



THE CONTEMPT OF COURT BILL, 2012

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FIRST SCHEDULE

A Bill for

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

- Short title. **1.** This Act may be cited as the Contempt of Court Act, 2012.
- Interpretation. **2.** In this Act,—
 “contempt of court” means civil contempt or criminal contempt;

 “civil contempt” 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;

 “criminal contempt” means the publication, whether by words, spoken or written, or by signs, or visible representation, or otherwise, of any matters or

the doing of any other act whatsoever which—

- (a) scandalizes or tends to scandalize, or lowers or tends to lower the judicial authority or dignity of court;
- (b) prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or
- (c) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner.

“superior court” means the Supreme Court, the Court of Appeal, the High Court, Industrial Court and the Environmental and Land Court;

The strict liability rule.

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

Limitation of scope of strict liability.

4. (1) The strict liability rule applies only in relation to publications.

(2) The strict liability rule applies only to a publication which creates a risk that will impede or prejudice the course of justice in the proceedings in question.

(3) The strict liability rule applies to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

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

(5) For purposes of applying the strict liability rule, "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.

Defence
innocent
publication
distribution.

of **5.** (1) A person is not guilty of contempt of court
or 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 reasonable grounds for
believing that the proceeding was 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 is not guilty of contempt of court under the strict liability rule if that person has distributed a publication containing any matter referred to in subsection (1), if at the time of distribution that person had no reasonable grounds for believing that it contained or was likely to contain any such matter.

(4) The purpose of subsection (6) is to specifically limit the presumption of innocence and shift the evidential burden of proof set out in Chapter 4 of the Constitution, as contemplated in Article 24 of the

Constitution.

(5) The limitation of the presumption of innocence and the shifting of the evidential burden of proof under subsection (6) are necessary for purposes of maintaining the dignity of the court.

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

(7) 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;

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other than in conformity with the Books and Newspapers Act.

Fair and accurate report of judicial proceeding not contempt.

6.(1) Subject to section 8, a person is not guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding held in public if the report is published in good faith.

(2) In any such proceedings the court may, where it appears to be necessary for avoiding 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 thinks necessary for that purpose.

Fair criticism of
judicial act not
contempt.

7. 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.

Complaint
against
presiding
officers of
subordinate
courts not
contempt.

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

(a) any other subordinate court; or

(b) superior court.

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

9.(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 information relating to the proceeding 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 an 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 camera, unless the court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public interest or national security, or on the ground that it contains information relating to a secret process, discovery or invention, or in exercise of any power vested in it.

Discussion of
public affairs.

10. A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a 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.

Savings.

11. Nothing in this Act—

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

Consent

12. Proceedings for criminal contempt of court shall

required for institution of proceedings.

not be instituted except by or with the consent of the Director of Public Prosecutions or on the motion of a court having jurisdiction to deal with it.

Use of recording devices.

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

(a) to use in court, or bring into court for use, any recording device or instrument for recording proceedings tape recorder or other instrument for recording sound, except with the leave of the court;

(b) to 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 to dispose of it or any recording so derived, with a view to such publication;

(c) to use any such recording in contravention of any conditions granted under paragraph (a).

(2) Leave under subsection (1)(a) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court deems fit with respect to the use of any recording made pursuant to the leave, and where leave has been granted the court may withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act of contempt under subsection (1) (a), the court

may order the instrument, 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.

Sources of information.

14. No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which a person is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice.

Publication matters exempted from disclosure in court.

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

Offences contempt of magistrates' courts.

16.(1) A magistrates' court has jurisdiction under this section to deal with any person who—

(a) willfully insults the judicial officer, any witness before court or officer of the court or any advocate having business in the court, during and sitting of the court or attendance in court or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of

the court or otherwise misbehaves in court.

(2) In any case referred to in subsection (1), the court may order any officer of the court, to take the offender into custody and detain him or her until the rising of the court, and the court may, if it considers fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding to or both one hundred thousand shillings.

(3) A magistrates' 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) The procedure set out in section 22 shall apply with necessary modifications for purposes of dealing with contempts under this section.

Other defences not affected.

17. 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.

Act not to imply enlargement of scope of contempt.

18 Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court.

Power of High Court to punish contempts of subordinate courts.

19. (1) The High Court shall have and shall exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice, in respect of contempts of subordinate courts as it has and exercises in respect of contempt of the High Court

(2) The High Court shall take cognizance of a contempt alleged to have been committed in respect of a court

Cap 63 subordinate to the High Court where such contempt is an offence punishable under the Penal Code.

Punishment for contempt of Court.

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

(2) 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.

(3) 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.

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

(5) Where a person is guilty of contempt of court in respect of any undertaking given to a court is a 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 may with the leave of the

court be in civil jail:

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

(6) Notwithstanding subsection (5), where the contempt of court referred to therein has been committed by a company and it is provided 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 the punishment may with the leave of the court be detained in civil prison.

Contempt not punishable in certain cases.

21. Notwithstanding anything contained in any law being in force—

- (a) no court shall impose a sentence under this Act for contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice;
- (b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in the public interest and the request for invoking the defence *is in good faith*

Procedure where contempt is in superior court.

22. (1) 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 as early as possible 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 as may be just.

(2) Notwithstanding subsection (1),

(a) where a person charged with contempt of court applies either orally or in writing to have the charge against him or her tried by a Judge, other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and

(b) the court is of the opinion that it is practicable to do so and that in that interest of proper administration of justice the application should be allowed, the court shall cause the matter to be placed together with a statement of the facts of the case before the Chief Justice for such directions as the Chief Justice may think fit to issue as evidence in the case.

(3) Notwithstanding anything in any other law, in any trial of a person charged with contempt of court under subsection (1) which is held, in pursuance of a direction given under subsection (2), by a judge other than Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or judges in whose presence or hearing the offence is alleged to have been committed to appear as witnesses and the statement placed before the Chief Justice under subsection (2) shall be treated as evidence in the case.

Cognizance of criminal contempt in other cases.

23. (1) In the case of criminal contempt, other than a contempt of court referred to in section 22 a Superior Court may take action on its own motion or on a motion made by any other 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.

Contempt by judge, magistrate or other person acting judicially.

24.(1) A judge, magistrate or other persons acting judicially shall be liable for contempt of his or her own court or of any other court in the same manner as any other person is liable and the provisions of this Act, shall apply accordingly.

(2) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge or judicial officer, magistrate or other person against the order or judgment of the subordinate court.

Procedure after cognizance.

25. (1) Notice of every proceeding under section 23 shall be served personally on the person charged, unless the court for reasons to be recorded, directs otherwise.

(2) The notice referred to in subsection (1) shall be accompanied—

(a) in the case of proceedings commenced on a motion, by a copy of the motion and copies of the affidavits, if any, on which such motion is founded; and

(b) in the case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The court may order a person charged under section 23, to give security if it is satisfied that that person is likely to abscond or in any other way avoid trial.

(4) A person charged with contempt under section 23 may file an affidavit in support of his or her defence, and the court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as justice of the case requires.

Hearing of cases of criminal contempt.

26. Every case of criminal contempt under section 23 shall be heard and determined by not less than two judges.

Penalties for contempt.

27. (1) In any case where a court has power to commit a person to prison for contempt of court and apart from this no limitation applies to the period of committal, the committal shall without prejudice to the power of the court to order the person's earlier discharge be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by a subordinate court.

(2) In any case where a subordinate court has power to fine a person for contempt of court and apart from this provision no limit applies to the amount of the fine, the fine shall not on any occasion exceed one hundred thousand shillings.

Enforcement of fines imposed by superior courts.

28.(1) Payment of a fine for contempt of court imposed by a superior court, may be enforced upon the order of the court in like manner as a judgment of the High Court for the payment of money.

Appeals.

29. (1) An appeal shall lie from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt—

- (a) where the order or decision is that of a single judge, to a bench of not less than two judges of the High Court;
- (b) where the order or decision is that of a bench of not less than two judges, to the Court of Appeal or Supreme Court.

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

- (a) the execution of the punishment or order appealed against be suspended;
- (b) if the appellant is in confinement, the appellant be released on bail; and
- (c) the appeal be heard notwithstanding that the appellant has not been convicted for contempt of court.

(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.

Limitations for
actions for
contempt.

30. 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.

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

31. The provisions of this Act shall be in addition to and not in derogation of the provision of any other written law relating to contempt of court.

Rules.

32. The Chief Justice may make rules for the better carrying into effect of the purpose of this Act.

Repeal of section 5 of the Judicature Act.

33. Section 5 of the Judicature Act is repealed.

SCHEDULE
TIMES WHEN PROCEEDINGS ARE ACTIVE FOR PURPOSES OF
SECTION 4

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 4 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) arrest without a warrant;

- (b) 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 to 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 terminate a;
- (b) if the proceedings are abandoned by the prosecutor;
- (c) in the case of by arrest without 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—

- (a) if the accused is found to be under a disability such as to render him unfit to be tried or unfit to plead; or
- (b) if a hospital order is made in his case under paragraph 5 but become active again if they are later resumed.

11. Criminal proceedings against a person which become active on the issue or the grant of a warrant for his arrest cease to be active at the end of the period of twelve months beginning with the date of the warrant unless he has been arrested within that period, but become active again if he is subsequently arrested.

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;

For the purposes of this paragraph any motion or application made in or for the purposes of any proceedings, and any pre-trial review in the court, is to be treated as a distinct proceeding.

13. Arrangements for the hearing of proceedings to which paragraph 12 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

14. 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.

15. 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.