

## CHAPTER 5:04

### CEMETERIES ACT

*Acts 3/1883, 37/1938 (ss. 3 and 8), 7/1944 (s. 3), 22/1946, 29/1951 (s. 2), 52/1954 (s. 2), 49/1962 (s. 18), 21/1963, 61/1966 (s. 70), 12/1973 (s. 270), 3/1979 (s. 108), 8/1988, 22/2001 (s. 4); R.G.N.s 153/1963, 347/1964, 217/1970.*

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**AN ACT to facilitate the establishment of public cemeteries and to provide for the management thereof; and to provide for the establishment, maintenance and taking over by local authorities of cemeteries, for the closing of cemeteries and for other matters incidental thereto.**

[Date of commencement: 10th June, 1891.]

#### **1 Short title**

This Act may be cited as the Cemeteries Act [*Chapter 5:04*].

#### **2 Interpretation**

In this Act—

“cemetery” means a public cemetery;

“local authority” means a municipal council, town council or rural district council;

“Minister” means the Minister of Local Government, Rural and Urban Development or any other Minister to whom the President may, from time to time, assign the administration of this Act; “trustee” means a person appointed as trustee in terms of section *three*.

### **3 Trustees**

The Minister may appoint trustees, being not fewer than three and not more than seven, for the management of any cemetery, and every such appointment shall be notified in the *Gazette*.

### **4 Removal of trustees**

The Minister may remove any trustee and upon the removal, death or resignation of any trustee, appoint another in his place.

### **5 Trustees may hold and mortgage land**

The trustees shall have power to acquire, hold and alienate land for the purposes of this Act, and may raise money on mortgage of any land so held.

### **6 Vesting land in trustees**

The legal estate in all lands held by the trustees in trust for the purposes of this Act shall vest in the trustees for the time being, and the production of the *Gazette* containing a notice of the appointment of any trustee, accompanied by a solemn declaration that such trustee then holds office, shall be sufficient proof of the appointment and capacity of such trustee.

### **7 Grants of land may be made**

Grants of land for the establishment or extension of any cemetery under this Act may be made—

(a) in the case of State land, by the President; (b) in the case of land vested in—

(i) a municipality or town, by the council thereof proceeding in accordance with section 152 of the Urban Councils Act [*Chapter 29:15*];

(ii) a rural district council, by the council proceeding in accordance with paragraph 1 of the First Schedule to the Rural District Councils Act [*Chapter 29:13*].

### **8 Local authorities may grant money**

A local authority may make grants-in-aid for the establishment or the maintenance of any cemetery established under this Act.

### **9 Powers of trustees**

The trustees shall have power to do all or any of the following things—

- (a) to enclose any land held in trust for the purposes of this Act with proper and sufficient walls, rails or fences;
- (b) to erect suitable gates or entrances;
- (c) to lay out and ornament the cemetery in such manner as is most suitable and convenient for the burial of the dead;
- (d) to embellish the cemetery with walks, avenues, roads, trees and shrubs;
- (e) to preserve, maintain and keep in a clean and orderly state and condition and to cause to be so maintained and kept the whole of the cemetery and its walls and fences and all monuments, tombstones, enclosures, buildings, erections, walks, trees and shrubs therein;
- (f) to sell, under such conditions and restrictions as they think proper, the exclusive right of burial or of constructing vaults with the exclusive right of burial therein either in perpetuity or for a limited period, in such parts of the cemetery as may be appropriated for that purpose;
- (g) to fix a scale of fees payable for any burial plot and on any vault or grave being dug or made and on any monument or tombstone being erected or placed in any part of the cemetery;
- (h) to permit any grave to be dug or made in the cemetery and any monument or tombstone to be erected or placed in any part of the cemetery as they may think fit, upon payment to them of the fees fixed in the scale of fees;
- (i) to define the positions of all graves and vaults permitted to be made in the cemetery, the depth of the graves and construction of coffins to be admitted into vaults, and the covering of vaults so as to prevent the escape of noxious exhalations;
- (j) to protect the buildings, monuments, tombs, shrubberies, plantations and enclosures therein and thereof from disturbance or damage;
- (k) to make such arrangements as they think fit for conveying, or for regulating and facilitating the conveyance, of the bodies of the dead from the place of death to any cemetery;
- (l) to do and perform or cause to be done and performed all such acts, matters and things as may be necessary and proper for any of the purposes of this Act.

## **10 Restrictions as to vaults**

Every vault shall be so constructed that no portion thereof shall be above the level of the earth immediately adjoining or surrounding the said vault.

## **11 Provision for burial of the poor**

The trustees shall cause to be set apart a portion of the cemetery for the burial of poor persons free of charge and shall cause to be buried therein the body of any poor person upon production of an order for that purpose from the district administrator.

## **12 Trustees may make rules**

(1) The trustees shall have authority to make rules for the execution of their powers under this Act, for regulating their proceedings and the duties of their employees and for preserving order at and convening their meetings.

(2) Rules made in terms of subsection (1) shall not be contrary to this or any other Act, nor to conditions of any grant or transfer of land held by the trustees.

(3) Rules made in terms of subsection (1) shall be submitted for the approval of the Minister and shall take effect when approved and published in a statutory instrument.

## **13 Quorum of trustees**

If the number of trustees appointed is three, the powers conferred by this Act may be executed by any two of them, and if the number is four or more, such powers may be executed by any three of them.

## **14 Majority to decide questions**

The majority of the votes of the members present at any meeting of trustees shall determine all questions which may be discussed or considered at such meeting.

## **15 Chairman**

(1) The trustees shall choose one of their number to be chairman.

(2) If the votes are in any case equally divided, the chairman shall have a casting vote in addition to his deliberative vote.

## **16 Monuments and tombstones**

When any person desires to erect and place any monument or tombstone in any part of any cemetery he shall, before permission is given, submit a plan of the monument or tombstone proposed to be erected and placed to the trustees of the cemetery, who may withhold their permission and prevent the erection of any monument which appears to them to be inappropriate or unbecoming.

## **17 Position of monuments and tombstones**

The trustees shall fix and determine the position of any monument which may be proposed to be erected according to the description, size and character thereof, having reference to the general plan for ornamenting the cemetery in an appropriate manner.

## **18 Removal of monuments and tombstones**

If any monument, tomb or other erection has been built or erected contrary to the terms and conditions upon which permission to erect or construct the same was granted, or if such terms and conditions or the regulations of the cemetery have not been complied with, the trustees may cause such monument, tomb or other erection to be taken down and removed.

## **19 Burials in places where the exclusive right has been acquired by individuals**

Before any body is permitted to be interred in any vault or in any place of burial, the exclusive right to which for burial purposes has been granted, sold or let by the trustees as a family or private burial place, the trustees or any employee of theirs may require satisfactory proof that the person for the time being entitled as owner to the exclusive right of burial in such vault or other place has consented or would not object to such interment taking place therein.

## **20 Right to keep up and maintain tombstones**

Any person digging or making any vault, grave or tombstone or erecting or placing any monument in any cemetery by and with the permission of the trustees, upon payment of the prescribed fees, shall, subject to the terms and conditions of that permission, be entitled to maintain and keep up or to have maintained and kept up, as the case may be, that vault, grave, monument or tombstone for the sole and separate use of such person and his representatives for ever or for such time as by those terms and conditions may be stipulated.

## **21 How chapels may be erected**

When the members of any religious denomination desire at their own expense to build in any cemetery a suitable mortuary, church or chapel for the performance of the rites and ceremonies in the burial of the dead according to the usages of such denomination, if the plans, specification, elevations and models thereof, and other buildings and conveniences thereto, are first submitted to and approved by the trustees, the trustees may permit the same to be erected and built within such part of the cemetery as may be set apart for such denomination upon such terms as may be agreed upon.

## **22 Ministers' right of access to chapels**

The minister of any denomination for which any portion of any cemetery is specially set apart may have access and admission to such portion at all times as he sees fit, subject to any rules made by the trustees, and any such minister may freely exercise his spiritual functions therein without hindrance or disturbance of the trustees or any other person:

Provided that it shall not be competent for the trustees by any rule or by any act, matter or thing to interfere directly or indirectly with the orderly performance of any religious ceremony in the burial of the dead according to the usage or practice of the communion to which the deceased may have belonged.

## **23 Accounts to be kept**

(1) The trustees shall keep a full and particular account of all moneys received and expended by them, and shall send an abstract of such account up to the 30th June next after their appointment, and subsequently to the same date in every year, to the office of the Secretary of the Ministry responsible for local government.

(2) The account referred to in subsection (1) shall be certified to be correct by not fewer than two of the trustees, and shall contain such particulars as the Minister may require.

(3) The Minister may order an inspection and examination or periodical inspections and examinations of the books, accounts and vouchers of the trustees of every cemetery.

## **24 Penalty for not keeping accounts**

Every trustee who omits to keep the account required by section *twenty-three* and to send such abstract thereof to the Secretary as is referred to in section *twenty-three* and every trustee who fails to produce the books, accounts and vouchers in obedience to any order made by the Minister in terms of subsection (3) of section *twenty-three*, shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Section as amended by section 4 of act 22 of 2001.]

## **25 Registration**

All burials within any cemetery shall be registered in a book to be provided by the trustees and kept for that purpose—

- (a) which shall be in such form as may be prescribed by regulation; and
- (b) which shall be regularly kept by some person appointed by the trustees to do that duty; and
- (c) in which shall be distinguished in what parts of the cemetery the several bodies, the burials of which are entered therein, are buried.

## **26 Destruction, damage or defacement of monuments prohibited**

Any person who wantonly or wilfully destroys or does or causes to be done any damage, defacement or disfigurement to any monument, vault, tombstone or grave, whether within or without a cemetery, or to any building, erection, railing, fence, tree, shrub, plant, thing or natural object, adjoining, connected with or relating to any such monument, vault, tombstone or grave, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section as amended by section 4 of act 22 of 2001.]

## **27 Damages for injuries not wilful**

Any person who does or causes to be done any injury to any monument, vault, tombstone, building, erection, railing, shrub, tree or plant in or belonging to any cemetery, or any other damage to any such cemetery, whether the same is done wilfully or wantonly or otherwise, shall be liable, irrespective of any such penalty referred to in section *twenty-six*, to pay a reasonable sum of money as damages or for compensation, which sum of money shall be recoverable in any court of competent jurisdiction by the trustees or by any person injured by such damage, but not by both the trustees and that person in respect of the same act or offence.

## **28 Animals found trespassing may be impounded**

Any animal found trespassing in any cemetery may be impounded by the trustees, or by any employee of theirs, and the owner of any animal so impounded shall be liable to pay, in lieu of any other trespass money, such sum not exceeding the amount of a fine of level one in respect of each animal so found as may be prescribed by rules in terms of section *twelve*, exclusive of driving distance, herding or other pound fees payable according to any other Act.

[Section as amended by section 4 of act 22 of 2001.]

## **29 Cemeteries to be deemed "public places"**

(1) Section 3 of the Miscellaneous Offences Act [*Chapter 9:15*] shall be in operation in and within the limits of every cemetery under the management of the trustees and for the purposes of the said section 3 every part of the cemetery shall be deemed to be a public place or public street:

Provided that if by this Act any higher punishment or penalty is prescribed for any act or offence in the said section 3 mentioned, such higher punishment or penalty may be imposed.

(2) All fines and penalties recovered under section 3 of the Miscellaneous Offences Act [*Chapter 9:15*] in respect of any offence committed within any cemetery shall be paid to the trustees.

### **30 Trustees and employees may arrest persons contravening this Act**

Any trustee or any employee of the trustees or any person called to aid or assist any such trustee or employee may, without warrant, take into custody any person who commits or is in the act of committing any offence against this Act or any offence mentioned in section 3 of the Miscellaneous Offences Act [*Chapter 9:15*] in any cemetery and whose name and place of abode are not known to the person so arresting, and the person arrested may be detained until he can be delivered into the custody of a police officer, to be dealt with according to law.

### **31 Fines and penalties to go to trustees**

All moneys arising from fines and penalties imposed by this Act shall, when recovered, be paid to the trustees of the cemetery in respect whereof such fine or penalty has been imposed.

### **32 Local authority may establish or take over cemetery**

(1) It shall be lawful for any local authority, with the consent of the Minister—

- (a) to establish and maintain one or more cemeteries under this Act;
- (b) to take over and maintain any cemetery established under this Act or controlled and administered by trustees;
- (c) to extend any cemetery established or taken over in terms of this section;
- (d) to enter into an agreement with any other local authority to combine, co-operate or contract in regard to the establishment, taking over or maintenance of any cemetery under this Act;
- (e) to transfer to trustees appointed for the purpose under section *three* any cemetery established or taken over in terms of this section.

(2) In the case of a local board established in terms of the Urban Councils Act [*Chapter 29:15*], if in the warrant issued in terms of section 6 of that Act the Minister has specified that one of the powers conferred on that local board shall be to administer cemeteries, it shall be lawful for that local board, with the consent of the Minister, to exercise the powers conferred on a local authority by subsection (1) in respect of any cemetery within the local government area for which that local board has been established and sections *seven, eight, thirty-three, thirty-four* and *thirty-eight* shall apply, *mutatis mutandis*.

### **33 Local authority deemed trustees**

(1) Any cemetery which has been established or maintained by any local authority shall be deemed to have been established under this Act.

(2) A local authority which has established or taken over or which establishes or takes over any cemetery shall be deemed to be trustees appointed under this Act, and shall have and exercise all the rights and powers and be liable to all the duties and obligations of trustees: Provided that—

- (i) sections *four, five, thirteen, fourteen, fifteen, twenty-three* and *twenty-four* shall not apply to any such local authority;
- (ii) the procedure for passing, confirming and promulgating any rules made under section *twelve* shall be in accordance with the enactment for the time being governing the constitution of such local authority, and upon due promulgation any such rule shall have the force of law within the area under the jurisdiction of such local authority.

(3) Any enactment for the time being governing the constitution of a local authority which provides for the making and adoption of model by-laws shall be deemed to extend to the making and adoption of model by-laws for the purposes of section *twelve*.

### **34 Penalty**

(1) Any rules made under this Act may provide penalties for any breach thereof, but no penalty shall exceed a fine of level three or imprisonment for a period of one month or both such fine and such imprisonment.

[Subsection as amended by section 4 of act 22 of 2001.]

(2) Any existing rule or by-law made under any law by any local authority in regard to any cemetery shall be deemed to be a rule made under this Act.

### **35 Consent to establish cemetery**

(1) No cemetery shall be opened or established—

- (a) in the area under the jurisdiction of a local authority, without the previous sanction of that local authority and of the Minister; or
- (b) within a local government area declared in terms of the Urban Councils Act [*Chapter 29:15*], without the previous sanction of the Minister and, if a local board has been established for that area, of that local board;

unless the cemetery is to be opened or established at a place which has been set aside for use as a cemetery in terms of a scheme which has been approved and become operative under section 75 of the Regional, Town and Country Planning Act [*Chapter 29:12*].

(2) Any person who opens any cemetery for the purpose of burial without the sanction mentioned in subsection (1), or any person who buries any body in any cemetery, knowing it to have been opened or established without such sanction, shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of act 22 of 2001.]

### **36 Minister may issue closing order**

(1) The Minister, with the consent of the President, may subject to the conditions mentioned in subsection (2), issue an order in writing to the trustees of any cemetery directing the closing of such cemetery:

Provided that any such order may specify conditions under which burials may, notwithstanding the closing of such cemetery, be permitted in any family plot.

(2) Notice of every order issued in terms of subsection (1) shall be given once a month for three consecutive months in the *Gazette* and in some newspaper circulating in the locality in which the cemetery is situated before the order shall take effect.

(3) Any person who buries any body in any cemetery which has been closed in terms of this section shall be guilty of an offence, unless such burial is permitted in accordance with conditions specified under the proviso to subsection (1), and shall be liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of act 22 of 2001.]

### **37 Burial in vaults**

(1) The trustees may at any time, and, on receipt of an order from the Minister to do so, given with the consent of the President, shall prohibit the burial of bodies in vaults in any cemetery vested in such trustees, except under such conditions as may be fixed by the trustees or by the Minister in such order, as the case may be.

(2) Any person who buries any body in any vault in any cemetery in contravention of any prohibition imposed or of any conditions fixed under subsection (1), shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Section as amended by section 4 of act 22 of 2001.]

### **38 Upkeep and closure of cemeteries, and removal of human remains**

(1) It shall be lawful for a local authority—

- (a) at the request of a religious denomination or the owners interested in any closed cemetery within the area of such local authority, to undertake the upkeep of such cemetery;
- (b) subject to the conditions mentioned in subsection (2), to take over and maintain in such manner and put to such uses as are approved by the Minister, being uses which will not desecrate the ground or any memorials or monuments therein, any cemetery within the area of such local authority which has been closed.

(2) The conditions mentioned in paragraph (b) of subsection (1) are—

- (a) the local authority shall give notice of its intention once a month for three consecutive months in the *Gazette* and in some newspaper circulating within the area of such local authority;
- (b) any person who has, possesses or enjoys any rights, powers or privileges in respect of such cemetery may lodge an objection with the local authority within the period of three months referred to in paragraph (a) and any such objections shall be forwarded to the Minister; (c) the approval of the Minister shall be obtained.

(3) If a local authority takes over any cemetery in terms of paragraph (b) of subsection (1), any rights, powers or privileges had, possessed or enjoyed in respect of such cemetery by any person shall cease.

(4) Subject to subsection (5)—

- (a) the Minister or any person authorized by him; or
- (b) with the approval of the Minister, a local authority or a local board established in terms of the Urban

Councils Act [*Chapter 29:15*]; may reverently remove or cause to be removed the human remains, memorials and monuments in any closed cemetery from that cemetery to another cemetery.

(5) Notice of intention to act in terms of subsection (4) shall be published once a month for three consecutive months in the *Gazette* and in a newspaper circulating in the area where the closed cemetery is situated and any person may lodge with the Minister a written objection to the proposed action within three months of the first publication of the notice in the *Gazette*.

(6) For the purposes of this section, a cemetery shall be deemed to have been closed if an order is made in terms of section *thirty-six* in relation to the cemetery or, in the case of a cemetery with no trustees, if no human remains have been buried therein for twelve months or more.