

Chapter 202.  
***Summary Ejectment Act 1952.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 202.

***Summary Ejectment Act 1952.***

ARRANGEMENT OF SECTIONS.

1. Interpretation.
  - “agent”
  - “lease”
  - “lessor”
2. Application.
3. Proceedings for possession on determination of lease. .
4. Recovery of premises when rent in arrear.
5. Recovery of possession by lessor.
6. Recovery of premises held without right, etc.
7. Notices between sub-lessor and sub-lessee.
8. Warrant sufficient authority for entering premises.
9. Procuring issue of warrant without right.
10. Rights of outgoing tenant.
11. Stay of execution, etc., on giving security.
12. Relief to parties to bond.
13. Protection of justices.
14. Effect of irregularity.
15. Regulations.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Summary Ejectment Act 1952,*

Being an Act to facilitate the recovery of possession of premises after determination of a tenancy, and for related purposes.

1. **INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**agent**” means a person who is—

- (a) usually employed by the lessor—
  - (i) in the letting of the premises; or
  - (ii) in the collection of the rents of the premises; or
- (b) authorized by the lessor in writing to act—
  - (i) in the particular matter; or
  - (ii) as his attorney;

“**lease**” includes—

- (a) a contract for the letting of land or premises, whether the contract is express or implied or is made orally, in writing or by deed; and
- (b) a contract for the letting of land or premises, together with goods, but does not include a lease—
- (c) arising under an attornment clause in a mortgage; or
- (d) in an agreement for the sale and purchase of land;

“**lessor**” and “**lessee**” means the parties to a lease or their respective successors in title, and include—

- (a) a mesne lessor and a mesne lessee; and
- (b) a sub-lessor and a sub-lessee; and
- (c) in respect of premises that are subject to a mortgage, a mortgagee who enters or has entered into possession of the premises under the mortgage and a person who was the lessee of the premises immediately prior to the mortgagee entering into possession, respectively, or their respective agents.

**2. APPLICATION.**

This Act does not apply to customary land.

**3. PROCEEDINGS FOR POSSESSION ON DETERMINATION OF LEASE.**

.

(1) Where—

- (a) the term or interest of a lessee of premises held by him has ended or has been duly determined; and
- (b) the lessee, or (if the lessee does not actually occupy the premises or occupies only a part of the premises) a person by whom the whole or part of the premises is then actually occupied, neglects or refuses to quit and deliver up possession of the premises or of the part of the premises, as the case may be,

the lessor of the premises may make a complaint to a magistrate of a District Court against the person for the recovery of the premises, or of the part of the premises, and the magistrate may issue a summons in the prescribed form to that person.

(2) Where the person to whom the summons is directed under Subsection (1)—

- (a) does not appear before a District Court at the time named in the summons; or
- (b) appears and does not satisfy the Court that there is reasonable cause why he should not give possession of the premises or of the part of the premises of which he is then in possession,

and still neglects or refuses to deliver up possession of the premises or of the part of the premises of which he is then in possession, then on proof of the matter of the complaint the Court may order him to deliver up possession of the premises or of the part of the premises to the complainant, either immediately or on or before a day named in the order.

(3) Where an order made under Subsection (2) is not obeyed, a magistrate of a District Court may, at the request of the complainant, issue a warrant in the prescribed form directed to a member of the Police Force requiring him, within a period specified in the warrant, not being more than 30 clear days from the date of the warrant—

- (a) to enter into the premises by force and with assistants if necessary; and
- (b) to give possession of the premises or of the part of the premises to the complainant.

(4) In a complaint under this section against a lessee or occupier the complainant may add a claim not exceeding K500.00 for rent or mesne profits (or both) down to the day appointed for the hearing or to any preceding day named in the complaint, and any misdescription in the nature of the claim may be amended at the hearing.

(5) If the lessor does not appear at the time named in the summons, the Court shall dismiss the complaint.

#### 4. RECOVERY OF PREMISES WHEN RENT IN ARREAR.

(1) Subject to this section, where the rent payable by a lessee holding premises by the week, month, or quarter, or a longer term not exceeding three years, is in arrear for—

- (a) 10 days in the case of a weekly tenancy; or
- (b) 21 days in the case of a monthly tenancy; or
- (c) 30 days in the case of a quarterly tenancy; or
- (d) 42 days in the case of a tenancy for a longer term,

the lessor may, without a formal demand or re-entry, make a complaint to a magistrate of a District Court who may issue a summons in the prescribed form directed to the lessee, and the service of the summons stands in place of a demand or re-entry.

(2) The power conferred on a lessor by Subsection (1) may be exercised only—

- (a) if a right of re-entry for the non-payment of rent has not been expressly conferred on the lessor by agreement with the lessee, on the expiration of the relevant period referred to in Subsection (1)(a), (b), (c) or (d); or
- (b) if a right of re-entry has been conferred on the lessor by agreement with the lessee—
  - (i) on the accrual of the right of re-entry in accordance with the terms of the agreement; or
  - (ii) at the expiration of the relevant period referred to in Paragraph (a),

whichever first occurs.

(3) Where there is a tenancy and no agreement as to its duration, the lessee shall, for the purposes of this section, be deemed to hold the premises by the month.

(4) If the lessee pays into a District Court all the rent in arrear and the costs at least five clear days before the day appointed for the hearing of the complaint, the complaint shall be deemed to be withdrawn.

(5) If—

- (a) the lessee does not make the payments specified in Subsection (4); and
- (b) does not appear at the time named in the summons, or, if appearing, does not show reasonable cause why the premises should not be recovered,

the District Court may, on proof of the matter of the complaint, order the lessee to deliver up possession of the premises to the complainant, immediately or on or before a day named in the order.

(6) Where an order under Subsection (5) is not obeyed, a magistrate of a District Court may, at the request of the complainant issue a warrant in the prescribed form directed to a member of the Police Force requiring him, within a period specified in the warrant, not being more than 30 clear days from the date of the warrant—

- (a) to enter by force and with assistants if necessary, into the premises; and
- (b) to give possession of the premises to the complainant.

(7) From the time of the execution of the warrant issued under Subsection (6)—

- (a) the complainant holds the premises discharged of the lease; and
- (b) the lessee and all persons claiming by, through or under him are barred from all relief so long as the order under Subsection (5) is not reversed.

## **5. RECOVERY OF POSSESSION BY LESSOR.**

(1) Where—

- (a) a lessee holding premises at a rent under a demise or agreement, written or oral, who is in arrear for two months, deserts the premises and leaves them uncultivated or unoccupied so that no sufficient distress can be had to countervail the arrears of rent; and
- (b) no right or power of re-entry in case of the non-payment of rent is given or reserved by the demise or agreement, to the lessor,

a District Court may, at the request of the lessor, his lawyer or agent and on proof of the matters specified in Paragraphs (a) and (b), issue a warrant directed to a member of the Police Force requiring him—

- (c) to enter and inspect the premises; and
- (d) to affix or cause to be affixed on some conspicuous part of the premises a notice in writing specifying the day (not sooner than 14 days from the affixing of the notice) on which he will return to inspect the premises a second time.

(2) If the lessee or some person on his behalf pays the rent in arrear into the District Court that issued the warrant at least two clear days before the day specified in the notice affixed under Subsection (1)(d), the warrant shall be deemed to have been withdrawn.



- (3) Where on the second inspection referred to in Subsection (1)(d)–
  - (a) the lessee or some person on his behalf does not appear and pay to the member of the Police Force the rent in arrear; or
  - (b) there is not a sufficient distress on the premises,

the District Court may issue a warrant directed to a member of the Police Force requiring him, on or before a day to be named in the warrant, to enter into the premises and put the lessor into possession of the premises.

(4) On the execution of a warrant under Subsection (3), the lease of the premises to the lessee as to any demise contained in the lease becomes void.

## **6. RECOVERY OF PREMISES HELD WITHOUT RIGHT, ETC.**

(1) Where a person without right, title or licence is in possession of premises, the owner may make a complaint to a magistrate of a District Court to recover possession of the premises, and the magistrate may issue a summons in the prescribed form to the person in illegal occupation.

- (2) Where the person summoned under Subsection (1)–
  - (a) does not appear before the District Court at the time named in the summons; or
  - (b) appears and does not show reasonable cause why possession of the premises should not be given,

the Court may, on proof of the matter of the complaint, issue a warrant directed to a member of the Police Force requiring him, on or before a day specified in the warrant–

- (c) to enter, by force and with assistants if necessary, into the premises; and
- (d) to give possession of the premises to the complainant.

## **7. NOTICES BETWEEN SUB-LESSOR AND SUB-LESSEE.**

- (1) A sub-lessor or sub-lessee–
  - (a) on whom a summons for the recovery of premises is served, or to whose knowledge it comes; or
  - (b) to whose knowledge the affixing of a notice under Section 5 comes,

shall, without delay, give notice of the summons or notice to his immediate sub-lessor or sub-lessee, as the case may be.

(2) If not already a party to any proceedings before the District Court, the sub-lessor or sub-lessee may, on receipt of notice specified in Subsection (1), apply to the Court to be added as a party to defend possession of the premises and the Court may allow him to be added.

(3) Where a summons is issued on the complaint of the lessor against a sub-lessor or sub-lessee, the District Court may, of its own motion and on reasonable notice being given to the sub-lessor or sub-lessee, as the case may be, add the sub-lessor or the sub-lessee as a party to defend possession of the premises.

(4) Where a sub-lessor or a sub-lessee has received notice under Subsection (1) or (3), the District Court may make an order for the recovery of possession against both the sub-lessor and the sub-lessee.

## **8. WARRANT SUFFICIENT AUTHORITY FOR ENTERING PREMISES.**

(1) A warrant under the hand of a magistrate of a District Court directed to a member of the Police Force and requiring him to give possession of premises authorizes him to enter, by force and with assistants if necessary, into the premises named in the warrant, and to give possession accordingly.

(2) An entry under a warrant shall not be made on a Sunday, Good Friday, Christmas Day or at any time other than between the hours of 9 a.m. and 4 p.m.

## **9. PROCURING ISSUE OF WARRANT WITHOUT RIGHT.**

Where, at the time of a granting of a warrant for the recovery of possession of any premises under this Act the person to whom it was granted had no lawful right to the possession of the premises, the obtaining of the warrant shall be deemed to be a trespass by him against the lessee or occupier of the premises only if—

- (a) an entry is made by virtue of the warrant; or
- (b) the complaint or request following which the warrant was issued was not bona fide.

## **10. RIGHTS OF OUTGOING TENANT.**

This Act does not affect any right to which a person is entitled by law as outgoing lessee.

## **11. STAY OF EXECUTION, ETC., ON GIVING SECURITY.**

(1) Where a lessee or occupier—

- (a) against whom—
  - (i) an order is made under Section 3 or 4 to deliver up possession of premises; or
  - (ii) a warrant is issued under Section 5 or 6 for the recovery of possession of premises; and
- (b) who offers at the time when the order is made or the warrant is issued to give security to defend an action of ejectment or other appropriate action, for recovery of possession of the premises in respect of which the order is made or the warrant is granted, brought against him in the

National Court by or on behalf of the lessor by or for whom or on whose behalf the relevant complaint was made,

proceedings under the order or the execution of the warrant shall be suspended for three clear days.

(2) Where during the interval of three clear days referred to in Subsection (1) the lessee or occupier gives security by a joint and several bond of two sureties as prescribed in this section—

(a) proceedings shall not be taken under the order; or

(b) the warrant shall not be executed or put in force but is void.

(3) A bond entered into under Subsection (2) shall—

(a) be made to the lessor, and his heirs, executors and administrators; and

(b) be approved, and certified as being approved, by the District Court by which the complaint was heard, by a memorandum in writing on or annexed to the bond; and

(c) be in such sum as the Court, regard being had to—

(i) the value of the premises; and

(ii) the probable cost of the action; and

(iii) the probable length of time that must elapse before it can be determined,

thinks reasonable; and

(d) be conditioned to be void (in case the lessor, his heirs, executors or administrators succeed in the action) on payment of—

(i) all costs of suit awarded to or recovered by the lessor, or his heirs, executors or administrators in the action; and

(ii) all mesne profits of the premises accruing between the time when the order was made or the warrant was issued, as the case may be, and the time when the lessor, or his heirs, executors or administrators obtain possession of the premises by virtue of the action.

## 12. RELIEF TO PARTIES TO BOND.

(1) On the application of a party bound by a bond specified in Section 11, or his heirs, executors or administrators, the National Court or a Judge may, in a summary way—

(a) give such relief to the person or persons making the application; or

(b) make such other order as it or he thinks just,

and a finding or order of the National Court or a Judge under this section operates as a defeasance of the bond.

(2) Where an unreasonable delay occurs in bringing or prosecuting the action of ejectment or other action for the recovery of the premises, the National Court or a Judge, on the application of a party bound by the bond, or his heirs, executors or administrators, may, in a summary way—

- (a) order the bond to be cancelled and given up to the person or persons making the application; or
- (b) make such other order as it or he thinks just.

(3) If the National Court or a Judge orders or directs the bond to be cancelled, the bond is void but without prejudice to any action or other remedy on it for a previous breach of the condition of defeasance of the bond.

(4) Where—

- (a) the bond is forfeited; or
- (b) on the hearing of the action in respect of which the bond was given the National Court or a Judge does not endorse on the record that the condition of the bond has been fulfilled,

the party to whom the bond has been made may make a complaint and recover on it.

(5) The District Court hearing a complaint under Subsection (4) may by order give such relief to the parties on the bond as appears to it just, and the order operates as a defeasance of the bond.

### **13. PROTECTION OF JUSTICES.**

An action or prosecution shall not be brought—

- (a) against—
  - (i) a magistrate for issuing a warrant under this Act for the recovery of possession of any premises; or
  - (ii) a member of the Police Force for executing a warrant issued under this Act,

by reason only of the fact that the person on whose application the warrant was granted had no lawful right to the possession of the premises; or

- (b) against a member of the Police Force by reason of an entry made by him under a warrant deemed to have been withdrawn under Section 4(2) if at the time he bona fide believed it to have been in force.

### **14. EFFECT OF IRREGULARITY.**

(1) Where the person on whose application a warrant for the recovery of possession of premises was granted had, at the time of the granting of the warrant, a lawful right to the possession of the premises—

- (a) he or his agent or any other person acting on his behalf; or

- (b) a member of the Police Force *bona fide* executing or entering under the warrant,

shall not be deemed to be a trespasser by reason only of any irregularity or informality in the mode of proceeding for obtaining possession under this Act, but the party aggrieved is not debarred from—

- (c) bringing an action in a court of competent jurisdiction for any special damage that he alleges he has sustained by reason of the irregularity or informality; and
- (d) recovering full satisfaction for the special damage, with costs.

(2) If special damage is not proved, the defendant is entitled to a verdict, and, if damage is proved but is assessed by the court at a sum not exceeding K1.00, the complainant is not entitled to costs unless that court certifies that in its opinion full costs ought to be allowed.

## 15. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG