

**THE CIVIL PROCEDURE (ACTIONS BY OR AGAINST
GOVERNMENT OR PUBLIC OFFICERS) LAW, 1966**



No 24



1966

I assent,

7th September, 1966

H.S. Norman-Walker,
Her Majesty's Commissioner.

**A LAW RELATING TO CIVIL ACTIONS BY OR AGAINST
THE GOVERNMENT OR PUBLIC OFFICERS**

(16th September, 1966)

ENACTED by the Legislature of Bechuanaland.

Short Title.

1. This Law may be cited as the Civil Procedure (Actions by or against the Government or Public Officers) Law, 1966.

Claims against Government cognizable by competent court.

2. Any claim against the Government which would if such claim had arisen against a subject be the ground of an action in any competent court shall be cognizable by the said court whether such claim shall arise or have arisen out of any contract lawfully entered into on behalf of the Government or out of any wrong committed by any servant of the Government acting in his capacity and within the scope of his authority as such servant :

Provided that no claim shall lie against the Government by virtue of this section in respect of any wrong committed by a servant of the Government unless the wrong would, apart from the provisions of this Law, have given rise to a claim against that servant or his estate :

Provided further that nothing herein contained shall be construed as affecting the provisions of any law which limits the liability of the Government or any department thereof in respect of any act or omission of its servants, or which prescribes specified periods within which a claim shall be made in respect of any such liability or imposes conditions on the institution of any action.

Actions by or against Government to be instituted by or against the Attorney-General.

3. (1) Save as may otherwise expressly be provided by any law, actions by or against the Government shall be instituted by or against the Attorney-General. Such actions shall be instituted and tried in the same manner as actions to which the Government is not a party.

(2) The Attorney-General or other person authorized by the Attorney-General to act for the Government in respect to any judicial proceedings shall be deemed to be the recognized agent by whom appearances, acts and applications may be made or done on behalf of the Government.

(3) All documents which in an action of the same nature between private parties would be required to be served on the defendant shall be delivered at the office of the Attorney-General or other person authorized to act on behalf of the Government in respect of such judicial proceeding.

Notice previous to Action.

4. No action shall be instituted against the Government, or against a public officer in respect of any act done in pursuance, or execution, or intended execution of any Law, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Law, duty or authority, until the expiration of one month next after notice in writing has been, in the case of the Government, delivered to or left at the office of the Attorney-General, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims.

Exemption from arrest and personal appearance.

5. In an action instituted against a public officer in respect of any such act, neglect or default as aforesaid —

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a judgment or order of a competent court; and
- (b) where the court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Application where Government undertakes defence.

6. (1) Where the Government undertakes the defence of an action against a public officer, the Attorney-General or other person appointed by him for that purpose upon being furnished with authority to appear and defend, shall apply to the court, and upon such application the court shall cause a note of his authority to be recorded.

(2) Where no application is made by the Attorney-General or other person appointed as aforesaid on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in an action between private parties:

Provided that the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a judgment or order of a competent court.

Execution of judgment or order.

7. When the judgment or order is against the Government, or against a public officer in respect of such act, neglect or default as aforesaid, a time shall be specified in the judgment or order

within which it shall be satisfied; and if the judgment or order is not satisfied within the time so specified the court shall report the case for the orders of the Government. Execution shall not be issued on any such judgment or order unless it remains unsatisfied for a period of three months computed from the date of the report.

Costs.

8. In all actions under this Law costs may be awarded in the same manner as in actions between private parties.

No Interdict or Specific Performance against Government.

9. (1) Nothing in this Law contained shall be construed as authorizing the grant of relief by way of interdict or specific performance against the Government, but in lieu thereof the court may make an order declaratory of the rights of the parties.

(2) The court shall not in any action grant any interdict or make any order against a public officer if the effect of granting the interdict or making the order would be to give any relief against the Government which could not have been obtained in any action against the Government.

Repeal of Chapter 17.

10. The Crown Liabilities Proclamation (Chapter 17) is repealed.

Passed by the Legislative Assembly this day,

the 23rd August, 1966.

G T. MATENGE,
Clerk of the Legislative Assembly.