

THE SUBORDINATE COURTS (AMENDMENT) ACT, 1969

No. 44



of 1969

AN ACT TO AMEND THE SUBORDINATE COURTS PROCLAMATION (CHAPTER 5)

Date of Assent: 22.8.69

Date of Commencement: 22.8.69

ENACTED by the Parliament of Botswana.

Short Title

1. This Act may be cited as the Subordinate Courts (Amendment) Act, 1969.

Amendment of Section 2 of Cap. 5

2. The Subordinate Courts Proclamation (Chapter 5) (hereinafter referred to as the principal law) is amended in section 2 by the deletion of the definition of "Immovable Property".

Amendment of Section 16 of Cap. 5

3. The principal law is amended in section 16 —

- (a) in subsection (1) by the deletion of the provisos thereto;
- (b) by the repeal of subsection (2).

Insertion of Section 31A into Cap. 5

4. The principal law is amended by the insertion after section 31 of the following section —

"Transfer of Cases to Customary Court

31A. (1) Where, at any time after the commencement of any proceedings, a Subordinate Court is of the opinion —

(a) that, by virtue of the provisions of section 4 of the Customary Law (Application and Ascertainment) Act, 1969, or any other law, customary law is applicable to the principal matter in issue;

and

(b) that it is not contrary to the interests of justice to do so;

it shall order that the case be transferred to a customary court of competent jurisdiction.

(2) Before making an order under subsection (1) the Subordinate Court shall afford the parties an opportunity of making representations in the matter.

(3) An order under subsection (1) shall have the effect of suspending all proceedings in the matter before the Subordinate Court making the order, and any party to the proceedings may thereupon, subject to the provisions of the Customary Courts Proclamation, 1961, commence proceedings *de novo* in any customary court of competent jurisdiction.”.

Amendment of Section 41 of Cap. 5

5. Section 41 of the principal law is amended —

(a) in paragraph (b) by the deletion of “R30” and the substitution of “R400”;

(b) in paragraphs (d) and (e) by the deletion of “R40” wherever it appears and the substitution of “R400”.

Amendment of Section 58 of Cap. 5

6. Section 58 of the principal law is amended in the proviso thereto by the deletion of “thirty-five cents” and the substitution of “R1.50”.

Amendment of Section 69 of Cap. 5

7. Section 69 of the principal law is amended —

(a) in subsection (1) by the deletion of “murder and sedition” and the substitution of “and murder”;

(b) in subsection (3) by the deletion of “sedition”.

Amendment of Section 71 of Cap. 5

8. Section 71 of the principal law is amended in subsection (4) —

(a) in paragraph (i) by the deletion of “with intent to do” and the substitution of “occasioning”;

(b) in paragraph (ii) by the deletion of “culpable homicide” and the substitution of “manslaughter”.

Amendment of Section 76 of Cap. 5

9. Section 76 of the principal law is amended by the deletion of “including detention in a reformatory, industrial school, inebriate reformatory, farm colony,

work colony, refuge, rescue home or other similar institution)" and the substitution of "(including detention of any kind whether in a prison or elsewhere)".

Amendment of Section 78 of Cap. 5

10. Section 78 of the principal law is amended in subsection (2) by the deletion of paragraph (b), exclusive of the proviso to the subsection, and the substitution of —

“(b) the Judge may —

- (i) hear any evidence and for that purpose may summon any person to appear and give evidence or produce any document or other article; and whether he has or has not heard any such evidence, may confirm, alter or reverse the conviction, or confirm, reduce, alter or set aside the sentence, or, subject to any maximum fine or period of imprisonment specified by law for the offence in question, increase the sentence to one which could have been awarded by a Subordinate Court having First Class jurisdiction, or confirm, alter or set aside any order of the Subordinate Court; and if the accused was convicted on one of two or more alternative counts he may when reversing that conviction convict the accused on another of those alternative counts; or he may set aside or correct the proceedings of the Subordinate Court, or generally give such judgment or impose such sentence or make such order as the Subordinate Court ought to have given, imposed or made on any matter which was before it at the trial of the case in question;

or

- (ii) when it appears necessary to do so, remit the case to the Subordinate Court with instructions to deal with any such matter as aforesaid in such manner as the Judge may think fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or the admitting of such person to bail, or, generally, touching any matter or thing connected with him or the proceedings in regard to him as to the Judge seems calculated to promote the ends of justice;”.

Amendment of Section 87 of Cap. 5

11. Section 87 of the principal law is repealed and the following is substituted:

“Jurisdiction as to Plea of Ultra Vires

87. (1) Subject to the provisions of section 18 of the Constitution no subordinate court shall be competent to pronounce on the validity of any written law, and every such court shall assume such law to be valid.

(2) Nothing in this section shall prevent a subordinate court from pronouncing on the validity of a town or district council bye-law.”.

Repeal of Section 92 of Cap. 5

12. Section 92 of the principal law is repealed.

Passed by the National Assembly this day, 14th August, 1969.

G.T. MATENGE,
Clerk of the National Assembly.

CERTIFICATE

I, GAEFALALE GAOLEBALE SEBESO, Deputy Speaker of the National Assembly, hereby certify that the National Assembly did not proceed on the Subordinate Courts (Amendment) Bill until a copy had been referred to the House of Chiefs after the Bill had been introduced in the National Assembly and a period of thirty days elapsed from the date when the Bill was referred to the House of Chiefs before the National Assembly proceeded on the Bill.

Date: 20th August, 1969.

G.G. SEBESO,
Deputy Speaker.