STATUTORY INSTRUMENTS

1961 No. 743

WEST AFRICA

The Gambia Court of Appeal Order in Council, 1961

Made - - - -	14*th April*, 1961
Laid before Parliament	20*th April*, 1961
Coming into Operation	27*th April*, 1961

At the Court at Windsor Castle, the 14th day of April, 1961

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the British Settlements Acts, 1887 and 1945(a), the Foreign Jurisdiction Act, 1890(b), 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 and commencement.

1.—(1) This Order may be cited as the Gambia Court of Appeal Order in Council, 1961.

(2) This Order shall come into operation on the 27th day of April, 1961.

Interpretation.

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

"appeal" includes a reserved question of law and a case stated;

"the Court" means the Gambia Court of Appeal established by this Order;

"the Gambia" means the Colony and the Protectorate of the Gambia;

"the Governor" means the Governor and Commander-in-Chief of the Gambia, and includes the officer for the time being administering the government and, to the extent to which a Deputy for the Governor is authorised to act, that Deputy.

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

"the public seal" means the public seal of the Gambia;

"superior courts of the Gambia" means the Supreme Court of the Colony of the Gambia or the High Court of the Protectorate of the Gambia.

(2) Any reference in this Order to the holder of an office by the term designating his office includes any person who is for the time being authorised to perform the functions of that office.

(3) The powers conferred upon the Governor by this Order shall be exercised by him in his discretion.

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7. (b) 53 & 54 Vict. c. 37.

(4) Save as is in this Order otherwise provided or required by the context, the Interpretation Act, 1889(a), 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, an Act of Parliament.

Establishment of Court of Appeal.

3.—(1) There shall be a Court of Appeal for the Gambia which shall be styled the Gambia Court of Appeal and which shall have such jurisdiction and powers as may be conferred upon it by this Order or any other law.

(2) The judges of the Court shall be—

(*a*) a President;

(*b*) the person for the time being holding or acting in the office of judge of the superior courts of the Gambia, who shall be judge of the Court ex officio; and

(*c*) such number of other judges as may be appointed by the Governor.

(3) No office of judge of the Court shall be abolished while there is a substantive holder thereof.

(4) The Court shall be a superior court of record, and save as otherwise provided by the Legislature of the Gambia, shall have all the powers of such a court.

Seal of the Court.

4.—(1) The Court shall have and use, as occasion may require, a seal bearing the style of the Court and a device approved by a Secretary of State.

(2) Until such a seal is provided a stamp bearing the style of the Court and countersigned by a Registrar of the Court may be used instead.

Appointment of President and Judges.

5.—(1) The President and judges of the court, not being judges ex officio, shall be appointed by the Governor by instrument under the public seal, in pursuance of Her Majesty's instructions given through a Secretary of State.

(2) A person shall not be qualified for appointment unless—

(*a*) he possesses the qualifications, other than any qualifications with respect to age, necessary for appointment as a judge of the superior courts of the Gambia; or

(*b*) he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.

Acting appointments.

6.—(1) The Governor, as occasion may require, may by instrument under the public seal appoint a judge of the court or other person who is qualified as provided in subsection (2) of section 5 of this Order, to act as President or appoint such other person as aforesaid to act as a judge of the Court.

(2) A person appointed under subsection (1) of this section to act as President or as a judge of the Court shall, unless he earlier resigns his office or is removed therefrom under section 8 of this Order, continue so to act until the end of the period for which he is appointed or, if he is not appointed for a specified period, until the Governor terminates his acting appointment on the ground that his services are no longer required:

(a) 52 & 53 Vict. c. 63.

Provided that in the case of an acting judge the Governor shall not terminate his acting appointment without the concurrence of the President.

Tenure of office of judges of the Court.

7.—(1) Subject to section 8 of this Order and subsections (2) and (3) of this section, a judge of the Court, not being a judge ex officio, shall vacate his office—

(*a*) at the expiration of such fixed period as may be prescribed in the instrument by which he is appointed to his office; or

(*b*) if no such period is so prescribed, then on attaining the age of sixty-two years:

Provided that the Governor may permit such a judge to continue in office until he has attained an age not exceeding sixty-five years.

(2) A judge of the Court may, notwithstanding that he has attained the age at which he is required by or under the provisions of this Order or any other law to vacate his office, and any person appointed to act as a judge of the Court may, notwithstanding that the period of his appointment has expired or his appointment has been terminated, continue to act as a judge of the Court for the purpose of giving judgment or otherwise in relation to any proceeding commenced before him while his appointment was subsisting.

(3) A judge of the Court, not being a judge ex officio, may at any time resign his office by writing under his hand addressed to, and received by, the Governor.

Removal of a judge of the Court.

8.—(1) A judge of the Court, not being a judge ex officio, may be removed from office 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 and shall not be so removed except in accordance with subsection (2) of this section.

(2) A judge of the Court, not being a judge ex officio, shall be removed from office by the Governor by order under the public seal if the question of removing him from office has, at the request of the Governor made in pursuance of subsection (3) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act, 1833(**a**), or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(3) If the Governor considers that the question of removing a judge of the Court from office under this section for inability as aforesaid or misbehaviour ought to be investigated then—

(*a*) the Governor shall by order under the public seal (which he may vary or revoke by a subsequent order) appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor from among persons who hold or have 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 any such court;

(*b*) the tribunal shall enquire into the matter and report on the facts thereof to the Governor and recommend to the Governor whether he should request that the question of removing that judge from office should be referred by Her Majesty to the Judicial Committee; and

(a) 3 & 4 Will. 4. c. 41.

(c) if the tribunal so recommends, the Governor shall request that the question should be referred accordingly.

(4) Subject to the provisions of subsection (3) of this section, the provisions of the Commissions of Inquiry Ordinance of the Gambia(a). (other than sections 2, 3, 5, 7 and 17 thereof) as in force on the 27th day of April, 1961, shall apply in relation to a tribunal appointed by an order made under that subsection as if the members thereof were commissioners appointed by a commission issued under the Ordinance and references in the Ordinance to commissioners and a commission shall be construed accordingly.

(5) If the question of removing a judge of the Court from office has been referred to a tribunal under subsection (3) of this section the Governor may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect—

(*a*) if the tribunal recommends to the Governor that he should not request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee ; or

(*b*) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(6) This section shall apply to any person appointed to act as President or as a judge of the Court as it applies to a substantive holder of such office but without prejudice to any provision in this Order for the termination of the appointment of such person.

Salaries of judges.

9.—(1) The President and the judges of the Court shall receive such salary as may be determined by the Governor.

(2) A person appointed to act as President or as a judge of the Court shall receive such remuneration as may be determined by the Governor.

(3) The salary, allowances and terms of service of a judge of the Court, or the remuneration of any person appointed to act as President or as a judge of the Court, shall not be altered to his disadvantage after his appointment:

Provided that where a judge of the Court is entitled to exercise an option in relation to his salary, allowances or terms of service, the option as exercised by him shall be deemed for the purposes of this subsection to be to his advantage.

(4) Any sums payable by way of salary, allowances and other remuneration to a judge of the Court shall be a charge on and paid out of the general revenues of the Gambia.

Precedence of judges.

10. The President shall take precedence of all other judges of the Court and the seniority of the other judges shall be determined according to instructions to be given from time to time by a Secretary of State or in the absence of such instructions by the President.

Oaths to be taken by judges.

11. A judge of the Court shall before entering upon the functions of his office make and subscribe before the Governor or some other person authorised by him in that behalf, oaths or affirmations of allegiance and for the due execution of his office in the forms set out in the Schedule to this Order.

(a) Laws of the Gambia Rev. 1955. c. 40.

Officers of the Court.

12. There shall be such Registrars and other officers of the Court appointed in such manner and on such terms as the Governor may direct.

Concurren appoint-ments.

13.—(1) Where the holder of any office constituted by or under the provisions of this Order is on leave of absence pending relinquishment of his office, the Governor may appoint another person to that office.

(2) Where two or more persons are holding the same office by reason of an appointment made pursuant to subsection (1) of this section then for the purposes of any functions conferred upon the holder of that office the person last appointed to the office shall be deemed to be the holder of the office.

Number of judges.

14. No matter shall be finally determined by the Court unless the Court consists of an uneven number of judges not being less than three.

Power of a single judge.

15.—(1) A single judge of the Court may exercise any power vested in the Court not involving the determination of an appeal:

Provided that—

(*a*) in criminal matters, if a single judge refuses an application to exercise any such power in favour of the person making the application, that person shall be entitled to have his application determined by the Court constituted as provided by section 14 of this Order;

(*b*) in civil matters, any order, direction or decision made or given by a single judge may be varied, discharged or reversed by the Court, constituted as aforesaid.

Judge not to sit on appeal from his own decision.

16. 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 a member;

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

Enforcement of Order of the Court.

17.—(1) A judgment of the Court given in any appeal shall be enforced in like manner as if it were a judgment of the superior courts of the Gambia.

(2) The Court shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court, which a superior Court of the Gambia has power to make.

Venue of Court.

18. The Court shall sit in the Town of Bathurst and in such other places in the Gambia as the President may appoint:

Provided that the Court may, for the purpose of the summary determination of an appeal, sit in such places outside the Gambia as may be prescribed, for that purpose, by any law enacted by the Legislature of the Gambia.

Rules of Court.

19.—(1) Subject to the provisions of this Order, the President may make rules of court for regulating the practice and procedure of the Court in exercise of the jurisdiction conferred upon it by or under this Order and, in connection with appeals brought to the Court, the practice and procedure of the superior courts of the Gambia.

(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 and the selection of judges for any purpose;

(*b*) for regulating 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, and regulating, the hearing of appeals with the assistance of one or more assessors and prescribing their remuneration;

(*e*) 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;

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

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

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

Provided that rules prescribing or affecting the amount of any fees or the recovery thereof shall not come into operation unless approved, either before or after being made, by the Governor.

(3) All rules of court made under the West African Court of Appeal Orders in Council, 1948 to 1958(**a**), or under the Sierra Leone and the Gambia Court of Appeal Orders in Council, 1959 and 1960(**b**), and in force immediately before the 27th day of April, 1961, shall, until amended or revoked by rules of court made under this Order, remain in force and for the purposes of this Order, be deemed to have been made under this Order but shall be applied with any adaptations, modifications and additions which the Court may consider necessary or just in consequence of the provisions of this Order.

Transitional provisions.

20. Any proceedings pending immediately before the commencement of this Order relating to appeals from the Superior Courts of the Gambia, may be continued after the commencement of this Order before the Court of Appeal established by this Order.

Saving of existing appeal laws.

21. The West African Court of Appeal Ordinance(**c**), of the Gambia which provides for appeals from the superior courts of the Gambia to the West African Court of Appeal and matters incidental thereto) shall, subject to amendment or repeal by the Legislature of the Gambia continue in force after the commencement of this Order, but shall have effect as if it was a law enacted in pursuance of section 3 of this Order, providing for appeals from those superior courts to the court established by this Order, and matters incidental to such appeals, and for that purpose it shall be construed with the necessary adaptations and modifications and in particular as if references therein to the West

(**a**) S.I. 1948/1330 (Rev. VIII, p. 390: 1948 I, p. 1361); S.I. 1955/1821, 1956/1700, 1957/279, 1958/1525 (1955 II, p. 3168; 1956 II, p. 2979; 1957 II, p. 3059; 1958 II, p. 2876).
(**b**) S.I. 1959/1977, 1960/440 (1959 II, p. 3289; 1960 III, p. 4099).
(**c**) Laws of the Gambia Rev. 1955 c. 6.

African Court of Appeal and the judges and officers of that court were references to the court established by this Order and the judges and officers thereof.

Revocations and Saving.

22. The Sierra Leone and the Gambia Court of Appeal Order in Council, 1959 and the Sierra Leone and the Gambia Court of Appeal (Amendment) Order in Council, 1960, insofar as they apply to the Gambia, are hereby revoked.

W. G. Agnew.

SCHEDULE

(Section 11)

A. Oath or Affirmation of Allegiance

I ..... do swear (or solemnly and sincerely affirm and declare) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.

So help me God. (To be omitted in affirmation).

B. Judicial Oath or Affirmation

I ..... do swear (or solemnly and sincerely affirm and declare) that I will well and truly serve Our Sovereign Lady Queen Elizabeth the Second in the office of .... and will do right to all manner of people after the laws and usages of the Gambia without fear or favour, affection or illwill.

So help me God. (To be omitted in affirmation).

EXPLANATORY NOTE

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

The purpose of this Order is to constitute a Court of Appeal for the Gambia to exercise the powers of an appellate court in relation to that territory which formerly were exercised by the Sierra Leone and the Gambia Court of Appeal.