

CHAPTER 36:06
MATIMELA

ARRANGEMENT OF SECTIONS

SECTION

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Act 25, 1968,
S.I. 79, 1969,
Act 48, 1971,
Act 2, 1975,
Act 21, 1975,
Act 5, 1977,
Act 38, 1977,
Act 20, 2004.

An Act to provide for the collection and disposal of stray livestock in districts and elsewhere and to provide for matters incidental thereto.

[Date of Commencement: 15th August, 1969]

1. Short title and application

This Act may be cited as the Matimela Act, and shall not apply within the area of a city or township.

2. Interpretation

In this Act, unless the context otherwise requires-

"AC brand" means an AC brand as defined in the Branding of Cattle Act;

"animals" means horses, donkeys, mules, cattle, sheep, goats and pigs;

"assistant matimela officer" means a person appointed under section 4 as an assistant matimela officer;

"branded animal" means any animal upon which any AC brand is imprinted and includes unweaned young of any animal upon which any such brand is imprinted;

"Chief" means Chief of a tribal area and includes any person performing the functions of Chief;

"council", in relation to any tribal area, means the District Council within the area in which the tribal area is situated;

"matimela" means any stray animals and any animals which having been stray animals continue to be matimela by virtue of section 13;

"matimela fund" means a fund established under section 12;

"matimela kraal" means a kraal established or deemed to have been established under section 3;

"matimela officer", in relation to any matimela kraal, means the person appointed under section 4 as matimela officer of that kraal, and in the absence or incapacity of such person means the council secretary.

3. Establishment of matimela kraals

(1) A council may by resolution establish any kraal or enclosure as a matimela kraal for the purposes of this Act.

(2) Any kraal or enclosure in the vicinity of any kgotla in which matimela has, prior to the coming into operation of this Act, been customarily placed shall be deemed to have been established as a matimela kraal under this section.

4. Matimela officers

(1) A council shall appoint a matimela officer for every matimela kraal established or deemed under section 3 to have been established in its area.

(2) A council may appoint as many assistant matimela officers as may be necessary for the purposes of this Act.

(3) In the exercise of their functions under this Act matimela officers and assistant officers shall act in accordance with such instructions as may be given them by the council.

5. Councils may make arrangements for collection of matimela (1) A council may at any time, and shall at least thrice in every year, in consultation with the Chief, make arrangements for the collection of matimela and may, for that purpose, employ persons whose remuneration shall be paid out of moneys available in the matimela fund or the general revenue of the council.

(2) Any matimela collected under subsection (1) shall as soon as is practicable be placed in a matimela kraal.

6. Reporting of matimela

(1) Any person (including any person mentioned in this subsection) who finds matimela knowing them to be matimela, shall report the presence of such animals to his nearest matimela officer, assistant matimela officer, Chief, sub-chief or headman within one month.

(2) Any Chief, sub-chief or headman who receives a report in terms of subsection (1) shall pass on such report to the matimela officer or assistant matimela officer within 30 days of receiving such report.

(3) A matimela officer shall, upon receipt of a report about the presence of matimela made in terms of subsection (1), submit such a report to a council.

(4) The council shall, within 30 days of receiving a report in terms of subsection (3), collect the matimela.

(5) Any person failing to comply with subsection (1) shall be guilty of an offence and liable to the penalties prescribed in section 25.

7. Driving fees

Any person who delivers matimela to a matimela kraal, not being a person employed under the provisions of section 5, shall be entitled to receive from the matimela officer driving fees at the rate prescribed:

Provided that no fees shall be claimable where the claimant has failed to deliver such matimela to any person collecting matimela under section 5.

8. Collecting of matimela

(1) Any person collecting matimela with the authority of the council under section 5 may, if so instructed by the council, enter upon any land for the purpose of ascertaining whether any matimela are there and may, if he finds any animals which he has reason to believe are matimela, seize such animals and take them to a matimela kraal:

Provided that no such person shall take such animals from a kraal unless he has first informed-

- (i) the occupier of that kraal, farm or enclosure;
- (ii) any servant or member of the family of such occupier; or
- (iii) in the absence of all such persons as are referred to in paragraphs (i) and (ii), the occupier of any neighbouring land or any servant or member of the family thereof:

Provided further that such person shall, in the exercise of the powers conferred upon him by this subsection, have in his possession, and shall produce on request, a letter or other document as evidence of such authority issued by the council, and such letter or other document shall be sufficient proof of such authority.

(2) No person other than-

- (a) the owner of such matimela;
- (b) a person acting as his agent or on his behalf;
- (c) an officer of the High Court acting in execution of a court order, or a local police officer acting in execution of an order of a subordinate court, or of customary court of competent jurisdiction, in respect of such matimela; or
- (d) a person exercising a right to take possession of such matimela under the Agricultural Charges Act or the Hypothecation Act,

shall, without the authority of the council, collect matimela which are in the possession of any person other than the owner of such matimela.

(3) Any person who obstructs any person authorized to collect matimela under section 5 in the exercise of the powers vested in him under subsection (1) or who contravenes subsection (2) shall be guilty of an offence and shall be liable to the penalties prescribed in section 25.

9. Notification of presence of matimela

(1) A matimela officer shall within 14 days after any matimela have been placed in a matimela kraal notify the council of the presence of such matimela and also compile a list of such matimela disclosing any distinguishing marks which such matimela may bear, including the particulars specified in section 19(1).

(2) If any notification given, or list compiled, under subsection (1) includes particulars of any branded animal, the matimela officer shall, at the time of notifying the council and compiling such list, forward a copy of such notification and list by registered post to the financial institution or to the proprietor of any AC brand, as the case may be.

(3) The council shall, on receiving any notification given it under (1), post details thereof in a conspicuous position at the council offices and such other places as it may deem necessary and take such steps to publicize the details as may be prescribed.

(4) Any person failing to comply with the provisions of subsection (1) or (2) shall be guilty of an offence and liable to the penalties prescribed in section 25.

10. Claiming of matimela

(1) The owner of any animal placed in a matimela kraal may, notwithstanding that an officer of the High Court acting in execution of a court order in respect of such matimela or exercising a right to take possession of such matimela under the Agricultural Charges Act or the Hypothecation Act, claim such animal in such manner and on payment of such fees as may be prescribed.

(2) Any person who refuses to pay the fees mentioned in subsection (1) shall be deemed

to have abandoned the animal:

Provided that no branded animal shall be deemed to have been abandoned until the matimela officer has given notice by registered post to the proprietor of every AC brand imprinted thereon of the intention to deem such animal as abandoned and such proprietor has failed to secure the payment of such fees within 30 days of the date of such notice.

(3) No animal placed in a matimela kraal under the provisions of this Act may be claimed after the lapse of 6 months from the date when it was so placed.

11. Sale of matimela (1) Whenever-

(a) any animal has not been claimed under section 10(1) within 6 months from the date on which it was placed in a matimela kraal;

(b) any animal is deemed to have been abandoned under section 10(2), the council may direct the matimela officer to sell such matimela and, in such event, the matimela officer shall then give notice of the date of such sale and the animals to be sold:

Provided that no branded animal shall be sold or included in any such notice unless the provisions of section 9(2) and 10(2) have been complied with.

(2) A notice advertising the sale of matimela shall be in the prescribed form and published in the prescribed manner.

(3) Unless the Minister otherwise directs, all matimela shall be sold either by public auction or to the Botswana Meat Commission and the proceeds thereof shall accrue to the matimela fund or general revenue of the council.

(4) Prior to the delivery to the purchaser of matimela stock sold under this section the animal shall be permanently marked in accordance with section 15.

(5) The title of the purchaser of any stock sold under the provisions of this section shall not be impeachable in any court of law on any grounds other than fraud.

12. Revenue and expenses in connection with matimela

(1) Any revenue accruing from matimela or any expenses incurred in connection with matimela shall be paid into or charged on the general revenue of the council.

(2) Notwithstanding subsection (1), the Minister may authorize any council to operate a matimela fund in such a manner as may be prescribed for the operation of matimela funds generally.

13. Matimela to continue to be matimela

Any animals which become matimela whether before or after the coming into operation of this Act shall continue to be matimela for the purposes of this Act until they are recovered by their owner or sold under section 11.

14. Matimela officer's duty to care for animals

Every matimela officer shall take proper care of any matimela kraaled under this Act, in accordance with such instructions as the council may issue.

15. Marking of matimela

(1) The matimela officer shall cause all matimela to be marked with a distinctive council mark as soon as they have been received in the matimela kraal, and may, not less than 30 days after the receipt of any matimela in the matimela kraal, cause such matimela to be marked by means of a brand in such manner as may be prescribed.

(2) Where an animal is claimed under section 10 the distinctive council mark made, and any brand imprinted, in accordance with subsection (1), shall be cancelled in such manner as may be prescribed.

(3) Where an animal is sold under section 11 the permanent mark specified in subsection (4) thereof shall take such form as may be prescribed.

(4) Upon receipt of a sale notification under section 11(2) the financial institution and the proprietor of any AC brand concerned shall ensure that a duly authorized representative attends the sale to cancel, in such manner as may be prescribed, any financial institution brand and AC brand imprinted on any animal sold under section 11, and no branded animal shall be delivered

to a purchaser until all such brands have been cancelled under this subsection.

16. Details of death or injury of animals to be kept

In case of the death or injury of any matimela in his charge, the matimela officer shall enter in his matimela kraal book a description of such animal and the cause of its death or injury; and the absence of any such entry, or its falsity in any material respect, shall be held to be *prima facie* proof of the fact that the death or injury in question was due to the default of the matimela officer.

17. Duty to destroy certain animals

(1) It shall be lawful for every matimela officer to destroy, subject to this section, any matimela in his charge suffering from a contagious disease, or likely to prove dangerous to human life or destructive to other animals impounded or being in such condition as to render its destruction a humane act.

(2) No such animals shall be destroyed unless a veterinary officer, agricultural and livestock officer, stock inspector or veterinary assistant has examined them and agreed with the matimela officer as to the necessity of their destruction.

(3) The matimela officer shall-

- (a) summon the owners of such animals, if known and if this is practicable, to attend the examination under subsection (2); and
- (b) if the animals include any branded animal, notify the proprietor of every AC brand imprinted on such animal of such examination.

(4) If any branded animal is destroyed in accordance with this section without the knowledge of the owner, the matimela officer shall forthwith give written notification of such destruction to the proprietor of every AC brand imprinted thereon.

(5) If any animal subject to a certificate of indebtedness registered under the Agricultural Charges Act or to a deed of hypothecation registered under the Hypothecation Act, is destroyed in accordance with this section with the knowledge of the owner thereof, such owner shall forthwith give written notification of such destruction to the financial institution or to the authorized creditor, as the case may be.

(6) (7) Nothing in this section shall apply to sheep or goats suffering merely from scab.

18. Carcasses and hides of matimela

(1) Where matimela die while in the possession of the matimela officer or are destroyed under section 17 the matimela officer may sell the carcasses or hides thereof unless such matimela suffered from a contagious disease and, in the case of the death or destruction of any branded animal, shall forthwith notify the proprietor of every AC brand imprinted thereon of such death or destruction.

(2) The proceeds of any sale under subsection (1) shall be paid into the matimela fund and may be claimed by the owner of the matimela if such claim is made to the council within 12 months of the date when the animals which have died or which have been slaughtered were first placed in the matimela kraal.

19. Matimela kraal book

(1) Every matimela officer shall keep a matimela kraal book in which the following particulars shall be legibly entered by him-

- (a) the date when all matimela received by him were so received;
- (b) the number and description of such animals together with the name and address of the proprietor of any brand imprinted thereon;
- (c) the name and residence of the person delivering such animals to the matimela kraal;
- (d) the date and particulars of the release or sale of such animals, as the case may be, and the name and residence of the person to whom such animals were sold or released; and
- (e) any other matters which he may be directed by the council to ascertain and record.

(2) The entries required under subsection (1) shall be made at the time when the acts in respect of which they are made were done, or so soon thereafter as possible, but not after any dispute concerning them has arisen.

(3) Any matimela officer who fails to comply with this section shall be guilty of an offence and shall be liable to the penalties prescribed in section 25.

20. Matimela kraal book to be open for inspection

Every matimela kraal book shall be kept at the office of the matimela officer, and shall at all reasonable times be open for inspection by any person free of charge.

21. False entries in matimela kraal book

Every matimela officer who-

- (a) knowingly makes a false entry in his matimela kraal book;
- (b) fraudulently destroys or erases any entry already made; or
- (c) fails to make available for inspection his matimela kraal book in accordance with section 20,

shall be guilty of an offence and shall be liable to the penalties prescribed in section 25.

22. Legal proceedings

(1) The council may bring an action in any court of competent jurisdiction for the delivery to it of matimela.

(2) In the event of there being any dispute-

- (a) as to whether any stock is or is not matimela;
- (b) as to whether any person is or is not the owner of any animals in a matimela kraal; or
- (c) whether any person is entitled to the proceeds of the sale of carcasses or hides in accordance with section 18(2),

the council or any interested party may make application to a magistrate's court presided over by a Magistrate Grade I or over for a declaration of its or his rights in the matter, and the magistrate's court shall make such order in the matter as it may think fit.

(3) The Minister may by order published in the *Gazette* authorize any customary court to exercise the jurisdiction conferred under subsection (2) upon a magistrate's court.

23. Variation of prescribed periods and times Where, under this Act, anything is required or permitted to be done within a specified time or after the lapse of a specified period the Minister may after consultation with the appropriate council or councils by order published in the *Gazette*-

- (a) either generally or in relation to any tribal area; or
- (b) in respect of specified matimela in any tribal area,

vary such time or period.

24. Regulations

The Minister may, after consultation with the appropriate council, make regulations-

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) prescribing the form of any brand mark used for the purposes of this Act; and
- (c) generally for the better carrying out of the provisions of this Act.

25. Penalties (1) A person who is guilty of an offence under section 6(3), 8(3), 9(4) or 21 shall be liable to a fine not exceeding P500 or to imprisonment for a term not exceeding one year, or to both.

(2) A person who is guilty of an offence under section 19(3) shall be liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both.

26. Protection of councils, etc.

No council, matimela officer, assistant matimela officer or other person shall be subject or liable to any action or proceedings for damages by reason of any act or omission done or omitted to be done by any person in exercise or purported exercise of his duties or functions under this Act unless such act or omission was done or omitted to be done *mala fide*.