I assent.

(L.S.)

UGO MIFSUD BONNICI
President

17th March, 1995

ACT No. V of 1995

AN ACT to establish the Small Claims Tribunal.

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 Small Claims Tribunal Act, 1995.

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

Interpretation.

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

"Adjudicator" means an Arbiter of the Tribunal appointed in accordance with section 4 of this Act;

"Minister" means the Minister responsible for justice;

"Registrar" means the Registrar of Courts appointed under the Code of Organization and Civil Procedure;

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"Tribunal" means the Small Claims Tribunal established under section 3 of this Act.

Establishment of tribunal.

3. (1) There shall be a Tribunal to be styled the Small Claims Tribunal.

(2) Subject to subsection (5) of this section, the Small Claims Tribunal shall have jurisdiction to hear and determine only all money claims of an amount not exceeding one hundred Maltese liri.

(3) (a) If the plaintiff claims payment of several sums due for the same cause, the value of the claim is to be determined by the total amount of the claims.

(b) If the plaintiff claims payment of several sums due for different causes, the value of the claim is determined by the highest sum, irrespective of the smaller sums.

(c) If the claim is for capital and interest, the value is determined by the aggregate amount of capital and interest.

(4) The Tribunal shall hold its sittings in such place or places in Malta and Gozo as the Minister may by order in the Gazette determine and the Tribunal shall, as far as practicable, hold the sittings in the Island where the person against whom the claim is made has his ordinary residence.

(5) Causes involving questions of ownership of immovable property, or relating to easements, burdens or other rights annexed to such property, even though the claim does not exceed one hundred Maltese liri, and causes of ejectment or eviction from immovable property shall not fall within the jurisdiction of the Tribunal.

Adjudicators.

4. (1) The Tribunal shall be presided by an Adjudicator sitting alone:

Provided that more than one Adjudicator may be appointed to sit in any of the said Tribunals, but only one Adjudicator shall sit in any one case.

(2) Adjudicators shall be appointed by the Prime Minister. No person shall be qualified to be appointed Adjudicator unless such person —

(a) is a citizen of Malta over the age of thirty years; and

(b) holds the warrant and has practised the profession of:

(i) advocate for a period of at least one year, or

(ii) legal procurator for at least three years.

(3) A person shall be disqualified to be appointed Adjudicator if such person:

(a) is a member of the House of Representatives; or

(b) is a member of a Local Council; or

(c) is an undischarged bankrupt; or

(d) has been sentenced by any court to imprisonment for any term or has been found guilty by any court of any of the crimes in Titles III, V or VI of Part II of Book First of the Criminal Code.

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(4) Adjudicators shall receive remuneration as the Prime Minister may by notice in the Gazette determine, and shall not be precluded from the exercise of their respective profession.

(5) Adjudicators shall be appointed for a term of three years and shall be eligible to be re-appointed for a further term or terms of three years each.

(6) In the exercise of his functions under this Act an Adjudicator shall not be subject to the control or direction of any other person or authority and may not be removed from office except by the Court of Appeal on an application for that purpose by the Prime Minister on the grounds of misbehaviour or inability to perform his functions by reason of infirmity of body or mind.

Abstention or challenge of Adjudicators.

5. An Adjudicator shall abstain and may be challenged in the same circumstances as a judge of the Superior Courts.

Oath to be taken by Adjudicators.

6. Every person appointed as an Adjudicator shall not assume the functions of his office unless and until he has taken before the Attorney General an oath to examine and decide the cases brought before him without delay, with impartiality and equity according to law.

Tribunal to decide according to equity.

7. (1) The Tribunal shall determine any claim or counterclaim before it principally in accordance with equity:

Provided that, in any case, any question of prescription shall be determined according to law.

(2) The Tribunal shall suspend its proceedings if:—

(a) the claim is sought to be avoided by way of defence, involving an issue outside the Tribunal's jurisdiction; and/or

(b) there is pending before a competent court an action, the outcome of which would affect the claim before the Tribunal.

Appeals.

8. (1) An appeal shall lie from a decision of a Tribunal to the Court of Appeal composed of one judge only in accordance with subsection (6) of section 41 of the Code of Organization and Civil Procedure. Such appeal shall be entered by an application to be filed within eighteen days.

(2) An appeal shall only lie in the following cases:

(a) on any matter relating to the jurisdiction of the Tribunal;

(b) on any question of prescription;

(c) on any non-compliance with the provisions of subsection (2) of section 7;

(d) where the Tribunal has acted in a serious manner contrary to the rules of impartiality and equity according to law and such action has prejudiced the rights of the appellant.

(3) Where the Court of Appeal finds that the grounds for appeal are justified it shall quash the decision of the Tribunal and shall itself determine the original claim and counterclaim in accordance with the provisions of section 7.

Procedure.

9. (1) Subject to the provisions of any rules made in accordance with section 16 of this Act and to the provisions of subsection (2) of this section, an Adjudicator shall regulate the proceedings before a Tribunal as he thinks fit in accordance with the rules of natural justice.

(2) Subject to any rules referred to in subsection (1) of this section, an Adjudicator—

(a) shall ensure that a case is heard and decided summarily, as far as possible, on the same day of the hearing and that the hearing shall not take longer than one sitting;

(b) he shall inform himself in any manner he thinks fit and shall not be bound by the rules of best evidence or the rules relative to hearsay evidence if he is satisfied that the evidence before him is sufficiently reliable for him to reach a conclusion on the case before him;

(c) he shall refrain as far as possible from appointing referees to give expert evidence, and shall where experts are appointed make out a list of facts upon which the expert is to give evidence;

(d) shall only list out the main points upon which his decision is based; and

(e) shall have the same power as a Magistrate sitting in a Court of Magistrates in its civil jurisdiction and in particular shall have power to summon witnesses and to administer an oath to witnesses.

(3) No proceedings before the Tribunal shall be invalid because of the non-observance of any formalities if there has been substantial compliance with this Act or any rules made thereunder.

Costs and enforcement.

10. (1) In any award the Adjudicator shall determine the costs that any of the parties is to bear. Unless special circumstances otherwise warrant the losing party shall be ordered to pay the costs of the party in whose favour the decision is awarded.

(2) Costs shall be limited to actual expenses directly made in connection with the case by the party in whose favour the payment of costs is awarded:

Provided that in no case shall costs be awarded in connection with any expenses consisting of legal fees or any fees however so called and paid by any of the parties to advocates, legal procurators or any other person assisting the parties before the Tribunal.

(3) In the case of a vexatious or frivolous claim the Tribunal may order the claimant to pay to the defendant a penalty of not more than fifty Maltese liri, which penalty shall be due as a civil debt.

(4) A decision of the Tribunal which has become *res judicata* may be enforced, depending on the residence of the person against whom enforcement is sought, by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo), as if the decision was a judgment of the respective Court.

Registry of Tribunal.

11. (1) The Registry of the Court of Magistrates (Malta) shall be the registry of the Tribunal:

Provided that acts may be filed in the Registry of the Court of Magistrates (Gozo), for the transmission to the Registry of the Court of Magistrates (Malta).

(2) The records of the Tribunal shall be accessible to all persons, and copies thereof shall be given on payment of the prescribed fee to any person on request.

(3) The acts of the Tribunal shall be deposited and kept in the archives of the courts of justice in Malta.

(4) The Minister may by regulations prescribe what records and acts may be kept in duplicate in the Registry of the Court of Magistrates (Gozo).

Duties of Registrar.

12. (1) The Registrar shall be responsible for the running of the Tribunal. The Registrar shall also perform any other duties which may be incumbent upon him under this Act or any rules made thereunder.

(2) The duties of Registrar of the Tribunal shall be carried out in accordance with the provisions of the Code of Organization and Civil Procedure.

Default of appearance of the parties.

13. If any of the parties fails to appear on the date appointed for the hearing of the cause, the Adjudicator shall adjourn the cause for another date and if on such other date —

(a) the claimant fails to appear, the Adjudicator shall dismiss the cause and order the costs to be borne by the claimant;

(b) the defendant fails to appear, the Adjudicator is to hear and determine the cause in the absence of the defendant.

Parties may be assisted by any person.

14. The parties may be assisted by any person.

Language of proceedings.

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15. The provisions of the Judicial Proceedings (Use of English Language) Act shall apply to the Tribunal.

Rules.

16. The Minister may make rules for the better functioning of the Tribunal and may without prejudice to the generality hereof make rules —

(a) setting out the procedure before the Tribunal or in appeals from the Tribunal;

(b) establishing the forms that are to be used in proceedings before the Tribunal or in appeals from the Tribunal;

(c) establishing rates of costs in proceedings before the Tribunal;

(d) establishing the fees that may be due to the registry of the Tribunal;

(e) establishing the fees that may be due to advocates and legal procurators appearing before the Tribunal;

(f) setting out the duties of Registrar in relation to the Tribunal;

(g) prescribing anything that may or is to be prescribed in accordance with this Act.

Expenditure of administration of Tribunal.

17. The expenses in connection with the administration of the Tribunal and the remuneration due to Adjudicators shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

Amendment of the Code of Organization and Civil Procedure.

18. Immediately after section 56 of the Code of Organization and Civil Procedure, there shall be added the following new section:

"Small Claims Tribunal.

56A. Notwithstanding any of the provisions of this Code the Inferior Courts shall not take cognizance of any claim falling within the jurisdiction of the Small Claims Tribunal established under the Small Claims Tribunal Act, 1995.".

Transitory provision.

19. Causes which on the coming into force of this Act are pending before the Court of Magistrates shall continue to be heard and determined before the said Court unless all the parties in such case agree

that the said case shall be decided by the Tribunal, in which case the acts shall be transmitted by the Registrar to the Tribunal which shall notwithstanding the provisions of section 10 also decide on the costs incurred before the Court of Magistrates. In such case the cause before the Court of Magistrates shall be taxed as if the case were withdrawn.

Amendment to the Consumer Affairs Act, 1994. (Act XXVIII of 1994).

20. Immediately after the definition of "Minister" in section 2 of the Consumer Affairs Act, 1994, there shall be inserted the following definition:

" "ordinary court" for the purposes of Part III of this Act includes the Small Claims Tribunal established under the Small Claims Tribunal Act, 1995;".

Passed by the House of Representatives at Sitting No. 401 of 8th March, 1995.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives

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