



On date to be published 132

1/11/2011 - 6677/4

**Supplement No. 1
to Gazette No. 57 of 29th July, 2011**

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ACT NO. 16 OF 2011

ADMINISTRATION OF THE JUDICIARY ACT, 2011

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ACT NO. 16 OF 2011

ADMINISTRATION OF THE JUDICIARY ACT, 2011

An Act to provide for an autonomous and accountable administration of the judiciary, a judiciary service, a budget of the courts and incidental matters.

Enacted by the Parliament of Lesotho.

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Administration of the Judiciary Act, 2011 and shall come into operation on the date as the Minister may, by notice published in the Gazette, determine.

Object of the Act

2. The object of the Act is to provide for an autonomous and accountable administration of the judiciary, the judiciary service, a budget of the courts and incidental matters.

Interpretation

3. In this Act, unless the context otherwise requires -

“Commission” means the Constitution of Lesotho;

“Constitution” means the Constitution of Lesotho;

“Court” does not include a court-martial or tribunal;

“judiciary” means the Court of Appeal, the High Court, the Labour Appeal Court, the Labour Court, the Magistrate Courts, the Judicial Commissioner’s Court, the Central and Local Courts and any other Court established by an Act of Parliament, excluding those established by a disciplinary law;

"judicial officer" or "member of the judiciary" means -

- (a) the President of the Court of Appeal, the Chief Justice, a Judge of the Court of Appeal or of the High Court;
- (b) a Judge of the Labour Appeal Court, the President and the Deputy President of the Labour Court;
- (c) the Registrar, Deputy Registrars and Assistant Registrars of the High Court, of the Court of Appeal, of the Labour Court and of the Labour Appeal Court;
- (d) a Chief Magistrate, Magistrate, Judicial Commissioner, President of a Central or Local Court; or
- (e) any officer having power to hold or exercise the judicial power of any court.

"Master" means the Master of the High Court referred to in section 13;

"member of staff of the judiciary" means -

- (a) a Judges's Clerk;
- (b) the Master of High Court ;
- (c) the Judicial Administrator;
- (d) a Clerk of Court in a Subordinate Court, Judicial Commissioner's Court, Central or Local Court;
- (e) any other person appointed as a member of staff of the Judiciary.

"Minister" means the Minister responsible for justice.

PART II – ADMINISTRATION OF THE JUDICIARY

Establishment of the judicial service

4. There is hereby established a judicial service which shall consist of judicial officers and members of the staff of the judicial.

The Registrar

5. The office of the Registrar of the High Court established under section 5 of the High Court Act 1978¹ shall continue in existence:

Provided that a person shall not be appointed as a Registrar unless the person holds one of the professional qualifications stipulated under the Legal Practitioners Act 1983² qualifying a person to be admitted as a legal practitioner in Lesotho and has held one or other of those qualifications for a period of not less than 5 years.

Functions of the Registrar

6. (1) In addition to his powers and functions in other laws, the Registrar shall be the chief administrator of the judiciary and shall be assisted by the Deputy Registrar and the Judicial Administrator who shall be appointed by the Commission.

(2) Subject to section 14, the Registrar shall exercise administrative and day-to-day control over the members of staff of the judiciary.

(3) In relation to the funds and expenditure of the judiciary, the Registrar shall be the chief accounting officer in accordance with the Finance Act 1988³ and any other financial laws.

(4) On matters of policy implementation, the Registrar shall liaise and coordinate with the Principal Secretaries and heads of departments.

(5) Subject to subsection (3), in carrying out functions under this or any other law, the Registrar shall not be subject to the direction or control of any person, institution or authority except President of the Court of Appeal in matters concerning the High Court and other courts.

Deputy Registrar

7. (1) There shall be a Deputy Register who shall be appointed by the Commission.

(2) A person shall not be appointed Deputy Registrar unless the person holds one of the professional qualifications stipulated under the Legal Practitioners Act 1983 qualifying a person to be admitted as a legal practitioner in Lesotho.

Functions of the Deputy Registrar

8. (1) The Deputy Registrar shall:
- (a) be primarily responsible for the day-to-day administration and case management of the courts;
 - (b) promote an efficient case management system in the courts;
 - (c) coordinate with the legal practitioners in all court proceedings;
 - (d) promote time management in the court system;
 - (e) promote courteous, efficient and expeditious delivery of services to the general public;
 - (f) promote an accountable, accessible and a responsive judicial service;
 - (g) ensure expeditious and efficient delivery of court processes and execution of court judgments and orders;
 - (h) ensure compliance with the code of ethics among the staff;
 - (i) improve the administrative procedures and practices in the administration of justice;

- (j) promote efficient practices and procedures in the administration of justice; and
- (k) exercise such powers and perform any other functions as may be assigned by the Registrar.

(2) The Deputy Registrar shall be assisted by Assistant Registrars in carrying out his functions under this Act or any other law.

Judicial Administrator

9. (1) There shall be a Judicial Administrator who shall be appointed by the Commission and accountable to the Registrar.

(2) A person shall not be appointed Judicial Administrator unless the person holds qualifications, or has extensive experience, in public administration or service of the judiciary or holds one of the professional qualifications stipulated under the Legal Practitioners Act 1983 qualifying a person to be admitted as a legal practitioner in Lesotho.

Functions of the Judicial Administrator

10. (1) The Judicial Administrator shall:
- (a) be responsible for the day-to-day administration of non-adjudicative work of the judiciary and for the implementation of the resolutions of the judiciary and of the Commission;
 - (b) be responsible for preparation of the budget for the judiciary and for keeping proper books of accounts and other records;
 - (c) in relation to the staff of the judiciary, have overall supervisory responsibilities;
 - (d) inculcate discipline, integrity and efficiency in the members of staff of the judicial service;

- (e) manage the optimum use of resources and equipment of the judiciary;
- (f) assist the Registrar in all matters related to the welfare of the staff in the judicial service;
- (g) receive complaints which are not amendable to be dealt with in the ordinary review and appellate judicial procedures from the members of the public about the way the courts and staff function and refer them to the Registrar for consideration and action;
- (h) inspect the courts to ensure their efficiency, effectiveness and the adequacy of resources at all times;
- (i) exercise such powers and perform any other functions as may be assigned, and under the control of the Registrar.

(2) The Judicial Administrator shall be assisted by Assistant Judicial Administrators in carrying out his functions under this Act or any other law.

Judges' Clerks

11. There shall be Judges' Clerks who shall be appointed by the Judicial Service Commission:

Provided that a person shall not be appointed as a Judges's Clerk unless he holds one of the professional qualifications stipulated under the Legal Practitioners Act 1983 qualifying him to be admitted as a legal practitioner in Lesotho.

Functions of Judge's Clerk

12. The functions of a Judge's Clerk shall be -

- (a) to assist the Judge in all court and chamber work;
- (b) to provide the Judge with the necessary research mate-

rial for Judgments;

- (c) to liaise with the Registrar and other Judges' Clerks;
- (d) to prepare the daily work-load for the Judge and to make necessary arrangements with the Registrar and counsel;
- (e) to keep the Judge up-to-date with delivery of his judgments;
- (f) to attend the Judge's court sittings, note and follow up any proceedings, orders or instructions;
- (g) to keep proper records of all Judge's personal judgments and those of other judges;
- (h) to ensure proper movement and management of files into and out of the Judge's chambers;
- (i) to ensure proper filing and indexing of all delivered judgments;
- (j) to ensure overall file security; and
- (k) to assist the Judge in all matters in connection with the Judge's judicial functions as the Judge may require.

Master of the High Court

13. (1) The office of the Master of the High Court referred to in the Administration of Estates Proclamation 1957⁴ and in other laws shall continue in existence under this Act.

(2) A person shall not be appointed by the Commission as a Master of the High Court unless the person holds one of the professional qualifications stipulated under the Legal Practitioners Act 1983 qualifying a person to be admitted as a legal practitioner in Lesotho.

Functions of the Master

14. (1) The Master shall continue to exercise powers and functions in any other law and shall discharge the duties and perform the acts as the Court may, from time to time, order.

(2) The Master shall cause to be prepared a half yearly -

(a) financial report;

(b) a report on the activities of the office of the Master of the High Court,

and submit both reports to the Registrar.

Appointment of members of staff of the judiciary

15. (1) The Commission shall appoint members of staff of the judiciary and any other officers of any court required for the purposes of this Act or any other law.

(2) Subject to subsections (3) and (4), a person appointed under this section shall hold office on such terms and conditions as the Minister responsible for the public service, in consultation with the Minister responsible for finance, may determine.

(3) A member of the judiciary appointed by the Commission and a member of staff of the judiciary appointed under this section shall hold office until attaining 60 years of age, but may opt to retire on attaining the age of 50 years.

(4) The pensionability of members of staff of the judiciary shall, until Parliament makes provision, continue to be governed by the relevant laws relating to pensions in the public service.

(5) A member of staff of the judiciary shall not be seconded to a position in the public service far removed from the core functions in the judicial service.

Disciplinary powers of the Commission

16. The Commission shall have the power to -

- (a) discipline or dismiss any member or staff of the judiciary; or
- (b) terminate the appointment of any member of staff of the Judiciary appointed under this Act or section 133 of the Constitution;
- (c) make rules to give effect to this section.

Funds of the judiciary

17. The funds of the judiciary shall consist of such moneys as may be appropriated by Parliament for the purposes of the judiciary.

Financial year of the judiciary

18. The financial year of the judiciary shall be the period of 12 months ending on the 31st March in each year.

Accounts of the judiciary

19. The Registrar shall cause to be kept proper books of accounts and other records relating to the accounts of the judiciary which shall be annually audited by the Auditor-General and submitted to Parliament in accordance with the Audit Act 1973⁵.

Annual report of the judiciary

20. (1) The Registrar shall, not later than 6 months after the expiry of the financial year, submit to the Minister responsible for justice for transmission to Parliament a report on the activities of the judiciary during that financial year.

(2) The report shall include information on the financial affairs of the judiciary.

(3) The following shall be appended to the report:

- (a) audited balance sheets;
- (b) audited statements of income and expenditure; and
- (c) such other information as Parliament may require.

(4) The Minister shall table a copy of the report before Parliament as soon as possible when Parliament is in session.

Appropriation and expenditure

21. Appropriation and expenditure in respect of the judiciary shall, until such time as due appropriation is made for the purposes of section 17, be effected and dealt with in the same manner as before the commencement of this Act.

PART III – ETHICAL PRINCIPLES FOR THE JUDICIARY

Ethical Principles for the judiciary

22. (1) The Judicial Service Commission shall make or adopt such Ethical Principles for the judiciary as may be appropriate to uphold the independence, the integrity and other interests of the judiciary and the Principles shall be published in the Gazette.

(2) The Tribunal appointed in terms of section 121(5) or 125(5) or (6) of the Constitution may have regard to the Ethical Principles for the judiciary in determining the question of removal of a Judge for inability or misbehavior.

(3) The Judicial Service Commission in exercise of its powers under section 133(1) and (2) of the Constitution may have regard to the Ethical Principles for the judiciary in exercising its disciplinary control over or removal of persons holding or acting in such offices referred to under section 133 (3) of the Constitution.

PART IV - MISCELLANEOUS

Judicial precedence

23. Judges of the Court of Appeal, of the High Court, of the Labour Appeal Court, Magistrates and judicial officers of other Subordinate Courts other than the President of the Court of Appeal, the Chief Justice, the President of the Labour Court, the Chief Magistrate, the Presidents of the Central and Local Courts, shall rank according to the date on which they were appointed.

Judicial Inspectorate

24. (1) There shall be a judicial inspectorate which shall consist of 5 members nominated by the following institutions:

- (a) Parliament;
- (b) the Attorney-General's office;
- (c) the Law Society;
- (d) the Ministry of Finance and Development Planning;
and
- (e) the Police.

(2) Members of the Judicial Inspectorate shall be appointed by the Minister in consultation with Chief Justice by notice published in the Gazette.

(3) The functions of the Judicial Inspectorate shall be:

- (a) to inspect the courts at regular intervals, to ensure their efficiency, effectiveness and adequacy of resources;
- (b) to receive any complaint from the public;
- (c) to make any interim or annual reports and recommendations; and
- (d) to do anything incidental thereto.

(4) The Judicial Inspectorate shall report to the Minister who shall table the report before Parliament at least once in a year.

(5) In exercise of its functions under this Act, the Judicial Inspectorate shall not be subject to the control of any person or authority.

(6) A member of the Judicial Inspectorate shall receive such allowances as may be determined by the Chief Justice in consultation with the Minister responsible for finance and development planning.

(7) A member of Judicial Inspectorate shall hold office for a period of 3 years.

(8) The Judicial Inspectorate shall regulate the performance of its functions.

(9) The Ministry of Justice, Human Rights and Rehabilitation shall be the Secretariat for the Judicial Inspectorate.

Advisory Committees

25. (1) The Chief Justice may constitute, on a permanent or temporary basis, one or more advisory committees to advise the Chief Justice on matters relating to the judiciary as the Chief Justice may, from time to time, consider necessary.

(2) A committee may consist of -

- (a) Judges;
- (b) judicial officers from Subordinate and Labour Courts;
- (c) prominent members of the public who have knowledge's of the Courts and of the prevailing social conditions in Lesotho; and
- (d) nominees representing relevant stakeholders.

(3) Members of the committee shall hold office on such terms and conditions as the Chief Justice may determine.

(4) The committee may, subject to any directions of the Chief Justice, regulate its own procedure.

(5) Members of the committee who are not public officers shall be entitled to receive attendance allowance as may be determined by the Chief Justice in consultation with the Minister responsible for finance.

Delegation

26. The Commission may, save for powers to appoint, promote, discipline, terminate and remove from office, delegate any of its powers to a member of staff of the judiciary.

Capital expenditure on property

27. Pursuant to section 118 of the Constitution, the Government shall provide all such assistance as the courts may require.

Transitional arrangements for members of staff of the judiciary

28. (1) A person who, in terms of this Act would be a member of staff of the judiciary but who, immediately before the commencement of this Act, was employed by the Public Service Commission on permanent and pensionable establishment, probation or contract shall be deemed, on the commencement of this Act, to be a member of staff of the judiciary, unless the person, by notice in writing to the Commission, within 18 months from the date of commencement of this Act, states his intention not to be a member of staff of the judiciary.

(2) A person who give notice under subsection (1) shall be redeployed in the public service if, in the opinion of the Minister responsible for the public service a suitable vacancy exists or may, in the public interest, be retired with entitlement to be paid all terminal benefits.

Regulations

29. The Chief Justice may make regulations generally for giving effect to the provisions of this Act.

NOTE

1. Act No. 5 of 1978
2. Act No. 11 of 1983
3. Act No. 6 of 1988
4. Proclamation No. 19 of 1935
5. Act No. 12 of 1973

GOVERNMENT NOTICE NO. 60 OF 2011

The Parliament of Lesotho

Statement of Objects and Reasons of the Administration
of the Judiciary Act, 2011

(Circulated by the Authority of the Minister of Justice, Human Rights
and the Correctional Service and of Law and Constitutional Affairs,
Honourable Mrs. Mpeo Mahase-Molloa)

1. The Administration of the Judiciary Bill, 2011 provides for the establishment of an autonomous administration of the Judiciary, a Judicial Service, and for a budget of the Judiciary.
2. The appointment, removal, discipline, promotion and resignation relating to the staff within the service and accounts are provided for under the Bill.
3. The Bill appoints the Registrar of the High Court as the Chief Accounting Officer in relation to funds and expenditure of the Judiciary in addition to her functions and powers in accordance with the Financial Order No. 6 of 1988.
4. The Bill provides for the creation of the position of Deputy Registrar Legal who is entrusted to oversee all the legal and judicial processes including case management system of the High Court and Court of Appeal.
5. The Bill also provides for the creation of the position of Deputy Registrar Administration who is responsible for the day to day administration and non-judicial processes of the High Court and Court of Appeal.
6. The Bill further creates positions of Judge's Clerk that amongst other functions will assist the Judges with research materials for the writing of judgment.
7. The Master of the High Court in addition to her functions under the Administration of Estates Proclamation No. 19 of 1935 will perform

acts ordered by the High Court and will report the same to the Registrar.

8. The Bill provides for the promulgation of Ethical Principles for the Judiciary that aims to enhance integrity and independent of the Judiciary. The Principles will also serve as a guide in determining the removal of Judges from the Bench for inability to perform functions and for misconduct.
9. The Bill sets up the Advisory Committee that will advise the Chief Justice on matters relating to the Judiciary.

