

Uganda

## Government Proceedings Act

### Chapter 77

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# Government Proceedings Act

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# Uganda

## Government Proceedings Act

### Chapter 77

Commenced on 7 May 1959

*[This is the version of this document at 31 December 2000.]*

*[Note: The version of the Act as at 31 December 2000 was revised and consolidated by the Law Reform Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]*

**An Act to amend the law relating to the civil liabilities and rights of the Government and to civil proceedings by and against the Government and to replace certain writs and an information, and for purposes incidental thereto and connected therewith.**

### Part I – Interpretation

#### 1. Interpretation

- (1) In this Act, unless the context otherwise requires—
  - (a) “**agent**” when used in relation to the Government includes an independent contractor employed by the Government;
  - (b) “**civil proceedings**” includes proceedings in the High Court or a magistrate’s court for the recovery of fines or penalties, but does not include proceedings corresponding or analogous to proceedings on the Crown side of the Queen’s Bench Division of the High Court in England;
  - (c) “**court**” means the High Court or a magistrate’s court;
  - (d) “**enactment**” means any legislative instrument having effect in Uganda;
  - (e) “**magistrate’s court**” means a court established under the Magistrates Courts Act;
  - (f) “**officer**” in relation to the Government includes the President, a Minister and any servant of the Government;
  - (g) “**order**” includes a judgment, decree, rule, award or declaration;
  - (h) “**prescribed**” means prescribed by rules of court;
  - (i) “**proceedings against the Government**” includes a claim by way of setoff or counterclaim raised in proceedings by the Government;
  - (j) “**rules of court**” means rules made by the authority having power to make rules or orders regulating the practice and procedure of the court;
  - (k) “**statutory duty**” means any duty imposed by or under any enactment.
- (2) Any reference in this Act to this Act shall, unless the context otherwise requires, include a reference to rules of court made for the purposes of this Act.
- (3) Any reference in Parts IV or V of this Act to civil proceedings by or against the Government, or to civil proceedings to which the Government is a party, shall be construed as including a reference to civil proceedings to which the Attorney General or any officer of the Government as such is a party; but the Government shall not for the purposes of Parts IV or 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 the relation of some other person.

## Part II – Substantive law

### 2. Right to sue the Government

Where any person has a claim against the Government after the commencement of this Act and the claim is either—

- (a) a claim based on contract which, if this Act had not been passed, might by virtue of the Suits By or Against the Government Ordinance have been enforced by an action against the Government; or
- (b) such that, if it had been made in England against the Crown in right of its Government in the United Kingdom and if the Crown Proceedings Act, 1947, of the United Kingdom had not been passed, it might have been enforced in England, subject to the grant of Her Majesty's fiat, by petition of right,

then, subject to this Act, the claim may be enforced by proceedings taken against the Government for that purpose in accordance with this Act.

### 3. Liability of the Government in tort

- (1) Subject to this Act and section 4 of the Law Reform (Miscellaneous Provisions) Act, the Government shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject—
  - (a) in respect of torts committed by its servants or agents;
  - (b) in respect of any breach of those duties which a person owes to his or her servants or agents at common law by reason of being their employer; and
  - (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property, except that no proceedings shall lie against the Government by virtue of paragraph (a) of this subsection in respect of any act or omission of a servant or agent of the Government unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that servant or agent or his or her or estate.
- (2) Where the Government is bound by a statutory duty which is binding also upon persons other than the Government and its officers, then, subject to this Act and section 4 of the Law Reform (Miscellaneous Provisions) Act, the Government shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort, if any, to which it would be so subject if it were a private person of full age and capacity.
- (3) 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 enactment, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the 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.
- (4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Government in respect of any tort committed by that department or officer shall, in the 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.
- (5) No proceedings shall 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 responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process.

#### **4. Provisions as to industrial property**

- (1) Where after the commencement of this Act any servant or agent of the Government infringes a patent, or infringes a registered trademark, or infringes any copyright (including any copyright in a design subsisting under the Registered Designs Act, 1949), and the infringement is committed with the authority of the Government, then, subject to this Act, civil proceedings in respect of the infringement shall lie against the Government.
- (2) Nothing in subsection (1) or in any other provision of this Act shall affect the rights of any Government department under section 46 of the Patents Act, 1949, or under section 12 of the Registered Designs Act, 1949, and those sections shall be interpreted as if for any reference to the Crown (however described) occurring in them there were substituted a reference to the Government.
- (3) Except as expressly provided by this section, no proceedings shall lie against the Government by virtue of this Act in respect of the infringement of a patent, in respect of the infringement of a registered trademark, or in respect of the infringement of any such copyright as is mentioned in subsection (1).

#### **5. Application of law as to indemnity and contribution**

Where the Government is subject to any liability by virtue of this Part of this Act, 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.

#### **6. Saving in respect of acts done under statutory powers**

Nothing in this Part of this Act shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of any powers or authorities conferred on the Government by any enactment, and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the Government, whether in time of peace or of war, for the purpose of the defence of Uganda or of training, or maintaining the efficiency of, any of the armed forces of Uganda.

### **Part III – Jurisdiction and procedure**

#### **7. Civil proceedings in the High Court**

- (1) Subject to this Act, all civil proceedings by or against the Government in the High Court shall be instituted and proceeded with in accordance with rules of court and not otherwise.
- (2) For the removal of doubt, it is declared that all civil proceedings mentioned in the Schedule to this Act have been abolished in Uganda.

#### **8. Civil proceedings in magistrates courts**

- (1) Subject to this Act, and to any enactment limiting the jurisdiction of a magistrate's court (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise), any civil proceedings by or against the Government may be instituted in a magistrate's court.
- (2) Any proceedings by or against the Government in a magistrate's court shall be instituted and proceeded with in accordance with rules of court and not otherwise.

## **9. Interpleader**

The Government may institute or be made a party to interpleader proceedings in the same manner in which a private person may institute such proceedings or be made a party to those proceedings, and may be made a party to such proceedings notwithstanding that the proceedings have been instituted by a court broker or other like officer.

## **10. Parties to proceedings**

Civil proceedings by or against the Government shall be instituted by or against the Attorney General.

## **11. Service of documents**

All documents required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government shall be served on the Attorney General.

## **12. Venue and related matters**

- (1) In any case in which civil proceedings against the Government in the High Court are instituted in a district registry or in the central office of the High Court at Kampala, and if an appearance is entered at the central office, all steps in relation to the proceedings up to trial shall be taken as though the proceedings had been instituted at the central office.
- (2) The trial of any civil proceedings by or against the Government in the High Court shall be held at Kampala unless the court, with the consent of the Government, otherwise directs.
- (3) Where the Government refuses its consent to a direction under subsection (2), the court may take account of its refusal in exercising its powers in regard to the award of costs.

## **13. Removal and transfer of proceedings**

- (1) If in a case where proceedings are instituted against the Government in a 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 removed into the High Court.
- (2) Where any proceedings have been removed into the High Court on the production of such a certificate as is mentioned in subsection (1), and it appears to the court by whom the proceedings are tried that the removal has occasioned additional expense to the person by whom the proceedings are brought, the court may take account of the additional expense so occasioned in exercising its powers in regard to the award of costs.
- (3) Without prejudice to the rights of the Government under subsections (1) and (2), the provisions of any enactment relating to the removal or transfer of proceedings from a magistrate's court to the High Court or the transfer of proceedings from the High Court to a magistrate's court shall apply in relation to proceedings against the Government; except that an order for the transfer to a magistrate's court of any proceedings against the Government in the High Court shall not be made without the consent of the Government.

## 14. Nature of relief

- (1) In any civil proceedings by or against the Government, the court shall, subject to 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; except that—
  - (a) 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 of an injunction or order for specific performance make an order declaratory of the rights of the parties; and
  - (b) 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 the land or the delivery of the property, but may in lieu of those orders make an order declaring that the plaintiff is entitled as against the Government to the land or property or to possession of the land or property.
- (2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.

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

In any civil proceedings or arbitration to which the Government is a party, the costs of and 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 or arbitrator shall have power to make an order for the payment of costs by or to the Government accordingly; except that—

- (a) in the case of proceedings to which by reason of any enactment or otherwise the Attorney General, a Government department or any officer of the Government as such is authorised to be made a party, the court or arbitrator shall have regard to the nature of the proceedings and the character and circumstances in which the Attorney General, the department or the 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 officer, whatever may be the result of the proceedings; and
- (b) nothing in this section shall affect the power of the court or arbitrator to order, or any enactment providing for, the payment of costs out of any particular fund or property, or any enactment expressly relieving any department or officer of the Government of the liability to pay costs.

## 16. Appeals and stay of execution

Subject to this Act, all enactments relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Government as they apply to proceedings between private persons.

## 17. Scope of Part III

- (1) Subject to this section, any reference in this Part of this Act to civil proceedings by the Government shall be construed as a reference to the following proceedings only—
  - (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which—
    - (i) if the claim to such right or relief had been made in England by the Crown in right of its Government of the United Kingdom; and

- (ii) if the Crown Proceedings Act, 1947, of the United Kingdom had not been passed, might have been enforced or vindicated or obtained in England by any such proceedings as are mentioned in paragraph 1 of the Schedule to this Act or by a writ of summons under Part V of the Crown Suits Act, 1865, of the United Kingdom;
  - (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action at the suit of the Attorney General or any officer of the Government as such; and
  - (c) all such proceedings as the Government is entitled to bring by virtue of this Act,
- and the expression “civil proceedings by or against the Government” shall be construed accordingly.
- (2) Subject to this section, any reference in this Part of this Act to civil proceedings against the Government shall be construed as a reference to the following proceedings only—
- (a) proceedings for the enforcement or vindication of any right or the obtaining of any relief which—
    - (i) if the claim to such right or relief had been made in England against the Crown in right of its Government in the United Kingdom; and
    - (ii) if the Crown Proceedings Act, 1947, had not been passed, might have been enforced or vindicated or obtained in England by any such proceedings as are mentioned in paragraph 2 of the Schedule to this Act;
  - (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been passed, might have been enforced or vindicated or obtained by an action against the Attorney General or any officer of the Government as such; and
  - (c) all such proceedings as any person is entitled to bring against the Government by virtue of this Act,
- and the expression “civil proceedings by or against the Government” shall be construed accordingly.
- (3) Notwithstanding anything in subsections (1) and (2), this Part of this Act shall not have effect with respect to any of the following proceedings—
- (a) proceedings brought by the Attorney General on the relation of some other person;
  - (b) proceedings by or against the Administrator General under the Administrator General’s Act;
  - (c) proceedings by or against the Public Trustee under the Public Trustee Act;
  - (d) proceedings by or with the consent of the Attorney General under the provisions of the Civil Procedure Act relating to public nuisances or charitable trusts.

## Part IV – Judgments and execution

### 18. Interest where a decree is for the payment of money and interest on costs

Sections 26(2) and (3) and 27(3) of the Civil Procedure Act (which relate to the payment of interest where a decree is for payment of money and to the payment of interest on costs) shall apply in the case of the Government as they do in the case of a private person.

### 19. Satisfaction of orders against the Government

- (1) Where in any civil proceedings by or against the Government, or in any proceedings corresponding or analogous to proceedings on the Crown side of the Queen’s Bench Division of the High Court in England or in connection with any arbitration to which the Government is a party, any order (including an order for costs) is made by any court in favour of any person against the Government,



against a Government department or against an officer of the Government as such, 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 or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order; but 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) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.
- (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the treasury officer of accounts or such other Government accounting officer as may be appropriate shall, subject as hereafter provided, pay to the person entitled or to his or her advocate the amount appearing by the certificate to be due to him or her together with the interest, if any, lawfully due on that amount; but 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 direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part of it, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted in the certificate.
- (4) Except as is provided in this section, no execution or attachment or process in the nature of an execution or attachment shall be issued out of any court for enforcing payment by the Government of any such money or costs as are 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.

## **20. Execution by the Government**

- (1) Subject to this Act, any order made in favour of the Government against any person in any civil proceedings to which the Government is a party may be enforced in the same manner as an order made in an action between private persons and not otherwise.
- (2) 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 in proceedings brought by the Government for the recovery of any fine or penalty, or the forfeiture or condemnation of goods, or the forfeiture of any ship or any share in a ship.

## **21. Attachment of monies payable by the Government**

- (1) Where any money is payable by the Government to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Government were money payable by a private person, be entitled under rules of court to obtain an order for the attachment of the money as a debt due or accruing due, the High Court may, subject to this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment of that money to that other person; except that no such order shall be made in respect of—
  - (a) any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution; or
  - (b) any money payable by the Government to any person on account of a deposit in the PostBank Uganda Limited.
- (2) The provisions of subsection (1) shall, so far as they relate to forms of relief falling within the jurisdiction of a magistrate's court, have effect in relation to magistrates courts as they have in relation to the High Court.

## Part V – Miscellaneous and supplemental

### 22. Discovery

- (1) Subject to and in accordance with rules of court—
  - (a) in any civil proceedings in the High Court or a 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 are mentioned in paragraph (a) of this subsection, the Government may be required by the court to answer interrogatories.
- (2) Notwithstanding subsection (1), this section shall be without prejudice to any enactment or rule of law which authorises 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 under the powers conferred by subsection (1)(b) shall direct by what officer of the Government the interrogatories are to be answered.
- (4) Without prejudice to subsection (2), 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 a Minister, it would be injurious to the public interest to disclose the existence of the document.

### 23. Exclusion of proceedings *in rem* against the Government

- (1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the Government, or the arrest, detention or sale of any cargo or other property belonging to the Government, or give to any person any lien on any such cargo or other property.
- (2) Where proceedings *in rem* have been instituted against any such cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the Government to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the cargo or other property did not belong to the Government, order that the proceedings shall be treated as if they were in personam duly instituted against the Government in accordance with this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.
- (3) Any order made in accordance with subsection (2) may be made upon such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as the court thinks expedient.

### 24. Application to the Government of certain enactments

This Act shall not prejudice the right of the Government to take advantage of the provisions of an enactment although not named in this Act; and it is declared that in any civil proceedings against the Government the provisions of any enactment which could, if the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Government.

### 25. Abolition of certain writs and informations in the nature of *quo warranto*

- (1) No writ of extent or *diem clausit extremum* shall issue after the commencement of this Act.
- (2) Informations in the nature of *quo warranto* are abolished.

- (3) In any case where any person acts in an office in which he or she is not entitled to act and an information in the nature of *quo warranto* would, but for subsection (2), have lain against that person, the High Court may grant an injunction restraining that person from so acting and may (if the case so requires) declare the office to be vacant.
- (4) No proceedings for an injunction under subsection (3) shall be taken by a person who would not immediately before the commencement of this Act have been entitled to apply for an information in the nature of *quo warranto*.

## 26. Rules of court

- (1) Any power to make rules of court shall include power to make rules for the purpose of 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 of the rules applying to proceedings between private persons.
- (2) Provision shall be made by rules of court with respect to the following matters—
  - (a) for securing that where any civil proceedings are brought against the Government in accordance with 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 officers of the Government concerned;
  - (b) for 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) for 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;
  - (d) for providing that a person shall not be entitled to avail himself or herself of any setoff or counterclaim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself or herself in proceedings of any other nature by the Government of any setoff or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

## 27. Financial provisions

- (1) Any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of money provided by Parliament.
- (2) Any sums payable to the Government by reason of this Act shall form part of and be paid into the Consolidated Fund.

## 28. Savings

- (1) Except as otherwise expressly provided in this Act, nothing in this Act shall—
  - (a) apply to any criminal proceedings;
  - (b) subject the Government to any greater liabilities in respect of the acts or omissions of any independent contractor employed 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;

- (c) affect any enactment, rule of evidence or presumption relating to the extent to which the Government is bound by any Act;
  - (d) affect any liability imposed on the public trustee by the Public Trustee 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 reason 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 of the property.
- (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 this Act some other and further remedy is available.

### **Schedule (s. 7(2))**

#### **Proceedings abolished**

1.
  - (a) Latin information and English information.
  - (b) Writs of *capias ad respondendum*, writs of *subpoena ad respondendum* and writs of appraisement.
  - (c) Writs of *scire facias*.
  - (d) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.
2.
  - (a) Proceedings against the Government by way of petition of right.
  - (b) Proceedings against the Government by way of *monstrans de droit*.