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Bill No. 19 of 2006 Magistrates' Courts (Amendment) Bill

2006

THE MAGISTRATES' COURTS (AMENDMENT) BILL, 2006.

MEMORANDUM.

1. The object of this Bill is, inter alia, to amend section 75 (2) (d) (Bail) of the Magistrates' Courts Act (Cap 16) to provide that all offences under the Firearms Act, (Cap 299) punishable by more than ten years imprisonment are bailable only by the High Court.
2. At present paragraph (d) of section 75 (2) only applies to offences under the Firearms Act, punishable by a sentence of imprisonment not less than ten years. The change is being made to make the provision only apply to the more serious offences.
3. The Bill further seeks to amend the Magistrates' Courts Act as follows—
 - (a) to formally abolish Magistrate Grade III and delete their jurisdiction;
 - (b) to amend section 40 of the Act to require the court when trying the offence of defilement where the victim of the offence is a child below twelve years of age to consider the need in the interest of the child, to exercise its power under article 28(2) of the Constitution to exclude the press and the public from the proceedings before the court for reasons of morality;
 - (c) to amend further section 75(2) of the Act to bring the section which relates to bail in line with the Anti-Terrorism Act, 2002 and to recognise that Chief Magistrates may now grant bail in cases of defilement;

- (d) to amend section 123 (Non-appearance of parties after adjournment) of the Act to bring it into line with article 28 (5) of the Constitution relating to the trial of an accused person in his or her absence;
- (e) to amend section 162 (sentencing power of a magistrate) of the Act to update the fines in the jurisdiction of a Magistrate Grade I in relation to the imprisonment of ten years prescribed in the section;
- (f) to repeal section 179 (Corporal punishment) of the Act relating to corporal punishment in order to comply with article 24 of the Constitution in pursuance of which the Constitutional Court has decided that corporal punishment is inhuman treatment and unconstitutional; and
- (g) to amend section 207 (civil jurisdiction of magistrates) of the Act to increase the jurisdiction of Chief magistrates from five million shillings to fifty million shillings and that of Magistrate Grade I from two million shillings to twenty million shillings, and thus to enhance the civil jurisdiction of the Chief Magistrate and the Magistrate Grade I. The idea is to decongest the High Court and to empower Magistrates to handle cases which they can adequately deal with.

4. The Bill further provides for transitional provisions in relation to pending cases affected by the enhanced jurisdiction in civil matters of the Chief Magistrate and Magistrate Grade I.

5. Finally, references in the Bill to Acts and sections of Acts in existence before the year 2001 which are now contained in the Revised Edition of the Laws of Uganda 2000 are now adapted to read as references to the corresponding sections and chapters as contained in the Revised Edition.

HON. (DR.) E. KHIDDU-MAKUBUYA (MP),
*Attorney General and
Minister of Justice and Constitutional Affairs.*

A Bill for an Act

ENTITLED

THE MAGISTRATES' COURTS (AMENDMENT) ACT, 2006.

An Act to amend the Magistrates' Courts Act.

BE IT ENACTED by Parliament as follows:

1. Abolition of Grade III Magistrate

The post of Magistrate Grade III is abolished and accordingly, section 4 of the Magistrates' Courts Act, in this Act referred to as the principal Act is amended in subsection (2) by the repeal of paragraph (d).

2. Section 40 of the principal Act amended

Section 40 of the principal Act is amended by inserting immediately after subsection (1) the following new subsection—

“(1a) In particular, the court shall, when conducting a trial of the offence of defilement, where the victim of the offence is a child below the age of twelve years, consider the need, in the interest of the child, to exercise its power under article 28(2) of the Constitution, to exclude the press and the public from the proceedings before the court for reasons of morality”.

3. Amendment of section 75 (2) of principal Act

Section 75 (2) of the principal Act is amended in subsection (2) as follows---

(a) by substituting for paragraph (b) the following new paragraph—

“(b) the offence of terrorism and any other offence punishable by more than ten years imprisonment under the Anti-Terrorism Act, 2002”;

(b) by substituting for paragraph (d) the following new paragraph—

“(d) offences under the Firearms Act punishable by more than ten years imprisonment”;

(c) by repealing paragraph (e);

(d) by substituting for paragraph (f) the following new paragraph—

“(f) rape contrary to section 123 of the Penal Code Act and aggravated defilement under section 129 of that Act”.

4. Replacement of section 123 of the principal Act

For section 123 of the principal Act there is substituted the following new section---

“Trial of accused in his or her absence

123. (1) Except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person so conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the court makes an order for the person to be removed and the trial to proceed in the absence of that person.

(2) Where the court decides to try the accused person in his or her absence under subsection (1) of this section, it shall make such provision as in its discretion appears sufficient for informing the accused of what has passed at the trial and for making his or her defence”.

5. Amendment of section 161 of the principal Act

Section 161 of the principal Act is amended by repealing paragraph (d) of subsection (1).

6. Amendment of section 162 of the principal Act

Section 162 of the principal Act is amended as follows—

(a) in paragraph (b) of subsection (1), by substituting for the words “one million shillings”, the words “four million eight hundred thousand shillings”;

(b) by repealing paragraph (d) of subsection (1);

(c) by repealing subsections (3) and (4).

7. Amendment of section 164 of the principal Act

Section 164 of the principal Act is amended by substituting for “Grade I, II or III the words “Grade I or II”.

8. Repeal of section 179 of the principal Act

The principal Act is amended by repealing section 179.

9. Amendment of section 182 of the principal Act

Section 182 of the principal Act is amended in subsection (4), by the repeal of the words "other than a Magistrate Grade III".

10. Amendment of section 204 of the principal Act

Section 204 of the principal Act is amended as follows—

- (a) in paragraph (b) of subsection (1), by the repeal of the words "or Grade III";
- (b) in paragraph (b) of subsection (5), by the repeal of the words "or Grade III".

11. Amendment of section 207 of the principal Act

Section 207 of the principal Act is amended in subsection (1) as follows—

- (a) in paragraph (a), by substituting for "five million shillings" the words "fifty million shillings";
- (b) in paragraph (b) by substituting for "two million shillings" the words "twenty million shillings";
- (c) by repealing paragraph (d).

12. Repeal of Schedule 2 to the principal Act

Schedule 2 of the principal Act is repealed.

13. Disapplication of Schedules 1 and 3 of the principal Act to Magistrate Grade III

Schedules 1 and 3 to the principal Act shall cease to apply to Magistrate Grade III and therefore any reference in those Schedules to Magistrate Grade III is repealed.

14. Transitional provisions

(1) Where, by reason of the amendment made by section 11 of this Act to section 207 of the principal Act, any cases in respect of any causes or matters pending before the High Court at the commencement of this Act,

would have been triable by a court presided over by a Chief Magistrate if commenced after the coming into force of this Act, any such case shall be transferred to the appropriate court presided over by a Chief Magistrate and be heard by that court if the hearing of the case before the High Court has not commenced or if the High Court is satisfied that it is fair for such transfer to be made.

(2) Where, by reason of the amendment made by section 11 of this Act of section 207 of the principal Act, any cases in respect of any causes or matters pending before the High Court or a court presided over by a Chief Magistrate at the commencement of this Act would have been triable by a court presided over by a Magistrate Grade I if commenced after the coming into force of this Act, any such case shall be transferred to the appropriate court presided over by a Magistrate Grade I to be heard by that court if the High Court or the Chief Magistrate has not commenced hearing the case, or if the High Court or the Chief Magistrate as the case may be, is satisfied that it is fair for such a transfer to be made.

Cross References

Anti-Terrorism Act, 2002

Constitution of Uganda

Firearms Act, Cap. 299

Penal Code Act, Cap. 120.