

THE UNITED REPUBLIC OF TANZANIA



No. 15 OF 1979

I ASSENT

Julius K. Nyerere
President

9TH August, 1979

An Act to provide for Appeals to the Court of Appeal of the United Republic of Tanzania

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ENACTED by the Parliament of the United Republic of Tanzania

PART I

PRELIMINARY

1. This Act may be cited as the Appellate Jurisdiction Act, 1979 and shall come into operation on such date as the Minister may, notice in the Gazette appoint

Short title and commencement

In this Act, unless the context requires otherwise

"court of Appeal" means the Court of Appeal of Tanzania established by section 68A of the Constitution of the United Republic of Tanzania, 1977;

"Court of Appeal for East Africa" means the Court of Appeal for East Africa established under Article 80 of the Treaty for East African Co-operation, 1967;

"High Court" means the High Court of the United Republic of Tanzania

"judgment" includes a decree, an order, a sentence or decision, or the

PART II

JURISDICTION OF THE COURT OF APPEAL

(1) The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court and from subordinate courts with extended jurisdiction.

Jurisdiction of court of Appeal

(2) For all purposes of and incidental. to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power, authority and jurisdiction vested in the Court from which the appeal is brought.

PART III

APPEALS TO THE COURT OF APPEAL

Appeals in
civil cases

4-(I) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal-

Acts, 1966
No. 49

- (a) against every decree, including an *ex parte* or preliminary decree made by the High Court in a suit under the Civil Procedure Code, 1966, in the exercise of its original jurisdiction;
 - (b) against the following orders of the High Court made under its original jurisdiction, that is to say-
 - (i) an order superseding an arbitration where the award has not been completed within the period allowed by the High Court;
 - (ii) an order on an award stated in the form of a special case;
 - (iii) an order modifying or correcting an award;
 - (iv) an order filing or refusing to file an agreement to refer to arbitration;
 - (v) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
 - (vi) an order filing or refusing to file an award in an arbitration without the intervention of the High Court;
 - (vii) an order under section 95 of the Civil Procedure Code, 1966, which relates to the award of compensation where an arrest or a temporary injunction is granted;
 - (viii) an order under any of the provisions of the Civil Procedure Code, 1966, imposing a fine or directing the arrest or detention, in the civil prison, of any person, except where the arrest or detention is in execution of a decree;
 - (ix) any order specified in rule 1 of order XLIII in the Civil Procedure Code, 1966, or in any rule of the High Court amending, or in substitution for, the rule;
 - (c) with the leave of the High Court or of the Court of Appeal, against every other decree, order, judgment, decision or finding of the High Court.
- (2) Notwithstanding the provisions of subsection (1)
- (a) except with the leave of the High Court, no appeal shall lie against-
 - (i) any decree or order made by the consent of the parties; or
 - (ii) any decree or order as to costs only where the costs are in the discretion of the High Court;

(b) except with the leave of the Court of Appeal, a party who does not appeal against a preliminary decree shall not dispute its correctness in an appeal against the final decree;

(c) no appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrates' Courts Act, 1963, unless the High Court certifies that a point of law is involved in the decision or order.

Cap. 537

5.-(1) Any person convicted on a trial held by the High Court or by a subordinate court exercising extended powers may appeal to the Court of Appeal-

Appeals in criminal cases

(a) where he has been sentenced to death, against conviction on any ground of appeal; and

(b) in any other case-

(i) against his conviction on any ground of appeal; and

(ii) against the sentence passed on conviction unless the sentence is one fixed by law.

(2) Where the Director of Public Prosecutions is dissatisfied with any acquittal, sentence or order made or passed by the High Court or by a subordinate court exercising extended powers he may appeal to the Court of Appeal against the acquittal, sentence or order, as the case may be, on any ground of appeal.

(3) Where, on proceedings under the proviso to section 197 of the Penal Code relating to the conviction of a woman who is pregnant, the High Court or a subordinate court exercising extended powers has found that the woman in question is not pregnant, the woman may appeal to the Court of Appeal against the finding.

cap. 16

(4) An appeal shall lie to the Court. of Appeal against any directions of the High Court or of a subordinate court exercising extended powers for the release of a person detained in proceedings for those directions in the nature of *habeas corpus* under section 348 of the Criminal Procedure Code against a refusal to give those directions.

(5) An appeal shall lie to the Court of Appeal from any order of the High Court awarding costs under section 173 of the Criminal Procedure Code, and the Court of Appeal shall have power to give the costs of the appeal as it shall deem reasonable.

Cap. 20

(6) Any person sentenced by the High Court in pursuance of the provisions of section 5A of the Criminal Procedure Code may appeal to the Court of Appeal against the sentence, unless it is one fixed by law; but if the High Court imposes a sentence which the court which committed the offender had power to impose, no appeal shall lie against such sentence.

(7) Either party-

(a) to proceedings under Part X of the Criminal Procedure Code may appeal to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact;

(b) to proceedings of a criminal nature under Head (C) of part 11, of the Magistrates, Courts Act, 1963, May, if the High Court certifies that a point of law is involved, appeal to the Court of Appeal,

where the order appealed against is a declaratory order, the determination of the Court of Appeal on it shall also have effect only as a declaratory order.

PART IV

APPEALS AND RESERVATIONS ON QUESTIONS RELATING To THE CONSTITUTION

Appeals to the Court of Appeal for constitutional interpretation

6-An appeal shall lie to the Court of Appeal Oil any question relating to the interpretation of the Constitution.

Reservation of questions

7. Where, in the course of any Proceedings in a subordinate court (other than a subordinate court with extended Powers), it appears to the magistrate that the determination of ally issue or other matter in the Proceedings involves a substantial question as to interpretation, of the Constitution, he may, at any time before judgment is Pronounced, reserve that question for determination by the High Court; and where a magistrate so reserves that question, he may continue the hearing If the proceedings in respect of all or any other issues or matters in the Proceedings or he may adjourn the hearing pending the determination of the question by the High Court

PART V

MISCELLANEOUS PROVISIONS AND REPEALS

Presence of appellant in criminal cases

8.(I) An appellant in any criminal cause or matter Shall have no right to be present-

- (a) at the hearing or determination of an application for leave to appeal out of time or as a Pauper or for a certificate that the case is a fit case for appeal, except where the rules of the High Court provide that he shall have the right to be present or *where* the High Court or the subordinate court concerned gives him leave to be present;
- (b) at the hearing or determination of an appeal by the Court of Appeal except in so far as the rules of the Court of Appeal that he shall have the right to be present or where the Court of Appeal gives him leave to be present

12) An appellant who has no right to be present and is not given leave to be Present a' the hearing of his application for leave to appeal or for a certificate that the case is a fit case for appeal or at the hearing of his appeal, may present his case and argument in writing.

9. The High Court and, where an appeal lies from a subordinate court exercising extended powers, the subordinate court concerned, may, if it thinks fit, pending the determination of an appeal from the High Court or the subordinate court concerned to the Court of Appeal-

Power to admit to bail or postpone fine

- (a) admit the appellant to bail in the same circumstances in which the court would have given bail under section 321 also the Criminal Procedure Code;
- (b) postpone the payment of a fine.

10. (1) Subject to subsection (2), the High Court and, where an appeal lies from a subordinate court exercising extended powers, subordinate court concerned, may extend the time for giving notice of intention to appeal from a judgment of the High Court or of the subordinate court concerned, for making an application for leave to appeal or for a certificate that the case is a fit case for appeal, notwithstanding that the time for giving the notice or making the application has already expired.

Extension of time by High Court

(2) In criminal cases, in the case of a sentence of death, no extension of time shall be granted after the issue of the warrant for the execution of that sentence.

11. The Chief Justice may make rules of court regulating appeals to the Court of Appeal and other matters incidental to the making, hearing or determination of those appeals.

Rules of Court

12. Notwithstanding the provisions of section 3 and section 13 of this Act-

Transitional provision

- (a) all proceedings pending before the Court of Appeal for East Africa in exercise of its jurisdiction immediately before the commencement of this Act may be continued and concluded before the Court of Appeal as if they were commenced under this Act or may be recommenced *de novo* before the Court of Appeal; and
- (b) every judgment of the Court of Appeal for East Africa which immediately before the commencement of this Act had not been fully executed or enforced may be executed and enforced in the same manner as if it were a judgment of the Court of Appeal made in exercise of its jurisdiction under this Act.

13-(I) The Appellate Jurisdiction Ordinance, 1961, is hereby repealed.

Repeal cap 451

(2) The Appellate Jurisdiction Act, 1962, is hereby repealed.

Cap. 507

This Acts to
apply not-
withstanding
Article 80 of
Treaty for
East Africa
Co-opera-
tion etc

14. Notwithstanding the provisions of Article 80 of the Treaty for East African Co-operation and those of the Court of Appeal for East Africa Act of the Community, the Court of Appeal shall, as from the commencement of this Act, have and exercise the powers and perform the duties, functions and responsibilities vested in it by this Act, and in the event of any conflict between any of the provisions of Article 80 of the Treaty for East African Co-operation or of the Court of Appeal for East Africa Act of the Community and this Act, the Provisions of this Act shall prevail in relation to all matters arising after the commencement of this Act.

Passed in the National Assembly on the fourteenth day of July, 1979.


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Clerk of the National Assembly