

COURTS

Colonial Courts of Admiralty Act, 1890, as applied in the Cape of Good Hope as of 1 January 1920.

Summary: This Act concerns the admiralty jurisdiction of the courts. It applies two statutes from English admiralty law -- the Admiralty Court Act 1840 and the Admiralty Court Act 1861

See *Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC).

It appears that it may also apply the English Vice-Admiralty Courts Act 1863.

See *MV "Jute Express" v Owners of the Cargo Lately Laden on Board the MV "Jute Express"* (296/91) [1992] ZASCA 44; [1992] 2 All SA 95 (A) (27 March 1992).

Applicability to SWA: The Act was applied to South West Africa by virtue of Administration of Justice Proclamation 21 of 1919.

See *Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC) at 27I-28F and *International Underwater Sampling Limited & Another v Mep Systems (Pty) Ltd* (AC 11/2009) [2010] NAHC 10 (12 January 2010).

Regulations: A set of rules known as the Vice Admiralty Rules were made in terms of the 1840 and the 1861 Acts.

See *Namibia Ports Authority v MV 'Rybak Leningrada'* 1996 NR 355 (HC).

The Rules for the Vice-Admiralty Courts in Her Majesty's Possessions Abroad, 1883 are also applicable.

See *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1998 NR 307 (HC).

Note: The Admiralty Proceedings Rules do not apply in Namibia, according to *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1998 NR 307 (HC).

Cases:

Namibia Ports Authority v MV 'Rybak Leningrada' 1996 NR 355 (HC)

Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others 1998 NR 307 (HC), 1999 NR 410 (HC)

Green Fisheries Corporation v Lubrication Specialist (Pty) Ltd 2003 NR 50 (HC) (Vice Admiralty Court Rules 29 and 30; basis for an action *in rem*)

International Underwater Sampling Limited & Another v Mep Systems (Pty) Ltd (AC 11/2009) [2010] NAHC 10 (12 January 2010).

See also *Banco Exterior De Espana SA & Another v Government of the Republic of Namibia & Another* 1996 NR 1 (HC) for further discussion of jurisdiction over admiralty law.

Further Administration of Justice Proclamation 38 of 1920.

Summary: This Proclamation provides for the procedure of circuit courts of the High Court.

Amendments: The SA *Supreme Court Act 59 of 1959* repeals sections 2-6, 8, 9 and

12. The RSA *Civil Proceedings Evidence Act 25 of 1965* amends section 11.

Magistrates' Courts Act 32 of 1944, as amended in South Africa to November 1979.

Summary: This Act consolidates all laws relating to magistrates' courts.

Applicability to SWA: Section 1 defines "territory" as "the territory of South West Africa", and "province" and "Republic" are both defined to include the territory. Section 115A states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(d) of the transfer proclamation excluded all references to "Republic" in the Act from the operation of section 3(1) of the General Proclamation, meaning that "Republic" retained the meaning it was given in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Act 14/1981, which is brought into operation by AG 19/1986, amends section 92. Act 11/1985 amends the Act substantially. The Appeals Amendment Act 29 of 1985, which is brought into operation by AG 19/1986, amends sections 1 and 83. Act 9/1990 amends section 1 and 10 of the Act (with regard to the administration of the Act and the qualifications for the appointment of judicial officers). The Married Persons Equality Act 1 of 1996 amends section 5 and deletes section 111(4).

Act 9/1997, which came into force on 3 November 1997 (GN 220/1997, GG 1722), increases the limits on the jurisdiction of magistrates' courts, by altering sections 29, 46, 50, 65I, 74 and 92. In terms of these amendments, the basic limit for civil actions is N\$25 000. For criminal actions, a magistrates' court may impose a sentence of up to five years or a fine of up to N\$20 000, and a regional magistrates' court may impose a sentence of up to 20 years and a fine of up to N\$100 000.

Act 1/1999 amends the minimum qualifications for regional magistrates, gives regional courts jurisdiction for murder trials, and repeals the provisions relating to imprisonment for failure to satisfy an order of court to pay a judgement debt (affecting sections 9, 12, 65A, 65C, 65D, 65E, 65F, 65G, 65H, 65J, 65K, 65L, 89, 106, 106A, 106B and 109).

The Magistrates Act 3 of 2003 (the relevant portion of which came into force on 30 June 2003 – GN 125/2003, GG 3001) amends sections 1 and 66, substitutes section 8 and repeals sections 9, 9bis, 10, 11 and 12.

Act 6/2009 (GG 4308) amends the composition of the Rules Board in section 25.

Regulations: The Rules of Court are contained in RSA GN R.1108 of 21 June 1968, as amended by—

RSA GN R.3002 of 25 July 1969

RSA GN R. 490 of 26 March 1970
 RSA GN R.1752 of 16 October 1970
 RSA GN R. 947 of 2 June 1972
 RSA GN R.1115 of 28 June 1974
 RSA GN R.1285 of 19 July 1974
 (which corrects RSA GN R.1115 of 28 June 1974)
 RSA GN R. 689 of 23 April 1976
 RSA GN R. 261 of 25 February 1977
 RSA GN R.2221 of 28 October 1977
 RSA GN R. 327 of 24 February 1978
 RSA GN R.2222 of 10 November 1978
 RSA GN R.1194 of 8 June 1979
 RSA GN R.1449 of 29 June 1979
 RSA GN R. 652 of 28 March 1980
 RSA GN R.1314 of 27 June 1980
 RSA GN R.1800 of 28 August 1981
 RSA GN R.1139 of 11 June 1982
 RSA GN R.1689 of 29 July 1983
 RSA GN R.1946 of 9 September 1983
 (which corrects RSA GN R.1689 of 29 July 1983)
 RSA GN 1338 of 29 June 1984
 GN 148/1985 (31 December 1985)
 GN 36/1987 (16 March 1987)
 AG GN 86/1989 (15 August 1989)
 AG GN 122/1989 (fees) (1 December 1989)
 GN 178/1992 (GG 537) (tariffs and fees)
 GN 43/1997 (GG 1513) (Rules 6(5)(a), 10 and 37(1), and Annexure 2, Table
 C - provisions and fees pertaining to messengers of the court)
 GN 75/2000 (GG 2284) (Rules 2, 5, 6, 8, 9, 12, 13, 29, 30, 33, 34, 35, 38, 41,
 43, 48, 48A, 49, 51, 59, 66, Annexure 1 and Annexure 2)
 GN 200/2007 (GG 3930) (Rules 12, 13,41,49, 60 and Annexure 2-Table C).

Additional places for holding courts are designated in GN 47/1991 (GG 181), GN 181/1992 (GG 540), GN 37/1993 (GG 617) GN 249/1997 (GG 1741) and GN 92-93/2002 (GG 2755).

The configuration of magisterial districts is affected by GN 89/1991 (GG 244), GN 22/1994(GG 799), GN 23/1994 (GG 799), GN 122/1997 (GG 1585), GN 21/1999 (GG 2046), GN 22/1999 (GG 2046) GN 177/2000 (GG 2374) and GN 94/2002 (GG 2755).

Officers competent to perform service of process in terms of section 15(4) are designated in AG GN 84/1989.

The Magistrate's Court Rules (Rehoboth) Amendment Proclamation (AG 29/1979) applies the amendments to the Magistrate's Court Rules contained in RSA GN R.2222 of 1978 to the Rehoboth Gebiet.

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003 (GG 3020).

Cases:

section 1:

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (“judicial officer” and “Chief: Lower Courts”)

- section 9:
S v Kauma 1992 NR 17 (HC)
Mostert v The Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC)
 (declaring sections 9 of the Act unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)
- section 10:
Mostert v The Minister of Justice 2003 NR 11 (SC) (declaring section 10 of the Act unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)
- section 12(1):
Garces v Fouche & Others 1997 NR 278 (HC)
- section 14(2)(b):
Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (deputy messengers appointed pursuant to this section fail to prove that they are employees in terms of labour law)
- section 19:
Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (provisions of section 19 on deputy messengers mean that if they are not employees they must be agents)
- section 65:
Julius v Commanding Officer, Windhoek Prison & Others; Nel v Commanding Officer, Windhoek Prison & Others 1996 NR 390 (HC)
 (declaring unconstitutional parts of section 65 concerning imprisonment for civil debt)
- section 66:
Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)
- section 83:
Thiro v M & Z Motors NLLP 2002 (2) 370 NLC
- section 89(1):
S v Handukene 2007 (2) NR 606 (HC) (lack of jurisdiction of district magistrate's court over common-law crime of rape applies equally to charge of rape under Combating of Rape Act 8 of 2000)
- section 92:
Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC)
- section 106:
S v Muronga 2004 NR 134 (HC)
S v Ndakohute 2005 NR 37 (HC)
S v Paulus 2007 (2) NR 622 (HC)(no provision for summary enquiry)
- section 108:
S v Amujekela 1991 NR 303 (HC)
S v Ndihalwa 1997 NR 98 (HC)
S v Hekandjo 1998 NR 142 (HC)
S v Paaie 2006 (1) NR 250 (HC)
S v Cloete 2006 (2) NR 430 (HC)
S v Paulus 2007 (2) NR 622 (HC) (non-appearance in court not covered)
S v Shikesho 2007 (2) NR 625 (HC) (summary conviction under this section inappropriate when accused under influence of alcohol and unable to comprehend proceedings)
- generally:
S v Myburgh 2008 (2) NR 592 (SC) (suggestion to legislature to amend Act to extend jurisdiction of magistrate's courts, especially regional

magistrate's courts, to order permanent stays of prosecution in appropriate criminal cases).

Cases on Magistrate's Court Rules:

Rule 7:

Duntrust (Pty) Ltd v H Sedlacek t/a GM Refrigeration 2005 NR 174 (HC)

Rule 17:

Olivier v Kaizemi 2005 NR 290 (HC)

Tsabo v Gobabis Municipality NLLP 2003 (4) 25 NLC

Rule 22:

Lewis v Sampoio 2000 NR 186 (SC)

Rule 36(d):

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC)

Rule 43:

Vermaak & Another v Messenger of the Court of Swakopmund & Another
2005 NR 14 (HC)

Rule 49:

Lewis v Sampoio 2000 NR 186 (SC)

Brand v Swart 2002 NR 63 (HC)

Rule 51(4):

Mostert v First National Bank of Namibia Ltd. & Another 2000 NR 54 (HC)

Rule 55A:

Olivier v Kaizemi 2005 NR 290 (HC)

Rule 59(6):

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC)

Rule 62:

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (application of rule to district labour court matter; overturned on other grounds in *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC))

Rule 66:

S v Hoadums 1990 NR 259 (HC)

S v Veiko 1994 NR 79 (HC)

Rule 67(1):

S v Wellington 1990 NR 20 (HC)

S v Gey van Pittius & Another 1990 NR 35 (HC).

S v Kakololo 2004 NR 7 (HC)

Rule 67(3):

S v Tases 2003 NR 103 (HC).

Articles: Francois X Bangamwabo and Clever Mapaure, "The constitutionality or otherwise of section 66(1) of the Magistrates' Courts Act, 1944 (No. 32 of 1944)", *Namibia Law Journal*, Volume 2, Issue 1, 2010, available at www.namibialawjournal.org.

Redefinition of Magisterial Districts Proclamation 15 of 1950.

Summary: This Proclamation defines the geographical boundaries of magisterial districts.

Amendments: This Proclamation is amended by-

Proc. 19/1952

Proc. 49/1952

Proc. 51/1954

Proc. 10/1955
Proc. 54/1955
Proc. 20/1956
Proc. 69/1956
Proc. 10/1957
Proc. 11/1957
Proc. 19/1957
Proc. 55/1957
Proc. 65/1957
SA Proc. 68 of 1957
Proc. 43/1958
Proc. 25/1959
Proc. 36/1959
Proc. 39/1960
Proc. 73/1961
Proc. 48/1962.

Vexatious Proceedings Act 3 of 1956.

Summary: This Act places restrictions on frivolous legal proceedings.

Applicability to SWA: Section 3 states “This Act shall apply also in the territory of South West Africa,” and section 1 defines “court” accordingly.

Transfer proclamation: Although this Act makes no reference to any minister, it probably fell under the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979. The wording of the Act did not make South African amendments automatically applicable to SWA. In any event, there were no amendments to the Act in South Africa prior to Namibian independence.

General Law Amendment Ordinance 22 of 1958, sections 1-2.

Summary: Section 1 of this Ordinance makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings. Section 2 of this Act (now obsolete) recognises the official title of “landdros”.

Amendments: Section 1(1) is amended by Ord. 13/1962, to change the relevant age to 18. Section 2 is amended by Ord. 29/1963.

Admiralty Jurisdiction Regulation Act 5 of 1972, as amended in South Africa to November 1979.

Summary: This Act requires the High Court, when sitting as a court of admiralty, to refer back to the law of England.

Applicability to SWA: Section 5 of this Act states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(r) of the transfer proclamation excluded sections 1 and 2 of the Act from the operation of section 3(1) of the General Proclamation.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA. The Act was repealed in its entirety in South Africa by the *Admiralty Jurisdiction Regulation Act 105 of 1983*, which was not applicable to SWA.

Supreme Court Act 15 of 1990.

Summary: This Act provides for the jurisdiction of the Supreme Court of Namibia in accordance with Article 79 of the Namibian Constitution.

Amendments: The Judicial Service Commission Act 18 of 1995 amends section 9. The Appeal Laws Amendment Act 10 of 2001 amends section 14. Act 4/2002 amends section 8.

Regulations: The Rules of the Supreme Court are contained in GN 56/1990 (GG 86). GN 119/2003 (GG 2994) amends Rule 8.

Fees: The tariff of fees contained in GN 56/1990 (GG 86) is altered by GN 80/2003 (GG 2949).

Cases:

S v Strowitzki 2003 NR 145 (SC)(sections 6 and 16(1))

Wirtz v Orford & Another 2005 NR 175 (SC)(sections 7 and 13), approved in *Dresselhaus Transport CC v Government of the Republic of Namibia* 2005 NR 214 (SC) at 252D

S v Koch 2006 (2) NR 513 (SC)(section 14(1))

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC) (section 19(a))

Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (section 16)

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC) (section 14)

Schroeder & Another v Solomon & Another 2009 (1) NR 1 (SC) (section 16).

Cases on Supreme Court Rules:

generally:

S v Strowitzki 2003 NR 145 (SC)(potential conflict with Constitution raised but not decided, at 156F-157A)

Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC) (duty of practitioners to ensure that record is complete and compliant with rules of court discussed at 445F-ff)

Rule 3:

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Rule 5:

Wirtz v Orford & Another 2005 NR 175 (SC)

Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)

Gurirab v Government of the Republic of Namibia & Others 2006 (2) NR 485 (SC)
Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC)
Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)
M Pupkewitz & Sons (Pty)Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

Rule 8:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Rule 11:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Rule 13:

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002
(unreported)(discussion of contradictions of rule and need for amendment)

Rule 14:

Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (effect of section 92(1) of Legal Practitioners Act 15 of 1995 on this rule)

Rule 18:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC).

Articles: Raymond Heathcote, “Section 16 of the Supreme Court Act”, *Namibia Law Journal*, Volume 1, Issue 1, 2009 available at www.namibialawjournal.org (discussing *Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others* 2008 (2) NR 753 (SC) and *Schroeder & Another v Solomon & Another* 2009 (1) NR 1 (SC)).

High Court Act 16 of 1990.

Summary: This Act provides for the jurisdiction of the High Court of Namibia in accordance with Article 80 of the Namibian Constitution.

Amendments: Section 93 of the Legal Practitioners Act 15 of 1995 amends section 3. The Judicial Service Commission Act 18 of 1995 also amends section 3. The International Co-operation in Criminal Matters Act 9 of 2000 amends section 29. The Appeal Laws Amendment Act 10 of 2001 amends section 18. Act 3/2002 amends section 8.

Regulations: The Rules of the High Court are contained in GN 59/1990 (GG 90), as amended by GN 187/1992 (GG 549), GN 148/1993 (GG 757), GN 81/1996 (GG 1293), GN 182/1996 (GG 1350), GN 221/1997 (GG 1727), GN 69/1998 (GG 1829), GN 141/2006 (GG 3690) and GN 6/2008 (GG 3983). Sittings of the court and court terms are addressed in GN 60/1990 (GG 90) and GN 189/2000 (GG 2386).

Cases:

section 2:

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

section 4:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC)

section 16:

S v Campbell & Others 1990 NR 310 (HC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC)
(discussion of section 16(d) in dicta)

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC)

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

section 18:

S v Stowitzki 1994 NR 265 (HC) (section 18(2)(a)(i))

S v Delie (1) 2001 NR 181 (HC); *S v Delie (2)* 2001 NR 286 (SC)

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported)(whether the decision of a judge in chambers in terms of Rule 48 constitutes a judgment or order under section 18)

Namibia Grape Growers and Exporters Association & Others v The Ministry of Mines and Energy & Others 2004 NR 194 (SC) (appeal against order for costs in terms of section 18(3))

Beukes v Peace Trust NLLP 2004 (4) 102 NLC (attributes of a judgement or order which is appealable under section 18(3))

Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC)

Wirtz v Orford & Another 2005 NR 175 (SC)

Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)

Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC) (section 18(3))

S v Koch 2006 (2) NR 513 (SC) (section 18(1) discussed in dicta at 520-22)

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC)

Handl v Handl 2008 (2) NR 489 (SC)

Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC) (section 14)

section 19:

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC) (section 19(1))

MFV Kapitan Solyanik Ukrainian-Cyprus Insurance Co & Another v Namack International (Pty) Ltd 1999 (2) SA 926 (NmHC) (section 19(1))

S v Katuta 2006 (1) NR 61 (HC) (section 19(1)(b))

JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)

section 20:

S v Gawanab 1997 NR 61 (HC)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (section 20 as applied *mutatis mutandis* by section 111, Labour Act 6 of 1992)

S v Handukene 2007 (2) NR 606 (HC) (section 20(1)(a))

section 30:

Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC) (Registrar's powers to tax a lay-litigant's bill of costs in terms of section 30(1))

generally:

S v Myburgh 2008 (2) NR 592 (SC) (High Court as only "competent court" for purposes of Article 25 of Constitution).

Cases on High Court Rules:

generally:

- Swanepoel v Marais & Others* 1992 NR 1 (HC)
- Adriaans v McNamara* 1993 NR 188 (HC)
- Johnston v Indigo Sky Gems (Pty) Ltd* 1997 NR 239 (HC)
- Ark Trading v Meridien Financial Services (Pty) Ltd* 1999 NR 230 (HC)
(discussion of importance of complying with rules of court)
- Van Zyl & Another v Smit & Another* 2007 (1) NR 314 (HC) (Practice Directives)
- Council of the Municipality of Windhoek v Bruni NO & Others* 2009 (1) NR 151 (HC) (Practice Directives)

Rule 4:

- Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board* 2008 (2) NR 427 (HC)

Rule 5(5):

- Vahekeni v Vahekeni* 2008 (1) NR 125 (SC)

Rule 6:

- Doeseb & Others v Kheibeb & Others* 2004 NR 81 (HC) (*ex parte* order in the form of an Anton Pillar)

Rule 6(1):

- Mahamat v First National Bank of Namibia Ltd* 1995 NR 199 (HC)
- Law Society of Namibia v Kamwi & Another* 2005 NR 91 (HC)

Rule 6(4):

- Transnamib v Essjay Ventures Limited* 1996 NR 188 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)

Rule 6(5):

- Transnamib v Essjay Ventures Limited* 1996 NR 188 (HC)
- Coin Security Namibia (Pty) Ltd v Jacobs & Another* 1996 NR 279 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)
- Seasonaire v Mahe Construction (Pty) Ltd* 2002 NR 53 (HC)
- Knouwds NO v Josea & Another* 2007 (2) NR 792g
- Ondjava Construction CC & Others v Haw Retailers* 2008 (1) NR 45 (HC)
- Shixwameni & Others v Congress of Democrats & Others* 2008 (1) NR 134 (HC)
- Hepute & Others v Minister of Mines and Energy & Another* 2008 (2) NR 399 (SC)
- Minister of Agriculture, Water and Forestry v O'Linn* 2008 (2) NR 792 (SC)
- Oshakati Tower (Pty) Ltd v Executive Properties CC & Others* 2009 (1) NR 99 (HC) (deals with Rule 6(5)(g) although this rule is not cited in the case)
- Council of the Municipality of Windhoek v Bruni NO & Others* 2009 (1) NR 151 (HC)

Rule 6(6):

- Vahekeni v Vahekeni* 2008 (1) NR 125 (SC)

Rule 6(11):

- Eimbeck v Inspector-General of the Namibian Police & Another* 1995 NR 13 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)
- Gariseb v Bayerl* 2003 NR 118 (HC)

Rule 6(12):

- RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another* 1998 NR 61 (HC)
- Swanepoel v Minister of Home Affairs & Others* 2000 NR 93 (HC)
- Bergmann v Commercial Bank of Namibia Ltd & Another* 2001 NR 48 (HC)
- Congress of Democrats & Others v Electoral Commission* 2005 NR 44 (HC)
- Sheehama v Inspector-General, Namibian Police* 2006 (1) NR 106 (HC)

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC)
Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (in labour law context)
Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC)

Rule 6(15):

Vaatz v Law Society of Namibia 1990 NR 332 (HC)
Cultura 2000 v Government of the Republic of Namibia 1992 NR 110 (HC)
Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC)
Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2) 2009 (1) NR 232 (HC)

Rule 8(3):

Zhou v Hong 2006 (1) NR 84 (HC)

Rule 10:

The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Rule 12:

Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Namibia Insurance Association v Government of Namibia 2001 NR 1 (HC)
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)

Rule 14:

Meridien Financial Services (Pty) Ltd v Ark Trading 1998 NR 48 (HC), confirmed in *Ark Trading v Meridien Financial Services (Pty) Ltd* 1999 NR 230 (HC)

Rule 15:

RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC)
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)
Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC)

Rule 16:

S v Bushebi 1998 NR 239 (SC)
Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its "alter ego")

Rule 18:

Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC)

Rule 18(4):

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others; Hofmeister v Basson & Others 1999 NR 206 (HC)
Namibia Beverages v Amupolo 1999 NR 303 (HC)
Makono v Nguvauva 2003 NR 138 (HC)
Coastal Fish Traders (Pty) Ltd v Wilson & Another 2006 (2) NR 573 (HC)

Rule 18(10):

- Hipandulwa v Kamupunya* 1993 NR 254 (HC)
- Rule 20(2):
Namibia Beverages v Amupolo 1999 NR 303 (HC)
- Rule 21(3):
Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
- Rule 22(3):
Makono v Nguvauva 2003 NR 138 (HC)
- Rule 23(1):
Gauseb v Minister of Home Affairs 1996 NR 90 (HC)
Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
- Rule 26:
Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders 1999 NR 129 (HC)
- Rule 27:
Adriaans v McNamara 1993 NR 188 (HC)
Xoagub v Shipena 1993 NR 215 (HC)
Transnamib v Essjay Ventures Limited 1996 NR 188 (HC)
Rothe v Asmus & Another 1996 NR 406 (HC)
S v Nakapela & Another 1997 NR 184 (HC)
Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC)
Johnston v Indigo Sky Gems (Pty) Ltd 1997 NR 239 (HC)
Seaflower Whitefish Corporation Ltd v Namibian Ports Authority 2000 NR 57 (HC)
The Nation (Pty) Ltd. v Meyer 2002 (2) 55 NHC
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)
Dimensions Properties v Municipal Council of Windhoek 2007 (1) NR 288
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC) (Rule 27(3): a procedural irregularity which constitutes a nullity cannot be condoned)
Solomon v De Klerk 2009 (1) NR 77 (HC)
- Rule 28:
South Bakels (Pty) Ltd & Another v Quality Products & Another 2008 (2) NR 419 (HC)
- Rule 28(1)-(2):
Meyer v Deputy Sheriff, Windhoek & Others 1999 NR 146 (HC)
- Rule 28(4):
Rothe v Asmus & Another 1996 NR 406 (HC)
Andreas v La Cock & Another 2006 (2) NR 472 (HC)
- Rule 28(6):
Commercial Bank of Namibia v Grobler 2002 NR 24 (HC)
- Rules 28(7):
Meyer v Deputy Sheriff, Windhoek & Others 1999 NR 146 (HC)
- Rule 30:
Gariseb v Bayerl 2003 NR 118 (HC)
Wirtz v Orford & Another 2005 NR 175 (SC)
Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC)
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)
Ondjava Construction CC & Others v Haw Retailers 2008 (1) NR 45 (HC)
Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board 2008 (2) NR 427 (HC)

Christian t/a Hope Financial Services v Chairman of Namibia Financial Institutions Supervisory Authority & Others 2009 (1) NR 22 (HC)
(discussion of Rule 30 applications in passing)

Rule 31(2)(a):

Hipandulwa v Kamupunya 1993 NR 254 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)

Rule 31(2)(b):

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC)
Maia v Total Namibia 1998 NR 303 (HC)
Adriaans v McNamara 1993 NR 188 (HC)
Xoagub v Shipena 1993 NR 215 (HC)
Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC)
Mutjavikua v Mutual & Federal Insurance Company Ltd 1998 NR 57 (HC)
Namcon CC v Tula's Plumbing CC 2005 NR 39 (HC)
Mhungu v Commercial Bank of Namibia Ltd NLLP 2002 (2) 299 HC
Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)

Rule 32:

Commercial Bank of Namibia Ltd v Trans Continental Trading (Namibia) & Others 1991 NR 135 (HC)
Rule 32(3)(b): *Standard Bank of Namibia Ltd v Veldsman* 1993 NR 391 (HC)
Kühn v Levey & Another 1996 NR 362 (HC)
Kramp v Rostami 1998 NR 79 (HC)
Namibia Petroleum (Pty) Ltd v Vermaak 1998 NR 155 (HC)
Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)
Bierman NO v Combrink 2006 (2) NR 447 (HC)
Namibia Breweries Limited v Serrao 2007 (1) NR 49 (HC)
Kamwi v Ministry of Finance 2007 (1) NR 167 (HC)
Ritz Reise (Pty) Ltd v Air Namibia (Pty) Ltd 2007 (1) NR 222 (HC)
Namibia Airports Company Ltd v Conradie 2007 (1) NR 375 (HC)
Mauno Haindongo t/a Omawa Wholesalers v African Experience (Pty) Ltd 2006 (1) NR 56 (HC)
Gamikaub (Pty) Ltd v Schweiger 2008 (2) NR 464 (SC)
Easy Life Management (Cape)(Pty) Ltd & Another v Easy Fit Cupboards Windhoek CC & Others 2008 (2) NR 686 (HC)

Rule 33:

Freiremar SA v The Prosecutor-General of Namibia & Another 1996 NR 18 (HC)
Van As & Another v Prosecutor-General 2000 NR 271 (HC)

Rule 34 (10):

Prior t/a Pro Security v Jacobs t/a Southern Engineering 2007 (2) NR 564 (HC)

Rule 35:

South African Sugar Association v Namibia Sugar Distributors (Pty) Ltd 1999 NR 241 (HC)
Waltraut Fritzsche t/a Reit Safari v Telecom Namibia Ltd 2000 NR 201 (HC)
Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)
Kanyama v Cupido 2007 (1) NR 216 (HC)
Kauaaka & Others v St Phillips Faith Healing Church 2007 (1) NR 276 (HC)
Marco Fishing (Pty) Ltd v Government of the Republic of Namibia & Others 2008 (2) NR 742 (HC)

Rule 39:

- Christian v Metropolitan Life Namibia & Another* 2007 (1) NR 255 (HC)
(exception to rule that party seeking postponement is responsible for wasted costs)
- Rule 40(6):
Aluminium City CC v Scandia Kitchens & Joinery (Pty) Ltd 2007 (2) 494 (HC)
- Rule 42:
Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC)
Prosperita Glass CC t/a Mr Glass v Pretorius t/a Ben Pretorius Building Contractor 2008 (1) NR 368 (HC)
National Housing Enterprise v Beukes & Others 2009 (1) NR 82 (LC)
- Rule 43:
Eger v Eger 1997 NR 126 (HC)
Dreyer v Dreyer 2007 (2) NR 553 (HC)
- Rule 43:
Handl v Handl 2008 (2) NR 489 (SC)
- Rule 44:
Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC)
Sylvie McTeer Properties v Kuhn & Others 2005 NR 519 (HC)
Schacht v Schweiger 2007 (1) NR 62 (HC)
Kamwi v Law Society of Namibia 2007 (2) NR 400 (HC)
De Villiers v Axiz Namibian (Pty) Ltd 2009 (1) NR 40 (HC)
- Rule 45:
Appolus v Shipanga & Others 1992 NR 273 (HC)
Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC)
Deputy Sheriff of Gobabis v Eiman & Another 1999 NR 310 (HC)
Jantjies v Jantjies & Another 2001 NR 26 (HC)
- Rule 45(12):
Bank Windhoek Ltd v Kusch 2003 NR 67 (HC)
- Rule 47:
Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC)
Hepute & Others v Minister of Mines and Energy & Another 2007 (1) NR 124 (HC), 2008 (2) NR 399 (SC)
- Rule 48:
Vaatz v Law Society of Namibia 1993 NR 465 (HC)
Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported)(whether the decision of a judge in chambers in terms of Rule 48 constitutes a judgment or order under section 18)
Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)
- Rule 49:
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)
- Rule 49(6)(a):
Maia v Total Namibia 1998 NR 303 (HC)
- Rule 49(11):
Deputy Sheriff for Caprivi Region v Mboози 2005 NR 172 (HC)
- Rule 49(13):
Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Louw v Chairperson of the District Labour Court, Windhoek & Others 2001 NR 197 (HC) (Rule 49(13) declared unconstitutional)
- Rule 51:
S v Tjiho 1991 NR 361 (HC)

Rule 53:

Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others 1991 NR 417 (HC)
S v Gawanab 1997 NR 61 (HC)
Aonin Fishing (Pty) Ltd & Another v Minister of Fisheries and Marine Resources 1998 NR 147 (HC)
Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance & Others 2006 (1) NR 275 (HC)
Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC)
Mbanderu Traditional Authority & Another v Kahurre & Others 2008 (1) NR 55 (SC)
Purity Manganese (Pty) Ltd v Minister of Mines and Energy & Others; Global Industrial Development (Pty) Ltd v Minister of Mines and Energy & Another 2009 (1) NR 277 (HC)

Rule 54:

Pietersen-Diergaardt v Fischer 2008 (1) NR 307 (HC) (condonation of breaches of this rule)

Rule 58:

Katuematima v Tjaveandja & Others 1996 NR 339 (HC)

Rule 60:

Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Zhou v Hong 2006 (1) NR 84 (HC)
S v Malumo & 116 Others (No 3) 2008 (2) NR 512 (HC)

Rule 62(4):

Motor Vehicle Accident Fund v Gerber 2004 NR 119 (HC)

Rule 63:

Kramp v Rostrami 1998 NR 79 (HC)
Ekanjjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC)
Zhou v Hong 2006 (1) NR 84 (HC)

Rule 69(3):

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC)

Rule 70:

Vaatz v Law Society of Namibia 1993 NR 465 (HC)
Hameva & Another v Minister of Home Affairs, Namibia 1996 NR 380 (SC).
Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)
Nate Ndauendapo & Associates v Aussenkehr Farms (Pty)Ltd & Others 2007 (1) NR 162 (HC)
Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC) (Rule 70 read with Sixth Schedule prescribed by GN 141/2006)

other:

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC) (costs in an urgent application where parties agreed not to proceed; application of rule that a party should at the earliest opportunity take all steps to end litigation or curtail costs associated with it)
Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (Practice Directions 1/2002 and 1/2007; whether Practice Directives generally binding on lay litigants discussed in *dicta* at 771).

Reciprocal Service of Civil Process Act 27 of 1994.

Summary: This Act provides for the reciprocal service of process in civil matters in Namibian and in designated countries.

Regulations: The Republic of South Africa is declared to be a designated country in terms of section 2(1) of the Act by GN 113/1995 (GG 1095).

Enforcement of Foreign Civil Judgements Act 28 of 1994.

Summary: This Act provides that civil judgements granted in designated countries may be enforced in magistrates' courts in Namibia. It replaces the *Reciprocal Enforcement of Civil Judgements Act 9 of 1966*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 amends section 1.

Regulations: The Republic of South Africa is declared to be a designated country in terms of section 2(a) of the Act by GN 112/1995 (GG 1095).

Community Courts Act 10 of 2003.

Summary: This Act provides for the recognition and establishment of community courts, and the application of customary law by these courts. It sets the jurisdiction and procedure of community courts, and provides an appeal procedure. This Act repeals Proclamation No. R.348 of 1967, Proclamation No. R.320 of 1970, Proclamation No. 160 of 1975, Ordinance No. 2 of 1986, and Ordinance No. 3 of 1986. It came into operation on 17 November 2003 (GN 236/2003, GG 3095).

Regulations: Regulations are contained in GN 237/2003 (GG 3095). The period for application for recognition as community court is set as 17 November 2003-31 March 2004 in GN 238/2003 (GG 3095), and extended to 31 December 2004 by GN 52/2004 (GG 3176).

Establishment of community courts: Community courts are established in GN 86-114 (GG 4262) and GN 52-61/2010 (GG 4450). These notices also designate areas of jurisdiction and appoint assessors and justices.

Articles: N Horn, "Criminal or Civil Procedure? The Possibility of a Plea of *Autrefois* in the Namibian Community courts Act" in Manfred O Hinz and Helgard K Patemann, eds, *The Shade of New Leaves: Governance in Traditional Authority - A Southern African Perspective*, Windhoek: Centre for Applied Social Studies, 2006.

Magistrates Act 3 of 2003.

Summary: This Act provides for the establishment of a Magistrates Commission and establishes a magistracy outside the Public Service. Part II of the Act came into force on 20 June 2003, and the remainder of the Act came into force on 30 June 2003 (GN 125/2003, GG 3001).

Amendments: Act 23/2003 amends section 11 of the Act. Act 5/2009 (GG 4307) amends sections 1 and 11, and substitutes the expression “Chief Magistrate” for “Chief: Lower Courts” and ‘Chief of lower courts’.

Regulations: “Regulations regarding Magistrates”, which came into operation on 30 June 2003, are contained in GN 130/2003 (GG 3007). The remuneration of magistrates is increased in GN 44/2009 (GG 4236).

Appointments: The members of the Magistrates’ Commission are announced in GN 153/2009 (GG 4310).

Cases: *Mostert & Another v The Magistrates’ Commission & Another* 2005 NR 491 (HC) (section 5); *Alexander v Minister of Justice & Others* 2009 (2) NR 712 (HC) (section 11(7)); appointment of acting magistrates by Magistrates Commission is generally constitutional, but appointment of Chief: Lower Courts as acting magistrate is impermissible violation of independence of judiciary).

UNIFORM RULES OF COURT

The **Uniform Rules of Court** are no longer applicable in Namibia. However, cases concerning these rules may contain information which is useful for the interpretation of other court rules and so are listed here:

Rule 6(11):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Rule 6(12)(b):

Salt & Another v Smith 1990 NR 87 (HC)

Rule 31(2)(b):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Krauer & Another v Metzger (2) 1990 NR 135 (HC)

Maia v Total Namibia (Pty) Ltd 1990 NR 216 (HC)

SOS-Kinderdorf International v Effie Lentin Architects 1990 NR 300 (HC)

Argos Fishing Company Ltd v Friopesca SA 1991 NR 106 (HC)

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC)

Rule 45(1):

Namib Building Society v Du Plessis 1990 NR 161 (HC)

Rule 53:

Federal Convention of Namibia v Speaker, National Assembly of Namibia & Others 1991 NR 69 (HC)

Booyesen v Kalokwe NO & Others 1991 NR 95 (HC)

Rule 63:

De Roeck v Campbell & Others (1) 1990 NR 28 (HC).

SELECTED ARTICLES

Law Reform and Development Commission, *Report on Small Claims Courts* (LRDC 6)

Nico Horn & Anton Boesl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available at www.kas.de/proj/home/pub/8/2/year-2008/dokument_id-15058/index.html.

INTERNATIONAL LAW

SADC Protocol on the Tribunal and the Rules of Procedure thereof, 2000

(entered into force within SADC on 14 August 2001) (source: SADC; www.sadc-tribunal.org)

signature: 7 August 2000 (source: SADC)

ratification: 2 October 2001 (source: SADC; Ministry of Foreign Affairs)

SADC Agreement Amending the Protocol on the Tribunal, 2002

entered into force within SADC on 3 October 2002 (source: SADC)

signature: 3 October 2002 (source: SADC; www.sadc-tribunal.org)

SADC Agreement Amending the Protocol on the Tribunal, 2007

entered into force within SADC on 17 August 2007 (source: SADC)

signature: 17 August 2007 (source: SADC; www.sadc-tribunal.org)

SADC Agreement Amending Article 6 of the Protocol on Tribunal, 2008

entered into force within SADC on 17 August 2008 (source: SADC)

signature: 17 August 2008 (source: SADC; www.sadc-tribunal.org)

Note:

In the original 1992 SADC Treaty Article 16 on the Tribunal stated:

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.

2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol adopted by the Summit.

3. Members of the Tribunal shall be appointed for a specified period.

4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.

5. The decisions of the Tribunal shall be final and binding.

The 2000 SADC Summit adopted a Tribunal Protocol which included requirements that it must be ratified in Article 35. It was also specified in Article 38 that the Protocol would “come into force” only after two thirds of SADC Members had ratified it. However, after the underlying SADC Treaty was amended in 2001, Article 16 on the Tribunal stated:

1. The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.

2. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit.

3. Members of the Tribunal shall be appointed for a specified period.

4. The Tribunal shall give advisory opinions on such matters as the Summit or the Council may refer to it.

5. The decisions of the Tribunal shall be final and binding.

As a result, the 2000 Tribunal Protocol came into force on 14 August 2001, the effective date of the amendments to the SADC Treaty.

In 2002, to end any uncertainty and to bring the Tribunal Protocol in line with the 2001 amendments to the SADC Treaty, the SADC Summit accepted an amendment to the Tribunal Protocol to cancel its requirement for ratification by Member States, deleting Articles 35 and 38.

Similarly, Article 37 of the 2000 Tribunal Protocol makes the following provision for amendments:

1. Any State which is a Party to this Protocol may propose an amendment thereto.

2. Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all States of the proposed amendment or amendments at least thirty (30)

days in advance of consideration of the amendment by the Committee of Ministers. Such period of notice may be waived by the States.

3. *An amendment to this Protocol shall be adopted by a decision of three (3) quarters of all the members of the Summit who are Parties to this Protocol, and shall become effective subject to Article 36 of this Protocol.*

After the 2002 amendments, Article 37 read as follows:

1. *Any Member State may propose an amendment to this Protocol.*
2. *Proposals for amendment to this Protocol may be made to the Executive Secretary who shall duly notify all Member States of the proposed amendments at least thirty (30) days in advance of consideration of the amendment by Member States but such period of notice may be waived by Member States.*
3. *Amendments to this Protocol shall be adopted by a decision of three quarters of all the Members of the Summit and shall become effective within thirty (30) days after such adoption.*

www.sadc-tribunal.org/docs/Protocol_on_Tribunal_and_Rules_thereof.pdf
www.thestandard.co.zw/opinion/21583-chinamasa-wrong-on-sadc-tribunal-pull-out.html

Articles: Oliver C Ruppel and Francois X Bangamwabo, “The SADC Tribunal: a legal analysis of its mandate and role in regional integration”, in Anton Boesl and Trudi Hartzenberg, eds, *Monitoring Regional Integration in Southern Africa Yearbook 2008*, Konrad Adenauer Stiftung, available at www.kas.de/upload/auslandshomepages/namibia/MRI2008/MRI2008_08_Ruppel.pdf ; Karin Klazen, “Towards a Southern African Development Community: The SADC Tribunal and its recent cases”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available at www.namibialawjournal.org.

See also *Criminal Procedure Act 51 of 1977* (**CRIMINAL LAW AND PROCEDURE**).

See also *Extradition Act 11 of 1996* (**CRIMINAL LAW AND PROCEDURE**).

See also **EVIDENCE**.

See also **JUDGES**.

See also *Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933* (re: execution of judgements in respect of immovable property) (**LAND**).

See also **LAW**.

See also **LEGAL PRACTITIONERS**.