

Tanzania

## Witness Summonses (Reciprocal Enforcement) Act Chapter 67

Legislation as at 31 July 2002

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## Tanzania

# Witness Summonses (Reciprocal Enforcement) Act Chapter 67

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*[This is the version of this document at 31 July 2002.]*

*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Act No. 4 of 1969]*

**An Act to provide for the enforcement of witness summonses issued by courts of certain countries and for related matters.**

### 1. Short title

This Act may be cited as the Witness Summonses (Reciprocal Enforcement) Act, and applies to Mainland Tanzania as well as Tanzania Zanzibar.

### 2. Interpretation

(1) In this Act unless the context otherwise requires—

"**court**" means a court of law constituted or established by or under the law of a country to which this Act applies;

"**magistrate**" means a resident magistrate;

"**Minister**" means the Minister for the time being responsible for legal affairs;

"**summons**" includes any subpoena or other process for requiring the attendance of any person to give evidence before a court or to produce any document before a court.

(2) Where a power is conferred or a duty is imposed by this Act upon a magistrate endorsing a summons in accordance with section 4, such power may be exercised and such duty may be performed by any other magistrate having jurisdiction over the area of jurisdiction of the magistrate endorsing the summons.

### 3. Application of Act

Where the Minister is satisfied that reciprocal provision has been or will be made by or under the law of any country for the enforcement of a summons issued by any court in the United Republic, the Minister may, by order published in the *Gazette*, declare that this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Act shall apply accordingly.

### 4. Backing of summonses

(1) Where a summons has been issued by a court in a country to which this Act applies, requiring the attendance before such court for the purpose of giving evidence or producing any document in proceedings of a criminal nature pending before such court by a person who is or is suspected in or

on the way to Tanzania, the court issuing the summons may forward the summons together with three copies thereof to the Attorney-General.

- (2) On receipt of the documents referred to in subsection (1), the Attorney-General shall forward the same to the Registrar of the High Court of the United Republic, or, if the person to whom the summons is addressed is or is suspected of being in Zanzibar, to the Registrar of the High Court of Zanzibar, together with a request to cause the summons to be served on the person to whom it is addressed and stating the possible whereabouts of such person.
- (3) On receipt of the summons under subsection (2), the Registrar shall forward the same together with the copies of the summons to the magistrate within whose area of jurisdiction the person to whom the summons is addressed is or is suspected of being, present.
- (4) Where a magistrate receives a summons under this section he may, if he is satisfied—
  - (a) that the summons was issued by a person having lawful authority to issue it;
  - (b) that adequate provision has been made or will be made for the payment to the person whom the summons is addressed of expenses for his travel to the court issuing the summons and for his return to his ordinary place of residence in Tanzania or to the place where the summons is served upon him under the provisions of this Act and for his subsistence during the journeys and for the period of his stay at the place where the court issuing the summons is situate; and
  - (c) that the provisions of this Act have been complied with,endorse such summons and all the copies of the summons.
- (5) An endorsement of a summons by a magistrate under subsection (4) shall be sufficient authority for the service of the summons in the manner prescribed in section 5.

## 5. Service of summons

- (1) A summons endorsed by a magistrate in accordance with the provisions of section 4, shall be served by a police officer or other public officer or by such other person as the magistrate endorsing the summons may direct, and shall be served personally on the person to whom it is addressed by delivering or tendering to that person a copy of the summons.
- (2) The person upon whom the summons is served in accordance with subsection (1) shall, if so required by the person serving the summons, sign on the reverse of a copy of the summons and the person serving the summons shall return such copy to the magistrate who endorsed the same, who shall forward the copy to the Registrar.
- (3) Where the person summoned is a public officer, the magistrate endorsing the summons may send the summons together with a copy, to the head of the department or division in which the person to whom the summons is addressed is serving, and such head of department or division shall, upon the receipt of the summons, cause the summons to be served in accordance with the provisions of this section and shall return a copy of the summons to the magistrate endorsing the same after certifying on the reverse of such copy the date on which and the manner in which the summons was served, and the magistrate shall forward the copy of the summons to the Registrar.
- (4) Every person who serves a summons either in accordance with subsection (2) or in accordance with subsection (3), shall make an affidavit sworn or affirmed before a Commissioner for Oaths specifying the date on which and the manner in which the summons was served and such affidavit, shall be admissible in evidence and the statements made in the affidavit shall be deemed to be correct unless and until the contrary is proved.
- (5) Where a summons has been served in accordance with this section the Registrar shall send to the court issuing the summons the copy of the summons upon which the person served has signed or the copy certified in accordance with subsection (3) together with a copy of the affidavit made under subsection (4).

## 6. Where witness cannot be found

Where the magistrate who has endorsed a summons is satisfied that the witness cannot be found within the area of his jurisdiction the magistrate shall return the summons to the Registrar with a written report to the effect that the person to whom the summons is addressed cannot be found and containing such other relevant information as he may think fit, and upon receipt of the summons and the report, the Registrar shall return the summons to the court issuing the same or, if the Registrar has reason to believe that the person to whom the summons is addressed may be found in some other area of Tanzania, send the summons to the magistrate having jurisdiction over that area.

## 7. Court may make order excusing attendance

- (1) The person upon whom a summons is served in accordance with the provisions of this Act may apply to the magistrate who endorsed the summons for an order excusing such person compliance with the summons.
- (2) Every application under subsection (1) shall be by chamber summons supported by an affidavit or affidavits specifying the grounds upon which the order is sought.
- (3) Where an application is made under this section the magistrate may require the applicant to appear before him to be examined and the magistrate may examine any witness or witnesses whom the applicant may wish to call on his behalf.
- (4) Where an application is made under this section and the magistrate is satisfied that—
  - (a) no adequate provision has been made for the payment to the applicant of expenses for travelling to the court issuing the summons and for return to his ordinary place of residence within Tanzania or to the place within Tanzania where he was served with the summons and for his subsistence during the journeys and for the period of stay at the place where the court issuing the summons is situate; or
  - (b) such person is too ill to travel to the court issuing the summons or that he suffers from a physical or mental disability which would cause that person great hardship to travel to such court; or
  - (c) the summons was not served upon the person in time to enable him to travel to the court issuing the same so as to arrive there by the date specified in the summons; or
  - (d) having regard to all the circumstances it would be unreasonable to require such person to comply with the summons,the magistrate may by order excuse such person from complying with the summons.
- (5) Every order made under subsection (4) shall be in writing and contain reasons for the making of the order and shall be signed by the magistrate who shall send a certified copy to the Registrar and the Registrar shall forward a copy of such order to the court issuing the summons.
- (6) The provisions of Part III of the Magistrate's Courts Act <sup>1</sup>, relating to the powers of the High Court to revise any order made by a magistrate's court, shall apply to an order made under this section.

## 8. Minister may excuse attendance

- (1) Where the Minister is satisfied that it is desirable so to do, he may, at any time after the summons has been received by the Attorney-General in accordance with the provisions of subsection (1) of section 4, whether or not the summons has been served on the person named in the summons under the provisions of this Act, direct, by an order under his hand, that the person named in the summons shall be excused from complying with the summons.

<sup>1</sup>

- (2) Where an order under subsection (1) is made before the summons has been served on the person, no further step shall be taken to serve the summons.
- (3) The Attorney-General shall forward a copy of an order made under this section to the court issuing the summons.
- (4) An order under subsection (1) shall not be subject to review by any court.

## 9. Disobedience of summons

Any person who has been served with a summons under this Act and has not been excused from complying with it by an order made under section 7 or under section 8, shall, if he fails to obey the summons, be guilty of an offence and be liable on conviction to a fine not exceeding five thousand shillings.

## 10. \*\*\*

*[Incorporated into s. 1]*