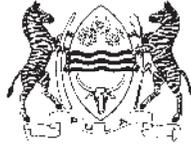


CUSTOMARY COURTS (AMENDMENT) ACT, 2013

No. 22



of 2013

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Amendment of section 2 of Cap. 04:05
3. Insertion of section 6A
4. Amendment of section 7 of the Act
5. Amendment of section 9 of the Act
6. Amendment of section 10 of the Act
7. Amendment of section 19 of the Act
8. Amendment of section 20 of the Act
9. Amendment of section 22 of the Act
10. Amendment of section 23 of the Act
11. Amendment of section 25 of the Act
12. Amendment of section 27 of the Act
13. Amendment of section 28 of the Act
14. Amendment of section 29 of the Act
15. Amendment of section 31 of the Act
16. Amendment of section 33 of the Act
17. Amendment of section 34 of the Act
18. Amendment of section 35 of the Act
19. Amendment of section 36 of the Act
20. Amendment of section 39 of the Act
21. Amendment of section 40 of the Act
22. Amendment of section 41 of the Act
23. Insertion of section 41A
24. Amendment of section 44 of the Act
25. Amendment of section 45 of the Act
26. Amendment of section 46 of the Act
27. Amendment of section 49 of the Act
28. Amendment of section 50 of the Act

An Act to amend the Customary Courts Act.

Date of Assent: 04-10-2013

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and commencement

1. This Act may be cited as the Customary Courts (Amendment) Act, 2013, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Amendment of section 2 of Cap. 04:05

2. The Customary Courts Act, in this Act referred to as “the Act”, is amended in section 2 by —

(a) deleting the definition of “administrative officer” which appears therein; and

(b) inserting, in their correct alphabetical order, the following new definitions —

“bailiff” means a court bailiff appointed under section 6A;

“customary court of appeal” means a court established under section 41;

“higher customary court” means a court that is presided over by a —

(a) *Kgosi*;

(b) *Mothusa Kgosi*;

(c) *Moemela Kgosi*;

(d) *Court President*; or

(e) *Deputy Court President*

“lower customary court” means a court that is presided over by a *Kgosana*; and

“member” means a person who presides over a customary court, or customary court of appeal.”.

Insertion of section 6A

3. The Act is amended by inserting, immediately after section 6, the following new section —

“Court bailiff 6A. (1) The Director of Tribal Administration shall appoint in accordance with the laws governing the public service, such bailiffs and assistant bailiffs as may be necessary to perform duties under this Act.

(2) A bailiff and assistant bailiff shall —

(a) serve and execute any summons, subpoena, warrant or other document issued by the customary court or customary court of appeal;

(b) administer any corporal punishment imposed by the customary court or customary court of appeal; and

(c) carry out any other lawful duty as may be assigned to him by a member.”.

Amendment of section 7 of the Act

4. The Act is amended by substituting for section 7, the following new section —

“Establishment and recognition of customary courts

7. (1) Every Kgosi may submit for the consideration of the Minister recommendations for the recognition, establishment, abolition or variation of the jurisdiction of the customary courts within his area.

(2) The Minister may by warrant under his hand, recognize or establish such customary courts as he thinks fit, and shall define in each warrant the jurisdiction as to causes of action and the local limits of jurisdiction to be enjoyed by that court.

(3) The Minister may, by Order published in the *Gazette*, suspend, cancel or vary any warrant issued under subsection (2).

(4) The Minister shall, by Order published in the *Gazette*, publish a summary of every warrant issued under subsection (2).”

5. The Act is amended by substituting for section 9, the following new section —

“Suspension
and dismissal
of members

9. (1) The Minister may dismiss or suspend for any period he may deem fit any member who appears to have abused his power or is incapable of exercising the same justly, or for any other sufficient reason, after affording such a member an opportunity to be heard.

(2) On such dismissal, or for the period of his suspension, the member shall be disqualified from exercising any powers or jurisdiction as a member of the court unless he is expressly reinstated by the Minister.”

6. The Act is amended by deleting the proviso to section 10.

7. The Act is amended in section 19 by deleting the words “a higher customary court,” wherever they appear in that section.

8. Section 20 of the Act is amended in subsection (1) by deleting the words “a higher customary court,” which appear therein.

9. Section 22 of the Act is amended by —

(a) deleting the words “then, subject to the provisions of subsection (2),” in the proviso to subsection (1); and

(b) deleting subsection (2).

10. Section 23 of the Act is amended by deleting subsection (3) and subsection (4).

11. Section 25 of the Act is amended by —

(a) substituting, for subsection (3), the following new subsection —

“(3) The Minister may, on the application by a *Kgosi*, vary the provisions of subsection (2) in so far as they relate to customary courts within the area of the *Kgosi*.”; and

(b) inserting, immediately after subsection (4), the following new subsection —

“(5) Notwithstanding the provisions of subsection (4), a customary court shall not attach or sell —

(a) any necessary bedding and wearing apparel of a person;

(b) any necessary furniture and household utensils of a person;

Amendment of
section 9 of
the Act

Amendment of
section 10 of
the Act

Amendment of
section 19 of
the Act

Amendment of
section 20 of
the Act

Amendment of
section 22 of
the Act

Amendment of
section 23 of
the Act

Amendment
of section 25
of the Act

- (c) any supply of food and drink in the house sufficient for the needs of a person;
- (d) any tools of trade of a person; or
- (e) any professional books or instruments of a person .”.
- Amendment of section 27 of the Act **12.** Section 27 of the Act is amended by substituting for the word “messengers” the word “bailiffs” wherever they appear in the section.
- Amendment of section 28 of the Act **13.** Section 28 of the Act is amended by substituting, for the words “P100 or to imprisonment for a term not exceeding three months, or to both”, the words “P500 or to imprisonment for a term not exceeding six months, with or without corporal punishment, or to both”.
- Amendment of section 29 of the Act **14.** Section 29 of the Act is amended in subsection (3) by substituting, for the words “P50 or to imprisonment for a term not exceeding one month, or to both”, the words “P500 or to imprisonment for a term not exceeding six months, with or without corporal punishment, or to both”.
- Amendment of section 31 of the Act **15.** Section 31 of the Act is amended by deleting the words “or the nearest administrative officer”.
- Amendment of section 33 of the Act **16.** Section 33 of the Act is amended by substituting, for the words “P100 or to imprisonment for a term not exceeding 12 months, or to both”, the words “P500 or to imprisonment for a term not exceeding six months, with or without corporal punishment, or to both”.
- Amendment of section 34 of the Act **17.** Section 34 of the Act is amended by substituting, for the words “P200 or to imprisonment for a term not exceeding two years, or to both”, the words “P1 000 or to imprisonment for a term not exceeding two years, or to both”.
- Amendment of section 35 of the Act **18.** Section 35 of the Act is amended by substituting, for the words “P100 or to imprisonment for a term not exceeding 12 months, or to both”, the words “P500 or to imprisonment for a term not exceeding six months, with or without corporal punishment, or to both”.
- Amendment of section 36 of the Act **19.** Section 36 of the Act is amended by substituting, for the words “P100 or to imprisonment for a term not exceeding 12 months, or to both”, the words, “P1 000 or to imprisonment for a term not exceeding 12 months, with or without corporal punishment, or to both”.
- Amendment of section 39 of the Act **20.** The Act is amended by substituting for section 39, the following new section —
- “Power to review cases **39.** (1) A customary court of appeal shall at all times have access to any customary court within its jurisdiction and to the records thereof, and on the application of any such customary court or any person concerned or of the customary court of appeal’s own motion may, for reasons which it shall record in writing —
- (a) revise any of the proceedings of a customary court whether of the first instance or appellate, and make such order or pass such sentence as the customary court could itself have made or passed:

Provided that —

- (i) a customary court of appeal shall not substitute a conviction for an acquittal or increase any sentence of fine or imprisonment or other sentence or make any order in any civil proceedings to the prejudice of any party or accused thereto, without first giving the accused or such party, as the case may be, an opportunity to be heard, and
 - (ii) if a conviction is substituted for an acquittal, or if a sentence is increased, or if, in a civil proceeding, an order to the prejudice of any party thereto is made, the accused or such party may within 30 days from the date of such order or sentence, appeal to the High Court; or
- (b) order any case to be re-tried either before the same customary court or before any other customary court of competent jurisdiction.

(2) The powers conferred upon the customary court of appeal under subsection (1) shall apply to a higher customary court in relation to a lower customary court.”.

21. The Act is amended by substituting for section 40, the following new section —

“Supervisory powers of Kgosi

40. (1) Notwithstanding the provisions of section 39, a *Kgosi* may have access to the customary courts in the area of his jurisdiction and may send for and examine the record of any proceedings before a customary court for the purpose of satisfying himself as to the correctness, legality or propriety of any judgment, sentence or order, recorded or passed, or as to the regularity of any proceedings in any such court.

(2) If a *Kgosi* acting under subsection (1) considers that any finding, sentence or order of a customary court is illegal or improper, he shall forward the record with such remarks thereon as he thinks fit to the court to which an appeal lies from that customary court.

(3) A court to which a record has been forwarded under subsection (2) shall forthwith examine the record with a view to satisfying itself as to the correctness, legality or propriety of the proceedings and may make any such order thereon by way of revision as such court would be empowered to make if the proceedings came before the customary court on appeal.”.

22. The Act is amended by substituting for section 41, the following new section —

“Customary courts of appeal

41. (1) The Minister shall, by Order published in the *Gazette*, establish customary courts of appeal to hear and determine such cases as shall be specified in the Order.

(2) The Minister shall, by notice published in the *Gazette*, appoint a president of the customary courts of appeal.

(3) Subject to the provisions of subsection (1), a president of the customary court of appeal shall, in addition to any other duties conferred by this Act, supervise the administration of customary courts of appeal.”.

Amendment of section 40 of the Act

Amendment of section 41 of the Act

Insertion of section 41A

23. The Act is amended by inserting, immediately after section 41, the following new section —

“Constitution of customary court of appeal 41A. (1) The Minister shall, by notice published in the *Gazette*, appoint three members of a customary court of appeal.

(2) A customary court of appeal may sit with assessors whenever the court deems it necessary to do so.

(3) The Minister may, by notice published in the *Gazette*, appoint three other persons to be alternate members of each customary court of appeal.

(4) Where, for any reason a member of a customary court of appeal is unable to attend a sitting of the court, the president of the court may nominate a person from the panel of alternate members to sit in place of the member who is absent, and such alternate member shall subject to subsection (5), be a member of the said court until the member in whose place he was appointed to sit is able to resume his seat.

(5) An alternate member appointed under subsection (4) shall continue to be a member of the customary court of appeal to finalise any proceedings commenced when he was appointed.”.

Amendment of section 44 of the Act

24. Section 44 of the Act is amended by deleting the words —

(a) “a magistrate’s court,” appearing in the first line; and

(b) “or before any magistrate’s court” appearing in paragraph (b).

Amendment of section 45 of the Act

25. The Act is amended by substituting for section 45, the following new section —

“Power of customary court of review as of course 45. (1) Without prejudice to any right of appeal which may exist under the provisions of this Act, any sentence in a criminal case tried in a customary court in which the punishment awarded is imprisonment exceeding six months or a fine exceeding P200 shall be subject to review by a member of the customary court of appeal.

(2) Whenever a customary court imposes upon any person convicted of an offence any sentence which is reviewable under the provisions of subsection (1), it shall transmit to a customary court of appeal within four weeks after the determination of the case, the record of the proceedings in the case together with such remarks, if any, as the court may desire to append thereto, and any written statements or arguments which the accused may within three days after the sentence supply to the court.”.

Amendment of section 46 of the Act

26. The Act is amended by substituting for section 46, the following new section —

“Execution of orders of High Court or customary courts 46. (1) A lower customary court shall carry into execution any decree or order of the High Court, or of a customary court of appeal or a higher customary court and shall execute all warrants and serve all processes issued by any court as aforesaid and directed to that court for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required.

(2) The provisions of subsection (1) shall apply to a higher customary court in relation to any decree, order, warrant, process or instruction of the High Court or a customary court of appeal and shall apply to a customary court of appeal in relation to any decree, order, warrant, process or instruction of the High Court .”.

27. Section 49 of the Act is amended by deleting paragraph (f) therein.

Amendment of
section 49 of
the Act

28. Section 50 of the Act is amended by deleting the words “or to proceedings transferred to a magistrate’s court under section 37, to revisory proceedings in a magistrate’s court under section 39 or appellate proceedings therein under section 42”.

Amendment of
section 50 of
the Act

PASSED by the National Assembly this 5th day of August, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.