

**OFFICIAL GAZETTE**  
**EXTRAORDINARY**  
**OF SOUTH WEST AFRICA**  
**BUITENGEWONE**  
**OFFISIËLE KOERANT**  
**VAN SUIDWES-AFRIKA**

PUBLISHED BY AUTHORITY

UITGAWE OP GESAG

R0,60    Wednesday 18 December 1985    WINDHOEK    Woensdag 18 Desember 1985    No 5149

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**Government Notice**

**Goewermentskennisgewing**

DEPARTMENT OF GOVERNMENTAL  
AFFAIRS

DEPARTEMENT VAN  
OWERHEIDSAKE

No. 143	1985	No. 143	1985
PROMULGATION OF ACT OF NATIONAL ASSEMBLY		AFKONDIGING VAN WET VAN NASIONALE VERGADERING	

The following Act, which has been adopted by the National Assembly and signed by the Administrator-General in terms of the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985), is hereby published in terms of section 18 of that Proclamation: —

No. 29 of 1985: Appeals Amendment Act, 1985

Die volgende Wet, wat ingevolge die Proklamasie op die Instelling van Wetgewende en Uitvoerende Gesag vir Suidwes-Afrika, 1985 (Proklamasie R.101 van 1985), deur die Nasionale Vergadering aangeneem en deur die Administrateur-generaal onderteken is, word hierby afgekondig ingevolge artikel 18 van daardie Proklamasie: —

No. 29 van 1985: Wysigingswet op Appelle, 1985

Act No. 29, 1985

## APPEALS AMENDMENT ACT, 1985

**EXPLANATORY NOTE:**

————— Words underlined with solid line indicate insertions proposed.

| | Words in bold typing in square brackets indicate omissions proposed.

**ACT**

To amend the Magistrates' Courts Act, 1944, so as to further regulate appeals in civil suits or proceedings to the Supreme Court of South West Africa; to amend the Supreme Court of South West Africa Proclamation, 1981, so as to further regulate appeals to the said Supreme Court; to amend the Criminal Procedure Act, 1977, so as to further regulate appeals in criminal proceedings in the said Supreme Court; and to provide for incidental matters.

—————  
*(Afrikaans text signed by the Administrator-General  
on 28 November 1985)*  
—————

BE IT ENACTED by the National Assembly, as follows:-

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974.

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for the definition of "court of appeal" of the following definition: 5

“‘court of appeal’ means the [provincial division of the Supreme Court to which an appeal lies from the magistrate's court] Supreme Court of South West Africa;”.

Amendment of section 83 of Act 32 of 1944, as substituted by section 16 of Act 15 of 1969.

2. Section 83 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 10

“Subject to the provisions of section 82, a party to any civil suit or proceeding in a court may appeal to the [provincial division of the Supreme Court having local jurisdiction] court of appeal, against -” 15

Amendment of section 1 of Proclamation 222 of 1981.

3. Section 1 of the Supreme Court of South West Africa Proclamation, 1981 (hereinafter referred to as the Proclamation), is hereby amended by the substitution for the definition of “full court” of the following definition: 20

“‘full court’, except for the purposes of section 6(1), means a court consisting of [two or more] three judges;”

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Amendment of section 6 of  
Proclamation 222 of 1981.

## 4. Section 6 of the Proclamation is hereby amended -

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) A single judge may at any time discontinue the hearing of any matter which is being heard before him and refer it for hearing to the full court, constituted in accordance with the proviso to paragraph (a).”;

- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph: 10

“(a) The Supreme Court shall, except where it is in terms of any law required or permitted to be otherwise constituted -

(i) for the hearing of any appeal against a judgment or order of an inferior court, be constituted before not less than two judges [for the hearing of any appeal: Provided that an appeal from any inferior court may be heard and determined before a single judge]; and 15

(ii) for the hearing of any appeal against a judgment or order of the Supreme Court constituted before a single judge, be constituted before three judges.”; and 20

- (c) by the substitution of subsection (5) of the following subsection: 25

“(5) During any period which may by rule of court be fixed as vacation or during which only one judge may be available, one judge of the Supreme Court shall, notwithstanding anything in this Proclamation or any other law contained, but subject to the provisions of subsection (2)(b), be competent to exercise all the powers, jurisdiction and authority of the Supreme Court.” 30

Amendment of section 14  
of Proclamation 222 of  
1981.

## 5. The following section is hereby substituted for section 14 of the Proclamation: 35

*“Appeals against judgment or order of Supreme Court in civil proceedings*

14.(1) An appeal from a judgment or order of the Supreme Court in any civil proceedings or against any judgment or order of the Supreme Court given on appeal shall, subject to the provisions of subsection (3), be heard by the appellate division. 40

(2) (a) If leave is granted under subsection (4)(b) to appeal against a judgment or order, in any civil proceedings, of the Supreme Court constituted before a single judge, the Supreme Court or the appellate 45

division, according to whether leave is granted by the Supreme Court or the appellate division, shall, if it is satisfied that the questions of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the appellate division, direct that the appeal be heard by a full court.

- (b) Any such direction by the Supreme Court may be set aside by the appellate division on application made to it by any interested party within 21 days, or such longer period as may on good cause be allowed, after the direction was given.
- (c) Any application to the appellate division under paragraph (b) shall be submitted by petition addressed to the Chief Justice.
- (d) The rules regulating the proceedings of the appellate division shall *mutatis mutandis* apply in respect of appeals to that division.

(3) An appeal which is to be heard by a full court in terms of a direction under paragraph (a) of subsection (2) which has not been set aside under paragraph (b) of that subsection, shall be heard by the full court.

(4) No appeal shall lie against a judgment or order of the Supreme Court in any civil proceedings or against any judgment or order of the Supreme Court given on appeal to it, except -

- (a) in the case of a judgment or order given in any civil proceedings by the full court on appeal to it, with the special leave of the appellate division;
- (b) in any other case, with the leave of the Supreme Court or, where such leave has been refused, with the leave of the appellate division.
- (5) (a) Any leave required in terms of subsection (4) for an appeal against a judgment or order of the Supreme Court given on appeal to it may be granted subject to such conditions as the Supreme Court or the appellate division, according to whether leave is granted by the Supreme Court or the appellate division, may determine, and such conditions may include a condition that the applicant shall pay the costs of the appeal.
- (b) If such leave to appeal is granted in any civil proceedings, the court granting the leave may order the applicant to find security for the costs of the appeal in such an amount as the registrar may determine, and may fix the time within which the security is to be found.
- (c) If the leave to appeal required in terms of subsection (4)(b) has been refused by the Supreme Court but is

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granted by the appellate division, the appellate division may vary any order as to costs made by the Supreme Court in refusing leave.

(6) The power to grant leave to appeal as contemplated in this section -

(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 other law which specifically limits it or specifically grants, limits or excludes any right of appeal.

(7) Notwithstanding anything to the contrary in any law contained, no appeal shall lie from a judgment or order of the Supreme Court in proceedings in connection with an application -

(a) by one spouse against the other for maintenance *pendente lite*;

(b) for contribution towards the costs of a pending matrimonial action;

(c) for the interim custody of a child when a matrimonial action between its parents is pending or is about to be instituted; or

(d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or is about to be instituted.”

Substitution of section 315 of Act 51 of 1977.

6. The following section is hereby substituted for section 315 of the Criminal Procedure Act, 1977:

“Court of appeal from superior court judgments.

315. (1) In respect of appeals and questions of law reserved in connection with criminal cases heard by the Supreme Court of South West Africa (hereinafter referred to as the Supreme Court), the court of appeal shall be the Appellate Division of the Supreme Court of South Africa (in this Chapter referred to as the Appellate Division), except in so far as subsection (3) otherwise provides.

(2) (a) If an application (excluding an application of a person who has been sentenced to death) for leave to appeal in a criminal case heard by a single judge of the Supreme Court (irrespective of whether he sat with or without assessors) is granted under section

316, the court or judge or judges granting the application shall, if it or he or, in the case of the judges referred to in subsection (8) of that section, they or the majority of them, is or are satisfied that the question of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the Appellate Division, direct that the appeal be heard by a full court.

(b) Any such direction by the court or a judge may be set aside by the Appellate Division on application made to it by the accused or the attorney-general or other prosecutor within 21 days, or such longer period as may on application to the Appellate Division on good cause be allowed, after the direction was given.

(c) Any application to the Appellate Division under paragraph (b) shall be submitted by petition addressed to the Chief Justice, and the provisions of section 316(6), (7), (8) and (9) shall apply *mutatis mutandis* in respect thereof.

(3) An appeal which is to be heard by a full court in terms of a direction under paragraph (a) of subsection (2) which has not been set aside under paragraph (b) of that subsection, shall be heard by a full court.

(4) An appeal in terms of this Chapter shall lie only as provided in sections 316 to 319 inclusive, and not as of right.

(5) In this Chapter -

(a) 'court of appeal', in relation to an appeal which in terms of subsection (3) is heard or is to be heard by a full court, means the full court concerned and, in relation to any other appeal, the Appellate Division;

(b) 'full court' means the Supreme Court, sitting as a court of appeal and constituted before three judges."

Amendment of section 316 of Act 51 of 1977.

7. Section 316 of the Criminal Procedure Act, 1977, is hereby amended -

(a) by the deletion in subsection (1) of the words "to the court of appeal", and the word "so", where it occurs for the last time;

- (b) by the insertion after subsection (1) of the following subsection:

“(1A) (a) No appeal shall lie against the judgment or order of a full court given on appeal to it in terms of section 315(3), except with the special leave of the Appellate Division on application made to it by the accused or, where a full court has for the purposes of such judgment or order given a decision in favour of the accused on a question of law, on application on the grounds of such decision made to that division by the attorney-general or other prosecutor against whom the decision was given. 5  
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(b) An application to the Appellate Division under paragraph (a) shall be submitted by petition addressed to the Chief Justice within 21 days, or such extended period as may on application by petition so addressed on good cause be allowed, after the judgment or order against which appeal is to be made was given. 15  
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(c) The accused or attorney-general or other prosecutor shall, when submitting in accordance with paragraph (b) the application for special leave to appeal, at the same time give written notice that this has been done to the registrar, and thereupon the registrar shall forward a certified copy of the record prepared in terms of subsection (5) for the purposes of such judgment or order, and of the reasons for such judgment or order, to the registrar of the Appellate Division. 25  
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(d) The provisions of subsections (2), (7), (8) and (9) shall apply *mutatis mutandis* with reference to any application and petition contemplated in paragraph (b) of this subsection.

(e) Upon an appeal under this subsection the provisions of section 322 shall apply *mutatis mutandis* with reference to the powers of the Appellate Division.” 35

- (c) by the substitution for subsection (5) of the following subsection: 40

“(5) (a) If an application under subsection (1) for leave to appeal is granted and the appeal is not under section 315(3) to be heard by the full court, the registrar [of the court granting such application] shall cause notice to be given accordingly to the registrar of the [court of appeal] Appellate Division without delay, and shall cause to be transmitted to the said registrar a certified copy of the record, including copies 45

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of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.

**(b) If an application under subsection (1) for leave to appeal is granted and the appeal is under section 315(3) to be heard by the full court, the registrar shall without delay prepare a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be prepared of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.”;**

**(d) by the substitution in subsection (6) for the words “court of appeal”, wherever they occur, of the words “Appellate Division”;**

**(e) by the substitution for subsection (7) of the following subsection:**

**“(7) The petition [may] shall be considered in chambers by [the Chief Justice or by any other judge of the court of appeal to whom it may be referred by the Chief Justice] three judges of the Appellate Division designated by the Chief Justice.”;**

**(f) by the substitution for subsection (8) of the following subsection:**

**“(8) The [judge] judges considering the petition may-**

**(a) call for any further information from the judge who heard the application for condonation or the application for leave to appeal or the application for leave to call further evidence, or from the judge who presided at the trial to which any such application relates;**



- (b) order that the application or applications in question or any of them be argued before **[him]** them at a time and place appointed;
- (c) whether **[he has]** they have acted under paragraph (a) or (b) or not - 5
- (i) in the case of an application for condonation, grant or refuse the application and, if **[he grants]** the application is granted, direct that an application for leave to appeal shall be made, within the period fixed by **[him]** them, to the court or judge referred to in subsection (1) or, if **[he deems]** they deem it expedient, that an application for leave to appeal shall be submitted under subsection (6) within the period fixed by **[him]** them as if it had been refused by the court or judge referred to in subsection (1); 10 15
- (ii) in the case of an application for leave to appeal or an application for leave to call further evidence, grant or refuse the application or, if **[such judge is]** they are of the opinion that the application for leave to call further evidence should have been granted, **[he]** they may, before deciding upon the application for leave to appeal, or, in the case where the court or judge referred to in subsection (1) has granted the application for leave to appeal but has refused leave to call further evidence, set aside the refusal of the said court or judge to grant leave to call further evidence and remit the matter in order that further evidence may be received in accordance with the provisions of subsection (3); or 20 25 30
- (d) refer the matter to the **[court of appeal]** Appellate Division for consideration, whether upon argument or otherwise, and **[the court of appeal]** that Division may thereupon deal with the matter in any manner referred to in paragraph (c)."; and 35
- (g) by the substitution for subsection (9) of the following 40 subsection:
- “(9) (a) The decision of the **[court of appeal or of a judge of the court of appeal]** Appellate Division or of the judges thereof considering the petition, as the case may be, to grant or refuse any application, shall be final. 45
- (b) For the purposes of this section any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three.” 50

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Amendment of section 317  
of Act 51 of 1977.

**8.** Section 317 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (5) for the words "court of appeal" of the words "Appellate Division".

Amendment of section 318  
of Act 51 of 1977.

**9.** Section 318 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for the words "court of appeal", wherever they occur, of the words "Appellate Division". 5

Amendment of section 319  
of Act 51 of 1977.

**10.** Section 319 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for the words "court of appeal" of the words "Appellate Division". 10

Amendment of section 323  
of Act 51 of 1977.

**11.** Section 323 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for the words "court of appeal", wherever they occur, of the words "Appellate Division".

Saving with respect to pending appeals.

**12.** No provision of this Act shall affect an appeal or any proceedings in connection therewith noted in terms of any Act or proclamation before the commencement of such provision, and any such appeal shall be continued and concluded in every respect as if this Act had not been passed. 15

Short title and commencement.

**13.** This Act shall be called the Appeals Amendment Act, 1985, and shall come into operation on a date fixed by the Administrator-General by proclamation in the *Official Gazette*. 20