

*Bill Supplement to the Zanzibar Government Gazette  
Vol. No. CXXI I of 29<sup>th</sup> August, 2016*

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**NOTICE**

The Bills following hereunder shall be presented before the House of Representatives for the first reading which will start its session on 21<sup>st</sup> day of September, 2016, and is gazetted for the public notice incorporating together with their object and reasons.

**ZANZIBAR**  
29<sup>th</sup> August, 2016

(Dr. ABDULHAMID Y. MZEE)  
*Secretary to the Revolutionary  
Council and Chief Secretary*

**A BILL**

*for*

**AN ACT TO REPEAL THE EVIDENCE DECREE, CAP 5 AND  
ENACT THE NEW EVIDENCE ACT AND MATTERS  
CONNECTED THEREWITH**

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**ENACTED** by the House of Representatives

**PART ONE  
PRELIMINARY PROVISIONS**

**1.** This Act may be cited as the Evidence Act, 2016, and shall come into operation upon being assented by the President.

Short title  
and  
Commence-  
ment.

Application.      **2.** Except as otherwise provided in any other law, this Act shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer, nor to proceedings before an arbitrator.

Interpre-  
tation              **3.** In this Act, unless the context requires otherwise:

"Court" includes Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence;

"Computer" means an electronic magnetic, optical or other high speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optional impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

"Document" means any writing, handwriting, typewriting, printing, Photostat, photograph and every recording upon any tangible thing, any form of communication including electronic document, communication or representation by letters, figures, marks or symbols or by more than one of these means, which may be used for the purpose of recording any matter provided that such recording is reasonably permanent and readable by sight;

"Documentary Evidence" means all documents including electronic records produced for the inspection of the Court;

"Electronic document" means a message, instrument, information, data, image, text, program, software, database, or the similar item, regardless of how created, if such item can be retrieved or displayed in a tangible form;

"Electronic records" means a record created, generated, sent, communicated, received, or stored by electronic means;

"Evidence" denotes the means by which an alleged matters of fact, the truth of which if submitted to investigations, is

proved or disproved; and without prejudice to the preceding generality, includes statements and admissions by accused persons;

"Fact" means and includes:

- (a) any thing, state of things, or relation of things, capable of being perceived by senses;
- (b) any mental condition of which any person is conscious.

"Facts in issue" means:

- (a) any fact from which, either by itself or in connection with other facts; the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows
- (b) whenever, under the provisions of the law for the time being in force relating to civil procedure, any court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue

"Fact is said to be proved" when, after considering the matter before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Fact is said to be disproved" when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Fact is said not to be proved" when it is neither proved nor disproved.

"Husband" or "Wife" means the spouse of valid marriage according to Islamic Law or any other written Law in or outside Zanzibar recognized by a competent jurisdiction;

"Oral Evidence" means all statements which the court permits or requires to be made before it by witnesses, being physically present at the time of making the statement or by use of other means of communication including teleconference or video conference in relation to matters of fact under inquiry;

"Police Officer" means a member of the Police Force of or above the rank of constable;

"Relevant" one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"May presume" whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume" whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved, or may call for proof of it

"Conclusive proof" when one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

## **PART TWO THE RELEVANCY OF FACTS**

Evidence may be given of facts in issue and relevant facts.

4.-(1) Evidence may be given in any suit or proceeding of the existence or non-existence of a fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

(2) This section shall not enable any person to give evidence of a fact which he is disentitled to prove by a provision of law for the time being in force relating to civil procedure.

5. Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Relevancy of facts forming part of same transaction.

6. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of thing under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Facts which are the occasion, cause or effect of facts in issue.

7.-(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive, preparation and previous or subsequent conduct.

(2) The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent to the conduct.

(3) The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

(4) When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

8. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts necessary to explain or introduce relevant facts.

Things said or done by conspirator in reference to common design.

**9.** Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

When facts not otherwise relevant become relevant.

**10.** Facts not otherwise relevant are relevant fact:

- (a) if they are inconsistent with any fact in issue or relevant fact;
- (b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

In suits for damages facts tending to enable court to determine amount are relevant.

**11.** In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

**12.** Where the question is as to the existence of any right or custom, the following facts are relevant:

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconstant with its existence; and
- (b) particular instances, in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

**13.**-(1) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Facts showing existence of state of mind, or of bodily or bodily feeling.

(2) A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

(3) Where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

**14.** When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Facts bearing on question whether act was accidental or intentional.

**15.** When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Existence of course of business when relevant.

### **PART THREE ADMISSIONS**

**16.** An admission is a statement, oral or documentary, or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances hereinafter mentioned.

Admission defined.

**17.**-(1) Statements made by a party to the proceeding, or by an agent to any such party, whom the court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admission by party to proceeding or his agent or interested party.

(2) Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

(3) Statements made by:

- (a) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in their character of persons so interested; or
- (b) persons from whom the parties to the suit have derived their interest in the subject matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

Admissions by persons whose position must be proved as against party to suit.

**18.** Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons expressly referred to by party to suit.

**19.** Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Proof of admissions against persons making them and by or on their behalf.

**20.** Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:

(1) An admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of

mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

**21.** Oral admission as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such documents under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admission as to contents of documents are relevant.

**22.** Oral admission as to the contents of electronic records, are not relevant, unless the genuineness of the electronic record produced is in question.

When oral admission as to contents of electronic records are relevant.

**23.-(1)** In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Admissions in civil cases when relevant.

(2) Nothing in this section shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under section 143.

**24.** Admissions are not conclusive proof of the matter admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admission not conclusive proof but may estop.

#### **PART FOUR CONFESSIONS**

**25.** A confession made by an accused person is irrelevant in a criminal proceeding:

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.

(a) if the making of the confession appears to the court to have been caused by any inducement, threat or promise having

reference to the charge against the accused person, proceeding from a person in authority; and

- (b) in the opinion of the court such inducement, threats or promise is sufficient to give the accused person grounds which would appear to him reasonable for supposing that by making confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession before magistrate.

**26.**-(1) A confession which is freely and voluntarily made by a person accused of an offence in the immediate presence of the Magistrate may be proved as against that person.

(2) No confession made to a police officer shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

**27.** No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.

How much of information received from accused may be proved.

**28.** Notwithstanding the provision of section 27, when any fact is disposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise, relevant.

**29.** If such a confession as is referred to in section 25 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is relevant.

**30.** If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Confession otherwise not to become irrelevant because of promise of secrecy.

**31.**-(1) When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

(2) Notwithstanding subsection (1), a conviction of an accused person shall not be based solely on a confession by a co-accused.

(3) "Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.

## **PART FIVE STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES**

**32.** Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:

Statements of persons who can not be called as witnesses.

- (a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, such statements are relevant whether the person who made them was or

was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;

- (b) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books or recorded electronically, kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him;
- (c) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;
- (d) When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen;
- (e) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption, the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;
- (f) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone,

family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

- (g) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in paragraph (a) of section 12; or
- (h) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

**33.**-(1) In any criminal proceedings where direct oral evidence of a relevant fact would be admissible, any statement contained in any writing, record or document, whether in the form of any entry in a book or in any other form and which tends to establish that fact shall, on production of the writing, record or document, be admissible as evidence of that fact if:

Admissibility  
of certain  
trade or  
business  
records.

- (a) the statement was made as a memorandum or record of the act, transaction, occurrence or event; or
- (b) the writing, record or document is, or forms part of, a record relating to any trade or business and was made or compiled in the regular course of business where it is the practice to record such act, transaction, occurrence or event when it takes place or within a reasonable time thereafter.

(2) All other circumstances of the making of the statement, including lack of personal knowledge by the person making it, may be held as affecting its weight as evidence but those circumstances shall not affect its admissibility.

(3) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this section regard shall be had to all circumstances from which any inference can be reasonably drawn as to the accuracy or otherwise of the statement and, in particular, to the

question whether or not the person making the statement, or concerned with making or keeping the writing, record or document, containing the statement, had any incentive to conceal or misrepresent the facts.

(4) For the purposes of this section- "business" includes a business, occupation, profession, trade or calling of every kind; "statement" includes any representation of fact, whether made in words or in any other way.

Proof by  
written  
statements  
in criminal  
proceedings.

**34.**-(1) In any criminal proceedings where direct oral evidence of a relevant fact would be admissible, a written statement by any person who is, or may be, a witness shall subject to the following provisions of this section, be admissible in evidence as proof of the relevant fact contained in it in lieu of direct oral evidence.

(2) A written statement may only be admissible under this section-

- (a) where its maker is not called as a witness, if he is dead or unfit by reason of bodily or mental condition to attend as a witness, or if he is outside Tanzania and it is not reasonably practicable to call him as a witness, or if all reasonable steps have been taken to procure his attendance but he cannot be found or he cannot attend because he is not identifiable or by operation of any law he cannot attend;
- (b) if the statement is, or purports to be, signed by the person who made it;
- (c) if it contains a declaration by the person making it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence, he would be liable to prosecution for perjury if he wilfully stated in it anything which he knew to be false or did not believe to be true;

- (d) if, before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings;
- (e) if none of the other parties, within ten days from the service of the copy of the statement, serves a notice on the party proposing or objecting to the statement being so tendered in evidence;
- (f) if, where the statement is made by a person who cannot read it, it is read to him before he signs it and it is accompanied by a declaration by the person who read it to the effect that it was so read.

(3) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue to this section:

- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and
- (b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court directs otherwise, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(6) For the purposes of any rule of law or practice which requires that evidence be corroborated or regulates the manner in which uncorroborated evidence is to be treated, a statement admissible under

this section shall not be treated as corroboration of evidence given by the maker of the statement.

Proof by  
written  
statements  
in civil  
proceedings.

**35.-(1)** In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document tending to establish that fact shall, in production of the original document, be admissible as evidence of that fact in lieu of the attendance of the witness if the following conditions are satisfied-

- (a) if the maker of the statement either-
  - (i) had personal knowledge of the matters dealt with by the statement; or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement in so far as the matters dealt with in it are not within his personal knowledge, is the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (b) if the maker of the statement is called as a witness in the proceedings, but the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness or if he is not in Tanzania and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him, or to identify him, have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused order that the statement mentioned in subsection.

(1) shall be admissible as evidence or may, without the order having been made, admit the statement in evidence-

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu of the original there is introduced, a copy of the original document or of the material part of it certified in the order or as the court may approve.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at the time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section a statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made or reproduced by him with his own hand or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purposes of deciding whether or not a statement is admissible as evidence under this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a duly registered medical practitioner; and, notwithstanding that the requirements of this section are satisfied with respect to a statement, a court may in its discretion reject the statement if for any reason it appears to the court to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously

with the occurrence or existence of the fact stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(7) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement admissible as evidence under this section shall not be treated as corroboration of evidence given by the maker of the statement.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

**36.-(1)** Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is subject to the provisions of any other law for the time being in force, relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, provided that;

- (a) the proceeding was between the same parties or their representatives in interest;
- (b) the adverse party in the first proceeding had the right and opportunity to cross-examine; and
- (c) the questions in issue were substantially the same in the first as in the second proceeding.

(2) A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

**PART SIX**  
**STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES**

- 37.** Entries in books of account, including those maintained in an electronic form, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Entries in books of account when relevant.
- 38.** An entry in any public or other official book, register, record, or an electronic record stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, record or an electronic record is kept, is itself a relevant fact. Relevancy of entry in public record made in performance of duty.
- 39.** Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts. Relevancy of statements in maps, charts and plans.
- 40.** When the court form an opinion as to the existence of any fact of a public nature, any statement made by it, in a recital contained in any law applicable in Zanzibar duly promulgated or in a notification of the Government appearing in the Official Gazette or any printed paper, purporting to be Government Gazette is a relevant fact. Relevancy of statement as to fact of public nature contained in certain Acts, gazette or notifications.
- 41.** When the court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the courts of such country contained in a book purporting to be a report of such rulings, is relevant. Relevancy of statements as to any law contained in law books.

Evidence obtained in undercover operations.

**42.** In any criminal proceedings:

- (a) an information retrieved from computer systems, networks or servers;
- (b) the records obtained through surveillance of means of preservation of information including facsimile machines, electronic transmission and communication facilities; or
- (c) the audio or video recording of acts or behaviors or conversation of persons charged,

shall be admissible in evidence.

How much of a statement is to be proved.

**43.** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

## PART SEVEN

### JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

Previous judgments relevant to bar a second suit or trial.

**44.** The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in some civil cases.

**45.-(1)** A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

- (2) Such judgment, order or decree is conclusive proof that:
- (a) a legal character, to which it confers accrued at the time when such judgment, order or decree came into operation;
  - (b) a legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
  - (c) a legal character which it takes away from any such person ceased at the time from which such judgment, order or decree, declared that it had ceased or should cease; and
  - (d) anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree, declares that it had been or should be his property.

**46.** Judgments, orders or decrees other than those mentioned in section 45 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 45.

**47.** Judgments, orders or decrees, other than those mentioned in sections 44, 45 and 46, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Judgments other than those mentioned sections 44 and 45, when relevant.

Fraud or collusion in obtaining judgment, or incompetency of court, may be proved.

**48.** Any party to a suit or other proceeding may show that any judgment order or decree which is relevant under section 44, 45 or 46, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

### **PART EIGHT OPINIONS OF THIRD PERSONS, WHEN RELEVANT**

Opinions of experts.

**49.** When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, or finger or thumb impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger or thumb impressions are relevant facts; such persons are called experts.

Facts bearing upon opinions of experts.

**50.** Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Opinion as to handwriting, when relevant.

**51.-(1)** When the court has to form an opinion as to the person by whom any documents was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

(2) A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Opinion as to digital signature when relevant.

**52.** When the court has to form an opinion as to the digital signature of any person, the opinion of Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.

**53.**-(1) When the court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Opinion as to existence of right or custom, when relevant.

(2) The expression "general custom or right" includes customs or rights common to any considerable class of persons.

**54.** When the court has to form an opinion as to:

- (a) the usages and tenets of any body of men or family;
  - (b) the constitution and government of any religious or charitable foundation; or
  - (c) the meaning of words or terms used in particular districts or by particular classes of people,
- the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinions as to usages, tenets, when relevant.

**55.**-(1) When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.

Opinion on relationship, when relevant.

(2) The opinion under subsection (1) shall not be sufficient to prove a marriage in proceedings under the Matrimonial Laws or prosecutions for the offences of adultery and bigamy punishable under the Penal Act.

**56.** Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Grounds of opinion when relevant.

**PART NINE  
CHARACTER, WHEN RELEVANT**

In civil cases character to prove conduct imputed, irrelevant.

**57.** In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

**58.** In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

**59.**-(1) In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

(2) This section does not apply to cases in which the bad character of any person is itself a fact in issue.

(3) A previous conviction is relevant as evidence of bad character.

Character as affecting damages.

**60.**-(1) In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant,

(2). In sections 57,58, 59 and 60 the word "character" includes both reputation and disposition; but except as provide in section 59, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

**PART TEN  
FACTS WHICH NEED NOT BE PROVED**

Fact judicially noticeable need not be proved.

**61.** No fact of which the court will take judicial notice need be proved.

**62.** The Court shall take judicial notice of the following facts:

Facts of  
which court  
must take  
judicial  
notice.

- (a) all written laws, rules, regulations, proclamation, orders or notices having the force of law in Zanzibar.
- (b) the existence and title of societies or other bodies the registration of which has been notified in the Gazette.
- (c) the course of proceedings of the House of Representatives of Zanzibar or Parliament of the United Republic of Tanzania
- (d) the accession to office, names, title, functions and signatures of the persons holding any public office in any part of the United Republic, if the fact of their appointment to such office is notified in the Gazette.
- (e) all seals of all Courts of any part of United Republic of Tanzania duly established and of Notaries Public, and all seals which any person is authorized to use by any written law.
- (f) the existence, title, the flag of Zanzibar and national flag of every State or Sovereign recognized by the United Republic of Tanzania.
- (g) the divisions of time, the geographical division of the world, and public festivals, feasts and holidays notified in the Official Gazette.
- (h) the commencement, continuance and termination of hostilities between the United Republic of Tanzania and any other State or body of persons.
- (i) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or to act before it.

(j) the ordinary course of nature

(k) the meaning of words

(l) all matters of general or local notoriety

(m) all other matters of which it is directed by any written law to take judicial notice

(2) In all these cases referred to in sub-section (1), and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

(3) If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless or until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

**63.**-(1) No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.

(2) Notwithstanding the provisions of subsection (1), the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

## **PART ELEVEN ORAL EVIDENCE**

Proof of facts by oral evidence.

**64.** All facts, except the contents of documents or electronic records, may be proved by oral evidence.

Oral evidence must be direct.

**65.**-(1) Oral evidence must, in all cases whatever, be direct, that:

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

- (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- (c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; or
- (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(2) The opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

(3) If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection.

**66.** The Court may allow a witness to give evidence, whether from within or outside Zanzibar through a live video link or by other means.

Evidence by Video Conference or other means.

## **PART TWELVE DOCUMENTARY EVIDENCE**

**67.** The contents of documents may be proved either by primary or by secondary evidence.

Proof of contents of documents.

**68.**-(1) Primary evidence means the document itself produced for the inspection of the court.

Primary evidence.

(2) Where a document is executed in several parts, each part is primary evidence of the document.

(3) Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

(4) Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Secondary evidence.

**69.** Secondary evidence means:

- (a) certified copies given under the provisions hereinafter contained;
- (b) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (c) copies made from or compared with original;
- (d) counterparts of documents as against the parties who did not execute them;
- (e) oral accounts of the contents of a document given by some person who has himself seen it.

Proof of documents by primary evidence.

**70.** Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

**71.-(1)** Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

- (a) when the original is shown or appears to be in the possession or power of:
  - (i) the person against whom the document is sought to be proved;

- (ii) a person out of reach of, or not subject to, the process of the court; or
  - (iii) a person legally bound to produce it, and when, after the notice mentioned in section 74, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
  - (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
  - (d) when the original is of such a nature as not to be easily movable;
  - (e) when the original is a public document within the meaning of section 85;
  - (f) when the original is a document of which certified copy is permitted by this Act, or by any another law in force in Zanzibar to be given in evidence;
  - (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection;

(2) In cases (a), (c) and (d) in subsection (1), any secondary evidence of the contents of the document is admissible.

(3) In case (b) of sub-section (1), the written admission is admissible.

(1) In case (e) or (f) of sub-section (1), a certified copy of the document, but no other kind of evidence is admissible.

(2) In case (g) of sub-section (1), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Special provisions as to evidence relating to electronic record.

**72.** The contents of electronic records may be proved in accordance with the provisions of section 73.

Admissibility of electronic records.

**73.**-(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer hereinafter referred to as the computer output, shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following:

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- (b) during that period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of those activities;
- (c) throughout the material part of that period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was

out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of those activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub-section (2) was regularly performed by computers, whether:

- (a) by a combination of computers operating over that period;
- (b) by different computers operating in succession over that period;
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer, and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following:

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be

appropriate for the purpose of showing that the electronic record was produced by a computer; or

- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities, whichever is appropriate, shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (5) For the purposes of this section;

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or, with or without human intervention, by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or, with or without human intervention, by means of any appropriate equipment.

(6) For the purposes of this section, any reference to information being derived from other information, shall be a reference to its being derived therefrom by calculation, comparison or any other process.

74.-(1) Secondary evidence of the contents of the documents referred to in paragraph (a) of subsection (1) of section 71, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the documents is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the court considers reasonable under the circumstances of the case.

Rules as to  
notice to  
produce.

(2) The notice referred to in subsection (1) shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it:

- (a) when the document to be proved is itself a notice;
- (b) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (d) when the adverse party or his agent has the original in court;
- (e) when the adverse party or his agent has admitted the loss of the document;
- (f) when the person in possession of the document is out of reach of, or not subject to, the process of the court.

75. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of  
signature  
and  
handwriting  
of person  
alleged to  
have signed  
or written  
document  
produced.

Proof as to  
digital  
Signature.

**76.** Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved.

Proof of  
execution  
of  
document  
required by  
law to be  
attested.

**78.**-(1) If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

(2) It shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration of Documents decree, unless its execution by the person by whom it purports to have been executed is specifically denied.

Proof where  
no attesting  
witness  
found.

**79.** If no such attesting witness can be found or when the witness is not subject to the process of the court or is incapable of giving evidence, it must be proved that the attestation of one attesting witness at least is in his handwriting and that the signature of the person executing the document is in the handwriting of that person.

Admission  
of  
execution  
by party to  
attested  
document.

**80.** The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it is a document required by law to be attested.

Proof when  
attesting  
witness  
denies the  
execution.

**81.** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of  
document  
not required  
by law to be  
attested.

**82.** An attested document not required by law to be attested may be proved as if it was unattested.

**83.**-(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

Comparison of signature, writing or seal with others admitted or proved.

(2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger or thumb impressions.

**84.**-(1) In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct:

Proof as to verification of digital signature.

- (a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;
- (b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

(2) For the purpose of this section, "Controller" means the Controller of Certifying Authorities appointed by the Revolutionary Government of Zanzibar.

## **PART THIRTEEN PUBLIC DOCUMENTS**

**85.**The following documents are public documents:

Public documents.

- (a) documents forming the acts or records of the acts of;
  - (i) the Revolutionary Government of Zanzibar or of the United Republic of Tanzania,

(ii) official bodies and tribunals, and

(iii) public officers, legislative, judicial and executive, whether of Zanzibar or any part of the United Republic of Tanzania or of a foreign country.

(b) public records kept in Zanzibar of private documents.

Private documents.

**86.** All documents not referred to in section 85 are private.

Certified copies of public documents.

**87.**-(1) A public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) An officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

**88.** Certified copies referred to in section 87 may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents.

**89.** The following public documents may be proved as follows:

- (a) Acts, orders or notifications of the Revolutionary Government of Zanzibar or of any of its departments:
- (i) by the records of the departments, certified by the heads of those departments respectively; or
  - (ii) by any document purporting to be printed by order of the Government;

- (b) the proceedings of the Legislatures of Zanzibar and United Republic of Tanzania, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies, purporting to be printed by order of Government
- (c) proclamations, orders or regulations issued by the President of Zanzibar or of the United Republic or by any department of the Government of Zanzibar or by any department of the Government of the United Republic, by copies or extracts contained in the Gazette or purporting to be printed by the Government Printer;
- (d) Acts of the executive or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some laws of the United Republic of Tanzania or, of Zanzibar;
- (e) the proceedings of a municipal body, in Zanzibar or in the United Republic of Tanzania, by a copy of the proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of that body;
- (f) Public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

**PART FOURTEEN  
PRESUMPTIONS AS TO DOCUMENTS**

Presumption as to genuineness of certified copies. **90.**-(1) The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in Zanzibar, who is duly authorized thereto,

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence. **91.**-(1) When a document is produced before any court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession of accused person, taken in accordance with law, and purporting to be signed by any Judge or magistrate, or by any such officer as aforesaid, the court shall presume that:

- (a) the document is genuine;
- (b) any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and
- (c) such evidence, statement or confession was duly taken.

(2) Notwithstanding subsection (1) and any other written law, where in criminal proceedings involving offence of terrorism or international terrorism, a question arises as to whether anything or a substance is in a state described or purported to be described in a document, that document shall be admissible in evidence without proof of the signature or authority of the person appearing to have

signed it and shall, in the absence of evidence to the contrary, be proof of the facts stated therein.

**92.**-(1) The court shall presume the genuineness of every document purporting to be the Gazette, or the Government Gazette of the United Republic of Tanzania or to be a newspaper or a journal, or to be a copy of a member's Act of the House of Representatives printed by the Government printer, and of every document purporting to be a document directed by any law to be kept by any person, if the document is kept substantially in the form required by law and is produced from the proper custody.

Presumption as to Gazettes, newspapers, members' Acts of legislature and other documents.

(2) For the purposes of this section a document is said to be in proper custody if it is in the place in which, and in the care of the person in whose care, it would ordinarily be.

(3) Such custody shall not be deemed to be improper if it is proved to have a legitimate origin, or if the circumstances of the case are such as to render such an origin probable.

**93.** The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

Presumption as to Gazettes in electronic Forms.

**94.** A court shall presume the genuineness of every book purporting to be printed or published under the authority of the government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the courts of such country.

Presumption regarding collections of laws and reports of decisions

**95.** The court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

Presumption  
regarding  
private  
documents  
executed  
outside  
Zanzibar.

**96.** A court shall presume that a private document purporting to be executed outside Zanzibar was duly executed and the execution duly authenticated if:

- (a) in the case of a document executed in Tanzania Mainland, Uganda, Kenya, Malawi or Zambia, it purports to be authenticated by a magistrate, registrar or judge under the seal of the court or by a notary public under his signature and seal of office;
- (b) in the case of a document executed in Tanzania Mainland, Uganda, Kenya, Malawi or Zambia which affects or relates to property not exceeding an amount or value of five thousand shillings, there purports to be appended to or endorsed on such document a statement signed by a magistrate or a justice of the peace:
  - (i) that the person executing the document is a person known to him; or
  - (ii) that two other persons known to him have separately testified before him that the person executing the document is known to each of them;
- (c) in the case of a document executed in any other place outside Zanzibar, if it purports to be authenticated by the signature and seal of office:
  - (i) of a foreign service officer of the United Republic or a diplomatic representative of a Commonwealth country in that place; or
  - (ii) of any Secretary of State, Minister, Under Secretary of State or any other person in such foreign place, who shall be shown by the certificate of the foreign service officer of the United Republic or a diplomatic representative of a Commonwealth country in that place, to be duly authorised under the law of that place to authenticate the document.

**97.** The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a notary public, or Commissioner for oath, or any Court, judge, magistrate or registrar, foreign service officer or diplomatic representative of a Commonwealth country, was so executed and authenticated.

Presumption as to powers of attorney.

**98.** The Court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.

Presumption as to Electronic agreement.

**99.-** (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

Presumption as to Electronic records and digital signatures.

(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that:

- (a) the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record;
- (b) except in the case of a secure electronic record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature.

**100.** The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Presumption as to digital signature certificates.

**101.** A court may presume that any document purporting to be a certified copy of any judicial record of a foreign country is genuine and accurate, if the document purports to be certified in any manner which is certified by a foreign service officer or diplomatic representative of a Commonwealth country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records.

Presumption  
as to books,  
maps and  
charts.

**102.** A court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption  
as to  
telecommu-  
nication  
messages.

**103.** The court may presume that a message, forwarded from a telecommunication office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption  
as to  
electronic  
messages.

**104.**-(1) The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee, to whom the message purports to be addressed, corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

(2) For the purpose of this section:

"addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

"originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

Presumption  
as to due  
execution,  
of  
documents,  
not  
produced.

**105.** The court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

**106.-** (1) Where any document, purporting or proved to be thirty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Presumption as to documents thirty years old.

(2) documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

**107.-** (1) Where any electronic record, purporting or proved to be five years old, is produced from any custody which the court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorized by him in this behalf.

Presumption as to electronic records five years old.

(2) Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

(3) Sub section (2) of this section, shall apply to section 93 of this Act.

**PART FIFTEEN**  
**THE EXCLUSION OF ORAL BY DOCUMENTARY**  
**EVIDENCE**

**108.-**(1) When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained, provided that:

- (a) when a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved; and
- (b) wills admitted to probate in Zanzibar may be proved by the probate.

(2) This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

(3) Where there are more originals than one, one original only need be proved.

(4) The statement, in any documents whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Exclusion  
of evidence  
of oral  
agreement.

**109.** when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 108, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms, provided that:

- (a) any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of

capacity in any contracting party, want or failure of consideration, or mistake in fact or law;

- (b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;
- (c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;
- (d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents;
- (e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved, if the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract;
- (f) any fact may be proved which shows in what manner the language of a document is related to existing facts.

**110.** When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Exclusion  
of evidence  
to explain  
or amend  
ambiguous  
document.

Exclusion of evidence against application of document to existing facts.

**111.** When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Evidence as to document unmeaning in reference to existing facts.

**112.** When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to application of language which can apply to one only of several persons.

**113.** When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

**114.** When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to meaning of illegible characters.

**115.** Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Who may give evidence of agreement varying terms of documents.

**116.** Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

**117.** Nothing in this Part contained shall be taken to affect any of the provisions of the Succession Decree as to the construction of wills.

Saving of provisions of the Succession Decree relating to wills.

## **PART SIXTEEN THE BURDEN OF PROOF**

**118.**-(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

**119.** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

On whom burden of proof lies.

**120.** The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Burden of proof as to particular fact.

**121.** The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

**122.**-(1) when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged, and the burden of proving any fact especially within the knowledge of such person is upon him.

Extent of burden of proof on accused person in certain cases.

(2) Such burden shall be deemed to be discharge if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist.

(3) The person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.

(4) Nothing in this section shall:

- (a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged;
- (b) impose, on the prosecution, the burden of proving that the circumstances or facts described in subsection (1) do not exist; or
- (c) affect the burden placed upon an accused person to prove a defence of intoxication or insanity.

Burden of proving fact especially within knowledge in civil proceedings.

**123.** In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving death of person known to have been alive within thirty years.

**124.** When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

**125.** When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

**126.** When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

**127.** When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Burden of good as to ownership.

**128.** Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Proof of good faith in transactions where one party is in relation of active confidence.

**129.** The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Birth during marriage conclusive proof of legitimacy.

**130.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts.

## PART SEVENTEEN ESTOPPEL

**131.** When a person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Estoppels.

Estoppels of  
tenant; and  
of license of  
person in  
possession.

**132.**-(1) A tenant of immovable property, or person claiming through such tenant, shall not, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.

(2) A person who came upon any immovable property by the license of the person in possession thereof shall not be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppels  
of acceptor  
of bill of  
exchange,  
bailee or  
licensee.

**133.**-(1) An acceptor of a bill of exchange shall not be permitted to deny that the drawer had authority to draw such bill or to endorse it, provided that, the acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

(2) A bailee or licensee shall not be permitted to deny that his bailor or licensor had authority, at the time when the bailment or license commenced, to make such bailment or grant such license, provided that, if a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

## **PART EIGHTEEN WITNESSES**

Who may  
testify.

**134.**-(1) All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

(2) A person of unsound mind is not incompetent to testify, unless he is prevented by reason of such unsoundness of mind from understanding the questions put to him and giving rational answers to them.

(3) Where in any criminal proceeding or matter, a child of tender age called as a witness does not, in the opinion of the court, understand the nature of the oath, his evidence may be received though not given

upon oath or affirmation, if in the opinion of the court which shall be recorded in the proceeding, he is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth.

(4) Notwithstanding any rule of law or practice to the contrary, but subject to the provisions of subsection (7), where evidence received by virtue of subsection (3) is given on behalf of the prosecution and is not corroborated by any other material evidence in support of it implicating the accused the court may, after warning itself of the danger of doing so, act upon that evidence to convict the accused if it is fully satisfied that the child is telling the truth.

(5) Notwithstanding any rule of law, or practice to the contrary, but subject to the provisions of subsection (7), the evidence of a child of a tender age received under subsection (3) may be acted upon by the court as material evidence corroborating the evidence of another child of tender age previously given or the evidence given by an adult which is required by the law or practice to be corroborated.

(6) For the purposes of subsections (3), (4) and (5) the expression "child of a tender age" means a child whose apparent age is not more than fourteen years.

(7) Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that a child of a tender age or a victim of sexual offence, the court shall receive the evidence, and may after assessing the credibility of the evidence of the child of a tender age or the victim of the sexual offence, as the case may be, on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the child of tender age or the victim of sexual offence is telling nothing but the truth.

(8) For the purpose of this section the term "sexual offence" means any of the sexual offences created either in the Penal Act or any written law.

Vulnerable  
and  
Intimidated  
witnesses  
eligible for  
special  
measures.

**135.**-(1) The court in criminal proceeding may allow, when it receives evidence from a vulnerable or an intimidated witness, the use of special measures.

(2) In this section, a vulnerable and an intimidated witness means:

- (a) a child;
- (b) a person with significant impairment of intelligence and social functioning (learning disability);
- (c) a person with mental disorder;
- (d) a person with physical disability or physical disorder;  
or
- (e) a person suffering from fear of distress as a result of the crime or intimidation.

(3) For the purposes of this section and subject to the procedures provided in the Criminal Procedure Act, special measures include:

- (a) screening witness from accused;
- (b) evidence by live link;
- (c) evidence given in private;
- (d) removal of gowns;
- (e) video recorded evidence in chief;
- (f) video recorded cross-examination or re-examination;
- (g) examination of witness through intermediary; or
- (h) aids to communication.

Dumb  
witnesses.

**136.** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by

signs; but such writing must be written and the signs made in open court; evidence so given shall be deemed to be oral evidence.

**137.**-(1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

Parties to civil suit, and their wives or husbands.

(2) In criminal proceedings against any person, the husband or wife of such person, respectively, shall be competent witness.

**138.** A judge or magistrate shall not, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such Judge or magistrate, or as to anything which came to his knowledge in court as such Judge or magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judge and magistrates.

**139.** No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suit between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Communications during marriage.

**140.** A person shall not be permitted to give any evidence derived from unpublished official records relating to any affairs of state, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Evidence as to affairs of state.

**141.** A public officer shall not be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

Official to affairs of state.

**142.**-(1) A magistrate, prosecutor, investigator or police officer shall not be compelled to say whence he got any information as to the commission of any offence, and a revenue officer shall not be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Information as to commission of offences.

(2) "Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue.

Professional  
communi-  
cation.

**143.**-(1) An advocate or vakil shall not at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

(2) Nothing in this section shall protect from disclosure:

- (a) any such communication made in furtherance of any illegal purpose; or
- (b) any fact observed by any advocate or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

(3) It is immaterial whether the attention of such advocate or vakil was or was not directed to such fact by or on behalf of his client.

(4) The obligation stated in this section continues after the employment has ceased.

Section 143  
to apply to  
interpreters,  
etc.

**144.** The provisions of section 143 shall apply to interpreters, and the clerks or servants of advocates and vakils.

Privilege  
not waived  
by  
volunteering  
evidence.

**145.** If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 143; and, if any party to a suit or proceeding calls any such advocate or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such advocate or vakil on matters which, but for such question, he would not be at liberty to disclose.

**146.** A person shall not be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communications with legal advisers.

**147.** A witness who is not a party to a suit shall not be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to incriminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Production of title-deeds of witness not a party.

**148.** A person shall not be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last mentioned person consents to their production.

Production of documents or electronic records which another person having possession could refuse to produce.

**149.-(1)** A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the answer to such question will incriminate, or may tend directly or indirectly to incriminate such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind.

Witness not excused from answering on ground that answer will incriminate.

(2) The answer, which a witness shall be compelled to give under subsection (1), shall not subject him to any arrest or prosecution, or be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer.

**150.** An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice.

Number of witnesses.

**151.** Subject to the provisions of the Penal Act or of any other law for the time being in force, no particular number of witnesses shall in any case be required for the proof of any fact.

## PART NINETEEN THE EXAMINATION OF WITNESSES

Order of production and examination of witnesses.

**152.** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the court.

Court to decide as to admissibility of evidence.

**153.**-(1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant and not otherwise.

(2) If the fact proposed to be proved is one which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court, may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Examination in-chief, cross-examination and re-examination.

**154.**-(1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

**155.**-(1) Witnesses shall be first examined-in-chief, then, if the adverse party so desires, cross-examined, then, if the party calling him so desires, re-examined.

Order of examinations and direction of re-examination.

(2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

**156.** A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Order of examinations and direction of re-examination.

**157.** Witness to character may be cross-examined and re-examined.

Witness to character.

**158.** Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading questions.

**159.**-(1) Leading questions shall not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the court.

When leading questions shall not be asked.

(2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

**160.** Leading questions may be asked in cross-examination.

When leading questions may be asked.

Evidence as to matters in writing.

**161.**-(1) Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

(2) A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Cross-examination as to previous statements in writing.

**162.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

**163.** During cross-examination, a witness may, in addition to the questions hereinbefore referred to, be asked any question which tend to:

- (a) test a veracity of such a witness;
- (b) discover who and what position such a witness is in life;  
or
- (c) shake the credit, by injuring the character, although the answer to such question exposes or tends to expose such a witness to penalty or forfeiture.

When witness to be compelled to answer.

**164.** If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 149 shall apply thereto.

**165.**-(1) If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

Court to decide when question asked and when witness compelled to answer

(2) In exercising its discretion under subsection (1), the court shall have regard to the following considerations:

- (a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;
- (d) the court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer is given would be unfavourable.

**166.** No such question as is referred to in section 165 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds

Procedure of court in case of question being asked without reasonable grounds.

**167.** If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate or vakil, reports the circumstances of the case to the high court or other authority to which such advocate or vakil is subject in the exercise of his profession.

Indecent and scandalous questions.

**168.** The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

**169.** The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

**170.**-(1) When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

(2) If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

(3) If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Question by party to his own witness.

**171.** The court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

**172.**-(1) The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him by:

- (a) the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (b) proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence; or
- (c) proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

(2) A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with the offence of perjury.

**173.** When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Questions tending to corroborate evidence of relevant of fact admissible.

**174.** In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

Former statements of witness may be proved to corroborate later testimony as same fact.

**175.** Whenever any statement relevant under section 32 or 36, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matters suggested.

What matters may be proved in connection with proved statement relevant under section 32 or 36.

Refreshing memory and when witness may use copy of document to refresh memory.

**176.**-(1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) Whenever a witness may fresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document, provided the court be satisfied that there is sufficient reason for the non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 176.

**177.** A witness may also testify to facts mentioned in any such document as is mentioned in section 176, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Right of adverse party as to writing used to refresh memory.

**178.** Any writing referred to under the provisions of sections 176 and 177 shall be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness there-upon.

Production of documents and translation of documents.

**179.**-(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or its admissibility.

(2) The validity of any such objection under subsection (1), shall be decided on by the court.

(3) The court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

(4) If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and, if the interpreter disobeys such direction, he shall be held to have committed the offence of abuse of office punishable under a relevant law.

**180.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Giving, as evidence, of document called for and produce on notice.

**181.** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Using, as evidence, of document production of which was refused on notice.

**182.**-(1) A judge or magistrate may, in order to discover or to obtain proper proof of relevant facts, ask any relevant question about any fact and may order production of any document or thing.

Power of Court put questions or order production.

(2) The judgment must be based upon facts declared by this Act to be relevant, and duly proved.

(3) This section shall not authorize any Judge or magistrate to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under 138 to 148, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge or magistrate ask any question which it would be improper for any other person to ask under section 165 or 166; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

**183.** In cases tried with assessors, the assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

Power of assessors to put questions.

**PART TWENTY**  
**IMPROPER ADMISSION AND REJECTION OF EVIDENCE**

No new trial for improper admission or rejection of evidence.

**184.** The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Power to make rules.

**185.**-(1)The Chief Justice may make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

- (a) the manner in which any information or matter may be authenticated by means of digital signature;
- (b) the manner and format in which electronic records shall be filed, tendered or issued before the court;
- (c) the matters relating to the type of digital signature, manner and format in which it may be affixed;
- (d) the security procedure for the purpose of creating secure electronic record and secure digital signature;
- (e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Chief Justice under this section shall be published in the Official Gazette.

## OBJECTS AND REASONS

The objects of this Bill is to repeal the Evidence Decree Cap. 5 and enact the new Evidence Act and other matters connected thereto.

This Bill is divided into twenty parts as briefly stated hereunder:

Part One is preliminary provisions which provides for that title and Commencement date, and interpretation of certain words used therein.

*Part Two* is about relevance of facts.

*Part Three* is about Admission provisions.

*Part Four* is about Confessions provisions.

*Part Five* is about Statement by persons who cannot be called as witness.

*Part Six* is about statement made under special circumstances.

*Part Seven* is about Judgments of Courts of Justice When Relevant.

*Part Eight* is provided provision relating to Opinions of Third Persons, When Relevant.

*Part Nine* is about Character, when Relevant.

*Part Ten* is provided for Facts Which Need Not Be Proved.

*Part Eleven* is about Oral Evidence.

*Part Twelve* is about Documentary Evidence.

*Part Thirteen* is about Public Documents.

*Part Fourteen* is about provision relating to Presumptions as to Documents.

*Part Fifteen* is about the Exclusion of Oral by Documentary Evidence.

*Part Sixteen* is about the Burden of Proof.

*Part Seventeen* is about Estoppel.

*Part Eighteen* is about Witnesses.

*Part Nineteen* is about the Examination of Witnesses.

*Part Twenty* is about Improper Admission and Rejection of Evidence.

ZANZIBAR

29<sup>th</sup> August, 2016

{ HAROUN A. SULEIMAN }

**MINISTRY OF STATE (PO), CONSTITUTION  
AND LEGAL AFFAIR, PUBLIC SERVICE  
AND GOOD GOVERNANCE**

