

THE UNITED REPUBLIC OF TANZANIA



No. 19 OF 1980

I ASSENT,

President

21ST. MAY, 1980

**An Act to amend the Evidence Act, 1967**

ENACTED by the Parliament of the United Republic of Tanzania.

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| <p><b>1.</b> This Act may be cited as the Evidence (Amendment) Act, 1980, and shall be read as one with the Evidence Act, 1967 (in Act referred to as "the principal Act").</p>  | Short title and construction |
| <p><b>2.</b> This Act shall come into operation on such date as the minister may, by notice in the <i>Gazette</i>, appoint.</p>  | Commencement                 |
| <p><b>3.</b>-(1) Section 3 of the principal Act is amended in subsection (1)--</p> <p>(a) by inserting, immediately before the definition "court", the following new definition-</p> <p>"confession" means--</p> <p>(a) words or conduct, or a combination of both words and conduct, from which, whether taken alone or in conjunction with the other facts proved, an inference may reasonably be drawn that the person who said the words or did the act or acts constituting the conduct has committed an offence or;</p> <p>(b) a statement which admits in terms either an offence the person making the statement has committed an offence; or</p> <p>(c) a statement containing an admission of all the ingredients of the offence with which its maker is charged; or</p> | Amendment of section 3       |

(d) a statement containing affirmative declarations in which incriminating facts are admitted from which, when taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making the statement has committed an offence;

(b) by deleting the definition "evidence" and substituting for it the following definition:

"evidence" denotes the means by which an alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved: and without prejudice to the preceding generality, includes statements and admissions by accused persons, .

(c) by inserting, immediately after the definition "oral evidence", the following new definition;

64 44 police officer" means any member of the Police Force of or above the rank of corporal;"

(2) Section (3) of the principal Act is amended in subsection (2), by deleting paragraph (a) of that subsection and substituting for it the following paragraph:

"(a) in criminal matters, except where any statute or Other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists;"

Repeal and replacement of section 27

4. Section 27 of the principal Act is repealed and replaced by the following:

'Admissibility of confessions to police officers

27.-(1) A confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person.

(2) The onus of proving that any confession made by an accused person was voluntarily made by him shall lie on the prosecution.

(3) A confession shall be held to be involuntary if the court believes that it was induced by any threat, promise or other prejudice held out by the Police other to whom it was made or by any member of the Police Force or by any other person in authority.

Repeal and replacement of section 28

5. Section 28 of the principal Act is - repealed and replaced by the following -.

"Confessions before magistrate Cap. 537

"28. A confession which is freely and voluntarily made by a person accused of an offence in the: immediate presence of a magistrate as defined in the Magistrates' Courts Act, 1963, or a justice -of the peace under that Act, may be proved as against that person."

**6.** Section 33 of the principal Act is repealed and replaced by the following: Repeal and replacement of section 33

**33.**-(1) When two or more persons are being tried jointly for the same offence or for different offences arising out of the same transaction, and a confession of the offence or offences charged made by one of those persons affecting himself and some other of those persons is proved, the court may take that confession into consideration against that other person.

(2) Notwithstanding subsection (1), a conviction of an accused person shall not be based solely on a confession by a co-accused.

(3) In this section "offence" includes the abetment of, or attempt to commit the offence charged, and any other offences which are minor and cognate to the offence charged which are disclosed in the confession and admitted by the accused."

**7.** Section 34 of the principal Act is amended by deleting the introductory clause of that section, commencing with the word "Statements" and ending with the word "cases" and the punctuation " - "; and substituting for it the following introductory clause: Amendment of section 34

**34.** Statements, written or oral, of relevant facts made by, a person who is- dead or unknown, or who cannot be found,, or who cannot be summoned owing to his entitlement to diplomatic immunity, privilege or other similar reason, or who can be summoned' but refuses voluntarily to appear before the court as a witness, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court, to be unreasonable, are themselves admissible in the following cases: -"

**8.** The principal Act is amended by adding, immediately after section 34, the following new sections:

**34A.**-(1) In, any criminal proceedings where direct oral evidence of a relevant fact would be admissible, any statement contained in any writing, record or document, whether in the form of an entry in a book or in any other form, and which tends to establish that fact shall, on production of the writing, record or document, be admissible as evidence of that fact if-

Addition of new section 32A 34B and 24C

(a) the statement was made as a memorandum or record of the act, transaction, occurrence or event; or

(b) the writing record or document is, or forms part of, a record relating to any trade or business and was made or compiled in the regular course of the business where it is the practice to record such act, transaction, occurrence or event when it takes place or within a reasonable time after.

(2) All other circumstances of the making of the statement, including lack of personal knowledge by the person making it, may be held as affecting its weight as evidence but those circumstances shall not affect its admissibility.

(3) In estimating the weight, if any, to be attached to a statement . admissible as evidence by virtue of this section regard shall be had to all circumstances from which any inference can be reasonably drawn its to the accuracy or otherwise of the statement and, in particular, to the question whether or not the person making the statement, or concerned with making or keeping the writing, record or document, containing the statement, had any incentive to conceal or misrepresent the facts.

(4) For the purposes of this section-  
 "business" includes a business, occupation, profession, trade or calling of every kind;  
 "statement" includes any representation of fact, whether made in words or in any other way.

Proof by  
written  
statements in  
criminal  
proceedings

**34B.**-(1) In any criminal proceedings where direct oral evidence of a relevant fact would be admissible, a written statement by any person who is, or may be, a witness shall subject to the following provisions of this section, be admissible in evidence as proof of the relevant facts contained in it, in lieu of direct oral evidence.

(2) A written statement may only be admissible under this section-

- (a) where its maker is not called as a witness, if he is dead or unfit by reason of bodily or mental condition to, attend as a witness, or if he is beyond the seas and, it is not reasonably practicable to call him as a witness, or if all reasonable steps have been taken to procure his attendance but he cannot be found or he cannot attend -because he is not identifiable or, by operation of any law he cannot attend;
- (b) if the statement is, of purports to be, signed. by the person who made it;
- (c) if it contains a declaration by the person making it to the effect. that it is true to the best of his knowledge and belief and that he made, the statement knowing that, if it were tendered in evidence he would be

liable to prosecution for perjury if he wilfully stated in it anything which he knew to be false or did not believe to be true;

- (d) if, before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each -of the other parties to the proceedings;
- (e) if none of the other parties, within ten days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being so tendered -in evidence;
- (f) if, where 'the statement is made by a person who cannot read it, it is read to him before he signs it and it is accompanied by a declaration by the person who read it to the effect that it was so read.

(3) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section-

- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and
- (b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(4) So much of any statement as is admitted in evidence,- by virtue of this section shall, unless the court directs otherwise, be read aloud at the hearing and where the court so directs an account shall be given orally of so 'much of any statement as is not read aloud.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(6) For the purposes of any rule of law or practice which requires that evidence be corroborated or regulates the manner in which uncorroborated evidence is to be treated, a statement admissible under this section shall not be treated as corroboration of evidence given by the maker of the statement.

Proof by  
written  
statements  
in civil  
proceeding

**34c.**-(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document tending to establish that fact shall, in production of the original document, be admissible as evidence of that fact, lieu of the attendance of the witness, if the following conditions are satisfied: -,

- (a) if the maker of the statement either-
- (i) had. personal knowledge of the matters' dealt with by the statement; or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement, in so far as the matters dealt with in it are not within his personal knowledge, is the performance of a duty to record information supplied to him by a person who had, or might reasonably, be supposed to have, personal knowledge of those matters; and

- (b) if the maker of the statement is called as a witness in the proceedings,

but the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him, or to identify him, have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused order that the statement mentioned in subsection (1) shall be admissible as evidence or may, without the order having been made, admit the statement in evidence-

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu of the original there is produced, a copy of the original document or of the material part of it certified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at the time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of 'this section a statement in a document shall not be deemed to 'have been made by a person unless the document or the material part of it was written, made or reproduce by him with his own hand, or was signed or initialled by him or other wise recognized by him in wring as one for the accuracy of which he is responsible

(5) For the purposes of deciding whether or not a statement is admissible as evidence under this section, the court may draw any reasonable inference from the form or contents

of the document in which the statement is contained. or from any other circumstances, and may. in deciding whether or not a Person is fit to attend as a witness, act on a certificate purporting to be the certificate of a duly registered medical practitioner; and a court may, notwithstanding that the requirements of this section are, satisfied with respect to a statement, a court may in its discretion reject the statement if for any reason it appears to the court to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this section. regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or Otherwise Of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the fact stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(7) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement admissible as evidence under this section shall not be treated as corroboration of evidence given by the maker of the statement.

**9.** The principal Act is amended by inserting, immediately after section 43, the following new section:

Addition of new section 43A

"Relevancy to judgment in criminal proceedings **43A.** A final judgment of a court in any criminal proceedings which declares any person to be guilty of a criminal offence shall, after the expiry of the time limited for an appeal against that judgment or after the date of the decision of any appeal in those proceedings, whichever is the latest, be taken as conclusive evidence that the person so convicted was guilty of that offence",.

**10.** Section 76 of the principal Act is amended by deleting the definition "bank" and substituting for it the following definition:

Amendment of section 76

44 "bank" or "banker" means any person carrying on the business of banking in the United Republic. and for the purposes of sections 76. 77 and 78 includes any person carrying on the business of banking in any country, if his business as a banker is a relevant fact or is connected to a fact which is relevant in any proceedings;".

**11.** Section 127 of the principal Act is amended- (a) in subsection (2), by deleting the colon, which occurs immediately before the proviso to that subsection. and substituting for it a fullstop;

Amendment of section 127

- (b) by deleting the proviso to' subsection (2), and the whole of subsection (3). and substituting for them the following subsections:

"(3) Notwithstanding any rule of law or practice to the contrary, where evidence received by virtue of. subsection (2) is given on behalf of the prosecution and is not corroborated by any other material evidence, in support of it implicating the accused, the court may, after warning itself of the danger of doing so, act on that evidence to convict the accused I if it is fully satisfied that the child is telling nothing but the truth.

(4) Notwithstanding any rule of law or practice to he contrary, the evidence of a child of tender years received under subsection (2) may be acted upon by the court as material evidence. corroborating the evidence of another child of tender year previous given or the evidence given be an adult which is required by law or practice to be corroborated.

(5) For the purposes of subsections (2), (3) and (4). the expression "child of tender years" means a child of or below the apparent age of fourteen years.

(6) A person of unsound mind shall, unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them, be competent to testify."

Repeal and replacement of section 130  
 12. Section 130 of the Evidence is repealed and replaced by the following:

"Evidence of spouses and by

**130.**-(1) Where a person charged with an offence Is the husband or the wife of another person that other person shall be a competent but not a compellable witness on behalf of the prosecution, subject to the following Provisions of this section.

(2) Any wife or husband, whether or not of a monogamous marriage\* shall be a Competent and compellable witness for the prosecution-

(a) in any case where the person charged is charged with an offence under Chapter XV of the Penal Code Or under the. Law of Marriage Act, 197 1;

(b) In any case where the person Charged is Charged in respect of an act or omission affect.ng the. person or property of the wife or husband, or any of the wives of a polygamous marriage, of that person or the children of either or any of them.

(3) Where a person whom the court has reason to believe is the husband of wife, or, in a polygamous marriage, one of the wives of a person charge with an offence is called as a witness for the prosecution, the court shall, except

in the cases specified in subsection (2), ensure, that person is made aware before giving evidence of the provisions of subsection (1), and the evidence of that person shall not be admissible unless the court has recorded in the proceedings that this subsection has, been complied with;

(4) Every, person charged within an offence and the wife, or in a polygamous marriage, one other wives, or the husband, as the case may be, of the person so charged, shall be a competent witness for the, defence at every, stage of the proceedings where the person charged is charged solely or jointly with any other person; but a wife or the husband of the person so charged shall not be called as a witness except upon the application of the person charged.

(5) Where any person is charged with an offence and a wife or the husband upon being called as a witness for the defence, fails or refuses to give evidence as required, the prosecution as well as the court may, each in its own discretion, comment upon that failure or refusal to give evidence for the other spouse."

**12.** Section 131 of the principal Act is repealed and replaced by the following section: Repeal and replacement of section 131

"General competency of spouses in civil proceedings

**131.** In all civil proceedings the parties to the suit, and the husband and wife or wives of any party to the suit, shall be competent and compellable witnesses."

**13.** Section 12 of the principal Act is amended by inserting, immediately after the word "document", where it last occurs in that section, the words "or a copy of it", and a comma after those words. Amendment of section 132

**14.** Section 134A of the principal Act is amended in subsection (I)- Amendment of section 134

(a) by Meting the full stop occurring after the word "client' at the end of the proviso to. that subsection; and

(b) by adding, immediately after paragraph (b) of the 'proviso to that subsection, the following paragraph:

"(c) proceedings in which the professional conduct of the advocate himself is or might be in issue."

**15.** The principal Act is amended by adding, immediately after section 141, the following new section: Addition of new section 141A

"Evidence in offences of receiving

**141A.**-(1) Where any person is charged with the offence of receiving any property while he knew it to have been stolen, or for having in his possession any stolen property or property fraudulently or in any other way unlawfully obtained, then for the purpose of proving guilty knowledge,, there may be given at any stage of the proceedings-,

- (a) evidence of the fact that other property stolen, or fraudulently or in any other way unlawfully obtained, was found or had been in his possession within the period of twelve months immediately preceding the date of the commission or discovery of the commission of the offence with which that person is then charged-,
- (b) subject to subsection (2). evidence of the fact that within the period of five years immediately preceding the date of the offence with which he is then charged he was convicted of any offence involving fraud or dishonesty.

(2) No evidence of the fact mentioned in subsection (1) (b) may be proved unless-

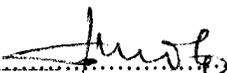
- (a) a written notice of the intention to give evidence of the previous conviction or conviction has been given to the accused or to his advocate or other representative at least three days before the day when the evidence is intended to be given; and
- (b) evidence has been given that the property in respect of which the accused is being tried was found or had been in his possession.

Amendment  
of section  
147

**16.** Section 147 of the principal Act is amended by adding, immediately after subsection (4), the following new subsection:

"(5) Notwithstanding the preceding provisions of this section, the court may, in any case, defer or permit to be deferred any examination or cross-examination of any witness until any other witness or witnesses have been examined-in-chief, cross-examined, re-examined or, as the case may be, further examined -in-chief or further cross-examined."

Passed in the National Assembly on the sixteenth day of April, 1980.

  
Clerk of the National Assembly