

THE UNITED REPUBLIC OF TANZANIA



No. 35 OF 1966

I ASSENT,

Julius K. Nyerere
President

4TH AUGUST, 1966

An Act to amend the Criminal Procedure Code

[5TH AUGUST, 1966]

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the Criminal Procedure Code (Amendment) Act, 1966 and shall be read as one with the Criminal Procedure Code (hereinafter referred to as "the Code").

short title
and
construction

2. Sections 164, 165 and 166 of the Code are hereby repealed and replaced by the following new sections: -

Sections
164, 165
and 166
of the
code
repealed
and replaced

"Prosecutor
to give or
adduce
evidence
before
inquiry by
court as
to insanity
of accused

164.-(1) When in the course of a trial or preliminary inquiry the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence it shall, before inquiring into the fact of such unsoundness of mind and notwithstanding the fact that the accused may not have pleaded to the charge, call on the prosecution to give or adduce evidence in support of the charge.

(2) If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person it shall dismiss the charge and acquit the accused person and may then proceed to deal with him under the Mental Diseases Ordinance.

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(3) If at the close of the evidence in support of the charge it appears to the court that a case has been made out against the accused person it shall then proceed to inquire into the fact of the unsoundness of mind of the accused and for this purpose may order him to be detained in a mental

hospital for medical examination or, in a case where bail may be granted, may admit him to bail on sufficient security as to his personal safety and that of the public and on condition that he submits himself to medical examination or observation by a medical officer as may be directed by the court.

(4) The medical officer in charge of a mental hospital in which an accused person has been ordered to be detained or a medical officer to whom he has been ordered to submit himself for mental examination or observation pursuant to subsection (3) shall, within forty-two days of such detention or submission, prepare and transmit to the court ordering the detention or submission, a written report on the mental condition of the accused stating whether in his opinion the accused is of unsound mind and consequently incapable of making his defence.

(5) On the receipt by the court of the written report provided for by subsection (4) it shall resume its inquiry into the question of the unsoundness of mind of the accused, and may admit as evidence for this purpose any such written report purporting to be signed by the medical officer preparing the same unless it is proved that the medical officer purporting to sign the same did not in fact sign it.

(6) Where the court, having considered any written report admitted in evidence under subsection (5) and any other evidence that may be available to it regarding the state of mind of the accused, is of the opinion that the accused is of unsound mind and consequently incapable of making his defence it shall record a finding to that effect, postpone further proceedings in the case, order the accused to be detained in safe custody in such place and manner as it may think fit and transmit the court record or a certified copy thereof to the Minister.

(7) Upon consideration of the record the Minister may by order directed to the court, direct that the accused be detained as a criminal lunatic in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order. Any such order and warrant shall be sufficient authority for the detention of such accused person until released or otherwise dealt with in the manner provided for by section 165 or 166.

(8) Where the written report required by subsection (4) is to the effect that the accused is of sound mind and capable of making his defence, proceedings shall be resumed as provided for by section 166.

Procedure ..
when
accused
certified
as capable
of making
defence

165.-(1) Where an accused person detained in pursuance of a warrant issued under section 164, of section 265 is found by the medical officer in whose charge he is to have recovered his soundness of mind sufficiently to be capable of making his defence, the medical officer shall forthwith forward to the Director of Public Prosecutions 'a certificate to that effect stating therein also whether the accused would, but for the charge against him, be fit for unconditional discharge from detention.

(2) Upon receipt of the certificate provided for in subsection 265 whether it is the intention of the Republic to the court which issued the warrant under section 164 or section 265 whether it is the intention of the Republic to continue proceedings against the accused.

(3) Where the court is informed by the Director of Public Prosecutions that the Republic intends to continue proceedings against the accused, it shall thereupon order the removal of the person from the place where he is detained and shall cause him to be brought before it in the manner provided for by section 166.

(4) Where the court is informed by the Director of Public Prosecutions that the Republic does not intend to continue proceedings against the accused, the court shall

(a) in cases where the certificate provided for in subsection (1) states that the accused is fit for unconditional discharge forthwith make an order for his discharge;

(b) in all other cases record the fact that proceedings have been discontinued, discharge the accused of the charge, and forthwith proceed to deal with him under section 8 of the Mental Diseases Ordinance as a person deemed to have been brought before it under that Ordinance:

Provided that any discharge of the accused pursuant to this section shall not operate as, a bar to any subsequent proceedings against him on account of the same facts.

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Resumption
of trial or
inquiry

166.-(1) Whenever a written report under subsection (4) of section 164 or information under subsection (3.) of section 165 is received by the court, it shall, subject to subsection (4) resume the preliminary inquiry or trial and require the accused to appear or be brought before it.

(2) Where proceedings are resumed under subsection (1) the court shall in all cases where the proceedings are resumed by virtue of subsection (3) of section 165 proceed to hear the case *de novo*, and: in any other case it may in its discretion treat the case as part heard and may then, proceed to hear further evidence in the case.

(3) Any written given under subsection (4) of section 164 or certificate given under subsection (1) of section 165 may be given in evidence in any proceedings under this section without further proof unless it is proved that the medical officer purporting to sign it did not in fact sign it.

(4) Notwithstanding the receipt by the court of the written report issued under subsection (4) of section 164 or the production of the certificate issued under subsection (1) of section 165, it may, if still not satisfied that the accused is of sound mind and capable of making his defence record a finding to that effect and proceed to make a fresh order under subsection (6) of section 164."

Section 168
of the
Code
repealed
and
replaced

3. Section 168 of the Code is hereby repealed and replaced by the following new section: -

'Defence of
insanity at
trial

168.-(I) Where any act or omission is charged against any person as an offence and it is given in evidence at the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the court before which such person is tried that he did the act or made the omission charged, but was insane as aforesaid when he did or made the same, the court shall make a special finding to the effect that the accused did the act or made the omission charged but by reason of his insanity, as aforesaid, is not guilty of the offence.

(2) When a special finding pursuant to subsection (1), is made by the court it shall-

- (a) where the person against whom the special finding is made was charged with an offence, under the Penal Code involving physical violence or damage to property for which but for his insanity at the time of doing the act or making the omission he would on conviction be liable to sentence of death or to suffer imprisonment for a term not less than *seven* years, submit the record of proceedings or a certified copy thereof to the Minister and shall meanwhile order the person to be kept in custody as a criminal lunatic;
- (b) in any other case, in its discretion, either proceed to deal with the person under section 8 of the Mental Diseases Ordinance or discharge or otherwise deal with him, subject to such conditions as to his remaining under supervision in any place or by any person and to such other conditions for ensuring the safety and welfare of the said accused person and the public as the court shall think fit.

(3) The Minister on receipt of a record of proceedings submitted to him pursuant to paragraph (a) of subsection (2) may order such person to be detained as a criminal lunatic in a mental hospital, prison or other suitable place of custody.

(4) The Superintendent of a mental hospital, prison or other place in which any criminal lunatic is detained by an order of the Minister under subsection (3) shall make a report in writing to the Minister of the condition, history and circumstances of any such lunatic at the expiration of a period of three years from the date of the Minister's order and thereafter at the expiration of periods of two years from the date of the last report.

(5) On the consideration of any such report, the Minister may order that the criminal lunatic be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person and to such other conditions for ensuring the safety and welfare of the said criminal lunatic and the public, as the Minister shall think fit.

(6) Notwithstanding the provisions of subsections (4) and (5) of this section, any person or persons thereunto empowered by the Minister may at any time after a criminal lunatic has been detained report to the Minister on the condition, history and circumstances of any such criminal lunatic, and the Minister, on a consideration of any such report, may order that the criminal lunatic be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person and to such other conditions for ensuring the safety and welfare of the said criminal lunatic and the public as the Minister shall think fit.

(7) The Minister may, at any time, order that a criminal lunatic be transferred from a mental hospital to a prison or from any place in which he is detained or remains under supervision to either a prison or a mental hospital."

4. The Code is hereby amended by adding thereto immediately after section 219 the following new section: -

New section
219A added
to code

"Withdrawal
of public
prosecutor
from pre-
liminary
inquiry

219A. In any preliminary inquiry, a public prosecutor may, at any time before the accused person is either discharged under section 225 or committed for trial under section 226, withdraw from the inquiry, and upon such withdrawal the

accused person shall be discharged but such discharge shall not operate as a bar to subsequent proceedings against him on account of the same facts".

Passed in the National Assembly on the twenty-first day of July, 1966.


Msekwa
Clerk to the National Assembly