1954 No. 1369

The Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order in Council, 1954

Made - - - -	*19th October,* 1954
Laid before Parliament	*23rd October,* 1954
Coming into Operation	*On a date to be appointed by the High Commissioner under Section 2.**

At the Court at Buckingham Palace, the 19th day of October, 1954

Present,

The Queen's Most Excellent Majesty in Council

Whereas it is desirable to establish a Court of Appeal for Basutoland, the Bechuanaland Protectorate and Swaziland:

Now, therefore, 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:—

Interpretation

1.—(1) In this Order, save where the context otherwise requires—

"the Court" means the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal established by this Order;

"the High Commissioner" means any person who is for the time being Her Majesty's High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland;

"judgment" includes decree, order, conviction, sentence and decision;

"President" means the President of the Court and includes any person who is acting as President;

"the Territories" means the territories to which this Order applies.

(2) Subject to the provisions of this section and save where the context otherwise requires, the Interpretation Act, 1889(b), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

Citation and commencement

2. This Order may be cited as the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order in Council, 1954, and shall come into operation on such date as the High Commissioner may by Proclamation appoint, which date shall not be earlier than the day after the day on which this Order shall be laid before both Houses of Parliament.

Application of Order

3. The territories to which this Order applies are Basutoland, the Bechuanaland Protectorate and Swaziland.

(a) 53 & 54 Vict. c. 37. (b) 52 & 53 Vict. c. 63.

* Date appointed, 15.4.55.

The Court of Appeal

4. There shall be a Court of Appeal for the Territories, which shall be called the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal and shall be a superior court of record.

Seal of the Court

5. The Court shall have and use, as occasion may require, a seal bearing a device or impression of the Royal Arms with the inscription "Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal".

Composition of the Court

6.—(1) Subject to the provisions of subsection (2) of this section, the judges of the Court shall be—

(*a*) the person who holds the substantive offices of Chief Justice of the High Court of Basutoland, Chief Justice of the High Court of the Bechuanaland Protectorate and Chief Justice of the High Court of Swaziland, who shall be the President of the Court;

(*b*) the other judges, if any, (including acting judges) of the High Courts of the Territories; and

(*c*) such other persons (being persons qualified for appointment as judges of the High Court of any of the Territories) as the High Commissioner may by instrument under his hand from time to time appoint.

(2) If the three offices referred to in paragraph (*a*) of subsection (1) of this section are not held by the same person, then every person who holds any of the said offices shall be a judge of the Court and the High Commissioner shall, by instrument under his hand, appoint one of those persons to be President.

(3) A person who is appointed to the office of judge under subsection (1) or is appointed to the office of President under subsection (2) of this section shall hold such office during Her Majesty's pleasure:

Provided that such a person—

(*a*) may at any time, by notice in writing addressed to the High Commissioner, resign his office; and

(*b*) shall vacate his office at the termination of such period, if any, as may be prescribed in the instrument by which he is appointed.

Acting President

7.—(1) If the office of President is vacant or if the High Commissioner is satisfied that the President is for any reason unable to perform the functions of his office, the High Commissioner may by instrument under his hand appoint a person qualified for appointment as a judge of the High Court of any of the Territories to act as President of the Court.

(2) Any person appointed to act as President of the Court shall continue so to act until his appointment is revoked by the High Commissioner by instrument under his hand:

Provided that such a person may at any time, by notice in writing addressed to the High Commissioner, resign his acting office.

Precedence of judges

8. The President shall take precedence of all other judges of the Court, and the seniority of the other judges shall be determined in accordance with such directions as may from time to time be given by the High Commissioner.

Officers of the Court

9. There shall be such Registrars and other Officers of the Court, appointed in such manner and on such terms, as the High Commissioner may from time to time direct.

Appointment of assessors

10. 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.

Number of judges

11.—(1) In an appeal from the High Court in its original jurisdiction the Court shall be duly constituted if it consists of an uneven number, not being less than three, of the judges of the Court, and the determination of any question before the Court shall be according to the opinion of the majority of the members of the Court hearing the case.

(2) In an appeal from the High Court in its appellate jurisdiction the Court shall be duly constituted if it consists of one judge of the Court.

(3) In relation to an appeal from the High Court in its original jurisdiction, a single judge of the Court may exercise any power vested in the Court not involving the decision of the appeal; but—

(*a*) in criminal matters, if any judge refuses an application for the exercise of any such power, the person making the application shall be entitled to have the application determined by the Court; and

(*b*) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.

Judges not to sit on appeals from their own decisions

12. A judge of the Court shall not sit as a judge on the hearing of an appeal—

(*a*) from any judgment given by himself or any judgment given by any court of which he was sitting as a member; or

(*b*) against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

Appeals to the Court

13.—(1) The Court shall have jurisdiction to hear and determine such appeals from judgments of courts of the Territories, and to exercise such powers and authorities, as may be prescribed by or under any laws for the time being in force in the Territories respectively, 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 appeal within its jurisdiction the Court shall have the power, authority and jurisdiction vested in the court from which the appeal is brought.

(2) The process of the Court shall run throughout the Territories and any judgment of the Court shall be enforced in like manner as if it were a judgment of the court from which the appeal is brought.

(3) In the hearing of any appeal the law to be applied shall be the law applicable to the case in the court from which the appeal is brought.

Reserved questions of law and cases stated

14. The jurisdiction conferred on the Court by section 13 of this Order to hear and determine appeals from judgments of courts of the Territories shall include jurisdiction to hear and determine questions of law reserved and cases stated and, save as may be otherwise provided by Rules of Court, the provisions of this Order shall, where the circumstances permit, apply in relation to reserved questions of law and cases stated as they apply in relation to appeals.

Rules of Court

15.—(1) Subject to the provisions of this Order, the President may make Rules of Court for regulating the practice and procedure of the Court (including, in relation to appeals to the Court, the practice and procedure of any court from which such appeals are brought) whether before or after final judgment in the Court.

(2) Without prejudice to the generality of sub-section (1) of this section, Rules of Court may be made for the following purposes:—

(*a*) for regulating the times and places of the sittings of the Court and the selection of judges for any purpose;

(*b*) for regulating the right of audience in 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 the summary determination of any appeal which appears to the Court to be frivolous or vexatious or to be brought for the purpose of delay;

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

(*f*) for excluding or modifying the application in relation to reserved questions of law and cases stated of any of the provisions of this Order relating to appeals;

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

(*h*) for prescribing the time within which any requirement of the Rules is to be complied with.

(3) Rules of Court shall not take effect unless they have been approved by the High Commissioner, and if approved shall have effect as if contained in this Order:

Provided that, if it shall be certified in any Rules that it is necessary that they should take effect before the High Commissioner's approval can be obtained, such Rules may be made to take effect accordingly; in which case such Rules may be disallowed by the High Commissioner (without prejudice to anything lawfully done thereunder) but shall continue to have effect unless and until they shall be so disallowed and notice of such disallowance shall be published by the Court.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order establishes a Court of Appeal for Basutoland, Bechuanaland Protectorate and Swaziland.