
CHAPTER 167**FENCING**

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CHAPTER 10

FENCING

*Ordinances Nos. 31 of 1955, 22 of 1956, Legal Notices Nos. 112 of 1970, 118 of 1970,
Act 14 of 1975, Legal Notice No. 83 of 1979.*

AN ACT RELATING TO THE ERECTION AND REPAIR OF DIVIDING
FENCES

[16 December 1955]

Short title

1. This Act may be cited as the Fencing Act.

Interpretation

2. In this Act, unless the context otherwise requires—
 “adjoining occupiers” means the occupiers of the lands on each side of a fence;
 “Crown lands” includes all lands of whatsoever description vested in the Crown;
 “fence” and “sufficient fence” means a sufficient fence of any of the kinds mentioned in the First Schedule separating the lands of different occupiers and include all necessary gates, floodgates, culverts and channels;
 “occupier” in relation to land means the person in actual occupation, or where there is no person in actual occupation, the owner;
 “prescribed” means prescribed by regulations made under this Act;
 “to repair” includes to trim, keep and maintain a live fence, and to clean, deepen, or straighten a river, creek, ditch, or natural or artificial watercourse used as a fence;
 “unalienated land” means land not the subject of sale, lease, grant, transfer or exchange.

(Amended by Ordinance 22 of 1956, s.2.)

Act not to apply to unalienated Crown land

3.—(1) This Act shall apply to land in any area or areas which the Minister may from time to time designate other than unalienated Crown lands or land within the boundaries of any city, town or native land which is both unalienated and not in actual occupation. *(Amended by Legal Notice 112 of 1970; Act 14 of 1975, s.38.)*

(2) The Crown, the Minister, or any public officer having the administration, management or control of Crown lands shall not be liable under this Act to make any contribution towards the erection or repair of any fence. *(Amended by Legal Notice 112 of 1970.)*

Act not to interfere with agreements

4. Nothing in this Act shall affect any covenant, contract, or agreement made between landlord and tenant, or between any adjoining occupiers, or between any other persons relative to the cost of erecting or repairing fences.

Adjoining occupiers to share cost of fencing

5. Subject to the provisions of this Act, the occupiers of adjoining lands not

divided by a sufficient fence are liable to contribute in equal proportions to the erection of a fence between such lands, notwithstanding that such fence may not extend along the whole boundary-line.

Notice to fence to be given

6.—(1) Any person desiring to compel any other person to contribute to the erection of a fence under this Act may serve on him a notice, in this Act referred to as a notice to fence, in the form numbered (1) in the Second Schedule or to the like effect, and shall specify the boundary to be fenced, and the kind of fence proposed to be erected.

(2) If any person erects a fence without serving notice as aforesaid, the occupier of adjoining land shall not be liable to pay any portion of the cost of erecting such fence, but shall not thereby be relieved from liability to pay half the cost of repairs in accordance with the provisions of section 15.

Objections to proposed fence

7. If the receiver of a notice to fence objects to any of the proposals therein contained, he may, within twenty-one days after the service of such notice, serve on the giver a cross-notice in the form numbered (2) in the Second Schedule or to the like effect signifying such objection and making counter proposals to fence otherwise he shall be deemed to have agreed to the proposals contained in the notice to fence served on him.

Where fencing notices vary

8. If notices to fence have been duly served by both parties, and the proposals therein contained do not correspond, or if a notice and cross-notice have been served, then (unless within twenty-one days after the service of the last of the said notices the parties can agree) the questions in dispute shall be determined by a resident magistrate* in the manner hereinafter provided.

(Amended by Legal Notice 118 of 1970.)

Succeeding occupier liable for contribution

9. If any person becomes the occupier of any land separated from any adjoining land by a fence, such person shall be subject to the same liabilities in respect of such fence as his predecessor was subject to when he relinquished occupation.

Where adjoining lands are excepted from Act when fence erected

10. Where a fence is at any time erected on the boundary of any land, and the adjoining land is at that time excepted from this Act but afterwards becomes subject thereto, then so soon as such adjoining land becomes subject to this Act the following provisions shall apply:—

- (a) the person who erected the fence, or his successor in title, may serve upon the occupier of such adjoining land a notice in writing requiring him to pay a half share of the value at the time of serving such notice of the fence dividing such lands;
- (b) the occupier of such adjoining land shall within one month after receiving the notice pay to the person who erected the fence, or to his successor in title, such half share as aforesaid and shall also be liable to bear half the cost of repairing the fence so long as he continues in occupation of such adjoining land;

* See Legal Notice No. 44 of 1977.

(c) the amount of such half share shall in case of dispute be determined by a resident magistrate* in the manner hereinafter set forth:

Provided that if the occupier of such adjoining land holds under a lease or other agreement having a currency of not more than ten years, he shall have the same rights as a tenant holding under a lease or agreement for not more than ten years under section 11.

(Amended by Legal Notice 118 of 1970.)

Certain lessees may pay interest on half cost of erection

11. Where any fence is erected under the provisions of this Act dividing any land occupied by any person holding under a lease or other agreement for a term not exceeding ten years from any adjoining land, it shall be lawful for such tenant, instead of paying his half share of the cost of erecting such fence, to pay to the person who erected the fence, or to his successor in title, interest on such share at the rate of 10 per cent per annum during such tenant's term of occupation:

Provided that such tenant shall be liable to pay half the cost of repairs to such fence during the said term.

Bush may be cleared along line of fence

12.—(1) Where the land or any part thereof on which any fence is to be erected in accordance with the provisions of this Act, is covered with standing bush, the person erecting such fence shall be entitled to fell and clear the bush for a width not exceeding 6 m on each side along the entire length of such fence; and the cost of such clearing shall be added to the cost of erection, and be apportioned accordingly:

Provided that in case of dispute such width shall be determined by a resident magistrate* in the manner hereinafter provided. (Amended by Legal Notice 118 of 1970; 83 of 1979.)

(2) Nothing in this section shall empower any person to fell any ornamental plantation, or any belt or patch of standing bush preserved for shelter, and not more than 100 m in width. (Amended by Legal Notice 83 of 1979.)

Where river, etc., natural boundary, occupiers may agree on line of fence

13.—(1) Where a river, creek, ditch, natural or artificial watercourse, or rocky or impracticable land is on the boundary of adjoining lands, the occupiers of such lands may agree upon a line of fence on either side of such boundary, and if they cannot agree, the line of fence shall be determined by a resident magistrate* in the manner hereinafter provided. (Amended by Legal Notice 118 of 1970; 83 of 1979.)

(2) The court may appoint one or more persons to inspect the proposed line of fencing, and shall determine whether any fence is necessary, and, if so, what line is to be adopted; and whether any and, if so, what compensation in the shape of an annual payment or otherwise is to be made to either of the occupiers in consideration of loss of occupation of land.

(3) The reasonable costs of such inspection, as fixed by the court, shall be costs in the cause.

(4) The occupation of lands on either side of such line of fence shall not be deemed adverse possession, and shall not affect the title to or possession of any such lands, save for the purposes of this Act.

* See Legal Notice No. 44 of 1977.

Posts to be on boundary line

14. Where a fence erected under the provisions of this Act is made of posts and rails, or wire, or palings, the posts of such fence shall be placed on the boundary line, or as near thereto as practicable.

Adjoining occupiers to keep fences in repair

15. Where any fence dividing adjoining lands is out of repair, the adjoining occupiers shall bear the cost of repairing the same in equal proportions.

Procedure to compel contribution to the repair of fences

16.—(1) Where either of the adjoining occupiers desires to repair any fence dividing lands he may serve a notice upon the other requiring him to assist in repairing such fence, and may, if such other occupier refuses or neglects so to do for the space of seven days after the service of such notice, himself repair the fence and recover half the cost thereof from such other occupier.

(2) Such notice shall be in the form numbered (3) in the Second Schedule or to the like effect.

Contribution where fence destroyed by accident

17. If any fence dividing adjoining lands is damaged or destroyed by sudden accident or other cause, and requires immediate repair, either of the adjoining occupiers may repair the same without any notice, and, subject to the provisions of section 18, may recover half the cost thereof from the other occupier.

Exception where accident results from neglect

18. If by reason of the neglect or fault of either occupier any fence dividing the adjoining lands is damaged or destroyed, whether by stock, or fire, or the falling of any tree, or otherwise howsoever, such occupier shall be liable for the whole cost of repairing the fence so damaged or destroyed.

Liability for reckless use of fire

19. Nothing in this Act contained shall be deemed to take away or interfere with the right of any person to sue for and recover compensation for any damage to any fence occasioned by the reckless or negligent use of fire, or otherwise howsoever.

Jurisdiction of magistrates in matters arising under Act

20. A resident magistrate* shall have jurisdiction to hear and determine all questions and disputes arising under this Act in so far as relate to—

- (a) the erection and repair of fences;
- (b) the kind of fence to be erected (the sowing or planting of a live fence or trees either at the time of erection or at any time thereafter, and the question of shelter, to be taken into consideration in deciding on the kind of fence);
- (c) the width of the bush to be felled and cleared;
- (d) the persons by whom any such fence is to be erected or repaired;
- (e) the line of fence to be adopted, and the amount of compensation (if any)

* See Legal Notice No. 44 of 1977.

- to be paid for loss of occupation of land;
- (f) the date on or before which, and the manner in which any fence is to be erected or repaired;
 - (g) the removal of fences that are not erected on the proper boundary;
 - (h) the entry on adjoining land for the purpose of erecting or repairing a fence;
 - (i) the reasonable and proper cost of erecting, converting or repairing any fence, and the persons by whom such cost is to be borne;
 - (j) any question or dispute that by this Act is to be determined by the magistrate;
 - (k) the costs of the proceedings, and the parties by whom and to whom such costs are to be paid.

(Amended by Legal Notice 118 of 1970.)

Proceedings to be by summons

21. All proceedings before a magistrate in respect of any of the matters mentioned in section 20 shall be by summons in the prescribed form, and such proceedings shall be conducted and all orders thereon by the magistrate may be made, enforced, and acted upon in like manner as in the case of proceedings under the Magistrates' Courts Act.

(Cap. 14.)

Magistrate to have jurisdiction notwithstanding title involved

22. A resident magistrate* shall have jurisdiction to hear and decide any claim arising under this Act whatever its amount, and notwithstanding that title to land may be involved.

(Amended by Legal Notice 118 of 1970.)

Moneys recoverable in any court of competent jurisdiction

23. Subject to any order made by a resident magistrate under the powers conferred on it by this Act, all moneys recoverable under this Act may be sued for and recovered in any court of competent jurisdiction.

How notices to be served

24.—(1) Any notice required under the provisions of this Act to be served on any person may be served—

- (a) either personally or by leaving the same at or posting the same in a registered letter addressed to such person's last known place of abode or business in Fiji; or
- (b) if such person is unknown, or after due inquiry cannot be found, or is absent from Fiji, then by serving the notice in any one of the modes aforesaid upon his known agent or attorney; or
- (c) if there is no known agent or attorney in Fiji, or such agent or attorney cannot after due inquiry be found, then by publishing a copy of such notice in a newspaper circulating in Fiji, and affixing a copy of the notice upon a conspicuous part of the land to which such notice relates or on some public road adjacent thereto.

(2) It shall not be necessary to prove the actual receipt of such notice by the person to whom it is addressed.

* See Legal Notice No. 44 of 1977.

Maximum price payable in respect of half-cost of fence

25. In every case where the half-cost of erecting or repairing a fence is payable under this Act, the amount so payable—

- (a) shall be a reasonable and proper sum; and
- (b) shall not exceed the actual half-cost, including interest on outlay, and reasonable remuneration for the superintendence and labour of the occupier when he is personally engaged on the work.

Persons constructing fences may obtain order to enter on adjoining land

26.—(1) Any occupier erecting or repairing a fence under this Act, his agents and workmen, may, if access thereto over his own land is more difficult, inconvenient, or expensive than over the adjoining land, enter, with or without horses, cattle, and carts, at all reasonable times upon any portion of such adjoining land, and do thereon such things as are reasonably required in order to erect or repair such fence:

Provided that he first obtains from a resident magistrate* on summons an order (which the court is hereby empowered to grant) authorising such entry. (Amended by Legal Notice 118 of 1970.)

Penalty for obstructing entry

(2) If the owner or occupier of such adjoining land, by himself, his agents, or servants, obstructs such entry, or the erection or repair as aforesaid of such fence, then, in addition to any other penalty that he may incur, he shall be liable to pay the entire cost of the erection or repair of such fence.

Order to be subject to certain provisions

27. With respect to every such order the following provisions shall apply:—

- (a) the right thereby conferred shall be exercised with as little damage as possible to the land entered upon;
- (b) nothing in such order or in this Act shall authorise the entry for the purpose aforesaid on any land in crop, or on any garden, orchard, plantation, shrubbery, or pleasure-ground, without the consent of the owner thereof; or shall, without the like consent, authorise any person to cut down, lop or injure any tree or shrub.

Compensation for wilful damage

28. Every owner or occupier of any land who suffers any loss or damage by reason of any act or thing wilfully done by any person, contrary to the provisions of sections 26 or 27 shall be entitled to recover compensation for the same.

Power to come in and defend proceedings against other person

29. Any person may come in and defend any proceeding under this Act against any other person where by reason of the proceeding such first-mentioned person might ultimately incur any liability, and may in such proceeding avail himself of any defence that such other person might set up.

Rules

30. The Chief Justice may from time to time make rules prescribing, in all cases not herein specially provided for, the practice and forms and fees in all proceedings before a magistrates' court under this Act.

* See Legal Notice No. 44 of 1977.

FIRST SCHEDULE*(Section 2)**(Amended by Legal Notice 83 of 1979.)***DESCRIPTION OF SUFFICIENT FENCE**

1. A post-and-rail fence at least 1,150 mm in height of substantial material firmly erected with not less than four rails, the space between the two bottom rails and the bottom rail and the ground not to exceed 125 mm and the posts to be not more than 2.5 m apart.

2. A batten-and-wire fence at least 1,150 mm in height of substantial material firmly erected with one or more wires, the wires to be not lighter than No. 8 in steel or black or galvanized iron. The battens to be either driven into the ground and securely stapled or intertwined in wires in an upright position and to be not more than 75 mm apart.

3. Any paling fence at least 1,150 mm in height with posts and two rails and having split or sawn timber placed upright and well nailed to both rails, there being not more than 100 mm of opening between each upright piece of timber.

4. A substantial wire fence having not less than three wires tightly stretched or two wires with a top rail or barbed-wire with or without battens or lacing affixed to the wires between the posts or standards, the posts or standards to be of durable wood, concrete or iron well and substantially erected and not more than 3.5 m apart, the top wire not to be less than 1,150 mm from the surface of the ground, the wires to be not lighter than No. 8 in steel or black or galvanized iron.

5. A substantial wire fence having not less than three wires tightly stretched or two wires with a top rail or barbed-wire with battens not more than 1.8 m apart, the wires being stapled to or let through such battens which shall be of durable wood, concrete or iron well and substantially erected. The posts or standards to be not less than one every 10 m the top wire not to be less than 1,150 mm from the surface of the ground, the wires to be not lighter than No. 8 in steel or black or galvanized iron.

6. A stone wall well and substantially built not less than 1.2 m in height and not less than 760 mm in width at base.

7. A close and sufficient live fence.

8. A combination of the above kinds of fences at least 1,150 mm in height.

9. Any other description of fence (including in the expression "fence" any natural or artificial watercourse) mutually agreed upon in writing by the persons interested.

SECOND SCHEDULE
(Section 6, 7 and 16)

FORMS

(1) NOTICE TO FENCE

To C.D., Occupier of [*Describe land with sufficient particularity to identify it.*]
Take notice that I desire that a fence between the above-described land and the adjoining land—viz., [*Describe land with sufficient particularity to identify it*—of which I am the occupier, be erected immediately (or on or before the day of , 19), and propose that such fence shall be a [*Describe the fence, identifying it by reference to First Schedule*].

This notice is given under the Fencing Act.
Dated this day of , 19 . A.B.

(2) CROSS-NOTICE

To A.B., Occupier of [*Describe land with sufficient particularity to identify it.*]
Take notice that I object to your notice to fence, dated the day of , 19 , in so far as it does not correspond with the proposal I now make, to wit, that a fence between the above-described land and the adjoining land of which I am occupier—viz., [*Describe land with sufficient particularity to identify it*—be made immediately (or on or before the day of , 19), and that such fence shall be a [*Describe the fence, identifying it by reference to First Schedule*].

This notice is given under the Fencing Act.
Dated this day of , 19 . C.D.

(3) NOTICE TO REPAIR

To A.B., Occupier of [*Describe land with sufficient particularity to identify it.*]
Take notice that the fence between the above-described land and the adjoining land, of which I am occupier—viz., [*Describe land with sufficient particularity to identify it*—is out of repair, and I require you to assist in repairing the same.

This notice is given under the Fencing Act.
Dated this day of , 19, . C.D.