

THE HIGH COURT ACT

Date of commencement: 21st May, 1954.

An Act to consolidate the law relating to the High Court of Swaziland.

Short title.

1. This Act may be cited as The High Court Act, 1954.

Jurisdiction of the High Court of Swaziland.

2. (1) The High Court shall be a Superior Court of record and in addition to any other jurisdiction conferred by the Constitution, this or any other law, the High Court shall within the limits of and subject to this or any other law possess and exercise all the jurisdiction, power and authority vested in the Supreme Court of South Africa.

- (2) The jurisdiction vested in the High Court in relation to procedure, practice and evidence in criminal cases, shall be exercised in the manner provided by the Criminal Procedure and Evidence Act, No. 67/38.

Retiring age of judges.

3. The retiring age of a judge shall be sixty-five years. (Amended A.36/1970.)

Powers of Review.

4. (1) The High Court shall have full power, jurisdiction and authority to review the proceedings of all subordinate courts of justice within Swaziland, and if necessary to set aside or correct the same.

- (2) Such power, jurisdiction and authority may be exercised in open court or in chambers in the discretion of the judge.

Powers of appeal.

5. The High Court shall be a court of appeal from all magistrate's courts in Swaziland with full power to —

- (a) reverse and vary all judgments, decisions and orders, civil and criminal, of any such courts;
- (b) order a new trial of any cause heard or decided in any such court and to direct, if necessary, that such new trial shall be heard in the High Court;
- (c) send back any case heard and decided in such court with such instructions as to any further proceedings as the High Court may deem necessary; and
- (d) 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 assessors.

6. (1) The High Court may call to its assistance at any civil or criminal trial or appeal not more than four persons to serve as assessors, of whom —
 - (a) not more than two shall be administrative officers chosen by the Minister for Local Administration; and
 - (b) not more than two shall be chosen by the Ngwenyama from chiefs, sub-chiefs, headmen, or others suitably qualified to aid the court.
- (2) An assessor shall, either in open court or otherwise, give such assistance and advice as the judge may require, but the decision shall be vested exclusively in the judge.
- (3) The agreement or disagreement of an assessor with the decision of the judge shall be noted on the record.

Sessions of court.

7. (1) The dates and times of sittings of the High Court, called “sessions”, shall be determined by the Chief Justice.
- (2) At such sessions, of which there shall be at least two each year, all criminal business shall as far as practicable be tried and determined in priority to all other business.
- (3) At any session the court shall consist of a single judge, unless the Chief Justice otherwise directs.

Proceedings to be in open Court and in English.

8. (1) Save as otherwise provided in this Act, the pleading and the 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, that at any time during a trial the Judge may order that the court be cleared or that any person or class of persons leave the court.
- (2) The pleadings and proceedings of the court shall be in the English language.

Taxation of bills of costs.

9. (1) All bills of costs in lawsuits in the High Court shall be taxed by the taxing master of the High Court, unless the said court otherwise determines.
- (2) No bill of costs in a lawsuit shall be claimable until it has been properly taxed.
- (3) A person seeking to have a bill of costs taxed shall request the person against whom it is drawn, or his lawful representative, in writing, to be present at the taxation, with mention of place and time of taxation.
- (4) When the bill of costs is one between attorney and client, the said notice shall not be necessary if the client has consented to the taxation taking place in his absence.

(5) The taxing master shall be bound to demand from the person who wishes to have a bill of costs taxed proof to his satisfaction that the services for which payment is claimed in such bill have actually been rendered. (Taken from A.12/1899.)

Rules of Court.

10. (1) The Chief Justice may make rules of court for regulating the proceedings of the High 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 payable, their amount and the method and time of payment of the same;
- (b) the expenses of parties and witnesses, their amount, method and time of payment of the same;
- (c) the fees and costs of advocates, attorneys, notaries public and conveyancers, and the amount, taxation and recovery of the same;
- (d) the obtaining of discovery orders in proceedings under the Motor Vehicle Insurance Act against the driver or owner, as defined in that Act, of a vehicle insured in terms thereof;
- (e) 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. (Amended P.20/1962; A.8/1968.)

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