and occupied by the dependant or dependants to whom it was allotted it shall revert to the Fijian owners from whose lands the allotment was made.

Where dependant an owner of land

(3) No allotment of land shall be made to any dependant who may be found to be already an owner of land by operation of any Fijian custom.

(8 of 1919, s. 2.)

Vacant lands

19.-(1) The Commission shall have power to mark out and define the boundaries of any lands which, on investigation by the Commission, may be found to have been unoccupied at the date of cession of the Fiji Islands to the British Crown and to have remained unoccupied up to the time of the sittings of the Commission and to which no title has been created by the operation of any native custom which was in force before cession. Such lands shall be declared by the Minister to be vacant lands under the control of the Crown and shall be dealt with in every respect as Crown lands:

Provided always that all income arising there from less ten per cent shall be paid to the Native Deposit Account and shall be used exclusively for the benefit of the native Fijians of Fiji in such manner and for such purposes as may be approved by the Minister on the advice of the Council of Chiefs.

(2) An order of the Minister declaring lands to be vacant lands under subsection (1) shall, on presentation to the Registrar of Titles, be filed by him, and the land shall be deemed to be Crown land for all purposes

(Amended by Order 7th October, 1970.)

(3) The provisions contained in subsections (1) and (2) shall apply to all lands which have hitherto been found by the Commission to be lands vacant at the date of cession.

(4) A certificate under the hand of the chairman of the Commission that the land therein specified was vacant at the date of cession and has since remained vacant shall be conclusive evidence of these facts.

(11 of 1930, s. 4.)

Rights of ownership may be forfeited by over two years absence

20.-(1) Whenever any member of any land-owning communal division ceases to reside with such communal division for a period exceeding two years; it shall be lawful for the Minister, on the request of the other members of such communal division, to declare such Fijian to be no longer a member of such communal division and such Fijian shall thereupon become divested of all interest in the lands of such communal division.

Modus operandi

(2) Every request as aforesaid shall be made through the tikina council of the tikina in which the communal division making it resides.

Rights may be revived in certain cases

(3) Any Fijian in respect of whom such declaration has been made by the Minister or the agnate legitimate descendant of such Fijian may, with the consent of the communal division concerned and with the approval of the Minister be restored to membership of such communal division and to proprietary rights in its lands.

Limitation to operation of section

(4) This section shall not operate against any Fijian who is absent from his home by reason of employment in the service of the Government or of any recognized missionary body or any other lawful bona fide and regular employment, nor shall it apply to any married woman living with her lawful husband or to any young person living with his recognized guardian.

Amendment of land register

(5) When any order is made by the Minister under this section any register of native lands relating to land affected by such declaration shall be amended accordingly.

(8 of 1919, s. 3.)

Illegitimate children to be tribal land-owners and recorded as such

21.-(1) Notwithstanding anything contained in the Legitimacy Act all Fijians of illegitimate birth shall be deemed to be owners of native lands and may be recorded as may seem just and equitable as members of the proprietary units of either their father or mother.

(Substituted by 27 of 1932, s. 4.)

(Cap 57)

(2) It shall be lawful for the Commission to prepare a supplementary register recording the names of all members of proprietary units found by the Commission under the

provisions of subsection (1) to be members of their respective proprietary units, and such register shall be transmitted to the Registrar of Titles and preserved by him in the same manner as the register referred to in section 10.

(27 of 1932, s. 5.)

Reservation of rights of Crown as ultimus haeres

22. Nothing in subsection (2) of section 10 or section 20 shall affect land the registered proprietors of which have become extinct or land which has already been declared to be the property of the Crown as *ultimus haeres* prior to the twelfth day of July, 1932.

(27 of 1932, s. 7.)

Rotuma not within scope of Act

23. This Act shall not apply to the island of Rotuma.

Controlled by Ministry of Fijian Affairs and Rural Development
