

2 October 2018



Change in law to reduce preliminary objections in Courts

- Appellate Jurisdiction Act amended to make just, expeditious, proportionate and affordable resolution of cases as overriding objective of the law
- Puts the nail on the coffin for preliminary objections that the Court has been plagued with
- Other laws amended include CPC, Land Disputes Courts Act, Magistrates' Court Act, National Sports Council Act and Statistics Act

The amendment of the Appellate Jurisdiction Act vide the Written Laws (Miscellaneous Amendments) (No 3) Act 2018 (Amendments Act 2018) will be seen as a victory for those advocating fewer procedural hurdles in Courts especially with the way preliminary objections were being raised and upheld by Courts. This amendment also shows the seriousness with which the Court of Appeal under the leadership of Chief Justice Prof Ibrahim Juma intends to get to substantive merit hearings to dispense justice.

The Amendments Act came into force on 25 September 2018.

The Amendments Act 2018 inserts section 3A and 3B that state the following:

3A.(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by this Act. (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection(1).

3B. (1) For the purpose of furthering the overriding objective specified in section 3A, the Court shall handle all matters presented before it with a view to attaining the following- (a) Just determination of the proceedings; (b) efficient use of the available judicial and administrative resources including the use of suitable technology; and (c) timely disposal of the proceedings in the Court at a cost affordable by the respective parties.

(2) A party to proceedings before the court or an advocate for such a party shall have the duty to assist the Court to further the overriding objective and to that effect, participate in the processes of the Court and comply with directions and orders of the Court.

(3) The Chief Justice may make rules for better carrying out the provisions of sections 3A and 3B."

The new provisions also require both the party's advocates to assist the Court to further the overriding objectives, meaning that frivolous and easily curable issues that do not largely affect the parties or the Court in reaching a just decision will not be entertained. The Chief Justice is also empowered to make rules to further the objectives. It is to be seen what these rules will state and how soon they will be published.

For further information on legal updates please contact:

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About FB Attorneys

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We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 2 by Chambers and Partners General Business Law.

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The Amendments Act has similarly amended the Civil Procedure Code where the overriding objective is a replica of those of the Appellate Jurisdiction Act (supra) where just, expeditious, proportionate and affordable resolution of cases is the main focus.

Amendment to Statistics Act

What has become quite controversial in the media on the amendment to the Statistics Act, the Amendments Act 2018 changes the definition of official statistics to now mean statistics produced, validated, compiled and disseminated by or under the authority of the Bureau. The Director General of the National Bureau of Statistics has now also been replaced by the designation Statistician General with a new definition introduced of statistical information to mean any organized quantitative or qualitative information obtained from different sources through censuses, surveys or administrative data.

Section 18 of the Statistics Act is repealed and now replaced with the following stricter provision that requires approval of the Statistician General and will likely lead to a reduction of the already few statistics being produced:

(1) Without prejudice to section 20, the Statistician General shall have powers to commence, vary or discontinue the collection of official statistics conducted through surveys or censuses. (2) A person, Government institution or agency shall not authorise the commencement of the collection of official statistics through surveys or censuses except with the approval of the Statistician General."

Section 24 of the Statistics Act has now the following more stricter provision inserted to it:

24A(l) Any person who is authorised by the Bureau to process any official statistics, shall before publishing or communicating such information to the public, obtain an authorisation from the Bureau. (2) A person who has different findings from statistics disseminated by the bureau shall, prior to communicating such findings to the public, consult the bureau.

24B(l) A person shall not disseminate or otherwise communicate to the public any statistical information which is intended to invalidate, distort or discredit official statistics. (2) A person shall not disseminate or communicate to the public any statistical information without the approval of the Statistician General."

The amendments to the Statistics Act also now imposes a penalty of TZS 10M or minimum 3 years or to both to any person who publishes or causes to be published or communicates any official statistic or statistical information contrary to this Act.

Generally the Amendments to the Statistics Act indicate that approval is required from the Statistician General for the commencement, publication and communication of official statistics, or not to disseminate any statistical information that may invalidate, distort or discredit officials statistics, giving the Statistician General wide powers to discontinue collection of official statistics that are being conducted through surveys or censuses, or stop from publication statistical information.

It is to be seen how the Statistician General will react to statistical information that has no similar official statistic produced by the National Bureau of Statistics. The amendments may also give rise to a constitutional challenge on curtailing freedom of expression and speech.

To read the Written Laws (Miscellaneous Amendments) (No 3) Act 2018 please click the link below:

<https://fbattorneys.co.tz/wp-content/uploads/2018/10/Amendment-3.pdf>

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