

Tanzania

## Judicature and Application of Laws Act Chapter 358

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# Judicature and Application of Laws Act (Chapter 358)

## Contents

Part I – Preliminary provisions .....	1
1. Short title .....	1
Part II – Jurisdiction of the High Court and subordinate courts .....	1
2. Jurisdiction of High Court .....	1
3. High Court to have jurisdiction over proceedings relating to merchant shipping .....	2
4. Rules of procedure .....	2
4A. Power to establish High Court divisions or registries .....	2
5. Powers of single judge of High Court .....	2
6. Jurisdiction of magistrates' courts .....	2
7. Judges to have all powers of magistrates .....	3
8. Preferment of magistrates not to affect powers to complete proceedings .....	3
Part III – Application and recognition of laws .....	3
A: Application of Acts of the United Kingdom .....	3
9. Certain Acts of United Kingdom Parliament to apply .....	3
10. *** .....	3
B: Application of customary law .....	3
11. Applicability of customary law .....	3
12. Declaration and modification of customary law .....	4
13. Saving .....	5
C: Application of Indian Acts .....	5
14. Indian Acts applied .....	5
15. Modifications .....	5
16. Power to adapt .....	5
17. Future amending Acts not to apply .....	6
18. Abrogation of formalities prior to making rules .....	6
19. *** .....	6
20. *** .....	6
21. *** .....	6
First Schedule .....	6
Second Schedule .....	7

# Tanzania

## Judicature and Application of Laws Act

### Chapter 358

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*[This is the version of this document at 30 November 2019.]*

*[Note: This legislation was revised and consolidated as at 31 July 2002 and 30 November 2019 by 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. All subsequent amendments have been researched and applied by Laws.Africa for TANZLII.]*

*[Amended by [Written Laws \(Miscellaneous Amendments\) Act, 2016 \(Act 3 of 2016\)](#) on 8 July 2016]*

*[R.L. Caps. 2 and 453; Ords. Nos. 7 of 1920; 17 of 1922; 25 of 1929; 26 of 1932; 8 of 1935; 12 of 1936; 35 of 1940; 1 of 1951; 36 of 1953; 46 of 1954; 26 of 1955; 33 of 1956; 51 of 1957; 33 of 1960; 38 of 1960; 1 of 1961; 35 of 1961; 57 of 1961; Act Nos. 8 of 1962; 62 of 1962; 55 of 1963]*

**An Act to declare the jurisdiction of the High Court and courts subordinate thereto and to apply and recognise certain laws.**

#### Part I – Preliminary provisions

##### 1. Short title

This Act may be cited as the Judicature and Application of Laws Act.

#### Part II – Jurisdiction of the High Court and subordinate courts

##### 2. Jurisdiction of High Court

- (1) Save as provided hereinafter or in any other written law, expressed, the High Court shall have full jurisdiction in civil and criminal matters.
- (2) For the avoidance of doubt it is hereby declared that the jurisdiction of the High Court shall extend to the territorial waters.
- (3) Subject to the provisions of this Act, the jurisdiction of the High Court shall be exercised in conformity with the written laws which are in force in Tanzania on the date on which this Act comes into operation (including the laws applied by this Act) or which may hereafter be applied or enacted and, subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the twenty-second day of July, 1920, and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and justices of the Peace in England according to their respective jurisdictions and authorities at that date, save in so far as the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may, at any time before the date on which this Act comes into operation, have been modified, amended or replaced by other provision in lieu thereof by or under the authority of any Order of Her Majesty in Council, or by any Proclamation issued, or any Act or Acts passed in and for Tanzania, or may hereafter be modified, amended or replaced by other provision in lieu thereof by or under any such Act or Acts of the Parliament of Tanzania:

Provided always that, the said common law, doctrines of equity and statutes of general application shall be in force in Tanzania only so far as the circumstances of Tanzania and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary.

*[Act No. 31 of 1966 Sch.]*

### **3. High Court to have jurisdiction over proceedings relating to merchant shipping**

The High Court shall be a Court of Admiralty and shall, subject to the provisions of any written law, have jurisdiction which is conferred upon it or which may hereafter be conferred upon it as such Court of Admiralty by any written law and, more particularly, shall have jurisdiction to make orders and to hear and determine claims, proceedings and other matters in respect of which jurisdiction is conferred upon a court by the Merchant Shipping Act.

*[Acts Nos. 31 of 1966 Sch.; 43 of 1967 3rd Sch.; Cap. 165]*

### **4. Rules of procedure**

Subject to the provisions of any other written law, the Chief Justice may make rules for regulating the practice and procedure of the High Court and of all other courts established in Tanzania.

#### **4A. Power to establish High Court divisions or registries**

- (1) The Chief Justice may, after consultation with the President, by Order published in the *Gazette*, establish such number of divisions of the High Court as may be required for the purpose of facilitating the discharge of judicial functions in respect of specific matters as may be determined by the Chief Justice.
- (2) The division established under subsection (1) shall, notwithstanding any other written law, exercise jurisdiction over such judicial functions as may be prescribed in the establishment Order.
- (3) The Chief Justice may by Order published in the *Gazette*, establish such number of registries or sub-registries of the High Court as may be required.
- (4) For avoidance of doubt, any division or registry or sub-registry which was established by Chief Justice prior to the coming into operation of the provisions of this section shall be deemed to have been established in accordance with the provisions of this section.
- (5) The Chief Justice may, by Order published in the *Gazette*, make rules prescribing practice and procedure of the division established under this section or for such other matters as may be required.

*[Act No. 3 of 2016 s. 18]*

### **5. Powers of single judge of High Court**

Subject to any written law to the contrary, a judge of the High Court may exercise all or any part of the jurisdiction of, and all or any powers and authorities conferred on, the High Court.

### **6. Jurisdiction of magistrates' courts**

Subject to the provisions of any written law and to the limits of its jurisdiction, a magistrates' court shall exercise its jurisdiction in accordance with the laws with which the High Court is required by this Act to exercise its jurisdiction and with such other laws as shall be in force in Tanzania from time to time, and applicable to the proceedings before it, but no magistrates' court shall exercise any jurisdiction or powers that are by any such law conferred exclusively on the High Court as such or on a court of record.

*[Acts Nos. 55 of 1963; 5 of 1963 6th Sch.]*

## 7. Judges to have all powers of magistrates

In addition to any other powers, functions and jurisdiction conferred upon him, a judge of the High Court and a person appointed to act as a judge of the High Court shall have and may exercise all the powers and functions conferred by law upon any description of magistrate, may hold any description of a magistrates' court and, when holding the same, shall have and may exercise the jurisdiction of a magistrate of that court.

*[Act No. 46 of 1964 s. 2]*

## 8. Preferment of magistrates not to affect powers to complete proceedings

- (1) Notwithstanding that any magistrate shall have been appointed to be or to act as a judge of the High Court or any primary court magistrate shall have been appointed to be or to act as a district magistrate, such former magistrate or primary court magistrate shall have power and jurisdiction to continue and complete any proceedings that were commenced before him prior to such appointment.
- (2) The provisions of this section shall be without prejudice to the generality of [section 7](#).

*[Act No. 46 of 1964 s. 2]*

## Part III – Application and recognition of laws

### A: Application of Acts of the United Kingdom

## 9. Certain Acts of United Kingdom Parliament to apply

The provisions of the Acts of the Parliament of the United Kingdom described in the First Schedule hereto, as amended prior to the twenty-second day of July, 1920, shall apply to and have effect within Tanzania subject to the exceptions, adaptations and modifications set out therein.

*[Act Nos. 55 of 1963; 5 of 1971]*

## 10. \*\*\*

*[Repealed by Act No. 31 of 1966, Sch.]*

### B: Application of customary law

## 11. Applicability of customary law

- (1) Customary law shall be applicable to, and courts shall exercise jurisdiction in accordance therewith in, matters of a civil nature—
  - (a) between members of a community in which rules of customary law relevant to the matter are established and accepted, or between a member of one community and a member of another community if the rules of customary law of both communities make similar provision for the matter;
  - (b) relating to any matter of status of, or succession to, a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted; or
  - (c) in any other case in which, by reason of the connection of any relevant issue with any customary right or obligation, it is appropriate that the defendant be treated as a member

of the community in which such right or obligation obtains and it is fitting and just that the matter be dealt with in accordance with customary law instead of the law that would otherwise be applicable,

except in any case where it is apparent, from the nature of any relevant act or transaction, manner of life or business, that the matter is or was to be regulated otherwise than by customary law:

Provided that—

- (i) where, in accordance with paragraph (a), (b) or (c) of this subsection customary law is applicable to any matter, it shall not cease to be applicable on account of any act or transaction designed to avoid, for an unjust purpose, the applicability of customary law; and
  - (ii) nothing in this subsection shall preclude any court from applying the rules of Islamic law in matters of marriage, divorce, guardianship, inheritance, *wakf* and similar matters in relation to members of a community which follows that law.
- (2) It is hereby declared for the avoidance of doubt that—
- (a) a person may become a member of such a community as is referred to in subsection (1), notwithstanding that he was hitherto a member of some other community (and whether or not any customary law is established or accepted in such other community), by his adoption of the way of life of the first-mentioned community or his acceptance by such community as one of themselves, and such adoption or acceptance may have effect either generally or for particular purposes;
  - (b) a person may cease to be a member of a community by reason of his adoption of the way of life of some other community (whether or not any customary law is established or accepted in such other community) or acceptance by some other community as one of themselves, but shall not be treated as having ceased to be a member of a community solely by his absence therefrom.
- (3) In any proceedings where the law applicable is customary law, the court shall apply the customary law prevailing within the area of its local jurisdiction, or if there is more than one such law, the law applicable in the area in which the act, transaction or matter occurred or arose, unless it is satisfied that the proper customary law to be applied is some other law:

Provided that, the court shall not apply any rule or practice of customary law which is abolished, prohibited, punishable, declared unlawful or expressly or impliedly disapplied or superseded by any written law.

- (4) Notwithstanding the provisions of this Act, the rules of customary law and the rules of Islamic law shall not apply in regard to any matter provided for in the Law of Marriage Act.

*[Cap. 29]*

- (5) For the avoidance of doubts it is hereby declared that the reference to a written law in subsection (3) does not include any law or practice other than any such written law applied to or enforceable in Tanzania in accordance with the provisions of section 9 or 14 of this Act, subsection (1) of section 2 of the Law of Real Property and Conveyancing Act or any English Act declared to be in force by order made under section 11 of the Law of Real Property and Conveyancing Act.

*[R.L. Cap. 114]*

*[Act No. 55 of 1963]*

## 12. Declaration and modification of customary law

- (1) A district council may, and where the Minister so requires shall, record in writing a declaration of what in the opinion of the council is the local customary law relating to any subject either as applying throughout the area of the council or in any specified part thereof, and submit such declaration to the Minister.

- (2) A district council may, if in the opinion of the council it is expedient for the good government and welfare of the area, submit for the consideration of the Minister a recommendation for the modification of any local customary law, whether or not a declaration has been recorded.
- (3) Where the Minister is satisfied that a declaration recorded under subsection (1) accurately records the local customary law with respect to the subject to which it relates, or that a modification recommended under subsection (2) is expedient and that such local customary law or modification is not incompatible in its terms or by necessary implication with any written law, he may by order direct such declaration or such modification to be the local customary law in respect of the subject and within the area to which it relates and shall cause such declaration or modification to be published in such manner as he may deem expedient.

*[Cap. 4 s. 8]*

- (4) Notwithstanding the foregoing provisions of this section, no declaration or modification shall include any provision purporting to declare any act or omission criminal, and the Minister may amend any declaration deemed to have been made under this section in order to remove any such provision.
- (5) In this section—

"district council" means a district council, established under the Local Government (District Authorities) Act;

*[Cap. 287]*

"Minister" means the Minister responsible for legal affairs.

### 13. Saving

Any appointment made by the Governor of Tanganyika under or for the purposes of any of the Acts set out in the First Schedule hereto, and still in force immediately prior to the date on which this Act comes into operation, shall continue in force until revoked by the President or other appropriate authority.

## C: Application of Indian Acts

### 14. Indian Acts applied

The Acts of the Governor-General of India in Council set out in the third column of the Second Schedule hereto (and hereinafter referred to as "the Indian Acts") and such amendment of or substitution for the same as was in force on 1st December, 1920 are, subject to the exceptions described in the fourth column of the said Schedule, hereby applied to Tanzania.

### 15. Modifications

In the application of the Indian Acts, the following modifications shall be made, that is to say—

- (a) the word "Tanganyika" shall be substituted for the words "British India";
- (b) the powers of the Governor-General in Council and of the local Government shall be exercised by the President;
- (c) the expressions "High Court" and "District Court" in any of the said Acts shall be deemed to be the High Court of Tanzania.

### 16. Power to adapt

For the purpose of facilitating the application of the Indian Acts, any court may construe any provision with such modification not affecting the substance as may be necessary or proper to adapt the same to

the matter before it and it shall be lawful for the President by notice in the *Gazette*, to prescribe any such modification and to direct by what person or authority any jurisdiction, powers or duties incident to the operation of any of the said Acts shall be exercised or performed.

#### 17. Future amending Acts not to apply

No Indian Act passed after the 1st December, 1920 amending or in substitution for any of the Indian Acts shall apply to Tanzania.

#### 18. Abrogation of formalities prior to making rules

So much of any Indian Act applied to Tanzania by this Act as requires the previous publication of a draft of proposed rules or by-laws, or requires a draft of proposed rules or by-laws to be referred to any board or authority, or provides that a power to make rules or by-laws shall be subject to the condition of the rules or by-laws being made after previous publication, or requires any rule or by-law to be notified to the persons affected thereby in any manner otherwise than publication in the *Gazette*, shall not be, and shall be deemed never to have been, in force in Tanzania.

[Ord. No. 17 of 1922 s. 2]

#### 19. \*\*\*

[Repealed by Act No. 6 of 1967, s. 180(6)(a)]

#### 20. \*\*\*

[Repealed by Act No. 49 of 1966 by virtue of ss. 98-100 and by Act No. 10 of 1971 2nd Sch.]

#### 21. \*\*\*

[Repealed by Act No. 10 of 1971 2nd Sch.]

### First Schedule

#### Applied Acts of the Parliament of the United Kingdom

Session and Chapter	Short title	Provisions which apply
19 & 20 Vict. c. 113	Foreign Tribunals Evidence Act, 1856	The whole Act
22. Vict. c. 20	Evidence by Commission Act, 1859	The whole Act
22 & 23 Vict. c. 63	British Law Ascertainment Act, 1861	The whole Act
24 & 25 Vict. c. 94	Foreign Law Ascertainment Act, 1861	The whole Act.
37 & 38 Vict. c. 94	Conveyancing (Scotland) Act, 1874	Section 51.
47 & 48 Vict. c. 31	Colonial Prisoners Removal Act, 1884	The whole Act.



Session and Chapter	Short title	Provisions which apply
48 & 49 Vict. c. 74	Evidence by Commission Act, 1885.	The whole Act.

The provisions set out in this Schedule shall apply to Tanzania as if there were substituted for the references therein to—

- (a) a British Colony or Possession, references to Tanzania;
- (b) the Governor of a British Colony or Possession, references to the President; and
- (c) a Superior or Supreme Court, a Magistrate or Justice of the Peace of a British Colony or Possession, and in the case of the Conveyancing (Scotland) Act, 1874, to a Court of Probate in a Colony, references to the High Court.

## Second Schedule

### Applied Indian Acts

Year	No	Title	Exceptions
(a) 1865	X	The Indian Succession Act	Parts XXIX to XL (inclusive) and section 333 but subject to s. 53 of the Administrator-General (Powers and Functions) Act (Cap. 27)
(b) 1870	XXI	The Hindu Wills Act	

*[Ords Nos. 26 of 1955 s. 15; 33 of 1960 s. 4; 38 of 1960 s. 3; 1 of 1961 s. 227; 35 of 1961 ss. 140, 141 (1); Acts Nos. 49 of 1966; 59 of 1966 s. 14; 6 of 1967 s. 180; 10 of 1971 2nd Sch.]*