

# THE JUDICIAL SERVICE ACT, 2005

## ARRANGEMENT OF SECTIONS

### PART I PRELIMINARY PROVISIONS

<i>Section</i>	<i>Title</i>
1.	Short title and commencement.
2.	Application.
3.	Interpretation.

### PART II ADMINISTRATION OF THE JUDICIARY

4. The Judiciary and office of the Chief Justice.
5. Duties of the Chief Justice in relation to administration of the Judiciary.
6. Supervisory powers of the Chief Justice.

### PART III THE JUDICIAL SERVICE COMMISSION

7. Composition of Judicial Service Commission.
8. Secretary and staff.
9. Oaths.
10. Vacancy in membership.
11. Procedure.
12. Protection of members.
13. Communication of Commission to be privileged.
14. Offence to influence or attempt to influence Commission.
15. Offence of false information to the Commission.
16. Interpretation of "Commission" in sections 14 and 15.
17. Unauthorized disclosure of information prohibited.
18. Prosecutions.

### PART IV PROVISIONS RELATING TO THE FUNCTIONS OF THE PRESIDENT

19. Delegation of functions.
20. Advice.
21. Regulations.

## PART V

## PROVISIONS RELATING TO THE FUNCTIONS OF THE COMMISSION

22. Functions of the Commission.
23. Delegation of functions.
24. Powers of dismissal and removal.

## PART VI

## COMMITTEES

*(a) Judges Ethics Committee*

25. Establishment of Committees.
26. Establishment and composition of the Committee.
27. Functions of the Judges Ethics Committee.
28. Complaints before the Judges Ethics Committee.
29. Who may lodge a complaint.
30. Form and content of a complaint.
31. Procedure of handling complaints by the Chief Justice.
32. Handling of a complaint by the Judges Ethics Committee.
33. Procedure where a Judge does not admit.
34. Proceedings of the committee

*(b) Judicial Officers Ethics Committee*

35. Establishment and composition of the Judicial Officers Ethics Committee.
36. Functions of the Judicial Officers Ethics Committee.
37. Complaints before Judicial Officers Ethics Committee.
38. Procedure.

*(c) Regional Judicial Committee*

39. Establishment of Regional Judicial Committees.

*(d) District Judicial Committee*

40. Establishment of the District Judicial Committees.
41. Reporting.

## PART VII

## FINAL PROVISIONS

42. Regulations.
43. Legal proceedings.
44. Repeal and savings.

PART VIII  
CONSEQUENTIAL PROVISIONS

- 45. Amendment of The Civil Procedure Code Act.
- 46. Amendment of The Criminal Procedure Act.

—————  
SCHEDULE  
—————

THE UNITED REPUBLIC OF TANZANIA



No. 2 OF 2005

I ASSENT,

*Benjamin W. Mkapa*

President

*6<sup>th</sup> April, 2005.*

**An Act to repeal the Judicial Service Act, 1962; to enact the Judicial Service Act, 2005, to provide for the administration, discipline of Judges, Judicial Officers and Magistrates in the Judiciary and for related matters.**

[.....]

ENACTED by Parliament of the United Republic of Tanzania

PART I

PRELIMINARY PROVISIONS

1.-(1) This Act may be cited as the Judicial Service Act, 2005.

Short title and commencement

(2) This Act shall come into operation on the date which the Minister may, by notice published in the *Gazette* appoint.

2. This Act shall apply to persons holding the office of a Chief Justice, a Justice of Appeal, Principal Judge, a Judge, Judicial Officer and a Magistrate.

Application

3. In this Act, unless the context otherwise requires -

Interpretation

“Act” means the Judicial Service Act, 2005;

“Code of Judicial Ethics” means the Code of Judicial Ethics established from time to time for Judges, Judicial Officers and Magistrates;

“Commission” means the Judicial Service Commission established under Article 112 of the Constitution;

“Chief Justice” means the Chief Justice appointed pursuant to Article

118(2) of the Constitution;

“Committee” means any Committee established under Part VI of this Act;

“complaint” in relation to a matter referred to the Commission or the Committee, means any act, omission or conduct referred in section 31 of the Act;

“Constitution” means the Constitution of the United Republic of Tanzania, 1977;

“Judge” means a Judge of the High Court appointed in terms of Article 109(7) of the Constitution;

“Judge In-charge” means the Judge In-charge of a High Court Zone or division of the High Court;

“judicial officer” means the Registrar of the Court of Appeal, Deputy Registrar of the Court of Appeal, Registrar of the High Court, Deputy Registrar of the High Court and District Registrar, Director of District Courts to Court of Appeal, Director of Primary Courts, Private Secretary to the Chief Justice and Senior Resident Magistrates holding certain posts in the headquarters of the Judiciary;

“Justice of Appeal” means a Justice of Appeal appointed pursuant to Article 118(1) of the Constitution;

Cap 1

“Magistrate” means a Primary Court Magistrate, a District Magistrate or a Resident Magistrate;

“Minister” means the Minister responsible for legal affairs;

“law officer” has a meaning ascribed to it under the Interpretation of Laws;

“President” means the President of the United Republic of Tanzania;

“Principal Judge” means the Judge of the High Court designated as “Jaji Kiongozi in Kiswahili” appointed under Article 109 of the Constitution;

Act No. 8  
of 2002

“public servant” has the meaning ascribed to it under section 3 of the Public Service Act, 2002.

**PART II**  
**ADMINISTRATION OF THE JUDICIARY**

**4.-(1)** The Court of Appeal of the United Republic of Tanzania and the High Court of the United Republic of Tanzania established by Articles 108(1) and 117(1) of the Constitution respectively and courts subordinate thereto, collectively referred to as the "Judiciary", shall be headed by the Chief Justice.

The  
Judiciary  
and Office  
of Chief  
Justice

(2) The Chief Justice shall, in addition to functions stipulated under Parts III and V of Chapter Five of the Constitution or any other written law, perform functions and exercise powers stipulated under this Act.

**5.** The duties of the Chief Justice in relation to administration of the Judiciary shall include:

Duties of  
the Chief  
Justice in  
relation to  
adminis-  
tration  
of the  
Judiciary

- (a) carrying out the general administration of the judiciary;
- (b) carrying out administration of the Court of Appeal;
- (c) convening meetings of the Commission;
- (d) recommending to the President on the need to re-engage a person who held the office of a Judge or a Justice of Appeal; and
- (e) to giving directions to the Principal Judge in relation to the carrying out of the administration of the High Court and courts subordinate thereto.

**6.-(1)** The Chief Justice shall, for the purpose of achieving better and effective performance of the functions of the offices of a Judge and a Justice of Appeal, supervise the disposal of cases.

Supervi-  
sory  
powers of  
the Chief  
Justice

(2) In the exercise of powers of supervision, the Chief Justice may:

- (a) call for any Judge to submit returns of the disposition of cases within a specified period;
- (b) receive and investigate any complaint relating to the disposal of any case;

- (c) take such measures as may be necessary to address any matter which is the subject of a complaint; or
- (e) recommend that any matter, which is a subject of complaint, be referred to the Judicial Service Commission.

### PART III

#### THE JUDICIAL SERVICE COMMISSION

Composi-  
tion of  
the  
Judicial  
Service  
Commis-  
sion

7. -(1) There shall continue in existence, the Judicial Service Commission with its composition as established under the Constitution.

(2) Members of the Commission appointed under Article 112(2)(c) and (e) of the Constitution shall hold office for three years but shall be eligible for re-appointment for one further term.

(3) No member of the Commission shall be represented in a meeting by proxy and no member shall delegate the performance of any function or the exercise of duty ordinarily performed by him or exercised by him by virtue of being member of the Commission to any person.

(4) The conduct of meetings and the procedure for making decision by the Judicial Service Commission shall be as provided for in the First Schedule to this Act.

Secretary  
and staff

8.-(1) There shall be a Secretary to the Commission who shall be appointed by the President and other members of staff of the Commission, as the Commission shall determine.

(2) The Secretary of the Commission shall be responsible for securing and facilitating the implementation of all the decisions of the Commission.

Oaths

9.-(1) The members of the Commission and the Secretary shall, on first appointment, take an oath in the form set out in the Second Schedule to this Act.

(2) The Chairman of the Commission may require any member of staff of Commission to take, on first appointment, an oath in the form set out in the Third Schedule to this Act.

(3) Where any person required to take an oath under this section has no religious belief or the taking of an oath is contrary to his religious belief, he may make and subscribe a solemn affirmation in the form of

the oath appointed, substituting the words “solemnly and sincerely declare and affirm” for the word “swear” and omitting the words “So help me God”.

(4) Every oath or affirmation taken by a member of the Commission shall be administered by the President and every oath or affirmation taken by a member of staff of the Commission shall be administered by the Chairman of the Commission.

10.-(1) Subject to its rules of procedure, the decisions and actions of the Commission shall not be invalid by the only reason of vacancy in its membership or the absence of any member.

Vacancy  
in  
member-  
ship

(2) Notwithstanding the provisions of subsection (1), any decision of the Commission shall require the concurrence of a majority of all the members thereof.

11. Subject to the provisions of this Act and to any regulation made by the President, the Commission shall regulate its own procedure.

Procedure

12. Every member of the Commission shall, in case of any action or suit brought against him for any act done or omitted to be done in the *bona fide* execution of his duties, have like protection and privileges as is by law given to the acts done or words spoken by a Judge of the High Court in the exercise of his judicial office.

Protection  
of  
members

13. No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, which has taken place —

Communi-  
cation  
of  
Commis-  
sion to be  
privileged

- (a) between the Commission, or any member or officer of the Commission and the President or a delegate, or the Public Service Commission, Police Force and Prisons Service Commission or any member of either such Commission; or
- (b) between any member or officer of the Commission and the Chairman thereof; or
- (c) between any member or officers of the Commission, in exercise of, or in connection with the exercise of, the functions of the Commission,

unless the Chairman of the Commission consents in writing to such production or disclosure.

Offence to influence or attempt to influence Commission

**14.** Without prejudice to the provisions of any other law, any person who otherwise than in the course of his duty directly or indirectly by himself or by any other person, in any manner whatsoever, influences or attempts to influence any decision of the Commission shall be guilty of an offence and on conviction shall be liable to a fine of not less than one hundred thousand shillings but not exceeding two hundred thousand shillings or to imprisonment for two years.

Provided that, nothing in this section shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for any office or from supplying any information or assistance at the request of the Commission.

Offence of false information to the Commission

**15.** Without prejudice to the provisions of any other law, any person who in connection with the exercise by the Commission of its functions or duties willfully gives to the Commission any information which he knows to be false or does not believe to be true, or which he knows to be false by reason of the omission of any particular material, shall be guilty of an offence and on conviction shall be liable to a fine of not less than one hundred thousand shillings but not exceeding five hundred thousand shillings or to imprisonment for a term of two years or to both.

Interpretation of "Commission" in sections 14 and 15

**16.** For the purposes of sections 14 and 15, the term "Commission" shall include the Commission, any member of the Commission, Secretary, any Committee of the Commission, any officer of the Commission or any person or body of persons appointed to assist the Commission in the exercise of its functions or duties.

Unauthorized disclosure of information prohibited

**17.-(1)** No member of the Commission, nor any officer of the Commission, or any other person, shall, without the written permission of the Chairman of the Commission, publish or disclose to any person otherwise than in exercise of his official functions the contents of any document, communication or information whatsoever which has come to his notice in the course of his duties in relation to the Commission; and any person who knowingly acts in contravention of the provisions of this subsection, shall be guilty of an offence, and on conviction shall be liable to a fine of not less than fifty thousand shillings but not exceeding one hundred thousand shillings or to imprisonment for a term of twelve months or to both.

Regulations

**21.-(1)** The President may make regulations -

- (a) for any matter which, by this Act, may be regulated by the President;
- (b) regulating the performance of the functions conferred on him by Article 113 of the Constitution and by this Act, and of any function in relation to establishing or abolishing any judicial office, and the exercise of such functions by any delegate.

(2) Without prejudice to the generality of the preceding provisions of this section, regulations may impose duties on any person, Judge, judicial officer, Commission or a public servant.

(3) The President may delegate any of the powers conferred on him under this section to the Commission or the Chief Justice.

#### PART V

#### PROVISIONS RELATING TO THE FUNCTIONS OF THE COMMISSION

Functions  
of the  
Commission

**22.** The functions of the Commission shall be to:

- (a) advise the President in respect of-
  - (i) appointment of a Principal Judge or of Judges;
  - (ii) appointment of the Registrar of the Court of Appeal and the Registrar of the High Court;
  - (iii) inability of a Justice of Appeal or a Judge to perform functions of the office of a Justice of Appeal, a Principal Judge or a Judge;
  - (iv) misconduct of a Justice of Appeal or a Judge inconsistent with the ethics of office of a Justice of Appeal a Principal Judge or a Judge, Registrar of Court of Appeal and the Registrar of the High Court or with the law concerning the ethics of public leaders;
- (b) scrutinize a complaint against a Justice of Appeal, a Principal Judge, a Judge, a judicial officer or a Magistrate;
- (c) take administrative measures against a Justice of Appeal, a Principal Judge or a Judge other than measures referred to under Article 110A(3) of the Constitution;

(2) Any person who knows of any information which to his knowledge has been disclosed in contravention of the provisions of subsection (1) of this section and who publishes or communicates it to any other person otherwise than for the purpose of any prosecution under this Act or in the course of his official duty, shall be guilty of an offence and on conviction shall be liable to a fine of not less than fifty thousand shillings but not exceeding one hundred thousand shillings or to imprisonment for a term of twelve months or to both.

18. Any prosecution in respect of any offence under this Part of this Act shall not be instituted except with the consent of the Director of Public Prosecutions.

Prosecu-  
tions

#### PART IV

##### PROVISIONS RELATING TO THE FUNCTIONS OF THE PRESIDENT

19.-(1) The President may, by regulations, delegate the exercise of any of the functions conferred on him by Article 113 of the Constitution, or any function of establishing or abolishing any judicial office, to the Commission, a Judge or a judicial officer.

Delegation  
of  
functions

(2) The President may, by regulations, authorize the Commission or any person to whom he has delegated the exercise of his functions under this section to deputize a Judge or a judicial officer to exercise on his behalf such other functions the exercise of which has been delegated to the Commission or such first mentioned person as may be specified therein.

(3) In any regulations made for purposes of this section, the President shall specify the offices to which each delegation or authorisation relates.

(4) The President may exercise his functions notwithstanding any delegation or authorization under this section.

20. The President may refer to the Commission for its advice any matter relating to the exercise of the functions conferred on the President by Article 113 of the Constitution or any function of establishing or abolishing any judicial office and the Commission shall advise the President on any such matter so referred to it:

Advice

provided that, nothing in this section shall preclude the President from seeking advice in respect of any such matter from any other person.

