

THE UNITED REPUBLIC OF TANZANIA



No. 26 OF 1971

I ASSENT,

  
President

28<sup>TH</sup> OCTOBER, 1971

**An Act to amend certain written laws relating to the Administration of Justice**

[29<sup>TH</sup> OCTOBER, 1971]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Administration of Justice (Miscellaneous Amendments) Act, 1971.

**PART I**

**AMENDMENTS TO THE PENAL CODE**

2. This Part shall be read as one with the Penal Code.

Construction  
Cap. 16

3. Section 4 of the Penal Code is repealed and replaced by the following section:—

Section 4  
repealed  
and  
replaced

"General  
rule of  
construction  
Cap. 1

4. Subject to the provisions of the Interpretation and General Clauses Ordinance the court shall, in construing the provisions of this Code, be guided by the principles of natural justice."

New section  
305A added

4. The Penal Code is amended by adding immediately below section 305, the following section:—

“Special  
provisions  
relating to  
evidence

305A. In any proceeding for an offence under section 302 or section 305 of this Code, the accused shall not be entitled to acquittal by reason only of the fact that the evidence adduced discloses that the person for whose benefit the accused obtained, or attempted to obtain, the goods or, as the case may be, the credit, was a person other than the accused or the person mentioned in the charge.”

Section 312  
repealed  
and  
replaced

5. Section 312 of the Penal Code is repealed and replaced by the following section:—

“Persons  
conveying  
or having  
possession  
of goods  
suspected  
of having  
been  
stolen or  
unlawful-  
ly acqui-  
red

312.—(1) Any person who—

- (a) has been detained as a result of the exercise of the powers conferred by section 24 of the Criminal Procedure Code and is found in possession of, or conveying in any manner, anything which may be reasonably suspected of having been stolen or otherwise unlawfully acquired; or
  - (b) is found by any police officer of or above the rank of Inspector in possession of or having control over any property which may, having regard to all the circumstances, be reasonably suspected of having been stolen or otherwise unlawfully acquired,
- may be charged with being in possession of, or conveying, or having control over, as the case may be, the property which is suspected of having been stolen or otherwise unlawfully acquired and shall, if he fails to satisfy the Court that he did not steal or otherwise unlawfully acquire the property, be guilty of the offence with which he is charged and be liable, on conviction, to imprisonment for a term not exceeding three years.

(2) For the purposes of this section “unlawfully acquired” means acquired in circumstances which constitute a criminal offence under any written law and also means acquired—

- (a) as consideration of any sale, barter or other disposition of any property so unlawfully acquired; or
- (b) by way of purchase with funds, the whole or any part of which was so unlawfully acquired.

(3) In proceedings for an offence under this section—

- (a) the accused shall not be entitled to acquittal by reason only of the fact that, on the evidence before the court, he could have been charged with, or convicted of, theft or other like offence in respect of the property:

Provided that where an accused person is convicted of an offence under this section in respect of any property, he shall not be charged with or be convicted of an offence of stealing or other like offence in respect of the same property;

- (b) where the court is satisfied that the accused was detained by a police officer in the exercise of the powers conferred upon him by section 24 of the Criminal Procedure Code the court may presume that the property found in his possession or being conveyed by him may reasonably be suspected of having been stolen or otherwise unlawfully acquired by him.”.

## PART II

## AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

6. This Part shall be read as one with the Criminal Procedure Code (hereinafter referred to as the “Code”). Construction  
Cap. 20
7. Section 3 of the Code is amended by deleting subsection (3). Section 3  
amended
8. Section 4 of the Code is amended by renumbering it as subsection (1) of section 4 and by adding the following subsection— Section 4  
amended
- “(2) Notwithstanding the provisions of subsection (1) where no provision is made in Part A of the First Schedule hereto in respect of any offence under the Penal Code, such offence shall be triable, and shall be deemed to have always been triable, by the High Court as well as by a subordinate court.”.
9. The Code is amended by adding immediately below section 187 the following new section:— New section  
187A added
- “Alternative verdict in charges of being in possession of property suspected of having been corruptly acquired Acts, 1971 No. 16” **187A.** Where any person is charged with an offence under subsection (1) of section 9 of the Prevention of Corruption Act, 1971, and the court is of the opinion that he did not corruptly acquire or receive the property but that he is guilty of an offence under section 312 of the Penal Code in respect of such property, the court may convict him of such later offence although he was not charged with it.”.
10. Section 247 of the Code is repealed and replaced by the following section— Section  
247  
repealed  
and  
replaced
- “Practice of High Court in its criminal jurisdiction” **247.** The High Court may, subject to the provisions of this Code and any other written law, regulate its own practice in the exercise of its criminal jurisdiction:
- Provided that the High Court shall always regulate its practice so as to ensure compliance with the principles of natural justice.”.
11. The Code is amended by adding immediately below section 274 the following new section:— New section  
275 added
- “State-ments by medical witness-es” **275.**—(1) In any trial before the High Court, any document purporting to be a report signed by a medical witness upon a purely medical or surgical matter, shall be receivable in evidence:

Provided that this subsection shall not apply unless such document was produced at the preliminary inquiry or a reasonable notice of the intention to produce the document at the trial together with a copy of the document has been given to the accused or his advocate.

(2) The court may presume that the signature to any such document is genuine and that the person signing the same holds the office or had the qualifications which he professed to hold or to have when he so signed the same.

(3) Where any such report is received in evidence, the court may, if it thinks fit, and shall, if so requested by the accused or his advocate, summon and examine or make available for cross-examination, the person who made the report; and the court shall inform the accused of his right to require the person who made the report to be summoned in accordance with the provisions of this subsection:

Provided that the court may dispense with the requirement of this subsection where it is satisfied that the person who made the report is dead or that the attendance of such person cannot be procured without undue delay or expense."

Section  
277  
of Code  
amended

12. Section 77 of the Code is amended by deleting therefrom the reference to section 223 (4) and substituting therefor reference to section 219 (8)."

### PART III

#### AMENDMENTS TO THE APPELLATE JURISDICTION ORDINANCE, 1961

Constru-  
ction  
Cap. 451  
Section 8  
amended

13. This Part shall be read as one with the Appellate Jurisdiction Ordinance, 1961.

14. Section 8 of the Appellate Jurisdiction Ordinance, 1961, is amended by adding immediately below subsection (6) the following subsections:—

"(7) Notwithstanding the provisions of this section or any other provision of this Ordinance or of any other written law, the Court of Appeal shall have no jurisdiction to entertain any appeal against conviction or sentence, or from proceedings under Part X of the Criminal Procedure Code, in or arising out of any case in which a person was charged, either as the principal offender or as an accessory, with any of the following offences, namely:

- (i) treason, contrary to section 39 of the Penal Code; or
- (ii) treasonable felony contrary to section 40 of the Penal Code; or
- (iii) misprision of treason contrary to section 41 of the Penal Code; or
- (iv) promoting warlike undertaking contrary to section 43 of the Penal Code; or
- (v) inciting to mutiny contrary to section 45 of the Penal Code; or
- (vi) aiding soldiers or police officers in acts of mutiny contrary to section 46 of the Penal Code; or
- (vii) inducing soldiers or police officers to desert contrary to section 47 of the Penal Code; or
- (viii) aiding prisoners of war to escape contrary to section 48 of the Penal Code; or



(ix) any offence under the National Security Act, 1970; or Acts 1970  
No. 3

(x) conspiracy or attempt to commit any of the foregoing offences.

(8) Where in any case a person was charged with any of the offences specified in subsection (7) and was also, in the same proceedings, charged with any other offence, the provisions of subsection (7) shall apply in respect of an appeal relating to such other offence as if the offence were an offence specified in subsection (7), whether or not such appeal relates only to conviction or sentence in respect of such other offence or to proceedings under Part X of the Criminal Procedure Code in respect of such other offence.

(9) Where in any case a person was charged with any of the offences specified in subsection (7) and another person jointly tried with him in the same proceedings was charged with any other offence, the provisions of subsection (7) shall apply in respect of an appeal by such other person against conviction or sentence in respect of such other offence and to an appeal arising out of proceedings under Part X of the Criminal Procedure Code relating to the conviction or acquittal of such other person or to the sentence imposed on him in respect of such other offence as if such other offence were an offence specified in subsection (7)."

#### PART IV

##### AMENDMENTS TO THE APPELLATE JURISDICTION ACT, 1962

15. This Part shall be read as one with the Appellate Jurisdiction Act, 1962 (hereinafter referred to as the principal Act). Constru-  
ction  
Cap. 507

16. Part III of the principal Act is amended by deleting the heading thereto and substituting therefor the following:— Amendment  
to heading  
of Part III

"Appeals, reservations and references on questions relating to the constitution and appeals in cases of conviction for certain offences."

17. The principal Act is amended by adding immediately below section 9 the following new section:— New section  
9A added

"Appeals  
in cases  
involving  
certain  
offences

9A.—(1) Any person convicted on a trial held by the High Court or by a subordinate court in the exercise of extended powers pursuant to an order made under section 13 of the Criminal Procedure Code, of any of the offences to which the provisions of subsection (7), subsection (8) or subsection (9) of section 8 of the Appellate Jurisdiction Ordinance, 1961, applies, may appeal to a full bench of the High Court against his conviction or sentence on any ground of appeal.

(2) Either party to proceedings under Part X of the Criminal Procedure Code arising out of any case in which a person has been convicted of an offence to which subsection (7), subsection (8) or subsection (9) of section 8 of the Appellate Jurisdiction Ordinance, 1961, applies, may appeal to a full bench of the High Court on a matter of law (not involving severity of sentence) but not on any matter of fact.

(3) Subject to the provisions of any rules of court made under this Act, an appeal to a full bench of the High Court under this section shall be heard and determined in accordance with the law and practice relating to appeals from original judgments.

(4) In this section a full bench of the High Court means a court composed of three Judges of the High Court.”.

## PART V

### AMENDMENTS TO THE EVIDENCE ACT, 1967

Construction  
Acts 1967  
No. 6

Section 33  
repealed  
and  
replaced

18. This Part shall be read as one with the Evidence Act, 1967.

19. Section 23 of the Evidence Act, 1967 is repealed and replaced by the following section:—

“Confession  
to be admi-  
ssible as  
evidence  
against co-  
accused

33.—(1) When two or more persons are being tried jointly for the same offence or for different offences arising out of the same transaction, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person.

(2) In this section “offence” includes the abetment of, or attempt to commit the offence.”.

## PART VI

### AMENDMENTS TO THE JUDICIAL SERVICE ACT, 1962

Constru-  
ction  
Cap. 508

Section 21B  
amended

20. This Part shall be read as one with the Judicial Service Act, 1962.

21. Section 21B of the Judicial Service Act, 1962 is amended by adding immediately below subsection (2) the following subsection:—

“(3) There shall be established, in each district, a District Board which shall be composed of—

- (a) the District Chairman of the Party, who shall be the Chairman;
- (b) two other members, who shall be nominated by the District Executive Committee of the Party;
- (c) the Area Secretary, who shall be a member;
- (d) the District Magistrate or, where there are two or more District Magistrates in a district, such one of them as the Chief Justice may appoint, who shall be a member and who shall also act as the Secretary to the Board.

(4) Every District Judicial Board shall—

- (a) consider and make recommendations to the appropriate Regional Judicial Board upon applications for appointment as primary court magistrates in the district for which such District Judicial Board is established or from persons residing in that district;

- (b) investigate and submit to the Minister a report upon complaints made against a primary court magistrate in that district;
- (c) perform such other functions as the Minister may direct.
- (5) The Minister may make regulations regulating the practice and procedure of District Judicial Boards.”.

## PART VII

### AMENDMENTS TO THE MAGISTRATES’ COURTS ACT, 1963

22. This Part shall be read as one with the Magistrates’ Courts Construction Act, 1963.

23. The Magistrates’ Courts Act, 1963 is amended by adding <sup>New section 8c added</sup> immediately below section 8B the following section:—

“Minister may make regulations concerning assessors

8C. The Minister may make regulations regulating—

- (a) constitution and composition of panels of assessors;
- (b) appointment of members of such panels;
- (c) disqualification from serving as assessors;
- (d) remuneration of assessors.”.

Passed in the National Assembly on the nineteenth day of October, 1971.

  
Clerk of the National Assembly