

**THE HIGH COURT PROCLAMATION
(CHAPTER 4)**

as amended by

THE HIGH COURT (CONSTITUTIONAL AMENDMENT) PROCLAMATION, 1961
(No. 38 of 1961)
(Promulgated 28th April, 1961)

and

THE GENERAL LAW (REMOVAL OF DISCRIMINATION) REVISION LAW, 1964
(No. 28 of 1964)
(Promulgated 19th November, 1964)

and

**THE CONSTITUTIONAL AMENDMENT (ADAPTATION OF EXISTING LAWS)
ORDER, 1966**
(Legal Notice No. 84 of 1966)
(Date of Commencement 30th September, 1966)

Reprinted by direction of the Attorney-General in terms of section 3 of the
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28 of 1964.
L.N. 84 of 1966.

CHAPTER 4

HIGH COURT

*To consolidate and amend the law
relating to the High Court of Botswana¹.*

(21st May, 1954)

Interpretation.

1. In this Proclamation —
“other Territories” means Lesotho and Swaziland.

2.²

Constitution of Court and Power to Appoint Registrar³.

3. (1) Any reference in this Proclamation or any other law to the Judge shall be deemed to be a reference to the Chief Justice or puisne judge or person temporarily appointed a puisne judge.

(2) At any session of the High Court, the Court shall consist of a single judge, unless the Chief Justice otherwise directs.

(3) The President⁴ may appoint a Registrar of the High Court and, if necessary, an Assistant Registrar of the High Court.

(4) Any reference in any law to the Registrar shall be deemed to include an Assistant Registrar.

Jurisdiction of the High Court.

4. The High Court shall have jurisdiction in all causes and proceedings whatsoever, both civil and criminal, arising or which have arisen in Botswana⁵: Provided always that, except in regard to the matters specified in section 29 of the Subordinate Courts Proclamation (Cap. 5) no civil cause or action to which Africans only are parties, and no civil cause or action to which either party is a European and in which the amount claimed or the value of the subject-matter in dispute does not exceed R1000, shall be instituted in or removed into the High Court save with the leave of a Judge upon application made to him in Chambers.

(1) amended by L.N. 84/1966

(2) deleted by Proc. 38/1961

(3) amended by Proc. 38/1961

Powers of Review.

5. (1) The High Court shall have full power, jurisdiction and authority to review the proceedings of all subordinate courts of justice within Botswana¹, and if necessary to set aside or correct the same. This power, jurisdiction and authority may be exercised in open Court or in Chambers in the discretion of the Judge.

(2)²

Powers of Appeal.

6. The High Court shall be a Court of Appeal from all subordinate courts in Botswana¹ with full power —

- (a) to reverse and vary all judgments, decisions and orders, civil and criminal, of any of the said subordinate courts;
- (b) to order a new trial of any cause heard or decided in any of the subordinate courts and to direct, if necessary, that such new trial shall be heard in the High Court;
- (c) to send back any case heard and decided in a subordinate court with such instructions as to any further proceedings as the High Court may deem necessary; and
- (d) to impose such punishment (whether more or less severe than, or of a different nature from, the punishment imposed by the Court below) as in the opinion of the High Court ought to have been imposed at the trial:

Provided that notwithstanding that the High 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 of proceedings, unless it appears to the High Court that a failure of justice has in fact resulted therefrom.

Court to have Assistance of Administrative Officers.

7. The High Court may call to its assistance at any civil or criminal trial or appeal not more than two Administrative Officers chosen by the President¹. It shall be the duty of such Officer or Officers to give, either in open Court or otherwise, such assistance and advice as the Judge may require, but the decision shall be vested exclusively in the Judge. The agreement or disagreement of such Officer or Officers with the decision of the Judge shall be noted on the record.

Assistance of Assessors.³

8. The High Court may call to its assistance at any civil or criminal trial or appeal one or more Assessors who shall be chosen by the President¹ to aid the Court. It shall be the duty of such Assessor or Assessors to give, either in open Court or otherwise, such assistance and advice as the Judge may require,

(1) amended by L.N. 84/1966

(2) deleted by Proc. 38/1961

(3) amended by Law 28/1964

but the decision shall be vested exclusively in the Judge. The agreement or disagreement of such Assessor or Assessors with the decision of the Judge shall be noted on the record.

Sessions of Court.

9. The dates and times of sittings of the High Court, called "Sessions", shall be determined by the Chief Justice or by any person performing the duties of the Chief Justice. At such Sessions, of which there shall be at least two in each year, all criminal business shall as far as practicable be tried and determined in priority to all other business.

Proceedings to be in Open Court and in English Language.

10. (1) Save as otherwise provided in this Proclamation, the pleadings and proceedings of the High Court shall be carried on and the sentences, decrees, judgments and orders thereof pronounced and declared in open Court and not otherwise: Provided, however, that at any time during a trial the Judge may, if he thinks fit, order the Court to be cleared or that any person or class of persons shall leave the Court.

(2) The pleadings and proceedings of the Court shall be in the English language.

Reference in any Law to Court of Resident Commissioner or Special Court.

11. Subject to the provisions of this Proclamation, whenever in any law in force in Botswana¹ the Court of the Resident Commissioner or the Special Court of Bechuanaland Protectorate is required or empowered to do any act, the High Court established by this Proclamation shall be required and empowered to do the like; and where in any law in force the term "Resident Commissioner's Court" or "the Special Court" is used the said term shall be deemed to mean the High Court.

12.²

Jurisdiction of Registrar.

13. When the Chief Justice and Puisne Judge are absent from Botswana¹ the Registrar may exercise the jurisdiction set out in paragraphs (b) (i), (ii), (iii), (iv), (v) and (vii) of sub-section (1) of section 12:

Provided that the Registrar shall not exercise jurisdiction under paragraph (b) (vii) in matrimonial matters:

Provided further that when he exercises jurisdiction under this section there shall be a right of appeal to the Judge in Chambers except under paragraph (b) (vii) where consent to judgment is filed.

(1) amended by L.N. 84/1966

(2) deleted by Proc. 38/1961

Rules of Court.

14. (1) The Chief Justice may at any time and from time to time make Rules of Court for regulating the proceedings of the Court, and, without derogating from the general powers hereby conferred, may in particular make Rules in regard to the following matters :

- (a) The pleading, practice and procedure of the Court, including all matters connected with the forms to be used and the fees to be payable, their amount and the method and time of payment of the same ;
- (b) the expenses of parties and witnesses, their amount and the method and time of payment of the same ;
- (c) the qualification, admission, enrolment and conduct of advocates, attorneys, notaries public and conveyancers, their fees and costs and the amount, taxation and recovery of the same ;
- (d) the duties and powers of the several officers of Court and of Commissioners of the same.

(2) Every rule as aforesaid shall be published in the *Gazette* and thereupon shall take effect and have the force of law.