

HIGH COURT ACT 1978

Act No. 5 of 1978

[Date of Assent 8.8.78]
[Commencement: 18-8-78]

Act

To consolidate and amend the law relating to the High Court of Lesotho.

Enacted by the Assembly —

- Short title 1. This Act may be cited as the High Court Act 1978.
- Continuation
of existence
of High
Court 2. (1) The High Court for Lesotho shall continue to exist and shall, as heretofore, be a superior court of record, and shall have —
- (a) unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law in force in Lesotho;
- (b) in its discretion and at the instance of any interested person, power to inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination; and
- (c) such jurisdiction and powers as may be conferred on it by this Act or any other law.
- (2) The Judges of the High Court shall be the Chief Justice and one or more judges.
- Appoint-
ment of
Judges of
High Court 3. (1) The Chief Justice and judges shall be appointed by the King acting in accordance with the advice of the Prime Minister.
- (2) A person shall not be qualified to be appointed as a judge of the High Court unless —
- (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 of a court having jurisdiction in appeals from such a court; or
- (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 five years.

(3) If the office of Chief Justice is vacant or the Chief Justice 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 person holding that office has resumed his functions, as the case may be, they shall be exercised by such one of the judges or by such other person qualified to be appointed as a judge of the High Court as the Prime Minister may appoint.

(4) If the office of a judge is vacant or if a judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or if the Chief Justice 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 judge of the High Court to act as judge of that court.

(5) A person appointed under subsection (4) to act as judge shall, subject to section 4 (1) and 4 (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 Chief Justice or as a judge in pursuance of subsection (3) or (4) may, notwithstanding the assumption or resumption of duties by the Chief Justice in the first case, or the expiration of the period, or the revocation, of the appointment in the second case, continue to act as Chief Justice or judge for so long and to the extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings which were commenced before him previously thereto.

4. (1) Subject to this section, a person holding the office of a judge of the High Court shall vacate the office when he attains the age of 75 years. **Tenure of office of High Court**

(2) Notwithstanding that he has attained the age prescribed in subsection (1) a person holding the office of judge of the High Court 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 judge of the High Court 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.

5. (1) There shall be attached to the High Court a Registrar and such number of Assistant Registrars as the Chief Justice may determine whose offices shall be offices in the public service. **Registrar of High Court**

(2) Any act which under any enactment is required to be done by the Registrar may be performed by an Assistant Registrar.

High
Court
proceedings
when
within
subordinate
courts'
jurisdiction

6. No civil cause or action within the jurisdiction of a subordinate court (which expression includes a local or central court) shall be instituted in or removed into the High Court, save —

(a) by a judge of the High Court acting of his own motion;
or

(b) with the leave of a judge upon application made to him in Chambers, and after notice to the other party.

Powers of
review

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

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

Powers on
appeal

8. (1) The High Court shall be a court of appeal from all subordinate courts in Lesotho with full power —

(a) to reverse and vary all judgments, decisions and orders, civil and criminal, of any of the subordinate courts;

(b) to order a new trial of any cause heard or decided in any of the subordinate courts and to direct, if necessary, that such new trial shall be heard in the High court;

(c) to send back any case heard and decided in a subordinate court with such instruction as to any further proceedings as the High Court may deem necessary; and

(d) to impose such punishment (whether more or less severe than, or of a different nature from, the punishment imposed by the subordinate court) as in the opinion of the High Court ought to have been imposed at the trial.

(2) When considering a criminal appeal and notwithstanding that a point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record of proceedings, unless it appears to the High Court that a failure of justice has in fact resulted therefrom.

Assessors

9. (1) The High Court may call to its assistance at any civil or criminal trial or appeal not more than four assessors, whose duty it shall be to give either in open court or otherwise, such assistance and advice as the judge may require, but the decision shall be vested exclusively in the judge.

(2) The agreement or disagreement of the assessor or assessors with the decision of the judge shall be noted on the record.

10. The High Court shall hold its sittings in the High Place of Court building at Maseru or in such other place as the Chief Justice may appoint. **sittings**

11. (1) The dates and times of sitting of the High Court (called "sessions") shall be determined by the Chief Justice. **Sessions of Court**

(2) At the sessions, of which there shall be two in each year, all criminal business shall as far as practicable be tried and determined in priority to all other business.

12. The Chief Justice shall regulate the distribution of business in the court, and all actions and proceedings before the Court shall be heard and determined by a single judge, unless the Chief Justice otherwise directs. **Distribution of business**

13. Save as otherwise provided in this Act, the pleadings and proceedings of the High Court shall be carried on and the sentences, decrees, judgments and orders thereof pronounced and declared in open court, but a judge may, if he thinks fit and at any time of the proceedings, order the court to be cleared or order any person or class of persons to leave the court. **Proceedings to be in open Court**

14. (1) No Chief Justice or Judge shall accept or perform any other office or place of profit or emoluments not authorised by law. **No Judge to hold other office of profit**

(2) Subsection (1) shall not apply to a judge who may be temporarily appointed under section 3 (4)

15. (1) In addition to their salaries under the Statutory Salaries Order 1972 there shall be paid to judges of the High Court such gratuities and allowances and there shall be granted to them such privileges in respect of leave of absence, transportation, passages and residential quarters as may be prescribed by a resolution of the Assembly to that effect. **Gratuities, allowance & privileges of judges**

(2) Pending a resolution of the Assembly for the purposes of subsection (i), the gratuities and allowances payable and the privileges granted members of the public service pursuant to the Public Service Regulations 1969 shall apply.

16. The Chief Justice may make rules of court for any one or more of the following purposes — **Rules of Court**

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the court in all causes or matters whatever;
- (b) for regulating and prescribing the procedure on appeals (other than criminal appeals) from any court or person to the court.
- (c) for prescribing the forms to be used in connection with any cause or matter before the court;

- (d) for prescribing the fees and percentages to be taken in the court; the fees of advocates and the costs of attorneys; the costs of proceedings in the court; and the taxation and recovery of the same;
- (e) for regulating the expenses of parties and witnesses, their amount and the method and time of payment thereof.

Repeal

17. The High Court Act 1967 and Part 3 of the Court of Appeal and High Court Order 1970 are repealed.