

Land Appeal Tribunals Give Access to Justice

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THE FUNCTIONS and powers of the traditional authorities, communal land boards and the communal land appeal tribunals as outlined in the Communal Land Reform Act, 2002 (Act No. 5 of 2002) provides for a system of checks and balances.

Traditional authorities maintain the primary power to allocate customary land rights. Communal land boards are mandated to ratify the customary land rights allocated by the traditional authorities.

On the other hand, communal land boards are tasked with the allocation of the rights of leaseholds, but they can only do this when the relevant traditional authorities have consented to it. At least in theory, traditional authorities are also expected to consult their community members before granting such consent.

However, sometimes people are not happy with the decisions of the chief/traditional authorities or communal land boards with regards to the allocation of specific land rights in the communal areas. When this happens, many communities do not know where else to go, and some tend to accept such decisions.

Some community members sometimes end up knocking on wrong doors, and eventually settle for such decisions. Others have contemplated or engaged in costly routes such as seeking private lawyers to settle such disputes in a court of law, when initially it was not necessary to do so.

The Communal Land Reform Act empowers parties aggrieved by the decisions of the traditional authorities and communal land boards to appeal such decisions. Section 39 and regulation 25 of the Communal Land Reform Act details the procedures to be followed to lodge an appeal.

Some of the decisions of the traditional authorities and communal land boards which can be appealed include the allocation of customary/leasehold rights to a neighbour, family or an outsider deemed unprocedural. This may involve the failure of the chief or traditional authorities to allocate land rights in circumstances where there is a legitimate expectation by the aggrieved party to be granted that specific land right. Others include failure to remove illegal fences, as well as boundary and grazing disputes, among others.

The procedures for the procurement of the intervention of the appeal tribunal are stated in regulation 25 of the Communal Land Reform Act, 2002 (Act No.5 of 2002). An aggrieved party must submit a notice of appeal in writing (appeal letter) to the office of the permanent secretary of the Ministry of Land Reform. The appeal letter must be submitted within 30 days of the decision being appealed against. The permanent secretary then notifies the minister about the appeal. The minister appoints the appeal tribunal to hear the case, and then the said tribunal passes judgement. It is important to note that failure to submit the appeal within the prescribed time will render the appeal invalid. Hence, an appeal tribunal cannot hear such a case. In fact, an appeal tribunal cannot be appointed to hear such a case in the first place.

Appeal tribunal members are individual (s) with a legal background and/or qualifications and relevant skills, expertise and experience in communal land matters – section 39 (2). They must have a thorough understanding of the communal Land Reform Act, 2002 (Act No. 5 of 2002).

The cases are primarily heard on record (by the tribunal) and depending on available evidence and supporting documents, they then pass judgement. The Ministry of Land Reform has the responsibility to communicate the decision of the appeal tribunal to all the involved parties. The appeal tribunal is empowered by Section 39 (6) "(a) to confirm, set aside or amend the decision which is the subject of the appeal, and b) to make any order in connection therewith as it may think fit".

According to section 39 (6), the decision of the appeal tribunal is conclusive and legally binding on the parties. Any party aggrieved by the decision of the Communal Lands Appeal Tribunal has the right to appeal to the High Court.

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