

THE CRIMINAL PROCEDURE AND EVIDENCE ACT

*Date of commencement: 1st January, 1939*

*Arrangement of Sections*

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*An Act to regulate procedure and evidence in criminal cases, and to make provision for other matters incidental thereto.*

## PART I

## PRELIMINARY

*Short title and application.*

1. This Act may be cited as the Criminal Procedure and Evidence Act, <sup>1938</sup>~~1939~~, and shall apply to all criminal proceedings instituted after the 1st January, 1939, in respect of any offence in any part of Swaziland whenever such offence was committed.

*Interpretation.*

2. In this Act unless the context otherwise requires —

“Attorney-General” means the Director of Public Prosecutions as appointed in terms of section 3 of the Director of Public Prosecutions Order No. 17 of 1973, in whom the powers, duties and functions formerly vested in the Attorney-General in so far as criminal proceedings only are vested:

Provided that this definition shall not apply to sections 163(4), 165(2);

“Chief” has the meaning assigned to it under the Swazi Administration Act, No. 79/1950;

“company” means a company incorporated or registered under any law generally governing companies, or under any special law or under letters patent or Royal Charter;

“counsel” includes an attorney in proceedings before the High Court in which such attorney has the right of audience;

“court” or “the court” in relation to any matter dealt with under a particular provision of this Act, means the judicial authority which under this Act or any other law has jurisdiction in respect of that matter;

“Crown” means the Attorney-General prosecuting in the name and on behalf of His Majesty;

“day” or “day-time” when used in contradistinction to “night” or “night-time”, means the space of time between sunrise and sunset;

“Director of Public Prosecutions” means the person appointed as such under the Director of Public Prosecutions Order No. 17 of 1973, in whom the duties and functions formerly vested in the Attorney-General in so far as criminal proceedings only are concerned are vested;

“district officer” includes a Senior District Officer, an Assistant District Officer, a Magistrate and an Assistant Magistrate;

“district” means a district defined under the provisions of the General Administration Act, No. 11 of 1905;

“His Majesty” shall mean the King of Swaziland; (Amended L.N. 38/1967).

“judge” means a judge of the High Court;

“judicial officer” includes a judge, magistrate or justice;

“justice” means a justice of the peace appointed or exercising functions as such under any law;

“magistrate” means any person entitled to preside over a court established under the Subordinate Courts Proclamation (*Cap.* 20);

“magistrate’s court” means any court established under the Subordinate Courts Proclamation (*Cap.* 20) and any court other than the High Court or a Swazi Court which now or hereafter possesses criminal jurisdiction under any law;



- “money” includes all coined money whether current in Swaziland or not, and all bank-notes, bank-drafts, cheques, orders, warrants, or any other authorities whatever for the payment of money;
- “night” or “night-time” when used in contradistinction to “day” or “day-time”, means the space of time between sunset and sunrise;
- “offence” means an act or omission punishable by law, or by a regulation or order lawfully made and in force under any statute;
- “peace officer” includes any magistrate or justice; a sheriff or a deputy sheriff; and police officer or person carrying out under any law the powers, duties and functions of a police officer in Swaziland; a gaoler or a warder of any prison or gaol, and any chief; (Amended P.6/1956)
- “person” and “owner” and other like terms, when used in reference to property or acts, include corporations of all kinds, and any other associations of persons capable of owning or holding property or doing acts; and, when relating to property, include the Government and any department thereof;
- “policeman” includes any person carrying out under any law the powers, duties and functions of a police officer; and “police” has a corresponding meaning;
- “premises” include, in addition to any land, building or structure, any vehicle, conveyance, ship or boat;
- “property” includes everything, animate or inanimate, corporeal or incorporeal, capable of being the subject of ownership;
- “public prosecutor” includes any person delegated generally or specially by the Attorney-General under this Act;
- “rules of court” means rules in force under the High Court Act No. 20 of 1954, or the Subordinate Courts Proclamation (*Cap.* 20) as the case may be;
- “telegraph” includes transmission by radio telegraphy or radio telephony. (Amended P.6/1956);
- “valuable security” includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property.

## PART II

### PROSECUTION AT THE PUBLIC INSTANCE

#### A. — ATTORNEY-GENERAL

*Attorney-General vested with right of prosecuting all offences.*

3. The Attorney-General, in accordance with the powers conferred upon him by section 91 of the Constitution is vested with the right and entrusted with the duty of prosecuting in the name and on behalf of His Majesty the King in respect of any offence committed in Swaziland. (Amended P.49/64; L.N. 8/1969.)

*Prosecution by Attorney-General in person or by substitute.*

4. The Attorney-General may appear —

- (a) personally;
- (b) by Crown Counsel; or
- (c) by any person, or by any person of a class, delegated by him,

at any preparatory examination held under Part VII or to conduct any prosecution before any court, other than a Swazi Court established under the Swazi Courts Act No. 80 of 1950. (Amended P.49/1964.)

*Presiding officer may appoint prosecutor in certain cases.*

5. If through any cause whatsoever the person so appointed to conduct a prosecution or to appear at any preparatory examination is unable to act or if no person has been appointed, the officer presiding over such court or examination shall, by writing under his hand, designate some fit and proper person for such occasion to prosecute or as the case may be, to appear:

Provided that where no fit and proper person is available, the presiding officer may, in his discretion, proceed with the trial of any case or the hearing of any examination in the absence of a prosecutor.

*Attorney-General's power of stopping prosecutions.*

6. The Attorney-General may, at any time before conviction, stop any prosecution commenced by him or by any other person; but, in the event of the accused having already pleaded to any charge, he shall be entitled to a verdict of acquittal in respect of such charge.

*Power of ordering liberation of persons committed for further examination, sentence or trial.*

7. (1) The Attorney-General may order the liberation of any person committed to prison for further examination, sentence, or trial.

(2) A writing setting forth that the Attorney-General sees no ground for prosecuting such person and subscribed by him shall be a sufficient warrant for such liberation.

*Neither acquittal nor conviction a bar to civil action for damages.*

8. Neither a conviction nor an acquittal following on any prosecution shall be a bar to civil action for damages at the instance of any person who may have suffered any injury from the commission of an alleged offence.

B. — LOCAL PUBLIC PROSECUTOR

*Powers and duties of local public prosecutor.*

9. (1) All public prosecutors in any magistrate's court are, as representatives of the Attorney-General, and subject to his instructions, charged with the duty of prosecuting in such court, in the name and on behalf of His Majesty the King, all offences which such court has jurisdiction to try.

(2) Criminal proceedings instituted in any magistrates court by any public prosecutor may be continued by any other public prosecutor.

(3) If a sworn declaration in writing is lodged with or made before a local public prosecutor by any person disclosing that any other person has committed an offence chargeable in the magistrate's court to which such public prosecutor is attached, he shall determine whether there are good grounds for prosecution or not:

Provided that —

- (a) he may refer the question whether he shall prosecute or not to the Attorney-General; and
- (b) any other person may be specially authorised by the Attorney-General to prosecute in such matter.

PART III

PRIVATE PROSECUTIONS

*Private prosecution on refusal of Attorney-General to prosecute.*

10. If the Attorney-General declines to prosecute for an alleged offence, any private party who can show some substantial and peculiar interest in the issue of the trial, arising out of some injury which he individually has suffered by the commission of such offence, may prosecute the person alleged to have committed it in any court.

*Other persons entitled to prosecute.*

11. (1) The right of prosecution under section 10 as private parties shall also be possessed by —

- (a) a husband in respect of an offence committed against his wife;
- (b) the legal guardian or curator of a minor or lunatic in respect of an offence committed against his ward; and,
- (c) the wife or child or, if there is no wife or child, any next of kin, of any deceased person in respect of any offence by which the death of such person is alleged to have been caused.

(2) All persons described in this section and section 10 are hereinafter referred to as private parties.

*Private prosecutor may apply to court for warrant.*

12. If, by virtue of the right of prosecution given to private parties in section 10 or 11, any private party desires to prosecute for any offence any person for whose liberation from prison any warrant has been issued by the Attorney-General, such private party may apply to the magistrate within whose jurisdiction such offence is alleged to have been committed, for a warrant for the further detention or, if he is on bail, for the detention of such person, and such magistrate shall make any order which to him seems right under the circumstances.

*Certificate of Attorney-General that he declines to prosecute.*

13. (1) No private party may obtain the process of any court for summoning any person to answer any charge, unless he produces to the officer authorised by law to issue such process a certificate signed by the Attorney-General that he has seen the statements or affidavits on which such charge is based and declines to prosecute at the public instance.

(2) In every case in which the Attorney-General declines to prosecute he shall grant such certificate at the request of the party intending to prosecute.

*Recognisances to be entered into by private prosecutor.*

14. No private party shall take any proceedings under the right conferred upon him by this Part until he has —

- (a) if the prosecution is in the High Court, deposited the sum of one hundred rand or entered into a recognisance in the sum of one hundred rand with two sufficient sureties in the sum of fifty rand each (to be approved by the court in which the proceedings are to be instituted) as security that he will prosecute the charge against the accused to a conclusion without delay; and,
- (b) in any prosecution given security in such amount and in such manner as the court may direct that he will pay the accused such costs incurred by him in respect of his defence to the charge, as the court before which the case is tried may order him to pay.

*Failure of private prosecutor to appear on appointed day.*

15. (1) If the private party does not appear on the day appointed for appearance, the charge or complaint shall be dismissed unless the court sees reason to believe that such party was prevented from being present by circumstances beyond his control, in which case it may adjourn the hearing of the case.

(2) If any such dismissal takes place, the accused shall not be again liable to prosecution, on the same charge, by any private party:

Provided that such dismissal shall not prevent the Attorney-General, or a public prosecutor on the instructions of the Attorney-General, from afterwards instituting a prosecution.

*Mode of conducting private prosecutions.*

16. A private prosecution shall, subject to this Act, be proceeded with in the same manner as if it were being conducted at the public instance, save that all costs and expenses of the prosecution shall be paid by the party prosecuting, subject to any order which the court may make when such prosecution is finally concluded.

*Competency of Attorney-General to take up and conduct prosecution at the public instance in all cases.*

17. The Attorney-General or the local public prosecutor may apply by motion to any court before which the prosecution is pending to stop all further proceedings in a prosecution at the instance of a private party, in order that the prosecution for the offence may be instituted or continued at the public instance; and such court shall make an order in terms of such motion.

*Deposit of money by private prosecutor.*

18. The registrar or clerk of the court shall demand and receive the prescribed fees for the service of any summons or subpoena or execution of any warrant of arrest or other process in a criminal prosecution at the instance of a private party.

*Costs of private prosecutions.*

19. (1) If a person prosecuted at the instance of a private party is acquitted, the court in which the prosecution was brought may order such party to pay the person prosecuted the whole or any part of the expenses (including the costs both before and after committal) occasioned to him by such prosecution.

(2) If the court, upon hearing the charge or complaint on a private prosecution, pronounces it to be unfounded and vexatious, it shall award the accused at his request such costs as it thinks fit.

PART IV

PRESCRIPTION OF OFFENCES

*Prosecution for murder not barred by lapse of time, for other offence barred by lapse of 20 years.*

20. The right to prosecute for murder shall not be barred by any lapse of time; but the right to prosecute for any other offence, whether at the public instance or at the instance of a private party, shall, unless some other period is expressly provided by law, be barred by the lapse of twenty years from the time when such offence was committed.

## PART V

## ARRESTS

## A. WITHOUT WARRANT

*Arrest and verbal order to arrest for offences committed in the presence of judicial officers.*

21. (1) Any judicial officer who has knowledge of any offence by seeing it committed, may himself arrest the offender or by verbal order authorise other persons so to do.

(2) The persons so authorised are empowered and required to follow the offender if he flees, and execute such order on him out of the presence of such judicial officer.

*Arrest by peace officer for offences committed in his presence and on reasonable grounds of suspicion.*

22. Every peace officer and every other officer empowered by law to execute criminal warrants is hereby authorised to arrest without warrant every person —

- (a) who commits any offence in his presence;
- (b) whom he has reasonable grounds to suspect of having committed any of the offences mentioned in Part II of the First Schedule;
- (c) whom he finds attempting to commit an offence, or clearly manifesting an intention so to do.

*When peace officer may arrest without warrant.*

23. (1) Any peace officer may, without any order or warrant, arrest any person —

- (a) who has in his possession any implement of house-breaking, and is not able to account satisfactorily for such possession;
- (b) in whose possession anything is found which is reasonably suspected to be stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such thing;
- (c) who obstructs a policeman or other peace officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (d) who is reasonably suspected of being a deserter from His Majesty's naval or military or air forces or from the Royal Swaziland Police;
- (e) who is or is loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;
- (f) reasonably suspected of committing or having committed an offence under any law governing the making, supplying, possession or conveyance of intoxicating liquor or of habit-forming drugs or the possession or disposal of arms and ammunition;