



**THE MAGISTRATES' COURTS
(AMENDMENT) BILL 2007**



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A

BILL

Entitled

AN ACT TO AMEND THE MAGISTRATES' COURTS ACT, (CAP. 20).

ENACTED by the National Parliament of Solomon Islands.

THE MAGISTRATES' COURTS (AMENDMENT) BILL 2007

ARRANGEMENT OF CLAUSES

CLAUSE:

1. SHORT TITLE AND COMMENCEMENT
2. REPEAL AND REPLACEMENT OF SECTIONS 3 AND 4
3. REPEAL AND REPLACEMENT OF SECTION 7, 8, 9 AND 10
4. INSERTION OF NEW SECTION 10A
5. REPEAL AND REPLACEMENT OF SECTION 19
6. REPEAL AND REPLACEMENT OF SECTION 38
7. TRANSITIONAL AND SAVINGS RELATING TO APPEALS

Short title
and commence-
ment

1. This Act may be cited as the Magistrates' Courts (Amendment) Act, 2007, and shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

Repeal and
replacement of
sections 3 and 4
of Cap 20

2. The Magistrates' Courts Act (hereinafter referred to as the "principal Act") is hereby amended by repealing sections 3 and 4 and substituting therefor the following new sections as sections 3 and 4 respectively -

" Establish-
ment of
Magistrates'
Court

3. (1) There is hereby established a single court of summary jurisdiction, subordinate to the High Court, to be known as the Magistrates' Court of Solomon Islands.

(2) There shall be appointed to the Magistrates' Court, established under subsection (1), Magistrates at one of three levels, with different levels of responsibility and jurisdiction to hear and determine cases. The levels of Magistrates shall be Principal Magistrate, Magistrate First Class and Magistrate Second Class.

(3) The Chief Justice shall have overall administrative responsibility of the Magistrates' Court and may by direction published in the Gazette appoint the place at and the district in which the Magistrates' Court shall be held and may direct that the Magistrates' Court be organised into administrative districts.

(4) Any power, authority, function or discretion vested in a Magistrates' Court by this or any other Act or law shall be possessed and may be exercised by a Magistrate having adequate jurisdiction.

(5) A Magistrates' Court shall be a Court of Record.

Territorial
limits of juris-
diction of
Magistrates'
Courts

4. (1) Principal Magistrates, Magistrates First Class and Magistrates Second Class shall be entitled to sit and exercise jurisdiction throughout Solomon Islands.

(2) The jurisdiction of each Magistrates' Court shall extend over all territorial waters as well as over inland waters."

Repeal and replacement of sections 7, 8, 9, and 10

3. The principal Act is hereby amended by repealing sections 7, 8, 9 and 10 and substituting therefor the following new sections as sections 7, 8, 9 and 10 respectively -

"Appointment of Magistrates

7. (1) Any person appointed pursuant to the Constitution to be a Magistrate may be empowered by the Chief Justice by warrant under his hand and the seal of the High Court to hold a Principal Magistrates' Court or a Magistrates' Court of the First Class or of the Second Class and to exercise all the powers and jurisdiction conferred by this or any other Act upon a Principal Magistrates' Court or a Magistrates' Court of the First Class or of the Second Class, as the case may be:

Provided that the Chief Justice may, by the terms of any such warrant restrict the powers to be exercised by any such person to such extent as he may think fit, and thereupon such person shall have and exercise the powers and jurisdiction conferred by this or any other Act only to the extent authorised.

(2) There is hereby established the office of Chief Magistrate.

(3) The Chief Magistrate shall be appointed by the Judicial and Legal Service Commission.

(4) Subject to any express provisions of any other Act, the Chief Magistrate shall in addition to exercising functions as a Principal Magistrate direct the distribution of business in the Magistrates' Court and may delegate this power to the Deputy Chief Magistrate in writing.

(5) The Chief Magistrate may require specified functions of Magistrates to be exercised by specified Magistrates or Magistrates of a specified class and any Magistrate of whom a requirement is made under this subsection shall comply with the requirement.

(6) There shall be a Deputy Chief Magistrate who shall be appointed by the Judicial and Legal Service Commission to assist the Chief Magistrate.

(7) The Deputy Chief Magistrate shall, in addition to exercising functions as a Principal Magistrate perform such other functions as the Chief Magistrate may direct.

(8) The Deputy Chief Magistrate shall act in the office of the Chief Magistrate during -

(a) the absence from duty of the Chief Magistrate or for any reason whatsoever; or

(b) where there is a vacancy in the office of the Chief Magistrate.

(9) Any act, matter or thing done by the Deputy Chief Magistrate while the Deputy Chief Magistrate is acting in the office of the Chief Magistrate shall be deemed to have been done by the Chief Magistrate.

Transitional provisions relating to serving Magistrates

8. Notwithstanding the repeal of section 7, any person appointed pursuant to the repealed section to be a Magistrate shall hold or act in that office or the corresponding judicial office as if the holder of that office had been appointed to do so in accordance with the provisions of this section and shall be deemed to have taken any oaths required upon such appointment in accordance with the required law.

Jurisdiction

9. Subject to the terms of his appointment, every Magistrate may exercise jurisdiction throughout Solomon Islands but may

subject to any direction made by the Chief Justice, be assigned by the Chief Magistrate to any particular district or districts and transferred from one district to another.

Procedure where Magistrate is unable to act on any cause or matter by reason of personal interest, etc

10. Where a Magistrate is a party to ~~to~~ any cause or matter, or is unable, from personal interest or any other sufficient reason, to adjudicate on any cause or matter, subject to any direction made by the Chief Justice, the Chief Magistrate shall direct some other Magistrate to deal with the case."

Insertion of new section 10A

4. The principal Act is hereby amended by adding after section 10 the following new section as section 10A -

"Records and returns

10A. Every Magistrates' Court shall keep such written records and furnish such returns as may be provided by this Act or as the Chief Justice may from time to time direct. The Chief Magistrate shall collate the returns of each Magistrates' Court and report to the Chief Justice each year as required by the Chief Justice."

Repeal and replacement of section 19

5. The principal Act is hereby amended by repealing section 19 and substituting therefor the following new section -

"Civil jurisdiction

19. (1) In civil causes and matters a Magistrates' Court, in addition to any other jurisdiction conferred upon it by any other Act or law, shall have jurisdiction within the limits of the district within which it is situated -

(a) in all personal suits including counter-claim and set-off, whether arising from contract, or from tort, or from both, where the value of the property, the debt or damage claimed, whether as balance of account or otherwise, is not more than twenty thousand dollars or, in the case of a Principal Magistrates' Court, fifty thousand dollars or up to one hundred thousand dollars where the parties agree to a higher limit;

(b) in all suits before a Principal Magistrate between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed the sum of fifty thousand dollars or up to one hundred thousand dollars where the parties agree to a higher limit and in all suits before a magistrate between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed the sum of five thousand dollars in the case of a Magistrates' Court of the Second Class, and the sum of twenty thousand dollars in the case of a Magistrates' Court of the First Class.

(c) to appoint guardians of infants and to make orders for the custody of infants;

(d) to grant in any suit instituted in the Magistrates' Court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts;

(e) in all claims for relief by way of interpleader in respect of land or other property attached in execution of a decree made by any Magistrate:

Provided that jurisdiction conferred by this paragraph shall not, unless the parties consent, be exercisable in respect of land or other property exceeding five thousand dollars in value in the case of a Magistrates' Court of the Second Class or, twenty thousand dollars in the case of a Magistrates' Court of the First Class or, fifty thousand dollars in the case of a Principal Magistrates' Court;

(f) to enforce by attachment and sale or delivery any order or judgment made by the Magistrates' Court or any other competent court;

(g) to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or installment of any debt due from him, in pursuance of any order or judgment of the Magistrates' Court or any other competent court:

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the Magistrates' Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same:

For the purposes of this paragraph, any Magistrates' Court may direct any debt due from any person, in pursuance of any order or judgment of that Court, or any other competent court, to be paid by installments, and may, from time to time vary or rescind such order.

(2) In subsection (1) the expression "competent court" shall include the High Court and any Local Court.

(3) Notwithstanding the provisions of subsection (1) no Magistrates' Court shall have jurisdiction -

(a) in suits wherein the title to any right, duty, or office is in question, or

(b) in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or

(c) in suits wherein the legitimacy of any person is in question; or

(d) in suits wherein the validity or dissolution of any marriage is in question; or

(e) in any action for malicious prosecution, defamation, seduction or breach of promise of marriage.

(4) Magistrates' Court of the Second Class shall have and exercise jurisdiction in civil cases similar in all respects to that set out in subsection (1)(a) save that such jurisdiction, in cases where the subject-matter in dispute is capable of being estimated at a money value, shall be limited to causes in which such subject-matter does not exceed five thousand dollars in amount or value.

(5) Where in any action the debt or demand consists of a balance not exceeding the jurisdictional limit of a Magistrates' Court, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, a Magistrates' Court shall have jurisdiction and power to hear and determine such action within the limits of its jurisdiction and power.

(6) Subject to the provisions of the Land and Titles Act, if, in any suit or civil cause or matter before a Magistrates' Court, the title to any land is disputed, or the question of the ownership thereof arises, the Court may adjudicate thereon if all the parties interested consent; but if they do not consent the Magistrate exercising the jurisdiction of the Court shall apply to the High Court to transfer such cause or matter to itself."

Repeal and
replacement of
section 38

6. The principal Act is hereby amended by repealing section 38 and substituting therefor the following new section -

“Transfer of cases by a judge
38. (1) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter before a Magistrates’ Court to any other Magistrates’ Court or to the High Court, and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.

(2) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter before the High Court to any Magistrates’ Court and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein if any of the following circumstances apply -

- (a) the case is not already commenced or part-heard before the High Court;
- (b) the parties involved consent; or
- (c) the court considers that it is in the interest of justice to so order.

(3) The power of transfer shall be exercised by means of an order under the hand of a Judge and the seal of the High Court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken therein, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such order be in dependence.

(4) The High Court may at all times cancel, alter, add to or amend any order under the proceeding subsection.

(5) The High Court may, if it appears expedient, in the first instance cause the contents of any such order to be electronically conveyed and until receipt of the order the electronic communication shall have the same validity and effect as if it were the order.

(6) Wherever a civil case is transferred in accordance with this section, the pleadings filed to that point shall be taken to be validly filed in the court to which the matter is transferred.”

Transitional and
savings relating
to
Appeals

7. The principal Act is hereby amended by inserting immediately after section 45 the following new section as section 45A -

“Pending
Appeals

45A. All appeals commenced or pending under the provisions of this Part, prior to the commencement of this Act, shall continue on and after that day, subject to such qualifications, modifications and adaptations as may be necessary to bring them into conformity with the provisions of sections 3,4,7,8,9 and 10A.”

THE MAGISTRATES' COURTS (AMENDMENT) BILL 2007

Objects and Reasons

The present Magistrates' Court Act was first enacted in 1961 to provide for the constitution of Magistrates' Courts, and for regulating their duties and jurisdiction and for appeals from Magistrates' Courts.

The Justice Sector Consultation Committee headed by the Chief Justice has examined the present provisions in the light of various developments that have taken place since the enactment of the legislation.

The amendments reflect the reforms proposed by the committee to substantially increase the Court jurisdictional limits of the Magistrate's Courts. Whilst the present provisions, permit the Chief Justice to increase limits, it has to be done in respect of each magistrate. The increases proposed are substantial, that it is considered desirable that it be done by an amendment to the Act.

The Bill also seeks to formally create the posts of Chief Magistrate and Deputy Chief Magistrate, and to give statutory recognition to the organisation of the Magistrates' Courts. Under the revised set up a single Magistrates' Court is established with magistrates being able to serve throughout Solomon Islands. This would ensure a proper allocation of court resources and provide greater management flexibility. The creation of formal roles for the Chief Magistrate and Deputy Chief Magistrate will ensure that the Court has the capacity to administer itself whilst being responsible to the Chief Justice. This would enhance judicial independence and permit more efficient case management practices to be adopted.

This Bill, therefore, seeks to provide for the creation of one magistrates court for Solomon Islands replacing the existing three court divisions of Principal Magistrates Courts, and Magistrates Courts of the First Class and Magistrates Courts of the Second Class, and confer on such courts enhanced jurisdiction.

**MINISTER OF POLICE, NATIONAL SECURITY,
JUSTICE AND LEGAL AFFAIRS**

PART II
CONSTITUTION OF THE COURTS

Establishment of
Magistrates'
Courts
16 of 1976, s. 3
6 of 1979, s. 2

3. (1) There shall be and are hereby constituted throughout Solomon Islands courts of summary jurisdiction, to be known respectively as Principal Magistrates' Courts and Magistrates' Courts of the First Class or of the Second Class subordinate to the High Court.

(2) There shall be in each district such Magistrates' Courts as the Chief Justice may direct.

(3) Any power, authority, function or discretion vested in a Magistrate's Court by this or any other Act or law shall be

possessed and may be exercised by a Magistrate having adequate jurisdiction.

(4) Every Magistrate's Court shall be a Court of Record.

4. (1) A Principal Magistrate's Court shall exercise jurisdiction throughout Solomon Islands.

(2) Subject to any express provisions of this or any other Act, every Magistrate's Court shall exercise jurisdiction within the limits of the district within which it is situated:

Provided that when there is more than one Magistrate's Court in the same district, the Chief Justice may direct the distribution of business between such Courts.

(3) The jurisdiction of each Magistrate's Court shall extend over any territorial waters adjacent to the district in which it is situated as well as over inland waters whether within or adjacent to such district.

Territorial limits
of jurisdiction of
Magistrates'
Courts
16 of 1976, s. 4

Civil jurisdiction
4 of 1969, s. 6
8 of 1971, s. 22
LN 46A of 1978
16 of 1976, s. 8
6 of 1979, s. 4

19. (1) In civil causes and matters a Magistrate's Court, in addition to any other jurisdiction conferred upon it by any other Act or law, shall have jurisdiction within the limits of the district within which it is situated—

(a) in all personal suits including counter-claim and set-off, whether arising from contract, or from tort, or from both, where the value of the property, the debt or damage claimed, whether as balance of account or otherwise, is not more than one thousand dollars or, in the case of a Principal Magistrate's Court, two thousand dollars;

(b) in all suits between landlord and tenant for possession of any lands or houses claimed under agreement or refused to be delivered up, where the annual value or rent does not exceed the sum of five hundred dollars or, in the case of a Principal Magistrate's Court, two thousand dollars;

(c) to appoint guardians of infants and to make orders for the custody of infants;

(d) to grant in any suit instituted in the Magistrate's Court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts;

(e) in all claims for relief by way of interpleader in respect of land or other property attached in execution of a decree made by any Magistrate:

Provided that jurisdiction conferred by this paragraph shall not, unless the parties consent, be exercisable in respect of land or other property exceeding five hundred dollars in value or, in the case of a Principal Magistrate's Court, two thousand dollars in value;

(f) to enforce by attachment and sale or delivery any order or judgment made by the Magistrate's Court or any other competent court;

(g) to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him, in pursuance of any order or judgment of the Magistrate's Court or any other competent court:

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the Magistrate's Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same:

For the purposes of this paragraph, any Magistrate's Court may direct any debt due from any person, in pursuance of any order or judgment of that Court, or any other competent court, to be paid by instalments, and may, from time to time vary or rescind such order.

(2) In subsection (1) the expression "competent court" shall include the High Court and any Local Court.

(3) Notwithstanding the provisions of subsection (1) no Magistrate's Court shall have jurisdiction—

(a) in suits wherein the title to any right, duty, or office is in question; or

(b) in suits wherein the validity of any will or other testamentary writing or of any bequest or limitation under any will or settlement is in question; or

(c) in suits wherein the legitimacy of any person is in question; or

(d) in suits wherein the validity or dissolution of any marriage is in question; or

(e) in any action for malicious prosecution, defamation, seduction or breach of promise of marriage.

(4) Magistrates' Courts of the Second Class shall have and exercise jurisdiction in civil cases similar in all respects to that set out in subsection (1) save that such jurisdiction, in cases where the subject-matter in dispute is capable of being estimated at a money value, shall be limited to causes in which such subject-matter does not exceed two hundred dollars in amount or value.

(5) Where in any action the debt or demand consists of a balance not exceeding two thousand dollars, after an admitted set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, a Magistrate's Court shall have jurisdiction and power to hear and determine such action within the limits of its jurisdiction and power.

Cap. 133

(6) Subject to the provisions of the Land and Titles Act, if, in any suit or civil cause or matter before a Magistrate's Court, the title to any land is disputed, or the question of the ownership thereof arises, the Court may adjudicate thereon if all the parties interested consent; but if they do not consent the Magistrate exercising the jurisdiction of the Court shall apply to the High Court to transfer such cause or matter to itself.

38.—(1) The High Court may at any time and at any stage thereof before judgment transfer any civil cause or matter before a Magistrate's Court to any other Magistrate's Court or to the High Court, and such cause may be transferred either entirely or in respect of any part thereof or procedure required to be taken therein.

Transfer of cases
by a Judge

(2) The power of transfer shall be exercised by means of an order under the hand of a Judge and the seal of the High Court, and may apply either to any particular cause or causes, matter or matters in dependence either entirely or in respect of any part thereof or procedure required to be taken therein, or generally to all such causes and matters as may be described in such order, and in the latter case may extend to future causes or matters as well as to such as may at the time of making such order be in dependence.

(3) The High Court may at all times cancel, alter, add to or amend any order under the preceding subsection.

(4) The High Court may, if it appear expedient, in the first instance cause the contents of any such order to be telegraphed, and any such telegram shall, until receipt of the said order have the same validity and effect as if it were the said order.

45. Appeals in criminal causes shall lie to the High Court from any Magistrate's Court in accordance with any other Act for the time being in force relating to criminal procedure and of any Rules of Court made under the provisions of section 90 of the Constitution.

Criminal appeals
LN 46A of 1978