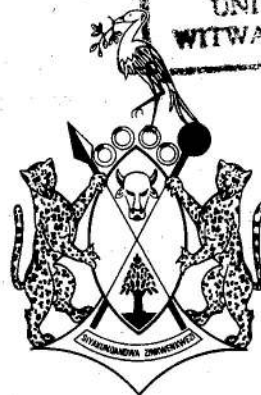


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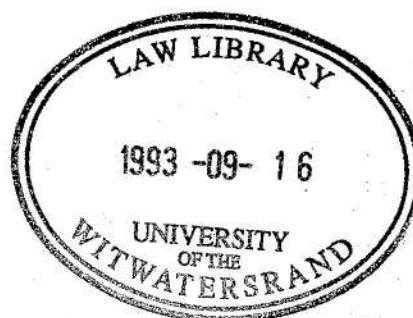
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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 65 OF 1993

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

**SUPREME COURT AMENDEMENT DECREE, 1993
Decree No. 14 of 1993**



COUNCIL OF STATE — REPUBLIC OF CISKEI

SUPREME COURT AMENDMENT DECREE, 1993

DECREE

To amend the Supreme Court Decree, 1990.

[English text signed by the Chairman of the Council of State. Assented to on 6 August 1993]

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Amendment of section 1 of Decree 43 of 1990. — Section 1 of the Supreme Court Decree, 1990 (hereinafter referred to as the principal decree) is hereby amended -

- (a) by the deletion of the definition of "Councillor"; and
- (b) by the insertion after the definition of "lower court" of the following definition:
" 'Minister' means the Minister of Justice;".

2. Amendment of section 4 of Decree 43 of 1990. — Section 4 of the principal decree is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Notwithstanding the provisions of subsection (1) the Chief Justice may, if he deems it expedient, direct that a court of a division sit at any other place in the Republic."

3. Amendment of section 5 of Decree 43 of 1990. — Section 5 of the principal decree is hereby amended -

- (a) by the substitution for subsection (3) of the following subsection:

"(3) The Chairman of the Council of State may appoint to act temporarily as a judge any person who qualifies for appointment under subsection (2) or any person who would so qualify but for his age: Provided that -

- (a) the Minister may appoint any such person to act as a judge for a period not exceeding one month; and
- (b) no person other than a person who complies with the provisions of subsection (2)(a) shall be appointed to act as Chief Justice."; and

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

"(5) The Chief Justice or a judge of the Supreme Court shall before exercising any function or duty of his office make and subscribe, before another judge of the Supreme Court or if no such judge is available before a person designated by the Chairman of the Council of State, an oath or affirmation substantially in the following form:

"I,
(full name)

do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a judge of the Supreme Court administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the law and customs of the Republic of Ciskei."

4. Substitution of section 6 of Decree 43 of 1990. — The following section is hereby substituted for section 6 of the principal decree:

"6. Judge not to hold any other office of profit. — No judge of the Supreme Court shall without the consent of the Minister accept, hold or perform any other office of profit or, in respect of any service, receive any fees, emoluments or remuneration other than the salary and allowances payable to him in his capacity as such a judge."

SUPREME COURT AMENDMENT DECREE, 1993

5. Amendment of section 13 of Decree 43 of 1990. — Section 13 of the principal decree is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) In any civil proceedings a court of the general division may, with the consent of the parties, refer -

- (a) any matter which requires extensive examination of documents or scientific technical or local investigation which in the opinion of the court cannot be conveniently conducted by it, or
- (b) any matter which relates wholly or in part to accounts, or
- (c) any other matter arising in such proceedings,

to a referee to be appointed by the court for enquiry and report, and the court may adopt the report of such referee, either wholly or in part and either with or without modification, or may remit such report for further enquiry or report or consideration by such referee or may make such other order in regard thereto as may be necessary or desirable.”;

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

“(5)(a) Any person summoned to appear and give evidence or to produce any document or thing before a referee, who without sufficient cause fails to attend at the time and place specified or to remain in attendance until the conclusion of the enquiry or until he is excused by the referee from further attendance or refuses to be sworn or having made affirmation, fails to answer fully and satisfactorily any question put to him or fails to produce any document or thing in his possession or custody or under his control which he was summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months.

(b) Any person, who after having been sworn or having made affirmation gives false evidence before a referee at an enquiry, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may be imposed for perjury.”.

6. Substitution of section 18 of Decree 43 of 1990. — The following section is hereby substituted for section 18 of the principal decree:

“18. Witnesses in civil proceedings. — (1) Any party to civil proceedings before a court of the general division in which the attendance of witnesses or the production of any document or thing is required may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of court.

(2) Whenever any person subpoenaed to attend civil proceedings as a witness or to produce any document or thing fails without reasonable excuse to obey the subpoena and it appears from the return of the proper officer or from evidence given under oath that the subpoena was served upon the person to whom it is directed and that his reasonable expenses calculated in accordance with the tariff framed under section 35(1) have been paid or offered to him or that he is evading service or, if any person who has attended in obedience to a subpoena fails to remain in attendance, the court in which the said proceedings are conducted may issue a warrant directing that he be arrested and brought before the court at a time and place stated in the warrant as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder before the court which issued it or in any prison 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 or to produce any document or thing at the said proceedings: Provided that the court may release him on a recognizance with or without sureties for his appearance to give evidence or to produce any document or thing as required and for his appearance at the enquiry referred to in subsection (4).

SUPREME COURT AMENDMENT DECREE, 1993

- (4) The court may in a summary manner enquire into such person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance and may, unless it is proved that such person has a reasonable excuse for such evasion or failure, sentence him to a fine not exceeding R500 or to imprisonment for a period not exceeding three months.
- (5) Any sentence imposed by the court under 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 such proceedings or to produce any document or thing or for his appearance at any enquiry referred to in subsection (4) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to attend proceedings or to appear at such enquiry."

7. Amendment of section 19 of Decree 43 of 1990. — Section 19 of the principal decree is hereby amended in subsection (5) by the substitution for paragraph (c) of the following:

"(c) that the compelling of his attendance would be an abuse of the process of the court,

the court may, notwithstanding anything in this section contained, after reasonable notice by the registrar to the party who issued out the subpoena and after hearing that party in chambers if he appears, make an order cancelling such subpoena."

8. Substitution of section 21 of Decree 43 of 1990. — The following section is hereby substituted for section 21 of the principal decree:

"21. Manner of dealing with commissions rogatoire, letters of request or documents for service originating in foreign country. — (1) Whenever a commission rogatoire or letter of request received from any state or territory or court outside the Republic is transmitted to the registrar by the Director-General, together with a translation in an official language if the original is in any other language and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to the court by the agents (if any) of the parties to the action or matter, the registrar shall submit the same to a judge in chambers in order to give effect to such commission rogatoire or letter of request.

(2) Whenever a request for the service on a person in the Republic of any civil process or citation received from a state, territory or court outside the Republic is transmitted to the registrar by the Director-General, together with a translation in an official language if the original is in any other language and an intimation that the Minister considers it desirable that effect should be given thereto, the registrar shall cause service of the said process or citation to be effected in accordance with the rules of court by the sheriff or a deputy-sheriff or any person specially appointed thereto by a judge.

(3) The registrar shall, after effect has been given to any such commission rogatoire, letter of request, process or citation, return all relevant documents duly certified in accordance with the rules of court to the Director-General for onward transmission.

(4) Except where the Minister otherwise directs, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service such as is referred to in this section has been performed."

9. Substitution of section 22 of Decree 43 of 1990. — The following section is hereby substituted for section 22 of the principal decree:

"22. Officers of the Supreme Court and their powers. — (1)(a) The Minister may, subject otherwise to the laws governing the public service, appoint for the Supreme Court or any division thereof a registrar, assistant registrar, sheriff, additional sheriff, deputy-sheriffs and other officers whenever they may be required for the administration of justice or the execution of the powers and authorities of such court or division: Provided that, if the duties to be performed by any deputy-sheriff are in the opinion of the Minister insufficient to keep at least one person fully occupied throughout the year and no officer in the public service is in his opinion able to perform the duties of such deputy-sheriff in addition to his other duties or if,

SUPREME COURT AMENDMENT DECREE, 1993

in the opinion of the Minister, the duties of such deputy-sheriff can be performed satisfactorily and at less cost to the State by a person who is not an officer in the public service, he may appoint any person as such deputy-sheriff at such remuneration and on such conditions as he may determine.

(b) Whenever by reason of absence or incapacity a registrar, assistant registrar or sheriff is unable to carry out the functions of his office or his office becomes vacant, the Minister may authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(c) An additional sheriff may, subject to the directions of the sheriff, exercise any power and perform any function or duty of the sheriff.

(2) Any officer in the public service appointed under subsection (1) may hold simultaneously more than one of the offices mentioned in that subsection.

(3) A deputy-sheriff who is not an officer in the public service may with the approval of the Minister appoint one or more assistants for whom he shall be responsible and any such assistant may, subject to the directions of the deputy-sheriff, exercise any power and perform any function or duty of such deputy-sheriff.

(4) Any person appointed as an assistant to the deputy-sheriff who is an officer in the public service may, subject to the directions of such deputy-sheriff, exercise any power and perform any function or duty of that deputy-sheriff.

(5) A deputy-sheriff who is not an officer of the public service shall as soon as possible after his appointment furnish security to the satisfaction of the sheriff for the due and faithful performance of his functions and, if he fails to furnish such security within a period fixed by the sheriff, his appointment shall lapse at the expiration of the said period.

(6) Whenever in any matter objection is made to the service or execution of process by the sheriff or a deputy-sheriff by reason of the interest of such sheriff or deputy-sheriff in such matter or of the relationship of such sheriff or deputy-sheriff to a party to such matter or of any other good cause of challenge, or whenever by reason of illness or absence or for any other reason it is necessary to appoint any person to perform temporarily any of the duties of a deputy-sheriff, the Minister may appoint an acting deputy-sheriff.

(7) The Minister may delegate to an officer in his department any of the powers vested in him by this section."

10. Substitution of section 23 of Decree 43 of 1990. — The following section is hereby substituted for section 23 of the principal decree:

"23. Keeping of trust account and books of account by deputy-sheriff. —

(1) Every deputy-sheriff who is not an officer in the public service shall open a separate trust account, which shall contain a reference to this section, with a registered deposit-taking institution and shall deposit therein all money received or held by him in his capacity as deputy-sheriff on account of any other person.

(2) Notwithstanding anything to the contrary in any law or the common law contained, no amount standing to the credit of an account referred to in subsection (1) shall be regarded as being part of the assets of the deputy-sheriff concerned and such amount shall not be attached on behalf of any creditor of such deputy-sheriff or upon his death or insolvency form part of his deceased or insolvent estate.

(3) Every deputy-sheriff shall keep proper books of account containing particulars and information regarding all moneys received, held or paid by him for or on account of any person in his capacity as deputy-sheriff.

(4) Any deputy-sheriff shall, when requested thereto by the Minister, the sheriff, a magistrate or an officer authorised thereto in writing by the Minister, without delay make the books of account referred to in subsection (3) available to the Minister or the said sheriff, magistrate or officer for examination.

(5) Any deposit-taking institution at which a deputy-sheriff keeps a trust account shall, at the request of the Minister, the sheriff, a magistrate or an officer

SUPREME COURT AMENDMENT DECREE, 1993

authorised in writing by the Minister, furnish particulars of deposits into, withdrawals from and the balance of such account, as at any particular time mentioned in the request, to the person so requesting the deposit-taking institution.

(6)(a) If any deputy-sheriff dies, vacates his office or is dismissed from his office, all process and other documents which were in his possession, including records which will be required to pay the claims of persons whose money has been deposited in the account referred to in subsection (1), shall be taken possession of by the sheriff and furnished to the deputy-sheriff's successor who shall pay such claims from the moneys in the said trust account.

(b) If a deputy-sheriff is suspended from office and profit by the sheriff in terms of section 24 and the sheriff appoints someone referred to in that section to act as deputy-sheriff, such appointed person shall be furnished by the sheriff with all the process and other documents referred to in paragraph (a) and shall take over the control and administration of the trust account until the suspension is set aside or the suspended deputy-sheriff is dismissed from his office.

(7) A successor referred to in subsection (6)(a) and any person referred to in subsection (6)(b) shall be entitled to the moneys, costs and expenses prescribed in the rules of court in respect of the payment of claims from, and the performance of any other act regarding the administration of, the trust account of the previous deputy-sheriff concerned."

11. Amendment of section 24 of Decree No. 43 of 1990. — Section 24 of the principal decree is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The sheriff shall forthwith report to the Director-General for the information of the Minister any action which he has taken under this section and the Minister may after investigation set aside the suspension or may confirm it and may if he deems fit dismiss from his office the deputy-sheriff who has been so suspended."

12. Amendment of section 25 of Decree 43 of 1990. — Section 25 of the principal decree is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The return of the sheriff or a deputy-sheriff or his assistant of what has been done upon any process of the court shall be *prima facie* evidence of the matters stated therein."

13. Amendment of section 26 of Decree 43 of 1990. — Section 26 of the principal decree is hereby amended by the substitution for paragraph (g) of the following:

"(g) Such arms and ammunition as the debtor is in terms of any law, regulation or disciplinary order required to have in his possession as part of his equipment:

Provided that the court may, in exceptional circumstances and on such conditions as it may determine, increase the amount specified in paragraph (b), (c), (d), (e) or (f) to not more than double the amount mentioned therein."

14. Amendment of section 27 of Decree 43 of 1990. — Section 27 of the principal decree is hereby amended by the substitution for that part of the section following paragraph (d) of the following:

"shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine."

15. Amendment of section 35 of Decree 43 of 1990. — Section 35 of the principal decree is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may by notice in the *Gazette* and with the concurrence of the Minister of Finance and Economic Development prescribe a tariff of allowances which shall be payable to a witness in civil proceedings and to any person who is to accompany any such witness on account of his advanced or tender age or infirmity."

SUPREME COURT AMENDMENT DECREE, 1993

16. Amendment of Schedule of Decree 43 of 1990. — The Schedule of the decree is hereby amended by the addition of the following:

"Act No. 5 of 1987 Supreme Court Amendment Act, 1987 The Whole".

17. Short title and commencement. — This decree shall be called the Supreme Court Amendment Decree, 1993.

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