

DRAFT FOR COURT BAILIFFS BILL

THE COURT BAILIFFS BIL

MEMORANDUM

The object of this Bill is to consolidate the Law relating to Court Bailiffs and Bailiffs who levy distress for rent under the distress for Rent (Bailiff) Act. The prime object is to provide more strict supervision and control in order to enhance discipline and integrity amongst Court Bailiffs. Coupled with this is making it easier to administer these people under one uniform Law.

To ensure effective supervision and control, the Bill proposes the established of Appointment and Disciplinary Committee, whose membership is designed to ensure expertise in the Licensing and regulation of Court Bailiffs business.

The Bill further proposes new and stringent requirements in the appointing and Licensing of Court Bailiffs. Age limits and educational standards are being set, in addition to technical knowledge and practical experience.

The Bill also promotes transparency and accountability amongst bailiffs by requiring that Bailiffs practice in their own names or through a firm all of whose partners are Licensed, it also requires that the liability of Bailiffs be unlimited.

Finally, the Bill empowers the Appointment and Disciplinary Committee to make Rules to give further effect to the provisions of the Bill.

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MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS.

THS COURT BAILIFFS BILL
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THE COURT BAILIFFS BILL 2012

A BILL for Act

ENTITLED

THE COURT BAILIFFS ACT 2012

An Act regulate the business and practice of Court Bailiffs, and to provide for other related matters.

BE IT ENACTED by parliament as follows:-

PART 1- PRELIMINARY

1. **Short title.**

This Act may be cited as the Court Bailiffs Act

2. **Interpretation.**

In this Act, unless the context otherwise requires-

“Advocate” means an advocate defined under the Advocates Act; Cap. 267

“Auctioneer” means an auctioneer licensed under the Auctioneers Act; Cap. 270

“Certifying officer” means a Chief Magistrate or a magistrate Grade 1;

“Committee” means the appointments and Disciplinary Committee established under section3;

“Court Bailiff” means a person who-

- (a) Attaches for sale any movable or immovable property in execution of a Court order made pursuant to the provisions of any written Law of contract;
- (b) Levies distress for rent or distrains under the provisions of any written Law , or
- (c) Carries out evictions under an order of Court.

“Court” means a Court of competent jurisdiction; and

“Court point” means the value of one currency point specified in the first Schedule.

PART II- ESTABLISHMENT OF APPOINTMENTS AND DISCIPLINARY COMMITTEE

3. **Establishment and composition of Committee.**

(1) There is an establishment Committee to be known as the Appointments and Disciplinary Committee which shall consist of-

- (a) a judge of the High Court appointed by the Chief Justice, who shall be the Chairperson;

- (b) A Registrar of the High Court appointment by the Chief Justice, who shall be Secretary to the Committee;
 - (c) one Chief Magistrate and one Senior Magistrate Grade 1, appointed the chief justice;
 - (d) two advocates of not less than ten years' standing nominated by the Uganda Law Society;
 - (e) two Court Bailiffs of not less than ten years' standing nominated by the Uganda Court Bailiffs Association; and
 - (f) one person from the private sector nominated by the private sector foundation.
- (2) a member of the Committee shall hold office for a term of five years and shall be eligible for re-appointment.

4. **Function of the Committee.**

- (1) The functions of the Committee are to exercise general supervision and control over the business and practice of Court Bailiffs, and in particular to-
- (a) License and regulate Court Bailiffs;
 - (b) Interview and appoint Court Bailiffs;
 - (c) Inspect the applicants-
 - (i) Office premises;
 - (ii) Storage facilities; and
 - (iii) Bank accounts, particularly those accounts on which decretal sums are supposed to be deposited;
 - (d) Design a mandatory course of study by Court Bailiffs;
 - (e) Supervise and discipline licensed Court Bailiffs; and
 - (f) Perform such other functions as may be conferred on the Committee by this Act or any other Law.

5. **Proceeds of the committee.**

- (1) The Committee shall meet and transact its business as specified in the Second Schedule.
- (2) The Committee may notwithstanding sub section (1) regulate its own procedure.

6. **Funds of the Committee.**

The funds of the Committee consist of-

- (a) Money provided by parliament to the committee; and

(b) Money obtained by the committee in the performance of its functions under this Act.

7. **Prohibition against unlicensed Court Bailiffs.**

(1) A person shall not carry on the business of a Court Bailiff unless such person holds a valid license issued by the Committee under this Act.

(2) A person who contravenes sub- section (1) commits an offence and is liable on conviction to a fine not exceeding fifty currency points or to imprisonment not exceeding one year or both.

PART III – LICENCES.

8. **Eligibility for License.**

(1) A person who satisfies the Committee that he or she-

(a) is a citizen of Uganda;

(b) is at least 21 years of age;

(c) has attained “Ordinary” level standard of education with credit passes in English and mathematics;

(d) has been an apprentice of a Licensed Court Bailiff for at least two years immediately preceding the application;

(e) has not been convicted in the ten years immediately preceding the application, of an offence involving fraud or dishonesty; and

(f) is not disqualified under this Act from obtaining or holding a license, may on application to the Committee, be licensed to carry out the business of a Court Bailiff.

(2) Without prejudice to subsection (1), the following persons are disqualified from being licensed under this Act-

(a) a Judge , Magistrate or any other employee of a Court;

(b) a member of parliament;

(c) a councilor of a local government;

(d) an advocate or a local government;

(e) an Auctioneer, or

(f) a public officer.

(3) A person who obtains a license in contravention of this section commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or to imprisonment not exceeding one year of both.

9. **Application for License.**

- (1) An application for a license shall be made in the prescribed form to the Committee together with the prescribed fee.
- (2) In considering the application, the committee may require the application to supply such additional information in support of the application as the Committee may consider necessary.
- (3) The Committee may, subject to the provisions of this Act and to the payment of the prescribed fee, issue a license in the prescribed form to the applicant.
- (4) A license issued under this section shall, unless earlier revoked, be valid only for the year in which it is issued.
- (5) Where an application for renewal of a license is made, the license shall be deemed to continue in force until the application for its renewal is determined.

10. **Conditions of License.**

- (1) A license issued under this Act is not transferable.
- (2) A Court Bailiff shall carry on business in his or her own name.
- (3) The liability of a Court Bailiff in relation to the conduct of his or her business is unlimited.
- (4) Subject to subsection (3), before the grant of license, the applicant shall, if so required by the rules made under this Act, give security in such form and amount as may be prescribed as assurance for the faithful discharge of his or her duties.
- (5) In addition to the conditions set out in this section, the Committee may impose any conditions it may consider necessary on a license and may add to, substitute or vary such conditions.
- (6) A person who contravenes this section, or breaches any condition imposed by the Committee under subsection (5) commits an offence.

11. **Renewal of License.**

- (1) The Committee may, on application by a licensed Court Bailiff, renew his or her license.
- (2) An application under this section shall-
 - (a) be made in the prescribed form to the Committee together with the prescribed fee,
 - (b) be lodged with the Committee at least one month prior to the expiry of the

licensed; and

- (c) be considered in accordance with the provisions of sections 8 and 9.

12. Refusal to grant or renew license.

- (1) The Committee may refuse to grant or renew a license if it is satisfied that-
 - (a) the information contained in the application is false or untrue in any material particular, or
 - (b) the applicant does not meet any of the requirements for the issue or renewal of a license.
- (2) where the Committee refuses to grant or renew a license, it shall notify the applicant in the prescribed form, specifying the reasons for such refusal.

13. Revocation of license.

- (1) In addition to the powers of the Committee under this Act, the Committee may revoke a license if-
 - (a) It discovers that the Court Bailiffs made a statement in or in connection with the application which he or she knew to be false or untrue in any material particular;
 - (b) any event occurs which renders the Court Bailiff ineligible to hold a license under this act;
 - (c) the Court Bailiff's business is wound up or is otherwise dissolved;
 - (d) the Court Bailiff is in breach of any condition attached to the license; or
 - (e) The Court Bailiff does not comply with any of the provisions of this Act or any rules made under this Act.
- (2) where revocation of a license is contemplated, the Committee shall serve the Court Bailiffs with a notice of revocation in the prescribed form.
- (3) A notice under subsection (2) shall be served not less than twenty – one days before the date of the intended revocation and shall specify the grounds for such revocation, and the Committee shall consider any representations made to it in writing by the Court Bailiff during that period, and shall take every reasonable precaution to ensure fairness in the exercise of its powers under this section.
- (4) The revocation of a license shall take effect from the date of service of a notice under subsection (3) if such notice is served on the Bailiff personally, or , where the notice is sent through registered post, on a date seven after the date of posting.

- (5) The committee shall, within fourteen days of the revocation of a license, cause the name of the Court Bailiff whose license is revoked to be published in the Gazette, and in one local daily news paper circulating in the area where the Court Bailiff carries on business.
- (6) The Court Bailiff whose license is revoked shall surrender his or her license to the committee and shall not be eligible to hold a license under this Act for a period of ten years starting from the effective date of the revocation.

14. Suspension of license.

- (1) The committee may suspend a license for a period not exceeding six months if
 - (a) the Court Bailiff is charged with any offence involving fraud, dishonesty, violence or malicious damage to property;
 - (b) having received a complaint against a Court Bailiff in respect of his or her conduct in executing Court orders or detaining, the Committee considers it appropriate to suspend the license pending further investigation of the complaint; or
 - (c) in the execution of his or her duties, the Court Bailiff has acted in a manner incompatible with his or her status as an officer of the Court.
- (2) Where a license is suspended, the Committee shall serve a notice of suspension in the prescribed form on the Court Bailiff personally or through registered post, specifying the reason for the suspension.
- (3) The suspension of a license under this section shall take effect from the date of service of a notice under subsection (2) if served personally on the Court Bailiff or, it sent through registered post, on a date seven days after the date posting.

15. Repeals and Savings.

Cap. 76. (1) The Distress for Rent (Bailiffs) Act is repealed.

Cap. 13. (2) Paragraph (w) of section 41(2) of the Judicature Act is repealed.

- (3) Without prejudice to the repeal of the enactments under this Act, any statutory instruments made under the said enactments shall continue in force with any necessary modifications until they are revoked under this Act.

SCHEDULES

FIRST SCHEDULE

S.2

CURRENCY POINT

One currency point is equivalent to twenty thousand Uganda Shillings

SECOND SCHEDULE

S.5

PROCEEDINGS OF THE COMMITTEE

1. The Committee shall meet at least once every three months.
2. A meeting of the Committee shall be held on such date and at such time as the Committee shall decide or in the absence of such decision or on any occasion on which the Chairperson in consultation with the secretary shall decide that a meeting is necessary, on a date and at a time determined by the Chairperson.
3. The Chairperson shall, on the application of at least four members, convene a special meeting of the Committee.
4. Unless three- quarters of the total membership of the Committee otherwise agree, at least a fourteen days written notice of every meeting of the Committee shall be given to every members of the committee.
5. The quorum for the conduct of meeting of the Committee shall be-
 - (a) In the case of a meeting to consider a matter other than a disciplinary matter, six members; or
 - (b) In the case of a meeting to consider a disciplinary matter, five members.
6. In each case at least one advocate and one Court Bailiff shall be present.
7. The Chairperson shall preside at every meeting of the Committee at which he or she is present but in the absence of the Chairperson from a meeting, the Committee shall elect one of the advocate appointed under section 3(1) (d) who shall, respect to that meeting and the business transacted, have all the powers of the Chairperson.
8. Subject to paragraph 5, no proceeding of the Committee shall be invalid by reason only of a vacancy among the members of the Committee.
9. For the purposes of any application or complaint made to it under this Act, the Committee may administer oaths or affirmations, and the complainant and the Court

Bailiff to whom a complaint relates, and an applicant making any application to the Committee may take out a summons to give evidence or to produce documents; but no person shall be compellable under any such summons to produce documents; but no person shall be compellable under any such summons to produce any document which he or she could not legally be compelled to produce at the trial of a suit.

10. All instruments made by and all decisions of the Committee shall be signified under the hand of the Chair person and the Secretary.
11. The Committee shall cause minutes of all proceedings of a meeting of the Committee to be entered in the books kept for that purpose.
12. Except as provided in this Schedule, the Committee shall regulate its own procedure.