

# SUPREME COURT ACT 15 OF 1990

[ASSENTED TO 5 OCTOBER 1990] [DATE OF COMMENCEMENT: 8 OCTOBER 1990]

(Signed by the President)

as amended by

Judicial Service Commission Act 18 of 1995

Appeal Laws Amendment Act 10 of 2001

Supreme Court Amendment Act 4 of 2002

## ACT

To make provision for the jurisdiction of the Supreme Court of Namibia in pursuance of the provisions of Article 79 of the Namibian Constitution; the making of rules of court; and to provide for matters incidental thereto.

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## 1 Definitions

In this Act, unless the context otherwise indicates-

"Chief Justice" means the Chief Justice of the Supreme Court appointed under Article 32(4)(a)(aa) of the Namibian Constitution;

"deputy-sheriff" means the deputy-sheriff of the Supreme Court appointed under section 26;

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

"Independence" or "date of Independence" means 21 March 1990 which was the day on which the Republic of Namibia was declared to be an independent State;

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

"lower Court" means any court (other than 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 Supreme Court, and includes an assistant registrar;

"rules of court" means the rules made under section 37;

"sheriff" means the sheriff of the Supreme Court appointed under section 26;

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

## 2 Jurisdiction of Supreme Court in general

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

## 3 Seat of the Supreme Court

The seat of the Supreme Court shall be in Windhoek: Provided that any sitting of the Supreme Court may be conducted in any other place within Namibia, if the Chief Justice is of the opinion that special circumstances renders expedient for any particular matter or matters to be heard at such other place or places in Namibia.

#### 4 Nature of Supreme Court and seal

(1)(a) The Supreme 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-SUPREME COURT" with the Coat of Arms of the Republic of Namibia inside the inner circle.

(b) the Seal shall be kept in custody of the registrar.

(2) The Supreme Court may at any time sit in so many courts duly constituted in the manner provided in the Namibian Constitution or this Act as the available judges may allow.

#### 5 Permanent judges of the Supreme Court

The Supreme Court shall consist of the Chief Justice and such additional judges appointed in a permanent capacity as determined in accordance with the provisions of Article 79(1) of the Namibian Constitution.

#### 6 Proceedings of Supreme Court 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 Supreme Court shall be carried on in open court.

#### 7 Period of appointment of acting judges and ad hoc judges

Any appointment of a person as an acting judge or as an ad hoc judge under Article 82(2) of the Namibian Constitution shall be regarded 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 had 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 Supreme Court

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

(a) retires from office in accordance with Article 82(4) of the Namibian Constitution;

(b) may at any time before attaining the retiring age referred to in paragraph (a) retire from office with the approval of the President, which approval may only be granted if there is sufficient reason, including a permanent infirmity of mind or body disabling the judge from the proper discharge of his or her duties of office.

[Subsec (1) substituted by sec 1 of Act 4 of 2002.]

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

## 9 Qualifications for appointment as judges of Supreme Court

No person shall be eligible for appointment as the Chief Justice or as an additional or acting judge of the Supreme Court, unless-

(a) such person has held office as a judge or an acting judge of the former Supreme Court of South West Africa; or

(b) such person has held office as a judge or acting judge of the High Court;  
or

(c) such person has held office as a judge of any superior court in any country which is a member of the Commonwealth; or

(d) such person has held office as a judge in any other country which in the opinion of the Chief Justice is a country whose legal system and legal institutions are sufficiently comparable with the legal system and legal institutions of Namibia as to make judges of such a country suitable for appointment as judges of the Supreme Court; or

(e) such person has practised as an advocate in any court referred to in paragraph (a), (b) or (c), or any legal institution referred to in paragraph (d) of this section, for a period of not less than ten years; or

[Para (e) amended by sec 6(a) of Act 18 of 1995.]

(f) 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 ten years.

[Para (f) added by sec 6(b) of Act 18 of 1995.]

## 10 Remuneration of judges of Supreme Court

(1) The Chief Justice and the other judges of the Supreme Court shall receive or enjoy such remuneration, benefits, allowances or privileges as may be prescribed by law.

(2) The remuneration of any judge referred to in subsection (1), shall not be reduced at any time while he or she is in office, but shall be subject to review from time to time.

11 Judge may not hold other office of profit

No judge of the Supreme 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 10.

12 No process to be issued against judge of Supreme Court except with consent of Chief Justice

(1) Notwithstanding anything to the contrary in any law contained, no summons or subpoena against the Chief Justice or any other judge of the Supreme Court, shall in any civil action be issued out of any court except with the consent of the Chief Justice, or in his or her absence or where the summons or subpoena is directed to him or her, the next available senior judge of the Supreme Court.

(2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to as contemplated in subsection (1), the date upon which such judge shall attend the court concerned shall be determined in consultation with the Chief Justice, or in his or her absence or where the summons or subpoena is directed to the Chief Justice, the next available senior judge of the Supreme Court.

(3) The provisions of this section shall apply also in respect of any acting judge of the Supreme Court during the tenure of his or her office as such a judge.

13 Quorum and manner of arriving at decisions

(1) A quorum of the Supreme Court shall, in pursuance of the provisions of Article 79(3) of the Namibian Constitution, when it hears and determines appeals, whether criminal or civil, or deals with any other matter referred to in that Article or such other matters in terms of this Act, be three judges: Provided that the Chief Justice, or in his or her absence, the senior available judge of the Supreme Court may, in his or her

discretion, direct that any matter be heard before a court consisting of a larger uneven number of judges or, if the matter is already being heard, he or she may direct that the hearing be discontinued and commenced afresh before a court consisting of so many judges of an uneven number as he or she may determine, but not less than three judges.

(2) The judgment of the majority of the judges of the Supreme Court shall be the judgment of the court and where there is no judgment to which a majority of such judges agree, the hearing shall be adjourned and commenced de novo before a fresh court constituted with the requisite quorum or such larger number of judges as referred to in the proviso to subsection (1).

(3) No judge of the Supreme Court shall sit at a hearing of an appeal against a judgment or order given or made in a case which was heard before him or her.

(4) If at any stage during the hearing of any matter in the Supreme Court one or more of the judges of the court die or retire or become otherwise incapable of acting or are absent, the hearing shall, if two or more judges remain, proceed before such remaining judges and, if only one judge remains, be adjourned and the matter shall, subject to the provisions of subsection (1), be heard de novo by a freshly constituted court: Provided that if the hearing proceeds before two judges and they, or where there is more than two judges, the majority, do not agree on judgment, the matter shall be heard de novo.

#### 14 Appellate jurisdiction of Supreme Court

(1) The Supreme Court shall, subject to the provisions of this Act or any other law, have jurisdiction to hear and determine any appeal from any judgment or order of the High Court and any party to any such proceedings before the High Court shall if he or she is dissatisfied with any such judgment or order, have a right of appeal to the Supreme Court.

(2) The right of appeal to the Supreme Court-

(a) shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in the suit or by reason only of the fact that the matter in dispute is incapable of being valued in money; and

(b) shall be subject to the provisions of any law which specifically limits it or specifically grants, limits or excludes such right of appeal, or which prescribes the procedures which have to be followed in the exercise of that right.

(3) Where in any civil proceedings leave to appeal to the Supreme Court is required in terms of any law, the Supreme Court may, where such leave has been refused, on application to it, grant such leave, and may vary any order as to costs made by the court in question in refusing leave to appeal.

(4) .....

[Subsec (4) deleted by sec 1 of Act 10 of 2001.]

(5) Any leave to appeal may be granted by the Supreme Court subject to such conditions, as may be determined by the Supreme Court.

(6)(a) An application for leave to appeal under subsection (3) shall be submitted by petition addressed to the Chief Justice within 21 days, (or such longer period as may on good cause be allowed), after the leave of the court against whose decision the appeal in question is to be made, was refused.

(b) The petition may be considered by the Chief Justice or any other judge designated for that purpose by the Chief Justice.

(c) The Chief Justice or such other judge considering the petition may order that the application be argued before him or her at a time and place appointed, and may, whether or not he or she has so ordered-

(i) grant or refuse the application; or

(ii) refer the application to the Supreme Court for consideration, whether upon argument or otherwise,

and where an application has been so referred to the Supreme Court, that court may thereupon grant or refuse the application, and make any order incidental thereto.

(d) The decision of the Chief Justice or other judge of the Supreme Court, as the case may be, to grant or refuse the application, shall be final: Provided that the refusal of such application shall in no manner limit any other right to appeal where such a right exists under any law.

(e) Notice of the date fixed for the hearing of an application under this subsection, and of the place appointed for such hearing under paragraph (c), shall be furnished to the applicant and the respondent by the registrar.

(7)(a) Where in any civil proceedings no leave to appeal to the Supreme Court is required in terms of any law, the Chief Justice or any other judge designated for that purpose by the Chief Justice-

(i) may, in his or her discretion, summarily dismiss the appeal on the grounds that it is frivolous or vexatious or otherwise has no prospects of success; or

(ii) shall, if the appeal is not so dismissed, direct that the appeal be proceeded with in accordance with the procedures prescribed by the rules of court.

(b) Where an order has been made dismissing the appeal on any of the grounds referred to in subparagraph (i) of paragraph (a) of this subsection, such order shall be deemed to be an order of the Supreme Court setting aside the appeal.

(c) Any decision or direction of the Chief Justice or such other judge in terms of paragraph (a) of this subsection, shall be communicated to the parties concerned by the registrar.

(8) .....

[Subsec (8) deleted by sec 1 of Act 10 of 2001.]

## 15 Jurisdiction of Supreme Court as court of first instance

(1) Whenever any matter may be referred for a decision to the Supreme Court by the Attorney-General under the Namibian Constitution, the Attorney-General shall be entitled to approach the Supreme Court directly (without first instituting any proceedings in any other court), on application to it, to hear and determine the matter in question.

(2) An application to the Supreme Court under subsection (1) shall be submitted by petition to the Chief Justice and shall further comply with the procedures prescribed for that purpose by the rules of court.

(3) The Chief Justice or any other judge designated for that purpose by the Chief Justice shall decide whether such application is, by virtue of its urgency or otherwise, of such a nature as to justify the exercise of the court's jurisdiction in terms of this section.

(4) Any decision referred to in subsection (3), by the Chief Justice or such other judge, as the case may be, shall be final.

(5) If the Chief Justice or such other judge, as the case may be, is of the opinion that the application is of a nature which justifies the exercise of the court's jurisdiction in terms of this section, any party affected or likely to be affected by the decision of the Chief Justice or such other judge, shall be informed of that decision by the registrar, and the matter shall, subject to the provisions of section 20, be further dealt with by the Supreme Court in accordance with the procedures prescribed by the rules of court.

(6) Nothing in subsection (4) contained shall be construed as precluding any party affected or likely to be affected by the decision that the application is not of such a nature as to justify the exercise of the court's jurisdiction as contemplated in that subsection, to institute proceedings in any other competent court.

## 16 Review jurisdiction of Supreme Court

(1) In addition to any jurisdiction conferred upon it by this Act, the Supreme Court shall, subject to the provisions of this section and section 20 have the jurisdiction to

review the proceedings of the High Court or any lower court, or any administrative tribunal or authority established or instituted by or under any law.

(2) The jurisdiction referred to in subsection (1) may be exercised by the Supreme Court *mero motu* whenever it comes to the notice of the Supreme Court or any judge of that court that an irregularity has occurred in any proceedings referred to in that subsection, notwithstanding that such proceedings are not subject to an appeal or other proceedings before the Supreme Court: Provided that nothing in this section contained shall be construed as conferring upon any person any right to institute any such review proceedings in the Supreme Court as a court of first instance.

(3) The Chief Justice or any other judge of the Supreme Court designated for that purpose by the Chief Justice, may give such directions as may appear to him or her to be just and expedient in any particular case where the Supreme Court exercises its jurisdiction in terms of this section, and provision may, subject to any such direction, be made in the rules of court for any procedures to be followed in such cases.

(4) The provisions of this section shall not be construed as in any way limiting the powers of the High Court as existing at the commencement of this Act or as depriving that court of any review jurisdiction which could lawfully be exercised by it at such commencement.

## 17 Finality of decisions of Supreme Court

(1) There shall be no appeal from, or review of, any judgment or order made by the Supreme Court.

(2) The Supreme Court shall not be bound by any judgment, ruling or order of any court which exercised jurisdiction in Namibia prior to or after Independence.

## 18 Administration of oath

(1) The Supreme Court or any judge thereof may where it is necessary or expedient require and administer any oath or affirmation.

(2) Any oath or affirmation shall be administered in the form which most clearly conveys to the person concerned the meaning of the oath or affirmation and which such person considers to be binding on his or her conscience.

#### 19 Powers of Supreme Court on hearing appeals

The Supreme Court shall have power-

(a) on the hearing of any 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 to 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 Supreme Court may deem necessary; and

(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.

#### 20 Powers of Supreme Court in cases where it is sitting as court of first instance or on review

Whenever the Supreme Court is properly seized with a matter as a court of first instance in terms of section 15 or it exercises its review jurisdiction in terms of section 16, the court shall have the power-

(a) to receive evidence either orally or on affidavit or by deposition before a person appointed by the court, or to direct that the matter be heard by the High Court, with such instructions relating to the taking of evidence or any other matter as the court

may deem necessary, or to give any other direction or make such order which in its opinion are in the circumstances of each case just or expedient; and

(b) to grant or refuse the application or to confirm, amend or set aside the proceedings which are the subject of the hearing, as the case may be, and to give any judgment or make any order which the circumstances may require.

## 21 Manner of securing attendance of witnesses in civil proceedings

(1) In any civil proceedings before the Supreme Court in which that court requires the attendance of any witness in order to hear oral evidence, it may procure the attendance of any such witness in the manner provided for in the rules of court.

(2) Whenever a witness who has lawfully and properly been directed to attend court in terms of the said rules, without reasonable cause fails to do so or, having attended court fails to remain in attendance until he or she is excused by the presiding officer, the court in which the said proceedings are conducted may issue a warrant directing that he or she be arrested and brought before the court on the date and at the time stated in the warrant or as soon as possible thereafter.

(3) A person arrested by virtue of any warrant issued under subsection (2), may be detained thereunder before the court which issued it or in any prison 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 secure his or her attendance as a witness at the said proceedings or at the enquiry referred to in subsection (4): Provided that the court may release such person on a recognisance, whether with or without sureties, for his or her appearance to give evidence as required or for his or her appearance at the enquiry referred to in subsection (4).

(4) The court may in a summary manner enquire into any person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance until excused by the court, and may, unless it is proved that such person has a reasonable excuse for such evasion or such failure, sentence him or her to a fine not exceeding R2

000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

(5) Any sentence imposed by the court under subsection (4) shall be enforced as if it were a sentence imposed in criminal proceedings.

(6) If a person who has been released on a recognisance in terms of subsection (3), fails to appear before the court-

(a) to give evidence as contemplated by the proviso to subsection (3); or

(b) at an enquiry referred to in subsection (4),

that court may, in addition to declaring his or her recognisance forfeited, deal with him or her as if he or she had failed to obey a subpoena to attend proceedings before the court or to appear at the said enquiry.

## 22 Manner in which recalcitrant witnesses may be dealt with

(1) Whenever in any civil proceedings before the Supreme Court any person who appears either in obedience to an order or process issued in terms of the rules of court or by virtue of a warrant under section 21 or is present and verbally required by the court to give evidence in such proceedings, refuses to be sworn or to make an affirmation as a witness or, having been sworn or having made an affirmation, refuses to answer any such questions as are put to him or her, or refuses or fails to produce any book, document, object 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), at the resumption of the proceedings after an adjournment in terms of that subsection, again refuses to do what

is 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 the 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 Supreme Court from giving judgment in any case or to dispose of the proceedings according to any other sufficient evidence submitted to it.

(4) When any process is issued in terms of the rules of court to procure the attendance of any person to give evidence or to produce any book, paper, document, object or other thing in any such proceedings and it appears that-

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

(b) such evidence could be given or such book, paper, document, object or thing could properly be produced by some other person; or

(c) the compelling of his or her attendance would be an abuse of the process of the court,

the court may, notwithstanding the provisions of this section, after reasonable notice by the registrar to the parties to the proceedings concerned and after hearing such parties, make an order cancelling such process.

## 23 Compilation of special dossiers

(1) In any civil proceedings before the Supreme Court in respect of which the provisions of Article 23(2) of the Namibian Constitution are applicable or in any other such proceedings in which it is considered to be just and expeditious, the court may direct that a special dossier be compiled by a referee referred to in subsection (2), containing-

(a) statistical information or evidence which may not otherwise conveniently and expeditiously be assembled or be assessed by the court;

(b) any other information or evidence of any scientific or technical nature which in the court's opinion is relevant in the proceedings and which may not be conveniently and expeditiously assembled or assessed by it including any matter involving sociological, psychological, economical or financial facts.

(2) The referee who is required to compile the special dossier referred to in subsection (1) of this section shall be a person regarded as a fit and proper person for the performance of his or her functions under this section appointed by the Chief Justice, or in his or her absence, the senior available judge, and such referee shall have the power to acquire the assistance or advice of the Attorney-General or the Ombudsman or any officers or employees in the public service or such other persons on the ground of their special or expert knowledge of the matter concerned, as are in his or her opinion necessary to enable him or her to discharge his or her functions under this section.

(3)(a) The powers, functions and terms of reference of the referee shall be specified in the direction referred to in subsection (1) of this section, including the power to conduct any enquiry for the purpose of the compilation of such special dossier, if such enquiry is necessary, and such referee shall for the purpose of such enquiry have such powers and shall conduct the enquiry in such manner as may be specified in such direction.

(b) For the purpose of procuring the attendance of any witness and the production of any document or thing before a referee such enquiry shall be deemed to be proceedings as contemplated in section 21, and the provisions of that section and section 22 shall mutatis mutandis apply in respect of such enquiry.

(c) Any person who after having been sworn or having made an affirmation, gives false evidence before a referee at an enquiry knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(4) The special dossier compiled by the referee in terms of this section shall, within such period and in such manner as are determined by the Chief Justice or such other judge, as the case may be, be furnished to the court which made the direction and to the parties in such proceedings before that court.

(5) Any party to such proceedings before the Supreme Court shall, within such period and in such manner as are determined by the Chief Justice or such other judge, be entitled to furnish the court with supplementary or answering dossiers, confirming, corroborating, modifying, contradicting or otherwise dealing with the reliability and credibility of the evidence or information contained in the special dossier.

(6) Any party to the proceedings of the Supreme Court to which such special dossier relates, may apply to the court for an order directing that viva voce evidence be heard with respect to the evidence or information contained in such dossier and the court may, in its discretion-

(a) refuse such application; or

(b) grant such application subject to such terms and conditions as it may determine.

(7) Any referee appointed under this section shall be entitled to such remuneration as may be prescribed by the rules of court or, if no such remuneration has been so prescribed, as the court may determine, and to any reasonable expenditure incurred by him or her for the purposes of discharging his or her functions under this section, and any such remuneration and expenditure shall be taxed by the taxing master of the Supreme Court and shall be payable as ordered by the court which made the direction.

(8) The Supreme Court may adopt the special dossier compiled by any such referee, either wholly or in part and with or without modifications, or may remit such dossier for further consideration by such referee, or make such other order in regard thereto as may be necessary or desirable.

(9) Any such dossier or any part thereof which is adopted by the Supreme Court, whether with or without modifications shall have effect as if it were a finding by that court in the proceedings in question.

## 24 Foreign witnesses

(1) Whenever, in any civil proceedings pending before the Supreme Court, the court in the exercise of its powers under this Act 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 Supreme 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 the 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 referred to 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.

## 25 Certified copies of Supreme Court records admissible as evidence

Whenever a judgment, sentence, order or other record of the Supreme Court is required to be proved or inspected or in any manner referred to, a copy of such judgment, sentence, order or record duly certified as such by the registrar under the seal of the court, shall, on mere production and without proof of the authenticity of the said registrar's signature, be prima facie evidence thereof.

## 26 Appointment of officers of Supreme Court

(1)(a) The Minister may, subject to the laws governing the public service, appoint for the Supreme Court a registrar, 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 any 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) A 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 that 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 of the relationship of such sheriff or deputy-sheriff to a party to such matter or of any other good cause of challenge, or whenever on account of illness or absence or of 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 an acting deputy-sheriff.

(7) Nothing in this section contained shall be construed as precluding the Minister from appointing the registrar or sheriff or the deputy-sheriff of the High Court to hold simultaneously the office of registrar or sheriff or deputy-sheriff of the Supreme Court, as the case may be, and any assistant of such deputy-sheriff shall be deemed to be also his or her assistant as contemplated in this section.

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

## 27 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 any 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 a 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.

## 28 Execution of process

(1) Whenever the Supreme Court is exercising its jurisdiction as a court of first instance in terms of section 15, or as a court of review in terms of section 16, the sheriff or deputy-sheriff or his or her assistant shall execute all sentences, decrees, judgments,

writs, summonses, subpoenas, rules, orders, warrants, commands and processes of the Supreme Court directed to the sheriff and make return of the manner of execution thereof to the Supreme Court and to the party (if any) 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 Supreme 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 Supreme Court or committed to his or her custody by any order of the Supreme 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 Supreme Court on application ex parte or on notice, as the circumstances may require.

(5) Any warrant or other process for the execution of any judgment, given or order issued by the Supreme Court as contemplated in subsection (1), against any association of persons, whether corporate or unincorporate, partnership or firm may be executed by the attachment of the property or assets of such association, partnership or firm.

## 29 Application of certain provisions of High Court Act, 1990

The provisions of sections 33, 34, 35 and 37 of the High Court Act, 1990, shall mutatis mutandis apply in respect of the liability of the State for acts performed by the sheriff, or the deputy-sheriff or his or her assistant appointed under this Act, the service of process on such sheriff or deputy-sheriff, the property which is not liable to be seized in execution by such sheriff, deputy-sheriff or his or her assistant and the transmission of any process of the court, as the case may be, and any reference in those provisions to the High Court shall be deemed to be a reference to the Supreme Court.

30 Offences relating to execution

Any person who-

(a) obstructs or hinders the sheriff or a deputy-sheriff or his or her assistant 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 the 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 Supreme 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 the 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 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 the 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.

### 31 Witness fees

The allowance payable to any witness who is lawfully obliged to attend any civil proceedings in the Supreme Court shall be on the same tariff and subject to the same conditions which are prescribed from time to time in respect of witnesses obliged to attend such proceedings in the High Court.

### 32 Enforceability of process of Supreme Court

The process of the Supreme Court shall run throughout Namibia and any judgment or order of the Supreme Court shall have force and effect in Namibia.

### 33 Execution of judgment or order of Supreme Court sitting as court of appeal

Any judgement or order of the Supreme Court sitting as a court of appeal shall be executed and enforced by the High Court in like manner as if it were an original judgment or order of the High Court.

### 34 Right of person in custody to be present at hearing of his or her appeal or as an interested party to any proceedings in Supreme Court

(1) Notwithstanding anything to the contrary in this Act or any other law contained any person who is in custody, whether he or she is legally represented in the Supreme Court or not, shall not be entitled to be present at the hearing of his or her appeal or as any other interested party to such appeal or as an interested party to any other proceedings in the Supreme Court except with the leave of that court.

(2) The leave referred to in subsection (1) may be granted subject to such person who is in custody, paying all expenses of and incidental to his or her transfer to and from the seat of the Supreme Court: Provided that if, in the opinion of the Supreme Court, such person's attendance in court is in the circumstances of each case advisable, such expenses shall be defrayed out of moneys appropriated for that purpose by law.

(3) When the Supreme Court exercises its appellate jurisdiction any person who is not represented by any legal representative, may present his case and argument in writing if he or she does not wish to appear before the court in person, and any case or argument so presented shall be considered by the Supreme Court as if such person has personally appeared before that court.

(4) Notwithstanding anything to the contrary in any law contained, the power of the Supreme Court to pass any sentence in any criminal proceedings may be exercised notwithstanding that the appellant is for any reason not present.

### 35 Right of audience

(1) Notwithstanding the provisions of any other law, the parties in any proceedings before the Supreme Court may appear in person or be represented by any legal practitioner who-

(a) had the right of audience in the former Supreme Court of South West Africa prior to the date of Independence; or

(b) has the right of audience in the High Court; or

(c) is granted the right of audience in the Supreme Court in terms of any other law or the rules of court; or

(d) is in respect of any particular proceedings before the Supreme Court granted special leave to appear in such proceedings by the Supreme Court on the

grounds of such person's particular qualifications or the special nature or circumstances of the relevant proceedings.

(2) Nothing in this section or any other law contained, shall preclude the Supreme Court in any particular case from allowing any attorney to appear in that court in any proceedings in which that court considers such appearance to be in the interest of the administration of justice.

### 36 Sessions of Supreme Court

(1) There shall be not less than three sessions of the Supreme Court during each calendar year.

(2) The date for the commencement of each session and the termination thereof shall be determined by the Chief Justice from time to time in accordance with the rules of court.

### 37 Rules of Court

(1) The Chief Justice may, with the approval of the President, make rules for regulating all matters in relation to the proceedings of the Supreme Court, and may prescribe therein-

- (a) the dates for the holding of courts;
- (b) the placing on the roll of cases for hearing;
- (c) the extension or reduction, as local circumstances may require, of any period within which any act is in terms of the rules required to be performed;
- (d) the process of the Supreme Court;
- (e) the time and manner of appeal to the Supreme Court;

(f) 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 in terms of this Act, and the fees payable and the tariff of costs and expenses which may be allowed in respect thereof;

(g) the practice and procedure in connection with the compilation of special dossiers in terms of section 23, and the remuneration payable to any such referee;

(h) the appointment and admission of commissioners to take evidence and examine witnesses;

(i) the hours during which the office of the registrar shall be open for the transaction of business;

(j) the manner in which the records of appeal to the Supreme Court ought to be compiled;

(k) the time within which appeals to the Supreme Court have to be noted;

(l) the further steps which shall be taken by the parties to the appeal and the times within which such steps have to be completed;

(m) the nature of any written submissions required from the parties to any proceedings in the Supreme Court and the times within which such submissions must be lodged with the registrar;

(n) the procedure pertaining to proceedings in the Supreme Court where such court exercises its jurisdiction in terms of section 15 or 16;

(o) the procedure and manner in which petitions are to be lodged with the Supreme Court or the Chief Justice in terms of this Act or any other law and the times within which such procedures have to be satisfied;

(p) the manner of recording or noting of evidence, and the custody and disposal of records or minutes of such evidence and proceedings;

(q) the tariff of court fees;

(r) the tariff of fees chargeable by advocates and attorneys in matters before the Supreme Court;

(s) the manner of determining the amount of security required to be given in matters relating to the process of the Supreme Court and the form and manner in which such security may be given;

(t) the taxation of bills of costs in respect of matters before the Supreme Court and the recovery of such costs;

(u) generally, any other matter in respect of which rules may be prescribed in terms of this Act or in respect of which it is necessary or desirable to make provision in order to ensure or facilitate the proper dispatch and conduct of the business of the Supreme Court.

(2) Nothing in this section contained shall preclude the Supreme Court from dealing with any matter before it, in such manner and on such principles so as to do substantial justice and to perform its functions and duties most efficially.

38 Repeal of Act 59 of 1959, Proclamation 222 of 1981 and certain provisions of Act 29 of 1985, and saving

(1) Subject to the provisions of subsection (2), the Supreme Court Act, 1959, and all amendments thereof in so far as they apply in Namibia, Proclamation 222 of 1981 and sections 3, 4 and 5 of the Appeals Amendment Act, 1985, are hereby repealed.

(2) No provision of this Act shall affect an appeal or any proceedings in connection therewith noted or deemed to have been noted to the Supreme Court in terms of any law before the commencement of such provision and any such appeal shall be continued and conducted in every respect as if this Act had not been passed.

39 Application of other laws

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 appellate division of the Supreme Court of South Africa (hereinafter referred to as the Appellate Division), shall be construed as a reference to the Supreme Court;

(b) to any division of the said Supreme Court of South Africa, which immediately prior to the commencement of this Act included a reference to the said Appellate Division, shall be construed as a reference or as including a reference, as the case may be, to the Supreme Court;

(c) to the Chief Justice of South Africa or any other judge of the Appellate Division, shall be construed as a reference to the Chief Justice or any other judge of the Supreme Court;

(d) to the registrar or any other officer of the Appellate Division, shall be construed as a reference to the registrar or such other officer of the Supreme Court, as the case may be;

(e) to the Supreme Court Act, 1959, or any provision thereof, shall, in so far as it applies in relation to the Appellate Division, be construed as a reference or including a reference, as the case may be, to this Act or any provision thereof corresponding to such first-mentioned provision.

40 Short title

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