

LAND ORDINANCE, 1923

(Ordinance No.3 of 1923)

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SCHEDULE

Certificate of occupancy

TANGANYIKA TERRITORY

No. 3 of 1923

H.A. BYATT,
Governor
 25th January, 1923.

An Ordinance to define and regulate the tenure of land within the Territory
 [25th January, 1923]

preamble

WHEREAS it is expedient that the existing customary rights of the natives of the Tanganyika Territory to use and enjoy the land of the Territory and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves their families and their posterity should be assured protected and preserved;

AND WHEREAS it is expedient that the existing natives customs with regard to the use and occupation of land should as far as possible be preserved;

AND WHEREAS it is expedient that the rights and obligations of the Government in regard to the whole of the lands within the Territory and also the rights and obligations of cultivators or other persons claiming to have an interest in such lands should be defined by law.

BE IT THEREFORE ENACTED by the Governor and Commander-in-Chief of the Tanganyika Territory as follows:-

Short title	1. This Ordinance may be cited as the Land Ordinance, 1923.
Ungranted land declared to be public land.	2. The whole of the lands of the Territory, whether occupied or unoccupied, on the date of the commencement of this Ordinance are hereby declared to be public lands. Provided that nothing in this Ordinance shall be deemed to affect the validity of any title to land or any interest therein lawfully acquired before the date of the commencement thereof and that all such titles shall have the same effect and validity in all respects as they had before that date. Such titles, however, shall be proved to the satisfaction of the Governor within five years from the date of this Ordinance in such form as may be prescribed.
Public land to be at the disposition of the Governor for benefit of natives.	3. Subject to the foregoing proviso, all public lands and all rights over the same are hereby declared to be under the control and subject to the disposition of the Governor and shall be held and administered for the use and common benefit, direct or indirect, of the natives of the Territory, and no title to the occupation and use of any such lands shall be valid without the consent of the Governor.
Regard to be had to native laws.	4. The Governor in the exercise of the powers conferred upon him by this Ordinance in respect to any land shall have regard to the native laws and customs existing in the district in which such land is situated.
Rights of occupancy.	5. A title to the use and occupation of land shall be termed a right of occupancy, and the grantee thereof shall be termed the occupier.
Power to grant rights of occupancy at a rental.	6. It shall be lawful for the Governor:- (a) to grant rights of occupancy to natives and non-natives. (b) To demand a rental for the use of any public lands granted to any native or non-native. (c) To revise the said rental at intervals of more than thirty-three years.
Right not to be for more than 99 years nor to be granted to a non-native free of rent.	7. Such rights of occupancy shall be for any definite term not exceeding ninety-nine years, and shall be granted subject to the terms of any contract which may be made between the Governor and the occupier not inconsistent with the provisions of this Ordinance. Provided that the Governor shall not (save in the case of a right granted in connection with a mining lease) grant rights of occupancy to any non-native free of rent or upon any conditions which may preclude him from revising the rent at intervals of not more than thirty-three years.
Restriction on alienation by natives to non-natives.	8. Section eleven of the Law of Property and Conveyancing Ordinance, 1923 (which restricts the transfer to a non-native of land belonging to a native), shall apply to rights of occupancy.
Certificates of occupancy.	9. It shall be lawful for the Governor when granting a right of occupancy or when a person is in occupation of land under right of occupancy or is entitled to a right of occupancy, to issue a certificate thereof under his hand and the seal of the

Territory and to require the occupier to sign at the foot thereof acceptance of the terms and conditions of such certificate.

Such certificate shall be termed a certificate of occupancy and shall be in the form set out in the first schedule or to the like effect, and there shall be paid therefor by the occupier such fee or duty (if any) as may be prescribed.

Revocations
of rights of
occupancy

- 10.** It shall not be lawful for the Governor to revoke a right of occupancy granted as aforesaid save for good cause. Good cause shall include-
- (a) Non-payment of rent, taxes, or other dues imposed upon the land.
 - (b) Requirement of the land by the Government for public purposes.
 - (c) Requirement of the land for mining purposes or for any purpose connected therewith.
 - (d) Abandonment or non-use of the land for a period of five years.
 - (e) Breach of the provisions of section thirteen.
 - (f) Breach of any term contained in the certificate or in any contract under section seven.
 - (g) Attempted alienation by a native in favour of a non-native.

Delegation to
administrative
officers of
power to make
grants for five
years

11. The Governor may authorize any administrative officer in charge of a district or sub-district to grant rights of occupancy to natives for any term not exceeding five years and to issue certificates of occupancy for the same and also, subject to appear to Governor, to revoke any right of occupancy so granted for any cause for which it could be revoked by the Governor.

Devolution on
death.
Ord. No 21 of
1922.

12. The devolution of the rights of an occupier upon death shall be regulated, in the case of a native, by the provisions of sections four and five of the Deceased Natives Estates Ordinance, 1922, or, in the case of a non-native by the law governing the devolution of leaseholds forming part of his estate.

Provisions
implied in
certificate
of
occupancy

13. Every certificate of occupancy shall be deemed to contain provisions to the following effect-

- (a) That the occupier binds himself to the Governor to pay compensation for any damage caused to individuals or communities in the exercise of the rights granted to him and to accept the ruling of the Governor as to the amount of such compensation.
- (b) That the occupier binds himself to pay to the Governor on behalf of the previous occupier, if any the amount found to be payable in respect of any unexhausted improvements existing on the land at the date of this entering into occupation.
- (c) That the occupier binds himself to pay to the Governor the rent fixed by the Governor any rent which may be fixed on revision in accordance with the provisions of this ordinance.

Fixing of
rents.

14. The rent to be charged in the first instance for a right of occupancy granted to a non-native in respect of any public land shall be determined by the offer of the highest bidder made at a public auction of such land, subject to such offer being not less than an upset rent to be fixed by the Governor in each case.

In determining the initial rent to be demanded for any right of occupancy granted to a native, and on every subsequent revision of rent payable by an occupier, whether a native or non-native the Governor shall take into consideration the rent obtained or obtainable in respect of any other like land in the immediate neighbourhood, and shall fix the rent at the highest amount that can be reasonably obtained for the land having regard to all the circumstances of the case: provided that in determining the amount of any rent whether original or revised, the Governor shall not take into consideration any value due to capital expended upon the land by the

same or any previous occupier during his term or terms of occupancy or any increase in the value of the land the rental of which is under consideration due to the employment of such capital.

Provided that the Governor may without an auction grant a right of occupancy of a site for any church, chapel, mosque, school, or for any public purpose.

Right to
surrender
on rent
revision.

15. Should the rental demanded by the Governor from the occupier be raised on revision, the occupier may surrender his rights, and shall in that case be entitled to compensation from the Governor to the value at the date of surrender of his unexhausted improvements. Such compensation shall be payable when surrendered rights are disposed of. Provided that in any event it shall be payable within two years of such surrender.

Limit of
5000 acres.

16. Except with the approval of the Secretary of State no single right of occupancy shall be granted to a non-native in respect of any area of land exceeding 5,000 acres.

Occupier to
have
exclusive
rights.

17. Subject to the provisions of the next succeeding section and of any laws relating to prospecting for minerals or mineral oils or to mining and to the terms and conditions of any contract under section seven, the occupier shall have exclusive rights to the land the subject of the right of occupancy against all persons other than the Governor.

Reservations
and roads of
access.

18. (1) Every right of occupancy shall be subject to any easement affecting the land at the date of the grant of the right of occupancy.

(2) A right of occupancy shall not confer on the holder any water rights or rights over any foreshore unless such rights are expressly mentioned, or confer any rights to mines, minerals, or mineral oil.

(3) The holder of a right of occupancy shall, if required by the Governor, allow a road of access over the land subject to his right of occupancy to any person occupying land which is so situate that such road of access is, in the opinion of the Governor, reasonably required.

(4) person requiring a road of access shall pay to the holder of the right of occupancy in respect of the land to be traversed compensation in respect of any growing crops or improvements damaged or destroyed by the construction of the road.

(5) In the event of the holder of a right of occupancy and the person desiring or using a road of access over the land subject to such right of occupancy being unable to agree as to the direction or width of the road of access, or as to any matter in connection with the construction, repair, or use of the road, or as to the amount of compensation to be paid in accordance with the provisions of sub section (4), any of the parties concerned may appeal to the Governor who may appoint an officer to determine the matters in dispute, and the decision of such officer shall be binding on all persons concerned.

Saving of
power to give
effect to
contracts made
by German
Govt.

19. Notwithstanding anything contained in this Ordinance, the Governor may make such grants and leases of public land as he may consider expedient-

(a) to give effect to any contract or undertaking by the former German Government; and

(b) In substitution for any grant or lease by the former German Government which is surrendered with the intent that a new grant or lease shall be made in lieu thereof.

20. The Governor may make regulations for the purpose of carrying this Ordinance into effect and particularly with regard to the following matters:-

Power to
make
regulations.

(1) The registration of rights of occupancy and the transfer thereof, so far as such registration or transfer is not provided for by any other law:

- (2) Regulating the transfer by sale or otherwise of rights of occupancy:
- (3) The terms and conditions upon which contracts may be made under section seven:
- (4) The grant of certificates of occupancy under section nine:
- (5) The procedure to be observed in revising rents and assessing compensation:
- (6) The survey and demarcation of areas the subject to rights of occupancy and the maintenance of boundary marks; and
- (7) The fees or duties to be paid for any matter or thing done under this Ordinance or under any regulations made under this Ordinance.

Legal proceedings.

21. (1) If the right of the Governor to grant any right of occupancy should be disputed, proceedings may, in the case of a grant to a non-native, be taken in the High Court, which Court shall have jurisdiction throughout the Territory accordingly. In the case of a grant to a native, proceedings may be taken in the Subordinate Court of the first class within the jurisdiction of which the land is situate.

(2) All claims (other than claims against the Government) arising under the provisions of this Ordinance in respect of any rights acquired under a right of occupancy in respect of land situated within the jurisdiction of a Subordinate Court of the first class be prosecuted before such Court, and no appeal shall lie from the decision of such Court:

Provided that the Governor may, if he thinks fit, transfer any such case at any stage of the proceedings to the High Court, or order a retrial by the High Court.

Interpretation

22. In construing this Ordinance the following terms shall have the meanings hereby assigned to them unless the context otherwise requires:-

“Unexhausted improvement” shall mean anything or any quality permanently attached to the land directly resulting from the expenditure of capital or labour by an occupier or any person acting on his behalf and increasing the productive capacity the utility or the amenity thereof, but shall not include the results of ordinary cultivation other than standing crops or growing produce.

“native” shall mean any native of Africa, not being of European or Asiatic origin or descent, and shall include a Swahili and a Somali.

“non-native” shall mean any person other than a native as above defined.

Abrogation of German Law.

23. The German law and practice as to the granting of public land shall cease to be in force in the Territory.

THE SCHEDULE

Form of Certificate

TANGANYIKA TERRITORY

The Land Ordinance, 1923

CERTIFICATE OF OCCUPANCY

(Date)

(Volume and page of Register)

This is to certify that A.B., of
Is entitled to a right of occupancy in and over the land described in the Schedule hereto and more particularly delineated in the plan annexed thereto for a term of years from the (dated) according to the true intent and meaning of the said Ordinance

and subject to the provisions thereof and to any regulations made thereunder and to the following special terms and conditions viz:-

1. (commencing rent)
2. (Term of revision)
3. Etc., etc., etc.,

L.S. Given under my hand and the Public Seal of the Territory the day and year above written

(signed)

Governor