1966 No. 1180

AFRICA

The Swaziland Court of Appeal Order 1966

Made - - - -	*20th September* 1966
Laid before Parliament	*26th September* 1966
Coming into Operation	*4th October* 1966

At the Court at Balmoral, the 20th day of September 1966

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Foreign Jurisdiction Act 1890(**a**) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation, revocation and commencement.

1.—(1) This Order may be cited as the Swaziland Court of Appeal Order 1966.

(2) The Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order in Council 1954(**b**), as amended from time to time(**c**), in so far as it relates to Swaziland, and section 96 of the Swaziland Order in Council 1963(**d**) are revoked.

(3) This Order shall come into operation on 4th October 1966.

Interpretation.

2.—(1) In this Order, unless the context otherwise requires—

"appeal" includes a case stated or a point of law reserved;

"the Court" means the Court constituted by this Order;

"the existing Court" means the Court of Appeal established by the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order in Council 1954;

"the Commissioner" means any person who is for the time being Her Majesty's Commissioner for Swaziland.

(2) In this Order, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including, to the extent of his authority, a reference to any person for the time being authorised to exercise the functions of that office.

(3) The Interpretation Act 1889(**e**) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

(**a**) 1890 c. 37. (**b**) S.I. 1954/1369 (1954 I, p. 167).
(**c**) The amending Orders are S.I. 1964/1187; 1965/133, 978 (1964 II, p. 2759; 1965 I, pp. 274, 2414). (**d**) S.I. 1963/2094 (1963 III, p. 4616). (**e**) 1889 c. 63.

Constitution of Court.

3.—(1) There shall be a Court of Appeal for Swaziland, styled the Swaziland Court of Appeal, which shall be a superior court of record.

(2) The judges of the Court shall be a President and not less than two or more than four Justices of Appeal.

(3) (*a*) The President and the Justices of Appeal shall be appointed by the Commissioner, in accordance with instructions given by Her Majesty through a Secretary of State, and shall hold office on such terms and conditions as the Commissioner shall, in accordance with such instructions, prescribe;

(*b*) a person shall not be qualified for appointment as the President or a Justice of Appeal unless he is or has been a judge of a court of unlimited jurisdiction in civil or criminal matters in a territory which has been designated in that behalf by the Commissioner in accordance with instructions given by Her Majesty through a Secretary of State or a court having jurisdiction in appeals from any such court.

(4) If at any time the office of President is vacant or the President is for any reason unable to exercise the functions of his office they shall be exercised by such one of the other judges of the Court or such other person qualified for appointment as a judge of the Court as the Commissioner may appoint.

(5) If a Justice of Appeal is appointed to act as President or is for any reason unable to exercise the functions of his office or if the President advises the Commissioner that the state of business in the Court so requires the Commissioner may appoint a person who is qualified for appointment as a judge of the Court to act as a Justice of Appeal.

(6) A person appointed under this section to act as President or a Justice of Appeal shall (unless he earlier resigns his acting office or is removed therefrom in pursuance of the provisions of section 4 of this Order) continue to act in that office until a person has been appointed to and assumed the functions of that office or until the person holding that office has resumed those functions or until the period for which he was appointed to act has expired, as the case may be.

(7) A person appointed as or to act as President or a Justice of Appeal, notwithstanding the termination of his appointment, otherwise than in pursuance of the provisions of section 4 of this Order, may continue to act as a judge of the Court for so long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(8) The Court shall be duly constituted notwithstanding any vacancy among the judges of the Court.

(9) The Court shall have and use a seal bearing the style of the Court and a device approved by the President.

(10) A person appointed to be President or a Justice of Appeal shall before entering upon the functions of his office take the oath or make the affirmation set out in the schedule to this Order.

(11) Section 84(1) of the Swaziland Order in Council 1963, which empowers the Commissioner to refer certain questions to the Public Service Commission, shall not apply to the President or a Justice of Appeal.

(12) Any power exercisable by a single judge of the Court may be exercised by a judge of the High Court for Swaziland.

Tenure of office of judges.

4.—(1) The President or a Justice of Appeal shall hold office until the expiration of the period for which he was appointed:

Provided that a judge may at any time resign his office.

(2) Section 90 of the Swaziland Order in Council 1963, which prescribes the circumstances in which a judge of the High Court for Swaziland may be removed from office, shall apply in relation to a judge of the Court and his removal from office as if he were a judge of the High Court.

Salary, allowances and conditions of service of judges.

5.—(1) The salary and allowances of a judge of the Court shall not be reduced nor his other conditions of service be made less favourable to him, while he continues in office; and, for the purpose of this subsection, if he elects that one of two or more provisions relating to salary, allowances or other conditions of service shall apply to him, that provision shall be deemed to be more favourable than any other provision.

(2) This section shall not apply to allowances which, under the law for the time being in force relating to pensions, are not taken into account in computing pensions.

Appointment of assessors.

6. The Court may, in any case in which it appears to the Court to be expedient, call in the aid of one or more assessors with such special qualifications as the Court may think fit, and hear such case wholly or in part with the assistance of such assessors.

Jurisdiction of the Court.

7.—(1) The Court shall have jurisdiction to hear and determine such appeals from the courts of Swaziland, and to exercise such powers and authorities, as may be prescribed by or under any laws for the time being in force subject to the provisions of this Order and of any such laws; and, subject as aforesaid, for all purposes of and incidental to the hearing and determination of any appeals in its jurisdiction the Court shall have the power, authority and jurisdiction vested in the court from which the appeal is brought.

(2) Any decision of the Court shall be enforced in like manner as if it were a judgment of the court from which the appeal was brought.

Practice and procedure on appeals.

8.—(1) Subject to the provisions of this Order, the President may make rules for regulating the practice and procedure of the Court with respect to appeals and, in connection with such appeals, for regulating the practice and procedure in any court from which such appeals are brought.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may be made for the following purposes:—

(*a*) for regulating the sittings of the Court, whether in divisions or otherwise, and the selection of judges for any purpose;

(*b*) for regulating the right of practising before the Court and the representation of persons concerned in any proceedings in the Court;

(*c*) for prescribing cases in which, and conditions upon which, an appellant in a criminal appeal to the Court shall be entitled to be present at the hearing of the appeal;

(*d*) for providing for summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purposes of delay;

(*e*) for prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;

(*f*) for prescribing and regulating the powers and duties of registrars and officers of the Court;

(*g*) for prescribing the time within which any requirement of the rules is to be complied with;

(*h*) for providing for a reference from a decision of a single judge to the Court.

(3) Rules made under this section may fix the number of judges of the Court who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which, for the purposes of any final determination by the Court other than the summary dismissal of an appeal, shall not be less than three; and

(*b*) any determination by the Court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit for the purpose of determining that matter.

(4) No rules of Court which may involve an increase in the expenses of the Court shall be made except with the concurrence of the Commissioner, but the validity of a rule of Court shall not be called in question in any proceedings on the ground that the concurrence of the Commissioner was not or does not appear to have been obtained.

Pending proceedings.

9.—(1) Any proceedings relating to appeals from the courts of Swaziland that are pending immediately before the commencement of this Order in the existing Court may be continued and concluded after the commencement of this Order in the Court.

(2) Any judgment of the existing Court given but not satisfied, before the commencement of this Order, may be enforced after the commencement of this Order as if it were a judgment of the Court.

Saving of existing appeal laws and rules of court.

10.—(1) Any law in force in Swaziland immediately before the commencement of this Order relating to appeals from the courts of Swaziland to the existing Court and matters relating thereto shall, subject to amendment or repeal by a law of the Legislature of Swaziland or by rules made under section 8 of this Order, continue in force after the commencement of this Order, but shall have effect as if it was a law enacted in pursuance of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

(2) All rules of court relating to the hearing and determination of appeals from the courts of Swaziland by the existing Court in force immediately before the commencement of this Order shall, subject to amendment or revocation by rules made under section 8 of this Order, continue in force after the commencement of this Order and shall have effect as if they were rules made under section 8 of this Order and for that purpose shall be construed with any necessary adaptations and modifications.

Existing appointment of judges.

11. Any person who immediately before the commencement of this Order holds the office of President or other judge of the existing Court by virtue of having been appointed thereto by a Secretary of State in accordance with the provisions of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order 1954, as amended from time to time, shall as from the commencement of this Order, be deemed to have been appointed by the Commissioner in accordance with the provisions of this Order, in the case of the person holding the office of President, to the office of President of the Court, and, in the case of a person holding the office of such other judge, to the office of Justice of Appeal of the Court.

W. G. Agnew.

Section 3(10) SCHEDULE

FORM OF OATH AND AFFIRMATION

1. Judicial Oath

I .....

do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*) and I will do right to all manner of people according to the law without fear or favour affection or ill-will. So help me God.

2. Judicial Affirmation

I .....

do solemnly and sincerely affirm and declare that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*) and I will do right to all manner of people according to the law without fear or favour affection or ill-will.

EXPLANATORY NOTE

(*This Note is not a part of the Order.*)

This Order establishes a Court of Appeal for Swaziland.