



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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#### OFFICE OF THE PRIME MINISTER

No. 149 2001

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 10 of 2001: Appeal Laws Amendment Act, 2001.

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**ACT**

**To** amend the Supreme Court Act, 1990, the High Court Act, 1990 the Criminal Procedure Act, 1977 and the Labour Act 1992 so as to repeal the provisions which confer jurisdiction on the full court of the High Court to hear appeals against judgments or orders of the High Court and of the Labour Court and to provide that such appeals shall lie direct to the Supreme Court of Namibia; to provide that civil appeals from judgments or orders of the High Court sitting as a court of first instance shall lie to the Supreme Court as of right and to do away with the requirement in certain cases that leave to appeal must be obtained; to amend the Income Tax Act, 1981 so as to provide that appeals against decisions of the special court for hearing income tax appeals constituted under that Act shall lie to the Supreme Court; and to provide for incidental matters.

*(Signed by the President on 5 July 2001)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

**Amendment of section 14 Act No. 15 of 1990**

1. Section 14 of the Supreme Court Act, 1990 is amended by the deletion of subsections (4) and (8).

**Amendment of section 16 of Act No. 16 of 1990**

2. Section 16 of the High Court Act, 1990 is amended by the deletion of paragraph (c).

**Amendment of section 18 of Act No. 16 of 1990**

3. Section 18 of the High Court Act, 1990 is amended -

(a) by the substitution for subsection (2) of the following subsection:

"(2) An appeal from any judgment or order of the High Court in civil proceedings shall lie -

- (a) in the case of that court sitting as a court of first instance, whether the full court or otherwise, to the Supreme Court, as of right, and no leave to appeal shall be required;
- (b) in the case of that court sitting as a court of appeal, whether the full court or otherwise, to the Supreme Court if leave to appeal is granted by the court which has given the judgment or has made the order or, in the event of such leave being refused, leave to appeal is granted by the Supreme Court.";

(b) by the deletion of subsection (4);

(c) by the substitution for subsection (5) of the following subsection:

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## APPEAL LAWS AMENDMENT ACT, 2001

"(5) If leave to appeal to the Supreme Court is granted in terms of subsection (2)(b), the court granting the leave may order the applicant to find security for costs of the appeal in such amount as the registrar of the court concerned may determine, and may fix the time within which the security is to be found."; and

- (d) by the deletion of subsection (6).

**Substitution of section 315 of Act No. 51 of 1977 as amended by section 6 of Act No. 29 of 1985**

4. The following section is substituted for section 315 of the Criminal Procedure Act, 1977:

**"Court of appeal from High Court judgments**

"5. (1) In respect of appeals and questions of law reserved in connection with criminal cases heard by the High Court of Namibia the court of appeal shall be the Supreme Court of Namibia.

(2) An appeal referred to in subsection (1) shall lie to the Supreme Court of Namibia only as provided in sections 316 to 319 inclusive, and not as of right.

**Amendment of section 316 of Act No. 51 of 1977, as amended by section 7 of Act 29 of 1985 and section 3 of Act No. 26 of 1993.**

5. Section 316 of the Criminal Procedure Act, 1977 is amended -

- (a) by the substitution for subsection (1) of the following subsection:

"(1) An accused convicted of any offence before the High Court of Namibia may, within a period of fourteen days of the passing of any sentence as a result of such conviction or within such extended period as may on application (in this section referred to as an application for condonation) on good cause be allowed, apply to the judge who presided at the trial or, if that judge is not available, to any other judge of that court for leave to appeal against his or her conviction or against any sentence or order following thereon (in this section referred to as an application for leave to appeal), and an accused convicted of any offence before any such court on a plea of guilty may, within the same period, apply for leave to appeal against any sentence or any order following thereon.";

- (b) by the deletion of subsection (1A);

- (c) by the substitution for subsection (5) of the following subsection:

"(5) If an application under subsection (1) for leave to appeal is granted the registrar shall cause notice to be given accordingly to the registrar of the Supreme Court without delay, and shall cause to be transmitted to the said registrar a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the Prosecutor-General, copies, (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the Prosecutor-General and the accused to be sufficient, in which event the Supreme Court may nevertheless call for the production of the whole record.";

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**APPEAL LAWS AMENDMENT ACT, 2001****Amendment of section 76 of Act No. 24 of 1981, as amended by section 21 of Act No. 12 of 1996**

6. Section 76 of the Income Tax Act, 1981 is amended by the substitution for subsection (2) of the following subsection:

"(2) Such appeal shall lie to the **[High Court]** Supreme Court of Namibia."

**Amendment of section 21 of Act No. 6 of 1992**

7. Section 21 of the Labour Act, 1992 is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the Labour Court may appeal, with the leave of the Labour Court or, if such leave is refused, with the leave of the Supreme Court of Namibia granted on application by way of petition to the Chief Justice, to **[a full court of the High Court of Namibia,]** the Supreme Court of Namibia, on any question of law against any decision or order of the Labour Court or any judgment or order of the Labour Court given on appeal from a judgment or order from a district labour court, as if such judgment or order were a judgment or order of the High Court of Namibia."

**Amendment of section 22 of Act No. 6 of 1992**

8. Section 22 of the Labour Act, 1992 is amended by the substitution for paragraph (g) of subsection (4) of the following paragraph:

"(g) the period within which and the manner in which an appeal from a decision of the Labour Court to the **[full court of the High Court]** Supreme Court of Namibia or from any district labour court to the Labour Court shall be noted;"

**Pending appeals**

9. Any appeal which, at the date of commencement of this Act, is pending -
- (a) before the full court of the High Court of Namibia, being an appeal from any judgment or order of any other court of the High Court of Namibia;
  - (b) before the full court of the High Court of Namibia, being an appeal from any judgment or order of the Labour Court, established by section 15(1)(a) of the Labour Act, 1992 (Act No. 6 of 1992); or
  - (c) before the High Court of Namibia, being an appeal from a decision of the special court for hearing income tax appeals, constituted in terms of section 76 of the Income Tax Act, 1981 (Act No. 24 of 1981),

shall stand removed to the Supreme Court of Namibia, but any such appeal which is partly heard at that date may continue to be heard and determined as if this Act had not been passed.

**Short title**

10. This Act shall be called the Appeal Laws Amendment Act, 2001.
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