



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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No. 755

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 147

1993

**PROMULGATION OF ACT OF
PARLIAMENT**

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

No. 26 of 1993: Criminal Procedure Amendment Act, 1993.

**CRIMINAL PROCEDURE AMENDMENT
ACT, 1993**

EXPLANATORY NOTE:

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Criminal Procedure Act, 1977, so as to make provision for the Prosecutor-General or other prosecutor to appeal against any decision given in favour of, including any resultant sentence imposed upon, or order made in respect of, an accused in criminal cases; to make further provision for an accused to appeal against any decision given by the High Court on appeal in favour of the Prosecutor-General or other prosecutor in criminal cases; and to provide for matters incidental thereto.

(Signed by the President on 15 November 1993)

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

Substitution of section 310 of Act 51 of 1977.

1. The following section is hereby substituted for section 310 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act):

"Appeal from lower court by Prosecutor-General or other prosecutor.

310. (1) The Prosecutor-General or, if a body or a person other than the Prosecutor-General or his or her representative, was the prosecutor in the proceedings, then such other prosecutor, may appeal against any decision given in favour of an accused in a criminal case in a lower court, including -

- (a) any resultant sentence imposed or order made by such court;
- (b) any order made under section 85(2) by such court,

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to the High Court, provided that an application for leave to appeal has been granted by a single judge of that court in chambers.

(2) (a) A written notice of an application referred to in subsection (1) shall be lodged with the registrar of the High Court by the Prosecutor-General or other prosecutor, within a period of 30 days of the decision, sentence or order of the lower court, as the case may be, or within such extended period as may on application on good cause be allowed.

(b) The notice shall state briefly the grounds for the application.

(3) The Prosecutor-General or other prosecutor shall, at least 14 days before the day appointed for the hearing of the application, cause to be served by any police official or the deputy sheriff upon the accused in person a copy of the notice, together with a written statement of the rights of the accused in terms of subsection (4): Provided that if any police official or the deputy sheriff is not able so to serve a copy of the notice, it may be served in any other manner that may on application be allowed.

(4) The accused may, within a period of 10 days of the serving of such a notice upon him or her, or within such extended period as may on application on good cause be allowed, lodge a written submission with the registrar, and the registrar shall submit it to the judge who is to hear the application, and shall send a copy thereof to the Prosecutor-General or other prosecutor.

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(5) (a) Any decision of a judge under subsection (1) in respect of an application for leave to appeal referred to in that subsection, may be set aside by the Supreme Court on application made to it by the Prosecutor-General or other prosecutor or the accused within 21 days after the decision was given, or within such extended period as may on application on good cause be allowed.

(b) Any application to the Supreme Court under paragraph (a) shall be submitted by petition addressed to the Chief Justice, and thereupon the provisions of section 316(6), (7), (8), (9) and (10) shall apply *mutatis mutandis* in respect thereof.

(6) Subject to the provisions of this section, section 309 shall apply *mutatis mutandis* with reference to an appeal in terms of subsection (1).

(7) If an application for leave to appeal referred to in subsection (1) or an application to set aside a decision referred to in subsection (5) or an appeal in terms of this section brought by the Prosecutor-General is refused or dismissed, the judge or the court, as the case may be, may order that the State pay the accused concerned the whole or any part of the costs to which such accused may have been put in opposing any such application or appeal, taxed according to the scale in civil cases of the court concerned.

(8) For the purposes of the provisions of paragraph (a) of subsection (1), any reference in that subsection to an accused shall be deemed to include a

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reference to any person, other than the accused, who claims that any right is vested in him or her in respect of any matter or article declared forfeited by the court as if it were a decision by that court, and such appeal may be heard either separately or jointly with an appeal against a decision as a result whereof the declaration of forfeiture was made.”.

Substitution of section
311 of Act 51 of 1977.

2. The following section is hereby substituted for section 311 of the principal Act:

“Appeal to
Supreme Court.

311. (1) Where the High Court on appeal, whether brought by the Prosecutor-General or other prosecutor or the accused, gives a decision in favour of the Prosecutor-General or other prosecutor or the accused against whom the decision is given, as the case may be, may appeal to the Supreme Court which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from, and if the matter was brought before the High Court in terms of -

- (a) section 309(1), reinstate the conviction, sentence or order of the lower court appealed from either in its original form or in such modified form as the Supreme Court may consider desirable; or
- (b) section 310(1), give such decision or take such action as the High Court ought, in the opinion of the Supreme Court, to have given or taken,

including any action under section 309(3).

(2) The provisions of section 316 in respect of any application or appeal by an accused referred to in that section,

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shall apply *mutatis mutandis* with reference to an appeal in terms of subsection (1).

(3) If an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the Prosecutor-General is dismissed or refused, the court or judge or judges may order that the State pay the accused concerned the whole or any part of the costs to which such accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of the court concerned.”

Amendment of section 316 of Act 51 of 1977, as amended by section 7 of Act 29 of 1985.

3. Section 316 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1A) of the following paragraph:

“(a) No appeal shall lie against the judgement or order of a full court given on appeal to it in terms of section 315(3), except with the special leave of the [Appellate Division] Supreme Court on application made to it by the accused or, where a full court has for the purposes of such judgement or order given a decision in favour of the accused [on a question of law] on application on the grounds of such decision made to [that division] the Supreme Court by the [attorney-general] Prosecutor-General or other prosecutor against whom the decision was given.”

Insertion of section 316A in Act 51 of 1977.

4. The following section is hereby inserted in the principal Act after section 316:

“Appeal from High Court by Prosecutor-General or other prosecutor.

316A. (1) The Prosecutor-General or, if a body or person other than the Prosecutor-General or his or her representative, was the prosecutor in the proceedings, then such other prosecutor, may appeal against any decision given in favour of an accused in a criminal case in the High Court, including -

(a) any resultant sentence imposed or order made by such court;

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(b) any order made under section 85(2) by such court,

to the Supreme Court.

(2) The provisions of section 316 in respect of an application or appeal by an accused referred to in that section, shall apply *mutatis mutandis* with reference to an appeal in terms of subsection (1).

(3) If an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the Prosecutor-General is dismissed or refused, the court or judge or judges may order that the State pay the accused concerned the whole or any part of the costs to which such accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of the court concerned.

(4) For the purposes of the provisions of paragraph (a) of subsection (1), any reference in that subsection to an accused shall be deemed to include a reference to any person, other than the accused, who claims that any right is vested in him or her in respect of any matter or article declared forfeited by the court as if it were a decision by that court, and such appeal may be heard either separately or jointly with an appeal against a decision as a result whereof the declaration of forfeiture was made."

Substitution of section 320 of Act 51 of 1977.

5. The following section is hereby substituted for section 320 of the principal Act:

"Report of trial judge to be furnished on appeal.

320. The judge or judges, as the case may be, of **[any court] the High Court before whom a person [is convicted] was on trial for any offence shall, in the case of an appeal under section 316 or 316A or of an application for a special entry under section 317 or the**

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reservation of a question of law under section 319 or an application to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his or her or their opinion upon the case or any point arising in the case, and such report, which shall form part of the record, shall without delay be forwarded by the registrar to the registrar of the court of appeal.”.

Amendment of section
321 of Act 51 of 1977.

6. Section 321 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The execution of the sentence of [**a superior court**] the High Court shall not be suspended by reason of any appeal [**against a conviction**] or by reason of any question of law having been reserved for consideration by the court of appeal, unless -”.

Amendment of section
322 of Act 51 of 1977.

7. Section 322 of the principal Act is hereby amended -

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“In the case of an appeal [**against a conviction**] or of any question of law reserved, the court of appeal may -”;

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

“(2) Upon an appeal under section 316 or 316A against any sentence, the court of appeal may confirm the sentence or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) Where the Prosecutor-General or other prosecutor has appealed or a question of law has been reserved on the application of a prosecutor, in the case of an acquittal, and the court of appeal

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has given a decision in favour of the Prosecutor-General or such prosecutor, the court of appeal may order that such of the steps referred to in section 324 be taken as the court may direct.”

Saving with respect to pending appeals.

8. No provision of this Act shall affect an appeal or any proceedings in connection therewith noted in terms of any law before the commencement of such provision, and any such appeal shall be continued and concluded in every respect as if this Act had not been passed.

Short title.

9. This Act shall be called the Criminal Procedure Amendment Act, 1993.
