

Malawi

## Limitation Act

### Chapter 6:02

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# Malawi

## Limitation Act

### Chapter 6:02

Assented to on 24 July 1967

Commenced on 1 April 1968

*[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.]*

**An Act to provide for the limitation of certain actions and arbitrations and for matters incidental thereto and connected therewith**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Limitation Act.

#### 2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**action**” includes any proceeding in a court;

“**arbitration agreement**” has the meaning assigned to that expression in the Arbitration Act;

*[Cap 6:03]*

“**award**” means an award of an arbitrator under the Arbitration Act or a foreign award within the meaning of the Arbitration Act;

“**land**” includes corporeal hereditaments and rent charges, and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held on trust for sale, but save as provided in this definition does not include any incorporeal hereditament;

“**officer**”, in relation to the Government, includes the President, a Minister and any servant of the Government;

“**personal estates**” and “personal property” do not include chattels real;

“**personal injuries**” includes any disease and any impairment of a person’s physical or mental condition;

“**rent**” includes a rent charge;

“**rent charge**” means any annuity or periodical sum of money charged upon or payable out of land, except interest on a mortgage of land;

“**trust**”, “trustee” and “trust for sale” have the same meanings respectively as in the Trustee Act.

*[Cap. 5:02]*

(2) For the purposes of this Act, proceedings by or against the Government shall include proceedings by or against any Government department or officer of the Government as such.

- (3) (a) For the purposes of this Act, a person shall be deemed to be under a disability while he is a minor, or of unsound mind.
- (b) For the purposes of paragraph (a) but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any written law authorizing the detention of persons of unsound mind or criminal lunatics.
- (4) A person shall be deemed to claim through another person, if he became entitled by, through, under or by the act of that other person to the right claimed:
- Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointer.
- (5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rent charges, to distrain for arrears of rent, and references to the bringing of an action in respect of such a right of action shall include references to the making of such an entry or distress.
- (6) References in this Act to the possession of land shall, in the case of rent charges, be construed as references to the receipt of the rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rent charges, be construed as references to the date of the last receipt of rent.
- (7) In Part III references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall—
- (a) in the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed;
- (b) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;
- (c) in the case of an action to recover arrears of rent or interest, or damages in respect thereof, be construed as references to the date on which the rent or interest became due.

## **Part II – Periods of limitation for different classes of action**

### **3. Part II to be subject to provisions of Part III relating to disability, acknowledgment, fraud, etc.**

This Part shall have effect subject to the provisions of Part III, which provides for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud and mistake.

## **Actions of contract and tort and certain other actions**

### **4. Limitation of actions, of contract and tort and certain other actions**

- (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose, that is to say—
- (a) actions founded on contract or on tort;
- (b) actions to enforce a recognizance;
- (c) actions to enforce an award;

- (d) actions to recover any sum recoverable by virtue of written law, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any written law or independently of any such contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.

- (2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.
- (3) An action shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.
- (4) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any written law shall not be brought after the expiration of two years from the date on which the cause of action accrued:

Provided that for the purposes of this subsection the expression "penalty" shall not include a fine to which any person is liable on conviction for a criminal offence.

- (5) Subsection (1) shall apply to an action to recover seamen's wages, but otherwise this section shall not apply to any cause of action within the Admiralty jurisdiction of the court which is enforceable *in rem*.
- (6) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the court by analogy in like manner as the periods of limitation in force before the commencement of this Act have heretofore been applied.

## 5. Limitation in case of successive conversions and extinction of title of owner of converted goods

- (1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.
- (2) Where any such cause of action has accrued to any person and the period prescribed for bringing an action thereon and for bringing any action in respect of such further conversion or wrongful detention as aforesaid has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

## Actions to recover land and rents

### 6. Limitation of actions to recover land

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

## 7. Accrual of right of action in case of present interests in land

- (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.
- (2) Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was, on the date of his death, in possession of the land or, in the case of a rent charge created by will or taking effect upon his death, in possession of the land charged and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death.
- (3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land or, in the case of a rent charge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

## 8. Accrual of right of action in case of future interests

- (1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.
- (2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.
- (3) Subsections (1) and (2) shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.
- (4) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.
- (5) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

## 9. Provisions in case of settled land and land held on trust

- (1) Subject to [section 19](#) (1), this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest

in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

- (2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life of settled land, his legal estate shall not be extinguished, if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act, and the legal estate shall accordingly remain vested in the tenant for life and shall devolve accordingly but if and when every such right of action as aforesaid has been barred by this Act, the said legal estate shall be extinguished.
- (3) Where any land is held upon trust including a trust for sale, and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act, but if and when every such right of action has been so barred, the estate of the trustees shall be extinguished.
- (4) Where any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the trustees would apart from this provision have been barred by this Act.
- (5) Where any settled land or land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as trustee or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

## 10. Accrual of right of action in case of forfeiture or breach of condition

A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that, if such a right has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

## 11. Accrual of right of action in case of certain tenancies

- (1) A tenancy at will shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.
- (2) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

- (3) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than twenty shillings is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last named person to recover the land shall be deemed to have accrued at the date when the rent was

first received by the person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease and not at the date of the determination of the lease.

## 12. Right of action not to accrue or continue unless there is adverse possession

- (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”) and where under [sections 6 to 11](#) inclusive any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.
- (2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to have accrued unless and until the land is again taken into adverse possession.
- (3) For the purposes of this section—
  - (a) possession of any land subject to a rent charge by a person (other than the person entitled to the rent charge) who does not pay the rent shall be deemed to be adverse possession of the rent charge; and
  - (b) receipt of rent under a lease by a person wrongfully claiming, in accordance with [section 11](#) (3), the land in reversion shall be deemed to be adverse possession of the land.

## 13. Cure of defective disentailing assurance

Where a person entitled in remainder to an entailed interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar the last-mentioned estates and interests only, and any person takes possession of land by virtue of the assurance, and that person or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

## 14. Limitation of redemption actions

When a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him.

## 15. No right of action to be preserved by formal entry or continual claim

For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

## 16. Extinction of title after expiration of period

Save as in this Act otherwise provided, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

**17. Limitation of action to recover rent**

No action shall be brought, or distress made, to recover arrears of rent or damages in respect thereof, after the expiration of six years from the date on which the arrears became due.

**Actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land****18. Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land**

- (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land, after the expiration of twelve years from the date when the right to receive the money accrued.
- (2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued:  
  
Provided that if, after that date, the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession discontinued.
- (3) The right to receive any principal sum of money accrued by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.
- (4) Nothing in this section shall apply to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.
- (5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land or to recover damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due:

Provided that—

- (a) where a prior mortgagee or other incumbrancer has been in possession of the property charged and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, he may recover by that action all arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof notwithstanding that the period exceeded six years;
  - (b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.
- (6) This section shall not apply to any mortgage or charge on a ship.

## **Actions in respect of trust property or the personal estate of deceased persons**

### **19. Limitation of actions in respect of trust property**

- (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—
  - (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
  - (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
- (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in a trust property, until the interest fell into possession.
- (3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from the judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

### **20. Limitation of actions claiming personal estate of a deceased person**

Subject to [section 19](#) (1), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

## **Part III – Extension of limitation periods in case of disability, acknowledgment, part payment, fraud and mistake**

### **Disability**

### **21. Extension of limitation period in case of disability**

- (1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired:

Provided that—

  - (a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;
  - (b) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;
  - (c) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims;

- (d) this section shall not apply to any suit to recover a penalty or forfeiture, or sum by way thereof, by virtue of any written law, except where the action is brought by an aggrieved party.
- (2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person—
  - (a) subsection (1) shall have effect as if for the words “six years” there were substituted the words “three years”; and
  - (b) this section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent.
- (3) For the purposes of this section “parent” in relation to any person has the meaning assigned to “parent” in Part I of the Statute Law (Miscellaneous Provisions) Act.

[Cap. 5:01]

## **Acknowledgment and part payment**

### **22. Fresh accrual of action on acknowledgment or part payment**

- (1) Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—
  - (a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or
  - (b) in the case of a foreclosure or other action by a mortgagee, the person in possession of the land or personal property or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.
- (2) Subsection (1) shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under [section 13](#), and on the making of the acknowledgment that section shall cease to apply to the land.
- (3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment.
- (4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

### 23. Normal provisions as to acknowledgments and part payments

- (1) Every such acknowledgment as is mentioned in [section 22](#) shall be in writing and signed by the person making the acknowledgment.
- (2) Any such acknowledgment or payment as is mentioned in [section 22](#) may be made by the agent of the person by whom it is required to be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

### 24. Effect of acknowledgment or part payment on persons other than the maker or recipient

- (1) An acknowledgment of the title to any land or mortgaged personality, by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.
- (2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.
- (3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors, and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.
- (4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged in the circumstances referred to in subsection (3), the acknowledgment shall be deemed to have been made to all the mortgagors.
- (5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledger and his successors but not any other person:  

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.
- (6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:  

Provided that a payment after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.
- (7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person, or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.
- (8) In this section the expression "successor", in relation to any mortgagee or person liable in respect of any debt or claim means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

## Fraud and mistake

### 25. Postponement of limitation period in case of fraud or mistake

Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

- (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person as is mentioned in paragraph (a); or
- (c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- (ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

## Part IV – General

### 26. Application of Act and other limitation law to arbitrations

- (1) This Act and any other written law relating to the limitation of actions shall apply to arbitrations as they apply to actions in the High Court.
- (2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of this Act and of any other written law relating to the limitation of actions (whether in their application to arbitrations or to other proceedings), be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.
- (3) For the purposes of this Act and of any other written law relating to the limitation of actions, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.
- (4) Any such notice as is referred to in subsection (3) may be served in the manner prescribed by the Rules of the High Court for the service of summonses, as well as in any other manner provided in the arbitration agreement.

*[Cap. 3:20 p. 103]*

- (5) Where the High Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by this Act or any other

written law relating to the limitation of actions for the commencement of proceedings (including arbitration) with respect to the dispute referred.

- (6) This section shall apply to an arbitration under any written law as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) shall have effect, in relation to an arbitration under any written law, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the written law as relate to the arbitration.

## **27. Provisions as to set-off or counterclaim**

For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

## **28. Acquiescence**

Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

## **29. Application, to registered land**

Without prejudice to the operation of any written law relating to the registration of land this Act shall apply to land registered under such written law in the same manner and to the same extent as it applies to land not so registered, except that where, if the land were not registered, the estate of the person registered as proprietor would be extinguished, such estate shall not be extinguished but shall be deemed to be held by the person registered as proprietor for the time being in trust for the person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estates and interests of any other person interested in the land whose estate or interest is not extinguished by this Act.

## **30. Application to proceedings by or against the Government**

Save as in this Act otherwise provided, this Act shall apply to proceedings by or against the Government as they apply to proceedings between private persons.

## **31. Miscellaneous savings**

- (1) Nothing in this Act shall—
- (a) affect the right of the Government to land, or apply to an action brought by the Government to recover possession of land;
  - (b) apply to any proceedings by the Government for the recovery of any tax or duty or the interest thereon or to any forfeiture proceedings relating thereto or to any proceedings in respect of the forfeiture of a ship or of forfeiture under the Forfeiture Act;
- [Cap. 14:06]*
- (c) apply to any criminal proceedings;
  - (d) apply to any proceedings in a local court based on customary law;
  - (e) affect any right to mines and minerals vested in the Government;
- (2) For the purposes of this section “local court” means a court established under the Traditional Courts Act.

*[Cap. 3:03]*

**32. Saving for other limitation laws**

This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other written law or to any action or arbitration to which the Government is a party and for which, if it were between private persons a period of limitation would be prescribed by any other written law.

**33. Provisions as to actions already barred and pending suits**

Nothing in this Act shall—

- (a) enable any action to be brought which was barred before the commencement of this Act, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with this Act; or
- (b) affect any action or arbitration commenced before the commencement of this Act or the title to any property which is the subject of any such action or arbitration.

**34. Transitional provisions**

The time for bringing proceedings in respect of a cause of action which arose before the commencement of this Act shall if it has not then already expired, expire at the time when it would have expired apart from the provisions of this Act or at the time when it would have expired if all the provisions of this Act had at all material times been in force, whichever is the later.