

CHAPTER 141

THE APPELLATE JURISDICTION ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 141

THE APPELLATE JURISDICTION ACT

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

[1st September, 1979]

[G.N. No. 98 of 1979]

Acts Nos.

15 of 1979

17 of 1993

32 of 1994

10 of 1999

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh141s1]1. Short title

This Act may be cited as the Appellate Jurisdiction Act.

[PCh141s2]2. Application Act No. 16 of 1984

This Act shall apply throughout the United Republic.

[PCh141s3]3. Interpretation

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

"Constitution" means the Constitution of the United Republic * or the Constitution of Zanzibar, as the case may be;

"Court of Appeal" means the Court of Appeal of the United Republic of Tanzania established by section 117 of the Constitution of the United Republic *;

"High Court" means the High Court of Tanzania or the High Court of Zanzibar, as the case may be;

"judgment" includes a decree, an order, a sentence or decision, or the grounds for any of them.

(2) For the purposes of this Act, reference to any provision of any procedural or substantive enactment applicable to Mainland Tanzania shall be construed to include reference to a like or similar provision of a corresponding procedural or substantive enactment by the House of Representatives applicable to Zanzibar in relation to the matters to which the former enactment relates.

(3) For the purposes of this Act, reference to a court subordinate to the High Court shall be construed to include a court subordinate to the High Court of Zanzibar corresponding to the court referred to in this Act.

(4) For the purposes of this Act, reference to the Director of Public Prosecutions, or to any other public officer on whom any power or function is conferred or imposed under this Act in relation to Mainland Tanzania shall, subject to subsection (5), be construed as including reference to a public officer holding office under the Revolutionary Government of Zanzibar and exercising or discharging powers or functions in relation to Zanzibar corresponding to those exercisable or discharged by the Director of Public Prosecutions or other public officer referred to in this Act.

(5) The provisions of subsection (4) shall not apply to the interpretation of the designation "Chief Justice".

PART II

JURISDICTION OF THE COURT OF APPEAL (s 4)

[PCh141s4]4. Jurisdiction of Court of Appeal Acts Nos. 17 of 1993 s. 2; 32 of 1994 Sch.

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

(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 of revision and the power, authority and jurisdiction vested in the court from which the appeal is brought.

(3) Without prejudice to subsection (2), the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court.

(4) The Court of Appeal may in accordance with this Act, the Tanzania Court of Appeal Rules or any other law for the time being in force providing for appeals to the Court summarily reject any appeal.

(5) The power conferred upon the court by subsection (2) and (4) of this section and the power to examine the records of any proceedings pursuant to subsection (3), shall not be exercised by a single judge of the court.

PART III

APPEALS TO THE COURT OF APPEAL (ss 5-6)

[PCh141s5]5. Appeals in civil cases Act No. 10 of 1999 Sch.

(1) 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—

(a) against every decree, including an ex parte or preliminary decree made by the High Court in a suit under the Civil Procedure Code *, 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 *, 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, imposing a fine or directing the arrest or detention, in 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, 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 * unless the High Court certifies that a point of law is involved in the decision or order;

(d) no appeal shall lie against any preliminary or interlocutory decision or order of the Commercial Division of the High Court unless such decision or order has the effect of finally determining the suit.

[PCh141s6]6. Appeals in criminal cases

(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–

(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, in proceedings under the proviso to subsection (1) of section 26 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.

(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 390 of the Criminal Procedure Act * 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 350 of the Criminal Procedure Act * and the Court of Appeal shall have power to award the costs of the appeal as it shall deem reasonable.

(6) Any person sentenced by the High Court in pursuance of the provisions of section 171 of the Criminal Procedure Act * 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 Act * 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 III of the Magistrates' Courts Act *, may, if the High Court certifies that a point of law is involved, appeal to the Court of Appeal,

but 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 (ss 7-8)

[PCh141s7]7. Appeals to the Court of Appeal for constitutional interpretation

An appeal shall lie to the Court of Appeal on any question relating to the interpretation of the Constitution.

[PCh141s8]8. Reservation of questions

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 any issue or other matter in the proceedings involves a substantial question as to the 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 of 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 (ss 9-15)

[PCh141s9]9. Presence of appellant in criminal cases

(1) 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 provide that he shall have the right to be present or where the Court of Appeal gives him leave to be present.

(2) An appellant who has no right to be present and is not given leave to be present at 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.

[PCh141s10]10. Power to admit to bail or postpone fine

The High Court or, 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—

(a) admit the appellant to bail in the same circumstances in which the court would have given bail under section 368 of the Criminal Procedure Act *;

(b) postpone the payment of a fine.

[PCh141s11]11. Extension of time by High Court

(1) Subject to subsection (2), the High Court or, where an appeal lies from a subordinate court exercising extended powers, the 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.

(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.

[PCh141s12]12. Chief Justice may make rules Act No. 16 of 1984

The Chief Justice may, either on his own motion or upon the advice of, and after consultation with, the Chief Justice of Zanzibar, make rules of court regulating appeals to

the Court of Appeal and other matters incidental to the making, hearing or determination of those appeals.

[PCh141s13]13. Transitional provisions

[Transitional provisions.]

[PCh141s14]14. Application of this Act

[Application of this Act notwithstanding Article 80 of the Treaty for East African Co-operation, etc.]

[PCh141s15]15. Repeal of R.L. Caps. 451 and 507

[Repeal of the Appellate Jurisdiction Ordinance and the Appellate Jurisdiction Act.]