



THE GOVERNMENT PROCEEDINGS ACT 2010
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ACT NO. 3 OF 2010

I ASSENT


{AMANI ABEID KARUME}
PRESIDENT OF ZANZIBAR
AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

26th JULY, 2010

AN ACT TO PROVIDE FOR THE RIGHTS AND LIABILITIES
OF THE GOVERNMENT IN CIVIL MATTERS AND FOR THE
PROCEDURE IN CIVIL PROCEEDINGS BY AND AGAINST
THE GOVERNMENT AND FOR THE PURPOSES INCIDENTAL
THERE TO AND CONNECTED THEREWITH

ENACTED by the House of Representatives of Zanzibar.

PART I PRELIMINARY PROVISIONS

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| Short title and Commencement | 1. This Act may be cited as the Government Proceedings Act 2010 and shall come into operation immediately after being assented to by the President. |
| Interpretation. | 2. (1) In this Act, unless the context otherwise requires:

“Agent” when used in relation to the Government includes an independent contractor employed by the Government;

“Civil proceedings” includes proceedings in the High Court for the recovery of fines or penalties;

“Government” means the Revolutionary Government of Zanzibar; |



"Minister" means the Minister responsible for Finance;

"President" means the President of Zanzibar and Chairman of the Revolutionary Council;

"Public officer" in relation to the Government includes Minister and any servant of the Government;

"Government Proceedings" includes a claim by way of set-off or counter-claim raised in proceedings initiated by the Government;

"Registrar" means the Registrar of the High Court;

"Special Department" means the Special Department as established under section 121 of the Constitution of Zanzibar of 1984;

"Statutory duty" means any duty imposed by or under any written law.

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

(3) The Government shall not, for the purposes of Part IV or Part V of this Act, be deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon relation of some other person.

PART II SUBSTANTIVE LAW

Liability of
the
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, delict, tort and in other respects, to which it would be subject if it were a private person of full age and capacity and any claim arising therefrom may be enforced against the Government in accordance with the provisions of this Act.



(2) Proceedings shall not 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, but for 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 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 public 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) Any law which removes or limits the amount of liability of any Government department or officer of the Government in respect of any tort committed by that department or officer shall, in case of proceedings against the Government under this section in respect of a tort committed by that department or officer, apply in relation to the Government as it would have applied in relation to that department or officer if the proceedings against the Government had been proceedings against that department or officer.

(6) Proceedings shall not 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 responsibility of judicial nature vested in him, or any responsibility 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 act done under statutory power.

5. Nothing in this Part shall extinguish or abridge any power or authority which, but for this Act, would have been exercised by virtue of any power or authority conferred on the Government by any written law.

PART III JURISDICTION AND PROCEDURE

Civil proceedings against the Government etc.

6.(1) Notwithstanding any other provisions of this Act, civil proceedings shall be instituted against the Government subject to the provisions of this section.

(2) No suit shall be instituted against the Government, or against a public officer in respect of any act purported to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of the Chief Secretary to the Government and Attorney General, stating the cause of action, name, description and place of residence of the plaintiff and the relief he claims and the plaint which contain statements that such notice has been so delivered or left.

(3) All suits against the Government shall after the expiry of the notice be brought against the Attorney General and a copy of the plaint shall be served upon the Ministry, Department or public officer that alleged to have committed the civil wrong on which the civil suit is based.

(4) Subject to the provisions of this Act, all such proceedings by or against the Government shall be instituted or proceeded within the High Court or Regional Magistrate's Court in accordance with the Civil Procedure Decree and rules of the Court.

(5) Subject to the provisions of sub section (4) of this section, all claims of or against the Government, notwithstanding any other law shall be instituted or tried by the High Court or Regional Court.

(6) Subject to the provisions of this Act, the Government shall not be required to pay any fee when filing a suit or obtaining judgment and decree from the Court.



Liabilities
against the
public
officer.

7.(1) Any public officer who failed to represent the Government in civil suit and causes any costs or charges to the Government shall be responsible in respect to that costs or charges and the Government shall be recovered that costs or charges from that officer in accordance with the Rules made under this Act.

(2) Any Advocate appointed to represent Government in civil suit who failed to represent the Government and causes unnecessary costs or charges to Government shall be responsible for that costs or charges and the Government shall be recovered that costs or charges from that Advocate in accordance with the Rules made under this Act.

Provisions
relating to
special
departments.

8.(1) Any thing done or omitted to be done by a member of the special department while on duty as such shall subject either him or the Government to liability in tort for causing the death of another person or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the special departments of the Government if-

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the special department or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the special departments; and
- (b) the Minister responsible for special departments certifies that such injury should be treated as attributable to service for the purposes of entitlement of pension relating to the disablement or death of members of the special department of which he is a member.

(2) The provisions of subsection (1) of this section shall not exempt a member of the special department from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of the special department.



(3) No proceedings in tort shall lie against the Government for death or personal injury due to anything suffered by a member of the special department of the Government if-

- (a) that the injury suffered by him is a consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid, or in consequence of the nature or condition of any equipment or supplies used for the purposes of the special department; and
 - (b) the Minister responsible for special departments certifies as mentioned in subsection (1) of this section, nor shall any act or omission of an officer of the Government subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the special department of the Government being a thing as to which the conditions aforesaid are satisfied.
- (4) If the Minister responsible for special departments satisfied that:
- (a) that a person was or was not on any particular occasion on duty as a member of the special department of the Government; or
 - (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said departments;

may issue a certificate certifying that to be the fact and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

Inter
pleader.

9. A Ministry may institute or be made a party to interpleader proceedings in the same manner in which a private person may institute such proceedings notwithstanding that the proceedings have been instituted by a court broker or other like officer.

Parties to
proceedings.

10.(1) Subject to the provisions of any other written law, civil proceedings by the Government shall be instituted by the Attorney General or any other person duly authorized to exercise his power.



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

Transfer
of
proceedings

11.(1) If in a case where proceedings have been instituted against or by the Government in the Regional Magistrate's Court an application in that behalf is made by the Government to the High Court, and there is produced to the court a certificate of 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 for trial.

(2) Without prejudice to the rights of the Government under the preceding provisions of this section, all rules of law relating to the removal or transfer of proceedings from a Regional Magistrates' Court to the High Court shall apply in relation to the proceedings against the Government.

Nature
of relief.

12.(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.

(2) 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.

(3) 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 land or 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 and if the Government needs that land or property for public purpose, proceedings of termination of such right shall be adhered to subject to the provisions of the Constitution and other relevant laws.

Costs in civil
proceedings
to which the
Government
is a party.

13.(1) In any civil proceedings to which the Government is a party, the costs or any 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.



(2) In the case of proceedings to which by reason of any law 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 public 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 Public officer, whatever may be the result of the proceedings; and

(3) Nothing in this section shall affect the power of the court to order, or any law providing for, the payment of costs out of any particular fund or property, or any law expressly relieving any department or officer of the Government of the liability to pay costs.

Appeals
and stay of
execution.

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

PART IV JUDGMENTS AND EXECUTION

Interest.

15.(1) The provisions of any written law relating to the payment of 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.

Satisfaction
of orders
against the
government.

16.(1) Where in any civil proceedings by or against the Government any order, including an order as to costs, is made by court in favour of a person against the Government or against any public officer, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order, 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 other relief, the certificate shall state the amount so payable and the Principal Secretary responsible for finance 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 in the certificate to be due to him together with the interest, if any, lawfully due thereon.

(3) 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 directives to be inserted therein.

(4) Save as 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 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.

(5) This section shall apply in relation to proceedings pending to the judgments or orders which have been rendered before the commencement of this Act but not yet executed or enforced and in relation to proceedings instituted thereafter.

(6) The Minister shall make Regulations prescribing procedure of payment in execution of decree made under sub section (2) of this section.

Execution
by the
Government.

17.(1) Subject to the provisions of this Act, any order made in favour of the Government against any person in any civil proceedings to which the Government is a party shall be enforced in the same manner as an order made in an action between private persons.



(2) The provision of Subsection (1) of this section 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 property.

PART V MISCELLANEOUS PROVISIONS

Discovery.

18.(1) Subject to and in accordance with any written law;

- (a) in any civil proceedings in the High Court or Regional 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 mentioned in paragraph (a) of this subsection, the Government may be required by the court to answer interrogatories.

(2) This section shall be without prejudice to any law 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.

(3) Any order of the court made under the powers conferred by paragraph (b) of subsection (1) of this section shall direct by which public officer the interrogatories are to be answered.

(4) Without prejudice to the Provision of subsection (1) of this section 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 the Minister, it would be injurious to the public interest to disclose the existence thereof.



Right of Government to rely on existing law.

19. This Act shall not prejudice the right of the Government to take advantage of the provisions of any law although not mentioned herein and it is hereby declared that in any civil proceedings against the Government the provisions of any law which could, if the proceedings were between private persons, be relied upon by the defendant as a defense to the proceedings, whether in whole or in part, may be so relied upon by the Government.

Limitation of action.

20. 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.

Set-off and counter-claim for recovery of taxes.

21. 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.

Pending proceedings

22. Except as provided in section 16 of this Act the provisions of this Act shall not affect proceedings which have been instituted before the commencement of this Act.

Amendment of Civil Procedure Decree and Land Tribunal Act.

23.(1) Sections 59, 60 and 62 of the Civil Procedure Decree, Chapter 8 of the Laws of Zanzibar are hereby repealed.

(2) Section 13 of the Land Tribunal Act, No. 7 of 1994 is hereby amended by adding the following words after paragraph (r):

“Provided that, where a proceedings is to be instituted by or against the Government, the competent court to try such a suit shall be the High Court or Regional Magistrate’s Court”.

Saving.

24.(1) Except as otherwise provided herein, nothing in this Act shall;

- (a) subject the Government to any greater liabilities in respect of the acts or omissions of any independent contractor 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;

(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.

Rules.

25.(1) The Minister may make Rules for the purpose of administration and 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 between private persons.

(2) Provisions shall be made in Rules made under subsection (1) of this section with respect to the following matters;

(a) securing that where 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 public officer concerned;

(b) 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) 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.

(3) Rules (including the Government Proceedings (Procedure Rules) made under subsection (1) in relation to the Civil Procedure Rules shall be read and construed as one with the Civil Procedure Rules and shall have the same effect as rules made under the Civil Procedure Decree.

PASSED in the House of Representatives of Zanzibar on 24th day of March, 2010.

A handwritten signature in blue ink, appearing to read 'Ibrahim Mzee Ibrahim'.

{IBRAHIM MZEE IBRAHIM}
CLERK OF THE HOUSE OF REPRESENTATIVES
ZANZIBAR.