



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notices

MINISTRY OF JUSTICE

No. 236 2003

COMMENCEMENT OF THE COMMUNITY COURTS ACT, 2003

Under the powers vested in me by section 34 of the Community Courts Act, 2003 (Act No. 10 of 2003) I determine that the Act comes into operation on 17 November 2003.

A. KAWANA

MINISTER OF JUSTICE

Windhoek, 12 November 2003

MINISTRY OF JUSTICE

No. 237 2003

REGULATIONS OF COMMUNITY COURTS: COMMUNITY COURTS ACT, 2003

The Minister of Justice, under section 32 of the Community Courts Act, 2003 (Act No. 10 of 2003), has made the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations a word or expression that is defined in the Act has the same meaning, and -

“the Act” means the Community Courts Act, 2003 (Act No. 10 of 2003); and

“Traditional Authorities Act” means the Traditional Authorities Act, 2000 (Act No. 25 of 2000).

Instituting of proceedings in community court

2. (1) The process of the community court for commencing an action shall be by summons -

- (a) served in accordance with the applicable customary law practice and procedure; and
- (b) calling upon the defendant to appear before the community court to answer to a claim of the plaintiff.

(2) Unless the applicable customary law practice and procedure otherwise requires, the summons shall -

- (a) be issued by the clerk of the court and shall bear his or her signature, the subject matter, date of issue, place, date and time of hearing;
- (b) show the surname of the defendant by which he or she is known to the plaintiff, the defendant's gender and residence or place of business, and, where known, his or her first name or initials and his or her occupation, and if defendant is sued in his or her representative capacity, the capacity in which he or she is so sued;
- (c) show a full address where the plaintiff will accept service of process, notices or documents and also the postal address;
- (d) show the first name, surname, gender, occupation and the residence or place of business of the plaintiff;
- (e) where the plaintiff sues as cessionary, show the name, address and description of the cedent at the date of the cession, and the date of the cession; and
- (f) where the plaintiff sues in a representative capacity, state the capacity in which he or she sues.

Procedure to be observed in community courts

3. A community court when conducting its proceedings shall observe its customary law practice and procedure which had been observed for years, but only to an extent it considers fair and just in accordance with the principles of fairness and natural justice contemplated in section 19.

Times and places of holding court sittings

4. Sittings of a community court shall be held at the time and place decided upon by the traditional community concerned.

Keeping of records of evidence and of proceedings in court and custody and disposal of such records and duties of clerk of court in respect of such records

5. (1) The record of proceedings to be recorded in writing by the clerk of the community court in terms of section 18(2) of the Act shall include -

- (a) any oral evidence given in court;
- (b) any objection made to any evidence received or tendered;
- (c) any judgment given by the court; and
- (d) any record of any inspection *in loco*.

(2) The clerk of the community court shall also mark each document put in evidence and note such mark on the record.

(3) The clerk of the community court shall furnish copies of the records of the proceedings of the court referred to in subregulation (1) to the magistrate's court and the Permanent Secretary: Justice within a period of 60 days from the date a record was made.

(4) Any person, upon request made to the Permanent Secretary: Justice, or the clerk of the community court concerned, may obtain a copy of the record of the proceedings of the court referred to in subregulation (1) on payment of a fee of N\$1,50 per folio.

Manner of procuring attendance of witnesses

6. (1) The process of community court for procuring the attendance of any person to give evidence on a subject matter or on any aspect thereof or to produce any book, paper or document shall be in accordance with the applicable customary law practice and procedure, otherwise, it shall be by subpoena issued by the clerk of the court and sued out by the party desiring the attendance of such person.

- (2) Service of a subpoena on a witness may be effected -
 - (a) in accordance with the applicable customary law practice and procedure; or
 - (b) through the messenger of the court, if the party suing out the subpoena so desires at his or her own expense.

(3) There shall be handed to the messenger of the court (if the party suing out the subpoena desires it to be served through the messenger) together with the subpoena so many copies of the subpoena as there are witnesses to be summoned.

Appointment of interpreters and their allowances

7. An interpreter referred to in section 15 of the Act shall -
- (a) be a competent person who is sufficiently conversant in the language that a community court has decided to use during its proceedings and also in the language he or she is called upon to translate into and from;
 - (b) be appointed by the clerk of the court;
 - (c) be paid the allowance set out in Table D; and
 - (d) take an oath or make an affirmation before the Justice presiding over the matter in the form set out below -

“I,(full name), do swear/solemnly and sincerely affirm and declare that I shall truly and correctly to the best of my ability interpret into and from the language I am called upon to interpret and from and into the language being used in this proceedings. So help me God.”

Service or execution of process of community court

8. (1) Service or execution of process of a community court referred to in section 17 of the Act shall be effected in accordance with the applicable customary law practice and procedure, otherwise it shall be effected in accordance with this regulation.

(2) A party requiring service or execution of process of community court by the messenger of the community court shall deliver to the messenger the original of such process together with as many copies thereof as there are persons to be served.

(3) The messenger of the community court to whom a process is entrusted for service or execution shall in writing notify -

(a) the clerk of the community court and the party who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution and return that process to the clerk; or

(b) the party who sued out the process that he or she has been unable to effect service or execution, and of the reason for such inability, and return the said process to such party, but the messenger shall keep a record of any process so returned.

(4) The messenger of the community court -

(a) shall effect the service or execution of the process of the community court without any avoidable delay;

(b) has power to call upon any member of the Namibian Police Force to render him or her aid, in any case where resistance to the due service or execution of the process of the community court has been met with or reasonably anticipated.

Business hours for office of clerk of community court

9. Unless the customary law practice and procedure provides otherwise –

(a) the business hours for the office of the clerk of the community court start at 8h00 and end at 17h00;

(b) the office of the clerk of the community court shall be closed on every Saturday, Sunday and public holiday.

Translation of community court records

10. (1) A community court shall cause its records which are a subject of appeal to the magistrate’s court to be translated into the official language.

(2) A party to the matter on appeal to the magistrate’s court may cause the records referred to in subsection (1) to be translated into the official language by a sworn translator at his or her own expense.

Appeal against order or decision of community court

11. (1) A party to any proceedings in a community court who is aggrieved by any order or decision of that community court may appeal to -

- (a) the same community court, if that community court in terms of section 2(5) of the Act comprises a body of appeal and is vested with the jurisdiction to hear and determine any appeal relating to a matter referred to in section 12(a) of the Act; or
 - (b) the magistrate's court, if -
 - (i) the community court does not comprise a body of appeal vested with the jurisdiction to hear and determine any appeal; or
 - (ii) it is a further appeal against any appeal judgment made by the court referred to in paragraph (a).
- (2) Upon request in writing by any party within 14 days from the date of the judgment of the community court, or within such extended period as the court may allow, the clerk of the community court shall -
- (a) within 21 days of the request, supply the party with a copy of the record of proceedings, including a written judgment showing -
 - (i) the facts the Justice found to be proved; and
 - (ii) the Justice's reasons for the order or decision.
 - (b) after supplying the party with a copy of the record of proceedings referred to in paragraph (a), forthwith endorse on the original minutes of record the date on which the copy was so supplied.
- (3) An appeal under subsection (1)(b) shall be noted by the delivery of notice to the clerk of the magistrate's court within 30 days from the date of the order or decision appealed against or within such extended period as the magistrate's court may allow.
- (4) A notice of appeal shall state -
- (a) whether the whole or a part of the judgment is appealed against, and if it is a part, then what part;
 - (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against, and whether it is a further appeal; and
 - (c) the name of -
 - (i) the magistrate's court to which the appeal is noted;
 - (ii) the community court whose order or decision is appealed against; and
 - (iii) the parties to the appeal.

Remunerations and allowances

12. Remunerations and allowances payable under the Act are set out in Tables A, B, C and D.

Take note that in terms of section 10(3) of the Act, a Justice or clerk or messenger of the court who receives remuneration as a traditional leader or a secretary under the Traditional Authorities Act shall not be entitled to allowances or remuneration under the Act.

TABLE A
SITTING ALLOWANCES PAYABLE
TO JUSTICES

(Section 10(2), regulation 12)

1. For every attendance:
 - (a) Per hour or part thereof..... an amount equal to the allowances payable to a traditional leader under section 17(1)(a)(ii) of the Traditional Authorities Act per hour;
 - (b) Per day..... an amount equal to the allowances payable to a traditional leader under section 17(1)(a)(ii) of the Traditional Authorities Act per day.
2. Attendance to be reckoned from the hour for which the Justice is summoned to the hour at which judgment is given or reserved, or to the hour at which the Justice is expressly released by the court from further attendance, whichever is the earlier.
3. When the case is adjourned, postponed or settled, attendances to be reckoned from the hour for which the Justice is summoned to the hour at which the case is adjourned, postponed or settled, or to the hour at which the Justice is expressly released by the court from further attendance, whichever is the earlier.
4. A Justice who has neither a residence nor a place of business within five kilometres of the court-house is also entitled to a travel allowance at the rate of 60 cents per kilometre for each journey actually and necessarily taken between the court-house and his or her residence or place of business.

TABLE B
ALLOWANCES PAYABLE TO ASSESSORS

(Sections 7(5) and 27(5), regulation 12)

1. Assessor in the community court, for every attendance:
 - (a) Per hour or part thereof N\$4,00;
 - (b) Per day..... N\$32,00;
2. Assessor in the magistrate's court, for every attendance:
 - (a) Per hour or part thereof..... an amount equal to a fee payable to state witness in magistrate's court per hour;
 - (b) Per day..... an amount equal to a fee payable to state witness in magistrate's court per day.

3. Attendance to be reckoned from the hour for which the assessor is summoned to the hour at which judgment is given or reserved, or to the hour at which the assessor is expressly released by the court from further attendance, whichever is the earlier.
4. When the case is adjourned, postponed or settled, attendances to be reckoned from the hour for which the assessor is summoned to the hour at which the case is adjourned, postponed or settled, or to the hour at which the assessor is expressly released by the court from further attendance, whichever is the earlier.
5. An assessor who has neither a residence nor a place of business within five kilometres of the court-house is also entitled -
 - (a) to a travel allowance at the rate of 60 cents per kilometer for each journey actually and necessarily taken between the court-house and his or her residence or place of business, in the case of an assessor in the community court; or
 - (b) to travel and accommodation allowances applicable to state witnesses in the magistrate's court, in the case of an assessor in the magistrate's court.

TABLE C

REMUNERATIONS PAYABLE TO CLERKS AND MESSENGERS OF COMMUNITY COURT

(Section 10(2), regulation 12)

1. Clerk of community court:

A remuneration..... equal to the allowances payable to a secretary under section 17(1)(b) of the Traditional Authorities Act.

2. Messenger of community court:

A remuneration equal to the allowances payable to a secretary under section 17(1)(b) of the Traditional Authorities Act, minus 20%.

TABLE D

ALLOWANCES PAYABLE TO INTERPRETERS

(Section 32(1)(f), regulation 12)

1. For every attendance:

- (a) Per hour or part thereof N\$2,00;
- (b) Per day..... N\$16,00.

2. Attendance to be reckoned from the hour for which the interpreter is summoned to the hour at which judgment is given or reserved, or to the hour at which the interpreter is expressly released by the court from further attendance, whichever is the earlier.
3. When the case is adjourned, postponed or settled, attendances to be reckoned from the hour for which the interpreter is summoned to the hour at which the case is adjourned, postponed or settled, or to the hour at which the interpreter is expressly released by the court from further attendance, whichever is the earlier.
4. An interpreter who has neither a residence nor a place of business within five kilometres of the court-house is also entitled to a travel allowance at the rate of 30 cents per kilometre for each journey actually and necessarily taken between the court-house and his or her residence or place of business.

MINISTRY OF JUSTICE

No. 238

2003

**DETERMINATION OF PERIOD FOR APPLICATION FOR
RECOGNITION AS COMMUNITY COURT:
COMMUNITY COURTS ACT, 2003**

Under the powers vested in me by section 2(2) of the Community Courts Act, 2003 (Act No. 10 of 2003), I determine the period 17 November 2003 to 31 March 2004 as the period within which an application under subsection (1) of that section for recognition as community court in respect of the area of a traditional community shall be made.

A. KAWANA
MINISTER OF JUSTICE

Windhoek, 12 November 2003
