

ACT 459

COURTS ACT, 1993

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**ACT 459**

**COURTS ACT, 1993<sup>1</sup>**

**AN ACT to incorporate into the law relating to the Courts, the provisions of Chapter Eleven of the Constitution, to provide for the jurisdiction of Regional Tribunals, to establish lower courts, provide for their composition and jurisdiction, to consolidate the Courts Act, 1971 and to provide for related matters.**

PART ONE

*The Superior Court of Judicature*

*The Supreme Court*

**1. The Supreme Court**

(1) In accordance with article 128 of the Constitution, the Supreme Court consists of the Chief Justice and not less than nine other Justices of the Supreme Court.

(2) The Supreme Court is duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in section 7.

(3) The Chief Justice presides at sittings of the Supreme Court and in the absence of the Chief Justice the most senior of the Justices of the Supreme Court, as constituted presides.

(4) A person is not qualified for appointment as a Justice of the Supreme Court unless that person is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer.

**2. General jurisdiction**

(1) By virtue of article 129 of the Constitution, the Supreme Court is the final court of appeal and has the appellate and other jurisdiction conferred on it by the Constitution or by any other law.

(2) The Supreme Court is not bound to follow the decisions of any other Court.

(3) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and the Courts lower than the Supreme Court shall follow the decisions of the Supreme Court on questions of law.

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1. Assented to on 6th July, 1993.

(4) For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on a matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by the Constitution or any other law, the Supreme Court has the powers, authority and jurisdiction vested in a Court established by the Constitution or any other law.

(5) The determination of a question before the Supreme Court shall be in accordance with the opinion of the majority of the members hearing the case.

### **3. Original jurisdiction**

(1) In accordance with article 130 of the Constitution, and subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of the Constitution, the Supreme Court has exclusive original jurisdiction

- (a) in matters relating to the enforcement or interpretation of the Constitution, and
- (b) in matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution.

(2) Where an issue that relates to a matter or question referred to in subsection (1) arises in proceedings in a Court other than the Supreme Court, that court shall stay the proceedings and refer the question of law to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

### **4. Appellate jurisdiction**

(1) In accordance with article 131 of the Constitution, an appeal lies from a judgment of the Court of Appeal to the Supreme Court

- (a) as of right, in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction;
- (b) with the leave of the Court of Appeal, in a cause or matter, where the case was commenced in a Court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest to grant leave of appeal;
- (c) as of right, in a cause or matter relating to the issue or refusal or writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.

(2) Notwithstanding subsection (1), the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in a cause or matter, including an interlocutory matter, civil or criminal, and may grant leave accordingly.

(3) The Supreme Court has appellate jurisdiction, to the exclusion of the Court of Appeal to determine matters relating to the conviction or otherwise of a person for high treason or treason by the High Court.

(4) An appeal from a decision of the Judicial Committee of the National House of Chiefs lies to the Supreme Court with the leave of the Judicial Committee or the Supreme Court.

(5) Subject to subsection (2), the Supreme Court shall not entertain an appeal unless the appellant has fulfilled the conditions of appeal prescribed under the Rules of Court.

#### **5. Supervisory jurisdiction**

In accordance with article 132 of the Constitution, the Supreme Court has supervisory jurisdiction over any other Court and over an adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto for the purpose of enforcing or securing the enforcement of its supervisory power.

#### **6. Review of its decisions**

(1) By virtue of article 133 of the Constitution, the Supreme Court may on the grounds and subject to the conditions prescribed by the Rules of Court review a decision made or given by it.

(2) The Supreme Court, when reviewing a decision under subsection (1), shall be constituted by not less than seven Justices of the Supreme Court.

#### **7. Powers of a single Justice**

In accordance with article 134 of the Constitution, a single Justice of the Supreme Court may exercise a power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court but

- (a) in criminal matters, where that Justice refuses or grants an application in the exercise of that power, a person affected by it is entitled to have the application determined by the Supreme Court constituted by three Justices of the Supreme Court; and
- (b) in civil matters, an order, a direction or decision made or given under this section may be varied, discharged or reversed by the Supreme Court, constituted by three Justices of the Supreme Court.

#### **8. Production of official documents**

(1) By virtue of article 135 of the Constitution, the Supreme Court has exclusive jurisdiction to determine whether an official document shall not be produced in Court because its production or the disclosure of its contents will be prejudicial to the security of the State or will be injurious to the public interest.

(2) Where an issue referred to in subsection (1) arises as to the production or otherwise of an official document in proceedings before a Court, other than the Supreme Court, the proceedings in that Court shall be suspended while the Supreme Court examines the document and determines whether the document should be produced or not; and the Supreme Court shall make the appropriate order.

(3) The proceedings of the Supreme Court as to whether an official document may be produced shall be held in camera.

(4) For the purposes of this section, the Supreme Court may

- (a) order a person who, or an authority which, has custody, legal or otherwise of the document to produce it; and a person or an authority so ordered shall produce the document for the purpose of inspection by the Supreme Court, and
- (b) determine whether or not the document shall be produced in the Court from which the reference was made after hearing the parties or their legal representatives or after having given them the opportunity of being heard.

(5) Pursuant to subsection (4), the Supreme Court may make an order that the person who, or the authority which has custody of the document shall produce it or shall produce that part of the contents of the document that is essential for the proceedings in accordance with the terms of the order.

(6) Where the question of the production of an official document arises in proceedings in the Supreme Court in the circumstances mentioned in subsection (1), the Supreme Court shall be governed, with the modifications that are necessary, by this section for the determination of the question that has arisen.

(7) Where there is a doubt as to whether a document referred to in clause (2) of article 121 of the Constitution (which prohibits the production by public officers of certain documents in proceedings before Parliament) is injurious to the public interest or prejudicial to the security of the State, the Speaker or the National Security Council, shall refer the matter to the Supreme Court for determination whether the production or the disclosure of the contents of the document would be injurious to the public interest or prejudicial to the security of the State.

(8) Subsections (4) and (5) shall, with the modifications that are necessary, apply to a determination by the Supreme Court under subsection (7) as they apply to a determination under subsection (2).

## **9. The prerogative of mercy**

Where a person is convicted or sentenced for an offence by a Court established under the Constitution or this Act and a petition is presented to the President for the exercise of the prerogative of mercy in respect of the conviction or sentence, the President may, except in the case of a sentence of death,

- (a) refer the case to the Supreme Court which shall hear and determine the case as if it were an appeal by a person convicted, or
- (b) if the President desires the assistance of the Supreme Court on a point arising in the case with a view to the determination of the petition, refer that point to the Supreme Court for its opinion; and the Supreme Court shall consider the point referred to it and furnish the President with its opinion.

### *The Court of Appeal*

## **10. The Court of Appeal**

(1) In accordance with article 136 of the Constitution, the Court of Appeal consists of

- (a) the Chief Justice,
- (b) not less than ten Justices of the Court of Appeal, subject to subsections (2) and (3) of this section, and



- (c) any other Justices of the Superior Court of Judicature who the Chief Justice may, for the determination of a particular cause or matter, by writing signed by the Chief Justice request to sit in the Court of Appeal for a specified period.

(2) The Court of Appeal is duly constituted by any three of the Justices of the Court of Appeal and when so constituted, the most senior of the Justices shall preside.

(3) A person is not qualified for appointment as a Justice of the Court of Appeal unless that person is of high moral character and proven integrity and is of not less than twelve years' standing as a lawyer.

(4) The Chief Justice may create the divisions of the Court of Appeal which the Chief Justice considers necessary to sit in the places determined by the Chief Justice.

(5) Subject to clause (3) of article 129 of the Constitution, the Court of Appeal is bound by its own previous decisions; and the Courts lower than the Court of Appeal shall follow the decisions of the Court of Appeal on questions of law.

(6) The determination of a question before the Court of Appeal shall be in accordance with the opinion of the majority of the members hearing the case.

## 11. Jurisdiction

(1) In accordance with article 137 of the Constitution, the Court of Appeal has jurisdiction to hear and determine, subject to the Constitution, appeals from a judgment, decree or an order of the High Court or a Regional Tribunal and any other appellate jurisdiction conferred on it by the Constitution or any other law.

(2) Except as otherwise provided in the Constitution, an appeal lies as of right from a judgment, decree or an order of the High Court and a Regional Tribunal to the Court of Appeal.

(3) The Court of Appeal shall have

- (a) jurisdiction to hear appeals from a judgment of a Circuit Court, in a civil cause or matter, and
- (b) in a cause or matter in which jurisdiction is conferred on the Court of Appeal under any other enactment.<sup>2</sup>

(4) A person aggrieved by a judgment of a Circuit Court in a civil cause or matter may appeal against the judgment to the Court of Appeal.<sup>3</sup>

(5) A person aggrieved by an interlocutory order or decision made or given by a Circuit Court may appeal to the Court of Appeal against the order or decision with the leave of the Circuit Court and upon a refusal, with the leave of the Court of Appeal, and the Court of Appeal has jurisdiction to hear and determine that appeal.

(6) Where a party desires to appeal to the Court of Appeal in a criminal case, that party shall give notice of appeal or notice of an application for leave to appeal within one month of the decision appealed against.

(7) The Court of Appeal or the Court whose decision is appealed against, may extend the time specified in subsection (6).

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2. Substituted by section 1 of the Courts (Amendment) Act, 2002 (Act 620).

3. Substituted by section 1 of the Courts (Amendment) Act, 2002 (Act 620).

(8) The Court of Appeal shall not entertain an appeal unless the appellant has fulfilled the conditions prescribed in that behalf by the Rules of Court.

(9) For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or enforcement of a judgment or an order made on an appeal, and for the purpose of any other authority expressly or by necessary implication given to the Court of Appeal by the Constitution, this Act or any other law, the Court of Appeal has the powers, authority and jurisdiction vested in the Court from which the appeal is brought.

## **12. Powers of a single Justice**

In accordance with article 138 of the Constitution, a single Justice of the Court of Appeal may exercise a power vested in the Court of Appeal that does not involve the decision of a cause or matter before the Court of Appeal, but,

- (a) in criminal matters, where that Justice refuses or grants an application in the exercise of that power, a person affected by it is entitled to have the application determined by the Court of Appeal as duly constituted, and
- (b) in civil matters, an order, a direction or decision made or given in exercise of the powers conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted.

## **13. Powers of the Court of Appeal in special cases**

(1) Where it appears to the Court of Appeal that an appellant, though not properly convicted on a count or part of the indictment or charge, has been properly convicted on any other count or part of the indictment or charge, the Court may

- (a) confirm the sentence passed on the appellant at the trial, or
- (b) pass a sentence in substitution for it as may be warranted in law by the verdict on the count or part of the indictment or charge on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant is convicted of an offence and the Justice, the jury or panel who tried the appellant, could on the indictment or charge have found the appellant guilty of any other offence, and on the finding of the Justice, jury or panel it appears to the Court of Appeal that the Justice, jury or panel must have been satisfied of facts which proved the appellant guilty of that other offence, the Court of Appeal may substitute for the verdict found by the Justice, jury or panel a verdict of guilty of that other offence, and pass the sentence, in substitution for the sentence passed at the trial, that is warranted in law for that other offence.

(3) Where at the trial of the appellant, the jury or panel found a special verdict and the Court of Appeal considers that a wrong conclusion had been arrived at by the Court before which the appellant was convicted on the basis of that verdict, and the Court of Appeal may order a conclusion to be recorded that appears to the Court of Appeal to be in law required by the verdict, and make the order that is warranted in law.

(4) Where after the trial of the appellant a special verdict is found and the Court of Appeal is satisfied that the special verdict was wrongly found, the Court of Appeal may set aside the verdict and substitute an order of conviction or acquittal or may make the order that is warranted in law.

(5) Where on an appeal it appears to the Court of Appeal that although the appellant was guilty of the act or omission charged but that the appellant was insane at the time the act was done or omission made so as not to be responsible according to law for the act or omission, the Court may set aside the sentence passed at the trial and order the appellant to be kept in custody as a criminally insane person in a place and in the manner directed by the Court until the pleasure of the President is known and the President may give orders for the safe custody of the appellant.

(6) Where the Court of Appeal is of the opinion that the proceedings in the trial court were a nullity through want of jurisdiction or otherwise, the Court of Appeal may order the appellant to be tried by a court of competent jurisdiction.

(7) Where the Court of Appeal is satisfied that owing to exceptional circumstances the interest of justice requires that there should be a re-trial, the Court may order a re-trial on the terms and conditions specified by the Court.

### *The High Court*

#### **14. The High Court**

(1) In accordance with article 139 of the Constitution, the High Court consists of

- (a) the Chief Justice,
- (b) not less than twenty Justices of the High Court, and
- (c) any other Justices of the Superior Court of Judicature or Chairmen of Regional Tribunals who the Chief Justice may, by writing signed by the Chief Justice, request to sit as High Court Justices for a period.

(2) The High Court is duly constituted

- (a) by a single Justice of the Court, or
- (b) by a Chairman of a Regional Tribunal, or
- (c) by a single Justice of the Court and jury, or
- (d) by a single Justice of the Court with assessors, or
- (e) by three Justices of the Court for the trial of the offence of high treason or treason as required by paragraph (i) of clause (2) of article 19 of the Constitution.

(3) There shall be in the High Court a number of divisions consisting of a number of Justices respectively as the Chief Justice may determine.

(4) A person is not qualified for appointment as a Justice of the High Court unless that person is a person of high moral character and proven integrity and is of at least ten years' standing as a lawyer.

#### **15. Jurisdiction**

(1) In accordance with article 140 of the Constitution, the High Court has, subject to the Constitution,

- (a) an original jurisdiction in all matters,

- (b) an appellate jurisdiction in a judgment of the Circuit Court in the trial of a criminal case,
- (c) an appellate jurisdiction in a judgment of a District Court or a Juvenile Court,
- (d) jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution, and
- (e) any other jurisdiction conferred by the Constitution, this Act or any other enactment.<sup>4</sup>

(2) For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or enforcement of a judgment or an order made on an appeal, and for the purpose of any other authority, expressly or by necessary implication given to the High Court by the Constitution, this Act or any other law, the High Court has the powers, authority and jurisdiction vested in the Court from which the appeal is brought.

(3) The High Court shall not, in a trial for the offence of high treason or treason, convict a person for an offence other than high treason or treason.

(4) A Justice of the High Court may, in accordance with the Rules of Court, exercise in court or in chambers, all or any of the jurisdiction vested in the High Court by the Constitution, this Act or any other law.

#### **16. Supervisory jurisdiction**

In accordance with article 141 of the Constitution, the High Court has supervisory jurisdiction over the lower courts and a lower adjudicating authority, and may, in the exercise of that jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto for the purpose of enforcing or securing the enforcement of its supervisory powers.

#### **17. Jurisdiction over acts of piracy**

(1) Subject to a right of appeal conferred by an enactment, the High Court has exclusive jurisdiction to try an act of piracy.

(2) An act of piracy has, for the purposes of this Act, the meaning assigned to it under [section 19 of the Criminal Code, 1960 (Act 29)].

#### **18. Jurisdiction in relation to infants**

(1) In addition to the jurisdiction conferred by an enactment, the High Court, subject to that enactment or to any other enactment,

- (a) may, on an application by a person, and after hearing the objections to the application, appoint a person as a guardian or as joint-guardian for an infant, where the Court is satisfied that the appointment is desirable in the circumstances having regard to the welfare of the infant;
- (b) may, on application by a person, and after hearing the objections to the application, make an order concerning the custody of an infant, the right of access to an infant, and weekly or other periodic payments towards the

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4. Substituted by section 2 of the Courts (Amendment) Act, 2002 (Act 620).

maintenance of an infant, that the Court considers just in the circumstances, having regard to the means of the persons concerned and the welfare of the infant;

- (c) may, for good cause, remove a guardian or joint-guardian and appoint a new guardian or joint-guardian;
- (d) may determine a dispute between a guardian and a parent, or between joint-guardians;
- (e) may intervene in a guardianship where the Court is satisfied that the guardian has acted or is likely to act prejudicially to the welfare of an infant, and may make the consequential orders that the Court considers desirable having regard to the welfare of the infant;
- (f) may, in respect of an infant, make the orders and give the directions for the control and administration of the estate of that infant, including the investment of money, that the Court considers desirable having regard to the welfare of the infant;
- (g) may, in respect of an infant, make the orders and give the directions permitting the use of moneys for the education of the infant, or for setting the infant up in an occupation or a career, that the Court considers desirable having regard to the welfare of the infant.

(2) The welfare of the infant shall be the primary consideration of the High Court in the exercise of its powers under this section.

(3) In this section, “**infant**” means a person under the age of eighteen years.<sup>5</sup>

#### **19. Jurisdiction in relation to persons of unsound mind**

In addition to the jurisdiction conferred by an enactment, the High Court, subject to that enactment or to any other enactment,

- (a) may, on an application by a person, and after hearing the objections to the application, appoint a person as a guardian or as joint-guardian for a person of unsound mind or may direct the person of unsound mind to be delivered into the care of a responsible authority or a relative, where the Court is satisfied it is desirable to ensure the welfare of the person of unsound mind;
- (b) may vary or rescind for good cause an appointment made under paragraph (a) and attach conditions that appear desirable to an appointment;
- (c) may make the orders and give the directions that appear necessary or desirable to secure the maintenance, safety and welfare of a person of unsound mind, the efficient administration, disposition and management of any of the property or affairs of that person and for purposes ancillary to them;
- (d) may make the orders that appear necessary or desirable to secure the carrying out of a contract entered into by a person of unsound mind, or the conduct of legal proceedings in the name or on behalf of that person.

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5. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

**20. Jurisdiction in maritime matters**

(1) The High Court may, subject to any other enactment, hear and determine

- (a) a question as to the title to, or ownership of, a ship, or the proceeds of the sale of a ship, arising in an action relating to possession, salvage, damage, necessities, wages or bottomry;
- (b) a question arising between the co-owners of a ship registered at a port in Ghana as to the ownership, possession, employment or earnings of that ship, or a share of it, with power to settle an account outstanding and unsettled between the parties in relation to it, and may direct the ship, or a share of it, to be sold, or make an appropriate order;
- (c) a claim for damage to a ship, whether received on the high seas or within the territorial waters or for damage done by a ship;
- (d) subject to [section 249 of the Merchant Shipping Act, 1963 (Act 183)], a claim in the nature of salvage for services rendered to a ship, including services rendered in saving life from a ship, whether rendered on the high seas or within the territorial waters, and whether a wreck in respect of which the salvage is claimed is found on sea or land;
- (e) a claim in the nature of towage, whether the services were rendered on the high seas or within the territorial waters;
- (f) a claim for necessities supplied to a foreign ship, whether supplied on the high seas or within the territorial waters; and a claim for necessities supplied to a ship elsewhere than in the port to which the ship belongs;
- (g) a claim by a seaman for wages earned on board a ship, whether due under a special contract or otherwise, and a claim by the master of a ship for salary earned on board the ship and for disbursements made by the master on account of the ship;
- (h) a claim in respect of a mortgage of a ship, which is a mortgage duly registered under the [Merchant Shipping Act, 1963 (Act 183)], or in respect of a mortgage of a ship which is, or the proceeds of which are, under the arrest of the Court;
- (i) a claim for building, equipping or repairing a ship, if at the time of the institution of the proceedings the ship is, or the proceeds of it are, under the arrest of the Court;
- (j) a claim arising out of an agreement relating to the use or hire of a ship, or the carriage of goods or persons in a ship, or in tort in respect of goods or persons carried in a ship.

(2) The High Court

- (a) may, in an action of restraint instituted by part-owners, give the relief that it considers just and equitable, including the imposition of bail on defendant part-owners to ensure the safe return of a ship;
- (b) may remove for good cause the master of a ship within the jurisdiction of the High Court and appoint a new master;
- (c) may give any other relief as it considers just and equitable, including the granting of injunctions, in respect of injurious acts done upon the high seas.

(3) In this section, “**damage**” includes loss of life and personal injuries, and “**ship**” includes any description of a vessel used in navigation not propelled by oars.

## **21. Right of appeal**

(1) The prosecution or a person convicted of an offence in a criminal case, tried by a Circuit Court or tried by a District or Juvenile Court may appeal against the judgment to the High Court.

(2) A person aggrieved by a judgment of a District Court in a civil matter may appeal against the judgment to the High Court.

(3) A person aggrieved by an interlocutory order or decision made or given by a District Court may appeal against the decision or order to the High Court with the leave of the District Court or of the High Court, and the High Court shall have jurisdiction to hear and determine the appeal.

(4) An appeal under this section against a judgment of a Circuit, District or a Juvenile Court, shall, subject to a transfer directed by the Chief Justice, be made to the Justice of the High Court exercising jurisdiction over the area of jurisdiction of the Circuit, District or Juvenile Court.

(5) The High Court shall not entertain an appeal unless the appellant has fulfilled the conditions imposed in that behalf by the Rules of Court.<sup>6</sup>

## **22. Masters**

(1) The Chief Justice may, acting in accordance with the advice of the Judicial Council and with the approval of the President, appoint a lawyer of not less than ten years’ standing as a Master of the High Court for the period and subject to the terms and conditions determined by the Chief Justice.

(2) A Master appointed under subsection (1) shall perform the functions prescribed by legislative instrument issued by the Chief Justice and any other functions that the Chief Justice may direct.

(3) A person aggrieved by an order or decision of a Master may, by leave of that Master or of the Court of Appeal, appeal to the Court of Appeal against the order or decision for determination by the Court of Appeal.

### *The Regional Tribunals*

## **23. Regional Tribunal**

(1) In accordance with article 142 of the Constitution, a Regional Tribunal consists of

- (a) the Chief Justice,
- (b) one Chairman, and
- (c) the members who may or may not be lawyers who shall be designated by the Chief Justice to sit as panel members of a Regional Tribunal, and for the period specified in writing by the Chief Justice.

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6. Substituted by section 3 of the Courts (Amendment) Act, 2002 (Act 620).

(2) A Regional Tribunal shall, in the exercise of its original jurisdiction, be duly constituted by a panel consisting of the Chairman and not less than two and not more than four other panel members.

(3) A person shall not be appointed

- (a) to a Regional Tribunal as a Chairman unless that person is qualified to be appointed a Justice of the High Court;
- (b) as a panel member unless that person is a person of high moral character and proven integrity.

(4) The Chief Justice or a Justice of the High Court or of the Court of Appeal nominated by the Chief Justice may sit as a Chairman of a Regional Tribunal.

#### **24. Original and appellate jurisdiction**

(1) Subject to the Constitution, this Act and any other law, a Regional Tribunal shall have concurrent original jurisdiction with the High Court in criminal matters and shall, in particular, try

- (a) the special offences specified under [Chapter 4 of Part III of the Criminal Code, 1960 (Act 29)];
- (b) offences arising under
  - (i) the [Customs, Excise and Preventive Services Management Law, 1993 (P.N.D.C.L. 330)]
  - (ii) [Income Tax Decree, 1975 (S.M.C.D. 5);]
  - (iii) [Narcotic Drugs (Control, Enforcement and Sanctions) Law, 1990 (P.N.D.C.L. 236)] and
- (c) any other offence involving serious economic fraud, loss of State funds or property.

(2) A Regional Tribunal shall not try a criminal offence if the trial requires the participation of a jury or assessors.<sup>7</sup>

#### **25. Trial by Regional Tribunal**

(1) Subject to the Constitution, this Act and any other enactment, a Regional Tribunal shall, in the exercise of its jurisdiction, have and exercise the powers conferred on the High Court by this Act or any other enactment and may issue in criminal matters an order or impose a sentence which the High Court may issue or impose.

(2) The [Criminal Procedure Code, 1960 (Act 30)], the [Evidence Decree, 1975, (N.R.C.D. 323)], the Rules of Court and any other rules of evidence and procedure applicable to the High Court in criminal trials shall, subject to this Act, apply to trials before a Regional Tribunal.<sup>8</sup>

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7. Subsections (3), (4) and (6) repealed by section 8 of the Courts (Amendment) Act, 2002 (Act 620).

8. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).



**26. Decision of Regional Tribunal and appeals**

(1) The determination of a question before a Regional Tribunal in the exercise of its original jurisdiction shall be in accordance with the opinion of the majority of the members hearing the case.<sup>9</sup>

(2) Where the majority does not include the Chairman and the accused is convicted, the accused shall, where notice to appeal is given against the decision, be granted bail by the Tribunal, subject to the conditions determined by the Tribunal.

(3) A person aggrieved by a judgment, decision or order of a Regional Tribunal in a matter before the Tribunal may appeal against it to the Court of Appeal.

(4) The Court of Appeal shall not entertain an appeal under subsection (3) unless the conditions prescribed by the Rules of Court have been complied with.

**27. Appointment of panel members**

(1) In accordance with clause (4) of article 144 of the Constitution, the panel members of a Regional Tribunal other than the Chairman, shall be appointed by the Chief Justice in consultation with the Regional Co-ordinating Council for the region and on the advice of the Judicial Council.

(2) Except as otherwise provided in this Act, the Chief Justice on the advice of the Judicial Council, shall determine the qualifications and tenure of office of members of a Regional Tribunal other than the Chairman.

*Appeals Before, and General Provisions relating to, the Superior Courts***28. Suspension of death sentence pending appeal**

Where an appeal to a superior court relates to a conviction involving a sentence of death,

- (a) the sentence shall not be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given; and
- (b) if notice is given the sentence shall not be executed
  - (i) until the expiration of seven days after the determination or discontinuance of the appeal, or
  - (ii) until the expiration of seven days after the application for leave to appeal is finally refused or withdrawn.

**29. Suspension of court order pending appeal**

(1) Where a Court, on conviction of a person, orders payment of compensation, payment of the expenses of the prosecution or the restoration or reversion of property in a person, the operation of the order shall be suspended,

- (a) until the expiration of the period within which an appeal may be brought; and

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9. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

- (b) where notice of appeal or notice of application for leave to appeal is given in accordance with law, until the determination of the appeal or until the refusal of leave to appeal or withdrawal of the application for leave to appeal.

(2) Where the operation of an order is suspended pending the determination of the appeal, the order shall not take effect if the conviction is quashed on appeal, unless the appellate court otherwise directs.

(3) Notwithstanding a provision of this section, the trial court may, in the case of stolen property where the title to the property is not in dispute, order the immediate enforcement of the order.

### 30 Orders available to appellate court

Subject to this Act, an appellate court may in a criminal case,

- (a) on an appeal from a conviction or acquittal
- (i) reverse the finding and sentence and acquit and discharge or convict the accused or order the accused to be retried by a court of competent jurisdiction, or commit the accused for trial; or
  - (ii) alter the finding, maintaining the sentence or with or without altering the finding, reduce or increase the sentence; or
  - (iii) with or without the reduction or increase and with or without altering the finding, alter the nature of the sentence; or
  - (iv) annul the conviction and substitute a special finding to the effect that the accused was guilty of the act or omission charged but was criminally insane so as not to be responsible at the time when the act was done or the omission was made, and order the accused to be confined as a criminally insane person in a mental hospital, prison or any other suitable place of safe custody; or
  - (v) annul or vary an order of imprisonment or any other punishment imposed on the person convicted; or
  - (vi) annul or vary an order for the payment of compensation, or of the expenses of the prosecution, or for the restoration of property to a person whether or not the conviction is quashed;
- (b) on an appeal from any other order, alter or reserve the order, and make an amendment or a consequential or an incidental order that may appear just and proper.

### 31. Appeal allowed on substantial miscarriage of justice

(1) Subject to subsection (2), an appellate court on hearing an appeal in a criminal case shall allow the appeal if the appellate court considers

- (a) that the verdict or conviction or acquittal ought to be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or
- (b) that the judgment in question ought to be set aside as a wrong decision on a question of law or fact, or
- (c) that there was a miscarriage of justice,

and in any other case shall dismiss the appeal.

(2) The appellate court shall dismiss the appeal if it considers that a substantial miscarriage of justice has not actually occurred or that the point raised in the appeal consists of a technicality or procedural error or a defect in the charge or indictment but that there is evidence to support the offence alleged in the statement of offence in the charge or indictment or any other offence of which the accused could have been convicted on that charge or indictment.

(3) Without prejudice to subsections (1) and (2),

- (a) where the charge upon which a person is being tried is amended in the course of the trial, and the accused is not called upon to plead to the amended charge, but the case proceeds as if the accused had pleaded not guilty to the amended charge, an appeal based only on the failure to call upon the accused to plead to the amended charge shall be dismissed;
- (b) where a person is charged with an offence like defrauding by false pretences or forgery and the particulars of the offence in the charge or indictment omit to allege an intent to defraud or any other intent forming part of the offence but evidence is led of the intent, an appeal based only on the omission in the charge or indictment shall be dismissed;
- (c) where a person is charged with corruption or extortion as a public officer and the charge or indictment omits to allege in the particulars of offence that the accused is a public officer but evidence is led that the accused is a public officer, an appeal based only on the omission shall be dismissed; or
- (d) where a person is charged with false pretences, stealing or an offence relating to property and the charge omits to allege the ownership of the property or that the person defrauded parted with the ownership of the property but evidence is led of the particulars omitted, an appeal based only on the omission shall be dismissed.

### **32. Order for production of document**

Subject to article 135 of the Constitution, in the exercise of its jurisdiction the appellate court may, in the interests of justice,

- (a) order the production of a document, an exhibit or any other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order a witness who would have been a compellable witness at the trial to attend and be examined before the Court, whether the witness was or was not called at the trial, or order the examination of the witness to be conducted in a manner provided by the Rules of Court, or in the absence of the Rules of Court, in a manner directed by the Court, before a Justice of the Court or before an officer of the Court or any other person appointed by the Court for the purpose, and allow the admission of the depositions taken as evidence before the Court.

**33. Other provisions relating to appeals**

(1) The Court before which a person is convicted or the Court to which an appeal is made may, on the application of an appellant, grant the appellant bail pending the determination of the appeal.

(2) Where an appeal is lodged by a person entitled to appeal, the Court to which the appeal is made may, pending the hearing and for reasons to be recorded by it in writing, order that the execution of the sentence or the order appealed against be suspended.

(3) The time during which an appellant is released on bail pending the determination of the appeal shall not count as part of a term of imprisonment under the sentence.

(4) Subject to subsection (3), and to the directions given by the Court, a sentence of imprisonment begins to run as from the day on which the prisoner is received into prison under the sentence.

(5) Where a question of law is reserved for the consideration of the Court of Appeal under section 100, this section shall, with the necessary modifications, apply to the person in relation to whose conviction the question of law is reserved as it applies to an appellant.

(6) An appellant who is in custody is entitled to be present at the hearing of the appeal unless the personal conduct of the appellant renders, or is likely to render, the continuation of the proceedings impracticable, and the Court orders the appellant to be removed for the trial to proceed; but the appellate court may exercise the power to pass sentence notwithstanding that the appellant is for a reason not present.

(7) Where the appeal is by the prosecution, the respondent is entitled, with the modifications that are necessary, to the rights of the appellant under this section.

(8) Subject to the Constitution, the judgment of an appellate court on an appeal shall be enforced as if it were a judgment of the Court from whose decision the appeal was brought.

(9) An appellate court may, in a criminal case, impose only the sentence that could have been imposed by the Court by which the case was tried.

(10) An appeal in a criminal case shall abate on the death of the person to whom the decision against which the appeal is brought relates.

(11) Subsection (10) does not apply to an order requiring the payment of a fine, costs or compensation, or the delivery or restitution of property, or the payment of its value, or the destruction or forfeiture of property.

**34. Dismissal of frivolous appeals**

(1) The Supreme Court may summarily dismiss an appeal which is frivolous or vexatious or does not show a substantial ground of appeal, without calling on a person to attend the hearing.

(2) Without prejudice to subsection (1), an appeal against a conviction in a criminal case may be dismissed summarily under that subsection where the appellant had been convicted on a plea of guilty.

**35. Offer of compensation or restitution**

(1) Where a person is charged with an offence before the High Court or a Regional Tribunal, the commission of which has caused economic loss, harm or damage to the State or a State agency, the accused may inform the prosecutor whether the accused admits the offence and is willing to offer compensation or make restitution and reparation for the loss, harm or damage caused.

(2) Where an accused makes an offer of compensation or restitution and reparation, the prosecutor shall consider if the offer is acceptable to the prosecution.

(3) If the offer is not acceptable to the prosecution the case before the Court shall proceed.

(4) If the offer is acceptable to the prosecution, the prosecutor shall in the presence of the accused, inform the Court which shall consider if the offer of compensation or restitution and reparation is satisfactory.

(5) Where the Court considers the offer to be satisfactory, the Court shall accept a plea of guilty from the accused and convict the accused on that plea, and in lieu of passing sentence on the accused make an order for the accused to pay compensation or make restitution and reparation.

(6) An order of the Court under subsection (5) is subject to the conditions directed by the Court.

(7) Where a person convicted under this section defaults in the payment of the money required of that person under this section, or fails to fulfil a condition imposed by the Court under subsection (6), the amount outstanding shall become due and payable and upon failure to make the payment, the Court shall [proceed to] pass a custodial sentence on the accused.<sup>10</sup>

**36. Contempt of the Superior Court of Judicature**

(1) By virtue of clause (2) of article 126 of the Constitution, the Superior Court of Judicature may commit for contempt to themselves and exercise the powers that were vested in a court of record immediately before the coming into force of the Constitution in relation to contempt of court.

(2) In the exercise of the judicial power conferred upon the Judiciary by the Constitution, this Act or any other law, the Superior Court of Judicature may, in relation to a matter within its jurisdiction, issue the necessary orders to ensure the enforcement of a judgment, decree or an order of the Court.

**37. Seals of the Superior Court of Judicature**

(1) The Supreme Court, the Court of Appeal, the High Court and the Regional Tribunal shall each have a seal which shall

- (a) be used as the occasion requires;
- (b) have a device or an impression of the arms of Ghana with the inscription of the words "Superior Court of Judicature" together respectively, with the

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10. Substituted by section 4 of the Courts (Amendment) Act, 2002 (Act 620).

words “Supreme Court”, “Court of Appeal”, “High Court of Justice”, or “Regional Tribunal”, and

(c) be in the form prescribed by the Chief Justice.

(2) The seal of the Supreme Court shall be kept by the Chief Justice, and a duplicate of the seal shall be kept by each Justice of the Court or by any other public officer approved by the Chief Justice.

(3) The seal of the Court of Appeal shall be kept by the Chief Justice, and a duplicate of the seal shall be kept by each Justice of the Court or by any other public officer approved by the Chief Justice.

(4) The seal of the High Court of Justice shall be kept by the Chief Justice, and a duplicate of the seal shall be kept by each Justice of the Court or by any other public officer approved by the Chief Justice.

(5) The seal of a Regional Tribunal shall be kept by the Chief Justice, and a duplicate shall be kept by the Chairman of the Regional Tribunal or by any other public officer approved by the Chief Justice.

### 38. Places of sittings of the Superior Court of Judicature

Subject to clause (4) of article 136 of the Constitution, the sittings of the Supreme Court, the Court of Appeal, the High Court or a Regional Tribunal shall be usually held in the places that the Chief Justice may determine, but the proceedings of the Court shall not be invalidated by the fact that the sittings of the Court in relation to any proceedings took place in a place other than a place determined under this section.

## PART TWO

### *Lower Courts*<sup>11</sup>

### 39. Establishment of lower courts

Pursuant to paragraph (b) of clause (1) of article 126 of the Constitution, the following are by this Act established as the lower courts:

- (a) Circuit Courts;
- (b) District Courts;
- (c) Juvenile Courts; and
- (d) the National House of Chiefs, Regional Houses of Chiefs and every Traditional Council, in respect of the jurisdiction of that House or Council to adjudicate over a cause or matter affecting chieftaincy.

### *The Circuit Courts*

### 40 Circuit Courts

(1) There shall be established in each Region the Circuit Courts that the Chief Justice may determine.

11. Part Two is substituted by section 5 of the Courts (Amendment) Act, 2002 (Act 620).

(2) The Chief Justice shall specify the area of jurisdiction of each Circuit Court.

(3) There shall be assigned to each Circuit Court a Judge who shall be appointed, subject to the approval of the President, by the Chief Justice acting on the advice of the Judicial Council.

(4) A person shall not be appointed a Circuit Court Judge unless that person is of high moral character and proven integrity, and is of not less than five years' standing as a lawyer.

(5) A Circuit Court Judge shall exercise the jurisdiction conferred on the Circuit Court or the Judge by this Act or any other enactment in respect of causes and matters arising within the relevant area of jurisdiction.

(6) A Circuit Court shall hold its sittings at the place and times directed by the Chief Justice.

(7) Subject to the directions of the Chief Justice, the sittings of a Circuit Court shall be held at the places and times that the Circuit Court Judge thinks appropriate.

#### **41. Justice of the Superior Court may sit as Circuit Court Judge**

Without prejudice to subsection (3) of section 40, the Chief Justice, or a Justice of the Superior Court of Judicature nominated by the Chief Justice, may sit as a Circuit Court Judge.

#### **42. Civil jurisdiction of the Circuit Courts**

(1) The civil jurisdiction of a Circuit Court consists of

- (a) an original jurisdiction in civil matters
  - (i) in personal actions arising under a contract or a tort, or for the recovery of a liquidated sum of money, where the amount claimed is not more than one hundred million cedis;
  - (ii) in actions between a landlord and a tenant for the possession of land claimed under a lease and refused to be delivered up;
  - (iii) in [causes and matters] involving the ownership, possession, occupation of or title to land;
  - (iv) to appoint guardians of infants and to make orders for the custody of infants;
  - (v) to grant in an action instituted in the Court, injunctions or orders to stay waste, or alienation or for the detention and preservation of property which is the subject matter of that action, or to restrain breaches of contract, or the commission of a tort;
  - (vi) in claims of relief by way of interpleader in respect of land or any other property attached in execution of an order made by a Circuit Court;
  - (vii) in applications for the grant of probate or letters of administration in respect of the estate of a deceased person, and in [causes and matters] relating to succession to property of a deceased person, who had, at the time of death, a fixed place of abode within the area of jurisdiction of the Circuit Court, and the value of the estate or property in question does not exceed one hundred million cedis; and

(b) any other jurisdiction conferred by this Act or any other enactment.

(2) Where there is a dispute as to whether or not an amount of money claimed or the value of property in an action, [cause or matter] is in excess of the amount or value specified in subsection (1), in relation to that action, [cause or matter], the Circuit Court shall call evidence as to the amount or value, and if it finds that it exceeds the amount or value specified in subsection (1), the Circuit Court shall transfer the case to the High Court.

(3) Where the amount claimed or the value of the property exceeds the amount or value specified in subsection (1), the Circuit Court shall, notwithstanding that subsection, proceed to hear the case if the parties agree that it should do so.

(4) The Attorney-General may, by legislative instrument, amend the amount or value specified in subsection (1).

#### **43. Criminal jurisdiction of the Circuit Courts**

A Circuit Court has original jurisdiction in criminal matters other than treason, offences triable on indictment and offences punishable by death.

#### **44. Appeals from the Circuit Courts**

(1) A person aggrieved by a judgment of a Circuit Court in a civil action may, subject to this Act and the Rules of Court, appeal to the Court of Appeal.

(2) A person aggrieved by a judgment of a Circuit Court in a criminal trial may, subject to this Act and the Rules of Court, appeal to the High Court.

### *The District Courts*

#### **45. Establishment of the District Courts**

(1) There shall be in each District the District Courts that the Chief Justice may determine.

(2) There shall be assigned to each District Court, a Magistrate who shall be appointed, subject to the approval of the President, by the Chief Justice on the advice of the Judicial Council.

(3) The Chief Justice shall specify the area of jurisdiction of the District Court.

#### **46. Qualification of a Magistrate and sitting of the District Court**

(1) A person does not qualify to be appointed a Magistrate of a District Court unless that person is of high moral character and proven integrity and is a lawyer of not less than three years' standing.

(2) The Chief Justice, a Justice of the Superior Court of Judicature or a Circuit Court Judge nominated by the Chief Justice may sit as a Magistrate of a District Court.

(3) The sittings of a District Court shall be held at the places and times directed by the Chief Justice.

(4) Subject to those directions, the sittings may be held at the places and times that the Magistrate thinks appropriate.



**47. Civil jurisdiction of the District Courts**

- (1) A District Court shall, within the area of its jurisdiction, have civil jurisdiction
- (a) in personal actions arising under a contract or a tort for the recovery of a liquidated sum of money where the amount claimed does not exceed ten million cedis;
  - (b) to grant, in an action instituted in the District Court, injunctions or orders to stay waste or alienation, or for the detention and preservation of property which is the subject matter of that action, or restrain a breach of contract or the commission of a tort;
  - (c) in claims for relief by way of interpleader in respect of land or any other property attached in execution of [a decree] [an order] made by the District Court;
  - (d) in civil [causes or matters] relating to the landlord and tenant of premises, or a person interested in the premises as required or authorised by a law relating to landlord and tenant;
  - (e) in actions relating to ownership, possession or occupation of land, where the value of the land does not exceed ten million cedis;
  - (f) in divorce and other matrimonial [causes or matters] and actions for paternity and custody of children;
  - (g) in an application for the grant of probate or letters of administration in respect of the estate of a deceased person, and in [causes and matters] relating to succession to property of a deceased person, who had at the time of death a fixed place of abode within the area of jurisdiction of the District Court and the value of the estate or property in question does not exceed ten million cedis; and
  - (h) hear and determine charges and dispose of any other matters affecting juveniles, that is persons under the age of eighteen.

(2) Where there is a dispute as to whether or not an amount of money claimed or the value of land or property in an action, [cause or matter] is in excess of the amount or value specified in subsection (1) in relation to that action, [cause of matter] the District Court shall call evidence as to the amount or value, and if it finds that it exceeds the amount or value specified in subsection (1) the District Court shall, subject to the powers of transfer of the Chief Justice, transfer the case to a Circuit Court.

(3) Where [in any action, cause or matter] the amount claimed or the value of the land or property exceeds the amount or value specified in subsection (1), the District Court shall, notwithstanding that subsection, proceed to hear the case if the parties agree that it should do so.

(4) The Attorney-General may, by legislative instrument, amend the amount or value specified in subsection (1).

**48. Criminal jurisdiction of the District Courts**

(1) In criminal matters, a District Court has jurisdiction to try summarily

- (a) an offence punishable by a fine not exceeding five hundred penalty units or a term of imprisonment not exceeding two years or both the fine and the imprisonment;
- (b) any other offence, except an offence punishable by death or by imprisonment for life or an offence declared by an enactment to be a first degree felony, if the Attorney-General thinks that the case is suitable to be tried summarily, considering
  - (i) the nature of the offence,
  - (ii) the absence of circumstances which would render the offence of a grave or serious character, and
  - (iii) any other circumstances of the case;
- (c) an attempt to commit an offence to which paragraph (a) or (b) applies;
- (d) abetment of or conspiracy in respect of that offence.

(2) Subject to this section, a District Court, in the exercise of its jurisdiction in criminal matters shall not impose a term of imprisonment exceeding two years or a fine exceeding five hundred penalty units or both the fine and the imprisonment.

(3) A District Court does not have jurisdiction to try an offence under paragraph (b), (c) or (d) of subsection (1) where the enactment creating the offence has prescribed in relation to the offence a minimum penalty that exceeds the penalty permitted to be imposed by a District Court under subsection (2).

(4) Where under an enactment increased punishment may be imposed upon a person previously convicted of a crime, a District Court may impose the increased punishment, or twice the maximum punishment prescribed by subsection (2) whichever is the lesser.

(5) The Attorney-General may, by legislative instrument, amend the amount or value specified in subsections (1) and (2).

**49. Juvenile Courts**

(1) The Chief Justice may designate a District Court as a Juvenile Court.

(2) A Juvenile Court shall be composed of the Magistrate of the District Court as the presiding person and two other persons one of whom is a social welfare officer and the other, a person of not less than twenty-five years both of whom shall be appointed by the Chief Justice on the recommendations of the Director of Social Welfare.

(3) A Juvenile Court has power to hear and determine a matter civil or criminal that involves a person under the age of eighteen and shall for that purpose have and exercise the powers of a District Court.

**50. Jurisdiction of the District Court under the Children's Act**

A District Court has jurisdiction to hear and determine an action that arises under the [Children's Act, 1998 (Act 560)] and is for the purposes of that enactment, the Family Tribunal, and exercise the powers conferred on a Family Tribunal under that Act and any other enactment.

**51. General powers of the District Courts**

(1) A District Court shall, in addition to the jurisdiction conferred by this Act, have any other functions conferred or imposed on it by any other enactment.

(2) A Magistrate may administer oaths, take solemn affirmations and declarations, make the decrees and orders, issue the process and exercise the powers, judicial and ministerial in relation to the administration of justice that are prescribed by an enactment, the Rules of Court, or special order of the District Court.

(3) A writ of summons for the commencement of an action in the High Court or a Circuit Court may, without prejudice to a power conferred on the High Court or a Circuit Court by any other provision of this Act or the Rules of Court, be filed with a District Court and the District Court with which the writ is filed shall transmit the writ immediately to the High Court or the Circuit Court at which the action in respect of which the writ is filed is to be determined.

(4) An act done by or under the authority of a Magistrate is not void or impeachable by reason only that the act was done, or that any act, offence, or matter in respect of or in relation to which the act was done, occurred beyond the limits of the district or area for which the Magistrate was appointed.

(5) Where in proceedings before a District Court a defendant raises an objection to the jurisdiction of the Court which might but for this section have been valid, if

- (a) in a civil case, the objection is raised at a time before the plaintiff calls the first witness in support of the claim, or
- (b) in a criminal case, the objection is raised at or before the time when the defendant is required to plead to the charge,

the Magistrate shall consider the objection, and if it appears to the Magistrate that there is prima facie proof of the objection, the Magistrate shall, in a civil case report the matter to the High Court and in a criminal case, report the matter to the Circuit Court, and the High Court or the Circuit Court shall direct where the matter shall be heard and determined.

(6) A Magistrate shall, when required by a Court, execute an order or a process issuing from the District Court, and shall take security from a person named in the order or process for appearance in the Court, and shall, in default, send that person to the place named in the order or process.

**52. Monthly lists and powers of the High Court**

(1) At the end of every month, every Magistrate shall forward to the High Court exercising jurisdiction over the District, a complete list of the criminal cases decided by or brought before the Magistrate during that month, setting out the name of the accused, the offence with which the accused was charged, and the date of conviction and the sentence, or of acquittal or discharge, and in every case the order of the Magistrate in full.

(2) Upon receipt of the list referred to in subsection (1), the Justice of the High Court may call for a copy of the record of a case included in the list and, without seeing the record or after seeing it, and without hearing argument or after hearing argument, may,

- (a) subject to an enactment fixing a minimum penalty, vary the sentence or impose any other sentence warranted in law by the verdict which the District Court could have imposed in substitution for the sentence imposed as the Justice thinks ought to have been imposed;

- (b) subject to an enactment requiring a particular order to be made, set aside an order or modify an order in the form that the Justice thinks fit;
- (c) set aside the conviction, in which case the person if under detention shall be immediately released from detention, and a fine already paid shall be refunded to the person fined, and the security given shall be released;
- (d) set aside the acquittal, record a conviction and impose a sentence which the District Court could have imposed;
- (e) set aside the conviction on acquittal and order a new trial or a preliminary enquiry before the District Court which made the conviction or acquittal or before any other District Court;
- (f) order further evidence to be taken either generally or on a particular point by the District Court which passed the sentence, or which ordered the acquittal or by any other District Court, and order in the meantime a person who has been convicted and imprisoned to be released on bail with surety or on that person's own recognisance; or
- (g) make any other order that the interests of justice requires, and give the necessary and consequential directions.

(3) Upon the receipt of the list referred to in subsection (1), if the High Court is of the view that a conviction for another offence ought to have been imposed, or that the accused was guilty of the act charged, but was insane so as not to be responsible for the action at the time when the accused did the act, the High Court shall set aside the conviction and send back the case for rehearing by the appropriate District Court, subject to the directions that the Justice thinks fit, and the Justice shall further inform the prosecution and the defence of that direction.

(4) Where a person convicted appeals against the conviction, or has applied for a case to be stated by the District Court under subsection (6) of section 100, the Justice shall not exercise jurisdiction under this section in relation to the case to which the appeal or application relates.

(5) When action on the list as provided in subsection (1) is complete or if the Justice decides not to take action, the Justice shall direct that the list be filed; but the direction shall not have the effect of preventing the Justice from subsequently taking an action prescribed in that subsection if the Justice thinks fit.

(6) Three months after the last day of the month to which the list relates the Judge shall become *functus officio* in respect of the cases on the list in respect of which an action has not been taken.

(7) Proceedings under this section may be taken by the Justice on the Justice's own motion or on the petition of a person interested praying for the exercise of the revisional powers of the Justice, and the powers may be exercised although the monthly list has not been transmitted to or received by the Justice.

### **53. Magistrate subject to the directions of the High Court**

(1) A Magistrate is subject to the orders and directions of the High Court as any other officer of the Court.

(2) The Justice of the High Court exercising jurisdiction over the District may, where the Justice thinks fit, require the Magistrate of the District Court to render to the High Court in the form that the High Court directs a report of a case which may be brought before the Magistrate.

(3) The Chief Justice may exercise the jurisdiction and functions conferred by section 52 and subsection (2) of this section on the High Court, and may give directions as to the Justice by whom and the manner in which the jurisdiction is, and the functions are, to be exercised in a particular case or class of cases.

### PART THREE

#### *Common Law and Customary Law*

#### **54. Choice of law**

(1) Subject to clause (2) of article 11 of the Constitution, this Act and to any other enactment, a Court when determining the law applicable to an issue arising out of a transaction or situation, shall be guided by the following rules in which references to the personal law of a person are references to the system of customary law to which that person is subject or to the common law where that person is not subject to a system of customary law:

Rule 1. An issue arising out of a transaction shall be determined according to the system of law intended by the parties to the transaction to govern the issue or the system of law which the parties may, from the nature or form of the transaction, be taken to have intended to govern the issue.

Rule 2. In the absence of an intention to the contrary, the law applicable to an issue arising out of the devolution of a person's estate shall be the personal law of that person.

Rule 3. In the absence of an intention to the contrary, the law applicable to an issue as to title between persons who trace their claims from one person or group of persons or from different persons all having the same personal law, shall be the personal law of that person or those persons.

Rule 4. In applying Rules 2 and 3 to disputes relating to titles to land, due consideration shall be given to the overriding provisions of the law of the place in which the land is situated.

Rule 5. Subject to Rules 1 to 4, the law applicable to an issue arising between two or more persons shall, where they are subject to the same personal law, be that law; and where they are not subject to the same personal law, the Court shall apply the relevant rules of their different systems of personal law to achieve a result that conforms with natural justice, equity and good conscience.

Rule 6. In determining an issue to which the preceding Rules do not apply, the Court shall apply the principles of the common law that will do substantial justice between the parties, having regard to equity and good conscience.

Rule 7. Subject to the directions that the Supreme Court may give in the exercise of its powers under article 132 of the Constitution, in the determination of an issue arising from the common law, the Court may adopt, develop and apply the remedies from a system of law, whether Ghanaian or non-Ghanaian, that appear to the Court to be efficacious and meet the requirements of justice, equity and good conscience.

(2) For the purposes of the Rules contained in subsection (1) and unless the context otherwise requires, “**common law**” means the common law as defined in article 11 of the Constitution.

(3) Subject to this Act and to any other enactment, the rules of law and evidence, including the rules of private international law, that have before the coming into force of this Act been applicable in proceedings in Ghana shall continue to apply, without prejudice to the development of the rules which may occur.

#### **55. Ascertainment of customary law**

(1) A question as to the existence or content of a rule of customary law is a question of law for the Court and not a question of fact.

(2) Where there is doubt as to the existence or content of a rule of customary law relevant in proceedings before a Court, the Court may adjourn the proceedings to enable an inquiry to be made under subsection (3),

(a) after the Court has considered submissions made by or on behalf of the parties, and

(b) after the Court has considered reported cases, textbooks and other sources that may be appropriate to the proceedings.

(3) The inquiry shall be held as part of the proceedings in the manner that the Court considers expedient, and the provisions of this Act relating to the attendance and testimony of witnesses shall apply with the modifications that appear to the Court to be necessary.

(4) The decision as to the persons who are to be heard at the inquiry shall be one for the Court, after hearing the submissions on it made by or on behalf of the parties.

(5) The Court may request a House of Chiefs, Divisional or Traditional Council or any other body with knowledge of the customary law in question to state its opinion which may be laid before the inquiry in written form.

### **PART FOUR**

#### *Exercise of Jurisdiction, Evidence and Rules of Court*

#### **56. Criminal jurisdiction of the Courts**

(1) Subject to this section, the jurisdiction of the Courts in criminal matters is exercisable only in respect of an offence committed within Ghana including its territorial waters and air space and in respect of offences committed on a ship or an aircraft registered or licensed in Ghana.

(2) Where an act which if done within the jurisdiction of a Court, would be a criminal offence, is done partly within and partly outside the jurisdiction, a person who within or outside the jurisdiction does or abets a part of the act may be tried and punished as if the act had been done wholly within the jurisdiction.

(3) A citizen who

- (a) while employed in the service of the Republic or of a statutory corporation does an act outside Ghana which if done in Ghana is punishable as an offence, or
- (b) does an act outside Ghana which if done in Ghana would constitute the offence of murder,<sup>12</sup> or
- (c) does outside Ghana an act which if done in Ghana constitutes an offence involving or resulting in the misappropriation, dissipation or loss of
  - (i) public funds,
  - (ii) government property including damage to government property,
  - (iii) property belonging to a statutory corporation including damage to the property of the statutory corporation,
- (d) does an act on the premises of a Ghanaian diplomatic mission which if done in Ghana would be punishable as an offence,

commits an offence as if the act constituting the offence was done in Ghana and may, subject to [section 46 of the Criminal Procedure Code, 1960 (Act 30)] be prosecuted and punished in Ghana.

(4) A person whether a citizen or not, is liable to be tried and punished in Ghana if that person does an act which if done within the jurisdiction of the courts of Ghana would have constituted any of the following offences:

- (a) slave trade or traffic in slaves;
- (b) piracy;
- (c) traffic in women or children;
- (d) falsification or counterfeiting or uttering of false copies or counterfeits of an official seal of the Republic or any currency, instrument of credit, stamp, passport, or public document issued by the Republic or under its authority;
- (e) genocide;
- (f) an offence against the property of the Republic;
- (g) an offence against the security, territorial integrity or political independence of the Republic;
- (h) hijacking;
- (i) unlawful traffic in narcotics;
- (j) attacks on an international communications system, canal or submarine cable;

12. The reference to section 183A of the Criminal Code, 1960 (Act 29) has been omitted as that section was repealed by section 1 of the Criminal Code, (Repeal of Criminal Libel and Seditious Laws) (Amendment) Act, 2001 (Act 620). Criminal libel in respect of the President or sedition against the President is now not good law.

- (k) unauthorised disclosure of an official secret of the Republic;
- (l) an offence by or against a person in the employment of the Republic or a statutory corporation while acting in the course of the duties of the employment;
- (m) traffic in obscene publications; and
- (n) any other offence which is authorised or required by a convention or treaty to which the Republic is a signatory to be prosecuted and punished in Ghana wherever the offence was committed.

#### **57. Limitation of jurisdiction in chieftaincy matters**

Subject to the Constitution, the Court of Appeal, the High Court, a Regional Tribunal, a Circuit Court and a District Court shall not entertain either at first instance or on appeal a cause or matter affecting chieftaincy.

#### **58. Summoning witnesses**

In proceedings, and at any stage of the proceedings, a Court, either on its own motion or on the application of a party, may summon a person to attend to give evidence, or to produce a document in the possession of that person or excerpts from the document, subject to the applicable enactment or the relevant rule of law.

#### **59. Warrant in criminal cases**

In a criminal case where the Court is satisfied by evidence on oath that a person can give material evidence and will not attend court unless compelled to do so, the Court may immediately issue a warrant for the arrest and production of the witness before the Court at a time and place specified in the warrant.

#### **60. Witness arrested under warrant**

(1) Where a witness is arrested on warrant the Court may order the release of the witness from custody for appearance of the witness at the hearing of the case, on a security determined by the Court.

(2) Where the witness fails to furnish proper security, the Court shall order the detention of the witness for production at the hearing.

#### **61. Penalty for non-attendance by witness**

- (1) A person summoned as a witness who
  - (a) without reasonable excuse fails to attend court as required by the summons after having had reasonable notice of the time and place as required by the summons, or
  - (b) having attended court departs without reasonable excuse and without having obtained the permission of the Court, or
  - (c) fails without reasonable excuse to attend after adjournment of the Court after being ordered to attend,

may be proceeded against by warrant to compel the attendance of that person, and commits an offence and may be dealt with summarily by the Court for contempt of court and



sentenced immediately to a fine not exceeding fifty penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.<sup>13</sup>

(2) The fine may be levied by attachment and the sale of the movable property belonging to the witness.

(3) For good cause shown, the High Court, a Regional Tribunal or a Circuit Court may remit or reduce a fine imposed under this section by a District Court.

## **62. Examination of witnesses**

(1) Subject to the applicable enactment or the relevant rule of law to the contrary, a Court shall require a witness to be examined on oath.

(2) The Court may [at any time if it thinks it just and expedient] for reasons to be recorded in the proceedings, take without oath the evidence of a person who declares that the taking of an oath is unlawful according to the religious belief of that person, or who by reason of immature age or want of religious belief ought not in the opinion of the Court to be admitted to give evidence on oath.

(3) The fact that the evidence has been taken without oath shall be recorded in the proceedings, and the evidence taken shall be treated as if it had been taken on oath.

(4) Where a person appears in court to give evidence and

- (a) refuses to be sworn, or
- (b) having been sworn, refuses without lawful excuse to answer a question put to that person, or
- (c) refuses or neglects to produce a document or thing which that person is required to produce, or
- (d) when lawfully required to do so refuses to sign that person's deposition, without offering a lawful or a sufficient excuse for the refusal or neglect,

that person commits, independently of any other liability, the offence of contempt of court, and the Court before which the contempt is committed may deal summarily with, and sentence, that person as if that person had been convicted of a misdemeanour.

## **63. Bystander may be required to give evidence**

A person present in Court, whether a party or not in the proceedings before the Court, may be compelled by the Court to give evidence or to produce a document in the possession or under the control of that person, in the same manner and subject to the same rules as if that person had been summoned to attend and give evidence, or to produce the document, and may be punished in the same manner for refusal to obey the order of the Court.

## **64. Prisoners may be brought by warrant to give evidence**

(1) A Justice, Chairman of a Regional Tribunal, a Circuit Court Judge, or a Magistrate may issue a warrant for a prisoner, or a person in custody, to appear as a party or be examined as a witness, in proceedings in the Court or Tribunal.

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13. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

(2) A warrant shall not be issued unless the Justice, the Chairman, the Circuit Judge or the Magistrate has probable grounds for believing that the appearance of the prisoner is necessary or desirable or that the evidence of the prisoner is likely to be material.

(3) The Director of Prisons or any other person in whose custody the prisoner is, shall immediately obey the warrant by bringing the prisoner to the Court in the custody of the Director or that other person or by delivering the prisoner to an officer of the Court as ordered, and if the prisoner, under the terms of the warrant, is delivered to an officer of the Court, the Director or the other persons shall not be liable for the escape of the prisoner.

(4) For the purposes of this section, “prisoner” includes a person in custody.

#### **65. Allowances to witnesses**

(1) A Court may, in proceedings before it, order and allow to each of the persons required to attend, or be examined as a witness, a sum of money it considers fit both for defraying reasonable expenses and for giving reasonable compensation for their trouble and loss of time.

(2) In proceedings before a Court, a person shall not refuse to attend as a witness, or to give evidence when so required by order of the Court on the grounds that the expenses of that person have not first been paid or provided for.

#### **66. Defrayment of witness allowances**

The sums of money allowed under section 65 shall be paid

- (a) in civil proceedings, by the party on whose behalf the witness is called and shall be recoverable as ordinary costs of the suit if ordered by the Court, or
- (b) in criminal proceedings, out of the Consolidated Fund if not paid by the convicted party or the prosecutor.

#### **67. Penalty on giving false evidence**

A person who in relation to proceedings before a Court gives false evidence on a declaration without oath, commits an offence and is liable to be convicted and punished in the same manner as if that person had given the evidence on oath.

#### **68. Inspection**

In proceedings before a Court, the Court may, on the application of either party or on its own motion, make an order for the inspection by the Court, the jury, the panel, the parties, or witnesses, of movable or immovable property, the inspection of which may be material to the proper determination of the question before the Court, and the Court may give the appropriate directions in respect of the inspection.

#### **69. Recording of proceedings before a Court**

(1) In proceedings before a Court, the Court may cause oral evidence to be recorded by shorthand, tape recorder or by any other means determined by the Chief Justice.

(2) The recording shall be done by an officer of the Court or any other person appointed for that purpose.

(3) A record taken under subsection (1) shall be transcribed by the person referred to in subsection (2) and the transcript shall, [for all purposes], be the official record of the proceedings in question.

(4) Before a person, other than the Justice, the Chairman of a Regional Tribunal, the Circuit Court Judge or the Magistrate, records or transcribes the evidence under this section, an oath shall be tendered to and taken by that person for the accurate and faithful recording of the evidence.<sup>14</sup>

(5) An officer of the Court who has once duly taken the oath shall not again be required to take the oath in respect of the same or of a subsequent case.

(6) The evidence shall be recorded under the supervision and control of the presiding Justice, the Chairman, the Circuit Court Judge or the Magistrate who may at any time before signing the written statement of the evidence amend anything in it which that person considers requires to be amended.<sup>15</sup>

(7) Before signing, the presiding Justice, Chairman, Judge or Magistrate shall examine the statement and be personally satisfied that it is in substance an accurate and faithful record of the oral evidence given.<sup>16</sup>

(8) Where an officer or any other person employed to record or transcribe evidence under this section wilfully falsifies or misrepresents the true meaning of the oral evidence recorded under this section, that officer or person

- (a) commits an offence, and is liable on conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment; or<sup>17</sup>
- (b) may be dealt with summarily by the Court as for contempt of court and be sentenced immediately to a fine not exceeding fifty penalty units or a term of imprisonment not exceeding six months.<sup>18</sup>

#### **70. Access to record of the Court**

(1) A person is not entitled to inspect or to have a copy of the record of evidence given in a case before a Court or to a copy of the Court's notes, except as may be expressly provided by the Constitution, a rule of court or any other enactment.

(2) Where a person affected by a judgment or a court order desires to have a copy of the judgment, order, deposition or any other part of the record, that person shall, on application for the copy, be furnished with it if the cost is paid for, except where the Court for a special reason thinks fit to furnish it free of charge.

#### **71. Minutes of proceedings**

(1) In civil or criminal proceedings dealt with in the High Court, Regional Tribunal, Circuit Court or District Court minutes of the proceedings shall be drawn up and shall be

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14. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

15. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

16. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

17. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

18. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

signed by an officer of the Court duly authorised by the Justice or Chairman of the Tribunal, Judge of the Circuit Court or the Magistrate.

(2) The minutes, with the notes of evidence taken at the hearing or trial including the record of proceedings taken under section 69, shall be preserved as records of the Court.

(3) The minutes and notes of evidence including the record referred to in subsection (2), or a copy of it signed and certified as a true copy by the officer referred to in subsection (1) shall, without further proof, be admitted as evidence of the proceedings and of the statements made by the witnesses.

#### **72. Promotion of reconciliation in civil cases**

(1) A Court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate settlement of disputes in an amicable manner between and among persons over whom the Court has jurisdiction.

(2) Where a civil suit or proceeding is pending, a Court with jurisdiction in that suit or proceeding may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.

#### **73. Reconciliation in criminal cases**

A Court with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of an offence not amounting to felony and not aggravated in degree, on payment of compensation or on any other terms approved by the Court before which the case is tried, and may, during the pendency of the negotiations for a settlement, stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.

#### **74. Vexatious proceedings**

(1) On an application by the Attorney-General, the High Court may order that legal proceedings shall not be instituted by a person in a Court without its leave if that person has habitually and persistently, without reasonable ground instituted vexatious legal proceedings in a Court whether against the same person or not.

(2) The leave of the High Court shall not be given unless it is satisfied that the proceedings are not an abuse of the court process and that there is prima facie ground for the proceedings.

#### **75. Examination of witnesses in matters pending before foreign tribunal**

(1) The High Court may order the examination of a witness within its jurisdiction on the terms that it considers necessary where an application is made by a court or tribunal of competent jurisdiction in another country for the testimony in respect of criminal, civil or commercial matters before that court or tribunal.

(2) The High Court may order the attendance of a witness before the person named in the order

(a) to be examined on oath, on interrogatories, or

(b) to produce specific documents;

and shall give the appropriate direction.

(3) An order of the High Court made under this section may be enforced in the same manner as an order made in a cause pending in the High Court.

#### **76. Certificate a sufficient evidence in support of application**

(1) An ambassador, a minister, diplomatic agent or consular officer may issue a certificate

- (a) that a matter the subject of an application under section 75 is a criminal, civil or commercial matter, and
- (b) that the court or tribunal requires the evidence pending before a court or tribunal in the country in which that person is employed.

(2) Where a certificate under subsection (1) is not issued, other evidence shall be admissible to show that the matter for which the evidence is required is pending before a court or tribunal in another country.

#### **77. Examination of witnesses upon oath**

A person authorised to take the examination of a witness by an order made under section 75 may take the examination on oath.

#### **78. Expenses of witnesses**

A person whose attendance is required under section 75 is entitled to the same allowances as a witness appearing at the trial in the High Court.

#### **79. Right of refusal to answer questions and produce documents**

(1) A person examined under an order made under section 75 has the same right to refuse to answer questions tending to incriminate that person and other questions as a witness in a cause pending in the High Court would be entitled to.

(2) A person shall not be compelled to produce under the order a writing or any other document which would not be compellable for that person to produce at a trial of a cause of that nature.

#### **80. Rules of Court**

(1) Subject to the Constitution, the Rules of Court Committee established by article 157 of the Constitution may, in accordance with clause (2) of article 157 of the Constitution, by constitutional instrument, make Rules of Court for regulating the practice and procedure of the Courts, which shall include Regulations relating to the prevention of frivolous and vexatious proceedings.

(2) Without prejudice to the generality of subsection (1), the Rules of Court Committee may, subject to the Constitution, make Rules of Court

- (a) for regulating the practice and procedure of the Superior Court of Judicature for the purposes of article 33 of the Constitution (which relates to the protection of rights by the Courts);
- (b) for the practice and procedure for petitions to the Supreme Court challenging the election of a President under article 64 of the Constitution;

- (c) for the practice and procedure of the High Court with respect to the exercise of the jurisdiction conferred on it by article 99 of the Constitution (which, inter alia, relates to the determination of the validity of the election of a Member of Parliament and of the Speaker of Parliament);
  - (d) for the practice and procedure of the High Court in respect of appeals against a disallowance or charge by the Auditor-General for the purposes of clause (10) of article 187 of the Constitution;
  - (e) for regulating the award of interest on sums of money claimed and found by a Court to be due, and prescribing the rates of interest;
  - (f) for regulating matters relating to the costs of the proceedings in court and prescribing the fees and allowances to be paid in respect of a matter relating to the proceedings of a Court;
  - (g) for regulating the sittings of the Courts and prescribing the periods of the vacations of the Courts;
  - (h) for prescribing forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of a Court.
- (3) The Rules of Court Committee may make Rules
- (a) for the practice and procedure for the removal of a President under article 69 of the Constitution;
  - (b) for regulating the practice and procedure of inquiries conducted before a Commission of Inquiry for the purposes of clause (2) of article 281 of the Constitution and for regulating the practice and procedure of a committee or any other body of inquiry appointed by the Government or established under an enactment; and
  - (c) regarding a matter in relation to which the Rules of Court Committee is authorised or required by an enactment to make Rules.

## PART FIVE

### *Enforcement of Foreign Judgments and Maintenance Orders*

#### *Foreign Judgments*

#### **81. Application of sections 81 to 88**

(1) Where the President is satisfied that, in the event of the benefits conferred by this section and sections 82 to 88 being extended to judgments given in the superior courts of a foreign country, substantial reciprocity of treatment will be assured in respect of the enforcement in that country of judgments given in the Superior Court of Judicature of Ghana, the President may, by legislative instrument, order

- (a) that this section and sections 82 to 88 shall extend to that country, and
- (b) that the courts of that country which are specified in the instrument shall be the superior courts of that country for the purposes of sections 82 to 88.

(2) A judgment of a superior court of a foreign country to which a legislative instrument under subsection (1) extends, other than a judgment of the Court given on an appeal from a court which is not a superior court, shall be a judgment to which this section and sections 82 to 88 apply, if

- (a) it is final and conclusive between the parties, and
- (b) there is payable under it a sum of money which is not a sum payable in respect of taxes or any other charges of a similar nature or in respect of a fine or any other penalty, and
- (c) it is given after the coming into operation of the instrument directing that sections 81 to 88 shall extend to that country.

(3) For the purposes of this section, a foreign judgment is final and conclusive although an appeal may be pending against it or that it may still be subject to appeal in the courts of the country of the original court.

## **82. Registration of judgment**

(1) A judgment creditor under a foreign judgment may apply to the High Court to have the foreign judgment registered.

(2) The application for registration of the foreign judgment shall be made within six years after the date of the judgment or where there has been an appeal, after the last judgment given in those proceedings.

(3) The High Court may order the foreign judgment to be registered subject to proof of the prescribed matters and the provisions of this Act in respect of foreign judgments.

(4) A foreign judgment shall not be registered if at the date of the application,

- (a) it has been wholly satisfied, or
- (b) it could not be enforced by execution in the country of the original court.

(5) Subject to section 83 with respect to the setting aside of a registration,

- (a) a registered foreign judgment shall, for the purposes of execution, be of the same force and effect,
- (b) proceedings may be taken on a registered foreign judgment,
- (c) the sum of money for which a foreign judgment is registered shall carry interest, and
- (d) the registering court shall have the same control over the execution of a registered foreign judgment,

as if the foreign judgment had been a judgment originally given in the registering court and entered on the date of registration.

(6) Execution shall not issue on the foreign judgment under this Act or the Rules of Court made in pursuance of it,

- (a) where it is competent for a party to make an application to have the registration of the foreign judgment set aside, or,
- (b) where an application is made, until after the application has been finally determined.

(7) Where the sum of money payable under a foreign judgment which is to be registered is expressed in a currency other than the currency of Ghana the foreign judgment shall be registered as if it were a judgment of a sum of money in the currency of Ghana based on the rate of bank exchange prevailing at the date of the foreign judgment of the original court.

(8) Where at the date of the application for registration, the foreign judgment has been partly satisfied, the judgment shall not be registered in respect of the whole sum of money payable under the foreign judgment but only in respect of the balance remaining payable at that date.

(9) Where, on an application for the registration of a foreign judgment, it appears to the registering court that the judgment is in respect of different matters and that some of the provisions of the judgment are of a nature that if those provisions had been contained in separate judgments those judgments could properly have been registered, the foreign judgment may be registered in respect of those that could be registered but not in respect of any other provisions contained in it.

(10) In addition to the sum of money payable under the foreign judgment and the interest due up to the time of registration by the law of the country of the original court, the following costs shall also be paid:

- (a) the reasonable costs of, and incidental to, registration of the judgment, and
- (b) the costs of obtaining a certified copy of the judgment from the original court.

### **83. Setting aside of registered judgments**

(1) On an application made by a party against whom a registered foreign judgment may be enforced, the registration of the foreign judgment

- (a) shall be set aside if the registering court is satisfied
  - (i) that the foreign judgment is not a judgment to which this Act applies or was registered in contravention of this Act, or
  - (ii) that the original court did not have jurisdiction in the case, or
  - (iii) that the foreign judgment debtor, being the defendant in the proceedings in the original court, did not, although process may have been duly served on the judgment debtor in accordance with the law of the country of the original court, receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear, or
  - (iv) that the foreign judgment was obtained by fraud, or
  - (v) that the enforcement of the foreign judgment would be contrary to public policy in Ghana; or
- (b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had prior to the date of the foreign judgment in the original court been the subject of a final and conclusive judgment by a court that had jurisdiction in the matter.



(2) For the purpose of this section, the original court shall, subject to subsection (3), be deemed to have had jurisdiction

- (a) in the case of a foreign judgment given in an action in personam
  - (i) where the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court, or
  - (ii) where the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court, or
  - (iii) where the judgment debtor, being a defendant in the original court had, before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of that country, or
  - (iv) where the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court, or
  - (v) where the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
- (b) in the case of a foreign judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, where the property in question was at the time of the proceedings in the original court situated in the country of that court; or
- (c) in the case of a foreign judgment given in an action other than an action referred to in paragraph (a) or (b) of this subsection, where the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2), the original Court, for the purposes of this Act, does not have jurisdiction

- (a) where the subject matter of the proceedings was immovable property outside the country of the original court; or
- (b) except as provided in subparagraphs (i), (ii) and (iii) of paragraph (a) and paragraph (c) of subsection (2), where bringing the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or
- (c) where the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of the court.

**84. Application to set aside registration**

(1) Where the applicant on an application to set aside the registration of a foreign judgment satisfies the registering court

- (a) that an appeal is pending, or
- (b) that the applicant is entitled, and intends, to appeal,

the registering Court may set aside the registration or adjourn the application until the expiry of a time the court considers necessary to enable the applicant to have the appeal disposed of by a competent tribunal.

(2) Where the registration of a foreign judgment is set aside under subsection (1), or solely for the reason that the foreign judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the foreign judgment when the appeal has been disposed of, or when the foreign judgment becomes enforceable by execution in the country of the original court.

(3) Where the registration of a foreign judgment is set aside because the judgment was registered for the whole sum of money payable under it, even though at the date of the application for the registration of the foreign judgment it has been partly satisfied, the registering court shall order the foreign judgment to be registered for the outstanding balance payable at the date of the application by the judgment creditor.

**85. Foreign judgments which are not enforceable otherwise**

Proceedings for the recovery of a sum of money payable under a foreign judgment, being a judgment to which this Act applies other than proceedings by way of registration of the judgment, shall not be entertained by a Court.

**86. General effect of certain foreign judgments**

(1) Subject to this section, a foreign judgment to which this Act applies or would have applied if a sum of money had been payable under it, shall be recognised in a Court as conclusive between the parties to it in proceedings founded on the same cause of action and may be relied upon as a defence or counterclaim in those proceedings.

(2) Subsection (1) applies whether the foreign judgment can be registered, is registered or is not registered.

(3) This section does not apply in the case of a foreign judgment,

- (a) where the judgment has been registered and the registration has been set aside on a ground other than
  - (i) that a sum of money was not payable under the judgment, or
  - (ii) that the judgment had been wholly or partly satisfied, or
  - (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or
- (b) where the foreign judgment has not been registered and it is shown, whether it could have been registered or not, that if it had been registered, the registration would have been set aside on application, on a ground other than those specified in paragraph (a).

**87. Foreign judgments unenforceable if no reciprocity**

Where it appears to the President that the treatment in respect of recognition and enforcement accorded by the court of a country to judgments given in a superior court of Ghana is substantially less favourable than that accorded by the Courts of Ghana to judgments of the superior courts of that country, the President may, by legislative instrument, order that proceedings shall not be entertained in a Court in Ghana for the recovery of a sum of money alleged to be payable under a foreign judgment given in a court of that country.

**88. Issue of certificates of judgments obtained in Ghana**

(1) Where a foreign judgment for a sum of money which is not for taxes or similar charges, or is not a fine or any other penalty, is entered by the High Court against a person, and the judgment creditor wants to enforce the judgment in a country to which a legislative instrument made under section 81 applies, the judgment creditor may apply to the Court in Ghana to issue to the judgment creditor a certified copy of the judgment, together with a certificate containing the particulars with respect to the action, including the cause of action, and the rate of interest payable on the sum of money under the foreign judgment that may be prescribed by the court that gave the judgment.

(2) Where execution of a foreign judgment is stayed for a period pending an appeal or for any other reason, an application shall not be made under this section with respect to the foreign judgment until the expiration of that period.

*Maintenance Orders***89. Application of sections 89 to 97**

(1) This section and sections 90 to 97 shall apply to a foreign country in respect of which the President, having regard to reciprocal provisions under the law of that country directs, by legislative instrument, the application of this and those sections.

(2) Where the President is satisfied that the law of a foreign country to which a legislative instrument made under subsection (1) applies does not contain reciprocal provisions in relation to maintenance orders, the President may revoke the legislative instrument.

**90. Registration of foreign maintenance orders**

(1) A foreign maintenance order made in a foreign country may be registered in the appropriate Court in the prescribed manner and shall be of the same force and effect and may be enforced as if the order had been an order originally given in that Court on the date of registration.

(2) The appropriate court for the purposes of a foreign maintenance order shall, if the Court by which the order was made was a superior court, be the High Court and, in any other case, shall be the District Court.

(3) A certified copy of the order shall, in the first instance, be sent to the Minister for transmission to the appropriate court for registration.

**91. Confirmation of foreign provisional order**

(1) Where a foreign maintenance order is made and by the law of the foreign country the order is provisional only unless confirmed by a Court in Ghana this section shall apply.

(2) Where a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, is transmitted to the Minister and it appears to the Minister that the person against whom the order was made is resident in Ghana, the Minister may send the documents to a District Court with a requisition that summons be issued calling upon that person to show cause why the order should not be confirmed, and the Court shall issue the summons and cause it to be served on that person.

(3) The summons may be served in the same manner as if it had been originally issued or subsequently endorsed by a Court with jurisdiction in the place where that person happens to be.

(4) At the hearing the person on whom the summons was served may state that that person was not a party at the hearing and may raise a defence which that person might have raised in the original proceedings had that person been a party to it, but no other defence.

(5) A certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(6) Where at the hearing the person served with the summons does not appear or, on appearing fails to satisfy the Court that the order ought not to be confirmed, the Court may confirm the order without modification or with the appropriate modifications upon hearing the evidence.

(7) Where the person against whom the summons was issued appears at the hearing and satisfies the Court that, for the purpose of a defence it is necessary to remit the case to the court which made the provisional order to take further evidence, the Court may remit the case and adjourn the proceedings for that purpose.

(8) Where a provisional order is confirmed under this section, it may be varied or rescinded as if it had originally been made by the confirming Court and where on an application for rescission or variation, the Court is satisfied that it is necessary to remit the case to the court which made the order to take further evidence, the Court may so remit the case and adjourn the proceedings for that purpose.

(9) Where an order is confirmed it shall have the same effect as if it were an order made by the Court which confirmed it.

**92. Transmission of maintenance order for registration abroad**

Where it appears to a Court that a person against whom the Court has made a maintenance order is resident in a foreign country, the Court shall, at the request of the applicant for the order, send a certified copy of the order to the Minister for transmission to the appropriate authority in that country for the order to be registered in that country.

**93. Provisional order against persons resident abroad****(1) Where**

- (a) an application is made to a District Court for a maintenance order against a person, and
- (b) that person does not appear at the hearing, and
- (c) it appears to the District Court that that person is resident in a foreign country and the Court is not satisfied that the summons had been duly served upon that person,

the Court may, upon hearing the evidence, make an order that it might have made if the summons had been duly served on that person, and that person had failed to appear at the hearing, but in that case the order shall be provisional and shall not have effect unless confirmed by a competent court in that country.

(2) The evidence of each witness shall be put into writing and the deposition shall be read to, and signed by, the witness.

(3) The Court shall send to the Minister for transmission to the appropriate authority in the foreign country,

- (a) a certified copy of the order with the depositions, and
- (b) a statement of the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and
- (c) any other information that the Court may possess to facilitate the identification of that person and ascertaining the whereabouts of that person.

(4) Where the order has come before a court in the foreign country for confirmation, and is remitted to the Court which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in the manner and subject to the conditions under which the evidence in support of the original application was taken.

(5) Where upon the hearing of the evidence it appears to the Court that the order ought not to have been made, the Court may rescind the order, but in any other case the depositions shall be sent to the Minister and dealt with in the manner in which the original depositions were dealt with.

(6) The confirmation of an order made under this section shall not affect a power of a Court to vary or rescind that order.

(7) On the making of a varying or rescinding order, the Court shall send a certified copy of it to the Minister for transmission to the appropriate authority and in the case of an order varying the original order the order shall not have effect unless confirmed in the manner in which the original order was made.

(8) The applicant shall have the right of appeal against a refusal to make a provisional order that the applicant would have had against a refusal to make the order, had summons been duly served on the person against whom the order is sought to be made.

**94. Communications between Courts**

The Minister may, by legislative instrument, provide for the manner in which a case can be remitted by a Court authorised to confirm a provisional order to the Court which made the provisional order and generally for facilitating communications between the Courts.

**95. Mode of enforcing orders**

(1) A Court in which an order has been registered or by which an order has been confirmed shall take the prescribed steps for enforcing the order.

(2) An order is enforceable in the manner in which a decree for the payment of money by instalments is enforceable or in any other prescribed manner.

(3) A warrant of distress or committal issued by a District Court for the purpose of enforcing an order registered or confirmed may be executed in a part of Ghana in the same manner as if the warrant had been originally issued or subsequently endorsed by a District Court having jurisdiction in the place where the warrant is executed.

**96. Proof of documents signed by officers of foreign court**

A document purporting to be signed by a judge or officer of a court in a foreign country shall, until the contrary is proved, be deemed to have been signed without proof of the signature, or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall be deemed to have been the proper officer of the court to sign the document until the contrary is proved.

**97. Depositions to be evidence**

Depositions taken for the purposes of a maintenance order in a court in a foreign country may be received in evidence in proceedings before a Court under this Act.

*General Provisions***98. Rules of Court**

(1) The Rules of Court Committee may make Rules of Court

- (a) for the giving of security for costs by persons applying for the registration of judgments;
- (b) for matters to be proved on an application for the registration of a judgment and for regulating the mode of providing those matters;
- (c) for the service on the judgment debtor of notice of the registration of a judgment;
- (d) for fixing of a period within which an application may be made to have the registration of the judgment set aside and the extension of the period fixed;
- (e) for the method by which issues relating to the enforcement of a foreign judgment by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court are to be determined;
- (f) for any other matter which under this Part is to be prescribed.

(2) Rules made for the purposes of this Part shall, in their application to proceedings under sections 81 to 88, have effect subject to an order made under section 89.

#### 99. Interpretation of this Part

(1) In this Part, unless the context otherwise requires,

“**appeal**” includes a proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

“**certified copy**” in relation to an order of a Court, means a copy of the order certified by the proper officer of the Court to be a true copy;

“**country of the original court**” means the country in which the original court is situated;

“**Court**” includes a District Court;

“**dependants**” means the individuals a person is liable to maintain according to the law in force in the country in which the maintenance order was made;

“**foreign country**” means a country in respect of which a legislative instrument made under section 81 or section 89 is in force or a country other than Ghana;

“**foreign judgment**” means a judgment to which sections 81 to 88 apply;

“**foreign maintenance order**” means a maintenance order to which sections 89 to 97 apply;

“**judgment**” means a judgment or an order given or made by a Court in civil proceedings, or a judgment or an order given or made by a Court in criminal proceedings, for the payment of a sum of money in respect of compensation or damages to an injured party;

“**judgment creditor**” includes the person in whose favour the judgment was given and a person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“**judgment debtor**” means the person against whom the judgment is enforceable under the law of the original court;

“**judgment given in the High Court**” includes a judgment given on appeal against that judgment;

“**maintenance order**” includes an order, other than an order of affiliation, for the periodic payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and an order or decree for the recovery or repayment of the cost of public relief or maintenance;

“**Minister**” means the Minister responsible for Justice;

“**original court**” in relation to a judgment means the court which gave the judgment;

“**prescribed**” means prescribed by the Rules of Court;

“**registration**” means registration under this Part;

“registering court” in relation to a judgment, means the Court to which an application to register the judgment is made.

(2) For the purposes of this Part, “action in personam” does not include a matrimonial cause or proceedings in connection with matrimonial matters, administration of the estates of deceased persons, insolvency, winding up of companies, lunacy or guardianship of infants.

(3) This Part applies to a maintenance order whether made before or after the commencement of this Act.

## PART SIX

### *Miscellaneous Provisions*

#### **100. Reservation of questions of law**

(1) This section shall have effect without prejudice to a right of appeal conferred by the Constitution, this Act or any other enactment.

(2) The Court of Appeal may, before giving judgment in proceedings before it, reserve, by case stated, a question of law, for the consideration of the Supreme Court.

(3) A Justice of the High Court or a Judge of a Circuit Court may, [at any time] before judgment in a civil cause or matter before it, reserve, by case stated, for the consideration of the Court of Appeal, a question of law which may arise in the proceedings.

(4) A Justice of the High Court or a Judge of a Circuit Court in a criminal trial may, before judgment, reserve, by case stated, for the consideration of the Court of Appeal, a question of law which may arise in the proceedings.<sup>19</sup>

(5) A Regional Tribunal or a Circuit Court in a trial before it may, before giving judgment, reserve, by case stated, for the consideration of the Court of Appeal a question of law which may arise in the proceedings.

(6) A District Court may [at any time] before giving judgment in an action before it, reserve, by case stated, a question of law which may arise in the proceedings for the consideration of the High Court.<sup>20</sup>

(7) *Omitted.*<sup>21</sup>

(8) Where a question of law is reserved under this section for the consideration of a Court, the Court which reserved the question shall adjourn the proceedings until the decision on that question of law is given and the Court which reserved the question shall give judgment in accordance with that decision.

(9) The Court to which a question of law is reserved under this section shall ensure

- (a) that the question referred to it is heard and determined by it as expeditiously as possible, and
- (b) that its decision is communicated to the Court which reserved the question.

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19. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

20. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

21. In view of subsection (9). The provision reads:

“A Court to which a question of law is referred under this section may hear and determine that question.”



**101. Concurrent jurisdiction**

(1) A jurisdiction conferred upon a District Court shall not restrict or affect the jurisdiction of the High Court or of a Circuit Court, and the High Court or the Circuit Court shall have in civil and criminal causes or matters, an original jurisdiction concurrent with the jurisdiction of a District Court.<sup>22</sup>

(2) In exercising the jurisdiction referred to in subsection (1), the High Court or the Circuit Court may

- (a) act independently of the District Court; and
- (b) in a criminal case, impose a penalty and exercise a power prescribed or conferred by an enactment in relation to an offence tried by it up to the limit set by this Act in relation to the High Court or a Circuit Court, and shall not be limited to the imposition of only the penalties that may be imposed by a District Court and shall have the powers specified in [subsection (2) of this section] in respect of the District Courts.<sup>23</sup>

**102. Proceedings to be generally held in public**

(1) In accordance with clause (3) of article 126 of the Constitution, and except as may be otherwise ordered by a Court or Tribunal in the interest of public morality, public safety or public order, the proceedings of a Court or Tribunal including the announcement of the decision of the Court or Tribunal shall be held in public.

(2) Subsection (1) does not prevent a Court or Tribunal from excluding from the proceedings persons other than the parties to the case or action and their counsel, to the extent that the Court or Tribunal considers necessary or expedient

- (a) in circumstances where publicity would prejudice the interest of justice or any interlocutory proceedings; or
- (b) in the interest of defence, public safety, public morality, the welfare of persons under the age of majority or the protection of the private lives of persons concerned in the proceedings.

(3) Subject to article 125 and clause (4) of article 140 of the Constitution and to the Rules of Court, a Court or member of the Court or Tribunal performing a function under the Constitution, this Act, or any other enactment may perform the function in chambers.

(4) The parties to a proceeding to which subsection (3) applies shall be informed in writing of the decision to perform in chambers a function referred to in that subsection.

**103. Judgment in cases part heard**

Where a cause or matter is for determination by a Court or Tribunal and the Court or Tribunal has heard the argument of the parties on the cause or matter, the Justice, Judge, the Chairman or the Magistrate or panel member of the Court or Tribunal shall not withdraw from the proceedings unless the judgment or decision has been delivered.

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22. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

23. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620) and subsection (3) of the section is repealed by section 8 of the Amending Act. Section 8 of the Amending Act also provided that,

“Lawyers holding office as Chairmen of Circuit Courts and Community Tribunals immediately before the commencement of this Act shall, on the coming into force of this Act, hold office as Circuit Court Judges or District Magistrates respectively.”

**104. Transfer of cases by the Chief Justice**

(1) Subject to the Constitution, the Chief Justice may by order signed by the Chief Justice transfer a case from a Judge, or Magistrate or Tribunal to any other Judge or Magistrate, and from one Court to any other competent court at any time or stage in the course of proceedings and either with or without an application from any of the parties to the proceedings.<sup>24</sup>

(2) The order may be general or special and shall state the nature and extent of the transfer, and in a case of urgency the power of transfer may be exercised by means of a telegraphic, telephonic or electronic communication from the Chief Justice.

(3) A transfer of a case made by telegraph, telephone or electronic communication and not confirmed immediately by order signed and sealed in a manner specified by the Chief Justice or any other person authorised in that behalf by the Chief Justice is not valid.

**105. Reporting case of transfer**

(1) A Justice of the High Court or Chairman of a Regional Tribunal may, on the initiative of the Justice or Chairman, or on an application by a person concerned, report to the Chief Justice a case civil or criminal pending before the Justice or Chairman which in the opinion of the Justice or Chairman ought for any reason to be transferred to any other Court, Justice or Regional Tribunal.

(2) Where the Chief Justice is satisfied that a transfer is desirable, the Chief Justice shall specify the Court or Tribunal to which or the Justice to whom that case is to be transferred for hearing and determination and give the necessary directions.

**106. Transfer by a Justice of the High Court, Chairman of Regional Tribunal**

(1) Subject to subsection (2), a Justice of the High Court shall, in respect of civil matters, or a Chairman of a Regional Tribunal shall, in respect of criminal matters, have and exercise the powers of the Chief Justice with respect to the transfer of a case from one District Court to another District Court or from a District Court to a Circuit Court.

(2) Subsection (1) does not restrict the power of transfer vested in the Chief Justice and an order of transfer made by a Justice or a Regional Tribunal under that subsection does not have effect where the Chief Justice has transferred the case in question or the Justice or Tribunal has, at the time of the making of the order, notice of an application to the Chief Justice for a transfer.

**107. Remission of civil causes by a Justice of the High Court**

(1) A Justice of the High Court may, on the initiative of the Justice or on the application by any of the parties to the motion, and at any stage of the proceedings before judgment, remit to a District Court a civil cause or matter pending before the Justice which the Justice considers may suitably be proceeded with by that District Court.

(2) The power to remit conferred by subsection (1) may be exercised in the manner and shall be subject to the limitations of the power conferred by section 106.

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24. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

**108. Chief Justice to select Court or Tribunal in case of doubt**

(1) The Chief Justice shall in case of doubt select the Court or Tribunal where a cause or matter should be heard and determined.

(2) Where the Chief Justice selects under subsection (1) a Court or Tribunal for the hearing and determination of a case, that case shall be heard and determined by that Court or Tribunal.

**109. Wrong ruling as to stamping**

Where an objection is taken in a Court to the admissibility of a document in evidence on the ground of absence or insufficiency of a stamp, the decision of the Court shall not be reversed, set aside or otherwise interfered with by reason only of a ruling of the Court that the document requires a stamp or that the stamp on the document is insufficient or because the document does not require a stamp.

**110. Execution of process**

The execution of a process of the Court may be performed by police officers or any other persons authorised by law, and a police officer or any other person who is in possession of the process shall be presumed to be duly authorised and shall for the purposes of the execution and a matter relating to it be an officer of court.

**111. Negligence or misconduct of officers**

(1) Where an officer employed to execute an order of a Court wilfully or by neglect or omission loses the opportunity of executing it, on complaint by the person aggrieved and proof of the fact alleged, the High Court may order the officer to pay the damage sustained by the aggrieved person.

(2) The order shall be enforced as an order directing the payment of money.

**112. Enquiring into allegations against certain officers**

(1) Where it is alleged in respect of an officer of a Court that the officer

- (a) has committed extortion under pretence of executing the process of the Court or otherwise under the pretext of acting with the authority of the Court, or
- (b) has failed to pay over money levied, or
- (c) is guilty of any other misconduct in relation to the duties of the officer,

the High Court or a Regional Tribunal may, without prejudice to any other liability or punishment to which the officer would, in the absence of this subsection be liable, enquire into the allegation in a summary manner.

(2) The High Court or Regional Tribunal

- (a) may, for the purpose of subsection (1), summon and enforce the attendance of a person before it and shall make the appropriate order for the payment of money levied and for the payment of damages and costs, and

- (b) may impose on the officer a fine not exceeding two hundred and fifty penalty units.<sup>25</sup>

### 113. Non-liability in performance of functions

A Justice of the Superior Court, a Circuit Judge, a Magistrate, panel members of a Regional Tribunal and of Juvenile Courts are not be liable for a matter or thing done in the performance of a function under this or any other enactment.<sup>26</sup>

### 114. Legal aid

(1) The Supreme Court, the Court of Appeal, the High Court or Regional Tribunal may assign a lawyer by way of legal aid to a party to proceedings before the Court or Tribunal where it appears desirable to the Court or Tribunal in the interests of justice that the party should have legal aid, and that the party is financially unable to obtain the services of a lawyer.

(2) A Circuit Court, or a District Court may with the prior approval of the Chief Justice, unless otherwise provided in this Act, assign a lawyer by way of legal aid to a party in proceedings before the Court where it appears to the Court desirable in the interests of justice that the party should have legal aid, and that the party is financially unable to obtain the services of a lawyer.

(3) For the purposes of enforcing a provision of the Constitution a person shall have legal aid in connection with proceedings relating to the Constitution, where that person has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.

(4) For the purposes of this section, legal aid consists of representation by a legal practitioner including assistance in preliminary or incidental matters to the proceedings or arriving at, or giving effect to, a compromise to avoid or to bring an end to the proceedings.

(5) A lawyer assigned to a party under this section for services to that party in relation to the proceedings shall be paid out of the Consolidated Fund the fees that the Minister responsible for Justice may in consultation with the Chief Justice determine.

(6) The Minister responsible for Justice may, after consultation with the Chief Justice, by legislative instrument, make Regulations for the purposes of giving full effect to this section.

(7) The Regulations shall prescribe

- (a) the conditions for a grant of legal aid to which subsection (4) applies;
- (b) the extent of the contribution to be made by a person granted legal aid under this section;
- (c) the assessment of disposable capital, income or property for the purposes of contributions towards legal aid; and
- (d) the grant of assistance to a person in respect of legal advice, the right to, and the nature of, legal advice for the purposes of this section.

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25. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

26. Amended by section 7 of the Court (Amendment) Act, 2002 (Act 620).

**115. Succession of Courts and pending cases**

(1) For the purposes of this Act and in accordance with the Constitution, the Supreme Court, the Court of Appeal and the High Court specified in this Act are successors to the Supreme Court, the Court of Appeal and the High Court respectively in existence immediately before the coming into force of the Constitution.

(2) The Regional Tribunal established by article 142 of the Constitution shall, subject to the Constitution and this Act, be successor to the Regional Public Tribunal in existence immediately before the coming into force of this Act.

(3) The proceedings pending before any of the Courts referred to in subsections (1) and (2) immediately before the coming into force of this Act may be proceeded with and concluded in that Court.

(4) The Circuit Court provided for under this Act shall be the successor to the Circuit Court in existence immediately before the coming into force of this Act and shall have and exercise the jurisdiction conferred on the Circuit Court under this Act.

(5) The Circuit Tribunals in existence immediately before the coming into force of this Act are abolished.

(6) A criminal case pending before a Circuit Tribunal immediately before the coming into force of this Act, is by this Act transferred to the Circuit Court with jurisdiction for the trial, and where the case is part-heard, the Circuit Court shall try the case de novo unless the parties agree that the Court adopts the proceedings.

(7) The Community Tribunals in existence immediately before the coming into force of this Act are abolished.

(8) A civil or criminal case pending before a Community Tribunal immediately before the coming into force of this Act is transferred to the relevant District Court for hearing and determination, and where the case is part-heard, the case shall be heard de novo by the District Court unless the parties agree that the Court adopts the proceedings.

(9) For the purposes of subsections (6) and (8), a case pending includes the proceedings or case before the Court or Tribunal, partly heard or mentioned, and recorded by the Court or Tribunal, and the proceedings or case, the documents in respect of which have been filed in the registry of the Court or Tribunal before the coming into force of this Act.

(10) A reference in an enactment, the Rules of Court or any other document in force or in existence immediately before the coming into force of this Act to a Circuit Tribunal or Community Tribunal shall upon the coming into force of this Act be read and construed as a reference to the Circuit Court or the District Court respectively specified for under this Act.

(11) A reference in an enactment, the Rules of Court or any other document in force immediately before the coming into force of this Act to a Chairman of a Circuit Tribunal or a Chairman of a Community Tribunal, shall upon the coming into force of this Act be read and construed as a reference to a Circuit Court Judge or District Court Magistrate respectively.<sup>27</sup>

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27. Subsections (4) to (11) amended by section 6 of the Courts (Amendment) Act, 2002 (Act 620), and references to "this Act" are references to the Courts (Amendment) Act, 2002 (Act 620).

**116. Regional Tribunals and High Court**

For the purposes of Part Three (which relates to the Common Law), Part Four (which relates to Jurisdiction, Evidence and Rules of Court) and Part Six (which relates to miscellaneous matters), unless the context otherwise requires and subject to the jurisdiction and power conferred specifically by this Act on the Regional Tribunal, a reference to the High Court includes a reference to the Regional Tribunal.

**117. Interpretation**

(1) In this Act, unless the context otherwise requires,

**“cause or matter affecting chieftaincy”** means a cause, matter, question or dispute relating to

- (a) the nomination, election, selection, installation or deposition of a person as a Chief or the claim of a person to be nominated, elected, selected, installed as a Chief, or
- (b) the destoolment or abdication of a Chief, or
- (c) the right of a person to take part in the nomination, election, selection, appointment or installation of a person as a Chief or in the deposition of a Chief, or
- (d) the recovery or delivery of stool property in connection with the nomination, election, appointment, installation, deposition or abdication, of a Chief or
- (e) the constitutional relations under customary law between Chiefs;

**“citizen”** means a citizen of Ghana;

**“civil case”** includes an action, a suit or any other original proceedings between plaintiff and defendant;

**“Court”** includes a court of competent jurisdiction established under the Constitution or under this Act;

**“functions”** includes powers and duties;

**“judgment”** includes a decree, an order, a decision or any other finding;

**“Juvenile Court”** includes Family Tribunal;<sup>28</sup>

**“panel”** means the chairman and other members of a Regional Tribunal;<sup>29</sup>

**“Region”** means a Region of Ghana;

**“Rules of Court”** means the Rules of Court made by the Rules of Court Committee;

**“Tribunal”** means a Regional Tribunal established under the Constitution.<sup>30</sup>

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28. Inserted by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

29. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

30. Amended by section 7 of the Courts (Amendment) Act, 2002 (Act 620).

(2) In this Act, and in any other enactment, a reference to an officer of a Court, unless the contrary intention appears, includes counsel in the proceedings and a person required to assist in the initiation or conduct of the court proceedings or in the enforcement of a judgment or decree or an order of a Court but does not include the parties in the case.

#### **118. Consequential amendments to existing enactments**

(1) An enactment in existence immediately before the commencement of this Act shall have effect subject to the modifications that are necessary to give effect to this Act.

(2) The enactments set out in the first column of the First Schedule are amended to the extent indicated in the second column of that Schedule.

#### **119. Application of English statutes of general application**

(1) Until provision is made by law in Ghana, the Statutes of England specified in the Second Schedule to this Act shall continue to apply in Ghana as statutes of general application subject to a statute in Ghana.

(2) Until provision is made by law in Ghana sections 49, 50, 51, 59, 71 (1) and (2), 131, 139, 145, 150, 151, 154, 158, 161, 164 and 184 of the Law of Property Act, 1925 (15 Geo. V. c. 20) shall apply in Ghana subject to the verbal amendments, not affecting substance, that are necessary to enable those sections to be conveniently applied in Ghana.

#### **120. Repeals and savings**

(1) The enactments set out in the Third Schedule are repealed.

(2) Notwithstanding the repeal of the Courts Act, 1971 (Act 372) the statutory instruments specified in the Third Schedule shall continue in force until revoked, altered or otherwise modified under this Act.

(3) The Rules of Court applicable to the Supreme Court, the Court of Appeal, the High Court and the Circuit Courts and in force immediately before the coming into force of this Act shall, subject to this Act, continue to apply to those Courts.

(4) The Rules of Court applicable to the High Court in the exercise of its criminal jurisdiction shall, subject to this Act and with the necessary modifications apply to the Regional Tribunals in the exercise of their jurisdiction.

(5) The Rules of Court and procedure applicable to the District Court Grade I, the Juvenile Court and Family Tribunal and in force on the coming into force of this Act shall, subject to this Act, apply to the District Courts in exercising their jurisdiction under this Act with the modifications that are necessary.

#### **121. Instruments continued in force**

The instruments set out in the Fourth Schedule to this Act are by this section continued in force.

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## SCHEDULE

## FIRST SCHEDULE

[Section 118 (2)]

*Consequential Amendments*

Trade Unions [Ordinance] (Cap 91)	In section 12 (4) for "article 121" substitute "article 157".
Public Trustee [Ordinance], 1952 (No. 24)	In section 10 (9), for "The Rules of Court Committee by article 121 of the Constitution" substitute "The Rules of Court Committee established under article 157 of the Constitution".
Legal Profession Act, 1960 (Act 32)	In section 21 paragraph 2 of the First Schedule, for "article 102 of the Constitution" substitute "The Rules of Court Committee established under article 157 of the Constitution".
Habeas Corpus Act, 1964 (Act 244)	In section 4 (2) as amended by the Second Schedule of Act 372, substitute "article 121" by "clause (2) or article 130".
Maintenance of Children [Decree], 1977 (S.M.C.D. 133)	<p>(a) For section 1 substitute the following—</p> <p style="padding-left: 40px;">"1. For the purposes of this Decree a Community Tribunal shall, when constituted in accordance with section 2 of this Act, be a Family Tribunal."</p> <p>(b) For section 6 substitute the following—</p> <p style="padding-left: 40px;"><b>"Enforcement of maintenance orders against non-resident</b></p> <p style="padding-left: 40px;">6. Where a maintenance order is made under section 4 of this Decree against any person who is resident in a country to which Sub-Part II of Part V of the Courts Act, 1993 (Act 459) applies, the order enforced against the person is in accordance with the provisions of that Sub-Part."</p> <p>(c) In section 7 substitute "section 16 and 37 (1) (f) of the Courts Act, 1971 (Act 372)" with "sections 18 and 47 (1) of the Courts Act, 1993 (Act 459)".</p>



*Courts Act, 1993*

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SECOND SCHEDULE

[Section 119]

*Statutes of General Application*

<i>Date of Statute</i>	<i>Short Title</i>	<i>Extent of Application</i>
1539 (31 Hen. VIII cl.)	Partitions Act	Sections 1 and 2
1540 (32 Hen. VIII c. 32)	Partitions Act	Section 1 and 2
1540 (32 Hen. VIII, c. 32)	Cestuique Vic Act	Section 4
1832 (2 & 3 Will IV, c. 71)	Prescription Act	Section 1 to 8
1845 (8 & 10 Vic, c. 106)	Real Property Act	Sections 6 to 8
1843 (6 & 7 Vict, c. 96)	Libel Act	Sections 1 & 2
1860 (23 & 24 Vic, c. 1)	Trustee Act	Sections 1 to 5 and 7 to 34
1868 (31 & 32 Vic, c. 60)	Partitions Act	Sections 2 to 9
1869 (32 & 33 Vict, c. 110)	Charitable Trusts Act	Section 12

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THIRD SCHEDULE

[Section 120]

*Repeals*

Courts Act 1971 (Act 372);  
 Courts (Amendment) Decree, 1972 (N.L.C.D. 101);  
 Courts (Amendment) (No. 2) Decree, 1972 (N.R.C.D. 137);  
 Courts (Amendment) Law, 1987 (P.N.D.C.L. 191);  
 Public Tribunals Law, 1984 (P.N.D.C.L. 78);  
 Public Tribunals (Amendment) Law, 1985 (P.N.D.C.L. 108);  
 Public Tribunals (Amendment) Law, 1989 (P.N.D.C.L. 213);  
 District and Community Tribunals (Establishment and Procedure) Regulations, 1988 (L.I. 1372).

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FOURTH SCHEDULE

[Section 121]

*Statutory Instruments Continued in Force*

Supreme Court Rules, 1970 (C.I. 13);  
 Court of Appeal Rules, 1962 (L.I. 218);

FOURTH SCHEDULE —*continued*

Court of Appeal (Legal Vacation) (Amendment) Rules, 1967 (L.I. 547);  
Court of Appeal (Amendment) Rules, 1969 (L.I. 618);  
Court of Appeal (Amendment) Rules, 1975 (L.I. 1002);  
Court of Appeal (Amendment) Rules, 1977 (L.I. 1128);  
High Court (Civil Procedure) Rules, 1954 (L.N. 140A).