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EXTRAORDINARY

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Bill No. 14 of 1986

LAND CONTROL (AMENDMENT) BILL, 1986

(Published on 16th July, 1986)

MEMORANDUM

1. The amending Bill seeks principally to ensure that Batswana are made aware of their right to intervene in any published controlled transaction and to receive priority in relation to any purchase of land in Botswana.
2. The Bill requires any party giving notice of such a transaction under the Act to draw the attention of citizens of this country to this right by giving a synopsis of this right in the published notice.
3. The Bill also enlarges the time within a citizen is required to raise the funds to take over the transaction.
4. Finally the Bill seeks to ensure that the price stated in the notice is in fact the price at which the transaction is to be concluded.

P.K. BALOPI,

Minister of Local Government and Lands.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 5 of (Cap. 32:11)
3. Amendment of section 8 of the principal Act

A BILL

—entitled—

An Act to amend the Land Control Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Land Control (Amendment) Act, 1986.

Amendment
of section 5
of Cap. 32:11

2. Section 5 of the Land Control Act, (hereinafter referred to as the "principal Act") is hereby amended as follows —

- (a) by the substitution for the words "thirty days" appearing in subsection (1) thereof of the words "ninety days", and
- (b) by the addition after paragraph (d) of subsection (1) thereof of the following new paragraph —

"(e) a reference to the right of any citizen of Botswana interested in entering into a similar transaction in respect of the property in question to receive priority notwithstanding the controlled transaction set out in the notice."

Amendment
of section 8
of the
principal
Act

3. Subsection (1) of section 8 of the principal Act is hereby substituted by the following new subsection —

"8 (1) The registrar shall not register any instrument or document effecting a controlled transaction unless he is satisfied that —

- (a) all the relevant provisions of the Act have been complied with;
- (b) documentary evidence has been produced that establishes the price at which the transaction was concluded.

L/2/4/687

Bill No. 15 of 1986

CUSTOMARY COURTS (AMENDMENT) BILL 1986

(Published on 16th July, 1986)

MEMORANDUM

A draft of the above Bill which it is proposed to present to the National Assembly is set out below.

2. The administration of the customary courts Act and the setting up of the Court of Appeal has revealed certain difficulties and incongruities in the Customary Courts Act. This amending Act seeks to remedy them.

3. Section 5 of the Act is amended to remove the restriction placed on the number of Assistant Courts Commissioners, so as to enable the Minister to appoint as many as may be necessary to expedite the review of cases.

4. Where a matter is to be heard on a particular day before a customary court and, for reasons other than the non-appearance of the person charged, the case cannot proceed on that day, the court is, by the new section 15A, empowered to admit the person charged to bail to ensure his appearance on the next date of hearing.

5. Whereas the law relating to serious crimes permits a court to bind an accused over, to keep the peace and be of good behaviour, in lieu of sentence being passed on him, the Customary Courts Act made no provision for such a discretion in a customary court which deals with lesser offences; nor did it provide for the customary court, where the offence was trivial or where punishment was inexpedient by reason of age, character, antecedents or mental health of the person charged, not to proceed to conviction, even if the offence was proved, but to discharge the person charged. The new sections 16A and 16B permit a customary court, where the court thinks fit, to exercise such a discretion in favour of a person charged.

6. Section 19 of the Act is amended to enlarge the time within which a warrant of committal may be countersigned by an administrative officer and is intended to eliminate the difficulties that may arise when an administrative officer is not readily available, for example in the more remote areas.

7. A recent decision of the High Court brought to light the inability of Customary Courts to pass a suspended sentence. It is proposed to normalise the situation by empowering these courts to suspend sentence by the inclusion of section 19A.

8. Section 36 of the Act has been re-worded to grant the Minister the power to appoint customary courts of appeal with three members and three alternate members to ensure that the absence of a sitting member does not prevent the court from sitting. It provides that the president of the customary court of appeal may, in such an event, select an alternate member to sit in place of the absent member until that member resumes his office.

9. Appeals from customary courts are heard by higher customary courts and appeals from higher customary courts are heard by the customary court of appeal. However, appeals from customary courts of appeal were, as the law now stands, to be heard by a subordinate court of the first class. This appears to be an incongruity in that it makes a customary court of appeal

subordinate to a subordinate court. The amendment to section 37 provides for an appeal from a customary court of appeal to be heard by the High Court instead.

The amendments to sections 27 and 33 are consequential amendments resulting from this amendment to section 37.

P.K. BALOPI,
Minister of Local Government and Lands.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 5 of the principal Act
3. Insertion of new section 15A in principal Act
4. Insertion of new sections 16A and 16B in principal Act
5. Amendment of section 19 of the principal Act
6. Insertion of new section 19A in principal Act
7. Amendment of section 27 of the principal Act
8. Amendment of section 33 of the principal Act
9. Substitution of section 36 of the principal Act
10. Substitution of section 37 of the principal Act

A BILL

—entitled—

An Act to amend the Customary Courts Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

- | | |
|---|--|
| Short title | 1. This Act may be cited as the Customary Courts (Amendment) Act, 1986. |
| Amendment of section 5 of the principal Act | 2. Subsection (1) of section 5 of the Customary Court (hereinafter referred to as the "principal Act") is substituted by the following new subsection —
<div style="padding-left: 20px;">"The Minister may, by notice in the Gazette, appoint officers in the Public Service to be Assistant Customary Courts Commissioners for the purposes of this Act."</div> |
| Insertion of new section 15A in principal Act | 3. The principal Act is amended by the addition after section 15 thereof of the following new section —
<div style="padding-left: 20px;">"15A (1) Where any criminal proceedings before a customary court are —
 <div style="padding-left: 20px;">(a) adjourned for any reason other than the failure of the person charged to appear on the day set for the hearing of the case, or
 <div style="padding-left: 20px;">(b) suspended under the provision of sub-section (1) of section 32, or</div> </div> </div> |

(c) transferred under the provision of sub-section (4) of section 32;

the customary court concerned may take from the person charged a recognizance with or without sureties conditioned for his appearance to answer the charge against him, at the time and place of trial and as often as may be necessary thereafter until final judgement in his case has been given, and may, instead of taking a recognizance in accordance with this section, fix the amount of the recognizance with a view to it being taken subsequently by any police officer above the rank of inspector or the police officer in charge of any police station or the person in charge of any place of detention to which the person charged is committed by the customary court.

(2) If on any day appointed for the hearing of the case, the person charged does not appear after he has been three times called by name in or near the court premises, the court may issue a warrant for his apprehension and may also call the person charged and his sureties (if any) upon their recognizance, and, in default of his appearance the same may then and there be declared forfeited; and any such declaration of forfeiture shall have the effect of a judgement on the recognizance for the amounts therein named against the person charged and his sureties respectively.

(3) A customary court may further add to a recognizance taken under subsection (1) of this section any conditions which it may deem necessary as to —

- (a) times and places at which and persons to whom the person charged shall present himself;
- (b) places where he is forbidden to go;
- (c) prohibition against communications by him with any named person or persons;
- (d) any other matters relating to his conduct;

(4) Where it appears to the customary court that default has been made in any condition of a recognizance taken by it, the court may issue a warrant for the apprehension of the person charged and an order declaring the recognizance for the amounts therein named against the person charged and his sureties respectively."

4. The principal Act is amended by the addition after section 16 thereof of the following new sections —

"Binding
over

"16A (1) A person convicted of an offence before a customary court, a higher customary court, a customary court of appeal or the High Court under the provisions

Insertion of
new sections
16A and 16B
in principal
Act

of this Act may, instead of, or in addition to, any punishment to which he is liable be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, on condition that he shall keep the peace and be of good behaviour for a term not exceeding three years to be fixed by the court and may be imprisoned until such recognizance, with sureties, if so directed, is entered into, but so that the imprisonment for not entering into the recognizance shall not extend for longer than three months, and shall not, together with the fixed terms of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned for the offence.

(2) When a person is convicted of any offence under the provisions of this Act a customary court, a higher customary court, a customary court of appeal or the High Court may, instead of passing sentence, discharge the offender upon his entering into his own recognizance, with or without sureties, in such sum as the court may think fit, to keep the peace and be of good behaviour for a term not exceeding three years to be fixed by the court on condition that he shall appear to receive judgement at some future sitting of the court or called upon.

"Discharge
without
proceeding to
conviction"

16B. (1) Where in any criminal proceeding under the provisions of this Act before any customary court, a higher customary court, a customary court of appeal or the High Court, the court thinks that the charge is proved but is of the opinion that having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge.

(2) An order made under this section shall, for the purpose of revesting or restoring any stolen property, and enabling the court to make any order restoring the property in respect of which the offence was committed or property seized for production in the trial have the like effect as a conviction.

Amendment
of section 19
of the
principal
Act

5. Section 19 of the principal Act is amended by the deletion of the words and figures "48 hours" appearing therein and the substitution therefor of the words "seven days".

6. The principal Act is hereby amended by inserting therein, immediately after section 19, the following new section —

"Suspended
sentences

Insertion of
new section
19A in
principal Act

"19A. (1) Whenever a person is convicted before the customary court of appeal or any customary court of any offence the court may in its discretion postpone for a period not exceeding three years the passing of sentence and release the offender on one or more conditions (whether as to compensation to be made by the offender for damage or pecuniary loss, good conduct or otherwise) as the court may order to be inserted in recognizance to appear at the expiration of the period, and if at end of such period the offender has observed all the conditions of the recognizance, the court may discharge the offender without passing any sentence.

(2) Whenever a person is convicted before the customary court of appeal or any customary court of any offence the court may in its discretion pass sentence but order that the operation of the whole or any part of the sentence be suspended for a period not exceeding three years, which period in the absence of any order to the contrary, shall be computed in accordance with the provisions respectively of subsections (3) and (4). Such order shall be subject to such conditions (whether as to compensation to be made by the offender for damage or pecuniary loss, good conduct or otherwise) as the court may specify therein.

(3) The period during which any order for the suspension of a part of a sentence, made under subsection (2) and affecting a sentence of imprisonment shall run, shall commence on the date upon which the person convicted was lawfully discharged from prison in respect of the unsuspended portion of such sentence, or if not then discharged because such person has to undergo any other sentence of imprisonment, such period shall commence upon the date upon which such person was lawfully discharged from prison in respect of such other sentence. If any portion of such other sentence is itself suspended, the periods of suspension of all such sentences shall, in the absence of any order to the contrary, run consecutively in the same order as the sentences.

(4) The period during which any order for the suspension of the whole of a sentence of imprisonment shall run, shall commence —

(a) where the convicted person is not serving another sentence, from the date from which the sentence wholly suspended was expressed as taking effect, or took effect; and

(b) where the convicted person is serving another sentence, from the date of expiration of that sentence including any period thereof which may be subjected to an order of suspension.

(5) If during the period of suspension of the whole of a sentence the convicted person is sentenced to imprisonment the portion then remaining of the sentence wholly suspended shall be deemed to be consecutive to the sentence of imprisonment subsequently awarded.

(6) If the offender has, during the period of suspension of any sentence under this section, observed all the conditions specified in the order, the suspended sentence shall not be enforced."

Amendment
of section 27
of the
principal
Act

7. Paragraph (b) of section 27 of the principal Act is amended by substituting for the words and figures "section 32, 34 and 37" therein the words and figures "sections 32 and 34".

Amendment
of section 33
of the
principal
Act

8. Section 33 of the principal Act is amended —

(a) by the deletion in subsection (1) thereof of the figure "35" appearing therein;

(b) by the deletion in subsection (2), thereof of the words and figures "or under section 37" appearing therein.

Substitution
of section
36 of the
principal
Act

9. Section 36 of the principal Act is substituted by the following new section —

"36 (1) The Minister may, by warrant under his hand, appoint customary courts of appeal to hear and determine such cases as he specifies in the warrant.

(2) A customary court of appeal may sit with assessors whenever the court deems it necessary so to do;

(3) A customary court of appeal shall consist of three persons of whom one shall be appointed, by the Minister, to be the president.

(4) The Minister may, by warrant under his hand appoint a panel of three other persons to be alternate members of each customary court of appeal.

(5) Where because of illness or absence out of the country or because of a personal or pecuniary interest in the matter or thing a member of a customary court of appeal is unable to attend a sitting of the court, the president of the court may nominate a person from the panel of alternate members to sit in place of the member who is absent, and such alternate member shall be a member of the said court until the member in whose place he was appointed to sit is able to resume his seat."

10. Section 37 of the principal Act is substituted by the following new section —

Substitution
of section
37 of the
principal
Act

“37 (1) Any person aggrieved by any order or decision of a lower customary court may within 30 days from the date of that order or decision appeal therefrom to a higher customary court, or, if there be no higher customary court, to the customary court of appeal.

(2) Any person aggrieved by any order or decision of a higher customary court may within 30 days from the date of that order appeal to a customary court of appeal.

(3) Any person aggrieved by any order or decision of a customary court of appeal may within 30 days of that order or decision appeal therefrom to the High Court.

Provided that —

- (i) an appeal to the High court under this subsection shall lie only in cases where the status of any person is at issue or where the amount of the judgement exceeds P200 or where sentences of imprisonment for a period exceeding six months or of corporal punishment exceeding eight strokes has been imposed; or
- (ii) notwithstanding the provisions of paragraph (i) any judge of the High Court sitting in chambers may on the application of any court or person concerned grant special leave to appeal against any order or decision made or given by a customary court under this Act.”

L/2/4/504 I