

CHAPTER 04:02
HIGH COURT
ARRANGEMENT OF SECTIONS

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Act 21, 1974,
Act 2, 1975,
Act 12, 1976,
S.I. 157, 1976,
Act 5, 1980,
Act 20, 1986,
Act 13, 1999,

An Act to consolidate and amend the law relating to the High Court of Botswana.

[Date of Commencement: 1st December, 1976]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the High Court Act.

2. Interpretation

In this Act unless the context otherwise requires-

"**Court**" means the High Court of Botswana;

"**customary court**" and "customary court of appeal" means the customary court and customary court of appeal respectively, set up under the Customary Courts Act;

"**judge**" means a judge of the Court and includes the Chief Justice;

"**judgment**" includes any decision, decree, determination, finding, sentence or order of any court;

"**magistrate's court**" means a court established under section 3 of the Magistrates' Courts Act;

"**Registrar**" means the Registrar of the Court and includes a Deputy Registrar and an Assistant Registrar;

"**rules of court**" means rules of court made under section 28;

"**seal**" includes stamp;

"**Sheriff**" includes a Deputy Sheriff and persons acting under the general or special direction of the Sheriff.

PART II
High Court (ss 3-14)

3. Judges of the Court (1) The High Court shall consist of the Chief Justice and such number of judges of the Court which shall not exceed a maximum number of 30 judges.

(2) Subject to subsection (1), the President may, in accordance with the provisions of section 96 (2) of the Constitution, appoint such number of judges for the Court as he may consider necessary to appoint.

4. Rank and precedence

The Chief Justice shall be the senior judge of the Court and the other judges of the Court shall take precedence after him according to the priority of their respective appointments as such.

5. Seal of the Court

(1) The Court shall have and use as occasion may require a seal bearing the device and impression of the arms of Botswana surrounded by the legend "The High Court of Botswana".

(2) The seal shall be kept in the custody of the Registrar.

6. Proceedings of Court to be disposed of by single judge

Except as otherwise provided by this Act or any other written law, every proceeding in the Court and all business arising thereout shall be heard and disposed of by or before a single judge or such number of judges as may be determined by the Chief Justice.

7. Assessors

(1) In any proceedings, whether civil or criminal, the judge presiding may summon to the assistance of the Court two or more persons to sit and act as assessors in an advisory capacity.

(2) It shall be the duty of the assessors to give, either in open court, or otherwise, such assistance and advice as the judge presiding may require, but the decision shall be vested exclusively in the judge.

(3) The agreement or disagreement of an assessor with the decision of the judge may be noted on the record, but if such agreement or disagreement is not noted it shall be presumed that the assessor agreed with the decision of the judge.

8. Language to be employed in Court

(1) The language to be employed in the Court shall be English and the evidence, pleadings and all the records of proceedings in the Court shall be in that language.

(2) If any of the parties or witnesses in proceedings before the Court do not understand the English language, then the proceedings shall be interpreted from English into the language understood by the parties or the witnesses concerned, as the case may be, and *vice versa*:

Provided that in civil proceedings the parties may be called upon to bear part or the whole of the costs of such interpretation if the language understood by the parties or witnesses is not one of the languages commonly spoken in Botswana.

9. Proceedings to be open to the public

(1) Except with the agreement of all parties thereto, the proceedings of the Court, including the announcement of the decision of the Court, shall be held in public.

(2) Nothing in subsection (1) shall prevent the judge presiding from excluding from any proceedings persons other than the parties thereto and their legal representatives, to such extent as he may consider necessary or expedient-

- (a) in circumstances where publicity would prejudice the interest of justice;
- (b) in interlocutory proceedings; or
- (c) in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings.

(3) If any person in or in the precincts of the Court conducts himself in such a manner as is capable of disturbing the peace or order of the Court, the judge presiding may order that such person be removed or detained in custody until the final rising of the Court for the day, or, if in the opinion of the judge peace or order cannot otherwise be secured, may order that the public gallery be cleared and the doors thereof closed to the public.

10. Appellate jurisdiction of Court

(1) The Court shall have appellate jurisdiction from any decision of a magistrate's court and customary courts of appeal in Botswana and shall have power to-

- (a) confirm, amend or set aside any judgment, decision or order, civil or criminal, of any magistrate's court or a customary court of appeal;
- (b) order a new trial of any cause heard or decided in any magistrate's court or a customary court of appeal, or to direct that such new trial shall be heard in the Court;
- (c) receive further evidence or to remit the case to the court of first instance for further hearing, with such instructions as to further proceedings as the Court may deem necessary;
- (d) impose such punishment, whether more or less severe than, or of a different nature from, the punishment imposed by the court of first instance, as in the opinion of the Court ought to have been imposed by that court:

Provided that notwithstanding that the Court is of the opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record or proceedings unless it appears to the Court that a failure of justice has in fact resulted therefrom.

(2) Notwithstanding the provisions of subsection (1), the right of the Director of Public Prosecutions or, in the case of a private prosecution, the private prosecutor to appeal shall be restricted to an appeal on a matter of law against a finding or acquittal.

11. Civil appeals to Court

(1) An appeal shall lie to the Court from a magistrate's court or a customary court of appeal in the following cases-

- (a) from all final judgments;
- (b) with leave of the Court, from all interlocutory judgments and orders given or made in the course of any civil action or matter:

Provided that no appeal shall lie, except with leave of the Court or of the magistrate's court, from an order made *ex parte*, or by consent, or as to costs only.

(2) Appeals from magistrate's courts or from customary courts of appeal shall be heard by one judge, except where in any particular case the Chief Justice directs that an appeal shall be heard by two or more judges.

(3) Subject to subsection (4), the Court shall not entertain any appeal unless the appellant has fulfilled all the conditions of appeal imposed by the Court or by the magistrate's court or by customary court of appeal or by any rules of court.

(4) Notwithstanding anything hereinbefore in this section contained, the Court may entertain any appeal from a magistrate's court or a customary court of appeal on any terms which it considers just.

12. Power in civil appeals

In a civil appeal the Court shall have power to-

- (a) dismiss the appeal;
- (b) reverse a judgment made upon a preliminary point and, on such reversal, remit the case to the magistrate's court or the customary court with directions to proceed to determine the case on its merits;
- (c) resettle issues and finally determine a case, notwithstanding that the judgment of the magistrate's court or the customary court has proceeded wholly on some ground other than that on which the Court proceeds;
- (d) call additional evidence or direct the magistrate's court or customary court or any magistrate's court or customary court to take additional evidence;
- (e) make any amendment or any consequential or additional order that may be just and proper;
- (f) confirm, reverse or vary a judgment;
- (g) order that a judgment be set aside and a new trial held;
- (h) make such order as to costs both in the Court and in the magistrate's court or the customary court as may be just and proper.

13. Appeal not to act as stay of execution

In civil matters, an appeal shall not operate as a stay of execution or of proceedings under a judgment unless the Court or the magistrate's court or customary court so orders, and no intermediate act or proceeding shall be invalidated, except insofar as the Court directs.

14. Magistrate's court to conform with order of Court

In civil appeals, a magistrate's court or customary court shall conform with and execute such judgment or order as shall be issued, made or pronounced therein by the Court in like manner as if it were an original judgment or order issued, made or pronounced therein by the magistrate's court or customary court.

PART III Registrar (ss 15-18)

15. Registrar

There shall be a Registrar of the Court and such Deputy Registrars and Assistant Registrars as may be appointed.

16. Powers and duties of Registrar

(1) The Registrar shall perform such duties and exercise such jurisdiction in exercise of the powers and authorities of the Court as may from time to time be prescribed by this Act or under any other written law, or as may from time to time be directed either generally or specially by the Chief Justice.

(2) Subject to subsection (1) the Registrar shall-

- (a) issue all summonses, warrants and writs of execution;
- (b) register all orders and judgments;
- (c) keep a record of all proceedings of the Court;
- (d) have the custody and keep an account of all fees and fines payable or paid into the Court and of all moneys paid into or out of the Court and keep proper accounts thereof.

17. Authorization

The Registrar may authorize any public officer in his department to perform any of the functions vested in him under this Act or any other written law, and any such officer so authorized may perform such functions under the direction of the Registrar.

18. Sheriff

(1) The Registrar shall be the Sheriff and, subject to subsection (2), shall perform the functions vested in the Sheriff under this Act or any other written law.

(2) Subject to any written law governing the public service, the Registrar may appoint one or more persons to be Deputy Sheriffs to perform, subject to his directions, the functions vested in the Sheriff under this Act or any other written law:

Provided that the office of Deputy Sheriff shall not *ipso facto* be an office of emolument in the public service.

(3) The Sheriff may require a Deputy Sheriff who is not a public officer to furnish security for the due and faithful performance of his functions.

PART IV

Civil Proceedings (ss 19-24)

19. Manner of securing attendance of witnesses in civil proceedings

(1) A party to civil proceedings before the Court in which the attendance of any witness is required may procure the attendance of such witness in the manner provided for in the rules of court.

(2) Whenever any person subpoenaed to attend any civil proceedings as a witness fails without reasonable cause to obey the subpoena and it appears from the return of the proper officer or from evidence given on oath that the subpoena was served on the person to whom it was directed and that his reasonable expenses calculated in accordance with the tariff prescribed in the rules of court have been paid or offered to him, or that he is evading service, or that any person who has attended obedience to a subpoena fails to remain in attendance without the authority of the Court, the Court in which such proceedings are conducted may issue a warrant directing that such person be arrested and brought before the Court at a time and place specified in the warrant or as soon thereafter as possible.

(3) A person arrested under a warrant issued under subsection (2) may be detained thereunder before the Court which issued it or in any prison or lock-up or other place of detention or in the custody of the person executing the warrant with a view to securing his presence as a witness at the proceedings:

Provided that the Court may release him on a recognizance with or without security pending his appearance at an enquiry under subsection (4).

(4) The Court may in a summary manner make enquiry into a present evasion of the service of a subpoena or failure to obey a subpoena or to remain in attendance and may, unless it is proved that such person has a reasonable excuse for such evasion or failure, sentence him to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

(5) Any sentence imposed by the Court under subsection (4) shall be enforced and shall be subject to appeal as if it were a sentence imposed for a criminal offence.

(6) If a person who has entered into any recognizance for his appearance at any proceedings or at any enquiry under subsection (4) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to appear at such proceedings or enquiry.

20. Expenses of witnesses

The Court may, in civil proceedings, allow to all persons required to attend or to be examined as witnesses such sums of money as expenses or compensation for their loss of time as may be prescribed.

21. Refusal of witness to give evidence

(1) Whenever a person who appears in obedience to a subpoena or by virtue of a warrant issued under section 19, or is present and is required by the Court to give evidence in any civil proceedings, or, having been sworn or made an affirmation, refuses to answer such questions as are put to him or refuses or fails to produce any document or thing that he is required to produce, without any just excuse for such refusal or failure, the Court may adjourn the proceedings for a period not exceeding eight days, and may, in the meantime, commit the person so refusing or failing to prison unless he sooner consents to do what is required of him.

(2) If any person so refusing or failing again refuses or fails to do what is required of him at the resumed hearing of the proceedings, the Court may again adjourn the proceedings and commit him for a like period and so again from time to time until such person does what is required of him.

(3) Nothing in this section shall be construed as preventing the Court from giving judgment in any case or otherwise disposing of the proceedings according to any other sufficient evidence taken.

22. Property not liable to be seized in execution

The following property shall not be seized in execution of any process of the Court-

- (a) the necessary beds and bedding and wearing apparel of the person against whom execution is levied or of his family;
- (b) the necessary furniture and household utensils, insofar as they do not exceed in value the sum of P400;
- (c) the supply of food and drink in the house sufficient for the needs of such person and of his family during one month;
- (d) tools and implements of trade, and tools necessarily used in the cultivation of land, insofar as such tools or implements do not exceed in value the sum of P400;
- (e) professional books, documents or instruments necessarily used by such person in his profession, insofar as the same do not exceed in value the sum of P400.

23. When civil imprisonment to be decreed

No writ of civil imprisonment for non-payment or non-satisfaction of any judgment or decree shall be granted or issued by the Court in cases in which the defendant or any other party against whom such writ of civil imprisonment is sought to be issued proves to the satisfaction of the Court that he or the other party against whom such writ is sought has no property or means sufficient to satisfy in whole or in part the said judgment or decree.

24. Offences related to execution

Any person who-

- (a) obstructs the Sheriff in the execution of his duty;
- (b) being aware that goods are under arrest, interdict or attachment by the Court, makes away with or disposes of those goods in a manner not authorized by law, or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in such manner;
- (c) being a judgment debtor and being required by the Sheriff to point out property to satisfy a warrant issued in execution of a judgment of the Court against such person-
 - (i) falsely declares to the Sheriff that he possesses no property or insufficient property to satisfy the warrant, or
 - (ii) knowing of such property, neglects or refuses to point out such property or to deliver it to the Sheriff when required to do so; or
- (d) being a judgment debtor, refuses or neglects to comply with any requirement of the

Sheriff with regard to the delivery of documents in his possession or under his control relating to the title of immovable property under execution, shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

PART V
General (ss 25-28)

25. Protection of judicial officers

(1) No judge shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not done within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have the jurisdiction to do or order the act complained of.

(2) No officer of the Court or other person bound to execute the lawful warrants or orders of the Court or other person acting judicially shall be liable to be sued in any court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same, nor shall any such person or the person at whose instance such warrant or order is to be executed be deemed to be a trespasser by reason of any irregularity in any proceeding on the validity of which such warrant or order depends or in the form of such warrant or order or in the mode of executing the same.

(3) No officer of the Court shall be liable to be sued in any court for any act or omission of any police officer or other person in the execution of any process which has been done or may have occurred either through disobedience or neglect of the orders or instructions given.

26. Restriction of vexatious actions

If, either of its own motion or on application made under this section by the Attorney-General, the Court is satisfied that any person has habitually and persistently and without reasonable cause instituted vexatious legal proceedings, whether in the Court or in any magistrate's court, and whether against the same person or persons or against different persons, the Court may, after hearing such person, or giving him an opportunity of being heard, order that no legal proceedings shall, without the leave of the Court, be instituted by him in any court, and, if already instituted at the making of the order, shall not be continued by him without such leave, and before giving such leave the Court shall be satisfied that the proceedings are not an abuse of the process of the Court and that there is a *prima facie* ground for such proceedings.

27. Execution of warrants

Any warrant of committal issued by the Court in the exercise of its civil jurisdiction may be executed by a Deputy Sheriff or any other person to whom it is directed at any time notwithstanding that the warrant is not in his possession at that time:

Provided that the warrant shall, on demand of the person arrested, be shown to him as soon as possible after his arrest.

28. Rules of court

The Chief Justice may make rules of court prescribing anything which, under this Act, may be or is to be prescribed and generally for the better carrying out of the purposes of this Act, and, without prejudice to the generality of the foregoing, such rules of court may provide-

- (a) for the pleading, practice and procedure of the Court, including all matters connected with the forms to be used and the fees to be payable, the amount and the method and time of payment of the same;
- (b) for the expenses of parties and witnesses, the amount and the method and time of payment of the same;
- (c) for the fees and costs of legal practitioners and notaries public, and the amount, taxation and recovery of the same;
- (d) for the duties and powers of the several officers of the Court;
- (e) for regulating the sittings of the Court and of the judges, whether sitting in chambers

- and the times for the holding of Courts;
- (f) that, in any matrimonial matter, the judge may, if the parties agree, interview them privately in his chambers in the presence of their legal advisers for the purpose of discussing with them a settlement of the matter or any other matter affecting the future conduct of the proceedings;
 - (g) that, in any case affecting the custody of children, the judge may, if he thinks fit, interview such children privately in his chambers;
 - (h) for regulating and prescribing the procedure on appeals or reviews from any court or person to the Court and setting out the powers of the Court in the exercise of its appellate and revisional jurisdiction;
 - (i) for regulating and prescribing the procedure in connection with interlocutory applications;
 - (j) for regulating and prescribing the manner of dealing with commissions rogatoire, letters of request and documents for service from foreign countries;
 - (k) for prescribing the fees to be paid in respect of service or execution of any process of the Court or in respect of the summoning of persons to answer interrogatories;
 - (l) for prescribing and regulating the manner of determining the amount of security to be given in any case where security is required to be given and the form and manner in which such security may be given;
 - (m) for prescribing and regulating the hours during which the office of the Registrar shall be open for the transaction of business;
 - (n) for prescribing and regulating the proceedings of the Sheriff, Deputy Sheriffs and other officers of the Court;
 - (o) for prescribing the tariff of costs and expenses which may be allowed in respect of service or execution of any process referred to in paragraph (m) or to persons appearing to answer interrogatories;
 - (p) for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purpose of delay;
 - (q) for the time within which any requirement of the rules is required to be complied with and the extension of such time;
 - (r) for prescribing the circumstances in which an appeal shall be deemed to have been abandoned;
 - (s) for generally making provision in regard to any matter in respect of which, in the opinion of the Chief Justice, it is necessary or desirable to make provision in order to facilitate the proper dispatch and conduct of the business of the court.