

CHAPTER 8:17
CLASS ACTIONS ACT

Acts 10/1999, 14/2002 (s. 13)

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AN ACT to provide for the institution and prosecution of legal proceedings by or on behalf of classes of persons and to provide for matters connected therewith or incidental thereto.

[Date of commencement: 20th October, 2000.]

PART I

PRELIMINARY

1 Short title and date of commencement

This Act may be cited as the Class Actions Act [*Chapter 8:17*].

2 Interpretation

In this Act—

“Board” means the Board of Trustees of the Fund, constituted in terms of subsection (2) of section *sixteen*;

“class action” means any form of legal proceedings, whether an action or an application, instituted by a representative or the Attorney-General on behalf of a class of persons, and any reference to “plaintiff” and “defendant” shall be construed accordingly;

“Fund” means the Class Action Fund established by subsection (1) of section *fourteen*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“representative” means a person appointed by the High Court in terms of section *five* to be the representative of a class of persons.

PART II

CLASS ACTION PROCEEDINGS

3 Application for leave to institute class action

(1) Subject to this section, the High Court may on application grant leave for the institution of a class action on behalf of any class of persons.

(2) An application for the institution of a class action—

(a) may be made by any person, whether or not he is a member of the class of persons concerned; and

(b) shall be made in the form and manner prescribed in rules of court.

(3) The High Court shall grant leave in terms of subsection (1) if it considers that in all the circumstances of the case a class action is appropriate, and in determining whether or not this is so the court shall take into account—

(a) whether or not a *prima facie* cause of action exists; and

(b) the issues of fact or law which are likely to be common to the claims of individual members of the class of persons concerned; and

(c) the existence and nature of the class of persons concerned, having regard to—

(i) its potential size; and

(ii) the general level of education and financial standing of its members; and

(iii) the difficulties likely to be encountered by the members enforcing their claims individually;

and

(d) the extent to which the members of the class of persons concerned may be prejudiced by being bound by any judgment given in the class action; and

(e) the nature of the relief claimed in the class action, including the amount or type of relief that each member of the class of persons concerned might claim individually; and

(f) the availability of a suitable person to represent the class of persons concerned; and

(g) any other relevant factor.

(4) The High Court may grant leave of subsection (1) notwithstanding that—

(a) the claims of individual members of the class of persons concerned involve different issues of fact or law; or

(b) the relief sought by individual members of the class of persons concerned may require individual determination; or

(c) members of the class of persons concerned seek different forms of relief.

4 Right of Attorney-General to institute class action

(1) If it appears to the Attorney-General to be necessary or desirable to do so in the public interest, he may institute a class action, subject to this Act, without obtaining the leave of the High Court in terms of section *three*.

(2) In deciding whether or not to institute a class action in any case, the Attorney-General shall pay due regard, *inter alia*, to the matters referred to in paragraphs (a) to (e) of subsection (3) of section *three*.

5 Appointment of representative

(1) Where the High Court grants an application under section *three* for leave to institute a class action it shall appoint the applicant or any other suitable person to be the representative of the class of persons concerned in the class action.

(2) In making an appointment for the purpose of subsection (1), the High Court shall have regard to—

(a) the suitability of the appointee to represent the best interests of all the members of the class of persons concerned; and

(b) any conflict of interest between the appointee and the members of the class of persons concerned; and

- (c) the ability of the appointee to make satisfactory arrangements to pay for the class action and to pay any order of costs that may be made.

6 Security for costs

(1) When granting leave to institute a class action or at any time thereafter, the High Court may order the representative concerned to provide security for costs.

(2) Where the Attorney-General has instituted a class action, the High Court may at any stage in the proceedings order a person who has obtained leave to be joined as a party to the action in terms of section *ten* to provide security for costs.

7 Notice of class action

(1) Where—

- (a) the High Court has granted leave to institute a class action, the representative shall cause a notice specifying the matters referred to in subsection (2) to be given to members of the class of persons concerned in such manner and within such period as the court shall specify;
- (b) the Attorney-General has instituted a class action, he shall cause a notice specifying the matters referred to in subsection (2) to be given to members of the class of persons concerned in such manner and within such period as may be prescribed in rules of court.

(2) A notice referred to in subsection (1) shall specify—

- (a) the cause of action giving rise to the class action, with sufficient detail to enable the circumstances giving rise to the action to be identified; and
- (b) the nature of the relief being sought in the class action; and
- (c) the class of persons concerned in the class action, with sufficient detail to enable the members to identify themselves with the intended action;

and shall advise members of the class concerned that—

- (i) each member of the class concerned will be bound by the class action and its results unless the member notifies the Registrar of the High Court, within a period fixed by the court or rules of court, as the case may be, and specified in the notice, that he wishes to be excluded from the action; and
- (ii) each member of the class concerned has the right to apply for leave to intervene in the class action in order to protect his interests in terms of section *ten*.

(3) A failure on the part of a member of a class of persons concerned in a class action to receive notice in terms of this section shall not—

- (a) invalidate the class action; or
- (b) prevent the member from being bound by the class action and its results.

8 Directions as to procedure in class action

At any stage in a class action, the High Court may—

- (a) give directions as to the procedure to be followed in the conduct of the class action; and
- (b) delineate the common issues to be decided in the class action; and
- (c) determine whether there are individual issues that require separate determination and, if so, give directions as to the procedure to be followed in determining them, including a direction for further hearings or the appointment of a commissioner to inquire into the issues and report to the court; and
- (d) where the claims are for damages or any other form of monetary relief, determine whether the claims of individual members of the class of persons concerned should be assessed as one aggregate amount or whether the claims should be proved individually; and
- (e) give any other directions that may be necessary for the proper conduct or determination of the class action.

9 Appointment of commissioner

(1) At any stage in a class action, the High Court may appoint a commissioner to do any one or more of the following things—

- (a) to determine particular issues;
- (b) to assess individual monetary claims;
- (c) to gather and collate any evidence;
- (d) to report to the High Court on any of the matters referred to in paragraphs (a) to (c).

(2) A commissioner appointed in terms of subsection (1) shall perform the duties for which he is appointed subject to the directions of the High Court.

10 Leave to intervene in class action

(1) The High Court may, on application by the member concerned, order a member of a class of persons who will be bound by a judgment in a class action to be joined as a separate party in the action to protect his individual interests.

(2) An order in terms of subsection (1) may be made subject to such terms and conditions, whether as to the payment of costs or otherwise, as the High Court may fix.

11 Effect of judgment in class action

The judgment of the court in a class action shall be binding on all members of the class of persons concerned, other than a member who has advised in terms of the notice published in terms of section *seven* that he wishes to be excluded from the action.

12 Form of award of damages in class action

(1) Where the High Court awards damages in a class action, the court may—

- (a) award damages in an aggregate amount to be distributed amongst the members of the class of persons concerned; or
- (b) make separate awards in respect of individual members of the class of persons concerned; or
- (c) direct individual members of the class of persons concerned to prove their claims for damages;

or may make such other award as the court considers appropriate in the circumstances.

(2) In making an award referred to in subsection (1), the High Court may make orders directing—

- (a) that the moneys payable in terms of the award shall be paid to the representative in the class action, or to a trustee or some other suitable person who shall hold the moneys for the members of the class of persons concerned;
- (b) how the moneys shall be disbursed to members of the class of persons concerned, whether on proof of their claims to the satisfaction of the holder of the moneys, or on an average basis to be determined by the holder of the moneys, or on some other basis;
- (c) that the holder of the moneys shall be required to account to the High Court or the Master of the High Court as to his distribution;
- (d) the holder of the moneys to furnish security to the satisfaction of the Master of the High Court for the proper administration of the moneys;
- (e) how any surplus moneys shall be re-allocated to members of the class of persons concerned or repaid to the defendant;
- (f) the payment of additional amounts by the defendant in the event of the award proving insufficient to meet the plaintiffs' claims.

13 Settlement, withdrawal, etc.

No class action instituted in terms of this Act shall be settled, withdrawn, compromised or discontinued without leave of the High Court and except upon such terms and conditions, including notice being given to members of the class of persons concerned, as the court may determine.

PART III

CLASS ACTIONS FUND

14 Establishment and object of Class Actions Fund

(1) There is hereby established a fund, to be known as the Class Actions Fund, the management and control of which shall, subject to this Act, vest in a Board of Trustees on behalf of the Minister.

(2) Subject to this Act, the object of the Fund shall be to provide financial assistance in the form of grants of funds towards expenses, or as security for costs, to persons who intend instituting class actions.

15 Composition of Fund

The Fund shall consist of—

- (a) reimbursements or payments by successful plaintiffs under section *twenty-one*; and
- (b) any moneys that may be payable to the Fund from moneys appropriated for the purpose by Act of Parliament; and
- (c) any moneys that the Fund may obtain, with the approval of the Minister, by way of donations, loans or other financial assistance; and
- (d) any other moneys that may accrue to the Fund, whether in terms of this Act or otherwise.

16 Administration of Fund

(1) Subject to this Act, the Fund shall be administered by a Board of Trustees on behalf of the Minister.

(2) The Board of Trustees shall consist of—

- (a) a chairman, who shall be appointed by the Minister after consultation with the Judicial Service Commission and who shall be a person who is or is qualified to be a judge of the Supreme Court or the High Court; and
- (b) the Attorney-General; and
- (c) the Secretary of the Ministry for which the Minister is responsible; and
- (d) two registered legal practitioners appointed by the Minister.

17 Terms of office and conditions of service of Board members

(1) A member of the Board shall hold office for such period, not exceeding three years, and on such terms and conditions, including terms and conditions for the payment of fees and allowances, as the Minister may fix.

(2) A member of the Board shall be eligible for reappointment on the expiry of his term of office.

18 Termination of membership of Board member

The Minister may require a member of the Board referred to in paragraph (a) or (d) of subsection (2) of section *sixteen* to vacate his office if the member—

(a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or

(b) is mentally or physically incapable of efficiently performing his duties as a member; or

(c) is absent from three consecutive meetings of the Board without good cause.

19 Financial year of Fund

The financial year of the Fund shall be the period of twelve months ending on the 31st December in each year.

20 Books of account and audit of Fund

(1) The Board shall ensure that proper accounts and other records relating thereto are kept in relation to all the transactions of the Fund.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him by section 9 of the Audit and Exchequer Act [*Chapter 22:03*] as though the assets of the Fund were public moneys.

21 Financial assistance in prosecuting class actions

(1) Any person who intends instituting a class action or who has been appointed a representative in a class action may apply to the Board for financial assistance in proceeding with the action.

(2) The Board may grant a person referred to in subsection (1) assistance in the form of—

(a) a grant of funds towards the expenses of the class action concerned; or

(b) security for costs in the class action concerned;

on such terms and conditions as the Board may fix, including terms and conditions relating to—

(i) reimbursement of the Fund; or

(ii) payment by plaintiffs in the class action of a proportion of any damages they may be awarded in the action.

(3) Any term or condition referred to in paragraph (ii) of subsection (2) shall be enforceable at the instance of the Board in all respects as if it were a contract between the Board and each individual plaintiff concerned, whether or not the plaintiff was himself a party to the application for assistance under subsection (1).

(4) The Board may waive reimbursement or payment under a term or condition fixed in terms of subsection (2) if the Board considers that such reimbursement or repayment would cause undue hardship.

PART IV

GENERAL

22 Act not to derogate from other laws

This Act shall be construed as additional to, and not as derogating from, any other law under which a person may bring any proceedings on behalf of another.

23 Act to apply to previous causes of action

Subject to the Prescription Act [*Chapter 8:11*], this Act shall apply in respect of any cause of action which may have existed but had not been enforced before the date of commencement of this Act.

24 Class action proceedings before the Supreme Court

The Supreme Court shall have the same powers as the High Court under Part II of this Act in relation to any application in terms of section 24 of the Constitution or any other constitutional question, and the provisions of Part II shall apply, *mutatis mutandis*, to the institution and prosecution of any class action in the Supreme Court under this Act.

[Section inserted by section 13 of Act 14 of 2002]