

HIGH COURT ACT 16 OF 1990

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HIGH COURT ACT 16 OF 1990

[Government Gazette: 8 October 1996] [Date of Commencement:]

ACT

To make provision for the jurisdiction of the High Court of Namibia in pursuance of the provisions of Article 80 of the Namibian Constitution; the making of rules of court; and to provide for matters incidental thereto.

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

1 Definitions

In this Act, unless the context otherwise indicates-

"**Chief Justice**" means the Chief Justice of the Supreme Court;

"**civil summons**" means any summons whereby civil proceedings are commenced, and includes any rule *nisi* or notice of motion the object of which is to require the appearance before the court of any person against whom relief is sought in such proceedings or of any person having an interest in resisting the grant of such relief;

"**deputy-sheriff**" means the deputy-sheriff of the High Court appointed under section 30;

"**full court**" means a court consisting of more than two judges;

"**High Court**" means the High Court of Namibia constituted under article 80 (1) of the Namibian Constitution;

"**Judge-President**" means the Judge-President of the High Court appointed under Article 32 (4) (a) (aa) or 82 (1) of the Namibian Constitution, as the case may be;

"**Judicial Service Commission**" means the Judicial Service Commission established under Article 85 of the Namibian Constitution;

"**lower court**" means a court (not being the High Court or the Supreme Court) which is required to keep a record of its proceedings, and includes a magistrate or other officer holding a preparatory examination into an alleged offence;

"**Minister**" means the Minister of Justice;

"**registrar**" means the registrar of the High Court, and includes an assistant registrar;

"**rules of court**" means the rules made under section 39;

"**sheriff**" means the sheriff of the High Court appointed under section 30;

"**Supreme Court**" means the Supreme Court of Namibia constituted under Article 79 (1) of the Namibian Constitution.

2 Jurisdiction of High Court in general

The High Court shall have jurisdiction to hear and to determine all matters which may be conferred or imposed upon it by this Act or the Namibian Constitution or any other law.

3 Qualifications for appointment as judges of High Court

No person shall, in pursuance of the provisions of Article 82 of the Namibian Constitution, be eligible for appointment as Judge-President or as an additional or acting judge of the High Court, unless-

- (a) such person has held office as a judge of a superior court in any country which is a member of the Commonwealth; or
- (b) such person has held office as a judge in any other country which in the opinion of the Chief Justice and the Judicial Service Commission is a country whose legal system and legal institutions are sufficiently comparable with the legal system and legal institutions of Namibia as to make the judge of such a country suitable for appointment as a judge of the High Court; or
- (c) such a person has practised as a legal practitioner in Namibia, whether before or after the commencement of the Legal Practitioners Act, 1995, or in a country referred to in paragraph (a) or (b), for a period of not less than five years.

[Para. (c) substituted by s. 93 of Act 15 of 1995.]

- (d) such person is a legal practitioner who has served in a legal capacity in full time public service for a cumulative period of not less than five years; or
- (e) such person is a magistrate other than an additional or assistant magistrate who-
 - (i) holds a degree in law from the University of Namibia or an equivalent qualification in law prescribed in terms of subsection (4) of section 5 of the legal Practitioners Act, 1995; and
 - (ii) has presided over a lower court for a cumulative period of not less than five years.

[Para. (d) and (e) added by s. 7 of Act 18 of 1995.]

4 Seat of High Court

The seat of the High Court shall be in Windhoek, but if the Judge-President deems it to be necessary or expedient in the interests of the administration of justice, he or she may authorise the holding of its sitting elsewhere in Namibia.

5 Remuneration of judges of High Court

The Judge-President and the other judges of the High Court, shall receive or enjoy such remuneration, benefits, allowances or privileges as may be prescribed by law.

6 Appointment of acting judge in permanent capacity

In the case of the appointment as a judge of any person holding office in an acting capacity by virtue of the provisions of Article 82 (3) of the Namibian Constitution, such appointment may be made with retrospective effect from the commencement of the period during which such person so held office in an acting capacity or, where such person has so held office for two or more periods which together constitute a single uninterrupted period, from the commencement of the first of such periods.

7 Period of appointment of acting judges

Any appointment of a person as an acting judge under Article 82 (3) of the Namibian Constitution shall be deemed to be also in respect of any period during which such person is necessarily engaged in connection with the disposal of any proceedings in which he or she has taken part as such a judge and which have not been disposed of at the termination of the period for which he or she has so been appointed or, having been disposed of before or after such termination, are re-opened.

8 Retirement of judges of High Court

(1) Any judge of the High Court holding office in a permanent capacity-

- (a) shall retire from office on attaining the age of 70 years;
- (b) may retire from office if he has attained the age of 65 years and has completed at least eight years pensionable service as defined by any law relating to the pensions of judges;
- (c) may at any time with the approval of the President retire from office if he or she becomes afflicted with a permanent infirmity of mind or body disabling him or her from the proper discharge of his or her duties of office or if any other reason exists which the President deems sufficient.

(2) Any judge of the High Court shall on retirement, and the widow or widower of such judge, as the case may be, shall on the death of such judge, be paid the pension prescribed by law.

9 Judges not to hold any other office of profit

No judge of the High Court shall, unless authorised thereto by the Judicial Service Commission accept or hold any other office of profit or receive in respect of any service rendered by him or her any remuneration other than the remuneration as contemplated in section 5.

10 Constitution of a court of High Court

- (1) (a) Subject to the provisions of this Act or any other law, the High Court shall, when sitting as a court of first instance for the hearing of any civil matter, be constituted before a single judge: Provided that the Judge-President or, in his or her absence, the senior available judge may, at any time direct that any matter be heard by a full court.
- (b) A single judge may at any time discontinue the hearing of any matter being heard before him or her and refer it for hearing to the full court.

(2) Any appeal from a lower court may be heard by one or more judges of the High Court, as the Judge-President may direct.

(3) Whenever it appears to the Judge-President or, in his or her absence, the senior available judge, that any matter being heard before the High Court should in view of its importance be heard before a court consisting of a larger number of judges, he or she may direct that the hearing be discontinued and commenced afresh before a court consisting of as many judges as he or she may determine.

(4) For the hearing of any criminal case as a court of first instance, the High Court shall be constituted in the manner prescribed in the applicable law relating to procedure in criminal matters.

(5) During any period which may by rule of court be fixed as vacation or during which only one judge may be available, one judge of the High Court shall, notwithstanding anything to the contrary in this Act or any other law contained, be competent to exercise all the powers, jurisdiction and authority of the High Court.

11 More than one court may sit at the same time

The High Court may at any time sit in as many courts constituted in the manner provided in this Act as the available judges may allow.

12 Nature of High Court and seal

(1) The High Court shall be a court of record and shall have for its use a seal consisting of a circle and around such circle within a wider circle the words "NAMIBIA HIGH COURT" with the Coat of Arms of the Republic of Namibia inside the inner circle.

(2) The seal shall be kept in custody of the registrar.

13 Proceedings to be carried on in open court

Save as is otherwise provided in Article 12 (1) (a) and (b) of the Namibian Constitution, all proceedings in the High Court shall be carried on in open court.

14 Manner of arising at decisions

(1) Save as may otherwise be provided in this Act or any other law, the judgment of the majority of the judges of the full court shall be the judgment of the court, and where the judgments of a majority of the judges of any such court are not in agreement, the hearing shall be adjourned and commenced *de novo* before a new court constituted in such manner as the Judge-President or, in his or her absence, the senior available judge may determine.

(2) If at any stage during the hearing of any matter by a full court or by a court consisting of two or more judges, any judge of such court dies or retires or becomes otherwise incapable of acting or is absent, the hearing shall, if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges and if such remaining judges do not constitute such a majority, or if only one judge remains, the hearing shall be commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the

decision of the majority of such remaining judges or of such one remaining judge, as the case may be, as the decision of the court.

(3) The provisions of subsection (1) shall *mutatis mutandis* apply whenever a hearing is before two or more judges or, in the circumstances set out in subsection (2), proceeds before two or more judges: Provided that if the hearing is or proceeds before two judges and they do not agree on judgment, the matter shall be heard *de novo*.

15 Certified copies of court records admissible as evidence

Whenever any judgement, decree, order or other record of the High Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, decree, order or other record duly certified as such by the registrar under the seal of the High Court shall be *prima facie* evidence thereof without proof of the authenticity of the registrar's signature.

16 Persons over whom and matters in relation to which the High Court has jurisdiction

The High Court shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within Namibia and all other matters of which it may according to law take cognisance, and shall, in addition to any powers of jurisdiction which may be vested in it by law, have power-

- (a) to hear and determine appeals from all lower courts in Namibia;
- (b) to review the proceedings of all such courts;
- (c) subject to the provisions of this Act or any other law, to hear appeals from judgments or orders of a single judge of the High Court;
- (d) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

17 Compilation of special dossiers

In any proceedings before the High Court in respect of which the provisions of Article 23 (2) of the Namibian Constitution are applicable or in any other proceedings in which it is considered to be just and expeditious the court may direct that a special dossier be compiled by a referee, and the provisions of section 23 of the Supreme Court Act, 1990, and the rules of court relating thereto shall *mutatis mutandis* apply in respect of such a direction made under this section, and any reference in the said section 23 and the said rules of court to the Supreme Court shall be deemed to be a reference to the High Court.

18 Appeals against judgment or order of High Court in civil proceedings

(1) An appeal from a judgment or order of the High Court in any civil proceedings or against any judgment or order of the High Court given on appeal shall, except in so far as this section otherwise provides, be heard by the Supreme Court.

(2) An appeal from any judgment or order of the High Court in any civil proceedings shall lie-

- (a) in the case of a single judge sitting as a court of first instance-
 - (i) to the full court, as of right, and no leave to appeal shall be required; or
 - (ii) directly to the Supreme Court-
 - (aa) if all parties to the proceedings concerned agree thereto in writing; or
 - (bb) in the event of no such agreement, leave to appeal has been granted by the court which has given the judgment or has made the order; or
 - (cc) in the event of such leave to appeal being refused, leave to appeal being granted by the Supreme Court;
- (b) in the case of a full court, or two or more judges, sitting as a court of first instance, to the Supreme Court, as of right, and no leave so to appeal shall be required;
- (c) in the case of a full Court, or one or more judges sitting as a court of appeal, to the Supreme Court if leave to appeal has been granted by the court which has given the judgment or has made the order or, in the event of such leave to appeal being refused, leave to appeal being granted by the Supreme Court.

(3) No judgment or order where the judgment or order sought to be appealed from is an interlocutory order or an order as to costs only left by law to the discretion of the court shall be subject to appeal save with the leave of the court which has given the judgment or has made the order, or in the event of such leave to appeal being refused, leave to appeal being granted by the Supreme Court.

(4) Nothing in paragraph (a) of subsection (2) contained, shall be construed as limiting or derogating from the right of any party in any civil proceedings contemplated in that paragraph to appeal to the full court within 21 days, (or such longer period as may on good cause be allowed), after his or her application for leave to appeal to the Supreme Court was refused by any court referred to in subparagraph (ii) (bb) or (cc) of that paragraph, as the case may be.

(5) (a) In considering whether in any civil proceedings leave to appeal should be granted under this section by the High Court, it shall be entitled also to take into consideration, whether the questions of law or fact involved in the appeal are of such a nature as to require the attention of the Supreme Court.

- (b) If such leave to appeal is granted in any civil proceedings by the High Court, the court granting the leave may order the applicant to find security for the costs of the appeal in such an amount as the registrar may determine, and may fix the time within which the security is to be found.

(6) The right of appeal to the full court shall be subject to the provisions of any law which prescribed the procedures which have to be followed in the exercise of that right.

(7) Notwithstanding anything to the contrary in any law contained, no appeal shall lie from a judgment or order of the High Court in proceedings in connection with an application-

- (a) by one spouse against the other for maintenance *pendente lite*;
- (b) for contribution towards the Costs of a pending matrimonial action
- (c) for the interim custody of a child when a matrimonial action between the parents is pending or is about to be instituted;
- (d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or is about to be instituted.

(8) The rules regulating the proceedings of the Supreme Court shall *mutatis mutandis* apply in respect of appeals to that court.

19 Powers of High Court on hearing of appeals

(1) The High Court shall have power-

- (a) on the hearing of an appeal to receive further evidence, either orally or by deposition before a person appointed by the court, or to remit the case to the court of first instance or the court whose judgment is the subject of the appeal, for further hearing, with such instructions relating to the taking of further evidence or any other matter as the High Court may deem necessary;
- (b) to confirm, amend or set aside the judgment or order which is the subject of the appeal and to give any judgment or make any order which the circumstances may require.

(2) On appeal to the Supreme Court that court shall, subject to the provisions of this Act, have such powers as the Supreme Court Act, 1990, or any other law may confer upon it in respect of any such appeal.

20 Grounds of review of proceedings of lower court

(1) The grounds upon which the proceedings of any lower court may be brought under review before the High Court are-

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings;
- (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(2) Nothing in this section contained shall effect the provisions of any other law relating to the review of proceedings in lower courts.

21 No process to be issued against judge except with consent of court

(1) Notwithstanding anything to the contrary in any law contained no summons or subpoena against any judge of the High Court shall in any civil action be issued out of any court except with the consent of the High Court.

(2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge shall attend court shall be determined in consultation with the Judge-President or, in his or her absence, the next senior judge of the High Court available.

22 Scope and execution of process of High Court

The civil process of the High Court shall run throughout Namibia.

23 Execution of process in respect of association partnership or firm

Any warrant or other process for the execution of any judgement or order issued against any association of persons, corporate or unincorporate, or any partnership or firm may be executed by attachment of the property or assets of such association, partnership or firm.

24 Time allowed for appearance

The time allowed for entering an appearance to a civil summons served outside Namibia shall not be less than 21 days.

25 Prohibition on attachment to found jurisdiction or arrest where defendant resides in Namibia

No attachment of person or property to found jurisdiction shall be ordered by the High Court against any person residing in Namibia.

26 Manner of securing attendance of witnesses in civil proceedings

(1) Any party to civil proceedings before the High Court in which the attendance of witnesses is required may procure the attendance of any witness in the manner provided for in the rules of court.

(2) Whenever any person subpoenaed to attend any civil proceedings as a witness fails without reasonable excuse to obey the subpoena and it appears from the return of the proper officer or from evidence given under oath that the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff prescribed under section 38 have been paid or offered to him or her, or that he or she is evading service, or if any person who has attended in obedience to a subpoena fails to remain in attendance, the court in which the proceedings are conducted, may issue a warrant directing that he or she be arrested and brought before the court at a time and place stated in the warrant or as soon as possible thereafter.

(3) Any person arrested under such warrant may be detained thereunder before the court which issued it or in any gaol or lock-up or other place of detention or in the custody of the person who is in charge of him or her, with a view to procuring his or

her presence as a witness in the said proceedings: Provided that the court may release such person on a recognisance with or without sureties for his or her appearance to give evidence as required and for his or her appearance at the enquiry referred to in subsection (4).

(4) The court may summarily enquire into such person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance, and may, unless it is proved that such person has a reasonable excuse for such evasion or failure, sentence him or her to a fine not exceeding R2 000 or to imprisonment for a period not exceeding one year.

(5) Any sentence imposed by the court under subsection (4) shall be enforced and shall be subject to appeal as if it were a sentence in a criminal case.

(6) If any person who has entered into any recognisance for his or her appearance to give evidence at such proceedings or for his or her appearance at an enquiry referred to in subsection (4), fails so to appear, he or she may, apart from the forfeiture of his or her recognisance, be dealt with as if he or she had failed to obey a subpoena to attend such proceedings or to appear at such enquiry.

27 Manner in which recalcitrant witnesses may be dealt with

(1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 26 or is present and is verbally required by the court to give evidence in any civil proceedings, refuses to be sworn or to make an affirmation, or, having been sworn or having made an affirmation, refuses to answer such questions as are put to him or her, or refuses or fails to produce any document or thing which he or she is required to produce, without any just or lawful excuse for any such refusal or failure, the court may adjourn the proceedings for 30 days or such shorter period as it may consider expedient and may, in respect of the period of such an adjournment, issue a warrant to commit the person so refusing or failing to imprisonment unless he or she sooner consents to do what is required of him or her.

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him or her, the court may again adjourn the proceedings and commit him or her to imprisonment for a like period and from time to time repeat that procedure until such person consents to do what is required of him or her.

(3) The provisions of this section shall not be construed so as to prevent the court from giving judgment in any case or otherwise disposing of the proceedings according to any other sufficient evidence submitted to it.

(4) No person shall be bound to produce any document or thing not specified or sufficiently described in the subpoena unless he or she actually has it in court.

(5) When a subpoena is issued to procure the attendance of any person to give evidence or to produce any book, paper or document in any such proceedings and it appears that-

- (a) he or she is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings; or

- (b) such book, paper or document could properly be produced by some other person; or
- (c) the compelling of his or her attendance would be an abuse of process of the court,

the court may, notwithstanding anything in this section contained, after reasonable notice by the registrar to the parties to the proceedings concerned and after hearing such parties make an order cancelling such subpoena.

28 Foreign witnesses

(1) Whenever in any civil proceedings pending before the High Court, the court in the exercise of its powers permits *viva voce* evidence at the hearing of those proceedings and the party seeking to call or to cross-examine a witness so required to give such evidence, is unable to secure the attendance of the witness at the hearing due to the fact that such witness is resident in a foreign country or territory or sojourns there, such party may apply to the High Court on notice of motion for the issue of a letter of request to the competent court of such foreign country or territory, requesting the said court to appoint a particular person to act as commissioner to take evidence of such a witness whether by means of interrogatories or otherwise.

(2) Where an application is granted in terms of subsection (1), the registrar shall transmit a certificate to that effect, together with the said letter of request, and the amount of the expenses payable to the person concerned for his or her appearance to give evidence before the commissioner contemplated in subsection (1), to the competent court of the foreign country or territory in question.

(3) The transmission of the documents referred in subsection (2) shall be effected through the relevant diplomatic channels of the Government of Namibia.

(4) A letter of request issued under this section shall, where the evidence of the witness concerned is to be taken by means of interrogatories, contain such duly and lawfully framed interrogatories, including any cross-interrogatories, which it is desired to put to the said witness.

(5) Any evidence recorded and duly certified as correct by a commissioner appointed by any competent court of a foreign country or territory in giving effect to a letter of request issued in terms of this section, shall, upon being tendered to the court in which the civil proceedings contemplated in subsection (1) are pending, be received as evidence in such proceedings.

(6) Where any witness sought to be examined or questioned in terms of this section, refuses to appear before the commissioner so appointed, the registrar shall provide to the competent authority of the foreign country or territory concerned, such certifications, documents or orders as are required by the laws of such foreign country or territory to empower such authority of that country or territory to compel the attendance of the witness concerned before the commissioner: Provided that the production of such certifications, documents or orders are not prohibited by any law of Namibia.

29 Manner of dealing with commissions rogatoire, letters of request and documents for service originating from foreign countries

(1) Whenever a commission rogatoire or letter of request received from any state or territory or court outside Namibia, is transmitted to the registrar by the Permanent Secretary for Justice, together with a translation in English, if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to the High Court by the agents, if any, of the parties to the action or matter, the registrar shall submit the same to a judge in chambers in order to give effect to such commission rogatoire or letter of request.

(2) Whenever a request for the service on any person in Namibia of any civil process or citation received from any state, territory or court outside Namibia, is transmitted to the registrar by the Permanent Secretary for Justice, together with a translation in English, if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto, the registrar shall cause service of the said process or citation to be effected in accordance with the rules of court by the sheriff or a deputy-sheriff, or any person specifically appointed thereto by a judge of the High Court.

(3) The registrar shall, after effect has been given to any such commission rogatoire, letter of request, process or citation, return all relevant documents, duly verified in accordance with the rules of court, to the Permanent Secretary for Justice for transmission.

(4) Except where the Minister otherwise directs, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service such as is referred to in this section has been performed.

30 Appointment of officers of High Court

(1) (a) The Minister may, subject to the laws governing the public service, appoint for the High Court a registrar and such deputy-registrars, assistant registrars, sheriffs, deputy-sheriffs and other officers as may be required for the administration of justice or the execution of the powers and authority of the said court: Provided that if, in the opinion of the Minister the duties of such deputy-sheriff can be performed satisfactorily or with a reduction in governmental cost by a person who is not an officer in the public service, the Minister may appoint any person as such deputy-sheriff at such remuneration and on such conditions as the Minister may determine.

(b) Whenever by reason of absence or incapacity a registrar, deputy-registrar, assistant registrar, sheriff, deputy-sheriff or other officer is unable to carry out the functions of his or her office, or his or her office becomes vacant, the Minister may authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that, when any such vacancy has remained unfilled for a continuous period of six months that fact shall be reported to the Public Service Commission.

(2) Any officer in the public service appointed under subsection (1) may simultaneously hold more than one of the offices mentioned in that subsection.

(3) Any deputy-sheriff who is not an officer in the public service may with the approval of the Minister appoint one or more assistants for whom he or she shall be responsible and any such assistant may subject to the directions of the deputy-sheriff exercise any of the powers and perform any of the functions or duties of such deputy-sheriff.

(4) Any person appointed as an assistant to a deputy-sheriff who is an officer in the public service may, subject to the directions of such deputy-sheriff exercise any of the powers and perform any of the functions or duties of such deputy-sheriff.

(5) A deputy-sheriff who is not an officer of the public service shall as soon as possible after his or her appointment furnish security to the satisfaction of the sheriff for the due and faithful performance of his or her duties and functions, and if he or she fails or neglects to furnish such security within a period determined by the sheriff, his or her appointment shall lapse at the expiration of the said period.

(6) Whenever in any matter objection is made to the service or execution of process by the sheriff or a deputy-sheriff by reason of the interest of such sheriff or deputy-sheriff in such matter or the relationship of such sheriff or deputy-sheriff to a party to such matter or of any good cause of challenge, or whenever on account of illness or absence or any other good and sufficient reason, it is necessary to appoint any person to perform temporarily any of the duties of the deputy-sheriff, the registrar may appoint any acting deputy-sheriff.

(7) The Minister may delegate to an officer in the Ministry of Justice any of the powers vested in him or her by this section.

31 Suspension and dismissal of deputy-sheriff

(1) A deputy-sheriff who is alleged to have been negligent or dilatory in the service or execution of process or wilfully to have demanded payment of more than the prescribed fees or expenses or to have made a false return or in any other manner to have misconducted himself or herself in connection with his or her duties, may pending investigation, be suspended from office and profit by the sheriff who may appoint any person to act in his or her place during the period of suspension.

(2) The sheriff shall forthwith report to the Permanent Secretary for Justice for the information of the Minister any action which he or she has taken under this section, and the Minister may after investigation set aside the suspension or may confirm it and may if he or she deems fit dismiss from his or her office the deputy-sheriff who has been so suspended.

32 Execution of process

(1) The sheriff or the deputy-sheriff concerned or his or her assistant shall execute all sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and processes of the High Court directed to the sheriff and make return of the manner of execution thereof to the court and to the party at whose instance they were issued.

(2) The return of such sheriff or a deputy-sheriff or his or her assistant of the steps taken in connection with any such process of the High Court, shall be *prima facie* evidence of the matters stated therein.

(3) The Sheriff shall receive and cause to be detained all persons arrested by order of the High Court or committed to his or her custody by any order of that court, or by any competent authority authorised by this Act.

(4) A refusal by such sheriff or any deputy-sheriff to perform any act which he or she is by law empowered to perform, shall be subject to review by the High Court on application *ex parte* or on notice, as the circumstances may require.

33 Liability for acts of sheriff

(1) The State shall be liable for any loss or damage resulting from any wrongful act performed by the sheriff or a deputy-sheriff who is an officer in the public service or an assistant of such deputy-sheriff, within the scope of his or her employment as sheriff or such deputy-sheriff or assistant or from any neglect of duty of the sheriff, or such deputy-sheriff or assistant.

(2) The sheriff or a deputy-sheriff or his or her assistant shall not be liable for damage arising out of the rescue or escape of any person arrested by him or her or committed to his or her custody, unless such rescue or escape was effected through his or her negligence or connivance, but shall in the event of the rescue or escape of any such person use all lawful means for his or her pursuit, apprehension and safe custody.

(3) No proceedings shall be brought for anything done or omitted to be done in the execution of his or her office by the sheriff or any deputy-sheriff or his or her assistant in the execution of his or her office unless commenced within six months after the act was committed or the omission occurred.

34 Service of process on sheriff or deputy-sheriff

(1) Whenever any process requires to be served on the sheriff, such process may be served by the other party by delivering a copy thereof to him or her at his or her office during ordinary office hours against his or her signature.

(2) Whenever any process requires to be served on a deputy-sheriff, the said process may be served by the sheriff or by the messenger of the magistrate's court, as the case may be: Provided, that if the messenger is himself or herself the deputy-sheriff to be so served, the said process may be served by any person appointed by the sheriff for that purpose.

35 Property not liable to be seized in execution

The sheriff or a deputy-sheriff or his or her assistant shall not seize in execution of any process-

- (a) the necessary beds, bedding and wearing apparel of the person against whom execution is levied or any member of his or her family;
- (b) the necessary furniture, other than beds, and household utensils in so far as they do not exceed in value the sum of R1 500;

- (c) livestock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of R1 500;
- (d) any food or drink sufficient to meet the needs of such person and the members of his or her family for one month;
- (e) tools and implements of trade in so far as they do not exceed in value the sum of R1 500;
- (f) professional books, documents or instruments necessarily used by the debtor in his profession, in so far as they do not exceed in value the sum of R1 500; or
- (g) such arms and ammunition as the debtor is in terms of any law, regulation or disciplinary order required to have in his or her possession as part of his or her equipment:

Provided that the High Court may in exceptional circumstances and on such conditions as it may determine, increase the amount specified in paragraph (b), (c), (e) or (f) to not more than four times the amount therein mentioned.

36 Offences relating to execution

Any person who-

- (a) obstructs or hinders the sheriff or a deputy-sheriff or his or her assistant appointed in terms of this Act in the exercise of his or her powers, or the performance of his or her duties or functions under the provisions of this Act or any other law; or
- (b) upon having been required by such sheriff, deputy-sheriff or his or her assistant in the course of the exercising of any such power, or the performance of any such duty or function, to identify himself or herself or to furnish proof of his or her identity, refuses or fails to do so or to do so to the satisfaction of such sheriff, deputy-sheriff or assistant, or furnishes a false identity or proof of identity; or
- (c) being aware that goods are under arrest, interdict or attachment by order of the court, makes away with or disposes of those goods in a manner not authorised by law, or knowingly permits those goods, if in his or her possession or under his or her control, to be made away with or disposed of in such a manner; or
- (d) being a judgment debtor and being required by such sheriff or deputy-sheriff or his or her assistant to point out property to satisfy a warrant issued in execution of judgment against such person-
 - (i) falsely declares to the sheriff or that deputy-sheriff or his or her assistant that he or she possesses no property or insufficient property to satisfy the warrant; or
 - (ii) while knowing of such property refuses or neglects to point out such property or to deliver it to such sheriff or deputy-sheriff or his or her assistant when requested to do so; or
- (e) being a judgment debtor, refuses or neglects to comply with any requirement of such sheriff or deputy-sheriff or his or her assistant in

connection with the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution,

shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

37 Transmission of summonses writs or other process and of notice of issue thereof by telegraph

In any civil proceedings-

- (a) any summons, writ, warrant, rule, order, notice, document or other process of the High Court or any communication which by any law, rule of court or agreement of parties shall be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served or executed upon such person, or left at his or her house or place of abode or business, shall be of the same force and effect as if the original had been shown to or a copy thereof had been served or executed upon such person, or left as aforesaid, as the case may be; and
- (b) any telegram from any judicial or police officer, registrar, deputy registrar, sheriff, deputy-sheriff or clerk of the court stating that a warrant or writ has been issued for the apprehension or arrest of any person required to appear in or to answer any civil suit, action or proceeding, shall be sufficient authority to any officer by law authorised to execute any such warrant or writ for the arrest and detention of such person until a sufficient period of time, not exceeding fourteen days, has elapsed to allow of the transmission of the warrant or writ to the place where such person has been arrested or is detained, unless the discharge of such person be previously ordered by a judge of the High Court: Provided that any such judge may upon cause shown order the further detention of any such person for a period to be stated in such order, but not exceeding 28 days from the date of arrest of such person.

38 Witness fees

(1) The Minister may from time to time by notice in the *Gazette* prescribe a tariff of allowances which shall be paid to a witness in civil proceedings before the High Court or to any person who is to accompany any such witness on account of the youth or infirmity due to old age or any other infirmity of such witness.

(2) Such notice may differentiate between persons according to the distances they have to travel to attend the court to which they are summoned or subpoenaed, or according to their professions, calling or occupations, and may empower such officers in the public service as may be specified therein, to order payment of allowances in accordance with a higher tariff than the tariff so prescribed in cases where payment of allowances in accordance with the last-mentioned tariff may cause undue hardship.

39 Rules of court

(1) The Judge-President may, with the approval of the President, make rules for regulating the conduct of the proceedings of the High Court, and may prescribe therein-

- (a) the process of the court;
- (b) the time and manner of appeal to the court;
- (c) the practice and procedure in connection with the service of any summons, pleading, subpoena or other document or in connection with the issue of interrogatories or the execution of any writ or warrant;
- (d) the compulsory examination by one or more duly registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant for the determination of such damages or compensation, and the manner, time, place and responsibility for the cost of the examination, and the making available to the opposing party of any documentary report on the examination;
- (e) the procedure at or in connection with any enquiry as to the mental state of any person and the judgments or orders which may be given or issued at any such enquiry;
- (f) the appointment and admission of commissioners to take evidence and examine witnesses;
- (g) the manner in which documents executed outside Namibia may be authenticated to permit of their being produced or used in any court or produced or lodged in any public office in Namibia;
- (h) the appointment and admission of sworn translators;
- (i) the proceedings of the sheriff and other officers of the court;
- (j) the tariff of court fees;
- (k) the fees payable in respect of the service or execution of any process of the court (except subpoenas or warrants issued at the instance of any governmental authority in criminal matters) or in respect of the summoning of persons to answer interrogatories;
- (l) the tariff of costs and expenses which may be allowed in respect of the service or execution of any process referred to in paragraph (k) or to persons appearing to answer interrogatories;
- (m) the manner of determining the amount of security to be given in any case where security is required to be given and the form and manner in which such security may be given;
- (n) the hours during which the office of the registrar shall be open for the transaction of business;
- (o) the manner of recording or noting of evidence and of proceedings in the court, and the custody and disposal of records or minutes of such evidence and proceedings;
- (p) the tariff of fees chargeable by advocates, attorneys and notaries;

- (q) the taxation of bills of costs, including bills of costs not relating to litigation, and the recovery of costs; and
- (r) generally any matter which it may be necessary or expedient to prescribe in order to ensure the proper despatch and conduct of the business of the court.

(2) The Judge-President may make rules for regulating the proceedings of the High Court with reference to-

- (a) the times for the holding of courts;
- (b) the placing on the roll of actions for hearing; and
- (c) the extension or reduction, as local circumstances may require, of any period within which any act may in terms of the rules made under subsection (1) be required to be performed.

40 Saving and transitional provisions

(1) Any appointment or rules made or tariff prescribed in respect of allowances to witnesses, or deemed to have been made or prescribed, and any security given or anything done in connection with or by virtue of any such appointment under the Supreme Court of South West Africa Proclamation, 1981, shall be deemed to have been made, prescribed or done under the corresponding provisions of this Act.

(2) Unless it would in any particular case obviously be inappropriate, any reference in any other law, or in any document or register-

- (a) to the Supreme Court of South West Africa, including a reference to that court as construed in accordance with the provisions of section 38(2) of the Supreme Court of South West Africa Proclamation, 1981, shall be construed as a reference to the High Court.
- (b) to the registrar or any other officer of the Supreme Court of South West Africa, shall be construed as a reference to the registrar or such other officer of the High Court, as the case may be;
- (c) to the Supreme Court Act, 1959, or any provision thereof, in so far as it applies in relation to the Supreme Court of South West Africa, or to the Supreme Court of South West Africa Proclamation, 1981, or any provision thereof shall be construed as a reference or including a reference, as the case may be, to this Act or any provision thereof corresponding to any of such first-mentioned provisions.

41 Short title

This Act shall be called the High Court Act, 1990.