

THE UNITED REPUBLIC OF TANZANIA



No. 12 OF 1987

I ASSENT,
M. M. M. M.
President
16/1/88

An Act to amend- the Economic and Organized Crime Control Act, 1984

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Economic and Organized Crime Control (Amendment) Act, 1987, and shall be read as one with the Economic and Organized Crime Control Act, 1984, in this Act referred to as "the principal Act"

2. Section 4 of the principal Act is hereby amended by deleting subsection (2) and the character "(1)" occurring in the first line of that section.

3. Section 5 of the principal Act is hereby amended by deleting subsections (4) and (5) and substituting for them, respectively, the following:

(4) The High Court shall select and summon two persons from among the list submitted by the Regional Judicial Board to be lay members for the purposes of each session or, if one case only is to be heard, for the purposes of the case concerned "

"(5) Where a lay member becomes unable to sit on the Court after proceedings in any case have commenced, and such inability is expected to last unduly long, the proceedings may continue until the conclusion of that case or, if at a session, of all the other cases, notwithstanding the absence of that member."

Short title and construction

Acts, 1984 No. 13

Amendment of section 4

Amendment of section 5

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| Amend- ment of section 7 | 4. Section 7 of the principal Act is hereby amended in subsection (1) by deleting the words "proceedings or session" and substituting for them the words "each session or the proceedings in a single case." |
| Amend- ment of section 11 | 5. Section 11 of the principal Act is hereby amended in subsection (2) by deleting paragraph (a) and substituting for it the following: - (a) the reference by any court subordinate to the High Court, with copies of records being sent to the Director of Public Prosecutions, of any case involving economic offense or offenses previously instituted before that court;" |
| Amend- ment of section 12 | 6. Section 12 of the principal Act is hereby amended- (a) in subsection (3) by deleting the words "a court of a resident magistrate" and substituting for it the words "such court subordinate to the High Court as he may specify in the certificate." (c) in subsection (5) by deleting the words "of a resident magistrate" and substituting for it the words "subordinate to the High Court" "(b) by adding immediately after subsection (3) the following subsection" "(3A) The Director of Public Prosecutions or any State Attorney duly authorized by him, may, in each case in which he deems it necessary or appropriate in the public interest, by certificate under his hand, order that any case instituted or to be instituted before a court subordinate to the High Court and which involves a non-economic offence or both an economic offence and a non-economic offence, be instituted in the Court " |
| Repeal and placement of section 16 | 7. Section 16 of the principal Act is hereby repealed and replaced by the following: 16.-(1) All questions to be decided by the Court, other than the question whether or not the accused is guilty of any offence, shall be decided by agreement of the majority of the members. The reasons for any member differing from the views held by the majority of the members shall be stated by him in open court and be recorded by the Judge presiding over the proceedings, and shall form it part of the record of the Court in those proceedings. (2) The decision whether or not the accused is guilty shall be made by the Judge presiding over the proceedings after- (a) summing up the evidence for the prosecution and the defence; and (b) requiring each of the lay members to state his opinion orally as to the case generally and as to any specific question of fact addressed to him by the Judge, and recording such opinion. (3) The Judge shall not, in making the decision pursuant to subsection (2), be bound by the opinions of the lay members" |
| Decision and verdict | |

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8. Section 18 of the principal Act is hereby amended by-

- (a) renumbering the present contents of section 18 as subsection (1) of that section; and
- (b) adding after subsection-(1) the following subsection-

Amend-
ment of
section 18

"(2) Save as is provided in section 19, all offences of contempt against the Court shall be triable by the district court."

9. Section 22 of the principal Act is hereby amended-

- (a) by deleting subsection (3) and substituting for it the following subsection-

Amend-
ment of
section 22

"(3) Where anything is seized after a search conducted pursuant to this section, the police officer seizing it shall-

- (i) forthwith or as soon as it is practicable evaluate or cause the property to be evaluated so as to ascertain its value;
- (ii) issue an official receipt evidencing such seizure and on which the value of the property as ascertained and bearing in addition to his signature, the signature, of the owner of the premises searched and that of at least one independent person who witnessed the search

- (b) by adding after subsection (5) the following subsection-

"(6) Where in the course of a search conducted under this section any premises or part of such premises are put under the custody of the police, then at least two locks or padlocks shall be fixed to the external doors of such premises, and the keys for one lock or padlock shall be kept by the owner or occupier of the premises or his agent who shall be specified for the purpose."

10. Section 23 of the principal Act is hereby amended by-

- "(a) by deleting, in the last line of subsection (3), the words "an order under this section" and substituting for them the words "an appropriate order under subsection (1)".
- (b) adding immediately after subsection (3) the following new sections-

Amendment
of section 23

"(4) Where the Court is satisfied that any property which was in the possession of a person charged with but acquitted of an economic offence, at the time of his apprehension-

- (a) was used for the purposes of committing or facilitating the commission of the offence; or,
- (b) was otherwise involved in the commission of the offence,

whether or not it was so used or involved in the commission of the offence with the knowledge or consent of the owner. the Court shall, subject to subsection (5) make an order in respect of the property under subsection (3).

(5) Where the person charged with but acquitted of an economic offence as referred to under subsection (4) is not the owner of the property, no order shall be issued in respect of the property unless the owner, if he is not charged, is given an opportunity to show cause why an order by the court in respect of the property should not be issued, and if he is not before the court and his whereabouts cannot immediately be ascertained, the court may order the Inspector General to issue a notice in terms of subsection (2) of section 24 and the provisions of subsections (3), (4), (5) and (6) of that section shall apply as if that owner had absconded.

(c) by renumbering the present subsections (4) and (5) as (5) and (6).

Amendment
of section 24

11. Section 24 of the principal Act is hereby amended-

1 (a) in subsection (1), by inserting a comma immediately after the word offence which appears in the fourth line, and by adding immediately after that comma the following phrase-

"or who is on bail during trial or pending appeal for an economic offence,"

(b) by deleting subsection (4) and substituting for it the following-

"(4) If upon receipt of certificate lodged with it in pursuance of subsection (3) and after considering any representations, made after the notice was given, the Court is satisfied that the evidence envisaged to be relied upon as revealed to the Court would have been sufficient to disclose a criminal offence connected with the absconded suspect, it shall proceed to make orders such as may be made under section 23(3) in respect of the property or part of the property or goods left by the absconded suspect.

12. Section 29 of the principal Act is hereby amended by deleting subsection (4) and substituting for it the following-

"(4) After the accused has been addressed as required by subsection (3) the magistrate shall, before ordering that he be held in remand prison where bail is not petitioned for or is not granted, explain to the accused person his right if he wishes, to petition for bail and, for the purposes of this section the power to hear bail applications and grant bail-

(a) between the arrest and the committal of the accused for trial by the Court, is hereby vested in the district court and the court of a resident magistrate if the value of any property involved in the offence charged is less than ten million shillings;

(b) after committal of the accused for trial but before commencement of the trial before the Court, is hereby vested in the High Court;

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- (c) after the trial has commenced before the Court, is hereby vested in the Court;
- (d) in all cases where the value of any property involved in the offence charged is ten million shillings or more at any stage before commencement of the trial before the Court is hereby vested in the High Court."

13. Section 35 of the principal Act is hereby amended-

Amendment
of section 35

- (a) in paragraph (a) of subsection (4) by adding the following proviso:
"Provided that where the offence for which the person is charged involves property whose value is ten million shillings or more, the court may require that cash deposit equal to half the value be paid and the rest be secured by execution of a bond.
- (b) by adding after subsection (5) the following subsection:
"(6) For the purposes of this section, "the Court" includes every court which has jurisdiction to hear a petition for and grant bail to a person under charges triable or being tried under this Act.
- (c) in subsection (3)-
 - (a) in paragraph (c) by adding immediately after the word "assault" which appears in the second sentence, the words "causing grievous harm"
 - (b) by adding immediately after paragraph (c) the following paragraph:
"(f) the offence for which the person is charged involves property whose value exceeds ten million shillings."

14. Section 36 of the principal Act is hereby amended by deleting the words "a magistrate" occurring in the fifth line of the section, and substituting for them the words "the court which granted the bail."

Amendment
of section 37

15. Section 37 of the principal Act is hereby amended-

- (a) in subsection (2) (a) by deleting the word "shall" occurring the penultimate line of the provision, and substituting for it the word "may"

Amend-
ment of
section 37

"(4) Where a person admitted to bail absconds or fails to appear before the court before which he is required to appear on the date fixed and conceals himself so that a warrant of arrest may not be executed-

- (a) the trial in respect of that person before such court shall continue; irrespective of the stage of the trial when the accused absconds, after sufficient efforts have been made to trace him and compel his attendance; and

(b) such of the property, movable or immovable, involved in the alleged commission of the economic offence or in respect of which the economic offence is alleged to have been committed may, if the economic or other criminal offence is disclosed to be connected with the absconded or untraced accused, be forfeited to the United Republic as if the accused were an absconded suspect in terms of section 24."

Amend-
ment of
section 42

16. Section 42 of the principal Act is hereby amended by deleting subsection (3) and substituting for it the following:

'(3) Where on a question to be decided by a majority of the members of the Court, any member holds a view which is different from that of the majority, he shall state in open court his reasons for his difference and they shall be recorded by the Judge presiding over the proceedings and be also read out as part of the judgment."

Amendment
of section 50

17. Section 50 of the principal Act is hereby amended in subsection (2) by deleting the word "magistrate" and substituting for it the word "Court"

Amend-
ment of
section 54

18. Section 54 of the principal Act is hereby amended-

(a) in subsection (1) by inserting after the words "the Court" wherever they occur in the subsection, in each case, the passage "or the district court, as the case may be";

(b) in subsection (4) by deleting the words "or the defendant" which appear in the last line;

(c) by deleting subsection (5) and substituting for it the following:

"(5) All depositions for the purposes of this section shall be taken before any magistrate named by the court making the order for the taking of the deposition."

Amend-
ment of
section 61

19. Section 61 of the principal Act is hereby amended-

(a) by renumbering the present provisions of section 61 as subsection (1) of that section;

(b) by adding after subsection (1) the following subsection:

"(2) Where a court subordinate to the High Court hears and determines a case the decision of which aggrieves a party, the appeal against that decision shall first be made to the High Court."

Amend-
ment of
First
Schedule

20. The First Schedule to the principal Act is hereby amended-

(a) in -subparagraph (a) of paragraph (4), by deleting the Phrase "unusually large or big amount or quantity Of" which appears in the first line and by adding immediately after the word "concerned" the phrase -of a value exceeding one million shillings"

- (b) in paragraph 5(1) by deleting sub-paragraph (d) and substituting for it the following:
 - "(d) being a public official, and in violation of his official duty, or not being a public official but in collusion with such a public official, intentionally promotes or furthers the objectives of a criminal racket by inducing or committing any act or omission."
- (c) in paragraph 8(1), which relates to persons conveying or having possession of goods suspected of having been stolen or unlawfully acquired by inserting immediately after the word "may", occurring in the passage which commences with the words "may-be charged", a comma and the conditional clause--
 - "if the value of the thing or the property concerned exceeds one million shillings,-"
- (d) in Paragraph I I(1) which relates to occasioning loss to a specified authority, by deleting the full stop at the end of subparagraph (1), substituting a comma for it, and adding the passage:
 - "if the monetary value of the loss or damage exceeds one million shillings.-"
- (e) by deleting paragraph 12 which relates to cattle theft and substituting for it the following:

12. A person is guilty of an offence under this paragraph who commits any offence contrary to section 146 of the East African Customs and Transfer Tax Management Act--

- (a) which is beyond the statutory power of the Commissioner-General to compound; or
- (b) which, considering the circumstances of its commission, the Commissioner-General is of the opinion, which he shall certify to the Director of Public Prosecutions, that it is unsuitable to compound; or
- (c) which the Director of Public Prosecutions considers is unsuitable to compound and informs the Commissioner-General of his opinion."
- (f) by deleting paragraph 12 which relates to stock theft.
- (g) by deleting paragraph 19 which relates to the Diamond Industry Protection Ordinance and substituting for it the following paragraph-

19. A person is guilty an offence under this paragraph who commits an offence under the Diamond Industry Protection Ordinance other than an offence against any subsidiary legislation mad under the Ordinance. 11

2 1. The Second Schedule to the principal Act is hereby amended in item A which sets out the oath of a lay member-

22. The Penal Code is amended in accordance with section 23.

"Offences relating to prohibited, restricted and uncustomed goods

Amendment of second schedule

Amendment of various laws

Amend-
ment of
the Penal
Code
Cap. 16

23. The Penal Code is hereby amended-

(a) by adding immediately after section 186 the following section:

Hoarding of
commodities

194A-Any person, whether or not licensed to carry on the business of selling commodities of any description shall be guilty of an offence of hoarding commodities against this section if, not being a manufacturer or producer of the commodities-

(a) he is found in possession of commodities of a value of one million shillings or less which are in demand by public in the locality concerned, in circumstances in which it can be inferred that they are not displayed or stocked for lawful sale or use or available for purchase by any persons offering the lawful price; or price; or

(b) he sells or offers any commodity for sale at a price or subject to a term or condition which is unlawful or which, having regard to all relevant circumstances, is unreasonable; or

(c) in the course of carrying on the business of selling any commodity, he engage. in any trade practice which is intended or likely-

(i) to create an artificial shortage in the supply of any commodity; or

(ii) to aggravate an actually existing shortage in the supply of any commodity; or

(iii) to cause an unlawful increase or decrease in the official or commercially accepted price of any commodity; or

(iv) to adversely affect the fair distribution of any commodity amongst the - purchasing population of the area concerned,

and on conviction shall be liable to imprisonment for a term not exceeding fourteen years or to a fine not exceeding one hundred thousand shillings or to both such imprisonment and fine; and the court may, in addition there to order that all the commodities be forfeited to the government, unless any other person satisfies the court that any of those commodities belonged to him and not to the accused, and that other person in himself not guilty of an offence under this section.

(2) For the purposes of this section-

(a) a person shall be deemed to have in stock any commodities of any description in any place he is the owner of any amount or quantity of such commodities;

- (b) "person" includes any employee or agent of such person (whether or not the employment agency would be such at law) and where such employee or agent is charged with an offence under this paragraph the provisions of subparagraph (3) shall apply *mutatis mutandis* to the employee or agent as they apply where the person charged, the employer or, as the case may be, the agent;
- (c) whether or not licensed to carry on business a person shall be deemed to be carrying on the business of selling commodities of any description if, at the time when the offence is alleged to have been committed or at any reasonable period preceding or succeeding the date when the offence is alleged to have been committed he had possession of an amount or quantity of such commodities in circumstances in which it may reasonably be inferred that such commodities were intended by him or he had held himself out as being seller of those commodities.
- (3) Where a person is charged with an offence under this section, it shall be a good defence for him to prove that-
- (a) there was no shortage in the supply of the commodity or commodities concerned in the locality in question;
- (b) the stocking of the amount or quantity of commodities concerned was not intended or likely to create any shortage in the supply of the commodities or to have any other adverse effect on the distribution of the commodities in the locality;
- (c) the commodities found in any premises under his control or management did not belong to him and that he had no right to dispose of any of the commodities in any way and that he did, at the earliest possible opportunity, advise the authorities investigating the matter of the identity of the owner;
- (d) the commodities owned by him or which he had the right to dispose of had at the time when they were found in his possession, been lawfully sold or otherwise lawfully disposed of to another person;
- (e) the commodities in stock were for his own lawful use or were being used in connection with his lawful business; or
- (f) he had kept them in store as a reasonable precaution, taken in the interests of his own household, against probable imminent future shortage or famine, or in order to meet a requirement of any future event reasonably important to him.

(4) The standard of proof by the accused of any of the facts or circumstances set out in subsection (3), shall be on it balance of probabilities.

Stealing
cattle

(b) by adding after section 267 the following section-
,268.-(I) If the thing stolen is any of the animals to which this section applies, the offender shall be liable to imprisonment for fifteen years.

(2) Where any person kills any animal to which this section applies with intent to steal its skin or carcass. or any part of its skin or carcass, he shall for the purposes of section 256 and this section, be deemed to have stolen the animal and shall be liable to be proceeded against and punished accordingly.

(3) This section applies to a horse mare. gelding, ass, mule, camel, ostrich, bull, cow. ox, ram. ewe. weter. goat or pig."

(c) by adding after section 284, a section 284A relating to the offence of occasioning loss to it specified authority, the loss being of a value of or below one million shillings.

Amendment
of the Stock
Theft Ordinance
_Cap.
422

24. [The Stock Theft Ordinance is hereby amended in section 20), in the definition stock" by deleting the passage paragraph 9 of the, First Schedule to the Economic and Organized Crime Control Act. 1984" and substituting for it -section 268 of the Penal Code".

Amendment
of Criminal
Procedure
Act, 1985
No. 9

25. The Criminal Procedure Act, 1985 is hereby amended-

(a) In section 148-

(i) in sub-paragraph (e) of sub-paragraph (5) of by adding immediately after the word "assault" which appears in the summa line the words --causing grievous harm-.

(ii) in paragraph (7)-

(a) by adding immediately after paragraph (ii) the following paragraph:-

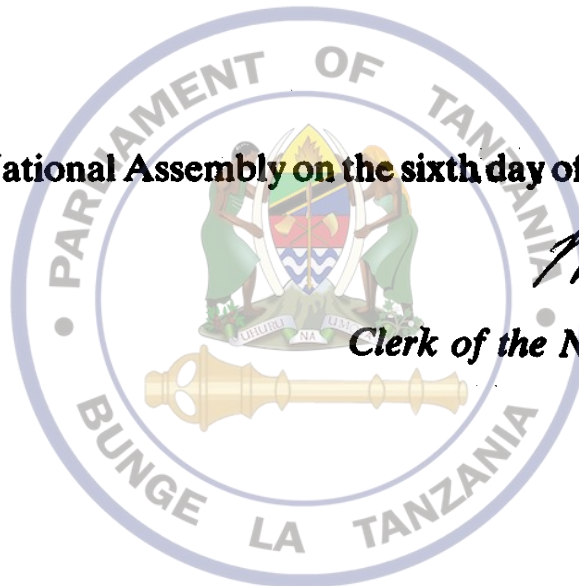
(ii) where the offence for which the person is charged involves property whose value exceeds ten million shillings, requiring the that cash deposit equivalent to half the value of the property be paid and the rest be secured by execution of a bond.

(b) (i) in section 243 by renumbering that section as 243(l);

(ii) by adding immediately after that section as amended the following subsection:-

“(2) Where, at any time during trial before a subordinate court, but before conviction the facts of the case reveal that the accused had committed an offence for which he would have been charged under the Economic and Organized Crime Control Act, 1985, the Magistrate shall stop the proceedings, direct the prosecutor of the case to frame a fresh charge under the appropriate section of the Economic and Organized Crime Control Act, 1984 and then proceed to deal with him in accordance with sections 29 and 30 of that Act.

Passed in the National Assembly on the sixth day of November, 1987.



M. Mwindadi
M. MWINDADI,
Clerk of the National Assembly