

THE HIGH COURT ACT, NO. 2 OF 1985

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ACT, NO. 2 OF 1985

I ASSENT

**(ALI HASSAN MWINYI)
THE PRESIDENT OF ZANZIBAR
AND
CHAIRMAN OF THE REVOLUTIONARY COUNCIL**

15th February, 1985.

**AN ACT TO REPEAL AND REPLACE THE HIGH COURT
DECREE, 1964, TO CONSOLIDATE CERTAIN LAWS
RELATING TO HIGH COURT AND OTHER
MATTERS RELATING THEREWITH AND
INCIDENTAL THERETO**

ENACTED by the House of Representatives of Zanzibar.

1. This Act may be cited as the High Court Act, 1985 and shall come into operation retrospectively on the 12th day of January, 1985.

Short title
and
commence-
ment.

2. In this Act, unless the context otherwise requires:-

Interpreta-
tion.

"the Constitution" means the Constitution of Zanzibar 1984;

"Court of Appeal" means the Court of Appeal for Tanzania established under the Constitution of the United Republic and as referred to in the Constitution;

"High Court" means the High Court of Zanzibar as established under the Constitution;

"Subordinate Court" means any court established under or referred to in section 5 of this Act;

Continuation of existence of High Court.

3.(1) The High Court for Zanzibar shall continue to exist and shall as heretofore have:-

- (a) unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law in force in Zanzibar;
- (b) in its discretion and at the instance of any interested person, power to inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination; and
- (c) such jurisdiction and powers as may be conferred on it by this Act or any other law.

Seal.

4. The High Court shall have a seal bearing the style of the court and a device approved by the Chief Justice.

Establishment of subordinate Courts.

5. There shall be courts subordinate to the High Court as follows:-

- (a) Regional Magistrates' Courts,
- (b) District Magistrates' Courts;
- (c) Kadhis' Courts; and
- (d) Juvenile Courts.

Appointment of Registrar and other officers of the High Court.

6.(1) There is hereby established the office of Registrar who shall be appointed by the Judicial Service Commission.

(2) The Chief Justice may assign duties to court and confer powers on persons appointed as Registrars, Clerks, bailiffs, interpreters and other officers of the High Court as he thinks fit and such persons shall have the powers so conferred.

(3) Any Registrar of the High Court and any other Officer of the court designated in that behalf by the Chief Justice may administer oaths and take affidavits, declarations and affirmations.

(4) Any Act which under any enactment is required to be done by the Registrar may be performed by an Assistant Registrar.

7.(1) The High court shall be a Court of Appeal from all subordinate courts in Zanzibar with full power:- Powers on appeal.

- (a) to reverse and vary all judgements, decisions and orders, civil and criminal, of any of the subordinate courts;
- (b) to order a new trial of any case heard or decided in any of the subordinate courts and to direct, if necessary, that such new trial shall be heard in the High Court;
- (c) to send back any case heard and decided in a subordinate court with such instruction as to any further proceedings as the High Court may deem necessary; and
- (d) to impose such punishment (whether more or less severe than, or of a different nature from, the punishment imposed by the subordinate court) as in the opinion of the High Court to have been imposed at the trial.

(2) When considering a criminal appeal and notwithstanding that a point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record of proceedings, unless it appears to the High court that a failure of justice has in fact resulted therefrom.

(3) Appeals in criminal and civil matters under this section shall be heard by one or more judges of the High Court as the Chief Justice may from time to time direct.

(4) This section shall not apply to any case where the Constitution or her law directs a specified number of Judges to constitute a quorum.

8.(1) The High Court shall have full power, jurisdiction and authority to review proceedings of all subordinate courts of justice within Zanzibar, and if necessary to set aside or correct the same. Powers of review and supervision.

(2) This power, jurisdiction and authority may be exercised in open court or in chambers in the discretion of the judge.

(3) The High Court shall exercise general powers of supervision over all subordinate courts.

High Court proceedings when within subordinate courts jurisdiction.

9. No civil cause or action within the jurisdiction of a subordinate court shall be instituted into or removed from the High Court save:-

- (a) by a judge of the High Court acting of his own motion; or
- (b) with the leave of a judge upon application made to him in Chambers, and after notice to the other party.

Assessors.

10.(1) The High Court may call to its assistance at any civil or criminal trial or appeal not more than four assessors, whose duty shall be to give either in open court or otherwise, such assistance and advice as the judge may require, but the decision shall be vested exclusively in the judge.

(2) The agreement or disagreement of the assessor or assessors with the decision of the judge shall be noted on the record.

(3) This section shall not apply to Muslim cases originating from the Kadhis' courts.

Place of sittings.

11. The High Court shall hold its sittings in the High Court building or in such other place as the Chief Justice may appoint.

Sessions of Court.

12.(1) The dates and times of sitting of the High Court (hereinafter called shall be determined by the Chief Justice.

(2) At the sessions, all criminal business shall as far as practicable be tried and determined in priority to all other business.

Distribution of business.

13. The Chief Justice shall regulate the distribution of business in the court, and all actions and proceedings before the court shall be heard and determined by a single judge, unless the Chief Justice otherwise directs or where the law provides otherwise.

14.(1) Save as otherwise provided in this Act, the pleadings and proceedings of the High Court shall be carried on and the sentences, decrees, judgements and orders thereof pronounced and declared in open court, but a judge may, if he thinks 'fit and at any time of the proceedings, order the court to be cleared or order any person or class of persons to leave the court.

Proceeding to be in open court.

(2) The language to be used in the High Court shall be both Kiswahili and English, and the proceedings shall be taken in either Kiswahili or English as the Chief Justice may direct.

15.(1) No Chief Justice or Judge shall accept or perform any other office or place of profit or emoluments not authorised by law.

No judge to hold other office of profit.

(2) Subsection (1) of this section shall not apply to a judge who may be temporarily appointed under provisions of the Constitution.

16.(1) Subject to the provisions of this Act or any other law, an appeal shall lie to the Court of Appeal from any judgement of the High Court in the exercise of its original or appellate jurisdiction:-

Appeals from High Court.

- (a) in civil suits, in the cases prescribed by the Civil Procedure Decree;
- (b) in criminal proceedings, in the cases prescribed by the Criminal Procedure Decree; and
- (c) in any other proceedings, in such cases and in such manner as may be prescribed by any law.

(2) In this section "judgement" .includes decree, order, conviction, sentence and decision.

17.(1) Where under the provision of any law a Judge of the High Court is empowered to reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise in any original proceedings before him the Court of Appeal shall have power to hear and determine every such question.

Power of High Court to reserve question of law for opinion of Court of Appeal.

(2) The power to reserve any such question for consideration by the Court of Appeal shall be in addition and without prejudice to any right of appeal conferred by this Act or any other law.

Protection
of Judges,
etc.

18.(1) No Judge, or any other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done in the discharge of his judicial duty whether or not within the limits of his jurisdiction if he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any court or other person bound to execute the lawful warrants or orders of any judge, or other person acting judicially shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

Power to
make Rules
of Court.

19.(1) Subject to the provisions of this Act or any other law, the Chief Justice may make Rules of Court:-

- (a) for regulating the pleading, practice and procedure in the Courts hereby constituted with respect to all matters within the respective jurisdictions of such courts;
- (b) for regulating the practice where any party wishes to appeal from a decision of a subordinate court;
- (c) for regulating the means by which particular facts may be proved in any of the courts hereby constituted;
- (d) for prescribing any forms to be used;
- (e) for prescribing, enforcing or remitting the fees to be taken;
- (f) for prescribing scales of costs and regulating any matter in connection therewith;
- (g) for prescribing the allowances to be made in criminal cases to complainants, witnesses, assessors, interpreters, medical practitioners and other persons assisting the courts in the administration of justice and the conditions upon which such allowances shall be paid;
- (h) for prescribing or regulating the duties of the officers of the said courts;

- (i) for regulating the mode in which advocates are to be admitted to practise as such and the mode in which the right to practice may be withdrawn or suspended on the ground of misconduct.

20.(1) The High Court Decree No.2 of 1964 and the Supreme Council Decree No.4 of 1970 are hereby repealed.

Repeal of Decree 2/64 and 4/70, savings and Transitional.

(2) Notwithstanding the repeal under subsection (1):-

- (a) any law, practice or procedure made or established under the repealed Decrees shall continue in force until other similar provision is made under this Act;
- (b) all appointments of officers made under the repealed Decree shall continue in force notwithstanding such repeal;
- (c) all legal proceedings begun in or before any court constituted by or under the repealed Decrees, shall if such proceedings are pending at the date of commencement of this Act, continue as if this Act had not been enacted.
- (d) all Rules of court, directions and other provisions made or given by or under the repealed Decrees shall continue in force until other similar provisions are made under this Act.

(3) Any fresh proceedings pending immediately before the date of commencement of this Act before the High Court may be continued before the High Court constituted by the Constitution and as provided Under this Act.

(4) All legal proceedings begun in or before any court constituted by the repealed Decree and adjudicated or finalised before the commencement of this Act shall be barred from commencing afresh under this Act or any other law.

PASSED in the House of Representatives on 22nd day of January, 1985.

(IDI PANDU HASSAN)

CLERK TO THE HOUSE OF REPRESENTATIVES OF ZANZIBAR