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NO. 46 OF 2016

CONTEMPT OF COURT ACT

[Date of assent: 23rd December, 2016.]

[Date of commencement: 13th January, 2017.]

AN ACT of Parliament to define and limit the powers of courts in punishing for contempt of court and for connected purposes

[Act No. 46 of 2016.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Contempt of Court Act, 2016.

2. Interpretation

In this Act, unless the context otherwise requires —

"Chief Justice" means the Chief Justice appointed under Article 166 of the Constitution;

"contempt of court" has the meaning assigned to it under section 4;

"corporation" means any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;

"judge" means any person appointed under Article 166 (1) of the Constitution;

"judicial officer" has the meaning assigned to it by Article 260 of the Constitution;

"Order" has the meaning assigned to it under section 2 of the Civil Procedure Act;

"Rules" means rules made by the Chief Justice pursuant to this Act;

"State organ" has the meaning assigned to it by Article 260 of the Constitution;

"subordinate court" has the meaning assigned to it by Article 169(1) of the Constitution;

"superior court" has the meaning assigned to it by Article 162(1) of the Constitution and includes the Employment and Labour Relations Court and the Environment and Land Court.

3. Objectives of this Act

The objectives of this Act are to —

- (a) uphold the dignity and authority of the court;
- (b) ensure compliance with the directions of court;
- (c) ensure the observance and respect of due process of law;
- (d) preserve an effective and impartial system of justice; and

- (e) maintain public confidence in the administration of justice as administered by court.

4. Contempt of Court

(1) Contempt of court includes —

- (a) civil contempt which means willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court;
- (b) criminal contempt which means the publication, whether by words, spoken or written, by signs, visible representation, or otherwise, of any matters or the doing of any other act which —
 - (i) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of the court;
 - (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
 - (iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice.

(2) In any case not relating to civil or criminal proceedings as contemplated under subsection (1), an act that is willfully committed to interfere, obstruct or interrupt the due process of the administration of justice in relation to any court, or to lower the authority of a court, or to scandalize a judge, judicial officer in relation to any proceedings before the court, on any other manner constitutes contempt of court.

PART II – JURISDICTION OF COURTS

5. Jurisdiction of superior Courts

Every superior court shall have power to —

- (a) punish for contempt of court on the face of the court;
- (b) punish for contempt of court; and
- (c) uphold the dignity and authority of subordinate courts.

6. Jurisdiction of subordinate courts to punish for contempt of court

Every subordinate court shall have power to punish for contempt of court on the face of the court in any case where a person —

- (a) assaults, threatens, intimidates, or willfully insults a judicial officer or a witness, during a sitting or attendance in a court, or in going to or returning from the court to whom any relevant proceedings relate;
- (b) willfully interrupts or obstructs the proceedings of a subordinate court; or
- (c) willfully disobeys an order or direction of a subordinate court.

7. Summary proceedings

(1) An offence of contempt of court shall be tried summarily and the court shall keep a record of the proceedings.

(2) Without prejudice to subsection (1), the Chief Justice may make rules of procedure to regulate proceedings and the process to try an offence of contempt of court in the superior and subordinate courts, including —

- (a) transfer of proceedings from a subordinate court to a superior court;

- (b) proceedings in camera and prohibition of publication of proceedings; and
- (c) appeals and limitation for appeals.

(3) Notwithstanding subsection (1), any proceedings to try an offence of contempt of court provided for under any other written law shall not take away the right of any person to a fair trial and fair administrative action in accordance with Articles 47 and 50 of the Constitution.

8. Institution of proceedings

Proceedings for criminal contempt of court shall not be instituted except by or with the consent of the Director of Public Prosecutions, with the leave of the court or on the motion of a court having jurisdiction to deal with criminal contempt of court.

PART III – DEFENCE TO CONTEMPT OF COURT

9. Defence to Contempt of court

In proceedings for contempt of court, it shall be a defence if it is proved to the satisfaction of the court that the conduct in issue —

- (a) is a fair comment on the general working of the court made in good faith, in the public interest and in temperate language;
- (b) is a fair comment on the merits of a decision of a court made in good faith and in temperate language;
- (c) is a publication of a fair and substantially accurate report of any judicial proceeding;
- (d) is a publication of any matter amounting to contempt of court by reason of its being published during judicial proceedings, by a person who had no reasonable grounds to believe that such judicial proceedings were pending at the time of the publication of the matter;
- (e) pertains to distribution of a publication containing any matter amounting to contempt of court by a person who had no reasonable ground to believe that the publication contained or was likely to contain any such matter;
- (f) is a true declaration made in good faith and in temperate language for initiation of action or in the course of disciplinary proceedings against a judge or judicial officer;
- (g) is a plea of truth taken up as a defence in any contempt of court charge under this Act or any written law;
- (h) is a relevant observation made in judicial capacity by a superior court on an appeal or revision or application for transfer of a case or by a court in judicial proceedings against a judge or judicial officer;
- (i) is a remark made in an administrative capacity by an authority in the cause of official business, including a remark connected with a disciplinary inquiry or in an inspection note or a character roll or confidential report; or
- (j) pertains to any other matter exempted from constituting a commission of an offence of contempt of court under any other written law.

10. The strict liability rule

(1) In this Act "the strict liability rule" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.

(2) The strict liability rule applies only in relation to publication, and for this purpose "publication" includes any speech, writing, broadcast or other communication in whatever form, which is addressed to the public at large or any section of the public.

(3) A person shall be strictly liable for contempt of court in any case where the person does any act which interferes or tends to interfere with the course of justice in relation to any judicial proceedings.

(4) For purposes of subsection (3), it shall be immaterial whether the interference was not intentional.

11. Limitation of scope of strict liability rule

(1) The strict liability rule applies only to publication —

- (a) which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced; and
- (b) only if the proceedings in question are active within the meaning of this section at the time of the publication.

(2) The Schedule applies in determining the times at which proceedings are to be treated as active within the meaning of this section.

12. Defence to strict liability rule

Nothing in this Act shall —

- (a) prejudice any defence available at common law to a charge of contempt of court under the strict liability rule;
- (b) imply that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions; or
- (c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

13. Defence of innocent publication or distribution

(1) A person is not guilty of contempt of court under the strict liability rule if that person has published any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings pending at the time of publication, if at that time, that person had no reason to believe that the proceedings were pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law, the publication of any matter referred to in subsection (1) in connection with any civil or criminal proceeding which is not pending at the time of publication does not constitute contempt of court.

(3) A person shall not be guilty of contempt of court under the strict liability rule if that person distributed a publication containing any matter referred to in subsection (1), if at the time of distribution that person did not know or had no reason to believe that it contained such matter or was likely to contain any such matter.

(4) The burden of proof of any fact tending to establish a defence under this section to any person is upon that person.

- (5) Subsection (3) does not apply in respect of distribution of —
- (a) any publication which is a book or paper printed or published; or
 - (b) any publication which is a newspaper published, other than in conformity with the Books and Newspapers Act (Cap. 111).

14. Fair and accurate report of judicial proceeding not contempt

(1) A person is not guilty of contempt of court for publishing a fair and accurate report of judicial proceedings held in open court if the report is published in good faith.

(2) In any judicial proceedings held in open court, the court may, where it appears necessary to avoid the risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court determines is necessary for that purpose.

15. Fair criticism of judicial act not contempt

A person is not guilty of contempt of court for publishing any fair comment on the merits of any case, which has been heard and determined.

16. Complaint against presiding officers of subordinate courts not contempt

A person is not guilty of contempt of court in respect of any complaint made by that person in good faith concerning the presiding officer of any subordinate court to —

- (a) a competent authority;
- (b) a judge; or
- (c) a judicial officer.

17. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases

(1) Notwithstanding anything contained in this Act, a person is not guilty of contempt of court for publishing a fair and accurate report of judicial proceedings before any court sitting in chambers or in camera except in the following cases —

- (a) where the publication is contrary to any law;
- (b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all publication of all information relating to the proceedings or of information of the description which is published;
- (c) where the court sits in chambers or in camera for reasons relating to public order or national security, the publication of information relating to those proceedings;
- (d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings.

(2) Without prejudice to subsection(1), a person is not guilty of contempt of court for publishing the text or a fair and accurate summary of the whole, or any part, of an order made by any court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof —

- (a) on the grounds of public policy or interest;
- (b) for reasons connected with public order or national security;

- (c) on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

18. Discussion of public affairs

A publication made as part of a discussion in good faith of public affairs or other matters of general public interest is not contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

19. Use of recording devices

(1) Subject to subsection (4), it is contempt of court to —

- (a) use in court any recording device or instrument for recording proceedings, a tape recorder or other instrument for recording sound, except with the leave of the court;
- (b) publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or disposes of it or any recording so derived, with a view to such publication; or
- (c) use any such recording in contravention of any conditions granted under paragraph (a).

(2) Leave under subsection (1)(a) may be granted or refused by the court, and where such leave is granted, it may be subject to such reasonable conditions as the court considers necessary.

(3) Without prejudice to any other power to deal with an act of contempt under subsection (1) (a), the court may order the instrument, device or any recording made with it, or both, to be forfeited, and any object so forfeited shall, unless the court otherwise determines on application by a person appearing to be the owner, be sold or otherwise disposed of in such manner as the court may direct.

(4) This section shall not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

(5) For purposes of this section "recording" includes any visual or audio recording.

20. Sources of information

A person is not guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which the person is responsible, unless it is established to the satisfaction of the court that such disclosure is necessary in the interests of justice, national security, or for the prevention of disorder crime.

21. Publication of matters exempted from disclosure in court

Where a court, having power to do so, allows a name or other matter to be withheld from publication in relation to proceedings before the court, the court may give such directions prohibiting the publication of that name or matter as appear to the court to be necessary for the purpose for which it was so withheld.

22. Other defences not affected

Nothing contained in this Act shall be construed as implying that any other defence which would be a valid defence in any proceedings for contempt of court has ceased to be available merely by reason of the provisions of this Act.

PART IV – CONTEMPT OF COURT PROCEEDINGS

23. Trial for contempt of court shall not constitute double jeopardy

Nothing in this Act prevents —

- (a) a court from trying a person for any other related criminal offence or adjudicating a civil matter; or
- (b) a person from instituting or seeking person for any other offence provided for under any other written law.

24. Power of High Court to punish contempt of subordinate courts

The High Court has the same jurisdiction, power and authority, in accordance with the same procedure and practice, in respect of contempt of subordinate courts as it has and exercises in respect of contempt of the High Court.

25. Procedure where contempt is in superior court

Where it is alleged that, or appears to a superior court that a person has committed contempt of court in its presence or hearing, the court may cause such person to be detained in custody and at any time before the rising of the court, on the same day or not more than twenty-four hours thereafter shall —

- (a) cause the person to be informed in writing of the contempt of court with which he or she is charged;
- (b) afford that person an opportunity to make his or her defence to the charge;
- (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him or her, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of such person on such terms as may be just.

26. Cognizance of criminal contempt in other cases

(1) In the case of criminal contempt, a superior court may take action on its own motion or on an application made by any person.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Director of Public Prosecutions.

(3) Every motion or reference made under this section shall specify the contempt of court the person is charged with.

PART V — OFFENCES

27. Offence of contempt of court

A person who —

- (a) assaults, threatens, intimidates, or willfully insults a judge or judicial officer or a witness, during a sitting or attendance in a court, or in going to or returning from the court;
- (b) willfully and without lawful excuse disobeys an order or directions of a superior or subordinate court in the course of the hearing of a proceeding;

- (c) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being heard or taken;
- (d) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room;
- (e) causes an obstruction or disturbance in the course of a judicial proceeding;
- (f) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority taken;
- (g) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private;
- (h) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence;
- (i) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding;
- (j) forcibly retakes possession of land from any person who has recently obtained possession by an order of court; or
- (k) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceeding is being heard or taken, commits an offence.

28. Punishment for contempt of court

(1) Save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of court is liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) Without prejudice to subsection (1), the court may order that the accused person be detained in police custody until the rising of the court.

(3) A court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(4) Subject to subsection (1), the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

(5) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in subsection (1) for any contempt either in respect of that court or of a court subordinate to it.

(6) Notwithstanding anything contained in this section, where a person is found guilty of civil contempt, the court may if it considers that the fine will not meet the ends of justice and that imprisonment is necessary direct that the person be detained in civil jail for such period not exceeding six months as the court may deem fit.

29. Punishment against management of company

(1) Where a company is guilty of contempt of court in respect of any undertaking given to a court by the company, every person who, at the time the contempt was committed, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and such person may with the leave of the court be committed to civil jail:

Provided that nothing in this subsection shall render any such person liable to punishment if the person proves to the satisfaction of the court that the contempt was committed without his or her knowledge or that he or she exercised all due diligence to prevent its commission.

(2) Where the contempt of court is committed by a company and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and may, with the leave of the court be committed to civil jail and in addition, be liable to a fine not exceeding two hundred thousand shillings.

30. Punishment against management of State organ, government department, ministry or corporation

(1) Where a State organ, government department, ministry or corporation is guilty of contempt of court in respect of any undertaking given to a court by the State organ, government department, ministry or corporation, the court shall serve a notice of not less than thirty days on the accounting officer, requiring the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

(2) No contempt of court proceedings shall be commenced against the accounting officer of a State organ, government department, ministry or corporation, unless the court has issued a notice of not less than thirty days to the accounting officer to show cause why contempt of court proceedings should not be commenced against the accounting officer.

(3) A notice issued under subsection (1) shall be served on the accounting officer and the Attorney-General.

(4) If the accounting officer does not respond to the notice to show cause issued under subsection (1) within thirty days of the receipt of the notice, the court shall proceed and commence contempt of court proceedings against the accounting officer.

(5) Where the contempt of court is committed by a State organ, government department, ministry or corporation, and it is proved to the satisfaction of the court that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any accounting officer, such accounting officer shall be deemed to be guilty of the contempt and may with the leave of the court be liable to a fine not exceeding two hundred thousand shillings.

(6) No State officer or public officer shall be convicted of contempt of court for the execution of his duties in good faith.

PART VI — MISCELLANEOUS PROVISIONS

31. Revision of order

(1) A superior court may, on an application made by a person aggrieved by an order by a subordinate court to punish for contempt of court revise such order on such terms as it deems fit and may upon revision —

- (a) uphold the order of the subordinate court; or
- (b) release the applicant with or without conditions.

(2) An application under subsection (1) shall be made on the following grounds —

- (a) an error apparent on the face of record; or
- (b) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant and could not be produced by him or her at the time when the order was passed.

(3) The procedure for revision of an order for contempt of court shall be as set out in Criminal Procedure Code (Cap. 75).

32. Review of order

(1) The High Court shall have power to review its own orders.

(2) Pending the review of an order under subsection (1), the High Court may order that —

- (a) the execution of the punishment or order to be reviewed be suspended; and
- (b) if the subject of the order or decision is in confinement, the subject be released on bail.

33. Appeals

(1) An appeal shall lie from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt to the Court of Appeal, only on points of law.

(2) Pending an appeal, an appellate court may order that —

- (a) the execution of the punishment or order appealed against be suspended; and
- (b) if the appellant is in confinement, the appellant be released on bail.

(3) Where a person aggrieved by any order against which an appeal may be filed satisfies the High Court that he or she intends to file an appeal, the High Court may also exercise all or any of the powers conferred by subsection (2).

(4) An appeal under subsection (1) shall be filed —

- (a) in the case of an appeal to the High Court, within thirty days;
- (b) in the case of an appeal to the court of Appeal, within sixty days, from the date of the order appealed against.

34. Limitations of actions for contempt

No court shall initiate any proceedings for contempt of court either on its own motion or otherwise after the expiry of a period of six months from the date on which the contempt of court is alleged to have been committed.

35. Proceedings not to issue against a Speaker of Parliament

A Court shall not initiate proceedings for contempt of court in relation to a decision made or directions given by a Speaker of a House of Parliament in the performance of his or her official responsibilities.

36. Act to be in addition to and not in derogation of other laws relating to contempt

The provisions of this Act shall supersede any other written law relating to contempt of court.

37. Rules

The Chief Justice may make rules for the better carrying out of the purposes of this Act.

38. Repeal of Section 5 of Cap. 8

The Judicature Act (Cap. 8) is amended by deleting section 5.

39. Repeal of section 36 of No. 27 of 2015

The High Court (Organization and Administration) Act (No. 27 of 2015) is amended by deleting section 36.

40. Repeal of section 35 of No. 28 of 2015

The Court of Appeal (Organization and Administration) Act (No. 28 of 2015) is amended by deleting section 35.

SCHEDULE

[Section 11 (2).]

**TIMES WHEN PROCEEDINGS ARE TO TREATED
AS ACTIVE FOR PURPOSES OF SECTION 11(2)***Preliminary***1.** In this Schedule —

"criminal proceedings" means proceedings against a person in respect of an offence, not being appellate proceedings or proceedings commenced by motion for committal or attachment; and

"appellate proceedings" means proceedings on appeal from or for the review of the decision of a court in any proceedings.

2. Criminal, appellate and other proceedings are active within the meaning of section 11 at the instances prescribed by the following paragraphs of this Schedule, and in relation to proceedings in which more than one of the steps described in any of those paragraphs is taken, the reference in that paragraph is a reference to the first of those steps.

Criminal proceedings

3. Subject to the following provisions of this Schedule, criminal proceedings are active from the relevant initial step specified in paragraph 4 until concluded as described in paragraph 5.

4. The initial steps of criminal proceedings are —
- (a) the arrest without a warrant;
 - (b) the issuance, of a warrant of arrest;
 - (c) issuance of a summons to appear;
 - (d) the service of a charge or other document specifying the charge.
5. Criminal proceedings are concluded —
- (a) by acquittal or, as the case may be, by sentence;
 - (b) by any other verdict, finding, order or decision which concludes the proceedings;
 - (c) by discontinuance; or
 - (d) by operation of law.
6. The reference in paragraph 5(a) to sentence includes any order or decision consequent on conviction or finding of guilt which disposes of the case, either absolutely or subject to future events, and a deferment of sentence.
7. Proceedings are discontinued within the meaning of paragraph 5(c) —
- (a) if the charge or summons is withdrawn or terminated;
 - (b) if the proceedings are abandoned by the prosecutor;
 - (c) in the case of arrest without a warrant, if the person arrested is released, otherwise than on bail, without having been charged.
8. Criminal proceedings before a court-martial are not concluded until the completion of any review of finding or sentence.
9. Without prejudice to paragraph 5(b), criminal proceedings against a person cease to be active if the accused is found to be under such disability as to render him or her unfit to be tried or unfit to plead.
10. Criminal proceedings against a person which become active on the issue or the grant of a warrant for his or her arrest cease to be active at the end of the period of twelve months beginning with the date of the warrant unless such person has been arrested within that period.
11. Despite paragraph 11, criminal proceedings become active again if the person referred to therein is subsequently arrested outside the said period of twelve months.

Other proceedings at first instance

12. Proceedings other than criminal proceedings and appellate proceedings are active —
- (a) from the time when arrangements for the hearing are made; or
 - (b) if no such arrangements are previously made, from the time the hearing begins, until the proceedings are disposed of or discontinued or withdrawn.
13. For the purposes of paragraph 13, any motion or application made in or for the purposes of any proceedings, any pre-trial review in the court, is to be treated as a distinct proceeding.

Contempt of Court

14. Arrangements for the hearing of proceedings to which paragraph 13 applies are made within the meaning of that paragraph —

- (a) in the case of proceedings in the High Court for which provision is made, by rules of court for setting down for trial, when the case is set down;
- (b) in the case of any proceedings, when a date for the trial or hearing is fixed.

Appellate proceedings

15. Appellate proceedings are active from the time when they are commenced —

- (a) by application for leave to appeal or apply for review, or by notice of such an application;
- (b) by notice of appeal or of application for review;
- (c) by other originating process, until disposed of or abandoned, discontinued or withdrawn.

16. Where, in appellate proceedings relating to criminal proceedings, the court —

- (a) remits the case to the court below; or
- (b) orders a new trial,

any further or new proceedings which result shall be treated as active from the conclusion of the appellate proceedings.
