

THE UNITED REPUBLIC OF TANZANIA



No. 16 OF 1967

I ASSENT,

.....
President

27TH APRIL, 1967

An Act to amend the Law relating to the Civil Liabilities and Rights of the Government and to Civil Proceedings by and against the Government and for purposes incidental thereto and connected therewith

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY

1. This Act may be cited as the Government Proceedings Act, 1967 and shall come into operation on such date as the Minister may by notice in the *Gazette* appoint. Short title
and com-
mencement

2.—(1) In this Act, unless the context otherwise requires— Interpreta-
tion
“agent”, when used in relation to the Government includes an independent contractor employed by the Government;
“civil proceedings” includes proceedings in the High Court or a magistrate’s court for the recovery of fines or penalties;
“Minister” means the Minister responsible for legal affairs;
“officer” in relation to the Government includes the President, a Minister, a Parliamentary Secretary and any servant of the Government;
“proceedings against the Government” includes a claim by way of set-off or counterclaim raised in proceedings initiated by the Government;
“statutory duty” means any duty imposed by or under any written law.

(2) Any reference in Part IV or Part V to civil proceedings by or against the Government, or to civil proceedings to which the Government is a party, shall be construed as including a reference to civil proceedings to which the Attorney-General, or any officer of the Government as such, is a party:

Provided that the Government shall not for the purposes of Part IV or Part V be deemed to be a party to any proceedings by reason only that they are brought by the Attorney-General upon the relation of some other person.

PART II

SUBSTANTIVE LAW

Liability of
Government
in civil
proceedings

3.—(1) Subject to the provisions of this Act and any other written law, the Government shall be subject to all those liabilities in contract, quasi-contract, detinue, tort and in other respects, to which it would be subject if it were a private person of full age and capacity and subject as aforesaid any claim arising therefrom may be enforced against the Government in accordance with the provisions of this Act.

(2) No proceedings shall lie against the Government in tort in respect of any act or omission of a servant or agent of the Government unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or agent or his estate.

(3) Where the Government is bound by a statutory duty which is binding also upon persons other than the Government and its officers, then the Government shall, subject to the provisions of this Act, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(4) Where any functions are conferred or imposed upon an officer of the Government as such either by any rule of the common law or by any written law, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of Government in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

(5) No proceedings shall lie against the Government by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

Application
of law
as to
indemnity
and
contribution

4. Where the Government is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Government in respect of the liability to which it is so subject as if the Government were a private person of full age and capacity.

Saving in
respect of
acts done
under
statutory
powers

5. Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of any powers or authorities conferred on the Government by any written law.

PART III

JURISDICTION AND PROCEDURE

6. Subject to the provisions of this Act, all civil proceedings by or against the Government in the High Court shall be instituted and proceeded with in accordance with such procedure as would apply in like proceedings between private persons. Civil proceedings in the High Court

7.—(1) Subject to the provisions of this Act and to any written law limiting the jurisdiction of a magistrate's court, any civil proceedings by or against the Government may be instituted in a magistrate's court. Civil proceedings in magistrate's courts

(2) Subject to the provisions of this Act, any proceedings by or against the Government in a magistrate's court shall be instituted and proceeded with in accordance with such procedure as would apply in like proceedings between private persons.

8. The Government may institute or be made a party to interpleader proceedings in the same manner in which a private person may institute such proceedings or be made a party thereto, and may be made a party to such proceedings notwithstanding that the proceedings have been instituted by a court broker or other like officer. Inter-pleader

9.—(1) Subject to the provisions of any other written law, civil proceedings against the Government shall be instituted against the Attorney-General. Parties to proceedings

(2) Subject to the provisions of any other written law, civil proceedings by the Government shall be instituted by the Attorney-General:

Provided that the Minister may by order published in the *Gazette* direct that any particular civil proceedings or class of civil proceedings may be instituted by any officer designated in the order instead of by the Attorney-General.

10.—(1) If, in a case where proceedings are instituted against the Government in a magistrate's court, an application in that behalf is made by the Government to transfer the proceedings to the High Court, and there is produced to the Court a certificate signed by the Attorney-General to the effect that the proceedings may involve an important question of law, or may be decisive of other cases arising out of the same matter, or are for other reasons more fit to be tried in the High Court, the proceedings shall be transferred to the High Court. Transfer of proceedings

(2) Where any proceedings have been transferred to the High Court on the production of such a certificate as is mentioned in subsection (1), and it appears to the court by whom the proceedings are tried that the transfer has occasioned additional expense to the person by whom the proceedings are brought, the court may take account of the additional expense so occasioned in exercising its powers in regard to the award of costs.

(3) Without prejudice to the rights of the Government under the provisions of subsections (1) and (2), the provisions of any written law relating to the transfer of proceedings from a magistrate's court to the High Court or the transfer of proceedings from the High Court to a magistrate's court, shall apply in relation to proceedings against the Government.

Nature of
relief

11.—(1) In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between private persons, and otherwise to give such appropriate relief as the case may require:

Provided that—

- (a) where in any proceedings against the Government any such relief is sought as might in proceedings between private persons be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
- (b) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.

Costs in
civil
proceedings
to which the
Government
is a party

12. In any civil proceedings to which the Government is a party, the costs of and incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between private persons and the court shall have power to make an order for the payment of costs by or to the Government accordingly:

Provided that—

- (a) in the case of proceedings to which by reason of any enactment or otherwise the Attorney-General, a Government department or any officer of the Government as such is authorized to be made a party, the court shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney-General, the department or the officer of the Government appears, and may in the exercise of its discretion order any other party to the proceedings to pay the costs of the Attorney-General, department or officer, whatever may be the result of the proceedings; and
- (b) nothing in this section shall affect the power of the court to order, or any enactment providing for, the payment of costs out of any particular fund or property, or any enactment expressly relieving any department or officer of the Government of the liability to pay costs.

Appeals and
stay of
execution

13. Subject to the provisions of this Act, any written law relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Government as it applies to proceedings between private persons.

PART IV

JUDGMENTS AND EXECUTION

14.—(1) The provisions of any written law relating to the payment of Interest interest where a decree is for the payment of money and to the payment of interest on costs shall apply in the case of Government as they do in the case of a private person.

(2) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

15.—(1) Where in any civil proceedings by or against the Government, Satisfaction of orders against the Government any order, including an order as to costs, is made by any court in favour of any person against the Government or against an officer of the Government as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person, issue to that person a certificate containing particulars of the order:

Provided that if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) If the order provides for the payment of any money by way of damages or otherwise, of any costs, the certificate shall state the amount so payable and the Principal Secretary to the Treasury or such other Government accounting officer as may be appropriate shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:

Provided that the court by which any such order as is mentioned in this section is made or any court to which an appeal against the order lies may, if it considers it reasonable to do so, direct that, pending an appeal or otherwise, payment of the whole, or any part thereof, of any amount so payable shall be suspended and if the certificate has not been issued may order any such directions to be inserted therein.

(3) Save as is provided in this section, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Government of any such money or costs as are referred to in this section, and no person shall be individually liable under any order for payment by the Government, or any Government department or any officer of the Government as such of any such money or costs.

(4) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

16.—(1) Subject to the provisions of this Act, any order made in Execution by the Government favour of the Government against any person in any civil proceedings to which the Government is a party may be enforced in the same manner as an order made in an action between private persons and not otherwise.

(2) Subsection (1) shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

(3) Nothing in this section shall affect any procedure which immediately before the commencement of this Act was available for enforcing an order made in favour of the Government for the recovery of any fine or penalty, or the forfeiture or condemnation of goods, or the forfeiture of any ship or any share in a ship.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Discovery

17.—(1) Subject to and in accordance with any written law—

- (a) in any civil proceedings in the High Court or a magistrate's court to which the Government is a party, the Government may be required by the court to make discovery of documents and produce documents for inspection; and
- (b) in any such proceedings as are mentioned in paragraph (a) of this subsection, the Government may be required by the court to answer interrogatories:

Provided that this section shall be without prejudice to any enactment or rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosures of the document or the answering of the question would be injurious to the public interest.

(2) Any order of the court made under the powers conferred by paragraph (b) of subsection (1) shall direct by what officer of the Government the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1) any rules of court made for the purposes of this section shall be such as to secure that the existence of a document is not disclosed if, in the opinion of a Minister, it would be injurious to the public interest to disclose the existence thereof.

Application to the Government of certain enactments

18. This Act shall not prejudice the right of the Government to take advantage of the provisions of an enactment although not named therein; and it is hereby declared that in any civil proceedings against the Government the provisions of any enactment which could, if the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Government.

Limitation of actions

19. Nothing in this Act shall prejudice the right of the Government to rely upon any written law relating to the limitation of time for bringing proceedings.

Rules

20.—(1) The Chief Justice may make rules for the purpose of giving effect to the provisions of this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Government in substitution for or by way of addition to any of the provisions regulating procedure in proceedings between private persons.

(2) Provisions shall be made in rules made under subsection (1) with respect to the following matters: —

- (a) for securing that where any civil proceedings are brought against the Government in accordance with the provisions of this Act, the plaintiff shall, before the Government is required to take any step in the proceedings, provide the Government with such information as the Government may reasonably require as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments and officers of the Government concerned;
- (b) for providing that in the case of proceedings against the Government the plaintiff shall not enter judgment against the Government in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Government;
- (c) for excepting proceedings brought against the Government from the operation of any rule of court providing for summary judgment without trial, and for enabling any such proceedings to be put in proper cases into any special list which may be kept for the trial of short causes in which leave to defend is given under any such rule of court as is referred to in this paragraph;
- (d) for providing that a person shall not be entitled to avail himself of any set-off or counter-claim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Government of any set-off or counter-claim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

21. Except as is otherwise in this Act expressly provided, the provisions of this Act shall not affect proceedings which have been instituted before the commencement of this Act. Pending Proceedings

22. The Government Suits Ordinance is hereby repealed:

Repeal of
Cap. 5

Provided that any proceedings under the said Ordinance pending before any court at the commencement of this Act shall be continued and concluded and any judgment given may be enforced in every respect as if the said Ordinance had remained in force.

23.—(1) Except as therein otherwise expressly provided, nothing in this Act shall— Saving

- (a) subject the Government to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Government than those to which the Government would be subject in respect of such acts or omissions if it were a private person;
- (b) affect any written law, rule of evidence or presumption relating to the extent to which the Government is bound by any Act;
- (c) affect any liability imposed on the Administrator-General under the Administrator-General's Ordinance or the Public Trustee under the Public Trustees Ordinance.

(2) Where any property vests in the Government by virtue of any enactment or rule of law which operates independently of the acts or the intention of the Government, the Government shall not by virtue of this Act be subject to any liabilities in tort by reasons only of the property

being so vested; but the provisions of this subsection shall be without prejudice to the liabilities of the Government under this Act in respect of any period after the Government or any person acting for the Government has in fact taken possession or control of any such property, or entered into occupation thereof.

(3) This Act shall not operate to limit the discretion of the court to grant relief by way of *mandamus* in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act some other and further remedy is available.

Passed in the National Assembly on the seventeenth day of April, 1967.


Clerk of the National Assembly

