



THE REPUBLIC OF KENYA

LAWS OF KENYA

GOVERNMENT PROCEEDINGS ACT

CHAPTER 40

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CHAPTER 40

GOVERNMENT PROCEEDINGS ACT

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CHAPTER 40
GOVERNMENT PROCEEDINGS ACT

[Date of assent: 17th December, 1956.]

[Date of commencement: 18th December, 1956.]

An Act of Parliament to state the law relating to the civil liabilities and rights of the Government and to civil proceedings by and against the Government; to state the law relating to the civil liabilities of persons other than the Government in certain cases involving the affairs or property of the Government; and for purposes incidental to and connected with those matters

[Act No. 47 of 1956, Act No. 36 of 1962, Act No. 1 of 1964, L.N. 2/1964, Act No. 21 of 1966, Act No. 5 of 1974, Act No. 7 of 1975, Act No. 6 of 1979, Act No. 35 of 2015.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Government Proceedings Act.

2. Interpretation

(1) In this Act, except where the context otherwise requires—

“**agent**”, when used in relation to the Government, includes an independent contractor employed by the Government;

“**armed forces**” means the military, naval and air forces of the Republic and includes any person who, although not a member of any of those forces, is serving under the control of any of those forces, and whether as a civilian or otherwise;

“**civil proceedings**” includes proceedings in the High Court or a subordinate court for the recovery of fines or penalties;

“**officer**”, in relation to the Government, includes the President, the Vice-President, a Minister, an Assistant Minister and any servant of the Government;

“**order**” includes a judgment, decree, rule, award or declaration;

“**prescribed**” means prescribed by rules of court;

“**proceedings against the Government**” includes a claim by way of set-off or counterclaim raised in proceedings by the Government;

“**statutory duty**” means any duty imposed by or under any written law.

(2) Any reference in this Act to the provisions of 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 Part IV or Part 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 to include a reference to civil proceedings to which the Attorney-General, or any Government department, or any officer of the Government as such, is a party:

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

[Act No. 21 of 1966, First Sch.]

PART II – SUBSTANTIVE LAW

3. Right to sue the Government

Where any person has a claim against the Government after the commencement of this Act and, if this Act had not been enacted, the claim might have been enforced in accordance with the provisions of the Petitions of Right Ordinance (Cap. 7 (1948) (now repealed)), or might have been enforced by a proceeding provided by any statutory provisions repealed by this Act then, subject to the provisions of this Act, the claim may be enforced as of right by proceedings taken against the Government for that purpose in accordance with the provisions of this Act.

[Act No. 21 of 1966, First Sch.]

4. Liability of the Government in tort

(1) Subject to the provisions of this 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 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:

Provided that no proceedings shall lie against the Government by virtue of paragraph (a) of this sub-section in respect of any act or omission of a servant or agent of the Government, unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his 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 the provisions of this 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 written law, 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 written law 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 any responsibilities which he has in connection with the execution of judicial process.

(6) No proceedings shall lie against the Government by virtue of this section in respect of any act, neglect or default of any officer of the Government, unless that officer has been directly or indirectly appointed by the Government and was at the material time paid in respect of his duties as an officer of the Government wholly out of the consolidated fund or was at the material time holding an office in respect of which the Minister for the time being responsible for Finance certifies that the holder thereof would normally be so paid.

[Act No. 21 of 1966, First Sch.]

5. 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 trade mark, or infringes any copyright (including any copyright in a design subsisting under the Registered Designs Act, 1949, (12,13, & 14 Geo. 6 c. 88.) of the United Kingdom) and the infringement is committed with the authority of the Government, then, subject to the provisions of this Act, civil proceedings in respect of the infringement shall lie against the Government.

(2) Nothing in subsection (1) of this section or any other provision of this Act shall affect the rights of any Government department under section 46 of the Patents Act, 1949, (12, 13, 14 Geo. 6 c. 87.) or under section 12 of, and the First Schedule to, the Registered Designs Act, 1949, of the United Kingdom.

(3) Save 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 trade mark, or the infringement of any copyright as is mentioned in subsection (1).

[Act No. 21 of 1966, First Sch.]

6. 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.

[Act No. 21 of 1966, First Sch.]

7. Provisions relating to the armed forces

(1) Nothing done or omitted to be done by a member of the armed forces while on duty as such shall subject either him or the Government to liability in tort for causing the death of another person, or for causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces if—

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces; and

- (b) where that other person is a member of the armed forces, the Minister for the time being responsible for Finance certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to a gratuity or pension under any written law relating to the disablement or death of members of the force of which he is a member:

Provided that this subsection shall not exempt a member of the armed forces from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those forces.

(2) No proceedings in tort shall lie against the Government for death or personal injury due to anything suffered by a member of the armed forces if—

- (a) that thing is suffered by him in consequence of the nature or condition of any land, premises, ship, aircraft or vehicle referred to in paragraph (a) of subsection (1), or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and
- (b) the Minister for the time being responsible for Finance certifies as mentioned in paragraph (b) of subsection (1),

nor shall any act or omission of an officer of the Government subject him to liability in tort for death or personal injury in so far as the death or personal injury is due to anything suffered by a member of the armed forces being a thing as to which the conditions aforesaid are satisfied.

(3) The Minister for the time being responsible for Defence, if satisfied that it is the fact—

- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces; or
- (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purpose of the armed forces,

may issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

[Act No. 36 of 1962, Sch., Act No. 21 of 1966, First Sch.]

8. Saving in respect of certain acts done under prerogative and statutory powers

(1) Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of any prerogative, privilege, power or authority vested in the Government by any written law, 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 Kenya or of training, or maintaining the efficiency of, any of the armed forces.

(2) Where in any proceedings under this Act it is material to determine whether anything was properly done or omitted to be done in the exercise of any prerogative or privilege of the Government, the President may, if satisfied that the act or omission was necessary for any such purpose mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matters so certified.

[Act No. 21 of 1966, First Sch.]

PART III – JURISDICTION AND PROCEDURE

9. Civil proceedings in the High Court

(1) Subject to the provisions of this Act, all civil proceedings by or against the Government mentioned in the First Schedule to this Act are hereby abolished, and 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) In this section, the expression “**rules of court**” means, in relation to any claim against the Government in the High Court which falls within the jurisdiction of that court as a prize court, rules of court made under section 3 of the Prize Courts Act, 1894 (57 & 58 Vict. c. 39.)

[Act No. 21 of 1966, First Sch.]

10. Civil proceedings in subordinate courts

(1) Subject to the provisions of this Act, and to any written law limiting the jurisdiction of a subordinate court (whether by reference to the subject matter of the proceedings to be brought or by the amount sought to be recovered in the proceedings or otherwise), any civil proceedings against the Government may be instituted in a subordinate court.

(2) Any proceedings by or against the Government in a subordinate court shall be instituted and proceeded with in accordance with rules of court and not otherwise.

[Act No. 21 of 1966, First Sch.]

11. Interpleader

The Government may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the same manner in which a subject may obtain relief by way of those proceedings or be made a party thereto, and may be made a party to those proceedings notwithstanding that the application for relief is made by a court broker or like officer; and all rules of court relating to interpleader proceedings shall, subject to the provisions of this Act, have effect accordingly.

[Act No. 21 of 1966, First Sch.]

12. Parties to proceedings

(1) 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, as the case may be.

(2) No proceedings instituted in accordance with this Part of this Act by or against the Attorney-General shall abate or be affected by any change in the person holding the office of Attorney-General.

[Act No. 21 of 1966, First Sch.]

13. 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 in accordance with the provisions of this Act shall be served on the Attorney-General.

[Act No. 21 of 1966, First Sch.]

13A. Notice of intention to institute proceedings

(1) No proceedings against the Government shall lie or be instituted until after the expiry of a period of thirty days after a notice in writing in the prescribed form have been served on the Government in relation to those proceedings.

(2) The notice to be served under this section shall be in the form prescribed in the Third Schedule to this Act and shall include the following particulars—

- (a) the full names, description and place of residence of the proposed plaintiff;
- (b) the date upon which the cause of action is alleged to have accrued;
- (c) the name of the Government department alleged to be responsible and the full names of any servant or agent whom it is intended to join as a defendant;
- (d) a concise statement of the facts on which it is alleged that the liability of the Government and of any such servant or agent has arisen;
- (e) the relief that will be claimed and, so far as may be practicable, the value of the subject matter of the intended proceedings or the amount which it is intended to claim.

(3) The provisions of this section shall not apply to such part of any proceedings as relates to a claim for relief in respect of which the court may, by virtue of proviso (i) to section 16 (1), make an order declaratory of the right of the parties in lieu of an injunction.

[Act No. 5 of 1974, s. 8, Act No. 7 of 1975, Sch.]

14. Venue and related matters

(1) In any case in which civil proceedings against the Government in the High Court are instituted by the issue of a plaint out of a District Registry, the Government may enter an appearance either in the District Registry or in the Central Office of the High Court in Nairobi, and, if an appearance is entered in the Central Office, all steps in relation to the proceedings up to the trial shall be taken in Nairobi.

(2) The trial of any civil proceedings by or against the Government in the High Court shall be held at the High Court in Nairobi unless the court, with the consent of the Government, otherwise directs.

(3) Where the Government refuses its consent to a direction under sub-section (2) of this section, the court may take account of the refusal in exercising its powers in regard to the award of costs.

[Act No. 21 of 1966, First Sch.]

15. Removal and transfer of proceedings

(1) If, in a case where proceedings are instituted against the Government in a subordinate 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 a certificate as is mentioned in subsection (1) of this section, 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 power in regard to the award of costs.

(3) Without prejudice to the rights of the Government under the preceding provisions of this section, the provisions of any written law relating to the removal or transfer of proceedings from a subordinate court to the High Court or the transfer of proceedings from the High Court to a subordinate court shall apply in relation to proceedings against the Government:

Provided that an order for the transfer to a subordinate court of any proceedings against the Government in the High Court shall not be made without the consent of the Government.

[Act No. 21 of 1966, First Sch.]

16. Nature of relief

(1) In any civil proceedings by or against the Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise give such appropriate relief as the case may require:

Provided that—

- (i) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects 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 thereof make an order declaratory of the rights of the parties; and
- (ii) 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 thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property, or to the possession thereof.

(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.

[Act No. 21 of 1966, First Sch.]

17. 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 subjects, and the court or arbitrator shall have power to make an order for the payment of costs by or to the Government accordingly:

Provided that—

- (i) in the case of proceedings to which by reason of any written law 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 the circumstances in which the Attorney-General, the department or officer of the Government appears, and may in the exercise of its or his 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

- (ii) nothing in this section shall affect the power of the court or arbitrator to order, or any written law providing for, the payment of costs out of any particular fund or property, or any written law expressly relieving any department or officer of the Government of the liability to pay costs.

[Act No. 21 of 1966, First Sch.]

18. Appeals and stay of execution

Subject to the provisions of this Act, any written law 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 subjects.

[Act No. 21 of 1966, First Sch.]

19. Scope of Part

(1) Subject to the provisions of 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, if this Act had not been enacted, might have been enforced or vindicated or obtained by any such proceedings mentioned in paragraph 1 of the First Schedule;
- (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been enacted, might have been enforced or vindicated or obtained by an action at the suit of any Government department or any officer of the Government as such;
- (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 the provisions of 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, if this Act had not been enacted, might have been enforced or vindicated or obtained by any such proceedings as are mentioned in paragraph 2 of the First Schedule ;
- (b) proceedings for the enforcement or vindication of any right or the obtaining of any relief which, if this Act had not been enacted, might have been enforced or vindicated or obtained by an action against the Attorney-General, any Government department, 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 the preceding provisions of this section, the provisions of this Part shall not have effect with respect to any of the following proceedings that is to say—

- (a) proceedings brought by the Attorney-General on the relation of some other person;
- (b) proceedings by or against the Public Trustee;
- (c) proceedings relating to charitable trusts by or against the Attorney-General;
- (d) proceedings by or against a registrar of titles under the Registration of Titles Act (Cap. 281).

[Act No. 21 of 1966, First Sch.]

PART IV – JUDGMENTS AND EXECUTION

20. Interest on debts, damages and costs

(1) Section 26 of the Civil Procedure Act (Cap. 21), (which provides that a judgment debt shall carry interest) shall apply to judgment debts due from or to the Government.

(2) The provisions of any written law empowering a court to award interest on costs shall apply to orders made in any proceedings by or against the Government.

(3) The provisions of any written law empowering a court to award interest on debts and damages shall apply to orders made in any proceedings by or against the Government.

(4) This section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

[Act No. 21 of 1966, First Sch.]

21. Satisfaction of orders against the Government

(1) Where in any civil proceedings by or against the Government, or in proceedings in connection with any arbitration in 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, or 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:

Provided that, 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 Accounting Officer for the Government department concerned shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with interest, if any, lawfully due thereon:

Provided that the court by which any such order as aforesaid 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 thereof, shall be suspended, and if the certificate has not been issued may order any such direction to be inserted therein.

(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.

(5) This section shall, with necessary modifications, apply to any civil proceedings by or against a county government, or in any proceedings in connection with any arbitration in which a county government is a party.

[Act No. 21 of 1966, First Sch., Act No. 35 of 2015, s. 2.]

22. Execution by the Government

(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 subjects, and not otherwise.

(2) Subsection (1) of this section shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

(3) 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 any goods, or the forfeiture of any ship or any share in a ship.

[Act No. 21 of 1966, First Sch.]

23. Attachment of moneys 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 subject, be entitled under rules of court to obtain an order for the attachment thereof as a debt due or accruing due, or an order for the appointment of a receiver to receive the money on his behalf, the High Court may, subject to the provisions of this Act and in accordance with rules of court, make an order restraining the first-mentioned person from receiving that money and directing payment thereof to that other person, or to the receiver:

Provided that no such order shall be made in respect of—

- (a) *deleted by Act No. 6 of 1979, Sch.;*
- (b) money which is subject to the provisions of any written law prohibiting or restricting assignment or charging or taking in execution; or
- (c) money payable by the Government to any person on account of a deposit in the Kenya Post Office Savings Bank.

(2) The provisions of subsection (1) of this section shall, so far as they relate to forms of relief falling within the jurisdiction of a subordinate court, have effect in relation to subordinate courts as they have effect in relation to the High Court.

[Act No. 21 of 1966, First Sch., Act No. 6 of 1979, Sch.]

PART V – MISCELLANEOUS

24. Discovery

(1) Subject to and in accordance with rules of court, in any civil proceedings in the High Court or a subordinate 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 or answer interrogatories:

Provided that this section shall be without prejudice to any 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) Any order of the court made under the powers conferred by paragraph (b) of subsection (1) of this section shall direct by what officer of the Government the interrogatories are to be answered.

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

[Act No. 21 of 1966, First Sch.]

25. 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 Government ship or aircraft, or of any cargo or other property belonging to the Government, or give to any person any lien on any such ship, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in the High Court or in a subordinate court against any such ship, aircraft, 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 ship, aircraft, 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 the provisions of 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 the provisions of subsection (2) may be 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 it thinks expedient.

[Act No. 21 of 1966, First Sch.]

26. Limitation of actions

Nothing in this Act shall prejudice the right of the Government to rely upon any written law relating to the limitation of time for bringing proceedings against public authorities.

[Act No. 21 of 1966, First Sch.]

27. Application to the Government of certain written laws

This Act shall not prejudice the rights of the Government to take advantage of the provisions of any written law although not named therein; and in any civil proceedings against the Government the provisions of any written law which could, if the proceedings were between subjects, 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.

[Act No. 21 of 1966, First Sch.]

28. No abatement on change of Government

No claim by or against the Government, and no proceedings for the enforcement of any such claim, shall abate or be affected by any change of the Government.

[Act No. 21 of 1966, First Sch.]

29. Abolition of certain writs

No writ of extent or *diem clausit extremum* shall issue after the commencement of this Act.

30. Rules of court

(1) Any power to make rules of court to provide for any matters relating to the procedure of civil courts shall include power to make rules of court 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 subjects.

(2) Provision shall be made by rules of court with respect to the following matters—

- (a) for providing for service of process, or notice thereof, in the case of proceedings by the Government against persons, whether citizens of Kenya or not, who are not resident in Kenya;
- (b) for securing that where any 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 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;
- (c) 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;
- (d) 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 aforesaid;

- (e) for enabling evidence to be taken on commission in proceedings by or against the Government;
- (f) for providing that a person shall not be entitled to avail himself of any set-off or counterclaim 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 counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

(3) Provision may be made by rules of court for regulating any appeals to the High Court, whether by way of case stated or otherwise, under any written law relating to the revenue, and any rules made under this sub-section may revoke any written law or rules in force immediately before the commencement of this Act so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any written law or rules so in force.

[Act No. 1 of 1964, s. 8, Act No. 21 of 1966, First Sch.]

31. *Spent.*

32. Financial provisions

(1) Any expenditure incurred by or on behalf of the Government by reason of this Act shall be defrayed out of moneys provided by Parliament.

(2) Except in so far as Parliament may otherwise authorise, any sum payable to the Government by reason of this Act shall be paid into the Consolidated Fund.

[Act No. 21 of 1966, First Sch.]

33. Repeal

The Acts of the United Kingdom set out in the Second Schedule shall cease to apply to Kenya to the extent specified in the third column of that Schedule.

34. Savings

- (1) Except as therein otherwise expressly provided, nothing in this Act shall—
- (a) affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the High Court as a prize court or to any criminal proceedings; or
 - (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; or
 - (c) subject the Government, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity; or
 - (d) affect any rules of evidence or any presumption relating to the extent to which the Government is bound by any written law; or
 - (e) affect any rights of the Government to control or otherwise intervene in proceedings affecting its rights, property or profits; or
 - (f) affect any liability imposed on the Public Trustee by the Public Trustee Act (Cap. 168).

(2) Where any property vests in the Government by virtue of any rule of law which operates independently of the acts or the intentions 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 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 that 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.

[Act No. 21 of 1966, First Sch.]

FIRST SCHEDULE

[Sections 9 and 19.]

PROCEEDINGS ABOLISHED BY THIS ACT

1. (1) Latin informations and English informations.

(2) Writs of *capias* and *respondendum*, writs of *subpoena ad respondendum*, and of appraisalment.

(3) Writs of *scire facias*.

(4) Proceedings for the determination of any issue upon a writ of extent or of *diem clausit extremum*.

2. (1) Proceedings against the Government by way of petition of right, including proceedings by way of petition of right intituled in the Admiralty Division under section 52 of the Naval Prize Act, 1864 (27 & 28 Vict. c. 25.)

(2) Proceedings against the Government by way of *monstrans de droit*.

SECOND SCHEDULE

[Section 33.]

REPEAL

<i>Chapter or No. and Year</i>	<i>Short title</i>	<i>Extent of Repeal</i>
25 Edw. 2 c. 18	The King's Tenant His Debtor	The whole Act.
25 Geo. 3 c. 35	The Crown Debtors Act, 1785	The whole Act.
57 Geo. 3 c. 117	The Extents in Aid Act, 1817	The whole Act.
27 & 28 Vict. c. 25	The Naval Prize Act, 1864	Section 52.
31 & 32 Vict. c. 78	The Admiralty Suits Act, 1868	The whole Act.

Government Proceedings

THIRD SCHEDULE

[Section 13A (2).]

FORM OF NOTICE TO THE ATTORNEY-GENERAL

TAKE NOTICE that (name and description of proposed plaintiff) of (address) intends to institute proceedings in the Court against the Attorney-General on behalf of (name of Government department) [and (full names of any other proposed defendant)].

The circumstances giving rise to liability are (give a concise statement) and it is alleged that the cause of action accrued on (date).

The relief sought is as follows—

(specify the nature of the relief sought and, so far as may be practicable, the value of the subject-matter or the amount to be claimed).

Dated this day of, 20

.....
(Signed)
Proposed plaintiff or
Advocate for the proposed plaintiff
