

debt the amount or the money value thereof from the agent, and no conviction or acquittal of the agent or of that person in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of the amount or money value.

(2) Nothing in this section shall prejudice or affect any right which any principal may have under any law in force in Kenya to recover from his agent any money or property.

9. A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment, nomination or election of a person to a public office.

Invalidity of appointment, etc., no bar to prosecution.

10. (1) Notwithstanding anything in any other law contained, the Director may, if it is proved to his satisfaction that there is reasonable cause for suspecting that an offence under this Act has been committed by any person, authorize in writing any named police officer of or above the rank of Assistant Superintendent, or any other officer of the Authority, with or without a named accountant, to investigate any bank account, share account or purchase account of that person or his wife or child, or of any specified person reasonably believed by the Director to be a trustee or agent for that person, and that authority shall be sufficient warrant for the production of such accounts and documents as may be required for scrutiny by the officer so authorized; and the officer may take copies of any relevant entry in any such account or document:

Special powers of investigation. 13 of 1991, s. 6. 10 of 1997.

Provided that nothing in this subsection shall prejudice or derogate from any privilege from disclosure which attaches in law to professional communications between advocate and client.

(2) Any authority issued under this section shall be addressed to a named person and shall only apply to accounts held by that person.

(3) Any person who fails to produce any such account or document to any person who produces due authority under subsection (1) or to permit any such authorized person to scrutinize the same or to take copies of any relevant entry therein or gives a false account shall be guilty of an offence and liable to imprisonment for a term not exceeding three years or to a fine not exceeding fifty thousand shillings, or to both such imprisonment and fine.

11. (1) In any trial or inquiry by a court of or into an offence punishable under this Act, the fact that an

Special rules of evidence.

accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating any other evidence in the trial or inquiry that the accused person received or obtained any money, gift, loan, fee, reward or other consideration or advantage.

(2) An accused person shall, for the purposes of subsection (1), be deemed to be in possession of resources or property, or to have obtained an accretion thereto, where the resources or property are held or the accretion is obtained by any other person and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that that other person is holding the resources or property or has obtained the accretion for or on behalf of the accused person or, in the case of the husband, wife, child, father, mother, sister or brother of an accused person, as a gift from the accused person.

Attorney-General
may
prohibit
transfer of
advantage,
etc. or
property
corruptly
acquired.
13 of 1991, s. 7.
16 of 1997.

11A. (1) Where a person has been charged with an offence under this Act and the Director has reason to suspect any person of having corruptly received or acquired any advantage, gift, loan, fee, reward or property, he shall apply to the court, *ex parte*, which may, upon evidence that the person concerned has corruptly received or acquired the advantage, gift, loan fee, reward or property or that there is any other person to whom there is evidence that the advantage, gift, loan, fee, reward or property or part of the proceeds or value thereof has been transferred or conveyed, order that the property, money or advantage in question shall not be transferred or disposed of ~~for such period; not exceeding six months,~~ as it shall deem fit.

Provided that the court may, on the application of the Director, by order extend the period for such further period as it shall deem fit.

(2) Any person who is served with an order under subsection (1) may, within fifteen days of such service, apply to the court for the discharge of the order, and the court may, after hearing the parties, either maintain, vary or discharge the order.

(3) Any person who has been served with an order under subsection (1) and who, in contravention of the order, transfers, disposes of or parts with the possession of the sum of money

or property specified in the order, shall be guilty of an offence and liable to imprisonment for a term not exceeding two years.

(4) In any proceedings for an offence under subsection (3), the accused person shall be acquitted if he satisfies the court—

- (a) that the sum of money or other property specified in the order was delivered to a police officer, or to some other person as directed in the order; or
- (b) that the sum of money or other property specified in the order was produced to the court and has been retained by such court; or
- (c) that the order has been discharged by the court before the transfer, disposal, or parting with possession complained of.

11B. (1) There is established an Authority to be known as “the Kenya Anti-Corruption Authority” (hereinafter referred to as “the Authority”) which shall be a body corporate with perpetual succession and a common seal, with power, in its corporate name, to—

The Kenya
Anti-
Corruption
Authority
10 of 1987.

- (a) sue and be sued;
- (b) take, purchase or otherwise acquire, hold, charge or dispose of both movable and immovable property;
- (c) borrow or lend money;
- (d) enter into contracts; and
- (e) do or perform all such things or acts necessary for the proper performance of its functions under this Act which may be lawfully done by a body corporate.

(2) The Authority shall consist of a Director who shall be the chief executive and such number of Assistant Directors, not exceeding three, all of whom shall be appointed by the President on the recommendations of the Advisory Board appointed under subsection (7).

(2A). The Director and Assistant Directors shall hold office for terms of four years each but shall be eligible for reappointment:

Provided that no Director or Assistant Director shall hold office for more than two terms.

(2B). The Director and Assistant Directors shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(2C). A Director or an Assistant Director may resign his office by writing under his hand addressed to the President which resignation shall take effect one month from the date of receipt of the letter of resignation by the President.

(2D). If a Director or an Assistant Director resigns or otherwise vacates office before the expiry of his term of office,, the President shall appoint another person in his place.

(2E). Where a Director or an Assistant Director is unable to perform the functions of his office due to any temporary incapacity which is likely to be prolonged, the President may appoint a substitute for that Director or Assistant Director until such time as the President determines that his incapacity has ceased.

(2F). No person shall be appointed as a Director or an Assistant Director who is—

- (a) a member of the National Assembly; or
- (b) a salaried employee of any public body (except on a secondment basis).

(2G). The President shall terminate the appointment of a Director or Assistant director who—

- (a) becomes subject to any of the disqualifications specified in subsection (2F);
- (b) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (c) is convicted of an offence involving dishonesty or fraud or moral turpitude;
- (d) is adjudged or is otherwise declared to be of unsound mind;
- (e) is absent without the leave of the Authority from three consecutive meetings of the Authority;
- (f) becomes for any reason, incapable or incompetent of properly performing the functions of his office.

Provided that the appointment of a Director or Assistant Director shall not be terminated under this paragraph until the question of his removal from office has been referred to a tribunal under subsection (2H), and the tribunal has recommended to the President that the Director or Assistant Director ought to be removed from office on grounds of incapability or incompetence as aforesaid.