



SAMOA

LAND AND TITLES ACT 2020

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2020, No. 24

AN ACT to replace the Land and Titles Act 1981.

[Assent date: 5th January 2021]

[Commencement date per section 1(2) – 15 March 2021]

[Commencement date per section 1(3) – 1 January 2022]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement:

- (1) This Act may be cited as the Land and Titles Act 2020.
- (2) Except for sections 43 and 44, this Act commences on a date nominated by the Minister.
- (3) Sections 43 and 44 commence on a separate date nominated by the Minister.

2. Interpretation:

- (1) In this Act, unless the context otherwise requires:
“Court” means the Land and Titles First Court, Land and Titles High Court, Land and Titles Court of

Appeal and Review as the case may be, which together, collectively form the Courts in Part IX of the Constitution;

“custom and usage” or “Samoan custom and usage” means the customs and usages of Samoa accepted as being in force at the relevant time and includes:

- (a) the principles of custom usage accepted by the people of Samoa in general; and
- (b) the customs and usages accepted as being in force in respect of a particular place or matter.

“day” means working day;

“Deputy President” means a Deputy President of the Court appointed by the Head of State on the advice of Komisi.

“faapogai” means a Matai Sa’o or a suli;

“Komisi” means the Komisi o le Faamasinoga o Fanua ma Suafa constituted by Article 104E of the Constitution;

“land” means customary land;

“Land and Titles Court of Appeal and Review” means the Court established under Article 104C of the Constitution;

“Land and Titles First Court” means the Court established under Article 104A of the Constitution;

“Land and Titles High Court” means the Court established under Article 104B of the Constitution;

“Land Titles Investigation Commission” means the Commission appointed under the Land Titles Investigation Act 1966;

- “Land Registrar” means the Registrar defined in section 2 of the Land Titles Registration Act 2008;
- “lawyer” has the meaning given it under the Lawyers and Legal Practice Act 2014;
- “matai” means a person whose title has been registered under this Act;
- “Matai Title Register” means the Register of Matai continued under section 16;
- “Minister” means the Minister responsible for Justice and Courts Administration;
- “Ministry” means the Ministry responsible for Justice and Courts Administration;
- “name” for the purpose of sections 18(4)(d) and 22(b)(ii) means the name on a person’s birth certificate or passport;
- “officer” in relation to the Court includes any Registrar, clerk, bailiff, usher or messenger in the service of the Court, and “Staff” in relation to the Court includes all officers of the Court;
- “party” includes every person who takes part as appellant, petitioner, respondent or applicant in any proceedings under this Act (other than as a witness) whether or not named as a party to any such proceedings, and, in any proceedings to appoint a matai, includes the pule and the proposed appointee;
- “President” means the President of the Court appointed under Part IX of the Constitution;
- “Registrar” means the Registrar referred to in section 4 also known as the Court Registrar;
- “repealed Act” means the Land and Titles Act 1981;

“rules” means any rules of Court made pursuant to this Act;

“Samoan” has the same meaning given to that term under the Samoa Status Act 1963;

“Samoan conciliation” means the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement and in which the Registrar may make suggestions for terms of settlement and actively encourage the participants to reach an agreement which accords with Samoan custom and usage and the requirements of this Act;

“Sui o le Nuu” means a person appointed as such under section 14(1)(a) of the Internal Affairs Act 1995;

“Vice President” means a Vice President appointed by the Head of State on the advice of the Komisi;

“working day” means a day other than Saturday, Sunday or a public holiday.

- (2) In this Act, “decision” includes judgment, order or other determination.

PART 2

ADMINISTRATION OF ACT

3. Ministry responsible for administration of this Act:

- (1) The Ministry responsible for Justice and Courts Administration is responsible for the administration of this Act.

- (2) The Chief Executive Officer of the Ministry also known as the “Court Registrar” shall keep or cause to be kept proper records in relation to the Ministry.

4. Registrar:

- (1) The Chief Executive Officer of the Ministry also known as the Court Registrar shall be the Registrar of the Land and Titles First Court, Land and Titles High Court and Land and Titles Court of Appeal and Review.
- (2) A suitable qualified person may be appointed under the Public Service Act 2004 as Deputy Registrar.
- (3) In respect of the Court and subject to the direction of the Registrar, each Deputy Registrar must possess, exercise and perform the same powers, functions and duties as the Registrar, and any reference in this Act to the Registrar, unless the context otherwise requires, includes a reference to each Deputy Registrar.

5. Appointment of other officers and employees:

The Public Service Commission may appoint other officers and employees of the Ministry as may be necessary.

6. Records of the Court:

- (1) The Registrar shall keep or cause to be kept records of or in relation to the Court, and of every proceeding before the Court, as required by this Act, or as may be prescribed by Rules, or by the President.
- (2) No person shall have access to the records of the Court except with the permission of the President, or the Registrar.

- (3) No person shall remove the records of or in relation to the Court except with the permission of the President for Courts purposes only.
- (4) Any person who breaches subsection (3) shall be liable to a fine not exceeding 50 penalty units or to an imprisonment term not exceeding three (3) years, or both.

7. Seal:

- (1) The seals of the following Courts are to be kept in the custody of the Registrar:
 - (a) Land and Titles First Court;
 - (b) Land and Titles High Court; and
 - (c) Land and Titles Court of Appeal and Review.
- (2) The form of the seal is to be determined by the Registrar, with the approval of the President.
- (3) The seal or seals in use at the commencement of this Act continue to be the seal or seals of the Courts under subsection (1) until and unless replaced.

**PART 3
CUSTOMARY LAND**

Division 1 - Land deemed or declared Customary Land

8. Land deemed or declared customary land:

- (1) The following land is deemed customary land, and any interest in the following land is deemed interest in customary land:
 - (a) any land ordered by the Court to be customary land under section 9;

- (b) any land conveyed by Government or any public body by way of deed which provides that the land is held in accordance with the customs and usages of the Samoan people.
- (2) Land deemed or declared as customary land and saved as such under the Repealed Act is regarded as customary land under this Act.

9. Declaration of certain land to be customary land:

- (1) A person or the alii and faipule of any village claiming an interest in any freehold land or any land in respect of which the customary or freehold status is claimed to be in doubt, may petition the Court for an order to be made with the consent of all parties, declaring such land to be customary land.
- (2) The Registrar, on payment of the prescribed fee, shall publish the petition in the Savali in three (3) consecutive issues, giving notice of the place, and the time or period (not being less than four (4) months from the date of the first publication) for filing objections by any Samoan who may be affected by the petition.
- (3) The Court shall not make an order under this section in respect of land which is registered as freehold land under the Land Titles Registration Act 2008 unless:
 - (a) a person having a registered interest in such land;
 - (b) a trustee appointed to represent beneficial interests in respect of such registered interest;
 - (c) a person who has filed an objection to the petition who claims any registered, beneficial or equitable interest; and

- (d) a person who has filed such an objection and who claims an interest in the land in accordance with custom and usage, has consented to such order in person before the Court, or by affidavit.
- (4) The Court shall not make an order under this section in respect of any land which is not registered as freehold land under the Land Titles Registration Act 2008 unless:
 - (a) a person, not being a person to whom subsection (5) applies, who has filed an objection to the petition and who claims that the land should be so registered as freehold land; and
 - (b) a person who has filed such an objection and who claims an interest in the land in accordance with custom and usage, has consented to such order in person before the Court, or by affidavit.
- (5) For the purpose of subsection (4), the Court may make an order under this section without the consent of any person who has claimed a freehold interest in the land if that person's claim has been rejected by the Land and Titles Investigation Commission under the provisions of the Land Titles Investigation Act 1966.
- (6) If in the course of any proceedings begun under this section, it appears to the Court that any person who has objected to the making of an order under this section claims a freehold interest in the land in question, the Court may adjourn the proceedings to enable that person to make a claim in respect of the said land under the Land Titles Investigation Act

1966 and, if such application is made, the Court may further adjourn the proceedings as it thinks fit to await the decision of the Land Titles Investigation Commission in respect of the claim.

- (7) Despite any provision in this section to the contrary, if the Court would have made an order but for the failure of the persons referred to in subsection (3) or (4) to agree as to the matai title or the pule by which the land should be held, the Court may, with the consent of such persons, order the land to be customary land by consent and shall thereupon, or at an adjourned hearing, proceed to hear and determine the question of the matai title or the pule.
- (8) Any order made pursuant to this section shall be forwarded to the Registrar of Lands.

10. Referral of judgments concerning customary land:

Upon the request of the Land Registrar, the Registrar of the Court must refer to the Land Registrar any judgment of the Court concerning the pule or status of any customary land or interest in the land, or an order or declaration made under this Act.

Division 2 - Surveys and sketch-plans

11. Surveys, sketch plans and aerial images:

- (1) Where a petition seeks the accuracy of customary land boundaries, the Court may order the petitioner to provide a sketch plan or aerial image of the customary land and its boundaries.
- (2) Nothing in this section limits the power of the Court to order a survey to be made at any time in respect of any matter before it.

- (3) The cost of any sketch plan or aerial image ordered under subsection (1), or survey under subsection (2) shall be paid as ordered by the Court.

PART 4

MATAI TITLES

Division 1 - Eligibility and Removal of Matai Title

12. Eligibility to hold a Matai Title:

- (1) A person is not qualified to hold a Matai Title or be registered as a matai unless she or he:
- (a) is a Samoan;
 - (b) is at least 21 years of age; and
 - (c) is prepared to carry out the obligations of his or her Matai Title including properly serving his or her family, village and community according to Samoan custom and usage; and
 - (d) meets other criteria required by the family in accordance with their custom and usages.
- (2) A person convicted of an offence and served an imprisonment sentence, is not eligible to hold a Matai Title unless that person's aiga by majority support the bestowment of that person's Matai Title.

13. Matai Sa'o:

To maintain the integrity of the institution of the Samoan Matai Sa'o, the following apply:

- (a) the selection and number of Matai Sa'o should not diminish the essence and importance of the Matai Sa'o; and

- (b) the bestowment ceremony of a Matai Sa'o shall comply with section 15; and
- (c) the Matai Sa'o given the responsibility of serving the extended family should be domiciled in Samoa and be present in the family and village to carry out duties expected of a Matai Sa'o.

14. Removal of Matai Title:

- (1) The Court on petition of a Sa'o or a Suli may hear and determine whether to remove a Matai Title if any of the following occurs:
 - (a) where the holder of that Title has acted in a manner that brings disrepute to the family, village or community of the Matai; or
 - (b) where the holder of that Title has failed to properly perform the duties of a Matai; or
 - (c) where the holder of that Title has been convicted of a crime and served an imprisonment sentence.
- (2) The Court may order to stay the removal of a Matai Title that is the subject of a petition under this section, until a final determination of the Court.
- (3) For the purpose of this section a petition to:
 - (a) remove a Matai Title from a suli may only be made by the Sa'o with pule over that Matai Title on the consensus of the suli; and
 - (b) remove a Matai Title of a Sa'o may be made by consensus suli.

Division 2 - Validity of Matai Title bestowed

15. Validity of the bestowment of a Matai Title:

- (1) The following requirements must be met in order for a Matai Title bestowment to be considered valid for registration under this Act:
 - (a) the person is appointed the holder of a Matai Title by and in accordance with the customs and usages of the Samoan people, including appointment in pursuance of a judgment of the Court; and
 - (b) a traditional ceremony of appointment in the village to which that Matai Title belongs is held; and
 - (c) that during the traditional ceremony under paragraph (b) -
 - (i) the person being bestowed a Matai title is physically present;
 - (ii) the village council of the village are physically present to acknowledge recognition of the bestowment of the Matai Title.
- (2) For the purpose of this section, a Sui-o-le-Nuu must attend the Matai Title bestowment ceremony to carry out his duties under this Act and where attendance is not possible, the Sui-o-le-Nuu may carry out his duties with written endorsement of not less than five (5) Matai that attended the ceremony.
- (3) Where a village is divided, the 'recognised village' means the village recorded according to the records of the Ministry of Women, Community and Social Development, and in the absence of such, a relevant decision of the Court.

*Division 3 - Matai Title Register***16. Registrar to keep Matai Title Register:**

- (1) The Matai Title Register (“Register”) is continued and must be maintained by the Registrar for the purpose of recording Matai Titles referred for registration under this Act.
- (2) The Registrar must register a Matai Title onto the Register:
 - (a) where for intention to bestow under Division 4 -
 - (i) no objections are made and the person meets the requirements of Division 6;
or
 - (ii) objections are made and the validity of the bestowment of the Matai Title is upheld by the Court;
 - (b) where for notification after bestowment of a Matai Title under Division 5 -
 - (i) no objections are made; or
 - (ii) if objections are made, the validity of the bestowment of the Matai Title is upheld by the Court.
- (3) If the Registrar is not satisfied that the requirements of section 15 are met, the Registrar must:
 - (a) not enter the Matai Title onto the Register;
and
 - (b) in writing notify the Matai Title holder that his or her Matai Title has not been entered onto the Register after which the person notified is to provide a written response to the

Registrar one (1) month after receiving that notice.

- (4) The Registrar must remove a Matai Title from the Register where:
 - (a) the Court has determined and issued an order for the removal of a Matai Title under section 14(1);
 - (b) the Registrar is satisfied that -
 - (i) upon application of a faapogai based on substantiated grounds that the person has vacated the Matai Title in question; or
 - (ii) the entry was made pursuant to an incomplete or defective folio forwarded by a Sui-o-le-Nuu under section 24; or
 - (iii) that the entry was made in error;
 - (c) the Registrar receives a request from the holder of a matai title, with reasonable grounds and supporting documentation.
- (5) The Registrar may remove a Matai Title from the Register upon an application of the Matai Title holder.
- (6) The Matai Title of a person that has been deleted from the Register under subsection (4)(a) must not be re-registered unless the person has again been appointed the holder of such Matai Title in accordance with the customs and usage of the Samoan people under this Part.

17. Objection to Registrar's decision not to enter or delete Matai Title:

- (1) A person may file a petition in Court objecting to the Registrar's decision made under section 16(3) or (4).
- (2) The Court may order that:
 - (a) the Matai Title of a person be entered onto the Register by the Registrar; or
 - (b) confirm the Registrar's decision.

Division 4 - Notification before a Matai Title is bestowed

18. Intention to bestow title:

- (1) A faapogai who intends to bestow a title to a Samoan may give notice of such intention to the Registrar which must be accompanied by the prescribed fee, at the office of the Court in Savaii or Upolu.
- (2) A person the subject of a notice under subsection (1) must meet the qualifications set out under section 12.
- (3) Upon receiving a notice under subsection (1), the Registrar must publish the particulars of the notice provided in three (3) consecutive issues of the Savali issued monthly.
- (4) The Registrar must ensure the notice specifies:
 - (a) the time limitation of four (4) months in which a person must file an objection petition to the intention to bestow title; and
 - (b) the place for an objection petition to be filed;
 - (c) the name of the faapogai;
 - (d) the name of the Matai Title holder;
 - (e) the Matai Title and the village where the Title was bestowed.

19. Objection may be filed against Notice of intention to bestow title:

- (1) A person may file an objection petition to the Court for determination against the notice published under section 18 and such objection shall provide:
 - (a) the kinship connection of the person objecting to the Matai Title the subject of the Notice;
 - (b) the reasons for objecting the intended Matai Title bestowment and the remedy sought; and
 - (c) any other prescribed requirements.
- (2) The objections to a petition must be published providing the names of the parties, the reason for the objection and the remedy sought within 20 days before hearing of the matter.

20. Procedure where no objection is filed:

- (1) If there is no objection to the proposed appointment, the Registrar shall, as soon as practicable after the time fixed for lodging objections, prepare, sign and file a petition to the Court for confirmation.
- (2) Upon receipt of the Court's confirmation under this section, the person the subject of a notice under section 18 must proceed with the required traditional ceremony for bestowment of a Matai Title.
- (3) Upon receipt of confirmation and particulars of the traditional ceremony bestowment of a Matai Title from the Sui-o-le-Nuu, the Registrar must register the Matai Title onto the Register.

21. Jurisdiction where there is no objection:

- (1) The Court has jurisdiction, *ex parte*, to confirm wholly or in part, and with or without modification, any claim for the bestowment of any title for a notice in which an objection has not been filed.
- (2) A proposed bestowment of title confirmed under this section may be set aside, in prescribed proceedings, for reason of error, misconduct or bad faith.
- (3) For all purposes any confirmation is regarded as a decision of the Court.
- (4) A confirmation by the Court under subsection (1) does not remove the obligation for a person to meet the requirements of Division 6.

Division 5 - Notification after bestowment of Matai Title

22. Notification after bestowment of Matai Title:

Where the Registrar receives for registration record for a Matai Title after the Title has been bestowed, the Registrar must before registration cause a Notice of the information provided pursuant to section 24 to be published:

- (a) in three (3) consecutive issues of the monthly issue of the Savali; and
- (b) setting out -
 - (i) the name of the faapogai;
 - (ii) the name of the Matai Title holder;
 - (iii) the Matai Title and the village where the Title was bestowed;

- (iv) the time limitation of four (4) months from the date of first publication of a notice to inform that an objection may be made against the Matai Title bestowed.

23. Objection to the Matai Title bestowed:

- (1) A person may file a petition in Court objecting to the Matai Title bestowed as set out in a Notice published under section 22.
- (2) A petition filed must be in accordance with section 19.
- (3) Where the Registrar is satisfied that the bestowment of a Matai Title has not been made in accordance with the Act, the Registrar must prepare, sign and file a petition for the Court to determine whether or not the Matai Title in question should be entered onto the Register.
- (4) The Court may either confirm the Matai Title bestowed or declare that the Matai Title bestowed is not valid under this Act.

Division 6 - Procedure after bestowment of Matai Title

24. Procedure after bestowment of Matai Title:

- (1) This section applies to matai titles bestowed after notification pursuant to Division 5, or before notification pursuant to Division 4.
- (2) A Sui-o-le-Nuu must within 14 days after a Matai Title is bestowed, do the following:

- (a) ensure the full name of the person bestowed with a Matai Title is entered correctly in the book approved by the Registrar, and that the name is the same in his or her birth certificate, passport or other legal identification means;
 - (b) enter and sign in triplicate in a book approved by the Registrar to be kept by the Sui-o-le-Nuu, the particulars of the traditional ceremony of appointment to the title, including whether the requirements of section 15 are met;
 - (c) forward to the Registrar from the book the original record containing those particulars;
 - (d) hand or forward to the new Matai Title holder from the book the duplicate record containing those particulars; and
 - (e) retain in the book the triplicate record containing those particulars until the book is full after which it must be returned to the Registrar for the issuance of a new book.
- (3) Despite subsection (2)(c), the duplicate record provided by a Sui-o-le-Nuu to the new Matai Title holder under subsection (2)(d) may be provided by the Matai Title holder to the Registrar for the Court's confirmation and Registration.
- (4) If a Matai Title is bestowed in a village that does not have a Sui-o-le-Nuu, and for the Matai Title to be registered, the faapogai may file a petition for the confirmation of the Court.

Division 7 - Offences relating to matai titles

25. False information and misleading:

A person:

- (a) who wilfully gives false information to the Registrar, Sui-o-le-nuu or person approved for the purpose of section 24(4); or
- (b) who intentionally misleads the Registrar, Sui-o-le-nuu or person approved for the purpose of section 24(4); and
- (c) including any Sui-o-le-nuu, who, without lawful excuse, breaches any duty required under section 24, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) years.

26. Wrongful use of a Matai Title:

A person other than the rightful holder who uses a Matai Title, or permits himself or herself to be addressed by a Matai Title, or acts as the holder of a Matai Title he or she has not been bestowed, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 12 months.

Division 8 - Interim Orders

27. Restriction on filing of application:

A petition must not be filed for a matter on which a final decision of the Court has been made, except with leave of the President.

28. Interim orders by President or Deputy President:

- (1) Upon the commencement of any proceedings and pending the final determination of the petition, leave to appeal application, or appeal by the Court, the President or Deputy President, sitting alone may make, either *ex parte* or otherwise, such interim orders as the President or Deputy President thinks fit as to the possession of the land, or the use of the title, or the exercise of the right to which the petition, leave to appeal application, or appeal relates.
- (2) An order made under this section is taken as an order of the Court, and is enforceable accordingly.

29. Interim orders by Registrar:

- (1) The Registrar may on the application of a party, before the commencement of proceedings, make an order the Registrar regards necessary to restrain any person from:
 - (a) remaining in possession of or entering upon any land;
 - (b) holding or using any Matai Title; or
 - (c) exercising any right or doing any act matter or things concerning or affecting any land or any Matai Title.
- (2) An order made under this section is taken as an order of the Court, and is enforceable accordingly.

30. Duration of interim order by Registrar:

- (1) An order under section 29 may be made *ex parte* or otherwise, and remains in force until the final judgment of the Court.

- (2) The President or Deputy President may after the commencement of proceedings, upon the application of any party affected by an order made under section 29, modify, vary or rescind the order.
- (3) The Registrar may before the commencement of proceedings, upon the application of any person affected by an order made under section 29, modify, vary or rescind the order.

Division 9 - Conciliation and Resolution

31. Genuine effort to resolve the dispute:

Each party to a matter in the Court is required to make a genuine effort to resolve the dispute before the commencement of a case by participating in mediation or Samoan conciliation.

32. Registrar to conduct Samoan conciliation:

- (1) The Registrar shall conduct Samoan conciliation in relation to any dispute prior to a petition being filed under this Act, with a view to resolving that dispute.
- (2) The process of Samoan conciliation shall be provided under rules of procedure to be prescribed under this Act.
- (3) The rules may provide for the Registrar to make suggestions on how a dispute may be resolved.
- (4) The Registrar may order costs for non-attendance under this section.

33. Judicial Settlement Conference:

- (1) The Court shall set a matter for a judicial settlement conference after it commences.
- (2) A Judge shall be appointed by the President to mediate the judicial settlement conference.
- (3) A Judge that acts as facilitator must not sit as a Judge on any of the same issues.
- (4) A settlement decision made under this section shall be called in open Court for confirmation as an order of the Court.
- (5) Rules may be prescribed setting out the procedure under this section.
- (6) The Judge may order costs for non-attendance under this section.

34. Dispute resolution processes:

The Court may at any time it deems fit order the parties to use a dispute resolution process during the progression of a matter and where such order is made, the Court may adjourn the matter.

PART 5 PROCEEDINGS

Division 1 - Land and Titles First Court

35. Institution of proceedings:

- (1) Proceedings before the Land and Titles First Court must commence on the filing of the petition in the prescribed form.

- (2) A petition filed must be published by the Registrar in three (3) consecutive issues of the monthly issue of the Savali.
- (3) The Registrar must set the matter for hearing when the requirements of this section are met.
- (4) An unpublished petition shall not be heard except by leave of the Court, which can only be granted on the exceptional nature of the matter on terms and conditions as the Court sees fit.

36. Sittings of the Court:

- (1) The time and places of sittings of the Court are determined by the Registrar after consulting the President.
- (2) The Court while sitting to hear any matter, may adjourn the hearing to any other time or venue.
- (3) A matter adjourned under subsection (2) must not be unreasonably delayed.
- (4) Two (2) or more Courts constituted under this Act:
 - (a) may sit at the same time in the same or different appointed venues; and
 - (b) have all the powers and jurisdiction of the Land and Titles First Court.

37. Registrar's functions and powers on hearings:

- (1) The functions of the Court which may be exercised by the Registrar if ordered by the President or the Deputy President or Vice President includes adjournment of matters or other matters for administrative purposes.

- (2) A direction made by the Registrar under this section, is regarded as a direction of the Court.
- (3) In preparation for a matter under this section, the Registrar may include certified copies of the faiga faavae referred to her or him under section 5A(3) of the Village Fono Act 1990.

38. Disputes on right of way:

In addition to the jurisdiction of the Land and Titles First Court in Part IX of the Constitution, the Court shall determine disputes involving right of way or access on customary land.

Division 2 - Land and Titles High Court

Subdivision A - Appeal

39. Grounds for Appeal:

Leave to appeal to the Land and Titles High Court may be granted on any of the following grounds:

- (a) that new and material evidence had been found since the hearing of the petition of which the applicant had no knowledge, or which could not reasonably have been adduced at the hearing of the petition;
- (b) that the successful party had been guilty of such misconduct in relation to the hearing of the petition as to affect the result of the case;
- (c) that a witness had been guilty of such misconduct in relation to the hearing of the petition as to affect the result of the case;

- (d) that a mistake has been identified and proven in relation to the hearing of the petition as to affect the result of the case;
- (e) that the Court did not have jurisdiction to make the decision or order;
- (f) that the decision or order is wrong in law or not in accordance with custom and usage;
- (g) that the decision or order was manifestly against the weight of the evidence adduced at the hearing of the petition;
- (h) a substantial wrong or a miscarriage of justice has occurred.

40. Leave to appeal application and response:

- (1) An appeal shall not be heard unless by leave of the Land and Titles High Court granted by the President or the Deputy President.
- (2) Within forty (40) days counting from the date of delivery of the decision of the Land and Titles First Court, a party may appeal a decision by filing:
 - (a) an application for leave to appeal detailing with support documentation the ground under section 39 relied on for appeal; and
 - (b) the prescribed fee.
- (3) A leave application filed under this section must be served on the respondent, who must file a response in the prescribed form, within 30 days from the date of receipt of the application.
- (4) The Registrar must not accept an application filed outside of the time specified under subsection (2), or a response file outside of the time specified under subsection (3).

41. Leave to appeal hearing:

- (1) The application for leave to appeal shall be heard before the President or Deputy President sitting alone on a date to be notified to each party by the Registrar in the prescribed form.
- (2) All parties may be heard and may make submissions.
- (3) The Land and Titles High Court may make such order on the application, as the President or Deputy President thinks fit.
- (4) The decision for leave to appeal must be made within 10 days from the date of the hearing.
- (5) In granting leave the Court:
 - (a) may order a stay of execution of the decision or order, pending the outcome of the appeal; and
 - (b) may grant requests for joinder parties; and
 - (c) may direct parties to prepare for issues identified to be determined; and
 - (d) may set the time and place for the appeal hearing which must be within 21 days from the date leave is granted; and
 - (e) must order the appellant to pay security for costs.

42. Appeal hearing:

- (1) An appeal must be by way of rehearing by the Land and Titles High Court as constituted in Article 104B of the Constitution.
- (2) The Court in its discretion may re-hear the whole or any part of the matter.

Subdivision B - Special Leave

43. Grounds for Special leave appeal:

- (1) A special appeal shall lie to the Land and Titles Court of Appeal and Review from a decision of the Land and Titles First Court and its appellate division in the repealed Act on the following grounds:
 - (a) the case involves a substantial question of the law in the interpretation or effect of clauses (5) and (6) of Article 104A; or
 - (b) the question involved is one which by reason of its general, customary or public importance or the magnitude of the interests affected, ought to be submitted to the Land and Titles Court of Appeal and Review.
- (2) An application in subsection (1) shall not be heard in the Land and Titles Court of Appeal and Review unless special leave is granted by the President.
- (3) This section applies to decisions made before the date of commencement of this Act.

44. Application for special leave and response:

- (1) An application for special leave under section 43, shall:
 - (a) be made in the prescribed form;
 - (b) be made within 12 months from the date of commencement of this Act;
 - (c) include the following -
 - (i) a copy of the notice of the appeal; and

- (ii) certified copies of all relevant documents, records and evidence, to support the application; and
 - (iii) the prescribed fee.
- (2) Upon receipt of an application, the Registrar must serve respondents in person where practicable and by publication of the Notice in three (3) consecutive issues of the Savali.
- (3) A respondent must file a response within 40 days from the date of receipt of the special leave application.
- (4) The Registrar may reject any application filed under this section that is not in accordance with the prescribed requirements.
- (5) In granting leave, the President may direct parties to prepare for issues identified to be determined.
- (6) Where leave is granted the Registrar shall consult the Chairperson of the Land and Titles Court of Appeal and Review to confirm the hearing date before notifying all parties.
- (7) Where a certificate is refused the Land and Titles Court of Appeal and Review may, if it is satisfied that the case involves a substantial question of law as to the interpretation of or effect of clauses (5) and (6) of Article 104A, grant special leave to appeal from that decision.
- (8) An appeal must be by way of rehearing by the Land and Titles Court of Appeal and Review as constituted under Article 104C under the Constitution.

Subdivision C - Case Stated

45. Case stated:

- (1) In any proceedings before the Land and Titles First Court, the Land and Titles First Court may reserve for consideration by the Land and Titles High Court, a case stated, and the Land and Titles High Court shall have the power to hear and determine such case stated.
- (2) In any proceedings before the Land and Titles High Court, the Land and Titles High Court may reserve for consideration by the Land and Titles Court of Appeal and Review, a case stated, and the Land and Titles Court of Appeal and Review shall have the power to hear and determine such case stated.

Division 3 - Land and Titles Court of Appeal and Review

Subdivision A - Appeal

46. Grounds for appeal:

- (1) The Land and Titles Court of Appeal and Review must not grant leave to appeal unless it is satisfied that it is necessary in the interests of justice for the court to hear and determine the appeal.
- (2) It is necessary in the interests of justice for the Land and Titles Court of Appeal and Review to hear and determine a proposed appeal if:
 - (a) the appeal involves a matter of general or public importance; or

- (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
- (c) the appeal involves a matter of general customary or cultural significance.

47. Leave to appeal application and response:

- (1) An appeal shall not be heard unless by leave of the Land and Titles Court of Appeal and Review granted by the Chairperson.
- (2) Within forty (40) days counting from the date of delivery of the decision of the Land and Titles High Court, an appellant may file:
 - (a) an application for leave to appeal in the prescribed form; and
 - (b) a Notice of Appeal in the prescribed form; and
 - (c) the prescribed fee.
- (3) The Respondent must file a response within 30 days counting from the date of receipt of the application.
- (4) The Registrar must not accept an application filed outside of the time specified under subsection (2), or a response file outside of time under subsection (3) unless otherwise directed by the President.

48. Leave to appeal hearing:

- (1) The application for leave to appeal shall be heard before the Chairperson sitting alone on a date to be notified to each party by the Registrar in the prescribed form.

- (2) All parties may be heard and may make submissions.
- (3) The Land and Titles Court of Appeal and Review may make such order on the application, as the Chairperson directs.
- (4) The decision for leave to appeal must be made within 10 days from the date of the hearing.
- (5) In granting leave, the Chairperson:
 - (a) may order a stay of execution of the decision or order, pending the outcome of the appeal; and
 - (b) may direct parties to prepare for issues identified, to be determined; and
 - (c) may set the time and place for the appeal hearing which must be within 60 days from the date leave is granted; and
 - (d) must order the appellant to pay security for costs.

49. Appeal hearing:

- (1) An appeal must be by way of rehearing by the Land and Titles Court of Appeal and Review as constituted in Article 104C of the Constitution.
- (2) The Court in its discretion may re-hear the whole or any part of the matter.

Subdivision B - Judicial Review

50. Grounds for judicial review:

The grounds for review in the Land and Titles Court of Appeal and Review are common law grounds of judicial review, such as illegality, irrationality and procedural impropriety.

51. Rules of Procedure:

- (1) A motion for judicial review may be filed at any time after the date of the decision or order of the Land and Titles First Court or Land and Titles High Court that is the subject of the review, together with the prescribed security for costs.
- (2) At the commencement of this Act, the rules of procedure for judicial review matters in the Supreme Court, applies to this Act until replaced and become part of the Rules under section 62.

*Division 4 - Decision of the Court***52. Application:**

This Division applies to the Land and Titles First Court, Land and Titles High Court and Land and Titles Court of Appeal and Review.

53. Discontinuance of proceedings:

- (1) The Court with the consent of all parties, may order that proceedings that commenced be discontinued, and such proceeding must be held in open court.
- (2) A petition filed but not served is deemed discontinued at the request of the petitioner before the Registrar, with all paid fees refunded.

54. Delivery of judgments:

- (1) A full judgment is to be delivered in open Court:
 - (a) for the Land and Titles First Court, by the Vice President presiding or a member of the panel appointed by the Vice President

- within three (3) months of the last date of the proceedings; and
- (b) for the Land and Titles High Court, by the President or Deputy President presiding or a member of the panel appointed by the President within three (3) months of the last date of the proceedings; and
 - (c) for the Land and Titles Court of Appeal and Review, by the Chairperson or a member of the Court appointed by the Chairperson within three (3) months after the last date of hearing.
- (2) Where the timelines in subsection (1) are impractical due to unforeseen and exceptional circumstances, the Court may deliver its judgment in any other form within one (1) month from the last date of the timeline in subsection (1).

55. Reasons for judgments:

- (1) The Court must in every decision on a petition, appeal or application for review, give reasons for such decision.
- (2) For leave to appeal decisions, the reasons may be stated briefly and in general terms only.
- (3) The Court must give reasons for a decision for an application for an interim order or in an application for an interim injunction.

56. Decisions and orders not reviewable by other Courts:

- (1) Subject to Part IX of the Constitution and this Act, no decision or order of the Land and Titles Court of Appeal and Review, Land and Titles High Court or Land and Titles First Court shall be reviewed or questioned in any other Court by way of appeal, or prerogative writ or otherwise whatsoever.
- (2) A decision of the Land and Titles Court of Appeal and Review is final, pursuant to Article 104C(9) of the Constitution.

57. Supreme Court and Court of Appeal Decisions not binding:

- (1) The decisions of the Supreme Court and Court of Appeal are not binding on the Land and Titles First Court, Land and Titles High Court or Land and Titles Court of Appeal and Review.
- (2) All decisions of the Supreme Court and the Court of Appeal on matters the subject of the jurisdiction of the Land and Titles First Court issued and delivered prior to the commencement of the Constitution Amendment Act 2020 and this Act, shall not bind the Land and Titles First Court, the Land and Titles High Court and the Land and Titles Court of Appeal and Review.
- (3) All rights or interests created or vested by the decisions referred to in subsection (2) shall subsist.

58. Orders as to costs:

- (1) In any proceedings the Court may make such order as it thinks just, as to the payment of the costs of the proceedings, or of any matter incidental or preliminary to the proceedings, by or to any person who is a party to the proceedings.
- (2) If the Court is of the opinion:
 - (a) that any proceeding is frivolous or vexatious;
or
 - (b) that any petition, application or objection in respect of the proceedings is frivolous or vexatious,it may, if it thinks fit, irrespective of the result of the proceedings, allow any party the whole or any part of his or her costs in defending or disputing the frivolous and vexatious proceedings.
- (3) In any proceeding and at any stage of the hearing, the Court may require any party to deposit any sum of money as security for costs, and in default of making the deposit the Court may stay the proceedings either wholly or in respect of the party in default.
- (4) The sum deposited is disposed of in such manner as the Court directs.

Division 6 - Enforcement and Offences

59. Enforcement of decisions and orders of the Court:

- (1) A decision or order of the Court shall be enforced in and by the Supreme Court or, as the case may be, by the District Court.

- (2) A sealed copy of the decision or order to be enforced under this section is to be filed in the Supreme Court, or the District Court.

60. Offence proceedings:

- (1) A person commits an offence and is liable upon conviction to a fine of 10 penalty units or to imprisonment for six (6) months who:
 - (a) disobeys any decision or order of the Court, or any order made under section 28 or 29;
 - (b) uses any abusive, insulting, offensive or threatening words or behaviour in the presence of the Court, or writes any such words to a member or officer of the Court;
 - (c) assaults, resists, obstructs, or incites any other person to assault, resist, or obstruct, any constable, surveyor, or officer of the Court in serving any process of the Court or executing any decision or order of the Court;
 - (d) by any words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court;
 - (e) fails to appear without lawful excuse on a summons or a date notified by the Court relating to the hearing of any proceedings before the Court;
 - (f) fails to appear without lawful excuse to appear on a date notified for any procedure of the Court;
 - (g) being a party to a petition, fails to be present at the time and place appointed for a survey under section 11.

- (2) Proceedings for an offence under this section, section 6(3), section 25 and section 26, are to be commenced in the District Court.

61. Non-Prosecution of matter:

- (1) If a Petitioner does not pursue with due diligence his petition filed in the Land and Titles First Court any other party may apply to the President to dismiss the petition.
- (2) If the Petitioner does not appear at the time appointed for hearing of his or her petition, the Land and Titles First Court may dismiss the petition.
- (3) In respect in subsection (1) the President or the Court may order the Petitioner to pay cost to any party.
- (4) If an Appellant does not prosecute his or her appeal with due diligence filed in the Land and Titles High Court or Land and Titles Court of Appeal and Review, any other party may apply to the President or Chairperson to dismiss the appeal.
- (5) If the Appellant does not appear at the time appointed for hearing his appeal, the Court may dismiss the appeal.
- (6) In respect of subsection (4), the President or the Chairperson or the Court may order the Appellant to pay cost to any party.

PART 6

RULES OF PROCEDURE OF THE COURTS

62. Rules for the procedures of the Courts:

- (1) Except for the rules in section 51, the Head of State acting on the advice of the Komisi may make rules

for the purpose of regulating the practice and procedure of the Land and Titles First Court, Land and Titles High Court and Land and Titles Court of Appeal and Review, in all matters within their jurisdictions.

- (2) The rules of Court made under subsection (1) shall be referred to as the “Land and Titles Court Procedure Rules”.
- (3) The Rules of Court may make provision for:
 - (a) in the Land and Titles First Court -
 - (i) filing of petitions required under this Act;
 - (ii) notification process for petitions filed under this Act;
 - (iii) service of petitions and responses; and
 - (b) in the Land and Titles High Court and Land and Titles Court of Appeal and Review proceedings -
 - (i) leave for appeal, appeal; and
 - (ii) judicial review proceedings.
- (4) The rules must also provide for:
 - (a) trial management, including -
 - (i) that the Court must allow a right of response or question by any party to an issue arising from matters raised before it; and
 - (ii) not consider any matter that is not part of any evidence presented before it;
 - (iii) follow precedent set in other matters already decided by it, if it is relevant; and

- (b) categories of relevant evidence permitted to be presented before the Court;
 - (c) the adjournment of proceedings; and
 - (d) mediation and preliminary conferences prior to a hearing; and
 - (e) the prevention or termination of frivolous or vexatious proceedings; and
 - (f) the summary disposal of proceedings; and
 - (g) how a person makes a submission to the Court; and
 - (h) dispute resolution processes and the procedure to be followed when any dispute resolution process ends; and
 - (i) consent orders where parties have reached agreement about a matter in dispute in the proceedings; and
 - (j) such other matters as the Court thinks appropriate.
- (5) In any matter of practice or procedure not provided for, or where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient, the Court may act in each case in such manner as it considers most consistent with Samoan custom and usage and natural justice and convenience.

63. Regulations:

- (1) The Head of State may, acting on the advice of Cabinet, make Regulations to give effect to or for the purposes of this Act, and in particular to prescribe fees and charges for the purposes of this Act.

- (2) The amount of any fee or charge prescribed in subsection (1):
- (a) shall be proposed by the Ministry in consultation with the President of the Land and Titles First Court; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

64. Engaging a lawyer:

A lawyer may be engaged to represent any party to a judicial review proceeding before the Land and Titles Court of Appeal and Review.

PART 7

VILLAGE FONON ACT MATTERS

65. Appeals from the Village Fonon:

The rules of procedure provide for the process of appeals which shall be instituted by filing a petition, from the Village Fonon, under sections 6 and 11 of the Village Fonon Act 1990.

PART 8

MISCELLANEOUS

66. Repeal:

The Land and Titles Act 1981 is repealed.

67. Savings and transitional provisions:

- (1) All Matai Titles entered onto and deleted by the Registrar under the repealed Act is treated as having been entered onto or deleted from the Register by the

Registrar under this Act, at the commencement of this Act.

- (2) The provisions of the repealed Act are saved for the purpose of determination of a petition filed before the commencement of this Act, at the commencement of this Act.
- (3) All records, instruments, nominations, appointments, warrants, decisions, orders and generally all documents and acts of authority originating under the repealed Act, and which are subsisting at the commencement of this Act, shall ensure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act and accordingly shall, where necessary, be deemed to have so originated.
- (4) The repeal of the Land and Titles Act 1981 does not affect any claim, title, right or interest created or vested under that Act, nor any instrument or document in support, and every such claim, title, right, interest, instrument or document shall continue in force and have effect as if this Act had not been passed or as if made or done under the corresponding provisions of this Act.
- (5) Employees employed under the repealed Act are taken to be employed under this Act, at the commencement of this Act.
- (6) An appointment under the repealed Act that is not provided for in this Act is revoked at the commencement of this Act.

- (7) The Appellate Division of the Land and Titles First Court is the Land and Titles High Court at the commencement of this Act.

68. Consequential amendments:

- (1) The Village Fono Act 1990 is amended:
- (a) in section 5D -
- (i) inserting the following as subsection (2):

“(2) The Register is open to search and inspection by the public.”; and

- (ii) renumber subsection (1) accordingly;
- (b) substitute section 5E with the following:

“5E. Use of *faiga faavae* in Land and Titles First Court:

The Land and Titles First Court’s may refer to and consider a registered *faiga faavae* where it is relevant to a Land and Titles First Court proceeding before it.”;

- (c) by repealing section 11(6).
- (d) in section -
- (i) 2 by omitting the definition of “registrar”; and
- (ii) 3 by substituting “Registrar” with “Chief Executive Officer”.
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REVISION NOTES 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division in 2020/3 March 2021 under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement dates.
- (b) Revision to correct grammatical error in section 40(2)(a) – by removing the word “for” before the word “appeal”.
- (c) Revision to correct cross referencing in:
 - (ii) Section 51(2); and
 - (iii) Section 44.



Savalenoa Mareva Betham-Annandale
Attorney General of Samoa

*This Act is administered
by the Ministry of Justice and Courts Administration.*