

CHAPTER 11

THE FOREIGN TRIBUNALS EVIDENCE

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CHAPTER 11**THE FOREIGN TRIBUNALS EVIDENCE ACT**

Commencement: 16 October, 1964

An Act to provide for the taking of evidence within or without Uganda in relation to proceedings pending before courts within or without Uganda and to provide for related matters.

PART I—EVIDENCE BY COMMISSION, ETC.**1. Nomination of examiner in civil proceedings; admissibility of examination**

(1) Where in any civil proceedings in any court of competent jurisdiction an order for the examination of any witness or person has been made and a commission, mandamus, order or request for the examination of the witness or person addressed to any court of competent jurisdiction beyond the jurisdiction of the court ordering the examination, that court or the Chief Justice may nominate some fit person to take the examination.

(2) Any deposition or examination taken under subsection (1) by or before an examiner so nominated shall be admissible in evidence to the same extent as if it had been taken by or before the court ordering the examination.

2. Nomination of examiner in criminal proceedings; admissibility of examination

(1) Where in any criminal proceedings a mandamus or order for the examination of any witness or person is addressed to a court of competent jurisdiction beyond the jurisdiction of the court ordering the examination, that court or the Chief Justice may nominate any judge or magistrate or other judicial officer within the jurisdiction of that court to take the examination of that witness or person.

(2) Any deposition or examination taken under subsection (1) shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge to whom the mandamus or order was addressed.

3. Oath or affirmation of witness

(1) Whenever in pursuance of section 1 or 2 any witness or person is to be examined in a place beyond the jurisdiction of the court ordering the examination, the witness or person may be examined on oath, affirmation or otherwise according to the law in force in the place where the examination is taken.

(2) Any deposition or examination taken under subsection (1) shall be effectual for all purposes as if the witness or person had been examined on oath before a person duly authorised to administer an oath in the court ordering the examination.

PART II—PROOF OF DOCUMENTS, *ETC.*

4. Proof of Commonwealth and foreign acts of State, judgments, *etc.*

- (1) Subject to this section—
- (a) all proclamations, treaties and other acts of State of a Commonwealth country or a foreign State;
 - (b) all judgments, decrees, orders and other judicial proceedings of any court of competent jurisdiction in a Commonwealth country or a foreign State; or
 - (c) all affidavits, pleadings and other legal documents filed or deposited in any such court,

may be proved in any court in Uganda or before any person having by law or by consent of parties authority to hear, receive and examine evidence, either by examined copies or by copies duly authenticated.

(2) A document mentioned in subsection (1) sought to be proved, shall be sealed or purport to be sealed

- (a) with the seal of the Commonwealth country or foreign State to which the original document belongs, in the case of an authenticated copy admissible in evidence;
- (b) with the seal of the court to which the original document belongs, or where there is no such seal, it shall be signed by the judge or one of the judges of the court, in the case of an authenticated copy of the judgment, decree, order or other judicial proceeding admissible in evidence.

(3) A document signed under subsection (2)(b) shall be supported by a statement in writing under the hand of the judge who signed the document stating that the court has no seal.

(4) A document which satisfies the provisions of this section shall be admitted in evidence in every case in which the original document could have been received in evidence without any proof of the seal where necessary or of the signature or the truth of the statement attached thereto or the judicial character of the person appearing to have made the signature or statement.

PART III—EXAMINATION OF WITNESSES, *ETC.*

5. Examination of witnesses in matters before foreign tribunals

(1) Whenever, upon an application being made for this purpose, it appears to a court or judge having authority under this Act that any court or tribunal of competent jurisdiction in a Commonwealth country or foreign State before which any civil or commercial matter is pending is desirous of obtaining the testimony, in relation to such matter, of any witness within the jurisdiction of the court in Uganda or of the judge in Uganda, the court or judge may order the examination, upon oath or affirmation, upon interrogatories or otherwise before any person named in the order, of such witness.

(2) The court or judge may by the same or subsequent order command the attendance of any person named in the order for the purpose of being examined or the production of any document to be mentioned in the order.

(3) An order made under subsection (2) may give such directions as to the time, place and manner of the examination and all other matters connected with the examination as may appear reasonable and just, and any such order may be enforced in like manner as an order made by the court or judge in a cause pending in the court or before the judge.

6. Certificate of diplomatic agent

(1) A certificate under the hand of a diplomatic representative of a Commonwealth country or foreign State that any matter in relation to which

an application is made under this Act is a civil or commercial matter pending before a court or tribunal in the country of which he or she is the diplomatic representative and that such court or tribunal is desirous of obtaining the testimony of the witness to whom the application relates shall be evidence of the matters so certified.

(2) Where no certificate is produced under subsection (1), other evidence to that effect shall be admissible.

7. Examination on oath

A person authorised to take the examination of witnesses by order made in pursuance of this Act may take all such examinations upon the oath or affirmation of the witness to be administered by the person so authorised.

8. Expenses of witness

Every person whose attendance is required under this Act shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

9. Refusal to answer questions, etc.

(1) A person examined under any order made under this Act shall have the like right to refuse to answer questions tending to incriminate himself or herself and other questions which a witness in any cause pending in the court by which or by a judge of which or before the judge by whom the order for examination was made would be entitled to.

(2) Any person who refuses to answer a question under subsection (1) shall not be compelled to produce under any order made under this Act any document that he or she would not be compellable to produce at a trial of such a cause.

10. Courts and judges having authority under this Act

(1) The High Court of Uganda and a court over which presides a magistrate or a magistrate grade I and any judge or magistrate of any such court shall respectively be courts or judges having authority under this Act.

(2) For the purposes of this Act, except as the context otherwise requires, “judge” includes a chief magistrate and a magistrate grade I.

11. Persons giving false evidence

Notwithstanding any other written law, every person examined as a witness under this Act, who upon that examination wilfully gives any false evidence shall be deemed and taken to commit perjury.

PART IV LAW ASCERTAINMENT

12. Ascertainment of law outside Uganda

(1) Notwithstanding section 43 of the Evidence Act, whenever in any action pending in a court of competent jurisdiction in Uganda it appears to the court that it is necessary or expedient, for the proper disposal of the action before it, to ascertain the law applicable to the facts of the case as administered in a Commonwealth country or a foreign State on any point on which the law of the Commonwealth country or foreign State is different from the law of Uganda, it shall be competent for the court in which the action is pending to direct a case to be prepared setting forth the facts—

- (a) as these may be ascertained by the practice and procedure of the court;
- (b) as may be agreed upon by the parties; or
- (c) by such person as may be appointed by the court for that purpose in the event of the parties not agreeing.

(2) Upon the case being approved of by the court or a judge of the court under subsection (1)—

- (a) the parties to the case shall settle the question of law arising out of the case on which they desire to have the opinion of another court; and
- (b) the judge shall accordingly make an order remitting the question of law as settled under paragraph (a) together with the case to the court in the Commonwealth country or foreign State whose opinion is desired upon the law administered by the court as applicable to the facts set forth in the case and desiring that court to pronounce its opinion on the question submitted to it under this Act.

(3) It shall be competent for any of the parties to any such action to present a petition to the court whose opinion is to be obtained praying that that court may hear the parties or their counsel and pronounce its opinion on the petition under the provisions of this Act or pronounce its opinion without hearing the parties or their counsel.

(4) The court to which a petition is presented shall, if it thinks fit, appoint an early day for hearing the parties to the petition or their counsel and shall thereafter pronounce its opinion upon the questions of law as administered by it which are submitted to it by the court in Uganda.

(5) The court to which the petition is presented shall be entitled to take such further procedure upon the petition as it deems fit.

13. Certified copies of opinion

(1) Whenever an opinion is pronounced under section 12, a copy of the opinion certified by an officer of such court shall be given to each of the parties to the action by whom the opinion shall be required.

(2) The copy of an opinion so certified shall be deemed and held to contain a correct record of the opinion.

14. Application of opinion

(1) It shall be competent for any of the parties to the action, after having obtained a certified copy of the opinion, to lodge that copy with an officer of the court in which the action is pending, together with a notice of motion setting forth that the party will, on a certain day named in the notice, move the court to apply the opinion contained in the certified copy of the opinion to the facts set forth in the case.

(2) The court shall thereupon apply that opinion to the facts in the same manner as if the opinion had been pronounced by the court itself upon a case reserved for the opinion of the court.

PART V—MISCELLANEOUS

15. Rules

The Minister may, by statutory instrument, in consultation with the Chief Justice, make rules and orders as shall be necessary or proper for giving effect to the provisions of this Act and regulating procedure under it.

History: Cap. 45 (Revised Edition, 1964); Cap. 10 (Revised Edition, 2000)

Cross Reference

Evidence Act, Cap. 8
