

THE SWAZI COURTS ACT

Date of commencement: 1st January, 1951.

Arrangement of Sections

1. Short title.
2. Interpretation.
3. Establishment of Swazi Courts.
4. Constitution of Court.
5. Suspension and dismissal of members.
6. Sessions.
7. Civil jurisdiction.
8. Criminal jurisdiction.
9. Cases excluded from ordinary jurisdiction.
10. Personal interest.
11. Laws to be administered.
12. Punishments.
13. When execution of sentence may be suspended.
14. Committal to prison.
15. Recovery of fines, damages, etc.
16. Compensation to aggrieved persons.
17. Contempt of Court.
18. Offences relating to execution.
19. Power to summon witnesses.
20. Provision for the summoning of witnesses or parties outside the area of the jurisdiction of a Swazi Court.
21. Practice and procedure.
22. Record of cases to be kept.
23. Parties to appear in person.
24. Adjudication without authority.
25. Members of Swazi Courts taking rewards.
26. Taking reward for influencing Swazi Courts.
27. Penalty for false evidence.
28. Transfer of cases.
29. Procedure on transfer to Magistrate's Court.
30. Revisory powers in criminal proceedings.
31. Revisory powers in civil proceedings.

32. Courts of Appeal.
33. Appeals.
34. Appeals out of time.
35. Power on Appeal.
36. Interpleader actions.
37. Execution of orders of Swazi Courts.
38. Indemnity of officers acting judicially.
39. Power to make rules.
40. Provisions inapplicable to certain proceedings.
41. Existing Courts.

An Act to make better provision for the recognition, constitution, functions and jurisdiction of Swazi Courts, and generally for the administration of justice in Swaziland in cases recognisable by Swazi Courts.

Short title.

1. This Act may be cited as the Swazi Courts Act, 1950.

Interpretation.

2. In this Act, unless the context otherwise requires —

“Chief” mean a Chief recognised as such by any law in force in Swaziland;

“Judicial Commissioner” means an officer appointed in writing by the Public Service Commission to carry out the duties laid down in this Act;

“Law of Swaziland” means the common law and statute law in force in Swaziland, other than Swazi law or custom;

“the Ngwenyama” means the Ngwenyama acting after such consultation with his Libandhla as is required by Swazi law and customs;

“Swazi Court” means a Court established or recognised under this Act. (Amended L.34/1966 and L.N.8/1969.)

Establishment of Swazi Courts.

3. (1) By warrant under his hand, the Ngwenyama may recognise or establish within Swaziland Swazi Courts which shall exercise jurisdiction over members of the Swazi nation within such limits, as may be defined by such warrant.

(2) The Ngwenyama may suspend, cancel or vary any warrant recognising or establishing a Swazi Court, or defining the jurisdiction of any such court or the limits within which such jurisdiction may be exercised.

Constitution of Court.

4. (1) A Swazi Court shall be constituted in accordance with the Swazi law and custom of Swaziland:

Provided that the Ngwenyama may prescribe the constitution of any Swazi Court, or the order of precedence among members thereof, or the powers and duties of persons acting as assessors to such Court.

(2) The presiding officer of a Swazi Court may in writing appoint a clerk of Court, and such number of Court Messengers as may be necessary:

Provided that the approval of the Ngwenyama to the appointment, term of office, and remuneration is obtained. (Amended L. 34/1966.)

Suspension and dismissal of members.

5. (1) The Ngwenyama may suspend or dismiss any member of a Swazi Court who appears to have abused his power or to be unworthy or incapable of exercising the same justly, or for other sufficient reason.

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

Sessions.

6. A Swazi Court shall hold sessions at such times as may be necessary for the convenient and speedy despatch of the business of the Court; but the Ngwenyama may direct sessions to be held at such times as he shall think fit.

Civil jurisdiction.

7. (1) Every Swazi Court shall exercise civil jurisdiction, to the extent set out in its warrant and subject to the provisions of this Act, over causes and matters in which all the parties are members of the Swazi nation and the defendant is ordinarily resident, or the cause of action shall have arisen, within the area of jurisdiction of the Court.

(2) Notwithstanding anything contained in this or any other Act such jurisdiction shall be deemed to extend to the hearing and determination of suits for the recovery of civil debts due to the Government under the provisions of any law, where such jurisdiction has been expressly conferred upon a Swazi Court under section 11.

Criminal jurisdiction.

8. (1) Every Swazi Court shall exercise criminal jurisdiction to the extent set out in its warrant and subject to the provisions of this Act.

(2) Such jurisdiction shall extend to the hearing, trial and determination of all criminal charges and matters in which the complainant and the accused are members of the Swazi nation and the defendant is accused of having, wholly or in part within the jurisdiction of the Court, committed or been accessory to the committing of an offence.

Cases excluded from ordinary jurisdiction.

9. Subject to any express provision conferring jurisdiction, no Swazi Court shall have jurisdiction to try —

- (a) cases in which a person is charged with an offence in consequence of which death is alleged to have occurred, or which is punishable under any law with death or imprisonment for life;
- (b) cases in connection with marriage other than a marriage contracted under or in accordance with Swazi law or custom, except where and in so far as the case concerns the payment or return or disposal of dowry;
- (c) cases relating to witchcraft, except with the approval of the Judicial Commissioner.

Personal interest.

10. No member of any Swazi Court shall adjudicate upon any matter or thing in which he is pecuniarily or personally interested.

Laws to be administered.

11. Subject to the provisions of this Act a Swazi Court shall administer —

- (a) the Swazi law and custom prevailing in Swaziland so far as it is not repugnant to natural justice or morality or inconsistent with the provisions of any law in force in Swaziland;
- (b) the provisions of all rules or orders made by the Ngwenyama or a Chief under the Swazi Administration Act No. 79/50 or any law repealing or replacing the same, and in force within the area of jurisdiction of the Court;
- (c) the provisions of any law which the Court is by or under such law authorised to administer. (Amended L.34/1966.)

Punishments.

12. For offences against Swazi law or custom a Swazi Court may, subject to the provisions of this Act and subject to the terms of the warrant constituting the Court, impose a fine or may order imprisonment or both, or may inflict any punishment authorised by Swazi law or custom provided that such punishment is not repugnant to natural justice and humanity; and the fine or other punishment shall in no case be excessive but shall always be commensurate with the nature and circumstances of the offence and the circumstances of the offender. (Amended L.34/1966.)

When execution of sentence may be suspended.

13. The execution of the sentence of a Swazi Court shall not be suspended by reason of any appeal against a conviction, unless the sentence is that the accused shall suffer corporal punishment, in which case the sentence shall not be executed until the appeal has been heard and decided.

Committal to prison.

14. Subject to the provisions of sections 30, 33 and 35, where a person is required to serve a sentence of imprisonment in pursuance of a judgment of a Swazi Court, whether the sentence of imprisonment was imposed without the option of a fine, or upon the expiry or the period allowed by the Swazi Court within which to pay an alternative fine, the member who presided at the trial shall commit the person to prison by warrant under his hand there to serve the sentence imposed on him. (Amended L.34/1966.)

Recovery of fines, damages, etc.

15. A Swazi Court may order that any fine, damages or other payment which it shall impose shall be paid at such time or times and by such instalments, and in kind or otherwise, as it shall think just; and in default of payment of any fine or of any instalment of the same when due, the Court may order that the amount of the fine or of the instalment as the case may be, shall be levied by the sale of any property belonging to the offender and situate within the area of the jurisdiction of the Court.

Compensation to aggrieved persons.

16. A Swazi Court may direct any fine, or such part thereof as it shall deem fit, or any compensation awarded to it, to be paid to the person injured or aggrieved by the act or omission in respect of which such fine or compensation was imposed, on condition that such person, if he shall accept the same, shall not have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of such act or omission.

Contempt of Court.

17. A person who —

- (a) omits to produce or deliver up a document on the lawful order of a Swazi Court; or
- (b) refuses to answer any question lawfully asked by the Court;
- (c) refuses to sign any statement lawfully required by the Court;
- (d) intentionally insults the Court or any member thereof;
- (e) intentionally interrupts the proceedings thereof at any stage;

shall be guilty of contempt of Court and on conviction liable to a fine not exceeding one hundred emalangeni or imprisonment for a period not exceeding three months or both. (Amended L.34/1966.)

Offences relating to execution.

18. A person who —

- (a) obstructs a Swazi Court Messenger in the execution of his duties; or
- (b) being aware that goods are under arrest, attachment or interdict by the Court —
 - (i) makes away with, or disposes of, those goods in a manner not authorised by law; or

- (ii) knowingly permits those goods, if in his possession or under his control, to be made away with, or disposed of, in such manner; or
- (c) being a judgment debtor and being required by a Swazi Court Messenger to point out property to satisfy a warrant issued in execution of judgment against that person, either —
 - (i) falsely declares to the court messenger that he possesses no property or insufficient property to satisfy the warrant; or,
 - (ii) although owning property, neglects or refuses to point it out; or,
- (d) being a judgment debtor, refuses or neglects to comply with a requirement of a Swazi Court Messenger in regard to delivery of documents in his possession or under his control which relate to the title of the immovable property under execution;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni, or in default of payment thereof, imprisonment for a period not exceeding three months. (Added by L.34/1966.)

Power to summon witnesses.

19. (1) A Swazi Court shall have the power to summon before the Court any member of the Swazi nation within the jurisdiction of the Court for the purpose of giving evidence:

Provided that if he is in employment, due notice that he is required to attend before such Swazi Court shall be given in writing to the employer and if such employer without just or reasonable cause prevents or refuses to allow him to obey the summons such employer shall be guilty of an offence and liable on conviction to a fine not exceeding seventy emalangeni or imprisonment for a period not exceeding two months or both.

(2) A member of the Swazi nation who without reasonable excuse fails to obey summons lawfully issued under this section may be arrested and brought before the Swazi Court and shall be liable to a fine not exceeding thirty-five emalangeni or in default of payment, to imprisonment for a period not exceeding one month. (Amended L.34/1966.)

Provision for the summoning of witnesses or parties outside the area of the jurisdiction of a Swazi Court.

20. The Ngwenyama may confer upon Swazi Courts such powers as he may think necessary to secure the appearance before any such Court of any member of the Swazi nation outside the area of the jurisdiction of such Court, when his appearance is required as a defendant in any proceeding within the jurisdiction of such Court or as a witness in any such proceeding.

Practice and procedure.

21. Subject to such rules as may be made under section 40 the practice and procedure of Swazi Courts shall be regulated in accordance with Swazi law and custom.

Record of cases to be kept.

22. Every Swazi Court shall keep, in writing, a record of all cases tried by it, in such form as the Ngwenyama may direct.

Parties to appear in person.

23. Notwithstanding anything contained in any other law, no advocate or legal practitioner may appear or act for any party before a Swazi Court.

Adjudication without authority.

24. A person who exercises or attempts to exercise judicial powers within the area of jurisdiction of a duly constituted Swazi Court, except in accordance with the provisions of this Act or any other law in force in Swaziland, or who sits as a member of such Court without due authority, shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred emalangeni, or, in default of payment thereof, to imprisonment for a period not exceeding twelve months, or to such imprisonment without option of a fine, or to both:

Provided that nothing contained in the section shall apply to any person who in accordance with Swazi custom attends the proceedings before a Swazi Court and assists the Court in any civil or criminal case. (Amended L.34/66.)

Members of Swazi Courts taking rewards.

25. A person who expects to be a member of a Swazi Court, and who wilfully accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, a reward for doing or forbearing to do any act as a member of such Court, or for showing or forbearing to show as a member of such Court, favour or disfavour to any person, shall be guilty of an offence and liable on conviction to a fine not exceeding six hundred emalangeni, or, in default of payment thereof, imprisonment for a period not exceeding two years, or such imprisonment without the option of a fine, or to both. (Amended L.34/1966.)

Taking reward for influencing Swazi Courts.

26. A person who wilfully accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any reward, whether in money or otherwise, for inducing a Swazi Court, or any member thereof by corrupt or illegal means or by personal influence, to do or forbear to do an act which such Court or member is authorised or required to do in the exercise of lawful jurisdiction, or to show favour or disfavour to any person, shall be liable on conviction to a fine not exceeding four hundred emalangeni, or, in default of payment thereof imprisonment for a period not exceeding twelve months, or such imprisonment without option of a fine, or both. (Amended L.34/1966.)

Penalty for false evidence.

27. A person who in any proceeding before a Swazi Court gives evidence upon oath or according to Swazi law and custom, which he knows to be false, or believes to be false, or does not believe to be true, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni or, in default of payment thereof, imprisonment for a period not exceeding six months, or such imprisonment without the option of a fine, or both. (Amended L.34/1966.)

Transfer of cases.

28. (1) Notwithstanding anything contained in this Act, any member of the Swazi nation who is a party to a dispute, which would in accordance with this Act be heard and determined by a Swazi Court, who has reason to believe that the matter cannot be equitably adjudicated

upon by the Court by which it would ordinarily be heard, or by reason of neglect or want of due diligence the adjudication of such Court is being unreasonably delayed, or that the Court has unreasonably refused to hear and adjudicate upon such matter, may report the matter —

- (a) to the Swazi Court of Appeal having jurisdiction where the Court concerned is a Swazi Court;
 - (b) to the Higher Swazi Court of Appeal where the Court concerned is a Swazi Court of Appeal;
 - (c) to the Judicial Commissioner where the Court concerned is the Higher Swazi Court of Appeal.
- (2) The Swazi Court of Appeal or the Higher Swazi Court of Appeal or the Judicial Commissioner, as the case may be, having duly enquired into the matter, shall either —
- (i) refuse the application; or
 - (ii) hear and determine the matter; or
 - (iii) direct that the matter be heard and determined forthwith by the Court concerned.

Procedure on transfer to Magistrate's Court.

29. (1) When a case is transferred from a Swazi Court to a Magistrate's Court, whether for trial or retrial, by an order under section 28 or section 30 or section 35(b), the Swazi Court shall report the proceedings to the Magistrate's Court, and thereupon the Magistrate's Court shall proceed to the trial or retrial of the case as though, in a criminal proceeding, a complaint of facts constituting the offence had been made to the Court, and, in a civil proceeding, as though a complaint therein had been made or filed in the Court.

(2) In a case heard by a Magistrate's Court under sub-section (1) the Magistrate's Court concerned may summon to its assistance one or more persons chosen from a panel appointed by the Ngwenyama to sit and act as assessors in an advisory capacity.

(3) It shall be the duty of an assessor to give, either in open court or otherwise, such assistance and advice as the officer presiding over such Magistrate's Court may require, but the decision shall be vested exclusively in the presiding officer.

(4) The agreement or disagreement of an assessor with the decision of the presiding officer shall be noted on the record.

Revisory powers in criminal proceedings.

30. (1) The Judicial Commissioner and every District Officer in his capacity as a holder of a Subordinate Court, shall at all times have access to the records of all Swazi Courts within his jurisdiction, other than the Higher Swazi Court of Appeal, and on the application of the Swazi Court or of any person concerned or on his own motion may, after consultation with the Court concerned, for reasons which he shall record in writing —

- (a) revise any criminal proceeding of the Swazi Court, other than the Higher Swazi Court of Appeal, and make such order or pass sentence therein as the Swazi Court could itself have made or passed:

Provided that should the Judicial Commissioner or District Officer be of the opinion that an acquittal should be altered to a conviction or any sentence of fine or imprisonment or other sentence in a criminal proceeding should be

increased, he shall cause the case to be retried by the Court to which an appeal would ordinarily lie under section 33;

- (b) order any criminal case to be retried before any other Swazi Court of competent jurisdiction;
- (c) transfer any criminal matter either before trial or at any stage of the proceedings, whether before or after sentence passed, to a Magistrate's Court of the First Class having jurisdiction.

(2) Notwithstanding anything contained in sub-section (1), the Judicial Commissioner shall exercise over the proceedings of the Higher Swazi Court of Appeal the power *mutatis mutandis* prescribed in sub-section (1).

(3) The powers conferred upon the Judicial Commissioner and District Officers by sub-section (1) and (2) shall not be exercised after expiration of six months from the termination of the proceedings in the Court concerned.

Revisory powers in civil proceedings.

31. (1) The Higher Swazi Court of Appeal and a Swazi Court of Appeal may, on the application of the Court immediately below or of any person concerned or of its own motion for reasons which it shall record in writing —

- (a) revise any civil proceedings of that Court and make such order therein as the Swazi Court or Swazi Court of Appeal or the Higher Swazi Court of Appeal could itself have made:

Provided that such reviewing Court shall not make any order in a civil proceeding, to the prejudice of any party in such proceeding, without first giving such party an opportunity to be heard;

- (b) order any case to be retried before any Swazi Court of competent jurisdiction.

(2) The powers conferred upon the Higher Swazi Court of Appeal and Swazi Courts of Appeal under this section shall not be exercised after the expiration of six months from the termination of the proceedings in the Court concerned.

Courts of Appeal.

32. The Ngwenyama may, by warrant under his hand, recognise any Swazi Court or establish such Swazi Courts of Appeal as he shall think fit, or a Higher Court of Appeal from any specified Swazi Court in Swaziland in respect of any of the cases arising therein.

Appeals.

33. (1) A person aggrieved by an order or decision of a Swazi Court of first instance may within thirty days from the date of such order or decision appeal therefrom to a Swazi Court of Appeal.

(2) A person aggrieved by an order or decision of a Swazi Court of Appeal may within thirty days from the date of such order or decision appeal therefrom to the Higher Court of Appeal.

(3) A person aggrieved by an order or decision of the Higher Swazi Court of Appeal in a criminal proceeding may within thirty days from the date of such order or decision appeal therefrom to the Judicial Commissioner.

(4) A person aggrieved by an order or decision of the Higher Swazi Court of Appeal in a civil matter may within thirty days from the date of such order or decision appeal therefrom to the High Court:

Provided that if in the opinion of a Judge of the High Court the written record of the case is inadequate for the purpose of the hearing of the Appeal in the High Court he may order the Appeal to be heard in the first instance by the Judicial Commissioner.

(5) A person aggrieved by an order or decision of the Judicial Commissioner under sub-sections (3) and (4) of this section may within thirty days of such order or decision appeal therefrom to the High Court.

(6) An Appeal to the High Court under sub-sections (4) and (5) shall lie only in cases where the amount of the judgment exceeds two hundred emalangeni or where sentence of imprisonment for a period exceeding three months or of corporal punishment exceeding eight strokes has been imposed:

Provided that notwithstanding anything in this Act a Judge of the High Court sitting in chambers may on the application of any Court or person concerned grant special leave of appeal against an order or decision made or given by any Swazi Court or by the Judicial Commissioner.

Appeals out of time.

34. Leave to appeal out of time to a Court prescribed by section 33 may be given by such Court upon such terms as to the Court seem just.

Power on appeal.

35. A Swazi Court of Appeal, the Judicial Commissioner or the High Court in the exercise of Appellate jurisdiction in a cause or matter under this Act may require the aid of such persons as assessors, chosen from a panel by the Ngwenyama, as the Court shall think fit and may —

- (a) make any order or pass any sentence as the Court of first instance could have made or passed in the cause or matter;
- (b) order any such cause or matter to be reheard before any other Swazi Court or before any Magistrate's Court of competent jurisdiction.

Interpleader actions.

36. All interpleader actions arising out of any execution of a judgment of the High Court on Appeal from a judgment or order of a Swazi Court shall be tried in the first instance by the Subordinate Court within whose jurisdiction the property in dispute was taken in attachment, subject to an appeal to the High Court. (Original section 34 repealed L.N.38/1967; present section added from Cap. 3).

Execution of orders of Swazi Courts.

37. A Swazi Court shall carry into execution any decree or order of the High Court or of a Magistrate's Court or of any other Swazi Court directed to the Court, and shall execute all warrants and serve all process issued by any such Courts and directed to the Court for

execution or service, and shall generally give such assistance to said Courts as may be required.

Indemnity of officers acting judicially.

38. No person shall be liable to be sued in any court for an act done or ordered to be done by him in the exercise of jurisdiction conferred by this Act, whether or not within the limits of his jurisdiction, if at the time of such act or order he believed in good faith that he had jurisdiction to do the act or to make the order; and no officer of any court or other person bound to execute lawful warrants or orders issued or made in the exercise of jurisdiction conferred by this Act shall be liable to be sued in any court for the execution of a warrant or order which he would be bound to execute, if the person issuing the same had been acting in the exercise of lawful authority.

Power to make rules.

39. The Ngwenyama may make rules for —
- (a) the fees to be charged in Swazi Courts;
 - (b) the disposal and application of fines and fees received by Swazi Courts;
 - (c) the practice and procedure of Swazi Courts; and
 - (d) the carrying into effect of the provisions of this Act.

Provisions inapplicable to certain proceedings.

40. The provisions of the Criminal Procedure and Evidence Act No. 67 of 38 shall not apply to the proceedings of a Swazi Court or to appeals therefrom under section 33 or to the revision of the proceedings thereof under section 30. (Amended corrigendum of 2/2/1979.)

Existing Courts.

41. Notwithstanding anything in this Act a Native Court in Swaziland exercising jurisdiction in accordance with Swazi law and custom at the commencement of this Act shall continue to exercise such jurisdiction until the Ngwenyama, by written notice, directs that such court shall no longer exercise jurisdiction, or unless a warrant under section 3 be sooner issued recognising or establishing such court as a Swazi Court under this Act.