

CUSTOMARY LAND LAW

BACHELOR OF LAWS, YEAR 3

Topic 3: SOURCES OF LAND LAW IN SIERRA LEONE.

Section 170(1) of the constitution of Sierra Leone, Act No. 6 of 1991, states the sources of law in Sierra Leone. This includes:

- “a) this Constitution;*
- b) laws made by or under the authority of Parliament as established by this Constitution;*
- c) any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law*
- d) the existing law; and*
- e) the common law.”*

1. The Constitution (Act No. 6 of 1991)

The constitution is the highest law of the land and is often referred to as the “grundnorm”. This position is re-echoed/emphasized under Section 171(15) of the constitution, which states:

“(15) This Constitution shall be the supreme law of Sierra Leone and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void and of no effect.”

The constitution contains certain provisions that deal with land law/property. For example; the constitution, under Section 21 protects citizens from deprivation of their property and if they are eventually so deprived in line with the provision stated in Section 21, prompt payment of adequate compensation must be ensured.

2. Statutes (or Laws of General Application)

The general law, for the purpose of land law, includes the following:

- i. First, statutes of general application adopted in the reception date of 1st January 1880, pursuant to Section 74 of the Courts Act (1965) and this section, among others, states that any statute of general application, the common law and doctrine

of equity, which had effect in England up onto 1st January 1880, is applicable in Sierra Leone. For example; the Statute of Frauds Act (1677), Statutory Declaration Act (1835) and the Leases Act (1449). However, controversy arises when a provision of a statute of general application conflicts with a local statute. In **ATTORNEY GENERAL v MARGAI**, it was held that the courts can modify a statute of general application in order for it to suit the Sierra Leonean society and where there is conflict, it is the local statute that takes precedent.

- ii. Secondly, as part of the general law, we have imperial legislation, which were enacted as Orders in Council or statutes enacted by the British Parliament for Sierra Leone under the British Settlement Act and Foreign Jurisdiction Act (1890). These statutes have effect in Sierra Leone.
- iii. Furthermore, we also have the Imperial Statutes (Law Of Property) Adoption Act, CAP 18 of the Laws of Sierra Leone (1960), which are statutes adopted by the Sierra Leone Legislature as part of property law statutes adopted in Sierra Leone. Some of these include the Conveyancing and Law of Property Act (1882), Trustee Act & the Settled Lands Act (1882). By virtue of Section 4(1) of the Interpretation Act (1971), this form of statutes are defined as laws enacted by the British Legislature that have effect in Sierra Leone.
- iv. Moreover, under statute law, we also have local statutes, which include two (2) sets of statutes:
 - a. Firstly, statutes that were adopted & re-legislated in the Sierra Leone Parliament. These include Sale of Goods Act (CAP 225), administration of Estates (CAP 45) and Limitation Act.
 - b. Secondly, statutes made post-independence by the Sierra Leone Parliament. An example is the Devolution of Estates Act (2007)

3. The Common Law

Section 4 of the Interpretation Act (1971) defines the common law as non-statute law handed out by courts in the UK, which are applicable in Sierra Leone.

4. Equity

These are rules that were developed in the Courts of Chancery and are said to replicate natural justice and good conscience; thus, part of the laws of Sierra Leone.

5. Customary Law




This is defined in Section 170(3) of the Constitution of Sierra Leone (1991) as:

“...the expression "customary law" means the rules of law which by custom are applicable to particular communities in Sierra Leone.”

Section 1 of the Local Courts Act (2011) defines customary law as:

“...any rule other than a rule of general law, having the force of law in any Chiefdom of the provinces whereby rights and correlative duties are acquired or imposed in conformity with natural justice and equity and not incompatible, either directly or indirectly, with any enactment applying to the provinces, and includes any amendment of customary law made in accordance with the provisions of any enactment;”

When dealing with customary law, it is important to note the following:

-  It must not conflict with the general law/statute.
-  It must not conflict with equity & good conscience.
-  Customary law can be aging, outdated, and can pose a serious threat to human rights issues.

It is vital to emphasize, also, that many of the land & property disputes arising in the provinces are often settled via customary law. Also note that, where customary law conflicts with the general law, general law takes precedent.

6. Case Law (or Precedent)

Case law or judge-made law is law based on the judicial decisions of judges in court. Important landmark cases in land law can also serve as sources of land law in litigation & education. An example of this is the case of **H. M. KANAGBO, W. L. SHERMAN, A. B. FOFANA & H. M. MORIBA v M. J. KAMANDA BONGAY (1962)**.

7. Legal Texts & Writings

Dictionaries, Textbooks, articles and legal opinions on land law can also serve as a secondary source of land law in Sierra Leone. It must, however, be mentioned that the abovementioned sources of reference are only persuasive authority and are not to be taken as legally binding.

CUSTOMARY LAND LAW

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Topic 4: OWNERSHIP & ACQUISITION OF LAND IN SIERRA LEONE.

Ownership & acquisition of land in Sierra Leone is a very topical issue under customary land law. This is the case because if one does not know the procedures & processes involved, one might end up in serious problems, which might have severe legal consequences.

OWNERSHIP & ACQUISITION OF STATE LANDS IN SIERRA LEONE.

Some piecemeal efforts have been made to showcase the various steps in owning and acquiring state land in Sierra Leone under the State Lands Act/Crown Lands Ordinance (No 19. Of 1960).

Firstly, after discovering that the land one intends to acquire falls within the state layout, he/she should then apply to the Ministry of Lands & Country Planning (MOLCP) for a lease to be granted to you. The letter is addressed to the Minister and is copied to the Director of Surveys & Lands. After the receipt of the application, the Ministry, through the Directorate of Survey & Lands will do due diligent search to determine whether, in fact, the land is indeed/marketed for any developmental purposes by the Government. Note, also, that there is usually a fee accompanied with doing the application. After the verification is done and the land is determined to be vacant, the Ministry will then grant a letter of offer of a lease on the said portion of land with several conditions attached. Some of the conditions include:-

- ✚ Payment of lease rent
- ✚ Development of the land within a 3-year period
- ✚ Avoidance of subletting/subleasing of the land
- ✚ Securing a valid building permit before doing construction on the land

Furthermore, after one would have fulfilled all of the above conditions, an application can be made again to the Ministry of Lands for the granting of a freehold. However, for a freehold to be granted, the above stated conditions stated in the lease ought to have been strictly complied with. The granting of a freehold gives/grants absolute possession in fee simple, free from encumbrance, to the individual applying for a freehold. The fee is also usually charged on an application of freehold from the MOLCP. The granting of a freehold by the Ministry simply means that the Ministry gives a conveyance to the individual, which is usually signed by the Minister, regarding the state land. Such a conveyance must be registered at the Administrator & Registrar General's Office at Roxy Building located at Walpole Street, Freetown.

OWNERSHIP & ACQUISITION OF PRIVATE LANDS IN SIERRA LEONE.

Acquiring private lands in the Western Area can be challenging if one is ignorant to the processes of doing so. Even though the procedure/transaction is largely private, there are certain things/steps that should not be taken for granted:

Firstly, the purchaser must always inquire from the vendor the title documents that give him the right to sell the land. When such documents have received, the purchaser must do due diligence to search if such documents are duly registered & authentic. Such research must be done at the Ministry of Lands and Country Planning (for the survey plan and Lands & Survey Number) and the Administrator & Registrar General's office (for the conveyance). If it turns out that the search shows that the documents are valid & authentic, the purchaser should proceed to a legal practitioner/Barrister & Solicitor for a legal scrutiny of the conveyance to determine whether the land is jointly owned or not by the vendor purporting to sell. Where the property is jointly owned, it is important for a consent agreement to be secured from the other beneficiary(s) or vendor(s) in the conveyance. Assuming there are no joint owners/vendors in the conveyance, the purchaser can now agree with the vendor on the price (or consideration) regarding the private land. Upon the agreement of the price, a date should be set for part payment to be made to the vendor. Usually, the part payment is made in a legal practitioner's office. Between the agreed date to meet at the office of the legal practitioner for a part payment to be made, the purchaser must do due diligence in ensuring that the land in question has been surveyed and an advance copy of the survey plan is sent to the legal practitioner. On the date of the payment of the part payment, it is prudent to have in place a draft copy of the conveyance, upon which the vendor will sign as he receives the part payment for the

sale of the land. This is so because land does not pass by receipt rather it only passes by way of a conveyance. Another reason why the purchaser must ensure the vendor signs a draft conveyance upon receipt of part payment is because:

- a. The vendor might travel after receipt of part payment;
- b. The vendor may die after receipt of the part payment;
- c. The vendor might change his mind; or
- d. Any encumbrance might come to frustrate the contract.

So, signing of the draft conveyance upon receipt of part payment is key. Furthermore, a date is usually agreed to between the purchaser and the vendor for final payment; usually a 3-4 week period. During such an interval, the purchaser should also do due diligence to ensure that he takes steps to purchase the possessed land either by inserting a pillar, signpost, shed, fence, etc., to show that he is the new purchaser of the property. The importance of such proof is that it would reveal/expose any encumbrance, potential or otherwise, on the land. Within the agreed timeframe for final payment, if there are no encumbrances encountered on the land, then there is a presumption of regularity for the sale of the land in question. Then, the purchaser can now proceed to make the final payment to the vendor. After payment, the purchaser must ensure to register the survey plan at the Ministry of Lands and Country Planning for an LS number to be granted, which will then be typed into the conveyance and then both documents are taken to the Administrator & Registrar General's office at Roxy Building, located at Walpole Street, Freetown. Then and only then can one say that that private land would have been legally transferred to him/her and that gives you the right and the acquisition of the land.

OWNERSHIP & ACQUISITION OF PROVINCIAL LANDS IN SIERRA LEONE.

Land in the provinces are owned by natives and are held in trust by tribal authorities on behalf of the community. This position is established under the Protectorate Land Act, Cap 122 of the Laws of Sierra Leone (1960). This law further dictates that non-natives cannot acquire freehold (i.e. fee simple absolute) possession in the provinces.

Where a non-native is desirous of owning land in the provinces, he/she can only get a lease or tenancy, subject to the approval of the tribal authorities.

In order for the lease to be granted, however, the non-native must first approach the family head of that property and later, the community head & tribal authority, showing good cause that the intended lease or tenancy would also benefit the community. After

this stage, negotiations on the consideration for the land would be reached and a percentage would go to the holding family of the land and the tribal authority for community development purposes. Documents (i.e. survey plan and lease agreement) are then taken out, signed and endorsed by the family heads and tribal authorities, confirming that this lease agreement/tenancy has been duly approved by them. It is vital to emphasize that in such an arrangement, the land does not pass in absolute possession to the non-native lessee. At the expiration of the tenancy/lease, the property reverts back to the community. This is so because by virtue of CAP 122 of the Laws of Sierra Leone (1960), a non-native is stopped from owning land freehold (i.e. in fee simple absolute) in the provinces. Some arguments have, however, been made out that a non-native may perhaps be able to own land in the provinces as freehold or absolute possession if he/she gets married to a native in the provinces. In such situations, both couple could be said to be in joint ownership of the land, by virtue of the principle of ***conjugal unity***. There is also the possibility of giving the land as a gift to the native & non-native couple. The state can, however, also hold provincial lands for developmental purposes.