

CHAPTER 7:06

HIGH COURT ACT

(Will be amended by the Judicial Service Act[Chapter7:18](No.10of2006)when it comes into operation)

Acts 29/1981, 3/1984 (s. 5), 30/1989, 1/1992, 15/1992, 20/1994 (s. 18), 14/1995 (s.28), 6/1996 (s. 7), 8/1997 (s. 21), 9/1997 (s. 10); 22.2001 (s. 4).

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AN ACT to make provision for the jurisdiction, powers, practice and procedure of the High Court of Zimbabwe and for the making of rules and regulations in connection therewith; to make provision for appeals from decisions of inferior courts and tribunals; to confer powers of review on the High Court of Zimbabwe; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 28th August, 1981.]

WHEREAS, in relation to the High Court, sections 79 (1) (b), 79A, 79B and 81 of the Constitution provide that—

79. (1) *The judicial authority of Zimbabwe shall vest in— (a) .*

. . .

(b) a High Court; and (c) . . .

79A. *The judiciary of Zimbabwe shall consist of— (a) the Chief Justice, who shall be head of the judiciary; and (b) . . .*

(c) the Judge President and the other judges of the High Court; and (d) . . .

79B. In the exercise of his judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him under the direction or control of another member of the judiciary.

81. (1) There shall be a High Court which shall be a superior court of record and shall have such jurisdiction and powers as may be conferred upon it by or in terms of this Constitution or any Act of Parliament.

(2) The High Court shall consist of— (a) the Chief Justice;

(b) the Judge President of the High Court who shall, subject to the directions of the Chief Justice, be in charge of the High Court;

(c) such other judges of the High Court as may from time to time be appointed.

(3) The Chief Justice may, from time to time, after consultation with the Judge President of the High Court, appoint a judge of the Supreme Court to act as a judge of the High Court.

(4) ...

(5) An Act of Parliament may provide for the conferring, by way of rules of court, upon a registrar of the High Court, duly appointed thereto, of the jurisdiction and powers of the High Court in civil cases in respect of—

(a) the making of orders in uncontested cases, other than orders affecting status or the custody or guardianship of children;

(b) deciding preliminary or interlocutory matters, including applications for directions but not including matters affecting the liberty of the subject:

Provided that any such Act of Parliament shall provide for the right of any person who is aggrieved by the order or decision of any such registrar to have the order or decision reviewed by a judge of the High Court who may, on such review, amend, vary, set aside or confirm the order or decision concerned or give such other order or decision as he deems fit.

AND WHEREAS it is desirable that an Act of Parliament make further provision in relation to the High Court:

NOW THEREFORE, be it enacted as follows:—

PART I

PRELIMINARY

1 Short title

This Act may be cited as the High Court Act [*Chapter 7:06*].

2 Interpretation

In this Act—

“Chief Justice” means the Chief Justice of Zimbabwe;

“civil case” means any case or matter which is not a criminal case or matter;

“judge” includes an acting judge of the High Court;

“Judge President” means the Judge President of the High Court;

“judgment” includes a decision or order;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“rules of court” means rules of court made in terms of section *fifty-six*;

“Sheriff” means the Sheriff for Zimbabwe and includes an additional sheriff and an assistant sheriff.

PART II

COMPOSITION

3 Composition of High Court

Subject to section *four*, the High Court shall be duly constituted—

(a) for the purpose of exercising its original jurisdiction in any civil matter, if it consists of one or more judges of the High Court;

(b) for the purpose of hearing a criminal trial, if it consists of one judge of the High Court and two assessors;

(c) for the purpose of exercising its powers to review the proceedings or decision of any inferior court, tribunal or administrative authority, if it consists of one or more judges of the High Court;

(d) for the purpose of exercising its appellate jurisdiction in any matter, if it consists of not less than two judges of the High Court.

4 Decisions of High Court

(1) When more than two judges of the High Court are sitting together the decision of the majority shall be the decision of the High Court.

(2) Whenever there is a difference of opinion on an appeal or application or any other matter being heard by an even number of judges of the High Court sitting together and the opinions are equally divided, the decision of

the High Court shall be suspended until the opinion of a further judge of the High Court has been obtained, and thereupon the decision of the majority of such judges shall be the decision of the High Court.

(3) If at any stage during the hearing of an appeal or application or any other matter by three or more judges of the High Court any such judge dies or retires or is otherwise unable to sit as a member of the High Court or is absent, the presiding judge may in his discretion direct that the appeal or application shall proceed before the remaining judges or that a further judge of the High Court be obtained to sit.

(4) In any case in which—

- (a) a decision has been suspended in terms of subsection (2) in order to obtain the opinion of a further judge of the High Court; or
- (b) a further judge of the High Court has been obtained to sit in terms of subsection (3); the presiding judge may direct the recalling of any witness or order further argument before the judges who originally constituted the court and the further judge.

(5) If a matter being heard by the High Court involves a difficult question of law or if at any stage during the hearing of a matter by one or more judges such a question arises, the presiding judge may direct that the hearing of that matter or the hearing in respect of that question shall proceed before such greater number of judges than two as may be determined by the Chief Justice or the Judge President, and thereupon the decision of the majority of such judges shall be the decision of the High Court.

5 Assessors in civil cases

(1) In any civil case before a judge of the High Court the judge may summon to his assistance to act as assessors one or more persons who are willing so to act and who have skill and experience in any matter which may have to be considered in the case.

(2) Any assessor summoned in terms of subsection (1) shall act in an advisory capacity only and shall not be entitled to a vote in the decision of the court.

6 Assessors in criminal trials

(1) A person shall be qualified to act as an assessor in a criminal trial in the High Court if— (a) he has experience in the administration of justice; or

- (b) he has experience or skill in any matter which may have to be considered at the trial; or
- (c) in the case of a trial involving a juvenile, he has experience or skill in dealing with juveniles; or
- (d) he has any other experience or qualification which, in the opinion of the Chief Justice and the Judge President, renders him suitable to act as an assessor in a criminal trial.

(2) The Minister, with the concurrence of the Chief Justice and the Judge President, shall prepare a list of persons who are qualified to act as assessors in terms of subsection (1).

(3) The Registrar of the High Court shall, subject to any directions given to him by the Chief Justice or the Judge President, choose to act as assessors at the trial of any person in the High Court two persons whose names appear on a list prepared in terms of subsection (2).

(4) The Attorney-General or the accused person in any criminal trial in the High Court shall each have the right to challenge, without assigning any reason therefor, not more than two persons chosen to be assessors at the trial, and where any assessor has been so challenged he shall refuse himself and the Registrar shall choose another person to act as an assessor from the list prepared in terms of subsection (2).

7 Swearing in of assessor in criminal trial

Before the commencement of a criminal trial in the High Court the judge shall administer an oath to the assessors that they will give a true verdict according to the evidence upon the issues to be tried and thereupon they shall, subject to this Part, be members of the court.

8 Incapacity of assessor in criminal trial

(1) If at any time during a criminal trial in the High Court one of the assessors dies or becomes, in the opinion of the judge, incapable of continuing to act as assessor, the judge may, if he thinks fit, with the consent of the accused and the prosecutor, direct that the trial shall proceed without that assessor.

(2) Where the trial proceeds in pursuance of a direction given in terms of subsection (1), the decision of the court shall be unanimous.

(3) If, in the circumstances referred to in subsection (1)—

- (a) the judge does not, in terms of that subsection, direct that the trial shall proceed without the assessor referred to in that subsection; or
- (b) the court is unable, as required by subsection (2), to agree on a decision on any charge in the indictment; the accused, unless already on bail, shall remain in custody and may be tried again:

Provided that a judge of the High Court may, in terms of Part IX of the Criminal Procedure and Evidence Act [*Chapter 9:07*], release the accused on bail.

(4) If the court is unable, as required by subsection (2), to agree on a decision on any charge in the indictment and the accused is again tried on such charge, the judge and the assessor who were members of the court which failed to agree as aforesaid shall not be competent to be members of any subsequent Court constituted to try the accused on that charge.

9 Perusal of record of preparatory examination

In a criminal trial in the High Court the only member of the court who may, before the court reaches its verdict, read the record of the proceedings at the preparatory examination or the documents or documents and record referred to in subsection (9) of section 110 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] which relate to the case but have not been put in as evidence shall be the judge.

10 Decision of court and reasons therefor in criminal trial

(1) Subject to this Part, any—

- (a) question of law; or
- (b) question as to whether a question for decision is one of fact or of law; or
- (c) question as to the admissibility of evidence; arising for decision at a criminal trial in the High Court shall be decided by the judge and no assessor shall have a voice in the decision of any of those questions.

(2) Any question of fact arising at a criminal trial in the High Court shall be decided by the majority of the members of the court.

(3) At any criminal trial in the High Court the judge shall have the sole responsibility for fixing the sentence, but he may consult the assessors if he thinks fit.

(4) The judge in any criminal trial in the High Court shall—

- (a) give reasons for his decision on any question referred to in subsection (1); and
- (b) give reasons for the decision or finding of the court on a question of fact; and
- (c) where there is any difference of opinion on a question of fact, give reasons for the decision or finding of the dissenting member of the court.

11 Withdrawal of assessor from court in criminal trial

(1) Subject to subsection (2), it shall not be necessary for the assessors at any criminal trial in the High Court to withdraw from the court during the hearing and determination of any question referred to in paragraph (c) of subsection (1) of section *ten*.

(2) At any criminal trial in the High Court the judge may adjourn the argument upon any question referred to in subsection (1) of section *ten* and may sit alone for the hearing of argument upon, and the decision of, the question.

12 Remuneration and allowances of assessors

Every assessor shall be paid such remuneration and allowances as the Minister may determine from moneys appropriated for the purpose by Act of Parliament.

PART III

ORIGINAL JURISDICTION IN CIVIL CASES

13 Original civil jurisdiction

Subject to this Act and any other law, the High Court shall have full original civil jurisdiction over all persons and over all matters within Zimbabwe.

14 High Court may determine future or contingent rights

The High Court may, in its discretion, at the instance of any interested person, inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination.

15 Exercise of jurisdiction founded on or confirmed by arrest or attachment

In any case in which the High Court may exercise jurisdiction founded on or confirmed by the arrest of any person or the attachment of any property, the High Court may permit or direct the issue of process, within such period as the court may specify, for service either in or outside Zimbabwe without ordering such arrest or attachment, if the High Court is satisfied that the person or property concerned is within Zimbabwe and is capable of being arrested or attached, and the jurisdiction of the High Court in the matter shall be founded or confirmed, as the case may be, by the issue of such process.

16 Restriction on decree of civil imprisonment

No writ of civil imprisonment for non-payment or non-satisfaction of any judgment or decree shall be granted or issued by the High Court in cases in which the person against whom such writ of civil imprisonment is sought to be issued proves to the satisfaction of the court that he does not have property or means sufficient to satisfy in whole or in part the said judgment or decree.

17 Manner of securing attendance of witness in civil cases

(1) A party to civil proceedings before the High Court in which the attendance of any witness is required may procure the attendance of that witness in the manner provided for in rules of court.

(2) Whenever it appears to the High Court that a person whose attendance as a witness before the court is required in any civil proceedings—

- (a) is evading the service upon him of a subpoena; or
- (b) has been served with a subpoena requiring his attendance and has been paid or offered his reasonable expenses in accordance with a tariff prescribed in rules of court but—

- (i) has failed without reasonable cause to attend in obedience to the subpoena; or
- (ii) has attended in obedience to the subpoena but has failed to remain in attendance;

the High Court may by warrant direct that he be arrested and brought before the High Court at a time and place specified in the warrant or as soon after that time as possible.

(3) A person arrested under a warrant in terms of subsection (2) may be detained thereunder within the precincts of the High Court or in any prison or lock-up or other place of detention, or in the custody of the person who is in charge of him, with a view to securing his presence as a witness in the proceedings concerned:

Provided that the High Court may release him on a recognizance, with or without sureties, for his appearance to give evidence as required and for his appearance at the inquiry referred to in subsection (4).

(4) The court may in a summary manner inquire into the evasion of the service of the subpoena or the failure to obey any subpoena or to remain in attendance at the court by any person, and may, unless it is proved that the person concerned has a reasonable excuse for such evasion or failure, sentence him 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.

(5) Any sentence imposed by the High Court in terms of subsection (4) shall be enforced and shall be subject to appeal as if it were a sentence imposed in a criminal case.

(6) If a person who has entered into any recognizance for his appearance to give evidence at civil proceedings before the High Court or for his appearance at an inquiry referred to in subsection (4) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with in terms of subsection (4) as if he had failed to obey a subpoena to attend such proceedings or appear at such inquiry.

(7) No person shall, except on the order of the High Court, be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in court.

(8) When a subpoena is issued to procure the attendance of a judicial officer before the High Court to give evidence or to produce any book, paper or document in any civil proceedings and it appears—

- (a) that he is unable to give evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings; or
- (b) that such book, paper or document could properly be produced by some other person; or
- (c) that the compelling of his attendance would be an abuse of the process of the court; the High Court may, notwithstanding anything contained in this section, after reasonable notice by the registrar of the High Court to the party who sued out the subpoena and after hearing that party in chambers if he appears, make an order cancelling such subpoena.

18 Refusal of witness to give evidence or produce documents

(1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section *seventeen* or is present and is verbally required by the High Court to give evidence in any civil proceedings, refuses to be sworn or, having been sworn, refuses to answer such questions as are put to him, or refuses or fails to produce any document or thing which he is required to produce, without any just excuse for such refusal or failure, the High Court may adjourn the proceedings for any period not exceeding eight days, and may, in the meantime, by warrant commit the person so refusing or failing to prison unless he sooner consents to do what is required of him.

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him, the High Court may again adjourn the proceedings and commit him for a like period and so again from time to time until such person consents to do what is required of him.

(3) Nothing contained in this section shall prevent the High Court from giving judgment in any case or otherwise disposing of the proceedings according to any other sufficient evidence taken.

19 Service of process on Sheriff or deputy sheriff

(1) Whenever any process is required to be served on the Sheriff, such process may be served by delivering a copy thereof to him at his office during ordinary office hours against his signature.

(2) Whenever any process is required to be served on a deputy sheriff, such process may, if the deputy sheriff resides in the same district as the Sheriff, be served by the Sheriff, and in every other case by the messenger of the magistrates court:

Provided that if the messenger is himself the deputy sheriff on whom the process is to be served, such process may be served by any person specially appointed by the Sheriff for that purpose.

19A Reference of question for inquiry and report by referee

(1) The High Court may refer any question arising in civil proceedings, including□

- (a) any question requiring extensive examination of documents or any scientific, technical or local investigation which, in the opinion of the High Court, cannot conveniently be conducted by it; or
- (b) any question relating wholly or partly to accounts; for inquiry and report by a referee appointed generally or specially by the High Court.

(2) The High Court may adopt, wholly or partly and with or without modification, the report of a referee appointed under subsection (1), or may remit the report to him for further consideration or may take such other action in regard to the report as the High Court considers necessary or desirable.

(3) Any part of a referee's report which has been adopted by the High Court under subsection (2) shall have effect, subject to any modifications the court may have made, as if it were a finding by the High Court in the civil proceedings in question.

(4) A referee appointed under this section shall have such powers, and shall conduct his inquiry in such manner, as may be prescribed by order of the High Court or in rules of court.

(5) For the purpose of procuring the attendance of witnesses, including a witness detained in custody under any law, and the production of documents or other things before a referee appointed under this section, proceedings before such a referee shall be deemed to be civil proceedings before the High Court.

(6) If a person who has been summoned to appear and give evidence or produce any document or thing before a referee appointed under this section

- (a) fails without just excuse to attend at the time and place specified; or
- (b) having attended, fails without just excuse to remain in attendance until the conclusion of the proceedings or until he is excused by the referee from further attendance; or
- (c) refuses without just excuse to be sworn; or
- (d) having been sworn, refuses without just excuse to answer such questions as are put to him or fails to produce any document or thing which he is required to produce; he 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 amended by s. 4 of Act 22/2001.

(7) If a person, after being sworn in proceedings before a referee appointed under this section, gives false evidence knowing the evidence to be false or not knowing or believing it to be true, he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by s. 4 of Act 22/2001.

(8) A referee appointed under this section shall be entitled to

- (a) such remuneration as may be prescribed in rules of court or, if no such remuneration is prescribed, as the court may determine; and
- (b) the reimbursement of any reasonable expenditure incurred by him in connection with the proceedings conducted by him; and any such remuneration and reimbursement shall be liable to taxation and shall be costs in the civil proceedings concerned.

[Section as inserted by s. 7 of Act No. 6 of 1996.]

20 Execution of process

(1) Subject to section *nineteen* and to rules of court, the Sheriff shall, by himself or his deputy or an assistant deputy, execute all sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and other process of the High Court, and shall make a return thereof to that court, together with the manner of the execution thereof.

(2) The Sheriff may, notwithstanding the appointment of a deputy sheriff and assistant deputy sheriffs, give special directions for the service of any particular process by some person other than the duly appointed deputy sheriff or assistant deputy sheriff for the area concerned.

(3) The return of the Sheriff or a deputy sheriff or an assistant deputy sheriff or a person mentioned in subsection (2) of what has been done upon any process of the High Court shall be *prima facie* evidence of the matters therein stated.

(4) The Sheriff shall receive and detain, or cause to be detained, in prison all such persons as are arrested by order of the High Court or committed to his custody by that court or by the Chief Justice or by any judge of the High Court.

21 Property not liable to be seized in execution

The following property of the person against whom execution is levied shall not be seized in execution of any process of the High Court—

- (a) the necessary beds, bedding and clothing of such person or of any member of his family;
- (b) the necessary furniture of such person, other than beds, and household utensils in so far as they do not exceed in value such sum as may be prescribed in rules of court;
- (c) stock, tools and implements necessarily used by such person in his trade or occupation in so far as they do not exceed in value such sum as may be prescribed in rules of court;
- (d) food and drink sufficient to meet the needs of such person and the members of his family for one month;
- (e) professional books, documents and instruments necessarily used by such person in his profession in so far as they do not exceed in value such sum as may be prescribed in rules of court.

22 Offences relating to execution

(1) In this section—

“sheriff’s agent” means a person mentioned in subsection (2) of section *twenty* or the proviso to subsection

(2) of section *nineteen*.

- (2) Any person who—
- (a) obstructs the Sheriff or a deputy sheriff or his assistant or a sheriff's agent in the execution of his duty; or
 - (b) being aware that goods are under arrest, interdict or attachment by the High Court, makes away with or disposes of those goods in a manner not authorized by law or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in such a manner; or
 - (c) being a judgment debtor and being required by the Sheriff or a deputy sheriff or his assistant or a sheriff's agent to point out property to satisfy a warrant issued in execution of judgment against such person—
 - (i) falsely declares to the Sheriff or deputy sheriff or his assistant or a sheriff's agent that he possesses no property or insufficient property to satisfy the warrant; or
 - (ii) although knowing of such property, neglects or refuses to point out such property or to deliver it to the Sheriff or deputy sheriff or his assistant or a sheriff's agent when required to do so;
- or
- (d) being a judgment debtor, refuses or neglects to comply with any requirement of the Sheriff or a deputy sheriff or his assistant or a sheriff's agent in regard to the delivery of documents in his possession or under his control relating to the title of immovable property under execution;

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.

[Subsection amended by s. 4 of Act 22/2001.

PART IV

ORIGINAL JURISDICTION IN CRIMINAL CASES

23 Original criminal jurisdiction

Subject to this Act and any other law, the High Court shall have full original criminal jurisdiction over all persons and over all matters in Zimbabwe.

24 Reservation of decision on indictment for decision of Supreme Court

(1) The High Court may reserve for the determination of the Supreme Court any question decided by the High Court on an exception or objection taken to the indictment in any criminal trial before the High Court.

(2) When the High Court reserves any question in terms of subsection (1), the court shall state the question reserved and shall direct that a copy thereof be transmitted to the registrar of the Supreme Court.

25 Reservation of question of law for consideration of Supreme Court

(1) If any question of law arises on the trial in the High Court of any person for any offence, the High Court may, after the accused has been convicted and sentenced or acquitted, as the case may be, reserve that question, of its own motion or at the request of the prosecutor or of the accused, for the consideration of the Supreme Court.

(2) When the High Court reserves any question in terms of subsection (1), the court shall state the question reserved and shall direct that a copy thereof be transmitted to the registrar of the Supreme Court.

PART V

POWERS OF REVIEW

26 Power to review proceedings and decisions

Subject to this Act and any other law, the High Court shall have power, jurisdiction and authority to review all proceedings and decisions of all inferior courts of justice, tribunals and administrative authorities within Zimbabwe.

27 Grounds for review

(1) Subject to this Act and any other law, the grounds on which any proceedings or decision may be brought on review before the High Court shall be—

- (a) absence of jurisdiction on the part of the court, tribunal or authority concerned;
- (b) interest in the cause, bias, malice or corruption on the part of the person presiding over the court or tribunal concerned or on the part of the authority concerned, as the case may be; (c) gross irregularity in the proceedings or the decision.

(2) Nothing in subsection (1) shall affect any other law relating to the review of proceedings or decisions of inferior courts, tribunals or authorities.

28 Powers on review of civil proceedings and decisions

On a review of any proceedings or decision other than criminal proceedings, the High Court may, subject to any other law, set aside or correct the proceedings or decision.

29 Powers on review of criminal proceedings

(1) For the purpose of reviewing any criminal proceedings of an inferior court or tribunal, the High Court may exercise any one or more of the following powers—

- (a) direct that any part of the evidence which was taken down in shorthand or recorded by mechanical means be transcribed and that the transcription be forwarded to the registrar of the High Court;

- (b) hear any evidence in connection with the proceedings, and for that purpose may cause any person to be summoned to appear and give evidence or produce any document or article;
 - (c) where the proceedings are not being reviewed at the instance of the convicted person, direct that any question of law or fact arising from the proceedings be argued before the High Court by the Attorney General or his deputy and a legal practitioner appointed by the High Court.
- (2) If on a review of any criminal proceedings of an inferior court or tribunal, the High Court considers that the proceedings—

- (a) are in accordance with real and substantial justice, it shall confirm the proceedings;
- (b) are not in accordance with real and substantial justice, it may, subject to this section—
 - (i) alter or quash the conviction; or
 - (ii) reduce or set aside the sentence or any order of the inferior court or tribunal or substitute a different sentence from that imposed by the inferior court or tribunal:

Provided that—

- (i) a sentence of imprisonment shall not be substituted for a fine unless the enactment under which the convicted person was convicted does not permit the imposition of a fine;
- (ii) the substituted sentence shall not be more severe than that imposed by the inferior court or tribunal unless the convicted person—
 - (a) is a company; or
 - (b) was represented by a legal practitioner at the proceedings in the inferior court or tribunal concerned;and requested that the proceedings be forwarded on review or otherwise instituted the review; or
- (iii) set aside or correct the proceedings of the inferior court or tribunal or any part thereof or generally give such judgment or impose such sentence or make such order as the inferior court or tribunal ought in terms of any law to have given, imposed or made on any matter which was before it in the proceedings in question; or
- (iv) if the convicted person was convicted on one of two or more alternative counts, when quashing that conviction remit the case to the inferior court or tribunal with instructions that he be retried on one or more of the alternative counts before a presiding officer other than the presiding officer who recorded the previous conviction; or
- (v) remit the case to the inferior court or tribunal with such instructions relative to the further proceedings to be had in the case as the High Court thinks fit; or
- (vi) make such order relative to the suspension of the execution of any sentence against the convicted person or the admission of such person to bail or generally any matter or thing connected with such person or the proceedings in regard to him as the High Court thinks calculated to promote the ends of real and substantial justice; or
- (vii) if the convicted person was convicted on one or more counts and acquitted on one or more counts and it appears to the High Court that the inferior court or tribunal intended to—
 - A. acquit him on one or more of the counts on which he was convicted; and
 - B. convict him on one or more of the counts on which he was acquitted; correct the proceedings in accordance with such intention;
- (viii) if the convicted person has been convicted of an offence and the inferior court or tribunal could on the indictment, summons or charge have found him guilty of some other offence, whether because it was, according to law, a competent verdict or because that other offence had been alleged as an alternative count, and on the findings of the inferior court or tribunal it appears to the High Court that the inferior court or tribunal must have been satisfied of facts which proved him guilty of that other offence, the High Court may, when quashing the conviction, substitute for the judgment of the inferior court or tribunal a judgment of guilty of that other offence, whether or not the convicted person had been acquitted of that offence at the trial, and may—
 - A. subject to the provisos to subparagraph (ii), substitute a different sentence for that imposed at the trial; or
 - B. remit the case to the court or tribunal concerned for the passing of such sentence in substitution for the sentence passed at the trial, whether more or less severe, as may be warranted in law for that other offence.

(3) No conviction or sentence shall be quashed or set aside in terms of subsection (2) by reason of any irregularity or defect in the record or proceedings unless the High Court or a judge thereof, as the case may be, considers that a substantial miscarriage of justice has actually occurred.

(4) Subject to rules of court, the powers conferred by subsections (1) and (2) may be exercised whenever it comes to the notice of the High Court or a judge of the High Court that any criminal proceedings of any inferior court or tribunal are not in accordance with real and substantial justice, notwithstanding that such proceedings are

not the subject of an application to the High Court and have not been submitted to the High Court or the judge for review.

(5) A judge of the High Court before whom the record of criminal proceedings in a magistrates court has been laid in terms of section 55, 57 or 58 of the Magistrates Court Act [*Chapter 7:10*]—

- (a) may lay the proceedings before the High Court for its consideration in terms of this section; or
- (b) may himself exercise the powers conferred by subsection (1), other than paragraph (b) thereof, or subsection (2):

Provided that a judge of the High Court shall not exercise any of the powers conferred by subparagraph (i), (ii) or (iii) of paragraph (b) of subsection (2) unless another judge of the High Court has agreed with the exercise of the power in that particular case;

- (c) shall, if he confirms the proceedings, cause the record to be endorsed with a certificate to that effect and returned to the court concerned.

PART VI

CIVIL APPEALS TO HIGH COURT

30 Jurisdiction in appeals in civil cases

(1) The High Court shall have jurisdiction to hear and determine an appeal in any civil case from the judgment of any court or tribunal from which in terms of any other enactment an appeal lies to the High Court.

(2) Unless provision to the contrary is made in any other enactment, the High Court shall hear and determine and shall exercise powers in respect of an appeal referred to in subsection (1) in accordance with this Act.

31 Powers of High Court on appeal in civil cases

(1) On the hearing of a civil appeal the High Court—

- (a) shall have power to confirm, vary, amend or set aside the judgment appealed against or give such judgment as the case may require;
- (b) may, if it thinks it necessary or expedient in the interests of justice—
 - (i) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
 - (ii) order any witness who would have been a compellable witness at the trial or proceedings to attend and be examined before the High Court, whether he was or was not called at the trial or proceedings, or order the examination of any such witness to be conducted in the manner provided by rules of court before any judge of the High Court or before any officer of the High Court or justice of the peace or other person appointed by the High Court for the purpose and allow the admission of any deposition so taken as evidence before the High Court;
 - (iii) receive the evidence, if tendered, of any witness, including any party, who is a competent but not compellable witness, and if any party makes application for the purpose, of the husband or wife of that party in cases where the evidence of the husband or wife could not have been given at the trial or proceedings except on such application;
 - (iv) having set aside the judgment appealed against, remit the case to the court or tribunal of first instance for further hearing, with such instructions as regards the taking of further evidence or otherwise as appear to it necessary;
 - (v) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the High Court, be conveniently conducted before that court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the High Court and act upon the report of any such commissioner so far as the High Court thinks fit to adopt it;
 - (vi) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the High Court that such knowledge is required for the proper determination of the case;
 - (vii) issue any warrant necessary for enforcing any order or sentence of the High Court;
 - (viii) take any other course which may lead to the just, speedy and inexpensive settlement of the case;
 - (viii a) make such order as to costs as the High Court thinks fit;

(Subparagraph as inserted by s. 10 of Act 9 of 1997)

- (c) may, if it appears to the High Court that a new trial or fresh proceedings should be held, set aside the judgment appealed against and order that a new trial or fresh proceedings be held.

(2) Whenever the High Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

32 Statement of case on question of law arising on appeal

(1) Where an appeal to the High Court in any civil case involves a question of law alone, a judge of the High Court may, if he thinks fit, request the parties thereto to state the question for determination by the High Court.

(2) Upon a request made in terms of subsection (1) the parties shall, if they are able to agree thereon, state the question, together with all the circumstances under which that question has arisen, in such manner and within such period as may be prescribed by rules of court.

(3) If the parties are unable to agree upon the statement of the question and the circumstances under which it has arisen, they shall inform the registrar of the High Court and thereupon the appeal shall be dealt with as if such request had not been made.

33 Effect of judgment of High Court in civil appeal

Except as otherwise provided in any other enactment, a judgment of the High Court in any appeal in terms of this Part shall be recorded in the court or tribunal appealed from, and such judgment may be enforced in all respects as if it had been given by the court or tribunal appealed from. PART VII

CRIMINAL APPEALS TO HIGH COURT

34 Jurisdiction in appeals in criminal cases

(1) The High Court shall have jurisdiction to hear and determine an appeal in any criminal case from the judgment of any court or tribunal from which, in terms of any enactment, an appeal lies to the High Court.

(2) Unless provision to the contrary is made in any enactment, the High Court shall hear and determine and shall exercise powers in respect of an appeal referred to in subsection (1) in accordance with this Act.

35 Concession of appeal by Attorney-General

When an appeal in a criminal case, other than an appeal against sentence only, has been noted to the High Court, the Attorney-General may, at any time before the hearing of the appeal, give notice to the registrar of the High Court that he does not for the reasons stated by him support the conviction, whereupon a judge of the High Court in chambers may allow the appeal and quash the conviction without hearing argument from the parties or their legal representatives and without their appearing before him.

36 Prosecution of appeals in person

(1) A person who has noted an appeal in a criminal case to the High Court shall not be entitled to prosecute such appeal in person unless a judge of the High Court has certified that there are reasonable grounds for appeal.

(2) An application for a certificate in terms of subsection (1) shall be made in such manner and within such time as may be prescribed in rules of court.

(3) In considering an application referred to in subsection (2), the judge of the High Court may, if the Attorney-General has given notice to the registrar of the High Court that he does not for reasons stated by him support the conviction, allow the appeal and quash the conviction without hearing argument from the parties or their legal representatives and without their appearing before him.

(4) If the certificate in terms of subsection (1) is withheld, the judge of the High Court may—

- (a) in respect of the appellant, exercise any of the powers conferred upon the High Court by subparagraph (ii), (iii) or (vi) of paragraph (b) of subsection (2) of section *twenty-nine*; or
- (b) in respect of any other person who was convicted after being charged jointly with the appellant, exercise any of the powers conferred upon a judge of the High Court by subsection (5) of section *twenty-nine*:

Provided that this paragraph shall not apply where such person has noted an appeal against the conviction or sentence and is to be represented by a legal practitioner at the hearing of the appeal.

(5) Where a case is dealt with in terms of paragraph (b) of subsection (4), sections 59, 63 and 64 of the Magistrates Court Act [*Chapter 7:10*] shall apply, *mutatis mutandis*, as if such case were subject to review.

37 Statement of case on question of law arising from appeal

In the case of an appeal to the High Court in a criminal case which involves a question of law alone, a judge of the High Court may, if he thinks fit, request the court or tribunal from which the appeal is brought to state the question, together with all the circumstances under which that question had arisen, in such manner as may be prescribed in rules of court.

38 Determination of appeals in ordinary cases

(1) Subject to this section and section *thirty-nine*, on an appeal against conviction the High Court shall allow the appeal and quash the conviction if it thinks that the judgment of the court or tribunal before which the appellant was convicted should be set aside—

- (a) on the ground that—
 - (i) it is unreasonable; or
 - (ii) it is not justified, having regard to the evidence; or
- (b) on the ground of a wrong decision on any question of law; or
- (c) because on any other ground there was a miscarriage of justice; and in any other case shall dismiss the appeal.

(2) Notwithstanding that the High Court is of the opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be set aside or altered unless the High Court considers that a substantial miscarriage of justice has actually occurred.

(3) If any point raised is decided in favour of the appellant and it consists of a misdirection by the trial court or tribunal of itself on a question of law or a question of fact or a question of mixed law and fact, the High Court shall dismiss the appeal if it is satisfied that the evidence which has to be considered has not been substantially affected by the misdirection and that the conviction is justified having regard to the evidence.

(4) On an appeal against sentence the High Court shall, if it thinks that a different sentence should be passed—

- (a) quash the sentence passed at the trial and pass such other sentence warranted in law in substitution therefor, whether more or less severe, as it thinks ought to be passed, having regard to all the circumstances, including events which have occurred after the date of sentence:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial;

- (b) without altering the sentence passed at the trial, declare what sentence the court or tribunal of first instance should have passed; and in any other case shall dismiss the appeal.

38A Special powers of High Court in respect of appeals by Attorney-General on points of law

(1) Where the Attorney-General seeks the leave of a judge of the High Court to appeal against the judgment of a court□

- (a) on a point of law; or
(b) because it has acquitted or quashed the conviction of any person who was the accused in the case on a view of the facts which could not reasonably be entertained:

a judge of the High Court may, in granting such leave or at any time thereafter, make such orders or give such directions as he thinks fit in order to secure the attendance before the High Court of the person who was the accused in the case concerned, including orders or directions for the issue of a summons or warrant of arrest, and the granting of bail or taking of recognizances.

(2) On an appeal by the Attorney-General on a point of law or against the acquittal or quashing of a conviction by any court or tribunal, the High Court□

- (a) may confirm the decision of the court or tribunal concerned; or
(b) may give judgment declaring the verdict and sentence which it considers the court or tribunal concerned should have given without, however, altering the judgment in the particular case concerned; or
(c) may exercise such other powers as are conferred upon it in relation to appeals against conviction or sentence by any other provision of this Act and may, where there has been an acquittal or the quashing of a conviction and where it is considered desirable having regard to the interests of justice to do so, substitute a verdict of guilty and either pass sentence itself or remit the case to the court or tribunal concerned for the passing of sentence.

[Section as inserted by s. 10 of Act 9 of 1997]

39 Powers of High Court in special cases

(1) If it appears to the High Court that the appellant, though not properly convicted on some count of the indictment, summons or charge, has been properly convicted on some other count of the indictment, summons or charge, the High Court may either confirm the sentence passed on the appellant at the trial or pass such sentence, whether more or less severe, in substitution therefor as it thinks proper and as may be warranted in law on the count of the indictment, summons or charge on which the High Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the trial court or tribunal could on the indictment, summons or charge have found him guilty of some other offence, whether because it was, according to law, a competent verdict or because that other offence had been alleged as an alternative count, and on the finding of the trial court or tribunal it appears to the High Court that the trial court or tribunal must have been satisfied of facts which proved him guilty of that other offence, the High Court may, when quashing the conviction, instead of allowing or dismissing the appeal, substitute for the judgment of the trial court or tribunal a judgment of guilty of that other offence, whether or not the appellant had been acquitted of that offence at the trial, and may— (a) pass such sentence; or

(b) remit the case to the court or tribunal concerned for the passing of such sentence; in substitution for the sentence passed at the trial, whether more or less severe, as may be warranted in law or that other offence.

(3) If on any appeal it appears to the High Court that although the appellant did the act or made the omission charged against him, he was mentally disordered or defective at the time the act was done or the omission was made so as not to be responsible for his actions according to law, the High Court may set aside the sentence passed at the trial and order that the appellant be kept in custody in some prison, and thereafter be dealt with in accordance with law in like manner as if a special verdict had been returned or a special finding had been made at the trial that he was guilty of the act or omission charged but was mentally disordered or defective when he did the act or made the omission.

40 Powers of High Court in relation to orders ancillary to conviction

(1) Where the operation of any award or order of restitution or revesting of property and of any other award or order which is an award or order ancillary to conviction is suspended pending the determination of a criminal appeal to the High Court, that court may on an appeal by order annul or vary any such award or order although the conviction is not quashed and the award or order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

(2) If a conviction is quashed on appeal any award or order such as is referred to in subsection (1) shall not take effect.

41 Supplementary powers of High Court

For the purposes of this Part, the High Court may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order any witness who would have been a compellable witness at the trial to attend and be examined before the High Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in the manner provided by rules of court before any judge of the High Court or before any officer of the High Court or justice of the peace or other person appointed by the High Court for the purpose, and allow the admission of any deposition so taken as evidence before the High Court;
- (c) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness and, if the appellant makes application for the purpose, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except on such application;
- (d) having set aside the conviction, remit the case to the court or tribunal of first instance for further hearing, with such instructions as regards the taking of further evidence or otherwise as appears to it necessary;
- (e) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the High Court, conveniently be conducted before that court, order the reference of the question in the manner provided by rules of court for inquiry and report to a special commissioner appointed by the High Court and act upon the report of any such commissioner so far as the High Court thinks it fit to adopt it;
- (f) appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the High Court that such knowledge is required for the proper determination of the case;
- (g) issue any warrant necessary for enforcing any order or sentence of the High Court;
- (h) exercise any of the powers of review conferred upon the High Court by section *twenty-nine*:

Provided that, whenever the High Court receives further evidence or gives instructions for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

41A Time for obtaining leave to appeal

(1) In any case where a person desires to apply to a judge of the High Court for leave to appeal, such application shall be submitted to the registrar of the High Court within such period and in such manner and form as may be prescribed by rules of court.

(2) If the applicant is in prison, an application in terms of subsection (1) may, within the time prescribed, be given to the officer in charge of the prison, who shall forward the application to the registrar of the High Court.

(3) A judge of the High Court may extend the time for giving notice of intention to appeal or of submitting an application for leave to appeal, notwithstanding that the time for giving such notice or submitting such application has already expired

(Section as inserted by s. 10 of Act 9 of 1997).

42 Detention as unconvicted prisoner

The time during which an appellant in custody is treated, pending the determination of his appeal to the High Court, as an unconvicted prisoner shall not, unless the High Court otherwise directs, count as part of any term of imprisonment under his sentence.

PART VIII

APPEALS FROM HIGH COURT

43 Right of appeal from High Court in civil cases

- (1) Subject to this section, an appeal in any civil case shall lie to the Supreme Court from any judgment of the High Court, whether in the exercise of its original or its appellate jurisdiction.
- (2) No appeal shall lie—
 - (a) from an order allowing an extension of time for appealing from a judgment;

- (b) from an order of a judge of the High Court in which he refuses an application for summary judgment and gives unconditional leave to defend an action; (c) from—
 - (i) an order of the High Court or any judge thereof made with the consent of the parties; or
 - (ii) an order as to costs only which by law is left to the discretion of the court, without the leave of the High Court or of the judge who made the order or, if that has been refused, without the leave of a judge of the Supreme Court;
 - (d) from an interlocutory order or interlocutory judgment made or given by a judge of the High Court, without the leave of that judge or, if that has been refused, without the leave of a judge of the Supreme Court, except in the following cases—
 - (i) where the liberty of the subject or the custody of minors is concerned;
 - (ii) where an interdict is granted or refused;
 - (iii) in the case of an order on a special case stated under any law relating to arbitration.
- (3) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of subsection (2).

44 Right of appeal from High Court in criminal cases

- (1) In this section—
 “judgment” does not include a decision of the High Court to reserve a question in terms of section *twentyfour* or *twenty-five*.
- (2) A person convicted on a criminal trial held by the High Court—
- (a) may appeal to the Supreme Court against his conviction on any ground of appeal which involves a question of law alone;
 - (b) may, with the leave of a judge of the High Court or, if a judge of the High Court refuses to grant leave, with the leave of a judge of the Supreme Court, appeal to the Supreme Court against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact:
 Provided that a person who appeals to the Supreme Court on a ground of appeal which involves a question of law alone may, without applying to a judge of the High Court, be granted leave to appeal by the Supreme Court should it appear to the Supreme Court on the hearing of the appeal that the ground of his appeal involves a question of mixed law and fact;
 - (c) may, if sentence of death or imprisonment for life has been passed upon him, appeal to the Supreme Court against his conviction or the sentence or both such conviction and sentence;
[Paragraph as amended by s. 21(1) of Act No. 8 of 1997]
 - (d) may, where the sentence to which he was liable on conviction was a sentence fixed by any law, appeal to the Supreme Court on the ground that the sentence passed upon him was not a sentence fixed by law in respect of the offence of which he was convicted;
 - (e) may, where the sentence to which he was liable on conviction was not a sentence fixed by law, and where sentence of death was not passed upon him, with the leave of a judge of the High Court or, if a judge of that court refuses to grant leave, with the leave of a judge of the Supreme Court, appeal to the Supreme Court against his sentence or order of forfeiture or other order following on conviction.
- (3) For the purposes of subsection (2), a ground of appeal that there was no or insufficient evidence to justify a conviction shall be deemed to be a ground of appeal which involves a question of fact alone.
- (4) Any person convicted and sentenced on a criminal trial by an inferior court or tribunal who is dissatisfied with the judgment of the High Court on an appeal against such conviction or sentence or with the judgment of the High Court on a review, other than a review pursuant to section 57 of the Magistrates Court Act [*Chapter 7:10*], shall have the same right of appeal to the Supreme Court as is conferred by subsection (2) on any person convicted on a trial held by the High Court.
- (5) Subject to rules of court, where a judge of the High Court has made an interlocutory order or given an interlocutory judgment in relation to any criminal proceedings before the High Court— (a) the person against whom the criminal proceedings are being or will be brought; or
 (b) the Attorney-General; may, with the leave of a judge of the High Court or, if a judge of that Court refuses to grant leave, with the leave of a judge of the Supreme Court, appeal to the Supreme Court against the interlocutory order or interlocutory judgment.
- (6) If the Attorney-General is dissatisfied with the judgment of the High Court in a criminal matter, whether in the exercise of its original or appellate jurisdiction or on review, including a review pursuant to section 57 of the Magistrates Court Act [*Chapter 7:10*]— (a) on a point of law; or
 (b) because it has acquitted or quashed the conviction of the person who was the accused in the case on a view of the facts which could not reasonably be entertained; he may, with the leave of a judge of the Supreme Court, appeal against such judgment to the Supreme Court:
 Provided that the person who was the accused in the case shall have the right, should he so desire, at his own expense to appear in person or to be legally represented or a judge of the Supreme Court may order that such person

be legally represented in which event the expenses of such representation shall be defrayed out of moneys appropriated for the purpose by Act of Parliament.

(7) If the Attorney-General considers that the sentence imposed by the High Court in any case, whether in the exercise of its original or appellate jurisdiction or on review, including a review pursuant to section 57 of the Magistrates Court Act [Chapter 7:10], is—

(a) incompetent in law, he may appeal to the Supreme Court against that sentence; or (b) inadequate—

- (i) in the light of the findings of fact relied on by the High Court and the nature of the charge; or
- (ii) because it was based on findings of fact for which there was no evidence or on a view of the facts which could not reasonably be entertained;

he may, with the leave of a judge of the Supreme Court, appeal to the Supreme Court against the sentence.

(8) A person whose application for leave to appeal in terms of subsection (2), (5) or (7) has been refused by a judge of the High Court or the Supreme Court, as the case may be, shall not apply to any other judge of the same court for leave to appeal.

(9) Where an offender has been discharged with a caution or reprimand such offender shall, notwithstanding anything to the contrary contained in any law, be deemed for the purposes of this section to have been convicted and sentenced.

45 Time for appealing

A person who intends to appeal under this Part from the High Court to the Supreme Court shall— (a) give notice of his intention to appeal; or

(b) submit an application for leave to appeal; to the registrar of the High Court within such period and in such manner and form as may be prescribed in rules of court.

46 Stay of execution of sentence pending appeal

The execution of a sentence imposed by the High Court, whether in the exercise of its original or appellate jurisdiction, shall not be suspended by reason of any appeal unless bail is granted by a judge: Provided that, in the case of a sentence of death—

- (a) the sentence shall not be executed until after the expiry of the time within which notice of intention to appeal may be given or an application for leave to appeal may be submitted;
- (b) if notice of intention to appeal is so given, the sentence shall not be executed until the appeal has been determined or abandoned or is deemed to have been abandoned.

PART IX

GENERAL

47 Sittings of High Court

The High Court shall sit at such places and at such times as may be prescribed in rules of court or directed by the Chief Justice.

48 Seal of High Court

(1) The High Court shall have and use as occasion may require a seal in a design approved from time to time by the President.

(2) The seal referred to in subsection (1) shall be delivered to and kept in the custody of the registrar of the High Court.

49 Proceedings in open court and in English

Save as is otherwise provided in rules of court or in any other enactment, all proceedings in the High Court shall be carried on in open court and the pleadings and proceedings thereof shall be in the English language.

50 Right of person to be present at hearing of his trial, action, application or appeal

(1) Every person, subject to subsection (2), shall be entitled to be present if he so desires at the hearing of his trial, action or appeal by the High Court or any application made by him to the High Court under this Act or rules of court.

(2) A person who is in custody, whether he is legally represented or not, shall not be entitled to be present at the hearing of his appeal by the High Court or any application made by him to the High Court in connection with his appeal without the leave of a judge of the High Court.

(3) The right of a person who is in custody to be present at the hearing of any matter referred to in subsection (2) shall be subject to his paying all expenses of and incidental to his transfer to and from the place where the High Court sits:

Provided that a judge of the High Court may direct that he be brought before the High Court in any case where, in the opinion of the judge, his presence is advisable, in which event such expenses shall be defrayed out of moneys appropriated for the purpose by Act of Parliament.

(4) A person who does not appear himself or who is not legally represented may present his case and argument to the High Court in writing, and any case or argument so presented shall be considered by the High Court.

(5) The power of the High Court in the exercise of its appellate jurisdiction to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

51 Right of audience

Subject to section *fifty*, rules of court and any other law, in all proceedings before the High Court the parties may appear in person or be represented and appear by any legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*].

52 Removal of cases from High Court

(1) Where the High Court is satisfied that a person who has brought any proceedings before it has no apparent means of paying the costs of the other party to the proceedings should he be ordered to pay those costs, the High Court may, on the application of the other party, order the person who has instituted the proceedings—

- (a) to give full security for the other party's costs to the satisfaction of the registrar of the High Court; or
- (b) to satisfy the High Court that he has a cause of action fit to be produced in the High Court.

(2) If a person against whom an order has been made in terms of subsection (1) fails to satisfy the High Court in accordance with that subsection, the High Court may order the proceedings to be stayed and additionally, or alternatively, if the proceedings are such that with the consent of the parties they could have been brought in a magistrates court, order that the proceedings be remitted for hearing before a magistrates court named in the order.

(3) The High Court may order that proceedings brought before it *in forma pauperis* be remitted for hearing before a magistrates court named in the order, where the proceedings are such that with the consent of the parties they could have been brought in a magistrates court.

(4) Where proceedings have been remitted to a magistrates court in terms of subsection (2) or (3) they shall be tried in that court as if they had originally been instituted therein:

Provided that the costs of the order in the High Court and all proceedings prior thereto shall be allowed according to the scale of costs for the time being in use in the High Court.

53 Costs in cases which could have been brought in magistrates court

If any proceedings which could have been brought in a magistrates court are instituted in the High Court—

- (a) the person who instituted the proceedings shall not recover any costs exceeding the amount of the costs which he would have recovered had he instituted the proceedings in a magistrates court; and
- (b) if judgment is given in favour of the person against whom the proceedings were brought, he shall be entitled to his costs, to be taxed as between legal practitioner and client, according to the scale of costs for the time being in use in the High Court; unless the High Court finds and records that the proceedings from their nature or circumstances were fit to be brought in the High Court:

Provided that where proceedings are brought in the High Court against an officer of a magistrates court on account of anything relating to his conduct in office, the question of costs shall be decided as if the proceedings could not have been brought in a magistrates court.

54 Administration of oaths

(1) The High Court or any judge thereof may require and administer any necessary oath.

(2) The oath to be administered to any person shall be administered in the form which most clearly conveys to him the meaning of the oath and which he considers to be binding on his conscience.

55 Officers of High Court

(1) There shall be—

- (a) a registrar of the High Court and such deputy registrars, assistant registrars and other officers of the High Court as may be required; and
- (b) for Zimbabwe, a Sheriff and such additional sheriffs and assistant sheriffs as may be required; whose offices shall be public offices and shall form part of the Public Service.

(2) A deputy registrar and assistant registrar shall be subject to the direction of the registrar of the High Court, and an additional sheriff and assistant sheriff shall be subject to the direction of the Sheriff.

(3) The Sheriff may, subject to the approval of the Minister, under his hand appoint deputies for whom he shall, during his continuance in that office, be responsible, and a deputy may appoint assistant deputies for whom he shall be responsible.

56 Rules of court

(1) Subject to subsection (4), the Chief Justice and the Judge President, after consultation with a committee appointed by the Chief Justice, may make rules of court for the regulation of all matters in relation to the proceedings of the High Court and in respect of any matter for which rules of court may in terms of this Act be made.

(2) Rules of court made in terms of subsection (1) may provide for the following matters—

- (a) the sittings of the High Court and of the judges of the High Court, whether sitting in court or in chambers;
- (b) the proof of any particular facts by affidavit in any proceedings or in any application in connection therewith at any stage of any proceedings, and the examination of witnesses by interrogatories or otherwise, and the allowing of the same in evidence;

- (c) the manner of determining the amount of security to be given in any case where security is required to be given and the form and manner in which such security may be given;
- (d) all matters relating to the manner and form of procuring and adducing evidence;
- (e) the manner of recording or noting of evidence and of the proceedings of the High Court;
- (f) the exclusion from the proceedings of the High Court of persons other than the parties thereto and their legal representatives and the circumstances in which such exclusion may take place;
- (g) the hearing and disposal by a judge of the High Court in chambers of any interlocutory application in connection with or for the purpose of any review or appeal;
- (h) the procedure, including the hearing of further evidence or the remittal of the matter, in connection with the hearing of an appeal from or review of a decision of any court or tribunal where an enactment provides for such appeal or review but does not expressly provide for the procedure in connection therewith;
- (i) the condonation of the late noting of an appeal or the bringing of a review out of time in special circumstances in any case where this is not expressly or by necessary implication prohibited by the enactment concerned;
- (j) the summary determination of any appeal or review which appears to the High Court to be frivolous or vexatious or to be brought for the purpose of delay;
- (k) the circumstances in which an appeal or review shall be deemed to have been abandoned;
- (l) the interviewing, privately, of the parties to a matrimonial matter, with their consent and in the presence of their legal advisers, by a judge of the High Court in chambers for the purpose of discussing with them a settlement of the matter or any other matter affecting the further conduct of the proceedings;
- (m) the private interview of children by a judge of the High Court in chambers, in any case which affects the custody of the children;
- (n) the manner of dealing with commissions *rogatoire*, letters of request and documents for service from foreign countries;
- (o) the authentication of documents executed outside Zimbabwe;
- (p) the appointment of commissioners to take bail and to examine witnesses, the payment of fees and allowances to such commissioners, the examination of witnesses *de bene esse* and the allowing of their testimony in evidence;
- (q) the process of the High Court and the issue and service thereof;
- (r) the particulars which, for the purpose of section 146 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall be deemed sufficient to set forth the offences specified in summonses and indictments;
- (s) the form of complaints, depositions, judgments, records, convictions, warrants, recognizances and other documents;
- (t) any matters relating to the costs of proceedings in the High Court and the taxation thereof;
- (u) the fees to be paid in respect of the service or execution of any process of the High Court, except subpoenas or warrants in criminal matters issued at the request of the State, or in respect of the summoning of persons to answer interrogatories;
- (v) the manner of procuring the attendance of witnesses and the tariff of fees and allowances which shall be paid to them;
- (w) the tariff of costs and expenses which may be allowed in respect of the service or execution of any process of the High Court, except subpoenas or warrants in criminal matters issued at the request of the State, or in respect of persons appearing to answer interrogatories;
- (x) the tariff of fees chargeable by legal practitioners in respect of any matters relating to the High Court;
- (y) the conduct of the Sheriff, the registrar of the High Court and other officers of the High Court and the hours during which the office of a registrar of the High Court shall be open for the transaction of business;
- (z) the conduct and dress of persons appearing before and attending hearings of the High Court;
- (aa) the time within which any requirement of rules of court is to be complied with and the extension of such time;
- (bb) giving full effect to the jurisdiction conferred upon the High Court by any enactment;
- (cc) generally, any matter in respect of which, in the opinion of the Chief Justice and the Judge President, it is necessary or desirable to make provision in order to ensure or facilitate the proper dispatch and conduct of the business of the High Court and, in relation to criminal cases, for carrying the criminal law, practice and procedure into effect.

(3) In any case not covered by rules of court made in terms of paragraph (h) of subsection (2), the High Court or judge of the High Court, as the case may be, shall act in such manner and on such principles as it or he thinks best fitted to do substantial justice and to effect and carry out the objects and provisions of the enactment concerned.

(4) Rules of court shall not have effect until they have been approved by the Minister and published in a statutory instrument.

57 Regulatory power to fix fees

The Minister may make regulations providing for the fees which shall be payable in respect of instruments, services or other matters received, issued, provided or otherwise dealt with by the registrar or Sheriff or any other officer to the High Court in the course of his duties or in the office of such officer.