

## COURT OF APPEAL ACT 1978

### ACT NO. 10 OF 1978

[Date of Assent: 6-9-78]  
[Commencement: 15-9-78]

#### ACT

To consolidate and amend the law relating to the Court of Appeal.

Enacted by the Assembly—

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| <p>1. This Act may be cited as the Court of Appeal Act 1978.</p>  | Short title         |
| <p>2. In this Act —<br/>“the Court” means the Court of Appeal;<br/>“judgment” means decree, order, conviction, sentence and decision.</p> | Interpre-<br>tation |

#### PART I — CONSTITUTION OF COURT

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| <p>3. (1) The Court of Appeal for Lesotho shall continue to exist and shall have such jurisdiction and powers as are conferred on it by this Act or any other law.</p> <p>(2) The judges of the Court shall be —</p> <p>(a) the President;</p> <p>(b) four Justices of Appeal;</p> <p>(c) the Chief Justice and judges of the High Court ex officio.</p> <p>(3) The Court shall hold its sittings in the High Court building at Maseru or in such other place as the President may appoint</p>  | Continua-<br>tion of<br>existence<br>of Court of<br>Appeal |
| <p>4. (1) The President and Justices of Appeal shall be appointed by the King acting in accordance with the advice of the Prime Minister.</p> <p>(2) A person shall not be qualified to be appointed as the President or as Justice of Appeal unless —</p> <p>(a) he holds or has held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of South Africa or of a court having jurisdiction in appeals from such a court;</p> <p>(b) holds the qualifications required for admission and enrolment by the High Court as advocate or attorney under the Legal Practitioners Act 1967 and has held the same for a period of not less than seven years.</p> <p>(3) If the office of President is vacant or the President is for any reason unable to exercise the functions of his office, then until a person has been appointed to and has assumed the functions of that office or until the President has resumed his functions, as the case may be, they shall be exercised by such one of the judges of the Court or by such other person qualified</p> | Appoint-<br>ment of<br>Judges of<br>Court of<br>Appeal     |

to be appointed as a judge of the Court as the Prime Minister may appoint.

(4) If the office of a Justice of Appeal is vacant or if a Justice of Appeal is appointed to act as President or is for any reason unable to perform the functions of his office or if the President advises the Prime Minister that the state of business so requires, the Prime Minister may appoint a person who is qualified to be appointed as a Justice of Appeal to act as a Justice of Appeal.

(5) A person appointed under subsection (4) to act as a Justice of Appeal shall subject to section 5(1) and 5(3), continue to act for the period of his appointment, or if no such period is specified, until his appointment is revoked by the Prime Minister.

(6) A person appointed to act as President or as a Justice of Appeal in pursuance of subsection (3) or (4) may, notwithstanding the assumption or resumption of duties by the President in the first case, or the expiration of the period, or the revocation, of the appointment in the second case, continue to act as President or Justice of Appeal for so long and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings which were commenced previously thereto.

Tenure of  
office of  
Judges of  
Court of  
Appeal

5. (1) Subject to this section, a person holding the office of President or Justice of Appeal shall vacate the office when he attains the age of 75 years.

(2) Notwithstanding that he has attained the age prescribed in subsection (1), a President or Justice of Appeal may continue in office for so long after attaining the age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings commenced before him before he attained that age.

(3) A President or Justice of Appeal may be removed from office by the King acting on the advice of the Prime Minister but only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(4) Notwithstanding subsection (1) and whenever it is expedient to do so the Prime Minister may

(a) appoint any person who is over 75 years but otherwise qualified to be appointed to act as a Justice of Appeal;

(b) extend the appointment of the President or of a Justice of Appeal who has attained the age of 75 years,

for such period or further period as the Prime Minister may think fit, and in such cases, the reference in subsection (2) to the age prescribed in subsection (1) shall be construed as a reference to the date of termination of the appointment or of the extension or further extension of the appointment as the case may be.



6. The Court shall, when determining any matter other than an interlocutory matter, be composed of an uneven number of judges, not being less than three.

Composition  
of Court of  
Appeal

## PART II — CRIMINAL APPEALS

7. (1) Any person convicted on a trial by the High Court may appeal to the Court on any matter of fact as well as on any matter of law.

First  
appeals

(2) If the Director of Public Prosecutions is dissatisfied with any judgment of the High Court upon a point of law in the exercise of its original jurisdiction, he may appeal against such judgment to the Court.

repealed and  
substituted  
A. 8 of 1955

(3) A sentence passed by the High Court on a person committed to the High Court for sentence shall be deemed to be a sentence passed upon such person on a trial held by the High Court and an appeal against such sentence shall lie accordingly to the Court.

8. (1) Any party to an appeal to the High Court may appeal to the Court against the High Court judgment with the leave of the judge of the High Court, or, when such leave is refused, with the leave of the Court on any ground of appeal which involves a question of law but not on a question of fact nor against severity of sentence.

Second  
appeals

(2) For the purposes of this section an order made by the High Court in its revisional jurisdiction, or a decision of the High Court on a case stated, shall be deemed to be a decision of the High Court in its appellate jurisdiction.

9. (1) Subject to subsection (2) on an appeal against conviction the Court shall allow the appeal if it is of the opinion that the conviction should be set aside on the ground that it is unreasonable, or cannot be supported, having regard to the evidence, or on the ground of any wrong decision of any question of law, or that on any other ground there was a miscarriage of justice, and in any other case shall dismiss the appeal.

Determina-  
tion of  
appeal in  
ordinary  
cases

Repealed by  
A. 8 of 1955  
substituted

(2) Notwithstanding the fact that the Court is of opinion that the point raised in an appeal under subsection (1) might be decided in favour of the appellant, the Court may, if it considers that no substantial miscarriage of justice has actually occurred, dismiss the appeal.

(3) The Court shall, if it allows an appeal against the conviction, either quash the conviction and direct a judgment and verdict of acquittal to be entered or if the interests of justice so require, order a new trial.

Repealed and  
substituted  
A. 8 of 1955

(4) On an appeal against sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

Powers of  
court in  
special  
cases

10. (1) If it appears to the Court that an appellant though not properly convicted on some count of the indictment or charge, has been properly convicted on some other count of the indictment or charge, the Court may either confirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law on the count of the indictment or charge on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the trial court could on the indictment or charge have found him guilty of some other offence and on the finding of the trial court must have been satisfied of the facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the judgment of the trial court a judgment of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) If on any appeal it appears to the Court that, although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission made so as not to be responsible for his actions, the Court may quash the sentence passed at the trial and substitute therefor a finding to the effect that the appellant was guilty of the act or omission charged against him but was insane at the time when he did the act or made the omission, and shall thereupon order that the appellant be kept in custody in some prison pending the signification of the King's pleasure.

Powers of  
the court in  
relation to  
an order  
ancillary to  
conviction

11. Where the operation of any award or order of restitution or revesting of property and of any other award or order which is an award or order ancillary to conviction is suspended pending the determination of an appeal to the Court, the Court may by order annul or vary any such award or order although the conviction is not quashed and shall annul the award or order, if the conviction is quashed and the award or order if annulled, shall not take effect, and, if varied, shall take effect as so varied.

Supplement-  
ary powers  
of court

12. The Court may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the Court whether he was or was not called at the trial, or order the examination of any such witness before any Judge of the Court or other person appointed by the Court for the purpose, and allow the admission of any deposition so taken as evidence before the Court;



(c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application to the trial court,

but in no case shall a sentence be increased by reason of or in consideration of any evidence which was not given at the trial.

13. In the case of a sentence of death or of corporal punishment—

Stay of execution of sentence of death or corporal punishment

(a) the sentence shall not be executed until after the expiration of the time within which a notice of appeal or an application for leave to appeal may be given;

(b) if a notice of appeal is filed the sentence shall not be executed until the appeal has been determined or abandoned;

(c) if an application for leave to appeal is filed, the application shall be determined as soon as practicable and the sentence shall not be executed until the application has been refused or the appeal has been determined or abandoned.

14. (1) The Court or the High Court may, if it deems fit, on the application of an appellant and pending the determination of his appeal—

Power to admit to bail and postpone fine

(a) admit the appellant to bail;  
and

(b) postpone the payment of any fine imposed upon him.

(2) The time during which an appellant, pending the determination of his appeal, is admitted to bail shall not count as part of any term of imprisonment under his sentence.

(3) Any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court shall, subject to any directions which the Court may give to the contrary, be deemed to be resumed or to begin to run, as the case requires—

(a) if the appellant is in custody, as from the day on which his appeal is determined;

(b) if the appellant is not in custody as from the day on which he is received into gaol under the sentence.

(4) When an appellant has been released on bail the court which released him may, if satisfied that it is in the interests of justice so to do, revoke the order admitting to bail, issue a warrant for his apprehension and order him to be committed to prison.

15. (1) In addition and without prejudice to the right of appeal given by this or any other Act, a Judge of the High Court may, upon the determination of a conviction whether in its origin-

Case stated

al or appellate criminal jurisdiction, reserve any question of law arising therein for the consideration of the court.

(2) The Court shall determine any question reserved for its consideration under subsection (1).

(3) On the determination by the Court of a question reserved for its consideration under subsection (1), the Court may make an order confirming, or setting aside the decision of the High Court, and shall have the same powers in relation to a case stated by the High Court as it has in relation to an appeal.

### PART III CIVIL APPEALS

Right of  
appeal in  
civil cases

16. (1) An appeal shall lie to the Court—

(a) from all final judgments of the High Court;

(b) by leave of the Court from an interlocutory order, an order made ex parte or an order as to costs only.

(2) The rights of appeal given by subsection (1) shall apply only to judgments given in the exercise of the original jurisdiction of the High Court.

Right of  
appeal from  
decision of  
High Court  
in its civil  
appellate  
jurisdiction

17. Any person aggrieved by any judgment of the High Court in its civil appellate jurisdiction may appeal to the Court with the leave of the Court or upon the certificate of the Judge who heard the appeal on any ground of appeal which involves a question of law but not on a question of fact.

Appeal in  
special  
cases

18. An appeal shall lie to the Court where provision is expressly made in any Act for such an appeal.

Power to  
reserve  
questions  
of law for  
opinion of  
Court of  
Appeal

19. In addition and without prejudice to the right of appeal given by this or any other Act, a Judge of the High Court may reserve for consideration by the Court, on a case to be stated by him, any question of law which may arise on the trial of any suit or matter and may give any judgment subject to the opinion of the Court, and the Court shall have power to hear and determine every such question.

### PART IV GENERAL

No appeal  
from Court  
of Appeal

20. Notwithstanding anything to the contrary in any other law there shall be no appeal from any judgment of the Court.

Prerogative  
of mercy

21. In the exercise of His prerogative of mercy, the King may, on consideration of any petition for the exercise of His mercy, having reference to the conviction of a person by the High Court or to the sentence (other than sentence of death)

passed on a person so convicted or, in the case of a person sentenced to death, on consideration of the record of the trial, either—

- (a) refer the whole case to the Court and the case shall then be heard and determined by the Court as in the case of an appeal by a convicted person; or
- (b) if He desires the assistance of the Court on any point arising in the case, refer the point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the King with its opinion thereupon accordingly.

22. The President may make rules of court for any one or more of the following purposes— **Rules of Court**

- (a) regulating the practice and procedure of the Court in all matters before it;
- (b) prescribing the time within which any requirement of the rules is to be complied with;
- (c) prescribing the fees to be taken in the Court; the costs of, and incidental, to any proceedings in the Court; and providing for the taxation and recovery of the same;
- (d) regarding any other matter which appears to the President to be necessary and desirable.

23. The Court of Appeal Proclamation 1954 and Parts 1, 2 and 4 of the Court of Appeal and High Court Order 1970 are repealed. **Repeals 0.17 of 1970**