

CHAPTER 141

THE APPELLATE JURISDICTION ACT

[PRINCIPAL LEGISLATION]

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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]

[GN. No. 98 of 1979]

Acts Nos.
15 of 1979
16 of 1984
17 of 1993
32 of 1994
10 of 1999
25 of 2002
3 of 2016
8 of 2018
11 of 2023

PART I

PRELIMINARY PROVISIONS

- Short title **1.** This Act may be cited as the Appellate Jurisdiction Act.
- Application
Act No.
16 of 1984 s. 13 **2.** This Act shall apply to Mainland Tanzania as well as Tanzania Zanzibar.
- Interpretation
Act No.
16 of 1984 s. 13
Cap. 2 **3.**—(1) In this Act, unless the context requires otherwise—
“Constitution” means the Constitution of the United Republic or the Constitution of Zanzibar;
“Court of Appeal” means the Court of Appeal of the United Republic of Tanzania established by Article 117 of the Constitution of the United Republic 1977;
“High Court” means the High Court of Tanzania or the High Court of Zanzibar; and
“judgment” includes a decree, an order, a sentence or decision, or the grounds for any of them.
(2) For the purpose 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 purpose 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 purpose 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”.

Overriding
objective of Act
Act No.
8 of 2018 s. 4

4.–(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by this Act.

(2) The High Court or Court of Appeal shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

[s. 3A]

Duty to uphold
objective
Act No.
8 of 2018 s. 4

5.–(1) For the purpose of furthering the overriding objective specified in section 4, the Court shall handle all matters presented before it with a view to attaining the following-

(a) just determination of the proceedings;

- (b) efficient use of the available judicial and administrative resources including the use of suitable technology; and
- (c) timely disposal of the proceedings in the High Court or Court of Appeal at a cost affordable by the respective parties.

(2) A party to proceedings before the High Court or Court of Appeal or an advocate for such a party shall have the duty to assist the High Court or Court of Appeal to further the overriding objective and to that effect, participate in the processes of the High Court or Court of Appeal and comply with directions and orders of the Court.

(3) The Chief Justice may make rules for better carrying out the provisions of sections 4 and 5.

[s. 3B]

PART II

JURISDICTION OF THE COURT OF APPEAL

Jurisdiction of
Court of Appeal
Acts Nos.
16 of 1984 s. 13
17 of 1993 s. 2
32 of 1994 sch.
3 of 2016 s. 4

6.—(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 shall have the power to review its own decisions.

GN. No.
368 of 2009

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

(6) The power conferred upon the Court of Appeal by subsection (2) and (5) 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 of Appeal.

[s. 4]

No review on
Interlocutory
order or decision
Act No.
11 of 2023 s. 9

7. An application for review shall not be entertained in respect of the decision of the Court of Appeal on any preliminary or interlocutory decision or order, unless such decision or order has the effect of finally determining the appeal, revision or reference.

[s. 4A]

PART III

APPEALS TO THE COURT OF APPEAL

Appeals in civil
cases
Acts Nos.
16 of 1984 s. 13
10 of 1999 Sch.
25 of 2002 Sch.
3 of 2016 s. 4A
11 of 2023 s. 10
Cap. 33

8.-(1) In civil proceedings, except where any other written law provides otherwise, an appeal shall lie to the Court of Appeal against every order or decree, including an *ex-parte* or preliminary decree made by the High Court, in the exercise of its original, appellate or revisional jurisdiction.

(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;

(ii) any decree or order as to costs only where the costs are in the discretion of the High Court; or

(iii) any other decision or order of the High Court other than those specified under subsection (1);

- Cap. 11
- (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; and
 - (d) no appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the suit.

[s. 5]

Appeals in
criminal cases

9.—(1) A 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 on any ground of appeal.

Cap. 16

(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.

Cap. 20

(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 413 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 370 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) A person sentenced by the High Court in pursuance of the provisions of section 177 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-

Cap. 20

(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;

Cap. 11

(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.

[s. 6]

PART IV
APPEALS AND RESERVATIONS ON QUESTIONS
RELATING TO THE CONSTITUTION

Appeals to Court
of Appeal for
constitutional
interpretation

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

[s. 7]

Reservation of
questions

11. 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.

[s. 8]

PART V
MISCELLAENOUS PROVISIONS AND REPEALS

Presence of
appellant in
criminal cases

12.—(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.

[s. 9]

Power to admit to bail or postpone fine

13. 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-

Cap. 20

- (a) admit the appellant to bail in the same circumstances in which the court would have given bail under section 389 of the Criminal Procedure Act;
- (b) postpone the payment of a fine.

[s. 10]

Extension of time by High Court

14.-(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.

[s. 11]

- Chief Justice may
make rules
Act No.
16 of 1984 s. 13(d) **15.** 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.
- [s. 12]
- Omitted **16.** [Omitted.]
- [s. 13]
- Application of
this Act **17.** Application of this Act notwithstanding Article 80 of the
Treaty for East African Co-operation, etc.
- [s. 14]
- Repeal of
Ord. No.
55 of 1961 and
C.A. 9/1962 **18.** [Repeals the Appellate Jurisdiction Ordinance and the
Appellate Jurisdiction Act.]
- [s. 15]
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