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MALTA**KAMRA TAD-DEPUTATI****HOUSE OF REPRESENTATIVES**

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Cassar, M.P., Deputat Prim Ministru Anzjan u Ministru tal-Gustizzja u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tas-16 ta' Frar, 1982.

ATT biex jipprovdi għall-użu ta' affidavits bħala xhieda fil-qrati.

A BILL introduced by the Honourable Joseph Cassar, M.P., Senior Deputy Prime Minister and Minister of Justice and Parliamentary Affairs and read the First time at the Sitting of the 16th February, 1982.

AN ACT to provide for the use of affidavits as evidence in courts.

C. MIFSUD

Skriivan tal-Kamra tad-Deputati

C. MIFSUD

Clerk to the House of Representatives

ABBOZZ TA' LIGI

msejjah

ATT biex jipprovi għall-użu ta' affidavits bħala xiehda fil-qrati.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'ligi dan li ġej:—

Titolu fil-qosor u bidu fis-sehħ.

1. (1) Dan l-Att jista' jissejjaħ l-Att ta' l-1982 dwar Xiehda b'Affidavit.

(2) Dan l-Att għandu jibda jsehħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista' jistabbilixxi b'avviz fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal disposizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

Tifsir.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra —

“affidavit” tfisser dikjarazzjoni bil-miktub, konfermata bil-gurament jew b'dikjarazzjoni solenni minn persuna li x-xiehda tagħha tkun meħtieġa minn xi Qorti u magħmula skond id-disposizzjonijiet tas-subartikolu (2) ta' l-artikolu 3 ta' dan l-Att;

“parti” tinkludi kull terza persuna kjamata fil-kawża u kull persuna ammessa *in statu et terminis* bħala parti f'kawża;

“Qorti” tfisser kull waħda mill-qrati msemmija fl-artikoli 3 u 4 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u kull bord jew tribunal stabbilit b'ligi, iżda ma tinkludix xi qorti jew korp ieħor b'kompetenza kriminali jew il-Qorti tal-Magistrati tal-Pulizija Ġudizzjarja għall-Gżira ta' Malta jew il-Qorti tal-Pulizija Ġudizzjarja għall-Gżejjer ta' Għawdex u Kemmuna fil-kompetenza inferjuri tagħha.

3. (1) Minkejja kull haġa li tinsab fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew f'xi liġi oħra, kull parti li jkollha l-ħsieb li tip-produċi xhud fi proċedimenti quddiem Qorti għandha tipprezenta fir-Registru tal-Qorti l-affidavits tax-xhieda li bihom il-parti jkollha l-ħsieb issostni l-każ tagħha.

Affidavits
quddiem
Assistent ta'
l-Imħallfin jiġu
ppreżentati
fil-Qorti.

(2) L-affidavit li għalih jirreferi s-subartikolu (1) ta' dan l-artikolu jittieħed quddiem Assistent ta' l-Imħallfin.

(3) L-affidavits imsemmija fis-subartikolu (1) ta' dan l-artikolu jiġu ppreżentati fir-Registru tal-Qorti li quddiemha jinbdew il-proċedimenti permezz ta' nota li tiġi notifikata lill-parti l-oħra; dik in-nota għandha tiġi ppreżentata fiż-żmien preskritt bil-liġi li fih parti tkun meħtieġa li tindika l-ismijiet tax-xhieda li tkun bi ħsiebha tipproduċi:

Iżda meta żmien ma jiġix hekk preskritt, in-nota għandha tiġi ppreżentata mill-parti flimkien ma' l-att li bih tinbeda l-kawża jew ma' l-att bi twegiba għalih, skond il-każ, jew meta l-att bi twegiba ma jkunx meħtieġ li jsir minn dik il-parti, mhux iktar tard mill-jum stabbilit għas-smiġħ.

(4) Meta ma jkunx prattikabbli għal xi parti li tipproduċi l-affidavit fiż-żmien xieraq, il-Qorti li tiegħu konjizzjoni tal-każ, għandha, fuq rikors magħmul minn dik il-parti, tawtorizza li l-affidavit jiġi ppreżentat fil-proċess jew tordna li x-xiehda tittieħed minn Assistent ta' l-Imħallfin jew tinstema' quddiem il-Qorti, skond il-każ.

4. Minkejja kull haġa li tinsab fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew f'xi liġi oħra, il-Qorti li tiegħu konjizzjoni tal-kawża jkollha s-setgħa li tikkonsidra l-fatti li jkunu jinsabu f'affidavit li jkun ittieħed kif imiss u li jkun tqiegħed fil-proċess, mingħajr il-ħtieġa li l-persuna li tagħmel dak l-affidavit tinstema' *viva voce* fil-qorti bil-miftuħ:

Affidavits
ikunu xiehda.

Iżda l-Qorti tista' tordna li x-xiehda ta' kull persuna tingħata *viva voce* fil-qorti bil-miftuħ jew tittieħed minn Assistent ta' l-Imħallfin.

5. (1) Il-parti li tkun trid tagħmel kontro-eżami ta' persuna li tagħmel affidavit għandha, fi żmien sitt ijiem tax-xogħol minn meta tiġi notifikata lilha n-nota msemmija fis-subartikolu (3) ta' l-artikolu 3 ta' dan l-Att, tipprezenta dikjarazzjoni f'dan is-sens:

Kontro-eżami
ta' persuna li
tagħmel
affidavit.

Iżda meta l-proċedimenti jittieħdu b'libell jew b'ċitazzjoni dik id-dikjarazzjoni għandha tiġi ppreżentata fiż-żmien mogħti mill-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għall-preżentata ta' twegiba, replika jew nota ta' eċċezzjonijiet, skond il-każ.

(2) Dak il-kontro-eżami għandu jsir quddiem il-Qorti jew quddiem Assistent ta' l-Imħallfin, skond kif tordna l-Qorti.

(3) Jekk ma ssirx dik id-dikjarazzjoni l-Qorti tista' tiċhad li jsir il-kontro-eżami.

6. Il-Qorti tista' f'kazijiet ta' urġenza, tqassar kull żmien preskritt f'dan l-Att.

Tqassar ta'
żmien.

7. (1) Għandhom jinħatru Assistenti ta' l-Imħallfin li separatament ikollhom il-funzjonijiet mogħtija lilhom b'dan l-Att, jiġifieri —

Assistenti
ta' l-Imħallfin.

(a) (i) li jirċievu kull affidavit fuq kull haġa li jkollha x'taq-sam ma' proċedimenti li jkunu ttieħdu jew li jkun hemm il-ħsieb li jittieħdu quddiem xi Qorti; u

(ii) li jieħdu x-xieħda ta' kull persuna bil-ġurament meta xi Qorti tkun ordnat li dik ix-xieħda tittieħed minn Assistent ta' l-Imħallfin;

(b) li jordnaw l-attendenza ta' kull persuna sabiex tieħu xi ġurament jew affidavit fuq kull haġa bħal dik f'dak il-post u f'dak il-ħin li jiġi speċifikat fl-ordni;

(c) li jordnaw l-arrest ta' kull persuna li tkun naqset milli tħares xi ordni msemmi fil-paragrafu (b) ta' dan is-subartikolu sabiex dik il-persuna tingieb quddiem l-Assistent ta' l-Imħallfin;

(d) li jaqdu kull funzjoni oħra li tista' ssir minnhom taħt xi liġi li qieġħda fis-seħħ, jew taħt xi liġi li ssir wara, jew li tista' legittimament tingħata lilhom minn xi Qorti.

(2) Fil-qadi tal-funzjonijiet tagħhom l-Assistenti ta' l-Imħallfin għandhom jaġixxu taħt id-direzzjoni u l-kontroll tal-Qorti li tieħu konjizzjoni tal-kawża.

Ħatra ta' Assistenti ta' l-Imħallfin.

8. (1) L-Assistenti ta' l-Imħallfin jinħatru mill-Ministru responsabbli għall-ġustizzja minn fost persuni li jkunu eżerċitaw bħala avukat f'Malta għal mhux inqas minn sentejn.

(2) Assistent ta' l-Imħallfin jinħatar għal perijodu ta' tliet snin u jkun jista' jinħatar mill-ġdid.

(3) Id-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili dwar meta Imħallfin jastjenu u jiġu rikuzati għandhom japplikaw dwar l-astensjoni u r-rikuża ta' Assistenti ta' l-Imħallfin.

(4) Mal-ħatra tiegħu jew mal-ħatra tiegħu mill-ġdid Assistent ta' l-Imħallfin għandu jieħu ġurament biex jaqdi l-funzjonijiet kollha tiegħu taħt dan l-Att fedelment u onestament. Il-ġurament għandu jittieħed quddiem l-Avukat Ġenerali.

Attendenza ta' Assistenti ta' l-Imħallfin.

9. Il-Ministru responsabbli għall-ġustizzja jista' b'avviz ippubblikat fil-Gazzetta jstabbilixxi l-jiem u l-ħin li matulhom l-Assistenti ta' l-Imħallfin għandhom jattendu biex jaqdu l-funzjonijiet tagħhom taħt dan l-Att u jista' jispeċifika l-post jew il-postijiet fejn għandhom jinqdedw dawk il-funzjonijiet:

Izda l-Qorti li tieħu konjizzjoni tal-kawża tista', minn jeddha jew fuq rikors minn xi parti nteressata, tordna li l-Assistent ta' l-Imħallfin għandu jaqdi l-funzjonijiet tiegħu taħt dan l-Att f'dak il-post u f'dak il-ħin kif jista' jiġi stabbilit f'dak l-ordni.

Formoli.

10. Il-Ministru responsabbli għall-ġustizzja jista' b'regolamenti jippreskrivi l-formoli li għandhom jintużaw għal kull proċeduri bil-miktub meħtieġa b'dan l-Att.

Drittijiet.

11. Il-Ministru responsabbli għall-ġustizzja, bi ftehim mal-Ministru responsabbli għall-finanzi, jista' b'regolamenti jippreskrivi d-drittijiet li għandhom jithallsu dwar:

- (i) it-teħid ta' kull affidavit;
- (ii) it-teħid ta' xieħda bil-ġurament;
- (iii) id-drittijiet tar-registru li għandhom jithallsu dwar dawk l-affidavits jew it-teħid ta' dik ix-xieħda;
- (iv) it-tnejn ta' kull affidavit;
- (v) l-attendenza quddiem Assistent ta' l-Imħallfin.

12. Id-disposizzjonijiet ta' l-Att ta' l-1980 dwar ir-Registrazzjoni Elettro-Manjetika ta' Proċedimenti għandhom japplikaw *mutatis mutandis* għar-registrazzjoni ta' xiehda li tittiehed minn Assistenti ta' l-Imħallfin.

Registrazzjoni ta' xiehda b'mezzi elettromanjetici. Att XVI ta' l-1980.

13. Ir-Registru tal-Qorti li tiegħu konjizzjoni tal-kawża jkun ir-Registru ta' l-Assistenti ta' l-Imħallfin u l-atti tal-Assistenti ta' l-Imħallfin jiġu depożitati hemmhekk.

Registru.

14. L-Assistenti ta' l-Imħallfin għandhom jirċievu dik ir-rimunerazzjoni li l-Ministru responsabbli għall-ġustizzja, bi ftehim mal-Ministru responsabbli għall-finanzi jista' minn żmien għal żmien jippreskrivi.

Rimunerazzjoni għal Assistenti ta' l-Imħallfin.

15. (1) Hlief kif provdut xort'oħra f'dan l-Att, id-disposizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandhom, *mutatis mutandis*, japplikaw għal proċedimenti taħt dan l-Att.

Disposizzjonijiet ta' liġijiet oħra li japplikaw għall-Att.

(2) Id-disposizzjonijiet ta' dan l-Att m'għandhomx japplikaw għal proċedimenti li jsiru dwar rogatorji jew quddiem imħallef supplenti jew meta tkun meħtieġa prova bis-subizzjoni tal-parti kuntrarja.

Għanijiet u Ragunijiet

L-Għan ta' l-Abbozz huwa li jhaffef il-proċedimenti quddiem il-Qorti billi jiġu introdotti disposizzjonijiet sabiex jittiehdu affidavits u tinstema' x-xhieda quddiem Assistenti ta' l-Imħallfin.

A BILL
entitled

AN ACT to provide for the use of affidavits as evidence in courts.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. (1) This Act may be cited as the Evidence by Affidavit Act, 1982.

(2) This Act shall come into force on such date as the Minister responsible for justice may be notice in the Gazette appoint, and different dates may be so appointed for different provisions or different purposes of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires —

“affidavit” means a written statement confirmed on oath or by solemn affirmation by a person whose evidence is requested in any Court and taken in accordance with the provisions of subsection (2) of section 3 of this Act;

“Court” means any of the courts mentioned in sections 3 and 4 of the Code of Organization and Civil Procedure and any board or tribunal established by law but does not include any court or other body having criminal jurisdiction or the Court of Magistrates of Judicial Police for the Island of Malta or the Court of Judicial Police for the Islands of Gozo and Comino in its inferior jurisdiction;

“party” includes any third party joined in the suit and any person admitted *in statu et terminis* as a party to a suit.

Affidavits before Judges' Assistant to be filed in Court.

3. (1) Notwithstanding anything contained in the Code of Organization and Civil Procedure or in any other law, any party intending to produce a witness in proceedings before a Court shall file in the

Registry of such Court the affidavits of the witnesses on which the party intends to rely in support of his case.

(2) The affidavits to which subsection (1) of this section refers shall be taken before a Judges' Assistant.

(3) The affidavits referred to in subsection (1) of this section shall be filed in the Registry of the Court before which the proceedings are taken by means of a note which shall be served on the other party; such note shall be filed within the time prescribed by law in which a party is required to indicate the names of the witnesses which he intends to produce:

Provided that where a term is not so prescribed, the note shall be filed by the party together with the written pleading introducing the cause or the written pleading in answer thereto, as the case may be, or, where a written pleading in answer is not required of such party, not later than the day fixed for the hearing.

(4) Where it is not reasonably practicable for a party to produce the affidavit in due time, the Court taking cognizance of the cause, shall, on an application by such party, authorize the filing of the affidavit in the record of the proceedings or direct that the testimony be taken by a Judges' Assistant or heard before the Court, as the case may be.

4. Notwithstanding anything contained in the Code of Organization and Civil Procedure or in any other law, it shall be in the power of any Court taking cognizance of the case to give consideration to the facts contained in an affidavit duly taken and filed in the records of the proceedings, without the necessity of examining the person making such affidavit *viva voce* in open court:

Affidavits to be evidence.

Provided that the Court may direct that the testimony of any person be given *viva voce* in open court or taken by a Judges' Assistant.

5. (1) The party desiring to cross-examine the person making the affidavit shall, within six working days from the service of the note referred to in subsection (3) of section 3 of this Act, file a declaration to this effect:

Cross-examination of person making affidavit.

Provided that where proceedings are taken by libel or writ of summons such declaration shall be filed within the time allowed by the Code of Organization and Civil Procedure for the filing of the answer, reply or statement of defence, as the case may be.

(2) Such cross-examination shall be conducted before the Court or Judges' Assistant, as the Court may direct.

(3) In the absence of such declaration the Court may disallow the cross-examination.

6. The Court may, in cases of urgency, abridge any term prescribed by this Act.

Abridgement of terms.

7. (1) There shall be appointed Judges' Assistants who shall separately have the functions assigned to them by this Act, that is to say —

Judges' Assistants.

(a) (i) to take any affidavit on any matter connected with any proceedings taken or intended to be taken before any Court; and

(ii) to take the testimony of any person on oath where any Court shall have committed the taking of such evidence to a Judges' Assistant;

(b) to order the attendance of any person for the purpose of making any oath or affidavit on any such matter at such place and time as may be specified in the order;

(c) to order the arrest of any person who shall have failed to conform with any order referred to in paragraph (b) of this subsection for the purpose of bringing such person before the Judges' Assistant;

(d) to perform any other function which may be performed by them under any law now in force or under any law hereafter enacted, or which may lawfully be assigned to them by any Court.

(2) In the performance of their functions the Judges' Assistants shall act under the direction and control of the Court taking cognizance of the case.

Appointment of Judges' Assistants.

8. (1) The Judges' Assistants shall be appointed by the Minister responsible for justice from among persons who have practised as advocate in Malta for not less than two years.

(2) A Judges' Assistant shall be appointed for a term of three years and shall be eligible for re-appointment.

(3) The provisions of the Code of Organization and Civil Procedure regarding the abstention and challenge of Judges shall apply to the abstention and challenge of Judges' Assistants.

(4) Upon his appointment or re-appointment a Judges' Assistant shall take an oath to perform all his functions under this Act faithfully and honestly. The oath shall be taken before the Attorney General.

Attendance by Judges' Assistants.

9. The Minister responsible for justice may by notice published in the Gazette establish the days and the time during which Judges' Assistants shall be in attendance for the performance of their functions under this Act and may designate the place or places where such functions are to be performed :

Provided that the Court taking cognizance of the case may, on its own motion or on an application by any interested party, direct that the Judges' Assistant shall perform his functions under this Act at such place and time as may be established in such direction.

Forms.

10. The Minister responsible for justice may by regulations prescribe the forms to be adopted for any written proceedings required by this Act.

Fees.

11. The Minister responsible for justice, in consultation with the Minister responsible for finance, may by regulations prescribe the fees payable for :

- (i) the taking of any affidavit;
- (ii) the taking of evidence on oath;
- (iii) the registry fees payable in connection with such affidavits or the taking of such evidence;
- (iv) the preparation of any affidavit;
- (v) the attendance before a Judges' Assistant.

- 12.** The provisions of the Electro-magnetic Recording of Proceedings Act, 1980, shall apply *mutatis mutandis* to the recording of testimony taken by Judges' Assistants. Electro-magnetic recording of testimony. Act XVI of 1980.
- 13.** The Registry of the Court taking cognizance of the case shall be the Registry of the Judges' Assistants and the records of the Judges' Assistants shall be deposited therein. Registry.
- 14.** The Judges' Assistants shall receive such remuneration as the Minister responsible for justice, in consultation with the Minister responsible for finance, may from time to time prescribe. Remuneration to Judges' Assistants.
- 15.** (1) Save as otherwise provided in this Act, the provisions of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to proceedings under this Act. Provisions of other laws applicable to the Act.
- (2) The provisions of this Act shall not apply to proceedings taken upon letters of request or before a supplementary judge or where proof is required by reference to the oath of the opposite party.

Objects and Reasons

The Bill aims to expedite proceedings before the Courts by introducing provisions for the taking of affidavits and the hearing of evidence by Judges' Assistants.