

SIGNED this *11th day of August, 2011.*

DR. ERNEST BAI KOROMA,
President.



No. 10



2011

Sierra Leone

The Local Courts Act, 2011.

Short title.

Being an Act to provide for the establishment and operation of Local Courts, the administration of justice in the provinces and for other related matters.

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

ACT

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THE LOCAL COURTS ACT, 2011 ARRANGEMENT OF SECTIONS

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PART 1—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires—

“Chairman” means the person appointed Chairman of a Local Court under section 2;

Act No. 6
of 1991.

“Commission” means the Judicial and Legal Service Commission established by section 140 of the Constitution of Sierra Leone, 1991;

“Court” means a Local Court;

“customary law” means any rule other than a rule of general law, having the force of law in any Chiefdom of the provinces whereby rights and correlative duties are acquired or imposed in conformity with natural justice and equity and not incompatible, either directly or indirectly, with any enactment applying to the provinces, and includes any amendment of customary law made in accordance with the provisions of any enactment;

“general law” means the laws in force in Sierra Leone other than customary law;

“Minister” means the Minister responsible for judicial affairs;

“Provincial Secretary” includes a Senior Assistant Secretary;

“Rules of Court Committee” means the Rules of Court Committee established by section 145 of the Constitution.

PART 11—ESTABLISHMENT AND ADMINISTRATION OF
LOCAL COURTSEstablishment
of Local
Courts.

2. (1) There is hereby established for each Chiefdom of Sierra Leone a Local Court which shall consist of a Chairman, Vice-Chairman and such other member or members as the Minister may determine.

(2) The Chairman, Vice-Chairman and any other member of the Court shall be appointed by the Chief Justice, after consultation with the Commission.

(3) Every Chairman, Vice-Chairman or other member of the Court shall, before assuming the functions of his office take and subscribe before the Chief Justice, the Oath set out in the Schedule.

3. (1) No person shall sit as Chairman, Vice-Chairman or member of the Court in the adjudication of any matter to which he is a party or in which he has a pecuniary or personal interest. Avoidance of conflict of interest.

(2) Where any doubt arises as to whether any member of the Court is a party to a matter before the Court or has any pecuniary or personal interest in such matter, the Court shall refer the matter to a Magistrate's Court which shall determine the question with all dispatch and make such order as may be appropriate.

4. (1) The Chief Justice or any other judge authorized by him in that behalf, may, after consultation with the Commission, dismiss or suspend the Chairman, Vice-Chairman or other member of the Court who appears to have abused his power of adjudication or to be unworthy or incapable of exercising that power. Dismissal, etc. of Chairman etc.

(2) Upon his dismissal or for the period of his suspension, the Chairman, Vice-Chairman or other member of the Court shall be disqualified from exercising any power of adjudication under this Act or any other enactment.

5. A person shall not be qualified to be appointed Chairman or Vice-Chairman of the Court unless he— Qualifications for appointment as Local Court Chairman.

- (a) is proficient in the dominant ethnic language of the Chieftdom;
- (b) has resided in the Chieftdom for a continuous period of not less than five years;
- (c) is knowledgeable and experienced in the customs and traditions of the Chieftdom; and
- (d) has not been convicted of an offence involving fraud or dishonesty.

Appointment
of officers of
Local Courts.

6. (1) Every Court shall have –
- (a) Clerk of Court;
 - (b) Finance Clerk;
 - (c) Bailiff, and
 - (d) such other officers as the business of the Court may require,

all of whom shall be appointed by the Chief Justice after consultation with the Commission.

(2) A person shall not be appointed Clerk of Court, Finance Clerk or Bailiff unless he is literate in English.

Local Courts
Service
Committee.

7. (1) (1) There is hereby established for each province, a Committee to be known as the Local Courts Service Committee for the purpose of advising the Commission on appointments, transfers, promotions and dismissals of officers and servants of Local Courts.

(2) Each Local Courts Service Committee shall consist of–

- (a) the resident High Court judge of the province, who shall be Chairman;
- (b) a Paramount Chief, representing the council of Chiefs of the province;
- (c) a representative of the Minister;
- (d) the Provincial Secretary;
- (e) a person having experience in the administration of Local Courts, and
- (f) a representative of the Local Councils in the Province;
- (g) a Member of Parliament of the Province selected by the Members of Parliament from the Province.

(3) The members of each Local Courts Service Committee shall be appointed by the President.

(4) Members appointed under paragraphs (b) and (e) of subsection (2) shall hold office for a period of three years and thereafter shall be eligible for re-appointment for not more than two other terms.

(5) The members of a Local Courts Service Committee shall be paid such allowances as the Chief Justice may, subject to the approval of the Minister responsible for finance determine.

(6) The Committee shall regulate the procedure for the conduct of its meetings.

8. Pursuant to subsection (2) of section 142 of the Constitution, the Commission may, by constitutional instrument, prescribe the terms and conditions of service of members and officers of the Courts.

Terms and conditions of service of members and officers.

9. (1) The Clerk of Court shall perform such duties as may be assigned to him by Rules made under this Act or any other enactment, or subject thereto, by any direction of the Court and, in particular, he shall—

Duties of Clerk of Court.

- (a) prepare and issue all warrants, writs and processes;
- (b) record all processes of the Court;
- (c) register all orders and judgments of the Court.

(2) Subject to the approval of the Chairman, the Clerk of Court may delegate any of his duties to any other officer or servant of the Court who shall perform the same in accordance with such directions as he receives from the Clerk of Court.

10. The Finance Clerk shall, in addition to such other duties as may be prescribed—

Duties of Finance Clerk.

- (a) receive and pay into the Consolidated Fund all fees, penalties, fines and other moneys taken by the Court; and
- (b) keep an account of all the moneys so received and paid by him.

Duties of
Bailiff

11. (1) The Bailiff shall perform such duties as may be assigned to him by Rules made under this Act or any other enactment, or subject thereto, by any direction of the Court and in particular he shall—

- (a) effect the service or execution of all writs and other processes which he receives from the Court;
- (b) make all necessary returns in relation to such writs and processes;
- (c) when he is not engaged on duties which necessitate his absence from the Court, attend and obey all lawful directions of the Court.

(2) The Court may appoint one or more members of the Chiefdom Police to assist the Bailiff in the exercise of his functions and any member of the Chiefdom Police in possession of any process shall be presumed to be authorized to execute such process unless the contrary is proved.

Sessions.

12. (1) Subject to subsection (2), the Court shall hold sessions at such times and places as may be necessary for the convenient and speedy dispatch of the business of the Court.

(2) The Chief Justice or any person or body authorized by him in that behalf may direct sessions to be held at such times and places as he thinks fit.

Power to
establish
additional
Courts.

13. (1) The Chief Justice may by statutory instrument establish additional Courts that may be required or direct that any Court which is no longer required shall cease to exercise jurisdiction.

(2) In the exercise of the powers conferred upon him under subsection (1), the Chief Justice shall have regard to such considerations as he may think relevant, including—

- (a) the population of the Chiefdom;

- (b) the level of commercial or economic activity in the Chiefdom;
- (c) the proximity of the Court or proposed Court to existing Courts; and
- (d) the ethnicity of the Chiefdom in which it is proposed, to establish a Court or in which it is proposed that a Court shall cease to exercise its jurisdiction.

14. (1) The expenses of the Court, including the salaries and allowances of the members and officials of the Courts, shall be a charge on the Consolidated Fund. Protection of members and officers of Local Courts.

(2) No member of the Court shall be liable to be sued in any civil court for any act done by him within the local limits of his jurisdiction in the exercise of his judicial duty, or for any order made by him, if he, at the time, reasonably and in good faith believed that he had jurisdiction to do or order the act complained of.

(3) No officer of a Local Court or other person bound to execute the lawful warrants or orders of the Court shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the Court issuing the same.

(4) Where, as a result of any proceedings, any member or officer of a Local Court or such other person as is mentioned in subsections (2) and (3) is required to pay compensation under subsection (4) of section 17 of the Constitution and that member, officer or other person can show that he reasonably and in the good faith believed that he had authority, or as the case may be, that the Court had jurisdiction to issue the warrant or order under which he acted, he shall be entitled to receive from the Accountant-General the amount of compensation he has paid by virtue of any judgment against him in any such proceedings and any such sums paid by the Accountant-General shall be a charge on the Consolidated Fund.

PART III—JURISDICTION

Jurisdiction.

15. (1) Subject to this Act, a Local Court shall have jurisdiction to hear and determine all civil and criminal matters arising within the local limits of its authority or transferred to it by a Customary Law Officer under section 34.

(2) In addition to its original jurisdiction over all customary law offences, the Court shall have jurisdiction to hear and determine any criminal offence punishable by a fine not exceeding fifty thousand leones or a term of imprisonment not exceeding six months or by both such fine and imprisonment.

(3) A Local Court shall have jurisdiction—

- (a) to hear and determine all civil cases governed by customary law, including cases between Paramount Chiefs or Chiefdom Councils involving a question of title to land;
- (b) subject to subsection (4), to hear and determine all civil cases governed by the general law where the claim, debt, duty or matter in dispute does not exceed one million leones, whether on balance of account or otherwise, or in claims for recovery of possession, where the annual rental value of the property does not exceed three million leones and the term of the lease does not exceed five years;
- (c) to administer the estate of deceased persons, situated within its jurisdiction and the administration of which is governed by customary law; but the administration of the estate shall not contravene any provision of the Devolution of Estates Act, 2007.

Act No. 21
of 2007

(4) Notwithstanding subsection (3), the Court shall have no jurisdiction in any action founded upon libel, slander, false imprisonment, malicious prosecution, seduction or breach of promise of marriage.

(5) The jurisdiction conferred by this section shall apply to all persons within the local limits of the Court's jurisdiction and where there is no provision of customary law, the general law shall apply.

(6) Section 28 of the Provinces Act is repealed.

16. In addition to the jurisdiction conferred by section 15, the Chief Justice may, by statutory instrument, confer on a Local Court additional jurisdiction to enforce all or any of the provisions of any enactment. Additional jurisdiction.

PART IV—PROCEDURE AND POWERS OF LOCAL COURTS

17. Subject to this Act and any Rules made under sections 55 and 56, the practice and procedure of the Court shall be governed by customary law. Practice and procedure.

18. (1) The room or place in which the Court sits shall be an open or public court to which members of the public may have access so long as they are of good behaviour and so far as it may conveniently accommodate them. Proceedings to be held in open court.

(2) Notwithstanding subsection (1), the Court may exclude members of the public in cases where young persons are involved or where the administration of justice would be rendered impracticable by the presence of the public.

19. (1) No legal practitioner, other than a practitioner who is a party and acting solely in his own behalf, or other persons, may appear before the Court on behalf of any party to any proceedings therein. Legal representation.

(2) Notwithstanding subsection (1), the Court may where for a good cause a party cannot be present in person, permit the absent party to be represented by a spouse, guardian or relative duly authorised by him in that behalf, but in such cases the absent party shall not be represented by a legal practitioner.

(3) The person representing a spouse, guardian or relative shall not be punished for a judgement given in the absence of the party.

Courts' powers to make orders and impose punishment.

20. (1) The Court, acting within the limits of its jurisdiction, may make such orders and impose such punishments as may be made or imposed in a Magistrate's Court and without prejudice to the generality of the foregoing, may in particular—

(a) in criminal cases—

(i) in addition to the imposition of a fine or the sentence to a term of imprisonment, order any person convicted before it of any offence, if it is of the opinion that the person or property of the complainant has suffered damage by the commission of the offence and the complainant so requests, to pay to the complainant such sum as appears to the Court to be reasonable compensation not exceeding twenty five thousand leones:

Provided that the award of such compensation shall be a bar to all further proceedings in respect of the damage so suffered;

- (ii) order any person convicted before it to pay all or any specified part of the expenses of his prosecution;
- (iii) where it appears to the Court that a charge is malicious, frivolous or vexatious, order the complainant to pay all or any specified part, of the expenses of the prosecution or the defence;
- (iv) when exercising the powers conferred upon it by subparagraphs (ii) and (iii) order the whole or such proportion as the Court thinks fit of the expenses so paid, to be paid over to the complainant or the accused person, as the case may be:

Provided that any compensation or expense awarded under subparagraph (i), (ii) or (iii) shall not be regarded as a penalty, but shall be recoverable as a judgment debt in the Court by which the order for payment is made but nothing in this proviso shall in any way affect or limit the powers conferred upon the Court by section 22;

(v) order the operation of the whole or any part of a sentence of imprisonment passed upon a person by the Court to be suspended for a period not exceeding three months on such conditions, relating to compensation to be made by the offender for damage or pecuniary loss, or to good conduct, or to any other matter whatsoever, as the Court may specify in that order;

(b) in civil cases—

(i) order the payment of money due as damages, compensation and reasonable costs and expenses incurred by the successful party and his witnesses;

(ii) order the recovery of possession of land and the restitution of property;

(iii) grant interlocutory and final injunctions and order specific performance in appropriate cases, according to custom and precedent;

(iv) where necessary, make any other order which the justice of the case may require.

(2) The Court shall have no jurisdiction to impose any punishment not expressly authorized under this Act or any other enactment.

Suspended sentences.

21. (1) Where the operation of a sentence of imprisonment has been suspended by the Court under subparagraph (v) of paragraph (a) of subsection (1) of section 20 and the convicted person has, during the period of suspension observed all the conditions specified in the order, the sentence shall not be enforced.

(2) If the conditions imposed under subparagraph (v) of paragraph (a) of section 20 are not fulfilled, the convicted person may upon the order of the Chairman of the Court, be arrested without warrant and brought before the Court which suspended the operation of his sentence and the Court may direct that the sentence shall be executed forthwith or after the expiration of any other sentence which such person is liable to serve.

(3) Notwithstanding subsection (2), the Court which suspended the operation of the sentence may, if satisfied that the convicted person has been unable through circumstances beyond his control to perform any condition of such suspension, grant an order further suspending the operation of the sentence, subject to such conditions as might have been imposed at the time of the passing of the sentence.

Restitution.

22. (1) Where upon the arrest of a person charged with an offence, any property is taken from him, the Court before which he is charged may, if it thinks fit, order that the property or a part of the property be restored to him or to such other person as he may direct.

(2) Where any person is convicted of having stolen or otherwise having dishonestly or wrongfully obtained any property, the Court convicting him may order that the property or a part of the property be restored to the person who appears to it to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof then is, of a sum specified in such order.

(3) Subsection (2) shall not apply to—

- (a) any valuable security which has been *bonafide* paid or discharged by any person liable to pay or discharge the same; or

6 and 7 Geo.
V Cap 50

- (b) any negotiable instrument which has been *bonafide* received by transfer or delivery by one person for a just and valuable consideration without notice, or without any reasonable cause to suspect that it has been stolen or otherwise dishonestly obtained; or
- (c) any offence against sections 20, 21, and 22 of the Larceny Act, 1916.

(4) On the restitution of any stolen property, if it appears to the Court by the evidence that the person convicted has sold the stolen property to any person and that that person had no knowledge that the property was stolen and that any moneys have been taken from the person convicted on his apprehension under subsection (1), the Court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the proceeds of such sale be delivered to such purchaser.

23. (1) Every Court shall have power—

Witnesses.

- (a) to require any person actually before the Court to give evidence in any case and to answer any question put to him by the Court; and
- (b) to summon before the Court for the purposes of giving or producing evidence any person in Sierra Leone:

Provided that—

- (i) any person so summoned to give evidence shall be entitled to receive his reasonable travelling and lodging expenses in advance and reasonable compensation for his loss of time;
- (ii) no person other than an accused person shall be bound to answer any question or to produce any document, where the answer to the question or the contents of the document might tend to incriminate him;

- (iii) in the case of an accused person, he shall not be required to answer any question or produce any document the answer to which or the contents of which might tend to incriminate him in respect of an offence other than that for which he is being tried.

(2) Any person summoned as a witness who refuses or neglects without sufficient cause, to appear or to produce any document required by the summons to be produced may be compelled by warrant to attend and shall be liable to a fine not exceeding fifty thousand leones.

(3) Any witness who refuses to take an oath or to make an affirmation or to give evidence or answer any lawful question shall be guilty of contempt of court and liable to a fine not exceeding fifteen thousand leones or imprisonment not exceeding three months.

Joinder of parties.

24. If it appears at any stage of a civil proceeding before the Court that any person other than the parties thereto, ought by reason of his having an interest in, or of his being likely to be affected by the result of, the proceedings, to be made a party thereto, the Court may either of its own motion or on the application of the person or of either party, order that he shall be made a party to the proceedings and on such order being made, notification thereof shall be served on the person concerned and the Court may make such consequential orders as to costs or otherwise as may be just.

Search warrants.

25. (1) If the Chairman of the Court is satisfied on information sworn before him that in fact, or according to reasonable suspicion, any animal, matter or thing on, by, or in respect of which, a criminal offence has been, or is being or is about to be committed is in any particular premises, vessel, vehicle or place, he may issue a search warrant authorizing any member of the Chieftdom Police or other person named therein to enter such premises, vessel, vehicle or place (which shall be named in the warrant) if necessary, by force and to search the same and every person found therein and if any animal, matter or thing searched for is found, to seize the same and to arrest the occupier of the premises, vessel, vehicle or place if the Chairman thinks fit so to direct.

(2) The search warrant shall be executed by the member of the Chiefdom Police or other person who shall have charge thereof; and he may be accompanied by any other court officials necessary to assist him.

(3) If the premises, vessel, vehicle or place is closed and the member of the Chiefdom Police or other person is not admitted after making known his authority and demanding admission, he may, if the warrant empowers him to do so, forcibly enter such premises, vessel, vehicle or place and every part thereof.

(4) The search warrant shall not be executed between the hours of eight o'clock at night and five o'clock in the morning, unless the Chairman issuing the warrant, by an order endorsed on the warrant gives authority for its execution at any time.

26. (1) Whenever any premises or place liable to be searched is closed, any person residing in or being in charge of such premises or place shall, on demand by the person executing the search warrant, and on production of the warrant allow him free entry to or an exit from such premises or place, and afford all reasonable facilities for a search.

Free entry to carry out searches.

(2) If entry to or exit from such premises or place cannot be obtained after production of the search warrant, it shall be lawful for the person executing the search warrant to enter such premises or place using such force as is reasonably necessary and search therein.

(3) Where any person in or around such premises or place is reasonably suspected of concealing on his person any article for which the search is made, such person shall be searched by a person of the same sex.

27. The Court may of its own motion or on the application of any party to a proceeding, make such order for the inspection by the Court, the parties or witnesses of any land or property the inspection of which may be material to the proper determination of any question at issue and may give such directions in respect of such inspection as the Court may think fit.

Inspection.

Place of
imprisonment.

28. Every person sentenced to be imprisonment by the Court or arrested in execution of the process of the Court, shall be imprisoned in such prison or lock-up as the Minister may from time to time prescribe or in any particular case, by order, specifically direct.

Recovery of
fines and
imprisonment
in default.

29. (1) The Court may order that any fine which it may impose shall be paid at such times and by such instalment as it may think just and in default of the payment of any fine or instalment thereof, the Court may order the convicted person to be committed to prison for a period not exceeding the period specified in the following scale:—

<i>Fine</i>	<i>Period of Imprisonment</i>
Not exceeding ten thousand leones	seven days
Exceeding ten thousand leones but not exceeding fifteen thousand leones	fourteen days
Exceeding fifteen thousand leones but not exceeding twenty thousand leones	one month
Exceeding twenty thousand leones but not exceeding twenty-five thousand leones	three months
Exceeding twenty-five thousand leones	six months.

(2) Where a person has been committed to prison by the Court for non-payment of a fine and such person thereafter pays the whole or part of the fine, his imprisonment shall be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days for which such person was committed as the sum paid bears to the amount of the fine.

Execution of
civil
judgment.

30. Any judgement or order given or made by the Court in a civil case may be executed in such manner as may be prescribed by Rules made under section 55.

31. (1) The Court may, whenever it thinks necessary to do so for the preservation, proper custody or management of any property which is the subject of any proceedings before it, appoint any person of established financial integrity to receive and take charge of any such property and deal with it in such manner as the Court shall direct.

Power to
appoint
receiver and
manager.

(2) In determining whether it is just and convenient that such an appointment should be made, the Court shall have regard to all relevant circumstances and in particular, the value of the property in question and the probable costs of the appointment.

(3) Unless otherwise ordered, the person to be appointed shall first give such security as shall be fixed by the Court and shall be allowed a proper salary or allowance.

(4) Any person appointed under this section shall render to the Court regular accounts at such intervals, not being greater than one year, as the Court shall prescribe, of all the property received or disposed of by him in execution of all directions given by the Court under subsection (1).

32. (1) Within seven days after the end of every month, the Clerk of Court shall forward to the Magistrate of the District a complete list of all cases decided or commenced in the Court during the preceding month.

Return of
cases.

(2) The list of cases shall be in such form as the Chief Justice may from time to time prescribe.

33. A Magistrate shall have access to all Local Courts in his District and all books, records and other documents in the custody of the Courts.

Access to
records of
Local Courts.

PART V—TRANSFERS, REVIEWS AND APPEALS

Power of Customary Law Officer to transfer cases

34. (1) A Customary Law Officer may, of his own motion or on the application of the Court or any party to the proceedings, for reasonable cause, transfer any proceedings initiated before the Court, to another Local Court, or the District Appeals Court as, in all the circumstances, appear to be most expedient, and any proceedings so transferred shall be commenced *de novo*.

(2) Notice of any application made by a party under subsection (1) shall be given at the office of the Court before which the proceedings have been commenced.

Power of review.

35. A Customary Law Officer may, of his own motion, where a *prima facie* case of miscarriage of justice is disclosed or where there is an error of law on the face of the record, review any decision of the Court, whether civil or criminal.

Review not available where appeal pending.

36. A Customary Law Officer shall not exercise his powers of review in any case where an appeal is pending.

Exercise of power of review.

37. (1) Notice shall be given to the Court and the parties concerned of the intention to review any proceedings and any such party shall be heard, if he so desires, at the time and place specified in such notice.

(2) Any notice given under subsection (1) shall operate as a stay of all proceedings in execution of the decision or order of the Court.

Orders of reviewing officer.

38. In the exercise of the power of review, the Customary Law Officer may set aside the conviction, sentence, judgment or order of the Court and where he considers it desirable, order any case to be re-tried by the same Court or any other Court of like jurisdiction or before a Magistrate's Court or, make such consequential order as he may think necessary.

39. (1) A person aggrieved by an order or decision of the Court may appeal to the District Appeal Court. Right of appeal.

(2) The convicted person or, in the case of civil proceedings, both parties, shall be informed of their right to appeal to the District Appeal Court at the termination of the proceedings before the Court.

(3) No judgment or order of a Local Court in a civil cause or matter shall be executed until a period of fifteen days, commencing on the day of the termination of the proceedings in the Court, has expired.

(4) If in a civil case either of the parties states that he desires to appeal to the District Appeal Court, the Court shall endorse the record with the words “This judgment (or order) is under appeal” and shall not be executed, unless and until it is confirmed by a judgment of the District Appeal Court and cause it to be transmitted without delay to the Clerk of the District Appeal Court.

(5) If the person aggrieved did not inform the Clerk of Court at the termination of the proceedings of his desire to appeal to the District Appeal Court, he may nevertheless appeal at any time before the expiry of the period of fifteen days prescribed in subsection (3) by declaring his intention to appeal either-

- (a) before the Clerk of Court, or
- (b) before the Clerk of the District Appeal Court who shall forthwith inform the Clerk of Court of any such declaration;

and in either case, the Clerk of Court shall endorse on the record the words set out in subsection (4) and cause it to be transmitted without delay to the Clerk of the District Appeal Court.

(6) On receiving the record so endorsed, the District Appeal Court shall list the appeal for hearing and cause notice of the date of the hearing to be given to the Court and all interested parties.

District
Appeal Court.

40. (1) As from the commencement of this Act, there shall be constituted a District Appeal Court for every district which shall consist of the Magistrate of the District sitting with two Assessors selected by him from a list of experts in customary law drawn up by the District Officer.

(2) Notwithstanding subsection (1), where it appears that no question of customary law will arise, the Magistrate may sit without Assessors.

(3) The Assessors shall advise the Magistrate on questions of customary law but the decision shall be vested exclusively in the Magistrate who shall record the reasons for his decision.

(4) On any appeal thereto, the District Appeal Court shall rehear the whole case and hear any additional witnesses called by the parties even though they did not give evidence in the court below.

(5) In an appeal before the District Appeal Court a party may be represented by a legal practitioner.

Appeal to
Local Appeals
Division of
High Court.

41. (1) There is hereby constituted a Local Appeals Division of the High Court which shall consist of a Judge of the High Court sitting with two Assessors selected by him from a list of experts in customary law drawn up by the Provincial Secretary.

(2) An appeal shall lie from decisions of the District Appeal Court to the Local Appeals Division of the High Court in the following cases:—

(a) all cases governed by the general law, if the case has been heard by a Magistrate at first instance;

(b) in cases governed by customary law—

(i) in criminal cases—

(aa) as of right on any ground of appeal which involves a question of law alone;

- (bb) with the leave of the District Appeal Court on any ground of appeal which involves a question of fact or mixed law and fact;

(ii) in all civil cases.

S. I. No. 29
of 1985.

(3) An appeal under subsection (2) shall be brought by a petition setting forth the grounds of appeal filed in the Registry of the High Court within thirty days of the decision appealed from and in all other respects the procedure with respect to the appeal shall be governed by the same rules as if the decision appealed from had been that of a Magistrate's Court.

(4) The Assessors shall advise the Judge on questions of customary law but the decision shall be vested exclusively in the Judge, who shall record the reasons for his decision.

42. For the purposes of an application of the rules relating to an appeal to the Court of Appeal, all cases in which an appeal lies to the Local Appeals Division of the High Court shall be deemed to have originated in a Magistrate's Court and shall be governed by the provisions of the Court of Appeal Rules, 1985.

Further
appeals.

43. (1) On an appeal, the appellate court may—

Powers, etc.
of appellate
courts.

- (a) confirm the judgment, order or sentence of the court below;
- (b) substitute for the judgment, order or sentence of the court below any judgment, order or sentence which might lawfully have been made at first instance;
- (c) remit the case to the original court or any other court of similar jurisdiction for re-hearing;
- (d) make any order as to costs of the proceedings both in the appeal and in the courts below as may be just;

- (e) exercise any power which might lawfully have been exercised by the courts below;
- (f) make any supplementary or consequential orders as the justice of the case may require.

(2) Notwithstanding that the appellate court is of the opinion that a point raised on the appeal might be decided in favour of the appellant, no process or proceedings of the Court shall be set aside or declared void by reason of a purely technical nature, if the appellate court is satisfied that no substantial miscarriage of justice has occurred.

(3) Where any time is fixed by this Act or any rule made under this Act for the bringing of any appeal or the doing of any act or thing, an appellate court may, if the justice of the case so requires, extend any such period of time on such terms as it shall think fit.

(4) Notice of any application made by a party under subsection (1) shall be given at the office of the Court before which the proceedings have been commenced.

PART VI—OFFENCES

Adjudicating
without
authority.

44. (1) Any person who—

- (a) within the area of the jurisdiction of any duly constituted Local Court exercises or attempts to exercise judicial powers, otherwise than in accordance with the provisions of any enactment; or
- (b) sits as a member of the Court without due authority,

commits an offence and shall be liable on summary conviction to a fine not exceeding two hundred thousand leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) A person shall not be regarded as having committed an offence under paragraph (a) of subsection (1) where with the

consent of the parties thereto, he conducts an arbitration or like settlement in any matter in accordance with the relevant customary law or any enactment.

(3) No prosecution for an offence against subsection (1) shall be instituted without the consent in writing of the Director of Public Prosecutions.

45. (1) No fees or fines in excess of those authorized by this Act or any other enactment shall be demanded or exacted from any person in respect of any proceedings in the Court and any default in complying with an order for the refund of fines, fees or costs made by a superior court or reviewing officer shall be deemed to be an exaction of fees or fines in excess of those authorized. Exacting excessive fees.

(2) Any member, officer or servant of the Court who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding two hundred thousand leones or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

46. Any person who— Obstruction of Bailiffs, etc.

- (a) assaults, obstructs, molests or resists; or
- (b) aids or incites any other person to assault, obstruct, molest or resist,

any Bailiff or other person acting or proceeding in the execution of his duties under section 11, commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand leones or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

47. A person who without lawful excuse— Contempt of Court.

- (a) intentionally insults the Court in session or any member thereof;
- (b) intentionally interrupts the proceedings of the Court;
- (c) refuses or neglects to comply with any lawful order of the Court;

- (d) wrongfully refuses to vacate any land or give up possession of property to any person who has obtained judgment from the Court for the recovery of possession of such land or property;
- (e) having the means to pay any sum by way of compensation or costs or otherwise in civil or criminal proceedings awarded against him by the Court refuses or neglects after the due notice to make such payment in accordance with any order for payment whether by installments or otherwise;
- (f) refuses to obey any summons to appear before the Court;

commits an offence and shall be liable on summary conviction to a fine not exceeding twenty five thousand leones or to imprisonment for a term not exceeding one month.

False
evidence.

48. (1) Any person who in any proceedings before the Court gives evidence whether on oath or otherwise which he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand leones or to imprisonment for a term not exceeding three months.

(2) Notwithstanding subsection (1), a person shall not be convicted of an offence under subsection (1), solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Rendering
false returns.

49. Any member, clerk or other officer of the Court who knowingly renders, or cause any subordinate officer to render, a false return of cases tried or penalties imposed by the Court commits an offence and is liable on summary conviction to a fine not exceeding one hundred and twenty thousand leones or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

50. Any person charged with the responsibility of recording the proceedings of the Court, who knowingly makes or causes to be made a false record of such proceedings commits an offence and is liable on summary conviction to a fine not exceeding one hundred and twenty thousand leones or to imprisonment for a term not exceeding three months.

Falsification
of records.

PART VII—MISCELLANEOUS

51. The powers vested in the Chairman under this Act or any Rules made under this Act shall be exercisable by a Vice-Chairman.

Powers of
Chairman.

52. (1) For the purposes of the functions set out under subsection (2), there shall be as many Customary Law Officers as may be required.

Customary
Law Officers.

(2) The functions of a Customary Law Officer shall include—

- (a) advising Local Courts in matters of law and organization;
- (b) undertaking research for the development of customary law;
- (c) assisting in the training of the personnel of the Court ; and
- (d) such other functions as the Chief Justice may from time to time confer upon him under this Act.

Reference to
Local Courts.

53. Whenever it appears to the High Court or a Magistrate Court that any proceedings before it are properly cognizable by the Court, it may stay any proceedings before it and refer the parties to such Court and make such consequential orders as to costs or otherwise as the justice of the case may require.

Fines, fees
etc. to be paid
into Conso-
lidated Fund.

54. Notwithstanding any enactment to the contrary, all fees, fines and other moneys taken by the Court shall be paid into and shall form part of, the Consolidated Fund.

General power
to make rules.

55. The Rules of Court Committee may, by statutory instrument, make rules prescribing any of the following matters:—

- (a) the practice and procedure of the Court;
- (b) the fees to be charged in the Court;
- (c) the procedure relating to the swearing of witnesses;
- (d) the rules of evidence in the Court;
- (e) the practice relating to the remand of accused persons;
- (f) the rules relating to bail;
- (g) the rules relating to the execution of sentences and civil judgments;
- (h) the costs to be allowed in civil and criminal cases;

- (i) the rules relating to arrest of accused persons and the issue and execution of search warrants;
- (j) the rules relating to the rendering of returns of reviewing officers;
- (k) the procedure relating to the institution of prosecutions and hearing of appeals and reviews;
- (l) the classes of proceedings existing under customary law which are to be regarded as civil or criminal proceedings, respectively.

56. The Chief Justice may make Rules for the following matters:— Power of Chief Justice to make rules

- (a) the forms to be used in the Courts;
- (b) the records to be kept by the Courts;
- (c) subject to section 55, any other matters which may require to be prescribed in order to ensure the effective operation of any of the provisions of this Act.

57. Any Rules made under sections 55 and 56 shall apply to all Local Courts and District Appeal Courts or to such particular Local Court or Courts, as may be specified therein. Application of Rules.

58. (1) The Local Courts Act, 1963 is repealed. Repeal of Act No. 20 of 1963 and savings.

(2) Notwithstanding the repeal of the Local Courts Act 1963—

- (a) all Courts and District Appeal Courts in existence immediately before the commencement of this Act shall not be affected by the repeal except as is expressly stated in this Act;
- (b) no proceedings before any Court which were finally terminated before the commencement of this Act shall be re-opened but any judgment, order or sentence made or passed in any such proceeding may be enforced in the same way as if the Act were still in force;
- (c) all proceedings in any Court commenced under the repealed Act, which have not been finally completed at the commencement of this Act shall be prosecuted and continued in conformity with this Act as far as consistently may be;
- (d) all Orders, Rules or Regulations made under the repealed Act, and in force at the commencement of this Act shall continue in force and have effect as if made under the provisions of, and with such modifications as may be necessary to bring them into conformity with, this Act, until such time as they are replaced by Orders or Rules made under this Act or until they are expressly revoked under this Act or any other enactment.

SCHEDULE

FORM OF OATH OF LOCAL COURT MEMBER (Section 2)

I.....being appointed the

*Chairman/Vice Chairman/a member of the.....

Court do hereby swear/affirm that I will well and truly serve as the

*Chairman/Vice-Chairman/a member of the.....

Court and will do right to all manner of people according to the laws and customs recognized by such Court without fear or favour, affection or ill will and that I will not accept in respect of my service as *Chairman/Vice-Chairman/member, any bribe, or any unlawful recompense, reward or benefit whatsoever.

So help me God.

(*Delete whichever is not applicable)

Passed in Parliament this *22nd day of July*, in the year of our Lord two thousand and eleven.

MOHAMED LEBBIE,
Officer-in-Charge
Office of the Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

MOHAMED LEBBIE,
Officer-in-Charge
Office of the Clerk of Parliament.