

Tanzania

Hire Purchase Act Chapter 14

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Tanzania

Hire Purchase Act

Chapter 14

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[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]

[G.N. No. 312 of 1966; Act No. 22 of 1966]

An Act to make provision for the regulation of certain hire purchase agreements and for related matters.

1. Short title

This Act may be cited as the Hire Purchase Act.

2. Interpretation

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

"**buyer**", "**delivery**", "**goods**", "**property**", "**sale**", "**seller**" and "**warranty**" have the meaning respectively assigned to them by the Sale of Goods Act¹;

"**contract of guarantee**" in relation to any hire purchase agreement, means a contract made at the request, express or implied, of the hirer to guarantee the performance of the hirer's obligations under the hire purchase agreement, and the expression "guarantor" shall be construed accordingly;

"**court**" means a court of competent jurisdiction;

"**hire purchase agreement**" means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee and where by virtue of two or more agreements, none of which by itself constitutes a hire purchase agreement, there is a bailment of goods and either the bailee may buy the goods or the property in the goods will or may pass to the bailee, the agreement shall be treated for the purposes of this Act, as a single agreement made at the time when the last of the agreements was made;

"**hire purchase price**" means the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of goods to which the agreement relates exclusive of any sum payable as a penalty or as a compensation or as damages for a breach of the agreement, but including any sum payable by the hirer by way of a deposit or other initial payment or credited or to be credited to the hirer under the agreement on account of any such deposit or payment whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means;

"**hirer**" means the person who takes or has taken goods from an owner under a hire purchase agreement and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

"**Minister**" means the Minister responsible for matters relating to commerce;

"**owner**" means the person who lets or has let goods to a hirer under a hire purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law.

- (2) Any reference in this Act to taking possession of goods comprised in a hire purchase agreement does not include a taking of possession by the owner as a result of the voluntary return of such goods by the hirer, but does include a taking of possession by the owner of such goods pursuant to an order of a court and a return of goods after a notice has been served on the hirer pursuant to the provisions of this Act.

3. Application of Act

This Act shall apply to and in respect of all hire purchase agreements entered into after the commencement of this Act under which the hire purchase price does not exceed the sum of sixty thousand shillings.

4. Establishment of Registry

- (1) There is hereby established a Registry of Hire Purchase, in this Act to be called the "Registry" for the purpose of registering hire purchase agreements.
- (2) For conducting the business of the Registry the Minister may, by notice in the *Gazette*, appoint a Registrar of Hire Purchase and as many Assistant Registrars of Hire Purchase, in this Act referred to as "the Registrar" and "Assistant Registrar" respectively, as the Minister may think fit.
- (3) Subject to the directions of the Registrar an Assistant Registrar, shall have all the powers and perform all the duties and be subject to all the obligations of the Registrar.

5. Hire purchase agreements to be registered

- (1) Every hire purchase agreement to which this Act applies shall be delivered for registration to the Registrar.
- (2) The Registrar shall, on payment of the prescribed fee, register any hire purchase agreement delivered in accordance with subsection (1) of this section unless—
 - (a) the agreement being liable to stamp duty is not duly stamped; or
 - (b) the agreement being made in a language other than Swahili is not accompanied by a Kiswahili translation which the Registrar is satisfied as true and accurate.
- (3) On registration of a hire purchase agreement the Registrar shall deliver to the owner a certificate of registration which shall be accepted by the court as *prima facie* proof of the facts stated.
- (4) Unless the hire purchase agreement shall have first been registered in accordance with the provisions of this section—
 - (a) no person shall be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, and the owner shall not be entitled to enforce any right to recover the goods from the hirer; and
 - (b) no security given by the hirer in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee shall be enforceable against the hirer or the guarantor by any holder.
- (5) The Registrar shall be permitted on such terms and subject to such conditions and limitations as may be prescribed to disclose the identity of any property subject to or the parties to, a registered hire purchase agreement.

6. Requirements relating to hire purchase agreements

- (1) Before any hire purchase agreement is entered into in respect of any goods, the owner shall state in writing to the prospective hirer, otherwise than in the note or memorandum of the agreement, a price at which the goods may be purchased for cash, in this section referred to as the "cash price":

Provided that this subsection shall be deemed to have been sufficiently complied with—

- (a) if the hirer has inspected the goods or like goods and at the time of inspection, tickets or labels were attached to or displayed with the goods, clearly stating the cash price, either of the goods as a whole or of all the different articles or sets of articles comprised in the goods; or
 - (b) if the hirer has selected the goods by reference to a catalogue, price list or advertisement, which clearly stated the cash price either of the goods as a whole or of all the different articles or sets of articles comprised in the goods.
- (2) An owner shall not be entitled to enforce a hire purchase agreement or any contract of guarantee relating to such agreement or any right to recover the goods from the hirer, and no security given by the hirer in respect of money payable under the hire purchase agreement or given by a guarantor in respect of money payable under such a contract of guarantee shall be enforceable against the hirer or guarantor by any holder, unless the requirement specified in subsection (1) has been complied with, and—
- (a) a note or memorandum of the agreement is made and signed by the hirer and by or on behalf of all other parties to the agreement;
 - (b) the note or memorandum contains a statement of the hire purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments by which the hire purchase price is to be paid and of the date, or the mode of determining the date, upon which each instalment is payable, and contains a description of the goods sufficient to identify them;
 - (c) the note or memorandum contains a notice relating to the rights of the hirer which is at least as prominent as the rest of the contents of the note or memorandum, in the prescribed form; and
 - (d) a copy of the note or memorandum, which if not written in Kiswahili, together with an accurate translation in Kiswahili, has been delivered or sent by registered post by the owner to the hirer within twenty-one days of the date of the agreement.
- (3) If the court is satisfied in any suit that a failure to comply with the requirement specified in subsection (1) or any requirement specified in paragraph (b), (c) or (d) or subsection (2) has not prejudiced the hirer, and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that the court thinks fit to impose, dispense with that requirement for the purposes of the suit.

7. Avoidance of certain provisions

Any provision in any agreement—

- (a) whereby an owner or any person acting on behalf of the owner is authorised to enter upon any premises for the purpose of taking possession of goods which have been let under a hire purchase agreement or is relieved from liability for any such entry;
- (b) whereby the right conferred on a hirer by the Act to determine the hire purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire purchase agreement under this Act;

- (c) whereby a hirer, after the determination of the hire purchase agreement or the bailment in any manner, is subject to a liability which exceeds the liability to which the hirer would have been subject if the agreement had been determined by the hirer under this Act;
- (d) whereby any person acting on behalf of an owner in connection with the formation or conclusion of a hire purchase agreement is treated as or deemed to be the agent of, the hirer; or
- (e) whereby an owner is relieved from liability for the acts or defaults of any person acting on behalf of the owner in connection with the formation or conclusion of a hire purchase agreement,

shall be void.

8. Conditions and warranties to be implied in hire purchase agreements

- (1) In every hire purchase agreement there shall be—
 - (a) an implied warranty that the hirer shall have and enjoy quiet possession of the goods;
 - (b) an implied condition on the part of the owner that the owner shall have a right to sell the goods at the time when the property is to pass;
 - (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party at the time the property is to pass;
 - (d) except where the goods are let as second-hand goods, and the note or memorandum of the agreement made in pursuance of section 6 contains a statement to that effect, an implied condition that the goods shall be of merchantable quality:

Provided that no such condition shall be implied by virtue of this paragraph as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or, if the hirer has examined the goods or a sample, as regards defects which the examination revealed or ought to have revealed.

- (2) Where the hirer expressly or by implication makes known the particular purpose for which the goods are required, there shall be an implied condition that the goods shall be reasonably fit for such purpose.
- (3) The warranties and conditions set out in subsection (1) of this section shall be implied notwithstanding any agreement to the contrary, and the owner shall not be entitled to rely on any provision in subsection (2) of this section, unless the owner proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to the hirer.
- (4) Nothing in this section shall exclude or prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire purchase agreement.

9. Duty of hirer to give information as to whereabouts of goods

- (1) It shall be lawful for the owner of goods under a hire purchase agreement to stipulate—
 - (a) that the hirer shall record the postal, residential and business addresses of the hirer in such agreement; and
 - (b) that, if before the ownership of the goods has passed to the hirer, the hirer changes either the postal, residential or business address or at any time removes or allows such goods or any part of the goods to be removed from any premises for keeping at other premises, the hirer shall, prior to such change of address or removal, notify the owner or his agent in writing of all or any of the following particulars—
 - (i) the new postal, residential and business address;
 - (ii) the premises to which such goods are to be removed;

- (iii) the name and postal, residential and business address of the landlord, if any, of such new premises,
but no such stipulation shall require the hirer to notify the owner more than ninety-six hours before such change or removal.
- (2) Any hirer who fails to comply with any stipulation made in terms of subsection (1) commits an offence and is liable upon conviction to a fine not exceeding two thousand shillings.
- (3) In any prosecution for a contravention of the provisions of this section it shall be a sufficient defence if the hirer satisfies the court that the failure to comply with any such stipulation was due to circumstances over which the hirer had no control.
- (4) If the owner of goods under a hire purchase agreement has given written notice of the ownership of the goods to the landlord of the premises where such goods are kept, such landlord shall not have any right of distress over such goods for rental.

10. Removal of goods from Tanzania

- (1) It shall be lawful for the owner of goods under a hire purchase agreement to stipulate that the hirer shall not remove or permit the removal of the goods from Tanzania without the written consent of the owner.
- (2) If the hirer in breach of a stipulation made in terms of subsection (1) and with intent to deprive the owner of his ownership of the goods or to defeat the rights of the owner to obtain any payment due under the agreement, removes or permits the removal of the goods from Tanzania, the hirer commits an offence and is liable upon conviction to a fine not exceeding five thousand shillings, or to twelve months imprisonment for a term or to both.
- (3) If a hire purchase agreement contains a stipulation such as is referred to in subsection (1) and the owner believes that the goods subject to the hire purchase agreement have been removed or are being removed or are about to be removed from Tanzania without his written consent, the owner may institute a suit for the return of the goods.
- (4) An owner referred to in subsection (3) may, before instituting the suit referred to in that subsection or while the hearing of the suit is pending, make an application, in which the hirer or any other person substantially interested in the goods shall be made a respondent, to a court for an order for the attachment of the goods.
- (5) An application for an order referred to in subsection (4) may be made on summons or notice to the respondent or *ex parte*, to a court having jurisdiction in the area in which the respondent or the goods proposed to be attached, may be or through which the goods are likely to be removed.
- (6) The rules of court governing applications on summons or notice or, as the case may be, applications *ex parte*, in interlocutory proceedings of a like nature to an application referred to in subsection (4) which are in force in the court to which such an application is made, shall subject to the provisions of subsections (7), (8) and (9), *mutatis mutandis*, apply to that application.
- (7) A court which makes an order *ex parte* for the attachment of goods in terms of this section may require the applicant to give such security for damages as may be caused, by the order as the court may think fit.
- (8) An order for the attachment of goods in terms of this section—
 - (a) may be discharged or varied by the court on cause shown by any person affected by the order and on such terms as to costs, as the court may think fit; and
 - (b) shall *ipso facto* be discharged upon the giving of security by the respondent both for the value of the goods to which the order relates and for the applicant's costs.
- (9) If goods are attached by order of a court other than the court in which the action for the return of the goods is brought, the court which made the order of attachment, shall cause copies of the

application, order and proceedings, together with the goods attached or, as the case may be, the security given for their release to be transmitted to the court in which the action is brought.

11. Power of court to allow goods to be removed

Where the terms of a hire purchase agreement require the hirer to keep the goods comprised in the agreement in his possession or control at a particular place or not to remove the goods from a particular place, the court may, on the application of the hirer and after hearing any representations made by or on behalf of the owner, make an order approving the removal of the goods to some other place within Mainland Tanzania, which place shall, for the purposes of the agreement, be substituted for the first mentioned place.

12. Duty of owner to supply documents and information

- (1) At any time before the final payment has been made under a hire purchase agreement, the owner shall, within fourteen days after receiving a request in writing from the hirer and the hirer has tendered to the owner the sum of five shillings or such other sum as may be prescribed for expenses, supply to the hirer a copy of any memorandum or note of the agreement, together with a statement signed by the owner or his agent showing—
 - (a) the amount paid under the agreement by or on behalf of the hirer;
 - (b) the amount which has become due under the agreement but remains unpaid, the date upon which each unpaid instalment became due, and the amount of each such instalment; and
 - (c) the amount which is to become payable under the agreement, the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.
- (2) In the event of a failure without reasonable cause to comply with the provisions of subsection (1), then, while the default continues—
 - (a) no person shall be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, and the owner shall not be entitled to enforce any right to recover the goods from the hirer; and
 - (b) no security given by the hirer in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee shall be enforceable against the hirer or the guarantor by any holder of such security, and, if the default continues for a period exceeding one month, the defaulter commits an offence and is liable upon conviction to a fine not exceeding two hundred shillings.

13. Appropriation of payments where more than one agreement

A hirer who is liable to make payments in respect of two or more hire purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, to appropriate the sum so paid or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as the hirer thinks fit, and, if the hirer fails to make any such appropriation, such payment shall by virtue of this section be appropriated in or towards the satisfaction of the sums due under the respective hire purchase agreements in the order in which such agreements were made.

14. Right of hirer to determine hire purchase agreement

- (1) A hirer shall, at any time before the final payment under a hire purchase agreement becomes due, be entitled to determine the agreement by giving notice of termination in writing to any person entitled or authorised to receive the sums payable under the agreement, and shall, on determining the agreement under this section, be liable, without prejudice to any liability

which has accrued before the termination, to pay the amount, if any, by which one half of the hire purchase price exceeds the total of the sums paid and the sums due in respect of the hire purchase price immediately before the termination or such lesser amount as may be specified in the agreement.

- (2) Where a hire purchase agreement has been determined under this section, the hirer shall, if he has failed to take reasonable care of the goods, be liable to pay damages for such failure.
- (3) Where a hirer, having determined a hire purchase agreement under this section, wrongfully retains possession of the goods, then, in any action brought by the owner to recover possession of the goods from the hirer, the court shall, unless it is satisfied that having regard to the circumstances it would not be just and equitable so to do, order the goods to be delivered to the owner, without giving the hirer an option to pay the value of the goods.
- (4) It shall be the duty of a hirer who determines a hire purchase agreement under this section to return the goods that are the subject of the said agreement at his own expense to the premises from which the goods were originally supplied or to to the hirer such other place as the owner may direct:

Provided that the owner shall reimburse the hirer for any additional expense incurred in returning the goods to premises other than those from which they were originally supplied.

- (5) Nothing in this section shall prejudice any right of a hirer to determine a hire purchase agreement otherwise than by virtue of this section.

15. Hirer to be entitled to finalise agreement at any time

- (1) The hirer under a hire purchase agreement may, if he has given notice in writing to the owner of his intention so to do, on or before the day specified for that purpose in the notice, complete the purchase of the goods by paying or tendering to the owner the net balance due to the owner under the agreement.
- (2) For the purpose of this section the net balance due shall be the hire purchase price less any part of such price which has been paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement.
- (3) The rights conferred on the hirer by this section may be exercised—
 - (a) at any time during the continuance of the agreement; or
 - (b) within twenty-eight days of the owner having taken possession of the goods on paying or tendering to the owner in addition to the net balance—
 - (i) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods; and
 - (ii) any amount properly expended by the owner on the storage, repair or maintenance of the goods.

16. Evidence of adverse detention in action by owner to recover possession of goods

- (1) Where, in an action by an owner to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the action and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession, be deemed to be adverse to the owner.
- (2) Nothing in this section shall affect a claim for damages for conversion.

17. Restriction of owner's right to recover possession of goods otherwise than by action

- (1) Where goods have been let under a hire purchase agreement and two-thirds of the hire purchase price has been paid, whether in pursuance of a judgment or otherwise, or tendered by or on behalf of the hirer or any guarantor, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than by suit.
- (2) If an owner recovers possession of goods in contravention of subsection (1) of this section, the hire purchase agreement, if not previously determined, shall determine and—
 - (a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner by suit all sums paid by the hirer under the agreement or under any security given by the hire in respect of the agreement and
 - (b) any guarantor shall be entitled to recover from the owner by suit all sums paid under the contract of guarantee or under any security given by the guarantor in respect of the contract of guarantee.
- (3) The provisions of this section shall not apply in any case in which the hirer has determined the agreement or the bailment by virtue of any right vested in the hirer.

18. Powers of court in certain actions by owner to recover possession of goods

- (1) Where an owner institutes a suit to enforce a right to recover possession of goods from a hirer after two-thirds of the hire purchase price has been paid or tendered, unless the hirer has left Tanzania, the suit shall be instituted in a court of competent jurisdiction for the area in which the hirer resides or carries on business or resided or carried on business at the date on which the hirer last made a payment under the hire purchase agreement and after the suit has been commenced, the owner shall not take any step to enforce payment of any sum due under the hire purchase agreement or under any contract of guarantee relating to such agreement, except by claiming the sum in the suit.
- (2) Subject to such exceptions as may be provided for by rules of court, all the parties to the agreement and any guarantor shall be made parties to the suit.
- (3) Pending the hearing of the suit the court shall, in addition to any other powers, have power upon the application of the owner, to make such orders as the court thinks just for the purpose of protecting the goods from damage or depreciation, including orders restricting or prohibiting the use of the goods or giving directions as to their custody.
- (4) On the hearing of the suit the court may, without prejudice to any other power—
 - (a) make an order for the specific delivery of all the goods to the owner; or
 - (b) subject to the provisions of subsection (5), make an order for the specific delivery of all the goods to the owner and postpone the operation of the order on condition that the hirer or any guarantor pays the unpaid balance of the hire purchase price at such times and in such amounts and fulfills such other conditions as the court thinks just; or
 - (c) make an order for the specific delivery of a part of the goods to the owner and subject to the provisions of subsection (6), for the transfer to the hirer of the owner's title to the remainder of the goods.
- (5) No order shall be made under paragraph (b) of subsection (4) unless the hirer satisfies the court that the goods are in his possession or control at the time when the order is made.
- (6) The court shall not make an order transferring to the hirer the owner's title to a part of the goods, unless it is satisfied that the amount which the hirer has paid in respect of the hire purchase price, exceeds the price of that part of the goods by at least one-third of the unpaid balance of the hire purchase price.

- (7) Where damages have been awarded against the owner in the proceedings, the court may treat the hirer as having paid in respect of the hire purchase price, in addition to the actual amount paid, the amount of the damages or such part of the damages as the court thinks fit, and the damages shall accordingly be remitted either in whole or in part.
- (8) In this section the expression "order for the specific delivery of the goods" means an order for the delivery of the goods to the owner without giving the hirer an option to pay their value, and the expression "price" in relation to any goods, means such part of the hire purchase price as is assigned to those goods by the note or memorandum of the hire purchase agreement, or, if no such assignment is made, such part of the hire purchase price as the court may determine.
- (9) If at any time before the hearing of a suit to which this section applies, the owner has recovered possession of a part of the goods, the references in subsection (4) to all the goods shall be construed as references to all the goods which the owner has not recovered, and, if the parties have not agreed upon an adjustment of the hire purchase price in respect of the goods so recovered, the court may for the purposes of paragraphs (b) and (c) of subsection (4) of this section, make such reduction of the hire purchase price and of the unpaid balance as the court thinks just.
- (10) Where an owner has recovered part of the goods let under a hire purchase agreement, or, if no assignment is made, such part of the hire purchase price as the court may determine to any suit by the owner to recover the remainder of the goods.

19. Owner to account for proceeds of sale

Notwithstanding any provision to the contrary contained in a hire purchase agreement, where the owner enforces a right to recover possession of the goods from the hirer otherwise than by suit, the owner shall sell the goods as soon as is reasonably possible and shall be liable to account for and pay to the hirer, such part of the proceeds of sale which exceeds the sum of the unpaid balance of the hire purchase price and the expenses necessarily incurred by the owner in recovering possession of and selling the goods.

20. Effect of postponement of an order for specific delivery of goods to owner

- (1) While the operation of an order for the specific delivery of goods to the owner is postponed under section 18, the hirer shall be deemed to be a bailee of the goods under and on the terms of the hire purchase agreement:

Provided that—

- (a) no further sum shall be or become payable by the hirer or a guarantor on account of the unpaid balance of the hire purchase price, except in accordance with the terms of the order; and
 - (b) the court may make such further modification of the terms of the hire purchase agreement and of any contract of guarantee relating to such agreement as the court considers necessary having regard to the variation of the terms of payment.
- (2) Where the operation of an order for the specific delivery of the goods to the owner is postponed, the hirer or a guarantor fails to comply with any condition of the postponement, or with any term of the agreement as varied by the court, or wrongfully disposes of the goods, the owner shall not take any civil proceedings against the hirer or guarantor otherwise than by making an application to the court by which the order was made:

Provided that, in the case of a breach of any condition relating to the payment of the unpaid balance of the hire purchase price, it shall not be necessary for the owner to apply to the court for leave to execute the order unless the court has so directed.

- (3) When the unpaid balance of the hire purchase price has been paid in accordance with the terms of the order, the owner's title to the goods shall vest in the hirer.

- (4) The court may at any time during the postponement of the operation of an order under section 18—
- (a) vary the conditions of the postponement, and make such further modification of the hire purchase agreement and of any contract of guarantee relating to such agreement as the court considers necessary having regard to the variation of the conditions of the postponement;
 - (b) revoke the postponement;
 - (c) make an order in accordance with the provisions of section 18, for the specific delivery of a part of the goods to the owner and for the transfer to the hirer of the owner's title to the remainder of the goods.

21. Successive hire purchase agreements between same parties

Where goods have been let under a hire purchase agreement and at any time after two-thirds of the hire purchase price has been paid or tendered, the owner makes a further hire purchase agreement with the hirer comprising those goods, the provisions of sections 17 and 18 shall have effect in relation to that further agreement as from the commencement of such agreement.

22. Hirer's refusal to surrender goods not to be conversion in certain cases

Where, by virtue of this Act, the enforcement by an owner of a right to recover possession of goods from a hirer is subject to any restriction, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of such refusal, be liable to the owner for conversion of the goods.

23. Limitation of owner's right to enforce certain provisions of agreement

No owner shall, by reason of any failure on the part of the hirer to carry out any obligation under any hire purchase agreement, be entitled to enforce—

- (a) any provision in the agreement for the acceleration of the payment of any instalment, unless an instalment or any part which is not less than one-tenth of the hire purchase price, or two or more instalments or parts of instalments which together are not less than one-twentieth of the hire purchase price, are due and unpaid; or
- (b) any provision in the agreement for the payment of any amount of damages, or for any forfeiture or penalty, or for the acceleration of the payment of any instalment, unless the owner has made written demand to the hirer to carry out the obligation in question within a period stated in such demand, not being less than ten days, and the hirer has failed to comply with such demand.

24. Agreement binding on liquidator or trustee of owner

If a company is wound up under the provisions of the Companies Act ² by reason of inability to pay its debts or a co-operative society is dissolved under the provisions of the Co-operative Societies Act ³ or a person is adjudged bankrupt or insolvent under the Bankruptcy Act ⁴ or any other enactment in force in Tanzania relating to bankruptcy or insolvency, any agreement entered into by such company or co-operative society or person as owner shall remain in full force and effect and shall be binding on the liquidator of such company or co-operative society or the trustee concerned, as the case may be:

²

Cap. 212

³

Cap. 211

⁴

Cap. 25

Provided that nothing in this section shall affect the powers of the court to set aside any disposition of property made by way of undue preference.

25. Insolvency or bankruptcy of hirer

- (1) In this section "trustee's expenses", in relation to goods which are the subject of an agreement entered into by a hirer referred to in paragraph (a) of subsection (2), means—
 - (a) the trustee's remuneration in respect of the goods; and
 - (b) the costs incurred by the trustee in conserving the goods; and
 - (c) all other expenses of liquidation or administration incurred by the trustee in connection with the goods.

- (2) Where, under any enactment in force in Tanzania relating to insolvency or bankruptcy, a hirer is adjudged or otherwise declared insolvent or bankrupt, the goods which are the subject of the agreement entered into by the hirer shall, notwithstanding the terms of the agreement, vest in the trustee of the hirer:

Provided that if the goods are used by the trustee on behalf of the hirer's estate, the trustee shall pay to the owner, as a cost in the administration of the estate, each instalment in respect of the purchase price which becomes due under the agreement during the period the goods are so used.

- (3) The trustee of a hirer referred to in subsection (2) shall pay to the owner out of the proceeds of the sale of the goods referred to in that subsection, reduced by the amount of the trustee's expenses and the cost of realising the goods, so far as there are proceeds available, an amount equal to the balance of the unpaid hire purchase price together with all other sums due to the owner under the agreement.

26. Negotiable instruments

- (1) If an owner takes from a hirer any negotiable instrument, other than a dated cheque which is not a post-dated cheque in respect of any instalment or part of an instalment payable under the provisions of a hire purchase agreement, the owner shall not have any right to recover any such instalment or part of an instalment in terms of the agreement, and any such owner shall be confined, in respect of the recovery of such instalment or part of an instalment, to the right of action, if any, in relation to such negotiable instrument, except, that nothing in this subsection shall affect any other rights of such owner under the agreement or under this Act.
- (2) If any negotiable instrument other than a dated cheque which is not a post-dated cheque, is given or drawn by a hirer in respect of any liability under an agreement, the owner shall upon taking such negotiable instrument from the hirer—
 - (a) write clearly on the face of such negotiable instrument the words "Issued in connection with a hire purchase agreement"; and
 - (b) write clearly at the top of the first page of such agreement the words "A negotiable instrument has been issued in connection with this agreement", or "Negotiable instruments have been issued in connection with this agreement", as may be appropriate.
- (3) Nothing contained in subsection (2) shall prevent the owner from writing on either the negotiable instrument or the agreement in question such further words as may serve to identify with greater particularity the negotiable instrument or agreement to which the owner refers.
- (4) Any owner who fails to comply with the provisions of subsection (2) commits an offence and is liable upon conviction to a fine not exceeding one thousand shillings.

27. Service of notice or document on owner or hirer

- (1) Any notice or document required or authorised to be served on or given to an owner or hirer under this Act may be served or given—
 - (a) by delivering it to the owner or hirer personally;
 - (b) by leaving it at the place of the owner or hirer abode or business with some other person apparently a resident or employed at such place and who is apparently of or above the age of sixteen years; or
 - (c) by posting it addressed to the owner or hirer at the last known place of abode or business.
- (2) The affidavit or oral evidence of an owner or his servant or agent as to the delivery or posting of any notice or document required to be served under this Act shall be admissible as *prima facie* evidence of the due service of the document or notice if the deponent swears to the facts necessary to prove due service either from own knowledge or information and belief based on and verified by the records of the owner.

28. False information

Every person who knowingly gives false information in any proposal form or other form completed for the purpose of entering into a hire purchase agreement, commits an offence and is liable upon conviction to a fine of five thousand shillings or to imprisonment for a term of six months or to both.

29. Power to make rules

- (1) The Minister may make rules generally for the better carrying out of any of the provisions or purposes of this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), such rules may provide for all or any of the following matters—
 - (a) anything which is to be or may be prescribed under this Act;
 - (b) the form of hire purchase agreements;
 - (c) the form of notices relating to hire purchase agreements;
 - (d) the fees payable on registration of hire purchase agreements.