

SPECIAL COURTS FOR BLACKS ABOLITION ACT 34 OF 1986

[ASSENTED TO 9 APRIL 1986]

[DATE OF COMMENCEMENT: 1 AUGUST 1986]

(English text signed by the State President)

as amended by
Maintenance Act 99 of 1998

ACT

To provide for the abolition of special courts for Blacks and for matters connected therewith.

1 Abolition of certain courts

(1) With effect from the date of commencement of this Act the Commissioners' Courts constituted under section 10 of the Black Administration Act, 1927 (Act 38 of 1927), and the Appeal Courts for Commissioners' Courts constituted under section 13 of that Act, are abolished, and the powers conferred on a Commissioner in terms of section 9 of that Act shall lapse.

(2) An action pending in a Commissioner's Court or an Appeal Court for Commissioners' Courts on the date referred to in subsection (1) shall be dealt with as if that subsection had not been introduced.

2 Repeal and amendment of certain provisions of law

The provisions of law referred to in the Schedule are hereby repealed or amended as set out in the Schedule.

3 Short title and commencement

This Act shall be called the Special Courts for Blacks Abolition Act, 1986, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule

[Schedule amended by s. 45 (1) of Act 99 of 1998 .]

A. Repeal or amendment of provisions of the Black Administration Act, 1927 (Act 38 of 1927), as follows-

- 1 Repeal of sections 9, 10, 13, 14, 15, 16, 17, 18, 19 and 21.
- 2 Amendment of section 11 by the deletion of subsections (1) and (2).
- 3 Amendment of section 12-

(a) by the substitution for subsection (4) of the following subsection:

'(4) Any party to a suit in which a Black chief, headman or chief's deputy has given judgment may appeal therefrom to any magistrate's court which would have had jurisdiction had the proceedings in the first instance been instituted in a magistrate's court, and if the appellant has noted his appeal in the manner and within the period prescribed by regulation under subsection (6), the execution of the judgment shall be suspended until the appeal has been decided (if it was prosecuted at the time and in the manner so prescribed) or until the expiration of the last-mentioned period if the appeal was not prosecuted within that period, or until the appeal has been withdrawn or has lapsed: Provided that no such appeal shall lie in any case where the claim or the value of the matter in dispute is less than R10, unless the court to which the appellant proposes to appeal, has certified after summary enquiry that the issue involves an important principle of law'; and

(b) by the deletion of subsection (5).

4 Amendment of section 20-

(a) by the substitution for subsection (5) of the following subsection:

'(5) (a) If a Black chief, headman or chief's deputy fails to recover from a person any fine imposed upon him in terms of subsection (2), or any portion of such fine, he may arrest such person or cause him to be arrested by his messengers, and shall within 48 hours after his arrest bring or cause him to be brought before the magistrate's court which has jurisdiction in the district in which the trial took place.

(b) A magistrate before whom any person is brought under paragraph (a) may, upon being satisfied that the fine was duly and lawfully imposed and is still unpaid either wholly or in part, order such person to pay the fine or the unpaid portion thereof forthwith and, if such person fails to comply forthwith with such order, sentence him to imprisonment for a period not exceeding three months.

(c) The magistrate shall issue in respect of any person sentenced to imprisonment in terms of this subsection a warrant for his detention in a prison.';

(b) by the substitution for subsection (6) of the following subsection:

'(6) Any person who has been convicted by a Black chief, headman or chief's deputy under this section may in the manner and within the period prescribed by regulation made under subsection (9), appeal against his conviction and against any sentence which may have been imposed upon him, to the magistrate's court which has jurisdiction in the district in which the trial in question took place.'; and

(c) by the deletion of subsections (7) and (8).

5 Amendment of section 23-

(a) by the deletion of subsection (4);

(b) by the substitution for subsection (5) of the following subsection:

'(5) Any claim or dispute in regard to the administration or distribution of any estate of a deceased Black shall be decided in a court of competent jurisdiction.'; and

(c) by the deletion of paragraph (d) of subsection (10).

B. Amendment of section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act 9 of 1929)-

(a) by the substitution for subsection (2) of the following subsection:

'(2) The area of jurisdiction of any court established under subsection (1) shall be determined by the Minister of Justice by notice in the *Gazette*.';

(b) by the substitution for subsection (3) of the following subsection:

'(3) (a) Every such court shall be a court of law and shall consist of so many divisions as the Minister of Justice may from time to time determine.

(b) A division of the court shall consist of a president who shall be appointed by the Minister of Justice, at which appointment the provisions of Chapter II of the Magistrates' Courts Act, 1944 (Act 32 of 1944), are *mutatis mutandis* applicable in so far as those provisions relate to a magistrate of a regional division, and sittings of two or more divisions may be held simultaneously.

(c) The president of a division of the court may in his discretion summon to his assistance two persons to sit and act with him as assessors in an advisory capacity on questions of fact.'; and

(c) by the substitution for subsection (4) of the following subsection:

'(4) (a) The State President may from time to time make rules for the courts established by him under this section, regulating-

- (i) the appointment and functions of the officers of the courts;
- (ii) the records to be kept;
- (iii) the practice and procedure in the courts;
- (iv) the attendance of witnesses and the allowances to be paid to them;
- (v) the appointment of assessors and the allowances to be paid to them;

- (vi) the fees which may be charged by advocates and attorneys, costs as between party and party and as between attorney and client, and the taxation of costs;
- (vii) the tariff of fees to be imposed and collected by officers of the courts;
- (viii) the noting and continuation of appeals;
- (ix) the appearance in the courts of parties or persons on their behalf;
- (x) the appointment of the times and places for the holding of the courts;
- (xi) generally, all such other matters relating to the courts as the State President may deem necessary for the purposes of this section.

(b) The rules which the State President has made under the repealed section 13 (5) of the Black Administration Act, 1927 (Act 38 of 1927), and the substituted section 10 (4) of the Black Administration Act, 1927, Amendment Act, 1929 (Act 9 of 1929), for Divorce Courts, shall remain in force until they are repealed or amended under this subsection.'

C. Amendment of the Magistrates' Courts Act, 1944 (Act 32 of 1944)-

- (a) by the substitution in section 1 for the definition of 'Minister' of the following definition:

', in section 15 (2) and (4) and in section 113, means the Minister of Justice; in any other provision of this Act, "Minister" in relation to any matter to be dealt with in a regional division, district or subdistrict administered under the control of the Minister of Justice, and in relation to the creation or abolition of any such regional division, district or subdistrict, means that Minister or any other Minister of State acting on his behalf;';

- (b) by the deletion of subsection (2) of section 2;
- (c) by the deletion of subsections (1A) and (5) of section 9;
- (d) by the insertion after section 29 of the following section:

'29A Jurisdiction in respect of appeals against decisions of Black chiefs, headmen and chiefs' deputies

(1) If a party appeals to a magistrate's court in terms of the provisions of section 12 (4) of the Black Administration Act, 1927 (Act 38 of 1927), the said court may confirm, alter or set aside the judgment after hearing such evidence as may be tendered by the parties to the dispute, or as may be deemed desirable by the court.

(2) A confirmation, alteration or setting aside in terms of subsection (1), shall be deemed to be a decision of a magistrate's court for the purposes of the provisions of Chapter XI.'; and

- (e) by the insertion after section 54 of the following section:

'54A Application of Black law

(1) Notwithstanding the provisions of this Act or any other law a court may in all suits or proceedings between Blacks, including the hearing of an appeal in terms of the provisions of section 29 of this Act or section 309 of the Criminal Procedure Act, 1977 (Act 51 of 1977), involving questions of customs followed by Blacks, take judicial notice thereof and decide such questions according to the Black law applying to such customs except in so far as it has been repealed or modified: Provided that such Black law shall not be opposed to the principles of public policy or natural justice: Provided further that it shall not be lawful for any court to declare that the custom of lobola or bogadi or other similar custom is repugnant to such principles.

(2) In any suit or proceedings between Blacks who do not belong to the same tribe, the court shall not, in the absence of any agreement between them with regard to the particular system of Black law to be applied in such suit or proceedings, apply any system of Black law other than that which is in operation at the place where the defendant or

respondent resides or carries on business or is employed, or if two or more different systems are in operation at that place, not being within a tribal area, the court shall not apply any such system unless it is the law of the tribe (if any) to which the defendant or respondent belongs.'

- D. Amendment of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), by the substitution for section 6C of the following section:

'6C Competent judicial authority concerning hearing of certain cases

Any contravention by a Black of a provision of a regulation relating to a matter contemplated in section 6A or 6B shall be heard by a magistrate, and any civil action founded on an act or omission arising from such a provision may be heard also in a magistrate's court, irrespective of who the parties may be and irrespective of whether or not the matter is ordinarily beyond the jurisdiction of such a court: Provided that a party who institutes such a civil action in a court other than a magistrate's court, may recover costs only in accordance with the scale which is applicable in a magistrate's court.'

- E. Repeal or amendment of provisions of the Children's Act, 1960 (Act 33 of 1960), as follows:-

1 Amendment of section 1-

- (a) by the deletion of the definition of 'Black children's court';
- (b) by the substitution for the definition of 'children's court' of the following definition:

'means a children's court mentioned in section 4;';

- (c) by the deletion of the definition of 'Commissioner', 'Additional Commissioner' and 'Assistant Commissioner';
- (d) by the deletion of the definition of 'Commissioner's court'; and
- (e) by the deletion of the definition of 'magistrate's court'.

2 Amendment of section 4 by the substitution for subsection (1) of the following subsection:

'(1) The Minister of Justice may establish a children's court for any district or for any area comprising two or more districts or portions of districts.'

3 Repeal of sections 5 and 6.

4 Amendment of section 7 by the substitution for subsection (6) of the following subsection:

'(6) Subject to the laws governing the public service the Minister of Justice may for every children's court appoint an officer to be styled a children's court assistant (or two or more such officers), who shall at any proceedings of the children's court to which he is attached adduce any available evidence relevant to those proceedings and who may at such proceedings cross-examine any witness giving evidence thereat whom he did not call, and who shall generally assist the said court in performing its functions.'

5 Substitution for section 9 of the following section:

'9 Certain provisions of Act 32 of 1944 to apply to children's courts

(1) Save as is expressly provided in this Act or in any other law, the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and of the rules made thereunder shall apply *mutatis mutandis* to children's courts in so far as such provisions relate to-

- (i) the appointment and functions of officers;
- (ii) the issue and service of process;
- (iii) the appearance in court of advocates, attorneys and law agents;
- (iv) the conduct of proceedings;
- (v) the execution of judgments; and
- (vi) the imposition of penalties for non-compliance with orders of court, for obstruction of execution of judgements, and for contempt of court,

and in so far as no other provision has been made under section 92 (1) (i) for

any matter mentioned in this subsection other than in subparagraph (iii).

(2) Such records of the proceedings of a children's court shall be kept and shall be accessible to such persons upon such conditions as to payment of fees and otherwise as may be prescribed.

(3) The contents of a statement or a report of a probation officer or of an officer of an approved agency which has been lodged with a children's court, shall not be disclosed for the purposes of any civil action except by order of any court to a court where such disclosure would be in the interest of any particular person.'

F

[Item F repealed by s. 45 (1) of Act 99 of 1998 .]

G. Amendment of the Black Labour Act, 1964 (Act 67 of 1964)-

(a) by the substitution in section 12 for paragraph (c) of subsection (2) of the following paragraph:

'(c) For the purposes of any such enquiry the Commissioner may exercise the same powers with regard to the summoning of witnesses and the taking of evidence as are conferred upon a court by law in criminal cases.';

(b) by the deletion of subsection (2) of section 25; and

(c) by the substitution for subsection (2) of section 31 of the following subsection:

'(2) Every contravention of or failure to comply with the provisions of this Act may be tried and the maximum penalties may be imposed by a magistrate's court.'

H. Amendment of section 14 of the National States Constitution Act, 1971 (Act 21 of 1971), by the substitution for subsection (2) of the following subsection:

'(2) The State President may by proclamation in the *Gazette* provide that any magistrate's court established in terms of the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), in any portion of an area for which a legislative assembly has been established, shall with effect from the date mentioned in such proclamation be transferred to the Government of the area concerned.'

I. Amendment of section 1 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971), by the substitution for the definition of 'magistrate' of the following definition:

"magistrate" includes an additional magistrate and assistant magistrate;'

J. Amendment of section 8 of the Contributions in respect of Black Labour Act, 1972 (Act 29 of 1972), by the substitution for subsection (3) of the following subsection:

'(3) A magistrate's court shall have jurisdiction to impose any penalty or make any order provided for by this section.'

K. Amendment of section 1 of the Mental Health Act, 1973 (Act 18 of 1973), by the substitution for the definition of 'magistrate' of the following definition:

"magistrate" includes an additional magistrate and an assistant magistrate;'

L. Amendment of the Criminal Procedure Act, 1977 (Act 51 of 1977), by the insertion after section 309 of the following section:

'309A Appeal against conviction and sentence of chiefs, headmen and chiefs' deputies

(1) In hearing any appeal to him under the provisions of section 20 of the Black Administration Act, 1927 (Act 38 of 1927), the magistrate shall hear and record such available evidence as may be relevant to any question in issue and shall thereupon either-

(a) confirm or vary the conviction and-

(i) confirm the sentence imposed by the chief, headman or chief's deputy and order that the said sentence be satisfied forthwith; or

(ii) set aside the sentence imposed by the chief, headman or chief's

deputy and in lieu thereof impose such other sentence as in his opinion ought to have been imposed; and

- (iii) impose a sentence of imprisonment for a period not exceeding three months on default of compliance forthwith with the order or sentence made or imposed under subparagraph (i) or (ii); or
- (iv) set aside the sentence imposed by the chief, headman or chief's deputy and in lieu thereof impose a sentence of imprisonment for a period not exceeding three months without the option of a fine;

or-

(b) uphold the appeal and set aside the conviction and sentence.

(2) The magistrate shall issue in respect of any person who has been sentenced to imprisonment under subsection (1), a warrant for his detention in a prison.'

- M. Repeal of section 12 of the Community Councils Act, 1977 (Act 125 of 1977).
- N. Repeal or amendment of provisions of the Black Local Authorities Act, 1982 (Act 102 of 1982), as follows: -

- 1 Amendment of section 1 by the deletion of the definition of 'commissioner'.
- 2 Repeal of section 53.

- O. Amendment of provisions of the Child Care Act, 1983 (Act 74 of 1983), as follows-

- 1 Amendment of section 1-

(a) by the substitution for the definition of 'children's court' of the following definition:

"children's court" means a children's court mentioned in section 5;';

(b) by the deletion of the definition of 'Commissioner's court';

(c) by the substitution for the definition of 'district' of the following definition:

"district" means the area subject to the jurisdiction of any magistrate's court;';

(d) by the substitution for the definition of 'magistrate' of the following definition:

"magistrate" includes an additional magistrate and an assistant magistrate;'; and

(e) by the deletion of the definition of 'magistrate's court'.

- 2 Amendment of section 5 by the deletion of subsections (2), (3) and (4).
- 3 Amendment of section 6 by the deletion of subsections (5) and (6).
- 4 Substitution for section 9 of the following section:

'9 Application of certain provisions of Act 32 of 1944

(1) Save as is otherwise provided in this Act or in any other law, the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and of the rules made thereunder shall apply *mutatis mutandis* to children's courts, in so far as those provisions relate to-

- (i) the appointment and functions of officers;
- (ii) the issue and service of process;
- (iii) the appearance in court of advocates and attorneys;
- (iv) the conduct of proceedings;
- (v) the execution of judgments; and
- (vi) the imposition of penalties for non-compliance with orders of court, for obstruction of execution of judgments and for contempt of court,

and in so far as no other provision has been made under section 60 (1) (g) of this Act for any matter mentioned in this subsection other than in paragraph (iii).

(2) Such records of the proceedings of a children's court shall be kept and shall be accessible to such persons upon such conditions as to payment of fees and otherwise as may be prescribed.

(3) The contents of a statement or a report of a social worker which has been lodged with a children's court, shall not be disclosed for the purposes of

any civil action except by order of any court to a court where such disclosure would be in the interest of any child mentioned in the report.'

P. Amendment of the Black Communities Development Act, 1984 (Act 4 of 1984)-

(a) by the substitution for subsection (2) of section 45 of the following subsection:

'(2) Such warrant shall be executed in like manner as if it had been issued pursuant to a judgment of a magistrate's court.'; and

(b) by the substitution for section 64 of the following section:

'64 Judicial authority concerning hearing of certain cases

Any contravention of a provision of this Act by a Black person shall be heard by a magistrate, and any civil action founded on an act or omission arising from such a provision may be heard also in a magistrate's court, irrespective of who the parties may be and irrespective of whether or not the matter would otherwise be beyond the jurisdiction of such a court: Provided that a party who institutes such a civil action in a court other than the magistrate's court, may recover costs only in accordance with the scale which is applicable in a magistrate's court.'