Land reforms in zambia essay

INTRODUCTION

This paper is aimed at discussing the rights and interests of natives and settlers in native reserves, trust lands and crown lands between 1924 and 1964 and to explain the political, social and economic developments that were introduced in the Zambian land administration between 1964 and 1995. The paper will further attempt to analyse and discuss the changes that have occurred in the land administration system between 1995 to date with the help of relevant authorities. Zambia, as we know it today, began in 1889 under the North Western and North Eastern Rhodesia Orders in Council. North Western Rhodesia Order in Council related to Barotseland and the Litunga had authority in tribal matters there. The North Eastern Rhodesia Order in Council related to the rest of Zambia where natives were protected in their occupation of land in that they could not be removed or displaced except with the approval of the British High Commissioner. The Royal Charter of 1889 gave power to the British South Africa Company (BSA Co.) to administer the two territories.

Under the Charter, the company was empowered to make land grants and to carry out mining activities and to make concessions for mining and other rights. The Northern Rhodesia Order in council of 1911 revoked the two Orders in council of 1889 mentioned above and amalgamated the two territories into one political unit called Northern Rhodesia. The only change made by this Order in Council was the amalgamation while the rest remained the same. For example, the BSA Co. continued to administer the new territory as before and had the same powers. The BSA Co. granted land to white settlers under a “ permit of occupation” which required that a

minimum level of development be done on the land before a freehold Title could be granted. These grants of land resulted in the displacement of indigenous people despite assurances given in the Orders in council of 1889 and 1911. The Northern Rhodesia Order in Council of 1924, a creation of the Devonshire Agreement, removed the administration of Northern Rhodesia from the Company and gave it to the British Crown.

A Governor was appointed by the British sovereign and was entrusted with the administration of the land in the territory, except, the land in the Barotseland. The native rights in land in the Barotseland were secured under treaties like the Barotse-North Western Rhodesia Order in Council of 1899. Under the 1924 Order in council the Governor was empowered to make grants and dispositions of land to settlers. The takeover of administration by the crown saw the coming of Sir Herbert Stanley as Governor of the Northern Rhodesia territory. He was instrumental to the enactment of the Northern Rhodesia (Crown lands and Native Reserves) Order in Council of 1928 under which land other than that in Barotseland was divided into crown lands and native reserves.

The creation of these two types of lands meant that the people in northern Rhodesia were to be segmented. The segmentation led to white settlements and native (indigenous) settlements and a dual land tenure system was born. The lack of proper facilities and scramble for land in the native reserves coupled with few white settlers coming to Northern Rhodesia led to large tracts of unalienated land under crown lands. The result was the enactment of the Northern Rhodesia (Native Trust land) Order in Council 1947.

Crown Lands

Crown lands were defined in a Government policy of 1942 as to mean “ that land for non-native settlement and for mining development and was to include land certified to be suitable for European development and all land known to contain mineral resources…” The Governor of the territory of Northern Rhodesia was vested with all the rights of the British Sovereign in or in relation to the crown land and was given the authority to exercise those rights. In this regard, English law regulated interests in crown land. The interests created under English law were freehold and leasehold estates. Land was granted under freehold title subject to preliminary leasehold of five (5) years during which personal occupation and minimum level of development was required. The crown lands were mainly stretched along the line of rail from Livingstone to Ndola. There were never for native occupation and as such natives settled on such land were moved away.

Native Reserves

Native reserves were land for indigenous settlements. This was land that was considered not fit for white settlement as it was usually inhabitable due to lack of facilities like water, communication and was infested with tsetse flies. The reserves were for the sole and exclusive use and occupation of the natives. They were vested in the Secretary of State for Colonies but the Governor was empowered to give land within reserves to the indigenous people. The indigenous people were allocated land either as a tribe or part of a tribe. There was no such thing as individual interests in land such as leasehold or freehold. Land was allocated to a people as a group.

In this regard, land occupation in the reserves was governed according to the customary practice (law) of that group of people. The governor also had powers to give land or interests in land in reserves to non-native individuals for a period not exceeding five (5) years. The individuals had to show that the land so acquired would be used for the benefit of the reserve community such as religious, welfare, educational activities, etc. These land grants, which were leaseholds, to non-natives in reserves were regulated by English law and not the customary law existing in the particular reserve.

Native Trust lands

These lands were the lands that had remained unoccupied and unalienated after the creation of crown lands and native reserves. Like the native reserves, they were vested in the Secretary of State for the Colonies and the task of administering and controlling them was given to the Governor. These lands were to be for the use or common benefit direct or indirect of the natives. Under these lands, Africans could be alienated land as individuals for specific periods. The lands could be used to establish townships such as Matero in Lusaka. The land could also be given to non-natives in special cases as long as it could be established that such alienation was for the benefit of the natives. The non-natives occupied this land on rights of occupancy for maximum periods of 99 years. These lands could easily be turned into crown lands if they were found to stand in the way of development of railways or were mineralised areas with economic value.

On attaining independence in 1964, the Northern Rhodesia (Crown lands and native reserves) Order in Council 1928, The Northern Rhodesia (Native

Trust Land) Order in Council 1947 and The Northern Rhodesia (Gwembe District) Order in Council 1959 were maintained. The Zambia Independence Order 1964 provided for the maintenance of the Orders but with modifications, adaptations, qualifications and exceptions as could be necessary to bring them into conformity with the Independence Order. The changes made by the Independence Order 1964 resulted in the Zambia (State Lands and Reserves) Order 1964, The Zambia (Trust Lands) Order 1964 and the Zambian (Gwembe District) Order 1964. The Zambia (State Lands and Reserves) Order 1964 and The Zambia (Trust Lands) Order 1964 transferred and vested into the Republican President of the new Zambia all rights in or in relation to crown lands or other immovable property in Northern Rhodesia that were vested in the British Sovereign immediately before independence and all native reserves and trust lands that were vested in the Secretary of State for the Colonies immediately before independence.

The Gwembe Order 1964 conferred upon the President the powers formerly exercisable by the Governor of the territory under the Northern Rhodesia (Gwembe District) Order 1959. The maintenance of the Orders after independence meant that the existing land categories and the segmented land tenure system remained as before. A land commission was appointed in 1965 and it made recommendations in 1967 which recommendations were not implemented by government. Prominent among the recommendations was one that stated as follows: “ The acquisition of rights by individuals to use unalienated state land and unoccupied land in the reserves, trust land area and the Barotse Province should be subject to the control of

government. This will entail controlling the exercise by individuals of customary rights in relation to unoccupied land….” After independence Zambia experienced a flight of white settlers. This left a lot of land unoccupied and a problem of absent landlords arose.

The Zambian government could not access this land due to provisions of the independence Constitution that protected personal property. To sort out this problem the government initiated a referendum aimed at changing the bill of rights in the independence Constitution and the result was the Land Acquisition Act of 1970. This Act gave power to the government to grab land that it so deemed fit. Barotseland was a special case during the colonial era in that the natives there had rights to the land secured under the treaties of 1899. In order to gain independence as a unitary state of Zambia, the government of Zambia had to enter into an agreement with the Litunga of Barotseland. Under the agreement (Barotse Agreement), the Barotseland was to maintain its rights to land in the independent Zambia as it had in the colonial times. In 1969, the government passed a Constitutional Amendment Act which amended the Zambia Independence order, 1964 which amendment terminated the Barotse Agreement.

This was followed by the enactment of the Western Province (Miscellaneous Provisions) Act 1970 which declared all land in the western province to be a reserve within the meaning of and under the Zambian (State lands and Reserves) Order 1928 to 1964. This meant that land in Barotseland, like all reserves in Zambia, became vested into the Republican President. In 1975 the government of Zambia proclaimed sweeping reforms to the land policy existing at the time. This was done through the Watershed Speech of the

then Republican President Dr K. D. Kaunda. The pronouncements from the Watershed Speech resulted in the enactment of the Land (Conversion of Titles) Act of 1975.

Under the Act, the freehold titles were converted to leasehold titles of up to a maximum period of 100 years. This applied to farm land and residential plots. The government repossessed all land in farms and around cities and towns that were vacant or undeveloped or not being utilized. The control of building of structures was to be controlled by the state and real estate agency was banned. Private rented accommodation was discouraged and the state gave itself the task of providing accommodation to the masses. The government banned the trading of bareland and pronounced it as having no value. If anything was to be sold it should be the development on land and not land itself. The sell or dealing in land and buildings was restricted in that such was to have presidential consent. The case of Mutwale v Professional Services Limited involved a landlord who rented a flat to a tenant without prior Presidential consent who defaulted in paying rent. The landlord sued the tenant for recovery of rentals.

The Supreme Court held that if prior presidential consent was not obtained for sublease, the whole contract including the provision for payment of rent was unenforceable. The Land (Conversion of Title) Act 1975 was amended in 1985 to restrict the alienation of land to non-Zambians. The reforms made by the UNIP government from 1964 to the time it left government were all aimed at fulfilling the socialist ideology where man was the centre of all life activities and that man should not be exploited by another man especially on things that are God given like land and other natural resources. It also

brought out the manner in which the African leaders perceived land. To them land should be owned by the state and not an individual for it was property for the community. This is the concept behind African customary law over land.

The advent of multi-party politics in Zambia in the 1990s brought in the Movement for Multi-party Democracy (MMD) as the ruling party. Its vision on land was spelt out in its manifesto as follows: “ The MMD shall institutionalise…a land code intended to ensure the fundamental right to property and ownership of land as well as to be an integral part of a more efficient land delivery system. To this end the MMD will address itself to the following fundamental issues: A review of the Land (Conversion of Titles) Act of 1975; the Trust Land and Reserve Orders-in-Council (respectively); Conversion of land allocation in customary lands; Land adjudication shall be co-ordinated in such a way that confidence shall be returned in land investors; The land planning system and related legislation shall evolve such land strategy as not only to merge Reserve and Trust Land but also to meet the varied development needs…attach economic value to underdeveloped land and to promote regular issuance of title deeds in both rural and urban areas.”

In a nutshell, the new political form was not in favour of continuing with the previous regime’s perception of land. They viewed land in a capitalist manner. In order to achieve this, the Land Act, Chapter 184 of the Laws of Zambia was enacted.

The land Act continued to vest land in the President for him to administer and control. Section 3(1) of the Act provides that the land shall be held by the President in perpetuity for and on behalf of the people of Zambia. Further section 3 goes on to state that the President should administer and control all land in Zambia for the use or common benefit, direct or indirect, of the people of Zambia.

The new leaders had the same view on land as the previous regime in that they concurred with their predecessors that land was a resource to be held for the community by the state and that no individual should have ownership of land without state control. In this regard, the land tenure was maintained under leasehold title and as was the case before 1964. The Act, in Section 3, further gives power to the President to alienate land to Zambian and non-Zambian. It is provided that a non-Zambian shall be alienated land by the President on specified condition, among which is permanent residence. T

his has removed the discrimination against non-Zambians with regard to access to land which discrimination was introduced by the 1985 amendment to the Land (Conversion of Titles) Act. The land Act created two types of land in Zambia. The State land (formerly State land) which has been defined as “ land which is not situated in a customary area” and a type of land called customary land.

The customary land was created by merging land previously referred to as reserve land under Zambia (State Lands and Reserves) Orders 1928 to 1964 and trust land under the Zambia (Trust Land) Orders 1947 to 1964. The Act introduced new concepts which were not in the 1975 Act such as Section 7

(1) of the Act which recognised customary land and the rights or interests of any person who so hold this land. The Act further provides in Section 8(1) for the conversion of this land to state land through a grant of leasehold by the President.

Section 4 of the Act restricts the powers of the President with regard to alienation of land in customary land by requesting that such alienation be done with the Consent of the Chief and the Local Authority of the area in which that land to be converted is situated. If Consent is refused by these institutions it is a requirement that they should communicate the reasons for refusal to the applicant and the Commissioner of Lands.

The novel aspect of the new dispensation in its land reform was the redefining of land. Section 2 of the Land Act defines land as “…any interest in land whether the land is virgin, bare or has improvements, but does not include any mining right as defined in the Mines and Minerals Act in respect of any land.” This definition attaches value to both bare land and land with improvements. In the 1975 land Act, bare land was stripped off value and what had value was the improvements in or on the land. Under the new Land Act, bare land has become a commodity for sale and the evils that led UNIP to strip bare land of its value have cropped up again. Land speculation, general exploitation and profiteering over land have become the order of the day.

The Act has further maintained the control of the President over land transactions but with modifications. The 1995 Act has limited the requirement for Presidential Consent to the sell, transfer and assignment of

land only. Unlike the 1975 Act that required Presidential Consent in all land dealings, the current one has restricted to the three processes aforementioned. One does not need Presidential Consent for subletting land or renting out a flat. There was a provision also that was not in the 1975 Act and that was the one that required the President to give reasons to the applicant if Consent was refused. Under the old Act, the refusal of Consent placed no obligation on the President to give reasons as to why Consent cannot be given. The new Act goes further to give a challenge to the President in that even if reasons are given by the President for refusing to give Consent, the applicant (if aggrieved) can take the matter to the Lands Tribunal for redress.

There was no such challenging provisions were in the old Act. The creation and recognition of customary land raised the need to build a fund for opening of new areas for investment and citizen empowerment. To achieve this, a land development fund was established under the Act. The land fund was to be funded by moneys collected from ground rent, appropriation from Parliament and moneys collected as consideration for alienation of land.