Current legal developments

Lesotho

**Principal legislation**

During the period ending December 1993, the following principal statutes were enacted: Constitution of Lesotho Government Notices 12 and 28 of 1993, Trading Enterprises Order 11 of 1993 and Nursing and Midwifery Order 19 of 1993.


The National Constituent Assembly Order 1990 set up a National Constituent Assembly to recommend a suitable constitution for Lesotho. It prepared a draft constitution making major changes to the Lesotho Independence Constitution of 1966. Widespread consultations with the people of Lesotho showed general approval for the draft constitution. The draft was then submitted to the National Constituent Assembly which revised it. The revised draft was published on 5 February 1993 as Government Notice 12 of 1993 and amended by Government Notice 28 of 1993.

*Lesotho Constitution (Commencement) Order 5 of 1993* provided that the Revised Draft should be the Constitution of Lesotho. It came into force in terms of s 5(a) of the Constitution (Commencement) Order 1993 on 2 April 1993.

The constitution provides for the protection of eighteen fundamental human rights and freedoms in respect of every person in Lesotho irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. They are: the right to life; the right to personal liberty; freedom of movement and residence; freedom from inhuman treatment; freedom from slavery and forced labour; freedom from arbitrary search or entry; the right to respect for private and family life; the right to a fair trial and a fair determination of civil rights and obligations; freedom of conscience; freedom of expression; freedom of peaceful assembly; freedom of association; freedom from arbitrary seizure of property; freedom from discrimination; the right to equality before the law and equal protection of the law; and the right to participate in government.

The constitution incorporates the doctrine of judicial review and any law that is inconsistent with the constitution shall be void to the extent of such inconsistency. The High Court has been granted original jurisdiction to enforce the fundamental rights and freedoms. Fundamental rights and freedoms, with some very limited exceptions, cannot be amended without the approval of the majority of the electorate.

The constitution sets out certain non-justiciable ‘principles of state policy’ to guide the state and public authorities in the progressive implementation of human rights. These are: promoting a society based on equality and justice for all its citizens, in particular for the disadvantaged groups; ensuring the highest attainable standard of physical and mental health for its citizens including the improvement of environmental and industrial health; making education available to all; providing an opportunity to work for all; providing just and favourable conditions of work; encouraging the formation of trade unions to protect workers’ rights and interests and promoting sound labour relations and fair employment practices; protecting children and young persons from economic and social exploitation; rehabilitating, training and social settlement of disabled persons; adopting policies to encourage
citizens to acquire property in all forms; ensuring participation in cultural activities including protection of copyright and neighbouring rights and protection of the environment.

The constitution provides for a constitutional monarch who, together with the National Assembly and the Senate constitutes parliament. National Assembly has sixty-five members elected on a one-person-one-vote principle. The Senate has twenty-two Principal Chiefs and eleven other Senators nominated by the King on advice of the Council of State. A bill can be introduced only in the National Assembly. The Senate can introduce amendments but it can be overruled by the National Assembly. The constitution provides for the establishment of the office of an ombudsman to investigate complaints against government departments, public authorities and statutory corporations or any of their members. It also sets up a Defence Commission with the Prime Minister as chairman to appoint, discipline and remove members of the defence force, police force and prison service.

Fundamental rights and freedoms and several other major provisions of the constitution, including the institution of chiefs and a monarchy, have been entrenched and require a referendum for amendment, whereas others can be altered by a two-third majority of each of the houses of parliament.

Trading Enterprises Order 11 of 1993
This Order repeals and replaces Trading Enterprise Order 10 of 1987 and came into force on 24 March 1993. It establishes a Trading Enterprise Board, consisting of the principal secretaries of relevant ministries, representatives of the army and police, commissioner of trade and a representative of the Chamber of Commerce appointed by the Minister of Trade and Industry. The board may delegate any or all of its functions to a Local Licensing Board, which has been set up in each of the ten districts in Lesotho. Each Local Licensing Board consists of the district secretary, district military officer, police officer in command of the district, district health inspector, district commercial officer, a representative of the Chamber of Commerce, a member of the District Development Council and a person representing consumers. The last three are ministerial appointments.

The major function of the board is to consider applications for the granting of trading licences. It is a criminal offence to trade without a licence. The board is enjoined to take into account the merits of the 'applicant and national priorities'. A licence can be suspended or cancelled if the 'continuance of any trade or occupation constitutes a danger to public health or public morality'. Likewise, if upon examination of 'transfer or expertise' of the contract, it appears that the trade or occupation is 'not conducive to the development and promotion of trade in Lesotho'. A licence can be suspended for up to sixty days. If the reasons that led to suspension do not change, the licence is cancelled. Both suspension and cancellation can be appealed against to the minister. It would appear that the decision of the minister can be challenged in a court of law.

Licences are granted for a period of one year but can be renewed upon payment of a prescribed fee and are transferable. Apart from licensing, the board has the following functions: to make recommendations to the minister to ensure proper implementation of government policies regarding trading activities and services; to provide for the expansion of local trading activities, including citizen participation in trading, investment, ownership, management and control of enterprises; to recommend to the minister the areas where citizens' participating activities may be promoted and areas where non-citizens may undertake trading activities in joint ventures with citizens.
Lesotho Defence Order 17 of 1993
The Order repeals the Royal Lesotho Defence Force Act 1980 and came into force on 28 March 1993. The Order provides for the establishment and maintenance of a defence force to be called the Lesotho Defence Force. The word 'royal' has been deleted from the name. The defence force has been charged with the defence of Lesotho, support of the civil authorities in the maintenance of order and such other duties as it may be charged with from time to time. The Order provides for the setting up of a defence commission for the appointment, discipline and removal of the members of the defence force. The power to grant commissions in the defence force has been vested in the King on the advice of the Defence Commission, which consists of the commander of the defence force, commissioner of the defence force, assistant commissioner of police and deputy director of the national security service. The composition of the Defence Commission is at variance with what has been provided in the constitution.

The Order enumerates a long list of military and civil offences and provides for their punishment. It also sets out the composition of the court-martial, its jurisdiction and the procedure it must follow. The legislation deals with the volunteer element of the force, reserve force and various matters relating to discipline.

Nursing and Midwifery Order 19 of 1993
This Order repeals and replaces the Nursing Act of 1983, and came into force retrospectively on 30 June 1990 and applies to all categories of nurses. Furthermore, the Order establishes the Lesotho College of Nursing as an examination body for the basic nursing programmes and midwifery. The examinations and the examination results are approved by the Senate of the National University of Lesotho. The Lesotho Nursing Council, set up under the repealed Act, continues to exist and operate. The council inter alia, may inquire into, adjudicate and settle all matters of discipline in the nursing profession and may impose such penalties as it may think fit. Under the Order, the Lesotho Nurses' Association will continue to operate. Membership of the association is obligatory for all nurses.

Other statutes enacted were:
National Assembly Election (Amendment) Order 1 of 1993 amends the principal legislation to provide that where elections have been postponed, they must be held within 125 days. Originally the period was ninety days.

National Assembly Election Order Legal Notice 1 of 1993 sets out the boundaries of sixty-five constituencies in terms of the National Assembly Election Order 1992 in order to elect sixty-five members to the National Assembly.

Legal Notice 8 of 1993 set 27 March 1993 as the polling day for national elections.
National Assembly Election (Amendment) (2) Order 10 of 1993 amends the principal legislation to provide for the voting of absent voters.

National Assembly Election (Amendment) (3) Order of 20 of 1993 amends the principal legislation and came into force on 26 March 1993. It inserts s 74(1A) to provide that if voting at a polling station is seriously delayed or cannot, for some reason, take place on polling day the chief electoral officer may adjourn the polling until polling at the polling station can be completed.

National Assembly Election (International Observer) Regulations (Legal Notice 52 of 1993) provide for the accreditation of international observers to determine if the national elections are free and fair.

Court of Disputed Returns (National Assembly Election Petition) Rules (Legal Notice 54 of 1993) came into operation on 2 April 1993. It repealed and replaced the High Court (National Assembly) (Election Petition) Rules (Legal Notice 58 of 1985). The
High Court is the court of disputed returns. An election petition is to be brought by way of a notice of motion addressed to the registrar in the prescribed form.

*Teachers’ Pensions Order* 2 of 1993 extends the application of Pensions Proclamation 1964, with necessary modifications, to teachers, including married female teachers, as from 1 October 1992.


*Chieftainship (Amendment) Order* 3 of 1993 amends the Chieftainship Act of 1968. In the public interest, it provides for suspension without pay for up to six months, of any chief. The minister need not give notice or hear representations before such a suspension takes place. An acting chief would be appointed during the period of suspension. Should no acting chief have been appointed after seven days, the minister may appoint one at his discretion, even if he is not a resident in the area of jurisdiction of the suspended chief.

*Suspension of Chief Notice* (Legal Notice 53 of 93) suspended four chiefs for a period of four months. Their suspension was revoked by Legal Notice 103 of 1993.

*Development Councils (Amendment) Order* 7 of 1994 amends the principal legislation to provide that the chief shall not be *ex officio* chairman of the village and ward of development councils. The chairman shall be elected by the respective members from among their own number. S 17A has been added to provide that the members of development councils shall be elected by secret ballot.

*Industrial Property (Amendment) Order* 22 of 1993 repealed s 26(2)(f) of the parent legislation. It could be regarded as redundant in view of s 26(2)(e) which covered similar territory. However, s 26(2)(f) also protected third party rights prior to those not protected by s 26(2)(e). They would only be protected if the trade mark they represent is well-known in Lesotho.

*Finance (Amendment) Order* 4 of 1993 amends parent legislation to provide for *ex-gratia* payment for services performed for the government of Lesotho or in recognition of contributions made to Lesotho of an amount to be specified by the minister and authorised by the military council.

*Post Office (Amendment) Order* 21 of 1993 amends the principal legislation as from 4 January 1993 so as to replace the Finance Act of 1978, wherever it occurs, by Finance Order 1988. It also inserts a new section 68 to clarify that any offence committed or any proceedings brought or any action taken under the repealed provisions of the Post Office Proclamation are to be deemed to have been taken under the parent legislation, Post Office Order 13 of 1979, and for that purpose the provisions of the Proclamation shall be deemed to belong to the provisions of the Post Office Order 1979.


*Lesotho Bank (Amendment) Order* 15 of 1993 amends the principal legislation, *inter alia*, to provide that Lesotho Bank shall be authorised to operate a unit trust fund with the approval of the Central Bank and its board of directors. The board has been given power to issue shares for sale to the public, with the approval of the minister.
Current legal developments

and on such terms and conditions as the minister may deem fit. This provision intended to facilitate the progressive privatisation of the Lesotho Bank.

Lesotho Agricultural Development Bank (Amendment) Order 14 of 1993 amends the parent legislation to provide for a board of directors and auditing. These changes were necessitated by the fact that the bank has been given the status of a fully-fledged bank by the Central Bank of Lesotho. The Order came into force on 26 March 1993.

Basotho Enterprises Development Corporation (Amendment) Order 8 of 1993 amends the principal legislation so as to make its shares transferable and issuable to private persons. The amendment also provides that the profits of the corporation could be used to pay dividends to shareholders. The purpose of the amendment is to facilitate the privatisation of the Basotho Enterprises Development Corporation (BEDCO).

Subsidiary legislation

The following deserve mention: Legal Notice 37 of 1993 removed the Council of Ministers of the Military Council to make way for the elected government on 22 February 1993. Following their removal their powers were temporarily transferred to the Military Council by Legal Notice 38 of 1993. Finance Amendment Order 4 of 1993 enabled the Military Council to make payments in the form of a so-called 'golden handshake' to the ministers so removed. The national election results were published in Government Notice 33 of 1993. Legal Notice 95 of 1993 gave notice of the appointment of Dr Ntsu Mokhele as Prime Minister Designate on 1 April 1993 by the Military Council. Legal Notice 100 of 1993. The Military Council National Assembly met on 19 April 1993 to elect a Speaker and swear in the elected members. Legal Notice 112 of 1993. The King nominated eight members to the Senate on the advice of the Council of State. Legal Notice 113 of 1993. The Senate met on 21 May 1993 to elect the President of Senate. Government Notice 45 of 1993. Parliament was summoned by the King to meet on 4 June 1993 for conducting its official business. Government Notice 44 of 1993 publishes the names of the members of the Council of State. Legal Notice 10 of 1993 fixed 22 January 1993 as the date on which the National Security Services Order 1992 came into force. Legal Notice 25 of 1993 fixed April 1993 as the date on which Labour Code Order 1992 came into force. Lesotho Water and Sewerage Authority Order 29 of 1991 came into force on 1 April 1992 (Order 7 of 1993). Agricultural Marketing (Price Control) (Amendment of Schedule) Regulations (Legal Notice 15 of 1993) fixed new minimum producer prices for wheat, wheat flour, bran and bread as from 5 January 1993. Legal Notice 36 of 1993, came into force on 19 February 1993 to provide maximum wholesale and retail selling prices of flour, wheat meal and bread. Agricultural Marketing (Distribution of Dairy Products) (Amendment) Regulations (Legal Notice 19 of 1993), amends the principal regulations to provide that all dairy products (not merely imported ones) shall be subject to a 2.5 per cent levy on their invoiced value. Illegally imported dairy products can no longer be confiscated by customs officials at the border or seized from shops by an inspector. The amendment brings the law in line with the Southern African Customs Union Agreement. Agricultural Marketing (Egg Trading) (Amendment) Regulations (Legal Notice 34 of 1993) replaces Lesotho Poultry Co-operative Society and defines it to mean a body of people elected in a district to administer all matters relating to egg trading in that particular district. The regulations came into force on 19 February 1993, repealing regulation 5 of the principal regulations. The repealed regulation provided that anyone importing meat into Lesotho shall be liable to pay a levy. This was contrary to the Southern African Customs Union Agreement. Wool and Mohair (Prices) Regulations (Legal Notice 101 of 1993) came into force on 18 June 1993 and provide for the first payment for 1993 Mohair Clip. Government Notice 13 of 1993 establishes the National Advisory Committee on Labour with the Principal Secretary of the Ministry of Employment as the chairman, the Legal Officer of the same Ministry as deputy chairman, the Labour Commissioner as secretary and 18
ordinary members. Legal Notice 51 of 1993 appoints members of the Road Transport Board for three years beginning 2 April 1993. Government Notice 27 of 1993 appoints members of the Lesotho Sports Council. Legal Notice 114 of 1993 sets up a Commission of Inquiry into Cooperatives in Lesotho to inquire into the operations of cooperative societies in general and the operations of the Co-op Lesotho, in particular. One of its terms of reference is to look into the adequacy of legislation relating to cooperative societies. Town and Country Planning (Development) (Amendment) Regulations (Legal Notice 111 of 1993) amends the parent regulations. The parent regulations were gazetted as if they were a statute. The amendment rectifies this, makes a few other technical corrections and sets out prescribed forms. Valuation and Rating (Levy of Rates) (Legal Notice 41 of 1993) lays down revised levy on properties, which shall be 0.25 per cent on all residential properties, 1.75 per cent on all commercial properties and 2.5 per cent on all industrial properties. Development Councils Fund Regulations (Legal Notice 44 of 1993) implements s 19A of the Development Councils Order 18 of 1991 (amended Order 13 of 1992), which established a Development Fund. The regulations require the Development Council to keep proper, auditable accounts of all its revenue and expenditure. They also lay down a procedure to draw funds above a certain limit.

JUDICIAL DECISIONS

Criminal procedure
*R v Tsotlebo Motsamat (CA)* crim app 1 of 1993

The Crown appealed on both a question of law and fact against the verdict of the High Court acquitting the respondent on a charge of murder. The deceased died as a result of gunshot wounds inflicted by a person described by crown witnesses as a 'stranger' (hereinafter the 'assailant'). It was alleged that the respondent, an inmate of the local area, acted in concert with the assailant and was liable as an accomplice.

After the assailant had shot the deceased he was pursued by a number of people. He was seen to run towards the respondent. Both ran in the same direction. They were eventually apprehended but the assailant died during his apprehension.

The respondent was brought to the headman and when asked what he was doing in the company of the stranger, made a highly incriminating statement amounting to a confession to being a party to the murder. The trial court held the confession to be inadmissible as it was made, in contravention of a statute, to a headman and not in writing before a magistrate.

S 228(2) of the Criminal Procedure & Evidence Act (CP & E) provides that a confession made to a policeman is only admissible if confirmed in writing before a magistrate. The question was whether a headman is a policeman for the purposes of the CP & E? It was held that a policeman is a member of the Royal Lesotho Police Force and a headman is clearly not such a member. The accused was acquitted.

In the Appeal Court the issue arose whether the DPP could appeal against an acquittal on both law and fact. The court observed it was most unusual for the Crown to appeal against an acquittal. In the Republic of South Africa no right to appeal on the merits exists. It is entirely foreign to the spirit and practice of the courts of law in South Africa that there should be an appeal from the judgment of a competent court acquitting an accused.

In Lesotho s 7(2) of the Court of Appeal Act of 1978 provides: 'if the DPP is dissatisfied with any judgement of the High Court on any matter of law or fact, he may appeal against such judgement to the court.'

Acting under this section the Court of Appeal set aside the acquittal of the accused.
Criminal procedure — order for review
R v Sekobolo et al rev case 117/93

All the accused appeared before a subordinate class magistrate charged with contravening the Forest Act in that they had cut down trees without the requisite licence. They pleaded guilty but after narration of the facts by the public prosecutor in terms of the relevant statute, they were acquitted on the ground that the facts did not disclose the offence charged. On further perusing the record of the proceedings, the magistrate found that he had misdirected himself since the facts did disclose the offence charged. However, since he was functus officio he could not reverse mero moto. Hence the request for review. The question was whether the High Court could review an acquittal.

S 178 of the Criminal Procedure and Evidence Act provides that when a wrong judgment is delivered, the error may be corrected before the judgment is delivered to the clerk. The court does not become functus officio until the judgment has been delivered to the clerk. The magistrate should have corrected his mistake when he became aware of it soon after court had adjourned, but before issuing judgment to the clerk.

Even if the magistrate had become functus officio, the High Court had no jurisdiction to entertain the matter by way of review. The Subordinate Courts Order 1988 provides for two kinds of review, namely automatic review that empowers the High Court to review all sentences in criminal cases in which the punishment is a fine, or imprisonment. Since in the instant case, the accused were not sentenced but acquitted and discharged, the proceedings could not be sent for automatic review.

Where, in any criminal case, a magistrate imposes a sentence that is not subject to review in the ordinary course, the High Court may nevertheless exercise its review jurisdiction if the proceedings in which the sentence was imposed were not in accordance with justice. It is a prerequisite for the exercise of review, therefore, that the trial magistrate should have imposed a sentence. An acquittal is not a sentence. Therefore, the High Court could not review the proceedings. However, this did not prejudice the DPP’s right to file an appeal against the judgment of the trial magistrate.

Constitutional law
Chief Seeiso Bereng Seeiso v Minister of Home Affairs et al (CA) civ case 21 of 1994

During a radio broadcast, King Letsie III invited the nation to consider the issue of monarchy and in particular, the reinstatement of his father King Moshoeshoe II (the appellant) to the throne. In pursuance of this broadcast, the appellant, together with other principal chiefs, resolved to convene a meeting of all Basotho on 12 March, 1994, to discuss the matter of reinstatement. Preparations for the meeting went ahead. On the evening of 11 March 1994 the appellant was served with a notice by the respondent (Minister of Home Affairs) banning the meeting.

In his opposing affidavit, the minister stated that the issue of monarchy was to be resolved in a democratic manner by parliament or by the entire nation. He also averred that under s 6 of the Chieftainship Act, it is the duty of every chief to support and maintain the authority of the King and his government, and in that regard to maintain public safety and public order. The minister claimed that the meeting was planned on Moshoeshoe’s Day, and the appellant should have known that public functions had been organised by government to celebrate that day. By organising the meeting on that day the appellant ‘chose to follow a different channel that may be in collision with peace in the country’. As a result of the military fracas which took place in Maseru in January 1994, the law and order situation was generally tense. As the minister in charge of police, he had a duty to prevent the exacerbation of an already fragile situation. In terms of s 8 of the Chieftainship Act, where a chief has exercised a power (convening a meeting), the minister may revoke it. Since such revocation was
an administrative decision, he was not obliged to give the appellant a hearing. Accordingly, by banning the meeting he had not violated the appellant's right or the right of the people to assemble peacefully by.

In his replying affidavit, the appellant averred that in convening a meeting he was merely exercising his constitutional right to assemble peacefully to discuss an issue of national importance. S 8 of the Chieftainship Act did not entitle the minister to violate the appellant's constitutional right of assembly. He denied that the situation in the country on 12 March 1994 was tense. The military unrest was confined to soldiers and the gathering of civilians had not been prevented. Banning the meeting was an abuse of administrative authority as the minister did not appraise the appellant the information on the basis of which he purported to claim that the meeting would prejudice public safety and national security.

The High Court dismissed the appellant's petition and held that the right to a fair hearing may have to yield to overriding considerations of public order and security. The appellant appealed against this judgment.

The Court of Appeal noted that s 15(1) of the constitution provides for freedom of peaceful assembly. S 15(2) permits a law to curtail this right in the interest of public safety and public order. However, the onus was on the minister to establish that the curtailment did not exceed the bounds necessary to preserve public order and security.

S 8 of the Chieftainship Act which the minister used to revoke the power exercised by the appellant to call a meeting, was clearly not a law envisaged by s 15(2) of the constitution. It was not the intention of the legislator to curtail an appellant's constitutional right in the interests of public safety or public order. S 8 merely allowed the minister to exercise some government control over the authority vested in the office of the chiefs in respect of the performance of their duties. Freedom of assembly is a constitutional right that is jealously guarded by the courts. The minister had no authority under the Chieftainship Act to ban the meeting convened by the appellant.

Even if the minister had such power under the Chieftainship Act, he failed to establish in terms of s 15(3) of the constitution that it was 'necessary in a practical sense' to ban the meeting in the interests of 'public safety and public order'.

Where an authority sought to rely on allegations affecting the security of state, it must do so in clear, unambiguous and factually precise terms. Phrases such as 'security of the state', 'the protection of public interest' and the 'maintenance of law and order' could not be used as shields, that by mere assertion could be invoked to ward off challenges levelled at an authority who acted in denial of a fundamental freedom entrenched in the constitution. Their invocation would only be upheld where such considerations, namely the security of the state, were legitimately raised and were supported by factual evidence that could be evaluated by the court.

The court observed that regrettably, the minister failed to meet this criterion. To say that 'the law and order situation was generally tense' and that the respondent had a duty to 'prevent any exacerbation of an already fragile situation' fell far short of the stipulated evidentiary requirements. This was all the more so when the appellant averred that 'the fracas was confined to the military' and that no civilian meetings were prohibited both during and after the 'fracas'.

The court upheld appellants' appeal with costs.

Land law

_Seboka Tlele-Tlele v NS Matekane et al civ app 386/91_

The respondent, holder of a lease a plot of land in Thaba-tseka, obtained an order
ejecting the applicant, who had occupied the plot. The applicant applied to the High Court to have the lease cancelled. The land was in an urban area and controlled by the Land Committee under the chairmanship of a chief who had allocated it to the applicant. The applicant had been using the land for a number of years.

However, the Minister of Interior declared the land a 'selected development area' under s 44 of the Land Act of 1979 by proclamation in the Government Gazette. The applicant claimed he was not aware of this declaration. The legal effect of the declaration was to render the right of the applicant to the land null and void. It was apparent from the respondent's papers that the purpose of the declaration was to grant the respondent the plot of land so that he could erect a warehouse.

The court held that s 44 of the Land Act was an empowering provision. There were conditions precedent that must be fulfilled, otherwise the minister could exercise draconian powers and expropriate allottees' lands. This section was not primarily intended to dispossess people of their land. The aim was to improve the quality of life as a whole, and not to take away land from an allottee in order to give it to someone else. Rather, the minister was obliged to make the existing occupiers the beneficiaries of any future development scheme that he might embark upon in public interest. Where this is not possible, for example, where an occupier's right cannot be reconciled with the development scheme, the minister may resort to the draconian measure of expropriation to overcome selfish or unreasonable obstruction of a project devised for the good of all in a particular area. But this method need not be adopted if the cooperation of individuals could be secured by persuasion.

It was, therefore, incumbent on the minister to consult with the present occupiers of land. Secondly, not only should he determine objectively whether it was in the public interest to develop the particular area, but also whether a declaration of a 'selected development area' was his only option.

In this case, the applicant was not given a hearing by the minister. A vague and ineffectual publication in the Government Gazette was no publication at all since it failed to identify the land that was the subject of the publication. The minister did not even know, or consider, the existing allottees in the area. There was no evidence of any development scheme for the area nor was there any evidence signifying that the exercise was in the public interest. On the contrary, the declaration was made for the benefit of the respondent. The court held that the minister had completely misconceived his powers under the Land Act and that in the circumstances, the respondent's lease had to be cancelled.

Umesh Kumar
MOA Owori
University of Lesotho

Namibia

PROCLAMATIONS OF THE PRESIDENT


Acts of the National Assembly

Social and Social Auxiliary Workers’ Professions Amendment Act 9 of 1994 amends the principal Act to provide that only registered workers are eligible as candidates or voters in the first election of members of the Social and Social Auxiliary Workers’ Board.

Public Accountants and Auditors Amendment Act 10 of 1994 defines certain expressions, amends the composition of the Public Accountants and Auditors Board and validates certain acts done by the Institute of Chartered Accountants in the name of the Board.

Stamp Duties Amendment Act 12 of 1994 provides that a special receipt to acknowledge the payment of stamp duty may be issued in respect of hire-purchase agreements or financial leases in certain circumstances and exempts from stamp duty the issue of negotiable certificates in respect of deposits made with building societies.

Sales Tax Amendment Act 13 of 1994 provides for a further exemption from sales tax in respect of the sale or importation of petrol, authorises the issue of exemption certificates to organisations and governments who have entered into technical assistance agreements with Namibia and amends previous amending Acts.

National Planning Commission Act 15 of 1994 provides for the membership, powers, functions and personnel of this Commission.

Medical and Dental Professions Amendment Act 16 of 1994 amends certain definitions and makes provision for the first election of the Medical Board and Dental Board.

Income Tax Amendment Act 17 of 1994 introduces various amendments to the main Act.

National Vocational Training Act 18 of 1994 provides for the training of apprentices and vocational trainees and establishes the controlling infrastructure.

Allied Health Services Professions Amendment Act 19 of 1994 contains provisions concerning a joint professional Board.

National Welfare Amendment Act 20 of 1994 repeals the provision that only registered social workers may be appointed as professional welfare workers in the Public Service.

Nursing Professions Amendment Act 21 of 1994 and the Pharmacy Professions Amendment Act 22 of 1994 amend the provisions regulating elections of their respective Boards.


Building Societies Amendment Act 25 of 1994 regulates the amalgamation of building societies and the transfer of their assets and liabilities.

Moratorium on the Payment of Stamp Duty or Transfer Duty in Respect of Rationalization Schemes Amendment Act 26 of 1994 exempts from payment of stamp duty any transfer deed relating to immovable property transferred as part of a rationalisation scheme.

Reciprocal Service of Civil Process Act 27 of 1994 provides for the reciprocal service of civil process in Namibia and designated countries.

Enforcement of Foreign Civil Judgments Act 28 of 1994 provides that civil judgments granted in designated countries may be enforced in Namibian magistrates’ courts.

Petroleum Products and Energy Amendment Act 29 of 1994 contains various
amendments to the principal Act.

The Import and Export Control Act 30 of 1994 provides for import and export control.

Government notices

General notices
General Notice 225 of 1994 amends the tariffs for telecommunication services with effect from 1 November 1994.

JUDICIAL DECISIONS

Limitations on freedom of speech

*Kauesa v Minister of Home Affairs* 1994 3 (BCLR Nm HC)

The applicant, a police officer, took part in a televised panel discussion during which he made various inflammatory and defamatory remarks concerning the attitude of his white colleagues in the police force. He faced a departmental hearing for contravention of a police regulation prohibiting members of the force from 'commenting unfavourably in public upon the administration of the force'. The applicant sought an order declaring this regulation invalid, for being in conflict with the fundamental freedom of speech or expression contained in article 21 of the Namibian Constitution. The court held that the onus to establish that the regulation was unconstitutional rested on the applicant and that he had to show that it was not reasonably justifiable in a democratic state.

Both parties referred to the constitutions of various other countries to establish how freedom of expression was dealt with there. However, the court stressed that when considering the constitutionality of a statutory provision, it had to be borne in mind that other constitutions were fundamentally different to that of Namibia. In the Namibian Constitution, a distinction is made between fundamental freedoms and fundamental rights, and fundamental freedoms are limited by fundamental rights insofar as there is a conflict between the two. Freedom of speech is a fundamental freedom and is limited by the fundamental rights relating to the inviolability of the dignity of people and the guarantee of equality before the law and non-discrimination. The converse, ie that fundamental rights are limited by fundamental freedoms, does not apply.

Article 21(2) provides that fundamental freedoms must be exercised 'subject to the law of Namibia'. This includes the common law and the fundamental rights included in the constitution. These restrictions impose their own inherent test of reasonableness and necessity. In so far as laws relating to defamation, contempt of court and incitement to commit an offence, infringe fundamental freedoms of speech and expression, these infringements are reasonable and necessary in a democratic society and therefore constitutional. Freedom of speech is not elevated above other fundamental freedoms or rights by the constitution.

The court considered the constitutional provisions dealing with affirmative action and compared them to similar provisions in other countries. It also considered the relevant police regulation and held that it was constitutional and that the applicant's speech was not protected by the constitution.
The application was dismissed with costs.

Right to a fair trial

*S v Nassar* 1994 5 BCLR 60 (Nm HC)

The accused in a High Court trial applied for an order that his legal representatives be furnished with copies of all witness statements, transcripts of video and audio recordings in the prosecution's possession and the opportunity to view them. The prosecution had refused to discover these documents and transcripts, relying on docket privilege as formulated in *R v Steyn* 1954 1 SA 324 (A). The defence alleged that the Steyn case was wrongly decided and that refusal to discover as requested encroached on the accused's right to a fair trial contained in article 12 of the constitution. The court held that Steyn's case was not wrongly decided as the question to be determined there was whether statements of witnesses in criminal proceedings were privileged in English law. The state argued that article 12(a) of the constitution guarantees a fair trial, merely restated the law as it existed prior to the constitution, and the Criminal Procedure Act 51 of 1977 provided for the furnishing of a summary of substantial facts and further particulars. Article 140(1) of the constitution provided that all laws in force immediately before the constitution would remain in force until repealed and that docket privilege was part of the common law that remained in force.

The defence submitted that article 12(1)(e) of the constitution, which guarantees that accused persons will have adequate time and facilities to prepare their defence, 'facilities' was not limited to physical facilities but included facilities in respect of information.

The court considered whether the right of an accused to a fair trial entitled him to disclosure of the police docket. It did not view the absence of an explicit provision equivalent to s 23 of the South African Constitution as material. The court held that 'facilities' in article 12(1)(e) included the provision of all relevant evidential material and that objections relating to the confidentiality of police informers, police techniques and relationships with other police forces were covered by the law of privilege proper, which could be raised when necessary.

The court granted the relief sought by the accused.

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**South Africa**

**Principal Legislation**

**Acts**

1994.

**Constitution of the Republic of South Africa Fifth Amendment Act** 29 of 1994
This Act amends the Constitution of the Republic of South Africa Act 200 of 1993 by, *inter alia*, making further provision in relation to the oath of office or solemn affirmation by an Acting President, making provision for the appointment of acting judges of the Constitutional Court and extending the periods within which the first Public Protector and the first members of the Human Rights Commission are to be appointed. Provision is made to facilitate the rationalisation of the various police forces into a single police service and for the appointment of the National and Provincial Commissioners of the South African Police Service and the Board of Commissioners prior to the commencement of the rationalisation process.

**Volkstaat Council Act** 30 of 1994
This Act establishes the Volkstaat Council as contemplated in s 184A of the Constitution of the Republic of South Africa Act 200 of 1993. Provisions are made regarding the qualification for membership of the Council, vacation of office and filling of vacancies in the Council, remuneration of members of the Council and procedures to be followed by the Council.

This Act is deemed to have come into operation on 25 May 1994 and will lapse on a date fixed by the President, after consultation with the Council, by proclamation in the *Gazette*.

**Council of Traditional Leaders Act** 31 of 1994
This Act provides for the composition of, the election of representatives to, and the powers and functions of the Council of Traditional Leaders. Provision is also made regarding the procedures in terms of which such powers and functions are to be exercised and performed.

**National Economic, Development and Labour Council Act** 35 of 1994
This Act provides for the establishment of the National Economic, Development and Labour Council. S 3 provides that the Council will consist of members who represent organised business; members who represent organised labour; members who represent organisations of community and development interests; and members who represent the state.

S 5 sets out the objects, powers and functions of the Council, while s 6 provides for the powers of the executive council. The National Economic, Development and Labour Council replaces the National Manpower Commission and therefore s 9 provides for the amendment of laws and transitional measures.

**Public Holidays Act** 36 of 1994
This Act makes provision for a new calendar of public holidays. S 5 sets out employee entitlement to paid public holidays.

**National Strategic Intelligence Act** 39 of 1994
This Act defines the functions of members of the National Intelligence structures. S 4 provides for the establishment of a National Intelligence Coordinating Committee and defines its functions in respect of intelligence relating to the security of the Republic. S 5 provides for the appointment of a Co-ordinator for Intelligence as chairperson of the National Intelligence Co-ordinating Committee and defines his or her functions.

**Human Rights Commission Act** 54 of 1994
This Act regulates matters incidental to the establishment of the Human Rights Commission as contemplated in s 115 up to and including s 118 of the Constitution of the Republic of South Africa Act 200 of 1993.

The term of office of the members of the commission and their independence and
The impartiality of members of the commission are dealt with in s 3 and s 4, respectively. The powers, duties and functions of the commission are provided for in s 7.

The commission may, by mediation, conciliation or negotiation endeavour to resolve any dispute or rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right. In s 9, detailed provision is made regarding investigations conducted by the commission. S 10 regulates the entry and search of premises as well as the attachment and removal of articles during such an investigation.

Bills
Forty Bills have been tabled during the period under review. These include, Inter alia, the Environment Conservation Amendment Bill 26 of 1994; Parliamentary Committee on Intelligence Bill 29 of 1994; Social Assistance Amendment Bill 32 of 1994; Aged Persons Amendment Bill 33 of 1994; Central Energy Fund Amendment Bill 41 of 1994; Taxation Laws Amendment Bill 43 of 1994; Independent Broadcasting Authority Amendment Bill 46 of 1994; Land Administration Bill 51 of 1994; Local Government Transition Act Amendment Bill 55 of 1994; Town and Regional Planners Amendment Bill 58 of 1994 and the Promotion of National Unity and Reconciliation Bill 60 of 1994. Most of these Bills have been enacted.

Land Administration Bill 51 of 1994
In view of problems experienced with land administration, especially in the former TBVC states and the self-governing territories, the Department of Land Affairs has appointed a task team to conduct a comprehensive investigation into all land-related legislation. The team found that certain land matters can only be effectively administered on a local level. Land matters are, however, not part of the functional areas specified in schedule 6 to the Constitution of the Republic of South Africa Act 200 of 1993, with the effect that provinces do not have legislative powers in respect of land matters. However, s 144(2) of the constitution provides that a province will have executive authority over, Inter alia, matters assigned to it by any law.

Existing legislation regarding land matters does not provide for the assignment or delegation of land functions and it is thus necessary to provide for a general provision in this regard.

The main objects of this Bill are thus to authorise the Minister of Land Affairs to delegate powers in respect of land matters that were assigned to him by law, to a Premier, a member of the Executive Council of a province, or an official in the service of the state, a provincial government, or a local government body. The Bill further proposes to authorise the President to repeal or amend certain laws, or to declare laws applicable to the areas of the former TBVC states and self-governing territories.

JUDICIAL DECISIONS

Bills of exchange
Navidas (Pty) Ltd v Essop; Metba v Essop 1994 4 SA 141 (A)
Both appellants in these cases had been the plaintiffs in a Provincial Division that had dismissed their claims for provisional sentence. In each summons it was alleged that the plaintiff was the holder in due course, alternatively the holder, of a cheque drawn by the respondent that was duly presented for payment but dishonoured after the respondent had countermanded payment. In both cases the respondent denied that the cheque had been duly presented. The dispute about the presentment arose from the 'clearing house' system used by banks for the rapid processing and collection of cheques. Instead of physically presenting a cheque at the drawee bank for payment, cheques are sent via the clearing house to the drawee bank's central processing office where it is determined via a computer link whether a particular cheque will be met.
Current legal developments

when it is presented. In these particular cases the drawee bank's central processing office had returned the cheques to the collecting bank marked 'payment stopped'.

The court held that it was clear from s 43(2)(c) and s 43(2)(a) of the Bills of Exchange Act 34 of 1964 that when a place of payment was specified in a cheque, it had to be presented at the specified place as prescribed in s 50(4). Where the specified place was a particular branch of a bank, its place of business was obviously the place where the cheque had to be presented. The clearing house system, although useful commercially, did not comply with the requirements for presentment as laid down in the Act. The gathering of information, whether by electronic or other means, of whether a cheque would be met, did not constitute presentment in terms of the Act.

As to the argument that 'presentment' in s 43 had to be construed as presentment according to the established usage and practice of bankers, the court held that, although it was true that technology had changed banking and that there was urgent commercial need for giving legal effect to the practices that had developed as a result, the court could not ignore the elaborate set of mandatory rules laid down by the legislature, whether under the guise of Interpretation or in any other manner. This would amount to recognising another form of presentment that did not comply with the explicit directives of the legislature. The cheques had therefore not been properly presented.

Damages
Smit v Abrahams 1994 4 SA 1 (A)
The respondent's vehicle had been irreparably damaged in a collision with another vehicle, driven by the appellant. The vehicle had been used by the respondent in his hawker's business. In a claim for damages, the respondent had included a claim for compensation for three months rental for the use of another vehicle to conduct his business, because he had not been in a financial position to purchase another vehicle or even to pay the deposit thereon.

The court found that the rigidity of the rule against awarding damages consisting of expenses incurred because of the plaintiff's poverty, is inconsistent with the flexible approach followed in South African law whereby the court considers whether there is a sufficiently close connection between act and consequence. The question has to be answered on the basis of policy considerations and the limits of reasonableness, fairness and justice. The plaintiff's lack of finance as a joint cause of the damage is only one of the facts to be taken into account when the court determines whether the defendant should be held responsible for the damages in question. The reasonable foreseeability of the damages is not the decisive criterion in determining liability. The importance of the predominating criterion in resolving the question of causality lies in its flexibility.

The court held that the act of the appellant had placed the respondent in a quandary. The respondent's conduct in response had been reasonable in all respects. The period during which he had kept his business going with the hired vehicle had not been unreasonably long. As a matter of policy, the damages that the respondent had suffered should be the responsibility of the appellant and it was not unfair or unjust to the appellant to hold him liable for the compensation of the respondent damages.

Human rights
Khala v Minister of Safety and Security 1994 4 SA 218 (W)
The plaintiff instituted action against the defendant for damages for unlawful arrest and detention. After his release no further steps were taken against the plaintiff. The state contended in an affidavit by a deputy attorney-general that it still intended proceeding with the prosecution, that there were other accused involved and that they were being sought by the police.
The plaintiff has now, after the commencement of the Constitution of the Republic of South Africa Act 200 of 1993, applied for an order that the defendant make certain documents that had been listed in a schedule to the defendant's discovery affidavit as being privileged, available for inspection and copy. The documents were contained in the police docket and consisted of witness statements, correspondence and inter-departmental reporting and the investigation diary. The plaintiff relied on s 23 of the constitution which provides for the right to access of information held by the state or any of its organs in so far as the information is required for the exercise or protection of a person's rights.

The court held that s 23 and in particular the word 'required' had to be given a generous and purposive interpretation and the enquiry in each case was a factual one. The plaintiff clearly required the information in the docket for the exercise or protection of his rights. The further enquiry should be whether the withholding of the information met the requirements of s 33 of the Act. Docket privilege did not deny the essential content of the right to access to official information. The onus of proving that a limit on the right met the requirements of s 33 of the Act rested on the party seeking to uphold the limitation and the standard of proof was on a balance of probabilities. The court held further that as a matter of public policy it was reasonable that some information in a police docket should be privileged and even that all information in the docket should not be disclosed for a prescribed period. The defendant had failed to justify the non-disclosure of non-privileged information in the police docket.

The court did a comprehensive analysis of common law docket privilege in South Africa in comparison to the practice in other countries and concluded that while South African courts were in general imposing greater restrictions on an accused's rights of access to information in a police docket, those countries were expanding the rights of the accused to access to such information in the possession of the prosecution. Our law should follow the international trend. The policy considerations of disclosing relevant non-privileged information in the police docket to the accused before trial should outweigh those against it. The court found that the defendant had failed to prove on a balance of probabilities that the privilege in relation to relevant non-privileged information in the police docket in a criminal trial was reasonable and justifiable in an open and democratic society based on freedom and equality and that the privilege claimed in its present broad terms had not been established. On the information before the court, it appeared that the docket was dormant and the state would not suffer prejudice if the plaintiff had access to the police docket. Such risk was outweighed by the plaintiff's right to have access to the non-privileged information in the docket. As the court was uncertain whether there was any privileged information in the docket, the defendant was given an opportunity to establish privilege in respect of particular items in the docket.

S v Botha 1994 4 SA 799 (W)

The accused in a criminal trial brought an application in terms of ss 23 and 25 (3) of the Constitution of the Republic of South Africa Act 200 of 1993 to compel the state to hand over copies of all relevant documents in its possession, whether it intended using them or not.

The court held that the contention that the state and its representatives were no more than mere trustees of the information in their possession was no longer tenable. The accused had an absolute right not to disclose his case. In the light of this it was difficult to see how the state could decide what information in its possession was relevant to the accused. There could not, however, be any objection to the reliance on real privilege and waiting for the completion of the police investigation before disclosure. The state's refusal to disclose certain information should be subject to...
review. Ss 23 and 25(3) of the constitution operated on different levels and were not mutually exclusive. S 23 has a wider field of application. The right of free access to state information and a transparent administration ran like a golden thread through the constitution and should not be restricted by legalistic interpretation. The mere fact that an accused was charged in a criminal case constituted a threat to his rights and he was therefore entitled to make use of s 23. The values underlying the constitution demanded that the authoritarian style of prosecution was no longer tenable. This did not mean that the adversarial system in a criminal trial had disappeared, but simply that the attorney-general and the accused now enjoyed equal status in respect of the information concerning the state's case. The attorney-general retained the right to refuse to disclose information for example, for the protection of informants, for the protection of witnesses against intimidation, of new police methods and investigation techniques, the protection of relationships between police services of different countries and in the case of certain information that should only be disclosed after the completion of the police investigation.

The court held that the exercise of the right to object to disclosure of information should be subject to review. The right to consult with defence witnesses was a necessary adjunct to the right of access to the state's witnesses' statements, but that this too was subject to certain limitations. The state was granted leave to deliver objections to the disclosure of any items in the police docket.

Insolvency

*Podlas v Coben & Bryden NNO 1994 4 SA 662 (T)*

This was an application for an interim interdict restraining the applicant's trustees and the Master of the Supreme Court from continuing with an interrogation in terms of the Insolvency Act 24 of 1936 pending the determination of the validity of the section by the Constitutional Court.

In terms of s 229 of the Constitution of the Republic of South Africa Act 200 of 1993, all Acts of parliament remain in force until repealed by a competent authority. If a provision or law is alleged to be in conflict with the constitution and the Supreme Court does not have jurisdiction to enquire into its validity, the court must, in terms of s 103(2), decide the matter on the assumption that it is valid. Consequently, applications such as this could not be entertained by the court. The purpose of the provision was clearly to obviate such applications that, if allowed, would stultify and disrupt the administrative machinery. If granted, such an interim interdict would have the effect of suspending certain provisions of an Act in respect of the applicant. Neither the common law nor any statute empowers the Supreme Court to do this.

The applicant further contended that an interrogation in terms of the Act violated her right to privacy under s 13 of the constitution, her right to freedom of speech, including her right not to speak, under s 15 and her right to equality before the law under ss 8(1) and 22. The court found that a person who has been sequestrated has effectively sacrificed his right to privacy, at least about pre-sequestration patrimonial matters. Insofar as s 33(1) of the constitution applies, it is reasonable and justifiable in an open and democratic society that the rights of creditors enjoy preference. The same applies to the rights under s 15. The right to equality before the law does not mean that an insolvent no longer undergoes *a capita diminuto*. The rules apply equally to all. This means that a person's rights may be limited by law, whether common law or statute law. Where the limitation occurs in a parliamentary Act, the Supreme Court is precluded form enquiring whether the limitation was reasonable and justifiable. That falls squarely within the jurisdiction of the Constitutional Court. The Supreme Court may only enquire whether the limitation is *applied* in a reasonable and justifiable manner.
Trade and competition
Waltons Stationery Co (Edms) Bpk v Fourie 1994 4 SA 507 (O)

Every person having contractual capacity has a common law right freely to engage in economic activity and to earn a living anywhere in the national territory. In the past this right was limited and defined by a multiplicity of statutes and regulations. That is why a provision such as s 26(1) was necessary in the Constitution of the Republic of South Africa Act 200 of 1993. It establishes and defines the basic right of freedom of trade as a fundamental right in the constitution. It thus eliminates all other restrictive measures that conflict with the constitution. This does not, however, restrict the freedom of individuals to conclude contracts for the temporary restraint of their freedom of trade. The enforceability of such contracts would remain dependent on whether or not it was in the public interest.

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Swaziland

LEGISLATION

The following legislation was passed during the period under review:

The Income Tax (Amendment) Act of 1994 was passed amending the Income Tax Order of 1975. An amendment to s 6 of the principal legislation provides that the normal tax payable by an employee who has, during any year, been in the employ of the same employer and whose taxable income is derived solely from remuneration, shall equal the sum of the amount deducted from such a person's remuneration during the year in terms of the second schedule. The effect of this amendment on the normal working person is that where monthly income tax deductions have been made during the year it will not be necessary for the Commissioner of Taxes to make a fresh assessment at the end of the tax year unless the person has other sources of income apart from his pay cheque, or unless some of the monthly deductions were not made. The taxpayer may, however, in terms of s 33 bis of the amended Act apply to the Commissioner to be assessed prior to the expiry of three years. In terms of s 3 of the amendment Act, taxable benefits derived from the employer-employee relationship include waived as well as reduced interest on a loan extended by the employer to the employee or extended by someone else to the employee by arrangement with the employer. As long as the interest on such loans is different from the official rate, that difference is taxable. Tax benefits also include any subsidy paid by the employer in respect of the amount of interest or capital repayments payable by the employee in terms of the loan as well as any subsidy paid to a lender by an employer in respect of a loan extended by such a lender to the employee. Official interest rate is as determined by the Minister for Finance by written notice in the Gazette. S 4 of the amendment Act amends s 8 of the principal Act by providing that the total reductions on tax payable are not to exceed E180. This places a ceiling on the reductions on tax payable which are allowed in terms of the section. This is, however, not a new proviso. The amendment merely increases the ceiling by E60 from the 1975 proviso. The amendment to s 12 by s 5 exempts from normal tax the receipts and accruals of trade unions, employee's associations and associations of employers registered in terms of the Industrial Relations Act of 1980. Whereas s 12(3) of the principal Act used to provide separately for the exemption from the payment of tax of married and single low income earners, the amendment section, s 5, provides
simply that persons who are resident in Swaziland (companies excluded) are exempt from tax if their annual income does not exceed E13 000. S 34 bis has been added in terms of which only financial statements audited by an auditor registered in terms of the Institute of Accountant’s Act of 1985 will be acceptable in support of any return of income or provisional return of income. Another new section is s 34 ter which provides for the procedure of an inquiry before the making of an assessment. S 36, being another additional section, provides for the powers of officers engaged in tax assessment to enter the premises of a taxpayer and inspect books and documents necessary for the carrying out of his job. A number of amendments were also made to the second schedule.

**Establishment of the Economic Review Commission Decree 1994** was made by the King to establish an Economic Commission for Swaziland. The terms of reference of the commission are stated in s 3 of the Decree and include the following:

- to seek to obtain consensus on the economic policies to be pursued by the government of Swaziland over the next 25 to 30 years;
- to sensitise the Swazi people on issues which have a major bearing on their well-being such as population control, the need to earn foreign currency, the rationale for rural resettlement, environmental degradation, the socio-economic impact of AIDS, crime and development, and the significance of good industrial relations; and
- to take into account the need for sector-specific and sub-sector specific policies and strategies in preparing a comprehensive economic policy for Swaziland.

In preparing the economic policy the commission is also ordered by the Decree to take into account the need for restructuring the economy of Swaziland in order to respond to recent major external developments and, in particular, the conclusion of the Uruguay Round of the Multilateral Trade Negotiations; the new dispensation in South Africa; and possible changes with regard to the Southern African Customs Union. The commission must also consider and make recommendations on other issues which it feels will help improve the economy of Swaziland. The commission is to report to the King and all reports so made shall be confidential and may not be disclosed to anybody until the King has given permission.

A **Corrigendum** to the Establishment of the Economic Review Commission Decree, 1994 was subsequently made to paragraph 3 the effect of which was to emphasise that the commission should make recommendations only and not prepare a national economic policy.

**Bills**

**Treasury Bills and Government Stocks Bill** 10 of 1994 was presented by the Minister for Finance to parliament. This bill is aimed at providing for the issue of Treasury bills and government stock. If this bill is passed into law the Minister for Finance will be empowered in terms of ss 3 and 4 to borrow money against the issue of treasury bills and stock in Swaziland as long as the amount borrowed does not exceed E300 000 000. In terms of s 5 bills issued under this law would not bear interest and would be negotiable and transferable by endorsement. The stocks shall be negotiable and transferable by a written instrument of transfer (s 6). The money borrowed under this law shall be paid into the Consolidated Fund (s 13) and may be used by the minister for any expenditure authorised by an appropriation Act for the financial year during which the withdrawal of such funds is to take place (s 11). S 14 exempts all bills and stocks issued and transfers made under this law from all duties payable under the Stamp Duties Act 23 of 1970.

**Fuel Oil Levy Bill** 11 of 1994 was presented by the Minister for Natural Resources and Energy. If passed into law this legislation will repeal and replace the Fuel Oil Levy Act of 1980. This law will empower the Minister for Natural Resources in consultation...
with the Minister for Finance to impose a levy on fuel oil. It will also empower the Minister for Finance to impose a tax on fuel oil in consultation with the Minister for Natural Resources. In terms of s 4, read together with s 9 the Strategic Oil Reserve Fund shall be established and sustained with funds obtained from the levy imposed in terms of this law. The amount accruing from the levy and so invested in the Oil Fund shall be used to finance increases in the cost of purchasing fuel oil as well as in connection with the purchase, acquisition, distribution, sale, saving, conservation, storage, utilisation of fuel oil and the carrying out of duties intended to facilitate the supply of fuel oil products in Swaziland. Tax imposed in terms of this law is to be used for purposes of earning revenue for Swaziland and shall be deposited in the consolidated fund. S 10 provides that the money raised through the increase in the levy in terms of the Fuel Oil Act of 1980 with effect from 1 April 1986 shall revert to the consolidated fund.

Insurance and Pension Funds Bill 12 of 1994 was also tabled. The objects of this bill are to bring about the de-monopolisation of the business of insurance so as to foster an efficient and competitive insurance industry in the country, to provide for the carrying on of the business of insurance in the country, and to provide for the registration and regulation of pension funds. In terms of s 4 of this bill no person who is not licensed under this law may carry on the business of insurance in the country and no person who is a resident, or carrying on business in Swaziland shall enter into an insurance contract for a risk within Swaziland with any person whether resident or carrying on business in or outside Swaziland, other than an insurer licensed in terms of this law. It is important to note the definition of 'carrying on business' which is given in s 4 as including the receipt of proposals and the issuing of policies in respect of persons resident in Swaziland. This definition is particularly significant, as over the years, many South African companies have issued policies to persons resident in Swaziland. It seems that this practice has been particularly rife in the field of life insurance. Excluded from the definition of 'carrying on business' are the following: collection, receipt, or payment of premiums in Swaziland on an insurance policy issued outside Swaziland to a person resident outside Swaziland on the date of issuance of that policy; reinsurance of risk carried by an insurer licensed in terms of this law; and the collection of premiums and servicing of policies existing at the date of commencement of this law. It appears that a person normally resident within Swaziland who is temporarily resident outside Swaziland can lawfully obtain a life insurance policy with a company not registered in terms of this law and that if such person were subsequently to resume his Swazi residence the legality of his insurance contract would persist. It does seem, though, as if the contract would have to come to an end on the renewal date if it were not a life policy. S 5 prohibits the operation or conduct of the activities of a pension fund, the inducing of, and the contribution to a pension fund where the fund is not registered under this law. In part II the bill provides for the establishment of the office of Registrar of Insurance and Pension Funds and the Advisory Council for Insurance and Pension Funds for the purpose of administering this law. Part III provides for the procedure for application for a licence and other activities requiring regulatory approval such as the transfer, creation or substantial increase of an ownership interest in the capital stock of an insurer and the change in the control of an insurer under certain specified circumstances. S 20 (1) requires an insurer registered in terms of this law to maintain a margin of solvency of 25 per cent, the margin of which may be modified by separate regulation for long-term insurance, short-term insurance and medical expense insurance. This section also makes provision for the maintenance by an insurer of a technical reserve fund. The investments of insurers are regulated by s 21 of the bill where, for instance, insurers are prohibited from making loans or credits to persons or groups of related persons which are in excess of the capital and surplus of the insurer. Part II further provides for record keeping, audits and reporting in respect of the business of
insurers, examination of insurers and the revocation of the insurer’s licence.

Veterinary Surgeons Bill 13 of 1994 the object of which is to establish a Veterinary Surgeons Council of Swaziland and to provide for the registration and control of Veterinary Surgeons is being proposed. If passed this law will require that veterinary surgeons be registered as a prerequisite to practising in the country. The law will establish the office of the Registrar of Veterinary Surgeons which shall be the public office responsible for keeping a register of veterinary surgeons. It would also establish a Veterinary Council of Swaziland which would be responsible for controlling and regulating the conduct of veterinary surgeons and as such would have disciplinary powers over the surgeons. The Veterinary Council shall consist of the Director of Veterinary Services, who shall also be the chairman of the Council, and four veterinary surgeons to be elected by the Swaziland Veterinary Association.

Cattle Dipping Charges (Amendment) Bill 9 of 1994 is aimed at enabling the Minister for Agriculture and Co-operatives to charge all owners of cattle, whether on title deed land or on Swazi national land, who use public dips for dipping their cattle such fee per beast per annum as he may, by notice in the Government Gazette, prescribe.

Subsidiary legislation

Regulation of Wages (Agricultural Industry) Order 1994 was made by the Minister for Labour in exercise of the powers conferred on him by s 11 of the Wages Act of 1964. This Order sets standards for terms and conditions for all workers in the agricultural industry and these are defined in s 3 as referring to all people employed for gain in the cultivation of land for purposes of animal husbandry, horticulture, fruit growing, dairy farming, livestock, small animal and poultry keeping or breeding, agriculture and the growth and/or production of seed; the use of land as grazing or meadowlands, market gardens, nursery grounds; all handling and processing normally carried out on a farm or estate including crop cleaning, winnowing, drying, sacking, cartoning, livestock food preparation; the construction, maintenance and repair of farm buildings and installations machinery, plant equipment, the running of irrigation schemes and the keeping of farm or estate accounts. Undertakings engaged in the retail supply of motor vehicles, agricultural machinery, mobile construction plant for the repair, servicing, assembling or adaptation of such vehicles, machinery or plant on behalf of other persons or under a licence. The order provides a basic minimum wage for various classes in the industry, for overtime, hours of work, public holidays, annual leave, sick leave, and other matters.

JUDICIAL DECISIONS

Delict

Lublanga v Editor of the Times of Swaziland, and Echo (Pty) Ltd t/a The Times of Swaziland civ case 279/93 (HC)

This was a suit for defamation. The court dealt, inter alia, with the question of the onus of proof in respect of the truthfulness of the published material. The court stated the matter thus

The onus of establishing that the contents of the article were true, and that its publication was in the public interest rests, in the circumstances, on the defendants. It can be stated at the outset that in discharging this onus it is not necessary for the defendant to prove the statement literally true in every detail; it is sufficient if he establishes that the statement is sufficiently true as a whole and in every material part thereof.

The court went on to state that the evidence of the plaintiff as to what the truth was and that it was different from what had been published had not been challenged. It was thus the court’s finding that the defendant had failed to discharge the onus. On the question of quantum of damages the court pointed out, among other things, that had the newspaper published an apology, the sting of the publication would have
been lessened. This appears to mean that even if publication of an apology is not a defence the court will be prepared to take it into account in the assessment of damages.

**Contract**

_Crookes v Electronic Installations (Pty) & Others civ case 955/93 (HC)_

Even though the principle dealt with in this case is a long established one I have decided to include the case because most of the authorities on this point are South African and this is one of the few local cases. It concerns ticket cases in contracts. The plaintiff had left his car for repairs with the defendant. When the car was damaged while in the custody of the defendant, the defendant argued that it had been a term of their contract that cars were left with him at their owner's risk in accordance with two notices that displayed on the defendant's premises. The court referred to the South African authorities on the point with approval. In particular it referred to _King's Car Hire (Pty) Ltd v Wakeling_ 1970 4 SA 640 where the court stated that in ticket cases, the court inquires whether the person who took the ticket knew that there was printing on it and, if he did, whether he knew that the printing contained references to the contract. If he did, then the provisions on the notice are taken to have been part of the contract. If he did not, then the person giving the notice must have done something reasonably sufficient to give the receiver of the ticket notice of the conditions.

**Landlord and tenant**

_Msibi v Matheis & Another civ case 1199/91 (HC)_

This case reiterated the common law principle that a lessee has a right to claim compensation for improvements upon termination of a lease against anyone who is the owner of the property at the time of the termination. However, what makes this case important is that the court went on to uphold this right even though it turned out that the lease was null and void. The court held that this fact does not alter the position. It is unfortunate, though, that the court, in its three page judgment does not state clearly the basis of the right to claim compensation for improvements in a case where the lease, which is the basis of the right, is void _ab initio_. Instead, the court seemed to emphasise the fact that the plaintiff was aware of the agreement with regard to improvements, an insignificant fact if the agreement was void. More so in this case where the agreement was, in fact, illegal for failure to comply with the provisions of the Land Speculation Control Act 8 of 1972.

**Labour law**

_Mbbamali v Meridien Bank Swaziland Ltd civ case 901/94 (HC)_

In this case the plaintiff was dismissed by the defendant from employment and subsequently entered into an agreement 'in full and final settlement of all claims which the plaintiff may have against the defendant howsoever rising'. However, the plaintiff later instituted legal action against the defendant for breach of the contract of employment. The court held that there is no authority for the view that the Employment Act 1980 and the Industrial Relations Act 1980 preclude an employee from compromising his claims because, as the court stated

... in compromising a claim one of the things a party has to weigh, according to his own judgement, is the factual situation that he will be able to establish or will not be able to resist if the matter goes to a hearing ... and indeed I do not believe that it to be the case, that these Acts preclude an employee from reaching his own judgement on these things, and accordingly coming to a compromise.

With due respect, putting the matter so broadly is misleading, for s 3 of the Employment Act of 1980 states clearly that any arrangement by anyone to contract out of the provisions of the Act would be void. The question of whether or not the agreement between the parties in this case was binding should have been answered
by enquiring as to whether or not its effect was to contract out of the Act. Any agreement whose effect would be to deprive the plaintiff of rights and benefits to which he is entitled under the Act would have been an attempt to contract out of the Act and would therefore not be binding. The fact that a plaintiff initially underestimates his benefits does not mean that he is not contracting out of the Act as Hull CJ would have us believe in this judgment.

Administration of estates
*Magongo & Magongo v The Master of the High Court NO & Four Others* civ case 1660/94 (HC)

It was argued by the applicants in this case that as a judicial officer, the Master becomes *functus officio* once he has appointed a *curator bonis* for a deceased's estate in so far as the appointment is concerned and has no power subsequently to revoke his appointment. The court disagreed and stated that the appointment of an interim curator is a temporary expedient to secure the property of the estate until an executor is appointed. The court went on to hold that the Master does have power to revoke the appointment of a *curator bonis* and to make a further appointment pending the appointment of an executor.

*Mubawu I Maztya*
*University of Swaziland*

**Zambia**

**LEGISLATION**

**Principal legislation**


The following Acts may be noted.

*Telecommunications Act* 23 of 1994

The main purpose of the Act, which repeals the Telecommunications Act of 1987 is to regulate the provision of telecommunication services to, from and within Zambia. The Act establishes the Communications Authority, which shall be a body corporate with common seal, and clothes it with legal personality. The powers and functions of the authority shall be exercised and performed by a nine-member Board of Regulators appointed by the minister comprising one nominee from each of the following: ministries responsible for Communications; Defence; Home Affairs; the National Farmers Union; the Zambia Consumers Protective Association; the Law Association of Zambia; the Engineering Institute of Zambia; a Trade Union representing staff employed by the company; and one person appointed at the discretion of the minister. The Chief Executive of the Board is the Controller of Communications, appointed by the minister. He is empowered, with the approval of the Board, to appoint supporting staff. The Communications Authority shall supervise and promote the provision of telecommunication services throughout Zambia and its functions, *inter alia*, include:

(a) to take all reasonable steps to extend the provision, throughout all urban and
rural areas of Zambia, of such telecommunication services under as satisfy all reasonable demands for them including, in particular, emergency services, public call box services, directory information services and maritime services;

(b) to promote the interests of consumers, purchasers and other users of telecommunication services (including, in particular, those who are disabled or of pensionable age) in respect of the prices charged, and the quality and variety of such services and apparatus supplied for the purposes of such services;

(c) to promote and maintain competition among persons engaged in commercial activities for or in connection with the provision of telecommunication services, and promote efficiency and economy on the part of persons so engaged;

(d) to promote research into telecommunications and the development and use of new techniques in telecommunications;

(e) to encourage major investors in and users of telecommunication services carrying on business outside Zambia to invest in and use telecommunication services, and to carry on business in Zambia;

(f) to promote the provision of international transit services by persons providing telecommunication services in Zambia;

(g) to enable persons providing telecommunication services in Zambia to compete effectively in the provision of such services outside Zambia; and

(h) to enable persons producing telecommunication apparatus in Zambia to compete effectively in the supply of such apparatus both inside and outside Zambia.

In the exercise and performance of its powers and functions the authority shall be subject to the control and direction of the minister.

Any individual wishing to operate a telecommunication system or to supply telecommunication equipment may apply to the authority for a licence. The Board is empowered to grant a licence subject to such conditions as it thinks fit or to vary the licence. Such conditions include those requiring the licensee not to show preference to, or exercise undue discrimination against, particular persons of any class or description as regards any aspect of the service to be provided under the licence or those making provision with respect to the fees and charges imposed for services provided under the licence.

It is an offence for any person without a licence to-

(a) establish or provide or offer to provide a telecommunication service; or

(b) connect any telecommunication apparatus to a telecommunication system or work any such apparatus for the purposes of a telecommunications system; or

(c) supply or offer to supply any telecommunication apparatus.

The penalty for the offence upon conviction is a fine not exceeding two million kwacha or imprisonment for up to three years, or both. The minister is empowered to establish a Telecommunications Users Advisory Committee, whose principal function shall be to consider complaints and comments from users of telecommunication services. Finally, the Act empowers the Minister of Finance to form to one or more state owned companies to deal in telecommunications. Such a company shall take over the telecommunications undertaking of the dissolved Posts and Telecommunications Corporation Limited.

Postal Services Act 24 of 1994

The object of the Act is to regulate the provision of postal services into, out of and within Zambia, to constitute a Postal Services Corporation and to define its functions. This Act was necessitated by the dissolution of the state owned monopoly, the Posts
Current legal developments

and Telecommunications Corporation Limited (PTC Limited) earlier in the year. The Posts and Telecommunications sector has been liberalised and the former PTC Limited has been split into two companies: the Telecommunications Corporation Limited, and the Postal Services Corporation (PSC). The PSC is a body corporate with a common seal capable of suing and being sued and is granted full legal personality. Its principal function is to conduct a postal and telegram service for the Republic. It is an offence for anyone other than the corporation to

(a) operate or offer to operate a postal service for a fee; or
(b) collect, convey, deliver or deal with any letter otherwise than as permitted by or under the Act.

Postal service is defined as 'the conveyance of letters to their addresses or to another person for delivery to their addresses or the collection thereof for such conveyance or delivery, or any associated service'.

The Act does not prohibit

- the conveyance and delivery of a letter by the sender himself;
- the conveyance and delivery of a letter by any person otherwise than for a fee or reward;
- the conveyance and delivery of a letter concerning the affairs of the sender or his agent, client or customer, or of the addressee or his agent, client or customer, by means of a message sent for that purpose;
- the conveyance and delivery of a letter, solely concerning goods or property commercially sent by water, land or air, to be delivered with the goods or property, if the letter is open to inspection and has inscribed on it the words 'consignee's letter' or other words of similar import;
- the conveyance and delivery of a letter containing any document issuing out of court or of any return or answer thereto; and
- the operation of, or any person's participation in, a licensed courier service.

The corporation is empowered, with the consent of the minister

- to determine all fees and charges in connection with the transmission of articles by post; and
- to issue and withdraw postage stamps.

The PSC shall establish a parcel post, a telegram service, and provide for the remittance of money by post by means of money order, postal order or other like warrant or order. Only an authorised officer is permitted to open a postal article or return it to any person after it has been delivered to a post office. An authorised officer may detain any postal article

- suspected to contain goods liable to customs, excise or any other duty or tax and may in the presence of the addressee open and examine that postal article;
- suspected to contain anything in respect of which an offence has been or is being committed.

The Act creates numerous offenses relating to

- forgery, possession and misuse of stamps and money orders;
- fraudulent use of official marks;
- false entries relating to mail;
- handling of the mail;
- postal articles;
- theft of or interference with mail;
- transmission of dangerous substances and endangerment of post office or telegram office;
- tampering with mail;
- unauthorised notice as to receipt of letters;
- trespass upon, and disorderly behaviour in, post office or telegram office;
- fraud involving money orders, postal orders;
- theft, forgery, etc of telegrams;
- impersonation of postal officers; and
- false declarations.

The corporation consists of a board of directors comprising eight members, being the Postmaster-General appointed by the corporation and nominees of the following organisations appointed by the minister
- the Federation of Employers;
- a trade union representing postal officers, nominated by the Zambia Congress of Trade Unions;
- Zambia Council of Commerce and Industry;
- Law Association of Zambia;
- Zambia Institute of Certified Accountants;
- a consumer organisation; and
- Ministry of Legal Affairs.

The minister shall appoint both the Chairman and Vice Chairman of the Board. Members of the Board hold office for a term of not more than three years. The Postmaster-General is the Chief Executive of the corporation.

Subsidiary legislation
The following subsidiary legislation was passed during the period under review: the Customs and Excise (Clearing and Forwarding Agents) Regulations SI 74 of 1994; the Income Tax (Foreign Organisations) (Approval and Exemption) Order SI 88 of 1994; the Electoral (General) Regulations SI 92 of 1994; the Electoral (General) (Amendment) Regulations SI 93 of 1994; the Air Navigation (Amendment) Regulations SI 96 of 1994; the Food and Drugs (Amendment) Regulations SI 97 of 1994; the Food and Drugs (Tariff of Fees) Regulations SI 98 of 1994; the Minimum Wages and Conditions of Employment (General) Order SI 99 of 1994; and the Minimum Wages and Conditions of Employment (Shop Workers) Order 1994.

JUDICIAL DECISIONS

Police powers
Alfred Mibakani Zulu v Attorney-General SCZ case 5 of 1994 ZSC
On 1 September 1992 the appellant, as Secretary-General of the University of Zambia Students Union (UNZASU), together with the president of the union, applied for a police permit to hold a public rally on 27 September 1992 as required under s 5 of the Public Order Act. The rally was to be held outside the university near the town centre in Lusaka. A permit was issued by a regulating officer with the rank of inspector. On 24 September 1992 the union representatives were called to State House where the President of the Republic told them that they should hold the meeting on the university campus and not in town. On 22 September, the commanding officer, a senior assistant commissioner of police, told the union representative verbally that he had cancelled the permit as the students were not a political party and that if they wished they could hold their meeting on the university campus. The police advertised the cancellation on both radio and television. At no time did the police communicate the cancellation in writing to the union. On 27 September the students, while marching to the venue of the meeting, were stopped by police at a roadblock and told that the permit for the meeting had been cancelled. When they failed to disperse upon being ordered to do so, they were arrested and charged with unlawful assembly.

The union challenged the police action in the High Court and asked for a declaration that the cancellation was invalid and that the fundamental rights of the students had been violated. The High Court (Kabazo Chanda) dismissed the action holding that the commanding officer had not cancelled the meeting but had only changed the
venue. The court also held that the students' fundamental rights to freedom of association and assembly had not been violated. The students appealed to the Supreme Court on a number of grounds the main ground being that the High Court had erred in finding that the commanding officer, by virtue of his superiority, had power to attach or change conditions in the permit issued by the regulating officer. The appellants argued that in terms of s 5 of the Public Order Act, the only person who could change the venue or conditions in a permit earlier issued was the regulating officer. Neither the commanding officer nor any superior officer had the right to order a change of venue or attach any conditions to the permit. They argued that although the regulating officer had wide discretion to grant or refuse a permit or to attach conditions to it, the exercise of such discretion rested entirely upon him. He could not exercise those powers under dictation or instruction from his superior or higher authorities. He should have exercised his discretionary powers individually and without interference from any quarter whatsoever. The appellants argued that the commanding officer's cancellation or alteration of the issued permit was an attempt to interfere with the discretion vested solely in the regulating officer. The Supreme Court, dismissing the appeal, held that there was no statutory authority to support the argument that a regulating officer was not subject to the ordinary chain of command existing in the police force. The commanding officer was fully entitled to give orders to the regulating officer about the issuing and cancellation or variation of permits and the regulating officer was duty-bound to obey such orders. The question of whether the original permit was cancelled or varied was immaterial. There was therefore no impropriety on the part of the police and the cancellation or variation of the permit in this case was valid under law. It followed, therefore, that the fundamental rights of the appellants had not been infringed.

Alfred W Chanda
University of Zambia

Zimbabwe

Principal legislation

The following Acts have recently come into operation.

Constitution of Zimbabwe Amendment (12) Act 4 of 1993; Defence Amendment Act 8 of 1993
The effect of these amending Acts is that appointments, promotions, discharges and conditions of service of defence force personnel are now governed exclusively by the Defence Act and not by the constitution. The new post of Commander of the Defence Forces is created and the Defence Forces Service Commission becomes a purely advisory body.

Urban Councils Amendment Act 9 of 1994
The relevant minister has been empowered to give directions to urban councils as to the disposal of land or buildings and may prohibit a council from repossessing land and buildings.

Building Societies Amendment Act 11 of 1994
Among the changes introduced are that building societies may now develop properties for sale and may enter into joint ventures with the state and local authorities to erect buildings and develop infrastructure. Building societies are now permitted to issue negotiable certificates of deposit and may lend money to members for the purchase of plant or machinery or any other purpose.
Dumping bodies or hindering burials in order to obtain payment of damages or marriage consideration (mora) is made an offence and competent fines for offences under the principal Act are increased.

Finance Act 19 of 1994
Giving effect to fiscal measures announced in the Budget Speech, this Act reduces income tax rates for 1995/6, raises and widens the income bands to which income tax rates apply, establishes tax rates for investors operating from proposed Export Processing Zones, abolishes the tax on holiday currency allowances, abolishes depletion allowances previously enjoyed by miners, introduces various measures to cater for the creation of private business corporations, extends sales tax to all services, subject to limited exception, on the same basis as sales of goods and introduces a provision to combat schemes to avoid sales tax.


Subsidiary legislation
Noteworthy Statutory Instruments have been promulgated under the following Acts: Animal Health, replanning regulations on notifiable diseases 289 of 94; Architects, increasing the minimum fees scale, 173 of 94 and regulating advertising and incorporation, 233 of 94; Aviation, amending fees for airworthiness certificates and other services, 241 of 94; Control of Goods, deregulating price controls on various commodities, 166 of 94 and removing certain restriction on exports, 193B of 94; Exchange Control, introducing regulations for bureaux de change, 138 of 94. Labour Relations, amending dispute settlement procedures, 154 of 94, introducing a new right of appeal in retrenchment regulations, 137 of 94 and publishing collective bargaining agreements for various industries: agriculture, 175 of 94, leather manufacturing, 176 of 94, radio television and electronic manufacturing, 180 of 904, sugar refining, 252/94, engineering, iron and steel, 257, 265, 267 and 268 of 94, banking, 254 of 94, commercial sectors, 261 of 94, soft drink manufacturing, 263 of 94, mining, 279 of 94, lumber milling and timber processing, 290 of 94, catering, 299, 350 and 315 of 94, clothing, 301 of 94, furniture manufacturing, 305 of 94 and National Railways, 308 of 94.


JUDICIAL DECISIONS

Aviation
Barclays Bank of Zimbabwe Ltd v Air Zimbabwe Corporation 1994 1 SA 639 (ZH)
The defendant was held entitled to rely upon the provisions of the 1955 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, relating to the limitation of a carrier's liability and to the extinction of claims.

Constitution
Nkomo and Another v Attorney-General Zimbabwe and Others 1993 2 ZLR 422 (S)
1994 (4) SA 34 (ZS)
Following the decision in Catholic Commission for Justice and Peace in Zimbabwe v Attorney General, Zimbabwe and Others 1993 (4) SA 239 (ZS), the constitution was amended to prevent a court from granting a stay or any other remedy for delay in the execution of a sentence of death. In this case it was held that the Constitutional Amendment did not affect the pre-existing right of the applicants to obtain relief arising from delay in executing their death sentences.

**Criminal procedure**

*S v Donga and Another 1993 2 ZLR 291 (S)*

Doubt was expressed over the advisability of the practice of producing in evidence a statement the admissibility of which is in issue.

**GENERAL**

Further reports have been published by the Law Development Commission dealing with the recognition of foreign adoption orders (No 35), arbitration (Nos 24 and 31), misstatements in insurance proposals (No 29), hearsay evidence in civil proceedings (No 30), the effect of noting an appeal in civil cases (No 34), the 'once and for all' rule in damage claims (no 36), blood alcohol levels in traffic cases (No 377) and prisoners on remand (No 38).

*IA Donovan*  
*RY Phillips*  
*Harare*