

Malawi

## Civil Procedure (Suits by or against the Government or Public Officers) Act

### Chapter 6:01

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Civil Procedure (Suits by or against the Government or Public Officers) Act  
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## Malawi

# Civil Procedure (Suits by or against the Government or Public Officers) Act

## Chapter 6:01

Commenced on 28 December 1946

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[37 of 1946; 31 of 1953; 12 of 1993; 17 of 1993; 19 of 1995; 11 of 2011; 23 of 2012; G.N. 22/1963; G.N. 137/1966; G.N. 166/1967]*

### An Act relating to civil suits by or against the government or public officers

#### 1. Short title

This Act may be cited as the Civil Procedure (Suits by or against the Government or Public Officers) Act.

#### 2. Claims against Government cognizable by competent court, whether claim in contract or tort

Any claim against the Government which would if such claim had arisen against a subject be the ground of an action in any competent court shall be cognizable by the said court whether such claim shall arise or have arisen out of any contract lawfully entered into on behalf of the Government or out of any wrong committed by any servant of the Government acting in his capacity and within the scope of his authority as such servant:

Provided that no claim shall lie against the Government by virtue of this section in respect of any wrong committed by a servant of the Government unless the wrong would, apart from this Act, have given rise to a claim against that servant or his estate:

Provided further that nothing herein contained shall be construed as affecting any law which limits the liability of the Government or any department thereof in respect of any act or omission of its servants, or which prescribes specified periods within which a claim shall be made in respect of any such liability or imposes conditions on the institution of any action.

#### 3. Suits by or against Government to be instituted by or against the Attorney General

- (1) Save as may otherwise expressly be provided by any Act, suits by or against the Government shall be instituted by or against the Attorney General. Such suits shall be instituted and tried in the same manner as suits to which the Government is not a party.
- (2) The Attorney General or other person authorized by the Attorney General to act for the Government in respect to any judicial proceedings shall be deemed to be the recognized agent by whom appearances, acts and applications may be made or done on behalf of the Government.
- (3) Claims by private persons against the Government

All documents which in a suit of the same nature between private parties would be required to be served on the defendant shall be delivered at the office of the Attorney General or other person authorized to act on behalf of the Government in respect of such judicial proceeding.

#### 4. Notice previous to suing

No suit shall be instituted against the Government, or against any public officer until the expiration of three months next after notice in writing has been, in the case of the Government, delivered to or left at the office of the Attorney General, and in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims.

*[19 of 1995]*

#### 5. Time within which suit may be brought against a public officer

- (1) No suit shall be instituted against a public officer in respect of any such act, neglect or default as aforesaid, unless such notice as aforesaid shall be so delivered or left within six months next after the act, neglect or default complained of, or in the case of a continuance of injury or damage, within three months next after the ceasing thereof:

Provided that if the suit be at the instance of any person for cause arising while such person was a convicted prisoner such notice may be delivered or left within six months after the discharge of such person from prison or, in the case of a continuance of injury or damage, within three months next after the ceasing thereof.

- (2) This section shall not affect any proceedings by any department of the Government against a local authority, or officer of a local authority.

#### 6. Exemption from arrest and personal appearance

In a suit instituted against a public officer in respect of any such act, neglect or default as aforesaid—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree; and
- (b) where the court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

#### 7. Applications where government undertakes defence

- (1) Where the Government undertakes the defence of a suit against a public officer, the Attorney General or other person appointed for that purpose by Government; upon being furnished with authority to appear and defend, shall apply to the court, and upon such application the court shall cause a note of his authority to be recorded.

- (2) Procedure where no application is made

Where no application is made by the Attorney General or other person appointed as aforesaid on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Defendant not liable to arrest before judgment

Provided that the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree.

#### 8. Execution of decree

When the decree is against the Government, or against a public officer in respect of such act, neglect or default as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified the court shall report the case for the orders of the

Government. Execution shall not be issued on any such decree unless it remains unsatisfied for a period of three months computed from the date of the report.

## **9. Costs**

In all suits under this Act costs may be awarded in the same manner as in suits between private parties.

## **10. No injunction or specific performance against Government**

- (1) Nothing in this Act contained shall be construed as authorizing the grant of relief by way of injunction or specific performance against the Government, but in lieu thereof the court may make an order declaratory of the right of the parties.
- (2) The court shall not in any suit grant any injunction or make any order against a public officer if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in a suit against the Government.

*[11 of 2011]*

*[23 of 2012]*