



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**LAW REFORM ACT**

CHAPTER 26

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**CHAPTER 26**

**LAW REFORM ACT**

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**CHAPTER 26**

**LAW REFORM ACT**

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

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

**An Act of Parliament to effect reforms in the law relating to civil actions and prerogative writs**

[Act No. 48 of 1956, Act No. 16 of 1960, L.N. 2/1964, L.N. 87/1964, Act No. 21 of 1966.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Law Reform Act.

**PART II – SURVIVAL OF CAUSES OF ACTION**

**2. Effect of death on certain causes of action**

(1) Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(2) Where a cause of action so survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless either—

- (a) proceedings against him in respect of that cause of action were pending at the date of his death; or
- (b) proceedings are taken in respect thereof not later than six months after his executor or administrator took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if

that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Act (Cap. 32) or the Carriage by Air Act, 1932, of the United Kingdom, and so much of this Part as relates to causes of action against the estates of deceased persons' shall apply in relation to causes of action under those Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

[L.N. 87/1964.]

### PART III – JOINT TORTFEASORS

#### **3. Proceedings against, and contribution between, joint and several tortfeasors**

(1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

- (a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;
- (b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise), the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment was first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
- (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, but no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

- (a) “**parent**” and “**child**” have the same meaning as they have for the purposes of the Fatal Accidents Act (Cap. 32); and
- (b) the reference in this section to “the judgment first given” shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed, and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

- (a) apply with respect to any tort committed before the commencement of this Act; or
- (b) affect any criminal proceedings against any person in respect of any wrongful act; or
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been enacted.

#### PART IV – CONTRIBUTORY NEGLIGENCE

#### **4. Apportionment of liability in case of contributory negligence**

(1) Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

- (i) this subsection shall not operate to defeat any defence arising under a contract;
- (ii) where any contract or written law providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) The provisions of Part III shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.

(4) When any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly, if an action were brought for the benefit of the estate under Part II, the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under the Fatal Accidents Act (Cap. 32) shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his executor or administrator by pleading the Limitation of Actions Act (Cap. 22) or any other written law limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or executor or administrator by virtue of that subsection.

(6) Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932, (No. 22 and 23, Geo. 5, c. 36) of the United Kingdom (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person) shall have effect subject to the provisions of this section.

(7) For the purposes of this section, “**fault**” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or which would, apart from this section, give rise to the defence of contributory negligence.

#### **5. Provisions as to workmen and employers**

(1) Where, within the time limited for the taking of proceedings under the Workmen’s Compensation Act (Cap. 236) (hereafter in this section referred to as the Act), an action is brought to recover damages independently of the Act in respect of an injury or disease giving rise to a claim for compensation under the Act, and it is determined in that action that—

- (a) damages are recoverable independently of the Act subject to such reduction as is mentioned in subsection (1) of section 4 of this Act; and
- (b) the employer would have been liable to pay compensation under the Act,

subsection (2) of section 25 of the Act (which enables the court, on the dismissal of an action to recover damages independently of the Act, to assess and award compensation under the Act) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said subsection (2), no damages shall be recoverable in that action.

(2) Where a workman or his executor or administrator or any of his dependants has recovered compensation under the Act, in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 4 of this Act from some person other than the employer (hereinafter referred to as the third party), any right conferred by section 24 of the Act on the person by whom the compensation was paid, or on any person called on to pay an indemnity under section 23 of the Act, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by that person as bears to

the total sum so paid or payable the same proportion as the reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.

(3) For the purposes of this section, “**dependants**”, “**employer**” and “**workman**” have the same meaning as in the Act.

## **6. Application of this Part**

This Part shall not apply to any claim to which section 1 of the Maritime Conventions Act, 1911, (1 and 2, Geo. 5, c. 57) of the United Kingdom applies, and that Act shall have effect as if this Part had not been enacted.

### PART V – ABOLITION OF THE DOCTRINE OF COMMON EMPLOYMENT

## **7. Common employment**

(1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him that that person was at the time the injuries were caused in common employment with the person injured.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act), shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

(3) For the purposes of this section, “personal injury” includes any disease and any impairment of a person’s physical or mental condition, and “injured” shall be construed accordingly.

### PART VI – MANDAMUS, PROHIBITION AND CERTIORARI

## **8. Orders of mandamus, prohibition and certiorari substituted for writs**

(1) The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of *mandamus*, prohibition or *certiorari*.

(2) In any case in which the High Court in England is, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, (1 and 2, Geo. 6, c. 63) of the United Kingdom empowered to make an order of *mandamus*, prohibition or *certiorari*, the High Court shall have power to make a like order.

(3) No return shall be made to any such order, and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (5) of this section.

(4) In any written law, references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order, and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

(5) Any person aggrieved by an order made in the exercise of the civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal.

[Act No. 16 of 1960, s. 2.]

## 9. Rules of court

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

- (a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of *mandamus*, prohibition or *certiorari* is sought;
- (b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;
- (c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.

(2) Subject to the provisions of subsection (3), rules made under subsection (1) may prescribe that applications for an order of *mandamus*, prohibition or *certiorari* shall, in specified proceedings, be made within six months, or such shorter period as may be prescribed, after the act or omission to which the application for leave relates.

(3) In the case of an application for an order of *certiorari* to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

## PART VII – MISCELLANEOUS

### 10. Act to bind Government

This Act shall bind the Government.

[Act No. 21 of 1966, Sch.]

### 11. Repeal

The Employers' Liability Act, 1880, (No. 43 and 44, Vict., c. 42) of the United Kingdom as applied to Kenya, is repealed.

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