

CHAPTER 3

THE BASIC RIGHTS AND DUTIES ENFORCEMENT ACT

An Act to provide for the procedure for enforcement of constitutional basic rights, for duties and for related matters.

[27th January, 1995]

[DPG]

Act No. 33 of 1994

[PCh3s1]1. Short title

(1) This Act may be cited as the Basic Rights and Duties Enforcement Act.

(2) This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania in relation to all suits the courses of action in which concern the provisions of sections 12 to 29 of the Constitution.

[PCh3s2]2. Interpretation

(1) In this Act, unless the context requires otherwise—

"act" includes any decision, determination, advice or recommendation made under a power or duty conferred or imposed by the Constitution or by any written law;

"administrative act or omission" means an act or omission of a Minister, Public Official, Tribunal, Board, Committee, Local Government Authority or other Authority of the Government exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any written law in furtherance of basic rights and duties;

"Constitution" means the Constitution of the United Republic of Tanzania, 1977;

"Minister" means the Minister for the time being responsible for legal affairs;

"subordinate court" means any court of a magistrate of any level established under the Magistrates' Courts Act. *

[PCh3s3]3. Application

This Act shall apply only for the purposes of enforcing the provisions of the basic rights and duties set out in Part III of Chapter One of the Constitution.

[PCh3s4]4. Right to apply to High Court for redress

If any person alleges that any of the provisions of sections 12 to 29 of the Constitution has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress.

[PCh3s5]5. Application to be made by petition

An application to the High Court in pursuance of section 4 shall be made by petition to be filed in the appropriate Registry of the High Court by originating summons.

[PCh3s6]6. Contents of petition

A petition made under this Act shall set out–

- (a) the name and address of the petitioner;
- (b) the name and address of each person against whom redress is sought;
- (c) the grounds upon which redress is sought;
- (d) the specific sections in Part III of Chapter One of the Constitution which are the basis of the petition;
- (e) particulars of the facts, but not the evidence to prove such facts, relied on; and
- (f) the nature of the redress sought.

[PCh3s7]7. Service of petition

(1) A copy of the petition shall be served by or on behalf of the petitioner on each person against whom redress is sought.

(2) Where redress is sought against the Government a copy of the petition shall be served by or on behalf of the petitioners on the Attorney-General or his duly authorised representative.

(3) Where redress is sought against a Minister, Deputy Minister, Permanent Secretary, Commissioner or other servant of the Government in respect of any matter arising out of the official duties or functions of the office he holds, a copy of the petition shall also be served by or on behalf of the petitioner on the Attorney-General or his duly authorised representative.

[PCh3s8]8. Jurisdiction of High Court

(1) The High Court shall have and may exercise original jurisdiction–

(a) to hear and determine any application made by any person in pursuance of section 4;

(b) to determine any question arising in the course of the trial of any case which is referred to it in pursuance of section 6, and may make such orders and give directions as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions of sections 12 to 29 of the Constitution, to the protection of which the person concerned is entitled.

(2) The High Court shall not exercise its powers under this section if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law, or that the application is merely frivolous or vexatious.

(3) The High Court shall dismiss every application brought under this Act which it is satisfied is brought only on the grounds that the provisions of sections 12 to 29 of the Constitution are likely to be contravened by reason of proposals contained in any Bill which, at the date of the application, has not become a law.

(4) For the avoidance of doubt, the provisions of Part VII of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act *, which relate to the procedure for and the power of the High Court to issue prerogative orders, shall not apply for the purposes of obtaining redress in respect of matters covered by this Act.

[PCh3s9]9. Where a matter arises in subordinate court

(1) Where in any proceedings in a subordinate court any question arises as to the contravention of any of the provisions of sections 12 to 29 of the Constitution, the presiding Magistrate shall, unless the parties to the proceedings agree to the contrary or the Magistrate is of the opinion that the raising of the question is merely frivolous or vexatious, refer the question to the High Court for decision; save that if the question arises before a Primary Court the Magistrate shall refer the question to the court of a resident magistrate which shall determine whether or not there exists a matter for reference to the High Court.

(2) Where any matter is referred to the High Court in pursuance of subsection (1), the High Court shall give its decision upon the question, and the subordinate court in which the question arose shall dispose of the case in accordance with that decision.

[PCh3s10]10. Constitution of High Court

(1) For the purposes of hearing and determining any petition made under this Act including references made to it under section 9, the High Court shall be composed of three Judges of the High Court; save that the determination whether an application is frivolous, vexatious or otherwise fit for hearing may be made by a single Judge of the High Court.

(2) Subject to subsection (1), every question in a petition before the High Court under this Act shall be determined according to the opinion of the majority of the Judges hearing the petition.

[PCh3s11]11. Hearing

(1) The High Court shall set down the petition for hearing as soon as may be convenient after filing and shall notify the date of hearing to the petitioner and to each of the persons upon whom a copy of the petition is required to be served.

(2) The petitioner and any person on whom a copy of the petition is required to be served may appear either in person or by advocate at the hearing of the petition and may adduce evidence.

[PCh3s12]12. Form of evidence

The High Court may, in its discretion, receive evidence by affidavit in addition to or in substitution for oral evidence.

[PCh3s13]13. Power of High Court in making decisions

(1) Subject to this section, in making decisions in any suit, if the High Court comes to the conclusion that the basic rights, freedoms and duties concerned have been unlawfully denied or that grounds exist for their protection by an order, it shall have power to make all such orders as shall be necessary and appropriate to secure the applicant the enjoyment of the basic rights, freedoms and duties conferred or imposed on him under the provisions of sections 12 to 29 of the Constitution.

(2) Where an application alleges that any law made or action taken by the Government or other authority abolishes or abridges the basic rights, freedoms or duties conferred or imposed by sections 12 to 29 of the Constitution and the High Court is satisfied that the law or action concerned to the extent of the contravention is invalid or unconstitutional, then the High Court shall, instead of declaring the law or action to be invalid or unconstitutional, have the power and the discretion in an appropriate case to allow Parliament or other legislative authority, or the Government or other authority concerned, as the case may be, to correct any defect in the impugned law or action within a specified period, subject to such conditions as may be specified by it, and the law or action impugned shall until the correction is made or the expiry of the limit set by the High Court, whichever be the shorter, be deemed to be valid.

(3) The power of the High Court under this Act shall include the power to make all such orders as shall be necessary and appropriate to secure the enjoyment by the applicant of the basic rights, freedoms and duties under the provisions of sections 12 to 29 of the Constitution should the Court come to the conclusion that such basic rights, freedoms or duties have been unlawfully denied or violated or that grounds exist for their protection by an order.

[PCh3s14]14. Appeals

(1) Any person aggrieved by any decision of the High Court on an application brought under section 4, 5 or 6 may appeal to the Court of Appeal.

(2) Where a Judge of the High Court determines that any application is made frivolously or vexatiously, and whereupon appeal to the High Court from a decision of a subordinate court a Judge of the High Court determines that the raising of a question is merely frivolous or vexatious, the matter shall be referred to the High Court constituted pursuant to section 10, and the decision of that Court on that question shall be final.

(3) Notwithstanding the provisions of the Civil Procedure Code * or of any other law to the contrary, where in proceedings under this Act which do not involve continuous breach or personal injuries, the Government files a notice of intention to appeal against any decision of a court, the notice shall, when entered, operate as a stay of execution upon the decision sought to be appealed against.

[PCh3s15]15. Rules of procedure

Subject to the provisions of this Act, the Chief Justice may, after consultation with the Minister make rules with respect to other matters relating to the practice and procedure of the High Court and of subordinate courts in relation to the jurisdiction and powers conferred by or under this Act, including rules with respect to the time within which application may be brought and references shall be made to the High Court from subordinate courts.