

CHAPTER 5
THE GOVERNMENT PROCEEDINGS ACT
[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

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CHAPTER 5

THE GOVERNMENT PROCEEDINGS ACT

An Act to provide for the rights and liabilities of the Government in civil matters, for the procedure in civil proceedings by or against the Government and for related matters.

[1st January, 1975]

[GN. No. 308 of 1974]

Acts Nos.
16 of 1967
40 of 1974
30 of 1994
11 of 2019
1 of 2020
4 of 2021

PART I

PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Government Proceedings Act.

Interpretation **2.**—(1) In this Act, unless the context otherwise requires—
“agent” when used in relation to the Government, includes
an independent contractor employed by the Government;
“civil proceedings” include proceedings in the High Court or
a magistrate’s court for the recovery of fines or penalties;
“Minister” means the Minister responsible for legal affairs;
“officer” in relation to the Government includes the
President, a Minister and any servant of the Government;
“proceedings against the Government” include a claim by
way of set-off or counterclaim raised in proceedings
initiated by the Government;
“statutory duty” means a duty imposed by or under any
written law.

(2) A reference in Part IV or Part V 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, is a party:

Provided that, the Government shall not, for the purposes of Part IV or Part V, 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

Liability of
Government in
civil proceedings

3.-(1) Subject to the provisions of this Act and any other written law, the Government shall be subject to those liabilities in contract, quasi-contract, detinue, tort and in other respects to which it would be subject, if it were a private person of full age and capacity and, subject as aforesaid, any claim arising therefrom may be enforced against the Government in accordance with the provisions of this Act.

(2) Proceedings shall not lie against the Government in tort in respect of any act or omission of a servant or agent of the Government unless the act or omission would, but from the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his estate.

(3) Where the Government is bound by a statutory duty which is binding also upon persons other than the Government and its officers, then the Government shall, subject to the provisions of this Act, in respect of a failure to comply with that duty, be subject to those liabilities in tort, if any, to which it would be subject if it were a private person of full age and capacity.

(4) Where any functions are conferred or imposed upon an officer of the Government either by any rule of the common law or by any written law and that officer commits a tort while performing or purporting to perform those functions, the liability of Government in respect of the tort shall be as it would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

(5) Proceedings shall not 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 any responsibilities which he has in connection with the execution of judicial process.

Application
of law as to
indemnity and
contribution

4. Where the Government is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Government in respect of the liability to which it is a subject as if the Government were a private person of full age and capacity.

Saving in respect
of acts done
under statutory
powers

5. This Part shall not extinguish or abridge any powers or authorities which, but for this Act, would have been exercised by virtue of any powers or authorities conferred on the Government by any written law.

PART III

JURISDICTION AND PROCEDURE

Civil proceedings
against
Government, etc.
Acts Nos.
40 of 1974 s. 2
30 of 1994 s. 2
11 of 2019 s. 21
1 of 2020 s. 25

6.-(1) Notwithstanding any other provision of this Act, civil proceedings may be instituted against the Government subject to the provisions of this section.

(2) A suit against the Government shall not be instituted, and heard unless the claimant previously submits to the Government, Minister, department or officer concerned, a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney General and the Solicitor General.

(3) The suits against the Government shall, upon the expiry of the notice period, be brought against the Government, ministry, government department, local government authority, executive agency, public corporation, parastatal organisation or public company that is alleged to have committed the

civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party.

(4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3).

(5) The suits against the Government shall be instituted in the High Court by delivering a claim in the Registry of the High Court within the area where the claim arose.

(6) Notwithstanding the provisions of subsection (3), the Attorney General may, unless another person ought to be sued, be sued or be joined as a co-defendant in proceedings against the Government.

(7) The Attorney General may, where necessary, give instructions to the Solicitor General to proceed or terminate any proceedings instituted by the Government and which is pending in court of law, and state the reasons thereof.

Cap. 76 (8) The provisions of the Public Officers (Recovery of Debts) Act, shall apply to any officer who occasions the Government to incur loss, costs or damages as a result of his failure to obtain legal representation in the suit.

Power of
Attorney General
to intervene suits
Act No.
11 of 2019 s. 22

7.-(1) The Attorney General shall, through the Solicitor General, have the right to intervene in any suit or matter instituted by or against the ministries, local government authorities, independent departments and other government institutions.

(2) Where the Attorney General intervenes in any matter in pursuance of subsection (1), the provisions of this Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the ministries, local government authorities, independent departments and other government institutions:

Provided that, the requirement of ninety days notice of intention to sue the Government as stipulated under this Act shall not apply where the Attorney General intervenes under this section.

(3) Notwithstanding the provisions of any written law, a ministry, local government authority, independent department or other government institution shall have a duty to notify the Attorney General of any impending suit or intention to institute a suit or matter against the Authority.

[s. 6A]

Civil proceedings
against
Government to
be instituted only
in High Court
Act No.
40 of 1974 s. 3

8. Notwithstanding any other written law, a civil proceedings against the Government may not be instituted in any court other than the High Court.

[s. 7]

Application of
general law of
procedure

9. Subject to the provisions of this Act, the civil proceedings by or against the Government shall be instituted and proceeded with in accordance with the procedure applicable in like proceedings between private persons.

[s. 8]

Interpleader

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

[s. 9]

Attorney
General or other
designated
officers to
be parties to
proceedings

11. Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney General:

Provided that, the Minister may, by order published in the *Gazette*, direct that, any particular civil proceedings or class of civil proceedings be instituted by any officer designated in the order instead of by the Attorney General.

[s. 10]

Transfer of proceedings where set-off or counter claim is made
Act No.
40 of 1974 s. 3

12. Where in any case proceedings have been instituted by the Government in a magistrate's court and the defendant satisfies the court that-

- (a) he has a claim against the Government;
- (b) he has obtained consent under section 6 for pursuing his claim against the Government; and
- (c) the claim against the Government may conveniently be pursued by way of set-off or counter-claim in the proceedings instituted by the Government,

the magistrate's court shall transfer the proceedings to the High Court for trial.

[s. 11]

Nature of relief
Act No.
30 of 1994 s. 3

13. In any civil proceedings by or against the Government, the court shall, subject to the provisions of this Act, have power to make orders as it has power to make in proceedings between private persons and otherwise to give appropriate relief as the case may require.

[s. 12]

Costs in civil proceedings to which Government is party

14. In any civil proceedings 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 shall have power to make an order for the payment of costs by or to the Government accordingly:

Provided that-

- (a) in the case of proceedings to which by reason of any law or otherwise, the Attorney General, a government department or any officer of the Government is authorised to be made a party, the court 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) this section shall not affect the power of the court to order or any law providing for the payment of costs out of any particular fund or property, or any law expressly relieving any department or officer of the Government of the liability to pay costs.

[s. 13]

Appeals and stay
of execution

15. Subject to the provisions of this Act, any written law relating to appeals and stay of execution shall, with necessary modifications, apply to civil proceedings by or against the Government as it applies to proceedings between private persons.

[s. 14]

PART IV JUDGEMENTS AND EXECUTION

Interest

16.—(1) The provisions of any written law relating to the payment of interest where a decree is for the payment of money and the payment of interest on costs shall apply in the case of Government as they do in the case of a private person.

(2). [Omitted].

[s. 15]

Satisfaction of
orders against
Government
Acts Nos.
1 of 2020 s. 26
4 of 2021 s. 11

17.—(1) Where in any civil proceedings by or against the Government, any order including an order as to costs is made by a court in favour of a person against the Government or against an officer of the Government, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person, issue to that person a certificate containing particulars of the order:

Provided that, where the court directs, a separate certificate shall be issued with respect to the costs ordered to be paid to the applicant.

(2) Where the order provides for the payment of money by way of damages or other relief, or of costs, the certificate shall state the amount payable and the Permanent Secretary to the Treasury or other Government accounting officer as may be appropriate shall, subject as hereinafter provided, pay to the person entitled or his advocate, the amount appearing in the certificate to be due to him together with any interest lawfully due thereon:

Provided that, the court by which any order as is mentioned in this section is made or any court to which an appeal against the order lies may, where it considers it reasonable to do so, direct that, pending an appeal or other legal proceedings, payment of the whole or part of any amount payable shall be suspended and where the certificate has not been issued may order any directions to be inserted therein.

(3) Save as is provided in this section, an execution, attachment or similar process shall not be issued out of any court for enforcing payment by the Government of any money or costs referred to in this section, and a person shall not be individually liable under any order for payment of money or cost by the Government or any government department or any officer of the Government.

(4) Notwithstanding subsection (3), where there is an agreement that provides for special arrangement relating to the execution, attachment or similar process and the arrangement has been approved by the Cabinet, the Court may, in the enforcement of financial obligation arising out of the agreement, issue an order for execution, attachment or similar process:

Provided that, the execution, attachment, or similar process is issued against the property which is connected with the agreement.

(5) For the purposes of subsection (3), the word "Government" shall include a Government, ministry, local government authority, independent department, executive agency, public corporation, parastatal organisation or a public company

established under any written law to which the Government is a majority shareholder.

(6) [Omitted].

[s. 16]

Execution by
Government
Act No
1 of 2020 s. 26

18.—(1) Subject to the provisions of 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.

(2) [Omitted].

(3) This section shall not affect any procedure which immediately before commencement of this Act was available for enforcing an order made in favor of the Government for the recovery of any fine or penalty or the forfeiture or condemnation of good or the forfeiture of any ship or any share in ship.

[s. 17]

PART V

OTHER PROVISIONS

Discovery

19.—(1) Subject to and in accordance with any written law-

(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 proceedings as are mentioned in paragraph (a), the Government may be required by the court to answer interrogatories:

Provided that, this section shall be without prejudice to any law 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 disclosure of the document or the answering of the question would be injurious to the public interest.

(2) An order of the court made under the powers conferred under paragraph (b) of subsection (1) shall direct by what officer of the Government, the interrogatories are to be answered.

(3) Without prejudice to the proviso of subsection (1), any rules of court made for the purposes of this section shall be as to secure that the existence of a document is not disclosed if in the opinion of a Minister, it would be injurious to public interest to disclose the existence thereof.

[s. 18]

Right of
Government to
rely on existing
laws

20. This Act shall not prejudice the right of the Government to rely on the provisions of any law; and in any civil proceedings against the Government, the provisions of any law which could, where the proceedings were between private persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part may, subject to any express provision to the contrary, be relied upon by the Government.

[s. 19]

Limitation of
actions

21. This Act shall not prejudice the right of the Government to rely upon any written law relating to the limitation of time for bringing proceedings.

[s. 20]

Rules

22.—(1) The Chief Justice may make rules for the purpose of giving effect to the provisions of this Act, and the 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 regulating procedure in proceedings between private persons.

(2) Provisions shall be made in rules made under subsection (1) with respect to the following matters:

(a) securing that, where civil proceedings are brought against the Government in accordance with the provisions of this Act, the plaintiff shall, before the Government is required to take any step in the

proceedings, provide the Government with 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) providing that, in the case of proceedings against the Government, the plaintiff shall not enter judgement 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) excluding proceedings brought against the Government from the operation of any rule of court providing for summary judgement without trial, and enabling any proceedings to be entered, where appropriate, into any special list which may be kept for the trial of short causes in which leave to defend is given under any rule of court as is referred to in this paragraph; and
- (d) providing that, a person shall not be entitled to avail himself of any set-off or counter-claim in any proceedings by the Government for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Government of any set-off or counter-claim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) Rules, including the Government Proceedings (Procedure) Rules, made under subsection (1) in relation to the Civil Procedure Rules shall be read and construed as one with the Civil Procedure Rules and have the same effect as rules made under the Civil Procedure Code.

[s. 21]

Cap. 33

Pending
proceedings

23. Except as is otherwise in this Act expressly provided, the provisions of this Act shall not affect proceedings which have been instituted before the commencement of this Act.

[s. 22]

Repeal
Act No.
16 of 1967

24. [Repeals the Government Proceedings Act.]

[s. 23]

Savings

25.-(1) Except as otherwise expressly provided in this Act, this Act shall not-

- (a) subject the Government to any greater liability in respect of the acts or omissions of any independent contractor employed by the Government than that to which the Government would be subject in respect of the acts or omissions if it were a private person;
- (b) affect any written law, rule of evidence or presumption relating to the extent to which the Government is bound by any law; or
- (c) affect any liability imposed on the Administrator-General under the Administrator-General (Powers and Functions) Act or the Public Trustee under the Public Trustee Act.

Cap. 27
Cap. 31

(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 liability in tort by reason only of the property being vested, but the provisions of this subsection shall be without prejudice to the liability 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 property or entered into occupation thereof.

(3) This Act shall not operate to limit the discretion of the court to grant relief by way of *mandamus* in cases in which the relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act, some other and further remedy is available.

[s. 24]