

TANGANYIKA



No. 10 OF 1964

I ASSENT,

Julius K. Nyerere
.....
President

5TH MARCH, 1964

An Act to provide for the Preservation and Protection of Sites and Articles of Palaeontological, Archaeological, Historical, or Natural Interest and for matters connected therewith and incidental thereto

[.....]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Antiquities Act, 1964, and shall come into operation on such day as the Minister shall, by notice in the *Gazette*, appoint. Short title and commencement

2.—(1) In this Act, unless the context otherwise requires—

Interpretation

“relic” means any movable object made, shaped, painted, carved, inscribed or otherwise produced or modified by human agency before the year 1863, whether or not it shall have been modified, added to or restored at a later date, and any human or other vertebrate faunal or botanical fossil remains or impressions;

“appointed day” means the day appointed by the Minister in accordance with section 1;

“Commissioner” means the Commissioner for National Culture;

“Conservator” means the person for the time being appointed to perform the functions of Conservator of Antiquities;

“discovery” means the finding on or under land, or in anything growing on the land, or attached to or within the fabric or foundations of any structure of any object, site or structure the presence of which was previously unknown to the owner thereof, but does not include the recognition or identification as a relic, or as a relic of a particular description, of any movable object previously in the known possession of any person, unless such object was so found;

“Honorary Antiquities Warden” means a person appointed by the Commissioner under section 22;

"Minister" means the Minister for the time being responsible for antiquities;

"the Museum" means the National Museum of Tanganyika;

"monument" means-

- (a) (i) any building, fortification, interment, midden, dam or structure erected, formed or built by human agency before the year 1863, or the ruins or remains thereof; and
- (ii) any rock painting or carving or any natural object painted, incised, modified or erected in Tanganyika by human agency before the year 1863; and
- (iii) any earthwork, trench, adit, well, road or other modification of the soil or rock, dug, excavated or otherwise engineered by human agency before the year 1863, whether or not it shall have been modified, added to or restored at a later date and whether or not it is included in a list published by the Commissioner under this section, and
- (b) any other place, site or structure declared to be a monument under section 3,

and includes such adjoining land as may be required for the purposes of fencing, covering or otherwise preserving the monument from injury;

"protected object" means-

- (a) any wooden door or door frame carved before 1940 in any African or oriental style; or
- (b) any object declared by the Minister under the provisions of section 9 to be a protected object.

(2) The Commissioner may from time to time, by notice in the *Gazette*, publish lists of monuments, and the inclusion of any place, site or structure in any such list for the time being in force shall be prima facie evidence in all proceedings, whether criminal or civil, that the same is a monument within the meaning ascribed to that expression in paragraph (a) of the definition "monument" in subsection (1). Any person aggrieved by the inclusion of any place, site or structure in a list published under this subsection may appeal therefrom to the Minister.

MONUMENTS

Declaration of places of historical interest as monuments

3.-(1) The Minister may, by order in the *Gazette*, declare any place, site or structure of historical interest to be a monument for the purposes of this Act.

(2) Any person aggrieved by an order under this section may apply to the Minister for a review of the order.

Control of monuments

4. (1) The Commissioner, and any person authorized by him, may, at all reasonable times-

- (a) enter and inspect any monument;
- (b) fence, repair and otherwise protect or preserve any monument;
- (c) search and excavate for relics in any monument and remove any relics hitherto undiscovered:

Provided that-

- (i) where the monument is a place of ordinary habitation or occupation, the Commissioner and any such person aforesaid shall give the occupier not less than forty-eight hours' notice in writing of his intention to exercise any of the powers specified in this subsection;
- (ii) nothing in this section shall authorize-
 - (A) the exclusion of the owner or any person beneficially interested in a monument, or any person authorized by him, from any part of the monument;
 - (B) the excavation of any monument, or any search for relics in a monument which is a place of ordinary habitation or occupation without the consent of the owner.

(2) Any person who willfully obstructs the Commissioner or any other person authorized by him in that behalf in the exercise of his powers under, subsection (1) shall be guilty of an offence against this Act.

5.-(1) Subject to the provisions of subsection (2), no person, whether beneficially interested therein or not, shall do any of the following acts to or in relation to any monument or protected object declared as such by the Minister under section 3, or included in a list published by the Commissioner under section 2 and for the time being in force, or to any other place, site or structure which he knows or has reasonable cause to believe to be a monument, that is to say-

Restriction
on certain
in relation
to
monuments

- (a) destroy, injure or deface the same or make any alteration, addition or repair thereto;
- (b) write, draw or carve any writing, drawing or figure thereon;
- (c) permit any animal under his control to damage the same or to enter any part thereof fenced by or on behalf of the Commissioner or the owner;
- (d) alter the course of cultivation so as to affect to its detriment any part thereof of palaeontological, archaeological, historical or natural interest.

(2) Nothing in this section shall apply to-

- (a) the Commissioner;
- (b) any act done under and in accordance with the written approval of the Commissioner.

6. The Minister may acquire any monument in accordance with the provisions of the Land Acquisition Ordinance as modified by this Act.

Acquisition
by the
Minister
Cap. 118

7.-(1) Where any person who would be entitled, were the monument to be compulsorily acquired, to compensation there for in accordance with the Land Acquisition Ordinance and this Act, has applied to the Commissioner for a licence to demolish, alter, make additions to or repair any monument to which this section applies and the Commissioner has refused or neglected to issue his licence, or has issued the licence subject to such conditions as will defeat the purpose of the demolition, alteration, addition or repair, he may, within, two months after such refusal or the

Owners may
require
Minister to
acquire

issue of such licence, as the case may be, or if the Commissioner has not issued a licence or refused to issue the same within two months of the application, within a further period of two months, serve notice on the Minister requiring him to elect whether to direct the issue of such licence or the removal of such conditions, as the case may be, or to acquire the monument, and the Minister shall make an election accordingly.

(2) Where the Minister elects to direct the issue of a licence or the removal of any such conditions, he shall, within one month of his receipt of the notice requiring him to make an election, give such directions to the Commissioner and the Commissioner shall forthwith give effect thereto.

(3) Where the Minister elects to acquire the monument, he shall, within one month of his receipt of the notice requiring him to make election, serve a notice or notices under section 5 of the Land Acquisition Ordinance, and, subject to the provisions of section 26 of this Act, the provisions of that Ordinance shall apply to the acquisition.

(4) This section shall apply to a monument-

- (a) which is included in an order made by the Minister under section 3; and
- (b) is situated in a municipality, or within the area of a town council or a township; and
- (c) is a place which was habitually used prior to the making of the order for habitation, commerce, trade or industry and has been continually so used thereafter.

RELICS AND PROTECTED OBJECTS

Relics discovered in Tanganyika to be property of Republic

8.-(1) Every relic discovered in Tanganyika, whether before or after the appointed day, other than a relic properly included in a list delivered to, and signed by, the Commissioner in accordance with the provisions of section 17, shall be the property of the Republic:

Provided that the Commissioner may, on behalf of the Republic, disclaim the ownership of any such relic, and upon such disclaimer the property of the Republic, and any property of the President, therein shall be extinguished.

(2) Nothing in subsection (1) shall apply to any relic discovered in Tanganyika before the appointed day which is, on that day, in the possession of or held on trust for the Trustees of the Museum or the trustees or other governing body of any other museum, university or similar institution to which the Minister may extend the provisions of this subsection.

Protected objects

9.-(1) The Minister may, by order in the *Gazette*, declare any object or class of objects discovered or made in Tanganyika and being of palaeontological, archaeological, historical or natural interest to be a protected object.

(2) Any person aggrieved by any order made under this section may apply to the Minister for a review of the order.

DISCOVERY AND EXCAVATION

10.-(1) Any person who, discovers a relic or monument, or any object or site which may reasonably be supposed to be a relic or monument, in Tanganyika, otherwise than in the course of a search or excavation made in accordance with a licence granted under section 13, and the occupier of any land who knows of any such discovery on or under such land, shall forthwith report the same to an administrative officer, the Commissioner, the Conservator or the Curator of the Museum. The discoverer of such a relic, monument, object or site shall take such steps as may be reasonable for the protection thereof and shall, where he makes a report concerning a portable relic or object, if so required (and on payment of the cost of delivery if any) deliver such antiquity or object to an administrative officer, the Commissioner, the Conservator or the Curator of the Museum, as the case may be.

Discovery
of relics
and
monuments

(2) Every administrative officer to whom a relic is delivered or a report is made under this section shall forthwith report the same in writing to the Commissioner.

(3) The Trustees of the Museum shall maintain a register of all matters reported to the Curator under this section and shall permit the Commissioner or any person authorized by him in writing to, examine the same and any antiquity or object delivered to the Curator and, if the Commissioner does not disclaim any such antiquity in accordance with the provisions of section 8, shall deliver the same to him at his request.

(4) The Commissioner and any person authorized by him in writing, may enter upon any lands and inspect the site of any monument or supposed monument or the site of the discovery of any relic or supposed relic required to be reported under this section.

(5) Any person who fails to comply with any of the provisions of subsection (1) or (3), or who obstructs the Commissioner or any person authorized by him in writing in that behalf in the exercise of his powers under subsection (3) or (4), shall be guilty of an offence against this Act.

11.-(1) No person, except the Commissioner or a person acting in his behalf, shall, whether on his own land or elsewhere-

- (a) excavate, dig or probe for monuments or relics; or
- (b) remove any relic hitherto undiscovered from any monument, or collect or remove any object which he supposes to be a relic from the site of its discovery, otherwise than for the purposes of preserving the same and reporting the discovery under the provisions of section 10 or in accordance with a requisition under that section,

except under and in accordance with an excavation licence issued by the Commissioner.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence against this Act.

12. An excavation licence shall be granted only to a person who satisfies the Commissioner-

- (a) that he has had sufficient scientific training or experience to enable him to carry out the proposed excavation or search satisfactorily; and

No excava-
tions, etc.,
without
licence

Person to
whom
licences
may be
granted

- (b) that he has at his disposal sufficient staff and financial and other resources to enable him to carry out the, proposed excavation or search satisfactorily; and
- (c) that he is able to conduct, or arrange for, the proper scientific study and publication of any materials discovered.

Licences

13.-(1) An excavation licence may be granted for such period not exceeding a year as the Commissioner may allow and may be renewed for a further period or periods, not exceeding a year at any one time.

(2) An excavation licence shall not constitute an authority to the licensee to enter upon or excavate any land without the consent of the owner thereof.

(3) The Commissioner may include in any excavation licence any terms which he considers necessary or expedient for the proper conduct of the excavation or search, the reporting, mapping and documenting thereof, the preservation of materials discovered, their removal, examination and return, and the making and delivery of casts, squeezes and other reproductions.

(4) In addition to any obligations conferred upon the licensee by the excavation licence, the licensee shall take all reasonable measures in accordance with current scientific practices, for the preservation of any relics or monuments discovered by him.

(5) The Commissioner may cancel any excavation licence if the licensee fails to conform with the obligations imposed on him by this Act and the terms of his licence.

(6) Any person aggrieved, by the refusal of the Commissioner to grant a licence to himself, or by the cancellation of his licence, may appeal against such refusal or cancellation to the Minister.

EXPORTS AND SALES

Export

14.(1) No person shall export from Tanganyika any-

- (a) relic discovered in Tanganyika;
- (b) monument or part thereof; or
- (c) protected object,

except under and in accordance with a licence issued by the Commissioner.

Provided that-

- (i) the Commissioner shall not withhold his licence, in the case of any relic disclaimed by him in accordance with the provisions of section 8; and
- (ii) the Commissioner and any person acting on his instructions may export any such relic, monument, or part thereof, or protected object for the purposes of exhibition, or of repair, examination, study or other scientific purpose.

(2) Any person who exports or attempts to export any relic, any monument or part thereof, or any protected object in contravention of subsection (1) shall be guilty of an offence against this Act.

15.-(1) No person shall sell or exchange any relic discovered in Tanganyika, or any protected object, except under and in accordance with a licence issued by the Commissioner. sales

(2) Before issuing a licence under this section, the Commissioner may require the applicant to produce to him the relic or object; and he may issue a licence subject to such conditions relating to the reporting or recording of any sale or exchange as he may think fit.

(3) The Commissioner may refuse to grant-

(a) a general licence under this section; or

(b) a particular licence under this section

(i) to any person who has been convicted of an offence against this Act, or who has been convicted, whether in Tanganyika or elsewhere, of any other offence involving fraud, dishonesty or stolen property, at any time during the three years next preceding the date of application therefor;

(ii) unless the relic or object is first produced to him,

but, save as aforesaid, he shall issue a licence on the applicant paying any prescribed fee and furnishing any prescribed particulars.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence against this Act.

POWERS OF LOCAL GOVERNMENT AUTHORITIES

16. (1) The powers conferred by or under the Municipalities Ordinance and the Local Government Ordinance upon local government authorities to make by-laws or to, perform functions shall be deemed to include power, subject to the approval of the Minister, to, make by-laws and to perform functions in relation to the preservation of, and access to, monuments (including, with the consent of the owner or other person beneficially interested therein, power to fence, repair and otherwise preserve and protect, and to erect notices or tablets giving information relating to, monuments).

(2) The approval of the Minister required by subsection (1) for the making of by-laws shall be in addition to any approval, concurrence or consent required by any other law for the making thereof.

Power of
local
authorities
relating to,
monuments

MISCELLANEOUS

17.-(1) Every person in possession on the appointed day of any relics discovered in Tanganyika before the appointed day shall within six months after the appointed day deliver to the Commissioner two copies of a list describing such relics to the best of his ability. Upon being satisfied that the relics described in any such list are properly included therein, the Commissioner shall sign one copy of the list and return it to the person by whom it was delivered.

Relics
found in
Tanganyika
before the
appointed
day

(2) At any time within a period of two years after the appointed day-

(a) the Commissioner may, on payment by him of the costs, if any, of delivery, require any person for the time being in possession of any relic included in a list delivered under this section, to deliver such relic to the Commissioner;

(b) the Commissioner may require any person who has been in possession of any such relic at any time during such period but has since disposed of the same, to, inform the Commissioner of the name and address of the person to whom he disposed of it.

(3) Any person who fails to comply with any requirement of the Commissioner under subsection (2), or who in purported compliance with such a requirement gives the Commissioner any information which he knows to be false or does not believe to be true shall be guilty of an offence against this Act.

(4) The Commissioner and any person acting on his instructions-

(a) may carry out tests and examinations on, and may photograph and make casts, squeezes and other reproductions of, any relic delivered to him under this section; and

(b) shall return the relic to the person by whom it was delivered to, the Commissioner within one year of its being so, delivered.

(5) Neither the Commissioner nor any person acting in accordance with his instructions shall be liable for any damage to, or loss of, any relic delivered to the Commissioner in accordance with the provisions of this section unless occasioned by his gross negligence or willful default.

(6) Nothing in subsections (1), (2) or (3) of this section shall apply to the Trustees of the Museum or to the trustees or other governing body of any other institution to which subsection (2) of section 8 extends.

Burden of
proof

18. In any proceedings, whether civil or criminal-

(a) in connection with a relic or an alleged relic, proof of the object being in Tanganyika at any particular time and of its having been made, shaped, painted, carved, inscribed or otherwise produced by human agency before the year 1863 shall be evidence of its having been discovered in Tanganyika, and the burden of proving-

(i) that the object was not discovered in Tanganyika; or

(ii) that it was discovered in Tanganyika before the appointed day and included in a list delivered to and signed by the Commissioner in accordance with the provisions of section 17,

shall lie upon the person asserting the same:

Provided that where any such person satisfies the court that the object has been in his possession, or in the possession of himself and any identifiable person or persons from whom he derived title, for a period of not less than six years, or that he, or an identifiable person from whom he derived title, imported the object into Tanganyika, the burden of proving the discovery thereof in Tanganyika shall revert to the person asserting such discovery;

(b) in connection with a monument or relic, or an alleged monument or relic, a certificate purporting to be under the hand of the Conservator that the relevant place, site, structure or object was made, shaped, painted, carved, inscribed or otherwise

produced or modified by human agency, or erected, formed, built, incised, dug, excavated or otherwise engineered by human agency, before the year 1863, shall be evidence of the matter stated therein.

19.-(1) The Minister shall, as occasion requires, appoint an Advisory Council for the purposes of this Act and such Council shall consist of three persons appointed by the Minister, one of whom shall be nominated by the Principal of the University College of Dar es Salaam.

(2) The Minister shall refer to the Council for its advice any application for a review and any appeal under this Act, and any representations made to the Minister against the acquisition of any monument under the provisions of section 6, but shall not be bound to accept the advice of the Council.

20.-(1) It shall be lawful for the Commissioner and any person acting under his instructions to erect any notice or tablet in suitable places for the purpose of preserving or giving information about, any monument, relic, or protected object, excavated or discovered, in the vicinity thereof or about any historical events which occurred at such places save that no such notice or tablet shall be erected-

Power to erect notice or tablet

- (a) on public land under the jurisdiction of a local authority under the provisions of the Municipalities Ordinance or the Local Government Ordinance without the consent of such local authority;
- (b) on any public highway as defined by section 2 of the Highways Ordinance without the consent of the road authority under whose jurisdiction the public highway lies.

Cap. 333

Cap. 167

(2) Whoever, without the authority of the Commissioner, destroys, pulls up, defaces, breaks, damages or removes any such notice or tablet shall be guilty of an offence.

21. The Commissioner may-

- (a) give; or
- (b) lend for purposes of display or exhibition; or
- (c) hand over for safe-keeping,

Power to hand over relics to museums, etc.

any relic or protected object to any museum, exhibition or scientific institution, except that in the case of (b) and (c) *supra* he may impose such conditions as he may deem fit as regards provision for the preservation, insurance and return of such relic or protected object:

Provided that no relic or protected object shall be given, lent or handed over to any museum, exhibition or scientific institution outside Tanganyika without the consent of the Minister.

22. The Commissioner may appoint fit and proper persons to be Honorary Antiquities Wardens for the purpose of assisting in the carrying out of the provisions of this Act and, in particular, but without prejudice to the generality of the foregoing, in the prevention and detection of offences under this Act.

Power to appoint Honorary Antiquities Wardens

- Arrest **23.**-(1) Where the Commissioner, Conservator or any Honorary Antiquities Warden has reason to believe that any person has committed an offence against this Act, he may require such second-mentioned person to furnish him with his name and address and reasonable evidence of his identity; and where any such second-mentioned person refuses to give his name and address and reasonable evidence of his identity, the Commissioner, Conservator or any Honorary Antiquities Warden shall have power to, arrest such person without warrant.
- (2) Any person who; refuses or neglects to furnish the Commissioner, Conservator or any Honorary Antiquities Warden with his name or address or reasonable evidence of his identity when so required under this section or furnishes a false name or address or false evidence of identity shall be guilty of an offence against this Act.
- Penalty **24.** Any person guilty of an offence against this Act shall be liable on conviction to a fine not exceeding Shs.10,000/- and, in addition, in the case of a continuing offence, to a fine not exceeding Shs. 1,000/- for each day during which the contravention of the relevant provision persists.
- Rules **25.** The Minister may make rules for the better carrying into effect of the provisions of this Act and, without prejudice to the generality of the foregoing, may make rules-
- (a) regulating the procedure and practice of the Advisory Council;
 - (b) regulating the sale and exchange of monuments;
 - (c) regulating the conduct of excavations;
 - (d) prescribing the powers and duties of Honorary Antiquities Wardens which may include powers and duties conferred or imposed by the Act on the Conservator other than those under sections 2, 8, 13, 14, 15, 17, 20 and 21;
 - (e) prohibiting and regulating access to monuments;
 - (f) restricting and regulating the charging of entrance fees to, monuments;
 - (g) prescribing anything which may be prescribed:
- Provided that no, rules under the provisions of Paragraph (e) or (f) shall restrict, otherwise than by limiting the charging of entrance fees therefor, the entry of the owner or any person beneficially interested therein, or any person authorized by such owner or person, from entry into or upon any monument.
- Application of Land Acquisition Ordinance **26.** Where the Minister determines to acquire any monument in accordance with the provisions of section 6, or elects to acquire a monument in pursuance of section 7, the acquisition shall be deemed to be an acquisition for a public purpose within the meaning of the Land Acquisition Ordinance, and the provisions of that Ordinance shall have effect as if the references therein to the President (other than those references relating to the vesting in the President of any title to the land acquired), and to the Minister for the time being responsible for lands, were references to the Minister for the time being responsible for antiquities:

Provided that—

- (a) the provisions of section 17 of the Land Acquisition Ordinance shall not apply where the Minister elects to acquire a monument under section 7 of this Act; and
- (b) in assessing the amount of any compensation payable, no account shall be taken of any palaeontological, archaeological or historical value unless the person entitled to compensation paid any sum referable thereto when he acquired his interest in the land.

27.—(1) The Monuments Preservation Ordinance and the Monuments (Preservation) Ordinance are hereby repealed. Repeal
and
amendment
Caps. 233
and 327

(2) Section 2 of the Land Acquisition Ordinance is hereby amended by deleting paragraphs (g) and (h) of the definition “public purposes” therein.

Passed in the National Assembly on the nineteenth day of February, 1964.


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Clerk of the National Assembly