

TANGANYIKA



No. 58 OF 1962

I ASSENT,

R. G. TURNBULL,  
*Governor-General*

4TH OCTOBER, 1962

**An Act to make further provision for the Operation and Management of the Newala District Piped Water Supply, to vest the liabilities and assets of the Makonde Water Corporation in the Government, to provide for the Dissolution of the said Corporation, and for matters connected therewith and incidental thereto**

[.....]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Makonde Water Supply Act, 1962, and shall come into operation on such date as the Minister, by notice published in the *Gazette*, shall appoint. Short title and commencement

2. In this Act, unless the context otherwise requires—

Interpretation

“appointed day” means the day appointed by the Minister, under section 1, to be the date on which this Act comes into operation;

“Corporation” means the Makonde Water Corporation established by the Makonde Ordinance;

“Makonde Ordinance” means the Makonde Water Corporation Ordinance; Cap. 351

“Minister” means the Minister for the time being responsible for agriculture;

“subscriber” has the meaning ascribed to it in the Makonde Ordinance.

3.—(1) On the appointed day—

Waterworks Ordinance to apply to Makonde area

(a) the Corporation shall cease to have any functions, rights, powers or duties in relation to the abstraction, distribution or supply of water;

(b) the aggregate of the areas which are areas of abstraction and areas of supply within the meaning of the Makonde Ordinance shall become a water supply area (hereinafter in this Act referred to as the Makonde Water Supply Area) under and for the purposes of the Waterworks Ordinance;

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(c) the areas which are areas of abstraction within the meaning of the Makonde Ordinance shall become catchment areas under and for the purposes of the Waterworks Ordinance; and

(d) the Minister for Communications, Power and Works shall become the Water Authority (hereinafter in this Act referred to as the Makonde Water Authority) for the Makonde Water Supply Area under and for the purposes of the Waterworks Ordinance.

(2) The appropriate authority under the Waterworks Ordinance may exercise the like powers of amending, varying, rescinding and revoking the declaration of the Makonde Water Supply Area, the delimiting of the catchment areas therein and the appointment of the Makonde Water Authority as if those acts had been done under the Waterworks Ordinance.

(3) The abstraction, distribution and supply of water by the Makonde Water Authority in accordance with schemes approved under the Makonde Ordinance or in accordance with any authorization or consent given under section 12 or 14 of the Makonde Ordinance shall, subject to any amendment, variation or revocation by the appropriate authority, be deemed to be approved and authorized, and supplied with the consent of the appropriate authority, under the Waterworks Ordinance.

Water  
Authority to  
be deemed to  
have water  
right  
Cap. 410

4. Until the Water Officer appointed under the Water Ordinance grants a water right to the Makonde Water Authority to abstract, store and use water in the Makonde Water Supply Area for the purposes of its functions, powers and duties under the Waterworks Ordinance, the Makonde Water Authority shall, notwithstanding anything to the contrary in the Water Ordinance, be deemed to have been granted such water right thereunder as will permit the Authority to abstract, store, supply and distribute water to the same extent as the Corporation was accustomed so to do, and to construct and maintain works for such purposes.

Transfer of  
undertaking  
of the  
Corporation

5.—(1) Subject to the provisions of this Act, on the appointed day all assets and liabilities which immediately before that day were vested in or incurred by the Corporation shall pass by succession to the Government and the Government shall have all powers necessary to take possession, recover and deal with such assets and to discharge such liabilities.

(2) Subject to the provisions of this Act, every deed, bond and agreement (other than an agreement for personal services) whether in writing or not, to which the Corporation was a party or which affected the Corporation immediately before the appointed day, and whether or not of such nature that rights, liabilities or obligations thereunder could be assigned, shall have effect as from the appointed day as if—

- (a) the Government had been a party thereto or were so affected in place of the Corporation;
- (b) for any reference (however worded and whether express or implied) to the Corporation, there were substituted in respect of anything to be done on or after that day a reference to the Government.

(3) Nothing in this section shall operate so as to transfer to or vest in the Government any liability of the Corporation in respect of any share issued by the Corporation, but the liabilities of the Corporation in respect of all such shares issued, and the rights and liabilities of all subscribers in respect of any such share, are hereby extinguished.

(4) Where, immediately before the appointed day, the Government or the Governor-General is liable, under an agreement with some other person, as a guarantor or surety for the performance of any act by the Corporation and, under the provisions of this section, the Government succeeds to the liability of the Corporation to the same person as a principal in that behalf, such person shall, in the event of seeking a remedy for a default, elect whether to pursue his remedy against the Government or the Governor-General as a guarantor or surety, or against the Government as a principal, and where he elects to pursue his remedy against the Government or the Governor-General in the one capacity, the liability of the Government and the Governor-General in the other capacity shall be extinguished.

6.—(1) Where, after the appointed day and before the dissolution of the Corporation, any officer or servant of the Corporation is appointed to the public service without any interval between the termination of his service under the Corporation and his appointment to the public service, then—

Officers  
and  
servants

- (a) if such officer or servant was employed by the Corporation on terms under which he was entitled to a gratuity and he is employed in the public service on the like terms, for the purposes of determining any right to a gratuity his service shall be regarded as continuous from the time he was appointed by the Corporation and, if the rates of the gratuity differ in respect of his service under the Corporation and his employment in the public service, the gratuity for which he is eligible shall be calculated at the appropriate rates in respect of his service under the Corporation and his employment in the public service; and if such officer or servant becomes eligible for a gratuity the Government shall be liable to pay that part of the gratuity attributable to his service under the Corporation;
- (b) if the terms relating to leave and passages on which such officer or servant is employed in the public service are less favourable than those on which he was employed by the Corporation, he shall be eligible at the end of his current tour of service (such tour to be calculated continuously with his service under the Corporation) to the passage allowances for which he would have been entitled had he remained in the employment of the Corporation until the end of that tour and to leave, in respect of that part of his tour of service during which he was employed by the Corporation, calculated at the rate appropriate to his service thereunder:

Provided that nothing in this subsection shall derogate from any powers, under the terms of his appointment, to dismiss, or terminate the appointment of any officer or servant appointed to the public service or to withhold any gratuity or passage allowance, or to refuse to grant any leave, as a consequence thereof.

(2) The Minister shall prepare a scheme for the termination of the appointment of officers and servants who are in the service of the Corporation on the appointed day and who are not appointed to the public service without any such interval as aforesaid and in such scheme shall provide for notice or payment in lieu of notice and, in so far as provision in that behalf is made in the terms on which officers or servants were

appointed by the Corporation, for the payment of gratuities, and the grant of leave, in proportion to the length of such officer's or servant's service, and the payment of passage allowances.

(3) A copy of every scheme made under subsection (2) shall be sent to the officers and servants affected thereby.

(4) The Minister shall make provision for the realization of any funds or property appropriated to any pension or provident fund scheme maintained by the Corporation and the distribution of the sums realized among the persons who are entitled or eligible to any benefits therefrom in proportion to their respective entitlements or eligibilities.

Legal proceedings

7.—(1) Any proceedings pending immediately before the appointed day to which the Corporation is a party shall be continued on and after the appointed day as if the Attorney-General (or such other officer of the Government as may be appointed in that behalf under the Government Suits Ordinance) were a party thereto in lieu of the Corporation.

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(2) Where any proceedings are instituted by or against the Government after the appointed day in respect of any assets or liabilities vested in or incurred by the Corporation or any cause of action existing by or against the Corporation prior to the appointed day, the Government and every other party to the proceedings may take all such objections and exceptions as might have been taken in proceedings by or against the Corporation, including, without prejudice to the generality of the foregoing, any objection or exception under the law relating to limitation of actions, and such proceedings may be instituted against the Government notwithstanding any restriction contained in section 3 of the Government Suits Ordinance or otherwise limiting the nature of suits which may be instituted against the Government as such.

(3) Nothing in this section shall apply to any proceedings in relation to a share in the Corporation or by a subscriber in relation to the rights conferred on subscribers by the Makonde Ordinance, but all such proceedings, and any cause of action in relation thereto, shall be extinguished.

Completion of acts

8. Where any thing has been commenced before the appointed day by or under the authority of the Corporation in the exercise of its powers under the Makonde Ordinance, or in relation to any part of its undertaking transferred to the Government by this Act, such thing may be carried on and completed by or under the authority of the Makonde Water Authority notwithstanding that it is not within the powers of a water authority under the Waterworks Ordinance.

Effecting and securing transfer

9.—(1) Upon the appointed day the Corporation shall deliver to the Makonde Water Authority, or as the Authority shall direct, all moveable property vested in the Corporation and all books, papers, documents, minutes, receipts and ledgers appertaining to the Corporation and its operations.

(2) The members of the Corporation and its officers and servants shall do all such acts as may be necessary or desirable for the more effectual vesting of the assets and liabilities of the Corporation in the Government.

(3) Save as provided in subsection (2), the Corporation shall cease to exercise any function or conduct any business from the appointed day and no honoraria shall be paid to any member of the Corporation in respect of any period commencing on or after that day.

(4) The Minister may by order provide for any matter which appears to him to be necessary or expedient for the purposes of securing the effective transfer of any assets and liabilities vested in the Government under this Act, and, without prejudice to the generality of the foregoing, may appoint a person to do any act or sign any document for and on behalf of the Corporation whereby the assets of the Corporation may be transferred to the Government; and every act done or document signed by a person in accordance with the provisions of such an order for such purposes shall be as effectual as if it had been done or made by the Corporation.

10. When the Minister is satisfied that the assets and liabilities of the Corporation have been transferred to the Government in accordance with this Act, he shall, by order in the *Gazette*, dissolve the Corporation: Dissolution of Corporation

Provided that the Minister shall not dissolve the Corporation until he has made all necessary schemes under subsection (2) of section 6.

11. Subject to the provisions of subsection (4) of section 6, the Minister shall pay the costs of discharging the liabilities of the Corporation, including any sums payable as a result, or on account, of any legal proceedings brought against the Government as successor to the Corporation and the costs of any scheme made under section 6, out of the liquid assets of the Corporation or, to the extent that such assets are insufficient for those purposes, out of moneys provided by Parliament. Payments

12.—(1) Section 65 of the Makonde Ordinance and section 42 of the Water Ordinance are hereby repealed. Repeal, expiry and revocation of laws

(2) Subject to the provisions of subsection (1), the Makonde Ordinance shall expire on the date on which the Minister dissolves the Corporation under section 10, and thereupon the provisions of subsection (2) of section 10 of the Interpretation and General Clauses Ordinance shall apply in relation to the Makonde Ordinance as if it had been repealed: Cap. 1

Provided that—

- (a) no person who, after the appointed day, pays any rate for which he remains liable under section 36 of the Makonde Ordinance shall be deemed to be a subscriber or be issued with a share certificate;
- (b) all rates collected after the appointed day shall be paid to the Government;
- (c) nothing in this subsection shall revive any right or interest expressly extinguished by this Act.

(3) The Makonde Water Corporation (Meter Rent) Rules, 1955, the Makonde Water Corporation (Issue and Transfer of Shares) Rules, 1955, and the Makonde Water Corporation Waterworks Rules, 1957, shall be deemed to be revoked with effect from the appointed day. Cap. 351  
Supp. 55  
Subsidiary  
p. 5  
Supp. 57  
Subsidiary  
p. 2

Passed in the National Assembly on the twenty-fifth day of September, 1962.

G. W. Y. HUCKS,  
*Clerk of the National Assembly*