

BECHUANALAND PROTECTORATE.
HIGH COMMISSIONER'S NOTICE
No. 3 of 1944.

It is hereby notified for general information that under and by virtue of the powers vested in him by section *thirty-nine* of the Bechuanaland Protectorate Native Courts Proclamation, 1943 (No. 33 of 1943), hereinafter referred to as "the Proclamation", His Excellency the High Commissioner, after consultation with the Native Authorities concerned, has been pleased to make the following Rules which shall be observed in Native Courts:—

NATIVE COURT RULES.

Court records.

1. A duplicate receipt book, a duplicate summons book and a case record book, as in the forms specified in the Schedule hereto, shall be kept by such officer of a Native Court as may be detailed for the purpose and shall be open to inspection at any time by an Administrative Officer.

Receipts for fines.

2. Every fine, whether compensatory or otherwise, whether in cash or in kind, shall be paid into Court, and the officer of the Court detailed for the purpose shall issue or cause to be issued a receipt for every such fine to the payer. When any fine, or part of a fine, is paid out by the officer of the Court as compensation, the party receiving the compensation shall give his receipt on the counterfoil of the receipt issued in respect of the fine.

Safe custody of records.

3. Such officer of a Native Court as may be detailed for the purpose shall be responsible for the safe keeping of all Court records and of any money or other property which may come into the possession of the Native Court and shall observe all directions given by the Native Authority or an Administrative Officer with regard to such safe keeping and the production when required of such records.

Disposal of fines.

4. All fines, other than compensatory fines, shall be paid into the Native Treasury of the area in which the Native Court is situated or, if there be no such Native Treasury, shall be disposed of in such manner as the Resident Commissioner may direct.

Detention in custody while awaiting trial.

5. When any Native is brought before a Native Court accused of any offence which such Court has jurisdiction to try, the Native Court may, if further

examination is deemed necessary and the circumstances of the case require it, commit the accused to prison for a period not exceeding fourteen days, there to be detained till brought to trial or liberated in due course of law; whereupon the accused shall immediately be sent to an Administrative Officer, who, on the application of the Native Court, may issue a warrant for the detention of the accused in prison accordingly.

Bail.

6. (1) If any Native while in custody awaiting or during his trial is prepared to give bail, such Native may at the discretion of the Native Court be admitted to bail, and, on his depositing a sum of money or property of such amount or value as the Court may fix, the Court may then apply to the Administrative Officer for his release from custody, whereupon the Administrative Officer shall cause the accused to be released:

Provided that the money or property so deposited as bail shall be refunded on his due appearance in Court at the prescribed time.

(2) Every Native Court to which an application for bail is made under the preceding paragraph of this Rule shall, within twenty-four hours thereafter, fix the amount of the bail to be given.

(3) Whenever an accused person considers himself aggrieved by the refusal of any Native Court to admit him to bail, or by such Native Court having required excessive bail, he may apply to the Court to which his appeal would lie from the Native Court concerned, which shall make such order thereon as to it in the circumstances of the case seems just.

Imprisonment.

7. Every Native sentenced to imprisonment by a Native Court shall immediately be sent to an Administrative Officer together with the record of the case and, subject to the provisions of sections *twenty-nine*, *thirty-two* and *thirty-four* of the Proclamation, the Administrative Officer shall thereupon commit such Native to prison and shall issue a warrant accordingly. The sentence of imprisonment shall commence from the date on which the sentence was pronounced by the Native Court.

Corporal punishment.

8. (1) No sentence of corporal punishment imposed by a Native Court shall exceed eight strokes with a light cane.

(2) No sentence of caning exceeding four strokes shall be carried into effect except in a lawfully established prison and in accordance with the regulations thereof, or in the presence of an Administrative Officer and subject to the provisions of sections *twenty-nine*, *thirty-two* and *thirty-four* of the Proclamation.

(3) A sentence of caning of four strokes or less may be carried into effect in the customary manner before the Native Court but only after the person convicted has been informed of his right of appeal in accordance with the provisions of section *thirty-two* of the Proclamation, and has stated that he does not wish to avail himself of it. Otherwise the sentence shall be carried into effect in accordance with the provisions of paragraph (2) of this Rule.

*Application for grant of leave to appeal from
Subordinate Court to the High Court.*

9. (1) Each application for the grant of special leave to appeal to the High Court under the provisions of the proviso to sub-section (4) of section *thirty-two* of the Proclamation shall be made through an Administrative Officer in his capacity as holder of a Subordinate Court. The Administrative Officer, in transmitting the application to the Registrar of the High Court, shall annex a copy of the record of the proceedings and of the judgment with the reasons therefor of the Subordinate Court.

(2) Each application shall be accompanied by a deposit of such sum not exceeding five pounds as the Administrative Officer shall in his discretion determine, unless the Administrative Officer upon application made to him shall have certified in writing that the applicant is unable to pay such deposit. If any application for such special leave to appeal shall be refused, and if in the opinion of the Judge of the High Court such application was unreasonable and of a frivolous nature, the said Judge may order the forfeiture of the deposit; in the absence of such order the sum deposited shall be returned to the applicant.

Notice to employers.

10. When a Native who is working for an employer is summoned in terms of sub-section (1) of section *eighteen* of the Proclamation, he shall be given reasonable notice of the time and place at which he is to appear and at the same time a copy of the summons shall be delivered to his employer.

Short title.

11. These Rules may be cited as the Bechuanaland Protectorate Native Court Rules, 1944.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.

High Commissioner's Office,
Cape Town, 7th January, 1944.

SCHEDULE.
DUPLICATE RECEIPT BOOK.
THE BECHUANALAND PROTECTORATE NATIVE COURTS
PROCLAMATION, 1943.

Receipt No.

Court Area

Case No.

Received from

Amount £

Date

.....
 Clerk.

DUPLICATE SUMMONS BOOK.
THE BECHUANALAND PROTECTORATE NATIVE COURTS
PROCLAMATION, 1943.

Summons No.

To

Name

Address

You are hereby summoned to attend as a witness
defendant

before the Native Court

at

Date Time

in the case

Date

.....
 Clerk.

CASE RECORD BOOK.
THE BECHUANALAND PROTECTORATE NATIVE COURTS
PROCLAMATION, 1943.

No. of Case.	Date of Hearing.	Name of Plaintiff or Complainant.	Name of Defendant or Accused.	Court of		
				Particulars of Case.	Verdict or Sentence.	Remarks.