



**THE ESTABLISHMENT OF ZANZIBAR COMMERCIAL COURT
ACT NO. 9 OF 2013**

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ACT NO. 9 OF 2013

I ASSENT

{DR. ALI MOHAMED SHEIN}
PRESIDENT OF ZANZIBAR

AND
CHAIRMAN OF THE REVOLUTIONARY COUNCIL

16 August 2013

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF
ZANZIBAR COMMERCIAL COURT AND OTHER
MATTERS CONNECTED THERETO

ENACTED by the House of Representatives of Zanzibar.

PART ONE
PRELIMINARY PROVISIONS

- Short title and Commencement. **1.** This Act may be cited as the Zanzibar Commercial Court (High Court Division) Act, 2013 and shall come into force on such date as the Minister may, by notice in the Gazette, appoint.
- Application. **2.**(1) Unless otherwise provided this Act shall apply to all commercial cases before the court.
- (2) In case of any lacunae in this Act, provisions of Civil Procedure Decree, Chapter 8 of the Laws of Zanzibar shall apply.
- Interpretation. **3.** In this Act, unless the context otherwise requires:-
- "Assessor" means a person appointed by the Commercial Court Users' Committee to sit with a judge in adjudication of commercial cases;



"Commercial case" means a civil case involving a matter considered by the court to be of a commercial significance, including any claim or application arising out of transaction of trade or commerce but not limited to:

- (a) The formation of business or commercial organization;
- (b) The governance of business or commercial organization;
- (c) The contractual relationship of a business or commercial organization with other bodies or person outside it;
- (d) The liability of a commercial or business organization or official arising out of its commercial or business activities;
- (e) Intellectual properties disputes;
- (f) The liability of a commercial or business person arising out of that person's commercial or business activities;
- (g) Banking and financial services including mortgages transactions;
- (h) The restructuring or payment of commercial debts by or to business or commercial organization or person;
- (i) The enforcement of commercial arbitration award;
- (j) The enforcement of awards of a regional court or tribunal of competent jurisdiction made in accordance with a treaty or Mutual Assistance, to which United Republic of Tanzania is a signatory and which forms part of the law of United Republic of Tanzania;
- (k) Admiralty proceeding;
- (l) Arbitration; and
- (m) Any other dispute to which Chief Justice shall deem fit to be tried by Commercial Court.

'Commercial disputes' means disputes involving a matter considered by the court to be of a commercial significance as provided under this Act.

'Court' means a Commercial Court established as a division of the High Court referred to under section 4 of this Act;

'Decree' means Civil Procedure Decree, Chapter 8 of the Laws of Zanzibar.



"Friend of the court" means a person who has been called upon by the court to assist the court on the matter before the court.

"Judge in charge" means the judge in charge of the Court and includes Regional Magistrate with extended jurisdiction assigned to hear commercial cases.

"Judge" means a judge of the High Court of Zanzibar assigned to preside over a commercial court

"Judicial review" includes judicial proceedings carried out for the following remedies:-

- (a) Certiorari;
- (b) Prohibition; and
- (c) Mandamus.

"Presiding judge" means a judge or Regional Magistrate with extended jurisdiction presiding over a Commercial Court.

"Public duty" includes a duty to make a decision or determination, and a duty to hear and determine a case.

"Quasi judicial body" means any person, government ministry, department or any other body that is empowered to make decision under the law but does not include a court of law;

"Registrar" means the Deputy Registrar of the Commercial Court and shall include any person acting in such a capacity.

PART TWO ADMINISTRATIVE PROVISIONS

Establishment of Zanzibar Commercial Court.

4. It is established a Commercial Court which shall be a Division of the High Court of Zanzibar to deal with Commercial disputes of the value provided under this Act.

Jurisdiction of Commercial Court.

5.(1) Notwithstanding any provision of this Act, the Commercial Court shall not have exclusive jurisdiction in settling commercial disputes.

(2) The Commercial Court shall have jurisdiction:

- (a) to hear and determine any commercial cases within the meaning of this Act;



- (b) to register consent judgments, commercial resolutions and awards following mediation or arbitration of a commercial dispute made under the provisions of this Act;
- (c) to hear appeals, revision and be a court of references on disputes of commercial nature;
- (d) to exercise such other functions and powers as are conferred upon it by this Act or as may be conferred upon it by any written law.

(3) Jurisdiction of Commercial Court may be invoked for claims of commercial nature exceeding shillings thirty million where the subject matter is movable property and intangible property exceeding shillings twenty million and capable of being estimated at a monetary value, and at least shillings fifty million in case of immovable property.

Composition of
the Court.

6. The Court shall consist of -

- (a) a judge appointed by the Chief Justice from amongst the judges of the High Court or Regional Magistrate with extended jurisdiction to hear commercial disputes;
- (b) two assessors amongst persons appointed by the Commercial Court Users Committee established under section 7 of this Act through the procedures to be set by the Minister as per section 41 of this Act.

Commercial Court
Users Committee.

7.(1) There shall be a Commercial Court Users Committee consisting of the Judges of the Commercial Court, one advocate nominated by the Zanzibar Law Society, one State attorney nominated by the Attorney General, one person nominated by the Zanzibar National Chamber of Commerce, Industry and Agriculture and one representative from the Ministry responsible for trade.

(2) The Judge in charge of the Commercial Court shall be the Chairperson and the Registrar shall be the Secretary to the Committee.

(3) It shall be the responsibility of the Commercial Court Users Committee to advise the commercial Court on matters of Court practice and to submit a list of persons knowledgeable in commercial matters to serve as assessors.

Staff of the Court.

8. There shall be such staff of the Court who shall be officers in judicial service and who shall be under the general supervision of the Registrar of the Court and Judicial Service Commission.



Sittings of the Court.

9.(1) The Court may sit on such occasion and at such places as the business of the Court may demand or as the Chief Justice may from time to time determine.

(2) For the purpose of carrying out of its functions under this Act, the Court shall be properly constituted if presided over by the presiding judge and two assessors.

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(3) At the conclusion of the proceedings before the Court, the presiding judge shall seek and record the opinion of each of the assessors present at such conclusion.

(4) The presiding judge shall not be bound by the opinions of the assessors but in the event of disagreement with the opinion of any of them the Judge shall record the opinion of that assessor and the reasons for his or her disagreement.

(5) No proceeding shall be invalid by reason only of an irregularity in the selection or appointment of any assessor.

(6) The court may invite any person as a friend of the court.

PART III INSTITUTION OF SUITS

Institution of the proceedings.

10.(1) Unless otherwise provided by this Act or any other written law, proceedings may be instituted by plaint or by originating summons and paying court fees provided in schedule 1 to this Act.:

(2) Notwithstanding the generality of subsection (1), the following proceedings may be instituted by way of originating summons: -

- (a) those in which the sole or principal question at issue deals with or is likely to deal with construction of any deed, contract or other document, or some other questions of law; or
- (b) those in which there is no likelihood of any substantial dispute of fact, unless the plaintiff intends in those proceedings to apply for judgment under Order XVI of the Decree or for any other reason he considers the proceedings to be more appropriate to be instituted by a plaint.

Register of cases.

11.(1) The Court shall cause to be maintained a register to be known as the Register of Commercial Cases in which particulars of cases as may be admitted by the Registrar to be instituted in the Court shall be entered.



(2) Any particular of cases entered in the Register shall be numbered chronologically in each year according to the order in which its records are entered.

Assignment of suits.

12. The Judge in Charge of the Court or any other Judge acting in that capacity shall, unless the circumstances do not permit of which shall be recorded, within a maximum of five working days after the institution of the suit, cause it to be manually or electrically assigned to a specific Judge.

PART IV PRE- TRIAL SCHEDULING AND CONFERENCE

Power to make orders and directions.

13.(1) Notwithstanding anything in this Act, the Court shall within fifteen working days from the date of completion of pleadings, on its own motion direct any part or parties to proceedings to appear before it, in order that the court may make such order or give such direction in relation to any interim applications which parties have filed or intend to file as it considers fit, for the just, expeditious and economical disposal of the suit.

(2) Where any party fails to comply any order or direction given by the court under subsection(1), the court may make such orders as it considers fit.

(3) Any order or direction given or made against any party who does not appear before the court when directed to do so under subsection (1) may be set aside or varied by the court on such terms as it considers just.

Pre-trial conference.

14.(1) The Court may, at any time before a case is tried, direct parties to attend a pre-trial conference relating to matters arising in the suit or proceedings.

(2) The Court may, at the pre-trial conference consider any matter including the possibility of settlement of all or any of the issues in the suit or proceedings and require the parties to furnish to the Court with any such information as it considers fit, and may also give all such directions as it appears to be necessary or desirable for securing the just, expeditious and economical disposal of the suit or proceedings.

(3) The Court, having made directions under this section or section 24 of this Act may, on its own motion or upon the application by any party, if any party defaults in complying with any such directions, dismiss such suit or proceedings or strike out the defence or counter-claim or enter judgment or make such order as it considers fit.

(4) At any time during the pre-trial conference where the parties are agreeable to a settlement of some or all of the matters in dispute in the suit or proceedings, the Court may enter judgment in the suit or proceedings or make such order to give effect to the settlement.



Notification of pre-trial.

15. All parties shall be informed of the date and time appointed for the holding of the pre-trial conference in their presence or by way of a notice in Form No. 1 prescribed in the Schedule 2 to this Act, and each party shall comply with any directions given viva voce or in such notice as the case may be.

Failure to appear by one or more parties.

16.(1) If at the time appointed for the pre-trial conference, one or more of the parties fails to attend without reasonable cause, the Court may dismiss the suit or proceedings or strike out the defence or counterclaim or enter judgment or make such other order as it considers fit.

(2) An order made by the Court in the absence of a party concerned or affected by the order may be set aside by the Court, on the application of that party within 14 days of the order, on such terms as it considers just.

(3) Without prejudice to the preceding sub sections of this section, where one or more of the parties to the suit or proceedings fails to attend the pre-trial conference without reasonable cause, the Court may, if it considers fit, adjourn the conference.

(4) Subsequent to the first adjournment if all parties fail to attend the pre-trial conference the court shall dismiss the suit.

Speed track of cases.

17.(1) All commercial cases shall proceed and be determined within ten months of commencement but shall not exceed twelve months:

Provided that, where-

- (a) there is likelihood to extend such time, the party shall make an application to the Court 30 days before lapse of twelve months and the Court may extend such time bearing in mind the complexity of the case.
- (b) a scheduling conference order is made, no departure from or amendment of such order shall be allowed unless the Court is satisfied that such departure or amendment is necessary in the interests of justice and the party in whose favour of whom such departure or amendment is made shall bear the costs of such departure or amendment, unless the Court directs otherwise.

(2) Notwithstanding the provision of subsection (1) of this section, the Court may in suo moto extend such a time depending on circumstances of the case.



PART V MEDIATION

Submission to mediation.	<p>18. If the suit is not settled or dismissed under the provisions of section 13, 14, 15 or 16 of this Act the Court shall direct the parties to submit their case to mediation and upon making such order; the Court shall appoint a mediator who shall set a date for mediation process to commence unless the parties have jointly filed a declaration to the effect that mediation is not worthwhile.</p>
Attendance to mediation.	<p>19. Where a third party is liable to satisfy all or part of a judgment in the suit or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the suit, the third party or his advocate may also attend the mediation session, unless the Court orders otherwise.</p>
Authority to settle matters.	<p>20.(1) A party to a mediation session shall have authority to settle any matter during the mediation session and report the same to the Court..</p> <p>(2) A party who requires the approval of another person before agreeing to a settlement shall, before the mediation process commence, arrange to have ready means of communication to that other person throughout the session, whether it takes place during or after regular business hours.</p>
Failure of party to attend mediation.	<p>21.(1) If it is not practicable to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the mediator seized of the case may-</p> <ul style="list-style-type: none">(a) dismiss the mediation process, if the non-complying party is a plaintiff, or strike out the defence, if the non complying party is a defendant;(b) order a party to pay costs; or(c) make any other order that is deemed just. <p>(2) This section shall not apply where the parties have complied with paragraphs (d) and (e) of section 23(2) of this Act.</p>
Restoration of the suit dismissed for non appearance to mediation.	<p>22.(1) Any party aggrieved by an order made by the mediator under section 29 of this Act may, within seven days from the date of the order, file in Court an application in a member to be prescribed under Rules to be made by Chief Justice under section 40(1) of this Act.</p>



(2) Upon establishing that fees and cost for restoration of mediation have been fully paid, the mediator shall set aside orders under section 32 of this Act and restore the suit or the defence as the case may be and issue a notice for mediation.

Role of mediator. **23.**(1) In conducting any mediation session under this Act:-

- (a) the parties shall strive to reduce cost and delay in litigation, and facilitate an early and fair resolution of disputes; and
- (b) the mediator shall facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable resolution.

(2) Without derogation from the generality of sub section (1), the mediator:-

- (a) shall, in an independent and impartial manner, do everything necessary to help the parties to resolve their dispute;
- (b) may, where necessary, conduct joint or separate meetings with the parties and may make recommendations for a settlement;
- (c) may, where services of an expert may be obtained at no cost or without expense, or where such services may be obtained at a cost, and if parties agree to pay such costs or expenses, obtain expert advice on a technical aspect of the dispute, which advice shall be given in an independent and impartial manner;
- (d) shall be guided by principles of objectivity, fairness and natural justice, and shall give consideration to, among other things:-
 - (i) the rights and obligations of the parties;
 - (ii) the usages of the trade concerned; and
 - (iii) the circumstances surrounding the disputes, including any previous business practices between the parties;
- (e) may, at any stage of the mediation proceedings and in a manner that the mediator considers appropriate, take into account the wishes of the parties, including any request by either of the parties that the mediator shall hear oral statements for a speedy settlement of the dispute; and
- (f) may, at any stage of the mediation proceedings, make proposals for the settlement of the dispute.



(3) A request for the services of an expert under this section may be made by the mediator with the consent of parties or by any party with the consent of the other party.

Confidentiality. **24.** All communications at a mediation session and the mediation notes and records of the mediator shall be deemed to be confidential and party to a mediation may not afterwards rely on the record thereof; statement made thereat; or any information obtained during the mediation as evidence in proceedings before Court or any other subsequent settlement initiative, except in relation to proceedings brought by either party to vitiate the settlement agreement on the grounds of fraud.

Duration of mediation. **25.** A mediation period shall not exceed a period of fourteen days from the date of the first session of mediation.

(2) However, the parties may ask for the extension of time, not exceeding 7 days.

End of mediation. **26.(1)** A mediation shall end when:-

- (a) the parties executed a settlement agreement;
- (b) the Mediator cancels a mediation session under section 31 for non-compliance on the part of any party;
- (c) the Mediator, after consultation with the parties, makes a declaration to the effect that further mediation is not possible or worthwhile;
- (d) the parties jointly agree that the mediation is to be terminated; or
- (e) a party makes a declaration to the mediator and the other party to the effect that the mediation is terminated; or
- (f) fourteen days expires from the date of the first session of mediation.

(2) A declaration under sub-section (1) of this section, may be made in writing or orally, but where a declaration is made orally, the mediator shall record it in writing.

Failure to reach settlement by mediation. **27.** Where upon the conclusion of mediation no settlement agreement is reached, the action shall revert to the trial Judge who shall continue with trial proceedings from the point when and at which the suit was referred for mediation

Assessors. **28.(1)** The trial of suit in the Court shall be with the aid of assessors who shall not be less than two and generally knowledgeable on the field concerning the suit, and shall be selected from a list submitted to the Court by the Commercial Court Users' Committee.



(2) The Chief Justice shall, upon recommendation of the Commercial Court Users Committee and by notice in the Gazette determine the remuneration or compensation to be paid to the assessor for service rendered.

Evidence by affidavit in suit commenced by originating summons.

29.(1) In any cause or matter commenced by originating summons and on any application made by chamber summons, evidence shall be given by affidavit unless the Court otherwise directs.

(2) The Court may, on the application of any party, order the attendance for cross-examination of the deponent of any such affidavit.

(3) Where an order has been made under sub section (2) of this section, and the deponent in question does not attend, his/her affidavit shall not be used as evidence unless the court is satisfied that there are exceptional reasons for failure to appear.

(4) Where the Court admits an affidavit of a person who has failed to appear for cross examination, lesser weight shall be attached to such affidavit.

Language of the court.

30. The language of the Court shall either be Kiswahili or English, provided that all proceedings before the Court shall be recorded in English.

Evidence by video.

31. (1) On an application by a party, the Court may allow a witness to give evidence without being present in the courtroom, through a video clips at the cost of the applicant.

(2) Where a witness is allowed to give evidence under the terms of subsection (1) the other party shall be afforded opportunity to cross examine him or her using the same means.

Recording of evidence.

32.(1) An official record shall be made of every hearing and the official record of hearing shall consist of the following:

- (a) in a hearing where an audio recording system approved and managed by the Court or any other person appointed by the Court is used, the audio recording; and
- (b) in a hearing where an audio recording system is not used, the notes of hearing recorded in such manner as the Court may determine.

(2) Any party may, in writing, request for a copy or a transcript of the official record of hearing upon payment of prescribed fees.



(3) A request for a copy of an official record of hearing shall be made in writing through Kiswahili and English:

Provided that the grant of such request shall be subject to approval of the Court if made by a person other than the parties to the suit.

Prohibition of unautho-rized audio and video recording.

33.(1) No person shall make or publish any audio or video recording of any hearing without the approval of the Court.

(2) A person who contravenes sub section (1) of this section commits an offence and shall upon conviction be liable to a fine of not less than three million shillings or imprisonment for a term not exceeding six months, and the Court may order confiscation of equipment used for such recordings or destruction of the recorded audio or video.

(3) Procedure to be applied for convicting a culprit under this section shall be the same to that of the contempt of court.

Duration for record.

34. Every official record of hearing shall be kept for a period of ten years from the date of final determination or if an appeal is preferred for five years from the determination of the appeal.

Judgment and decree

35.(1) At the conclusion of a hearing a judgment or a ruling shall be delivered orally or in writing within a period of sixty (60) days in case of a judgment or thirty days (30) in case of a ruling.

(2) Where the Judge fails to comply with the provisions of sub section 1 of this section the Judge shall state the reason for such failure in delivering the judgment or in the ruling.

(3) Every judgment shall contain a decree embodied in it as an order of the Court duly enforceable by the parties to the suit or any other party as the case may be.

Summary judgment.

36. Notwithstanding the provision of Order XXIX of the Decree, the Court may give summary judgment against a party on the whole or any part of a claim or on a particular issue if it satisfies itself that-

- (a) the plaintiff has no real chance of succeeding on the claim or issue; or
- (b) the defendant has no real chance of successfully defending the claim or issue; and
- (c) there is no other reason why the case or issue should not be disposed of at a trial.



PART VI MISCELLANEOUS PROVISIONS

Deputy Registrar. **37.** Deputy Registrar shall be appointed by the Chief Justice after recommendation by the Judicial Service Commission.

Powers of Deputy Registrar. **38.** In addition to Registrar's powers provided under Order LI of the Decree, the Deputy Registrar of the Court may, in proceedings before the Commercial Court, conduct mediation under Part IV of this Act.

Consequences of a defective affidavit. **39.** Where the Deputy Registrar is of the opinion that an affidavit in support of an application or a counter affidavit contradicts Order XXII of the Decree, he/she may reject the application or the counter affidavit and notify the relevant party or parties thereof:

Provided that the affidavit shall not be deemed defective by the Deputy Registrar unless-

- (a) it is not signed by the deponent;
- (b) it is not completed and signed by the person before whom the affidavit was sworn or affirmed;
- (c) It does not contain the full name, address and qualification of the person before whom it was sworn or affirmed; or
- (d) It does not contain a declaration or verification or contains a defective declaration or verification.

Powers of Chief Justice to make Rules of the Court. **40.(1)** The Chief Justice in consultation with the Commercial Court users Committee, shall have power to make rules for:-

- (a) reviewing court fees;
- (b) reviewing pecuniary jurisdiction of the Court,
- (c) qualification of mediators other than Judges and the Deputy Registrar,
- (d) Remunerations of assessors and mediators other than Judges and the Deputy Registrar; and



- (e) Any other direction for the speeding of procedures and filling any gaps in the Court practices.

(2) The Chief Justice may, after consultation with the Court Users Committee by a notice published in the Gazette appoint a panel of Mediators to take part in mediation process; Court Brokers Services.

Power of
Minister to make
Regulations.

41. The Minister may by Order published in the Gazette make regulations or the better carrying out the provisions of this Act.

SCHEDULE I

COURT FEES

(made under section 10)

1. These fees shall only apply in respect of suits and application filed in the Commercial Court.
2. For every subject matter or amount claimed whose value is up to TSH.200,000,000/=, 1% of the value shall be payable as Court fees.
3. Where the value or amount claimed exceeds Tsh. 200,000,000, 0.5% of that excess shall be payable in addition to the 1% payable under item 2 above.
4. Fee to be payable for unreasonable adjournment of cases is Tsh. 150,000/=.
5. Fee for filing a written statement of defence is Tsh. 10,000/= . Provided that, where a counter claim is raised in a written Statement of defence, fee payable shall be 1% of the value of claim.
6. Fee for filing attachment is Tsh. 5,000/= per attachment.
7. Fee for any application under the Act, is Tsh. 20,000/=



SCHEDULE II

FORM NO.1

(Made Under section 15)

Notification of pre-trial Conference

THE REVOLUTIONARY GOVERNMENT OF ZANZIBAR

IN THE COMMERCIAL COURT FOR ZANZIBAR

AT

COMMERCIAL CASE NO. OF 20.....

..... PLAINTIFF

AND

..... DEFENDANT

NOTICE OF PRE-TRIAL CONFERENCE

(Section 15)

To.....

.....

Take notice that you are required to attend before the Hon. Judgeor Registrar.....on.....day of.....20..... at.....forenoon/afternoon for a pre-trial conference.

Please Take note further that in the event that a plaintiff and, if represented, the plaintiff's advocate do not appear at the Pretrial Conference, the Hon. Judge or Registrar may **dismiss the suit or proceedings**. In the event that a defendant and, if represented, the defendant's advocate, do not appear at the Pre-trial conference, the Judge may **strike out the defence or counterclaim or enter judgment or make such other order as the Judge considers fit**.

Given under my under hand and the seal of this court on the day of20....

.....

Judge

PASSED by the House of Representatives on, 11th, April, 2013

YAHYA KHAMIS HAMAD
CLERK OF THE HOUSE OF REPRESENTATIVES
ZANZIBAR