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ACT

No. 9 of 2017

I assent

PROF. ARTHUR PETER MUTHARIKA
PRESIDENT
20th January, 2017

ARRANGEMENT OF SECTIONS

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An Act to amend the Lands Acquisition Act

ENACTED by the Parliament of Malawi as follows—

Short title and commencement

1. This Act may be cited as the Lands Acquisition (Amendment) Act, 2017, and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*.

Replacement of long title to Cap. 58:04

2. The Lands Acquisition Act (hereinafter referred to as the "principal Act") is amended by repealing the long title thereto and replacing it as follows—

"An Act to provide for the acquisition of land and compensation; and for incidental matters".

Amendment of s.1 of the principal Act

3. Section 1 of the principal Act is amended by inserting, immediately after the word "Acquisition", the words "and Compensation"

Amendment of s.2 of the principal Act

4. Section 2 of the principal Act is amended by—

(*a*) deleting the definition of the word "land" and substituting therefor the following—

"land" has the meaning as ascribed to that term under section 2 of the Land Act, 2016;".

Act No. 16 of 2016

(*b*) inserting, in the correct alphabetical order, a new definition of the word "court" as follows—

""court" means a court of competent jurisdiction;".

Replacement of s.3 of the principal Act

5. Section 3 of the principal Act is repealed and replaced as follows—

"Power to acquire land

3. Subject to the provisions of this Act, the Minister may acquire land for public utility either compulsorily or by agreement, and pay compensation therefor as may be agreed or determined under this Act.".

Replacement of s.4 of the principal Act

6. Section 4 of the principal Act is repealed and replaced as follows—

"Preliminary investigation

4.—(1)Where there is need to acquire land under this Act for public utility, it shall be lawful for any person authorized by the Minister under section 3 in that behalf, and for his servants and agents to—

(*a*) enter upon any land in question or any land in the vicinity thereof and survey and take levels;

(*b*) dig or bore under the subsoil;

(*c*) do all other acts necessary to ascertain whether the land is or may be suitable; or

(*d*) clear, set out and mark the boundaries of the land proposedto be acquired and the intended line of work, if any, proposed to be done on it.

(2) Any entry upon land under this section shall be preceded by a notice of not less than seven days to the occupier.

(3) The Minister shall pay for any damage done by persons entering any land pursuant to this section.".

7. The principal Act is amended by inserting, immediately after section 8, the following new part title as Part II A— Insertion of new part title as Part IIA into the principal Act

"PART IIA—COMPENSATION".

8. Section 9 of the principal Act is repealed and replaced as follows— Replacement of s.9 of the principal Act

"Compensation **9.**—(1) Subject to the provisions of this Act, where any land is acquired by the Minister under this Act, the Minister shall pay in respect thereof, appropriate compensation agreed or determined in accordance with the provisions of this Act.

(2) Any compensation payable under this section shall be paid in one lump sum.".

9. Section 10 of the principal Act is repealed and replaced as follows —

"Assessment of appropriate compensation **10.**—(1) Unless otherwise agreed between parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister.

(2) An assessment of compensation shall be calculated based on any of the following grounds—

(*a*) loss of occupational rights;

(*b*) loss of land;

(*c*) loss of structure;

(*d*) loss of business;

(*e*) relocation costs;

(*f*) loss of good will;

(*g*) costs of professional advice;

(*h*) nuisance;

(*i*) loss or reduction of tenure; or

(*j*) disturbances, if it is not too remote and is a natural and reasonable consequence of the disposition of the land.".

10. The principal Act is amended by inserting, immediately after section 10, the following new section as section 10A— Insertion of a new s.10A into the principal Act

"Matters to be taken into consideration in assessing compensation for alienated land

10A.—(1) In assessing the amount of compensation under section 10, the following matters, and no other matters, shall be taken into consideration—

(*a*) the market value of the land, or interest therein of the claimant at the valuation date;

(*b*) the damage, if any, sustained by the person interested, at the valuation date, by reason of the severance of such land from his land by reason of the exercise of the powers conferred by this Act;

(*c*) if, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, reasonable expenses, if any, incidental to such change;

(*d*) any increase in the value of the land or other benefit likely to accrue at the valuation date from the proposed development to the person interested; and

(*e*) the relief obtained by the claimant as a result of the taking of the land against the necessity of carrying out, in whole or in part, any order or direction against the land made under any law for the time being in force relating to the use and protection of land when the work required by the order or direction has not been commenced or completed at the valuation date.

(2) For the purposes of subsection (1) (*a*)—

(*a*) if the market value has been increased by means of any improvement made by the claimant or his predecessor in interest within two years before the valuation date, such increase shall be disregarded unless it is proved that the improvement was made in good faith and not in contemplation of the acquisition;

(*b*) the following matters shall not be taken into consideration—

(i) any enhancement of the market value due to the proposal to change use of the land;

(ii) any increased value thereof due to use of the land or any premises thereon which is contrary to the law or could be restrained by a court;

(iii) any damage sustained by the claimant which, if caused by a private person, would not be a good cause of action;

(iv) the special suitability or adaptability of the land for the proposed development;

(v) the degree of urgency which has led to the taking of the land; and

(vi) any disinclination of the claimant to part with his interest in the land.

(3) For the purposes of subsection (1) (*d*), the increase in value of the other land and the other benefit likely to accrue shall, where the land forms part of an estate—

(*a*) not less than one hundred sixty hectares in extent and not more than four hundred hectares in extent, be deemed equal in value to two per centum of the total area of the estate;

(*b*) exceeding four hundred hectares in extent, be deemed equal in value to four per centum of the total area of the estate:

Provided that—

(i) where the land taken is improved land, this subsection shall not operate to deprive the person interested of compensation in respect of damage to, or destruction of, surface rights existing at the valuation date on the land taken; and

(ii) where the land taken forms part of an estate less than one hundred and sixty hectares in extent, it shall not, in the absence of evidence, be assumed that there is any increase in the value or other benefit to be taken into consideration.

(4) For the purposes of this section, "estate" means an undivided area of land for commercial agricultural purposes or otherwise, the legal right to occupy which is vested in a person other than the Government.".

Amendment of Part III of the principal Act

11. Part III of the principal Act is amended—

(*a*) in the title thereto, by deleting the word "TRANSFER" and substituting therefor the word "REVERSION";

(*b*) by repealing section 12 and replacing it as follows—

"Reversion to the Government

12.—(1) Where a notice to acquire any land under this Act has been published in terms of section 5, such land shall revert to the Government as public land within two months of the publication of such notice.

(2) Notwithstanding subsection (1), where a person possessed of an interest in the land obtains a court order against the notice to acquire land, such land shall not revert to the Government until the court order is removed or the court decides in favour of the Minister; and

(*c*) by repealing section 13 and section 14.

Amendment of s.16 of the principal Act

12. Section 16 of the principal Act is amended by deleting the word "President" and substituting therefor the word "Republic".

Amendment of s.17 of the principal Act

13. Section 17 of the principal Act is amended—

(*a*) in subsection (1), by deleting the words "two hundred kwacha" and substituting therefor the words "one hundred thousand Kwacha"; and

(*b*) by deleting subsection (2) and substituting therefor the following new subsection as subsection (2)—

"(2) The court may issue an order of ejectment in addition to penalties under subsection (1), or upon application to such court.".

Passed in Parliament this twenty second day of November, two thousand and sixteen.

FIONA. KALEMBA
Clerk of Parliament