

# THE PUBLIC AUTHORITIES LIMITATION ACT, 1974

## No. 5 of 1974

*Date of Assent: 2nd May, 1974*

*Date of Commencement: By Notice*

**An Act of Parliament to provide for the limitation of proceedings against the Government and a local authority, and for purposes incidental to and connected with the foregoing**

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Public Authorities Limitation Act, 1974, and shall come into operation on such day as the Attorney-General may, by notice in the Gazette, appoint.

Short title and commencement.

2. (1) In this Act, except where the context otherwise requires—

Interpretation.

“local authority” means a municipal council, county council, town council, urban or area council, and, in respect of any function delegated to or conferred upon a local council, such local council;

“minor” means a person under eighteen years of age;

“proceedings” means civil proceedings in the High Court or a subordinate court.

(2) For the purposes of this Act—

(a) proceedings against the Government includes proceedings against the Attorney-General or any Government department or any public officer as such;

(b) proceedings against a local authority includes proceedings against any person employed by a local authority and sued or intended to be sued as such;

(c) a person is under a disability while he is a minor or of unsound mind or is detained in pursuance of any written law which authorizes the detention of persons suffering from mental disorder or unsoundness of **mind**.

Limitation of proceedings.

3. (1) No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.

(2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.

(3) Where the defence to any proceedings is that the defendant was at the material time acting in the course of his employment by the Government or a local authority and the proceedings were brought after the end of—

(a) twelve months, in the case of proceedings founded on tort; or

(b) three years, in the case of proceedings founded on contract,

from the date on which the cause of action accrued, the court, at any stage of the proceedings, if satisfied that such defendant was at the material time so acting, shall enter judgment for that defendant.

Tender of amends.

4. (1) In any proceedings founded on tort where damages are claimed against the Government or a local authority in respect of negligence, or a breach of any duty imposed by or under any written law, or in respect of any alleged act, neglect or default in the execution or intended performance of any public duty or authority—

(a) tender of amends before the proceedings were instituted may, in lieu of or in addition to any other plea, be pleaded;

(b) if the proceedings were instituted after such tender, or are proceeded with by the plaintiff after he has notice of the payment into court of any money in satisfaction of any cause of action, and the plaintiff does not recover more than the sum tendered or, in respect of the cause of action, paid, he shall not recover any costs incurred in the proceedings, or as the case may be, in respect of the cause of action, after the tender or payment, and the defendant shall be accordingly entitled to costs, to be taxed as between advocate and client, from the time of tender or payment;

(c) if, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity to make a tender of amends before the institution of proceedings, the court may award to the defendant costs to be taxed as between advocate and client;

(d) subject to sections 5 and 6 of this Act, when proceedings have been instituted contrary to subsection (1) or (2) of section 4 of this Act, or judgment is entered in pursuance of subsection (3) thereof, the defendant shall be entitled to costs to be taxed as between advocate and client unless the court otherwise orders.

(2) This section shall not affect any proceedings by or on behalf of the Government against a local authority.

**5.** Notwithstanding the provisions of section 4 of this Act, if, on the date when a right of action accrues for which a period of limitation is prescribed by this Act, the person to whom it accrues is under a disability, the action may be brought at any time before the end of twelve months from the date when that person ceases to be under a disability:

Extension of limitation period in case of disability.

Provided that—

(i) this section does not apply in respect of proceedings where the right of action first accrues to a person who is not under a disability and through whom the person under a disability claims;

(ii) this section does not apply to an action to recover a penalty or forfeiture or a sum by way of penalty or forfeiture recoverable by virtue of a written law.

**6.** Notwithstanding the provisions of section 31 of the Limitation of Actions Act, section 22 of that Act shall not apply in respect of the provisions of this Act, and in section 27 of the Limitation of Actions Act the reference to section 4 (2) of that Act shall be read and construed as a reference to section 3 (1) of this Act, but subject thereto and notwithstanding section 42 of the Limitation of Actions Act, Part III of that Act shall apply to this Act.

Application of Cap. 22.

**7.** Where immediately before the date of commencement of this Act, the time for commencing any proceedings has not already expired under any law relating to the limitation of actions then in force, but the bringing of such proceedings is

Transitional provisions.

barred by the provisions of this Act, the proceedings may be instituted before the expiration of twelve months from the date of commencement of this Act:

Provided that nothing in this section shall enable the institution of any proceedings in respect of which the time for bringing such proceedings would have expired apart from the provisions of this Act.

Amendment of  
Cap. 40.

**8.** The Government Proceedings Act is hereby amended—

(a) by the insertion after section 13 of a new section as follows—

13A. (1) No proceedings against the Government shall lie or be instituted until after the expiry of a period of thirty days after a notice in writing in the prescribed form shall have been served on the Government in relation to those proceedings.

(2) The notice to be served under this section shall be in the form prescribed in the Third Schedule to this Act and shall include the following particulars—

- (a) the full names, description and place of residence of the proposed plaintiff;
- (b) the date upon which the cause of action is alleged to have accrued;
- (c) the name of the Government department alleged to be responsible and the full names of any servant or agent whom it is intended to join as a defendant;
- (d) a concise statement of the facts on which it is alleged that the liability of the Government and of any such servant or agent has arisen;
- (e) the relief that will be claimed and, so far as may be practicable, the value of the subject matter of the intended proceedings or the amount which it is intended to claim.

(3) The provisions of this section shall not apply to such part of any proceedings as relates to a claim for relief in respect of which the court may,

by virtue of proviso (i) of section 16 (1) of this Act, make an order declaratory of the rights of the parties in lieu of a temporary injunction.

(b) by the insertion, after the Second Schedule thereto, of a Third Schedule containing the form prescribed in the Schedule to this Act.

9. Section 42 of the Limitation of Actions Act is hereby amended by the deletion of paragraph (e) and the substitution therefor of the following—

Amendment of  
Cap. 22.

(e) proceedings to which the Public Authorities Limitation Act, 1974, applies; or

10. The Public Officers Protection Act is hereby repealed.

Repeal of  
Cap. 186.

11. Paragraph (2) of regulation 263 of the Local Government Regulations is hereby repealed.

Repeal of  
Regulation 263 (2)  
of L.N. 256 of  
1963.

## SCHEDULE

(s. 8 (b))

### NOTICE TO THE ATTORNEY-GENERAL

TAKE NOTICE that (*name and description of proposed plaintiff*) of (*address*) intends to institute proceedings in the ..... Court against the Attorney-General on behalf of (*name of Government department*) [*and (full names of any other proposed defendant)*].

The circumstances giving rise to liability are (*give a concise statement*) and it is alleged that the cause of action accrued on (*date*).

The relief sought is as follows—

(*specify the nature of the relief sought and, so far as may be practicable, the value of the subject-matter or the amount to be claimed*).

Dated this                      day of                      , 19                      .

(Signed)

Proposed plaintiff *or*  
Advocate for the proposed plaintiff.