



**Tuvalu**

# **SUPERIOR COURTS ACT 1987**

**Act 9 of 1987**





Tuvalu

## SUPERIOR COURTS ACT 1987

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Tuvalu

## SUPERIOR COURTS ACT 1987

Act 9 of 1987

**AN ACT TO MAKE PROVISION WITH RESPECT TO THE JURISDICTION, POWERS AND AUTHORITIES OF THE HIGH COURT OF TUVALU AND THE COURT OF APPEAL FOR TUVALU; TO MAKE PROVISION WITH RESPECT TO APPEALS TO THE SOVEREIGN IN COUNCIL; AND FOR CONNECTED PURPOSES**

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [5th February 1988]

### PART I - PRELIMINARY

#### 1 Short title

This Act may be cited as the Superior Courts Act 1987.

#### 2 Interpretation

(1) In this Act, unless the context otherwise requires —

“**bailiff**” means a bailiff appointed under section 18(4);

“**decision**” includes judgment, decree or order;

“**Judge of the High Court**” or “**Judge**” means the Chief Justice or a Judge of the High Court appointed under section 123 of the Constitution;

“**Judge of Appeal**” means a Judge of Appeal appointed under section 8;

“**Justice**” means a Judge or Judge of Appeal;

“**Rules of Court**” means Rules of Court made under section 22;

“**Rules of Court Committee**” means the committee established by section 22(1);

“**Sovereign in Council**” has the meaning assigned by section 2(1) of Schedule 1 to the Constitution.

- (2) A reference in this Act to “any other law” includes a reference to the Constitution, except where the context otherwise requires.

*Schedule to 1 of 1986*

## PART II - THE HIGH COURT OF TUVALU

### 3 Jurisdiction of High Court

- (1) The High Court has such jurisdiction as is, or as may from time to time be, vested in it by this Act or any other law.

- (2) The jurisdiction of the High Court includes —

(a) unlimited original jurisdiction in relation to civil and criminal matters;

(b) jurisdiction —

(i) in all proceedings by way of matrimonial causes under the Matrimonial Proceedings Act 1984;

*8 of 1984*

(ii) in respect of proceedings for the grant of a decree of nullity of marriage; and

(iii) in relation to the guardianship, custody and wardship of children;

(c) such jurisdiction as may be vested in it by any other law in respect of —

(i) admiralty and maritime matters; or

(ii) probate and administration;

(d) supervisory jurisdiction over all inferior courts and tribunals and in relation to administrative decisions; and

(e) such appellate jurisdiction (including jurisdiction in relation to reserved questions of law and cases stated) as may be conferred upon it by any other law.

- (3) Nothing in this section —
- (a) affects the operation of any other law which states or restricts, or regulates the exercise of, the jurisdiction of the High Court in relation to any matter;
  - (b) affects the operation of section 43(1) of the Magistrates' Courts Act (Criminal appeals);  
*Cap.2*
  - (c) operates to prevent any other court or tribunal from exercising concurrently with the High Court any jurisdiction conferred by law on the court or tribunal; or
  - (d) shall be construed as conferring on the High Court jurisdiction in any civil cause or matter in respect of which jurisdiction is conferred on a lands court under the Native Lands Act. *Cap. 22*

#### **4 Exercise of jurisdiction of High Court**

- (1) A single Judge may exercise all or any part of the jurisdiction of the High Court.
- (2) The jurisdiction of the High Court shall be exercised —
  - (a) in respect of its criminal jurisdiction, in the manner provided by this Act, the Criminal Procedure Code and any other law; and  
*Cap.7*
  - (b) in respect of any other jurisdiction, in the manner provided by this Act, Rules of Court and any other law.

#### **5 Powers and authorities of High Court**

- (1) Subject to this section, the High Court, in relation to matters in which it has original jurisdiction under this or any other law, may —
  - (a) make orders or give directions of such kinds, and issue, or direct the issue of, writs of such kinds, as it considers appropriate or to be necessary in the interests of justice;
  - (b) without limiting the generality of paragraph (a), make orders to prevent abuse of the process of the law;
  - (c) make binding declarations of right, whether or not any consequential relief is or could be sought; and
  - (d) make declarations with respect to the legitimacy, legitimation, illegitimacy or paternity of an individual.

- (2) Without limiting the generality of subsection (1) but subject to this section, the High Court, in relation to its jurisdiction referred to in section 3(2) (a), (b) (iii), (d) or (e) may issue, or direct the issue of, such orders or writs in the nature of —
- (a) habeas corpus (to determine whether detention is lawful);
  - (b) certiorari (to quash or cancel a decision);
  - (c) mandamus (to order an action to be done);
  - (d) prohibition (to stop an action being done),
- as it considers appropriate (the words in brackets in paragraphs (a) to (d) being illustrative only and not definitive or exhaustive).
- (3) For the purposes of hearing and determining any appeal within its jurisdiction and the amendment, execution or enforcement of any decision on any such appeal, and for the purposes of any other authority expressly or by necessary implication given to the High Court by any other law, the High Court has all the powers, authorities and jurisdiction vested in the Court by this or any other law, including —
- (a) the powers, authorities and jurisdiction —
    - (i) vested in the court from which the appeal is brought; or
    - (ii) prescribed by Rules of Court; and
  - (b) the power, authority and jurisdiction to —
    - (i) affirm, reverse or modify the decision appealed from;
    - (ii) give such judgment, or make such order, as, in all the circumstances, it thinks fit, or refuse to make an order;
    - (iii) set aside the decision appealed from, in whole or in part, and remit the proceedings to the court, tribunal or body from which the appeal was brought for further hearing and determination, subject to such directions as the Court thinks fit; or
    - (iv) grant a new trial in any case in which there has been a trial, on any ground upon which it is appropriate to do so.
- (4) This section is subject to any other law which restricts, or regulates the exercise of, the powers, authorities and jurisdiction of the High Court.
- (5) Where, under section 6(3) (b), the High Court transacts any court business outside Tuvalu, the Court has the powers and authorities under this section which are necessary or expedient for the transaction of that business.

## **6 Sittings of High Court**

- (1) Subject to this section, the registry of the High Court shall be open throughout the year for the transaction of court business.
- (2) The Chief Justice may, by order, regulate or restrict the transaction of court business during any vacation period, or other period specified in the order.
- (3) The High Court may —
  - (a) sit or transact court business at any place in Tuvalu;
  - (b) transact court business of such kind as may be prescribed in Rules of Court, at any place outside Tuvalu appointed by the Chief Justice.
- (4) The Registrar of the High Court shall ordinarily publish in advance notice of all sittings of the High Court.

## **PART-III - THE COURT OF APPEAL FOR TUVALU**

### **7 Composition of Court of Appeal**

- (1) The Court of Appeal consists of the following Justices —
  - (a) not less than 3 Judges of Appeal; and
  - (b) the Judges of the High Court.
- (2) The Court of Appeal is duly constituted by any 3 Justices and, when so constituted, the most senior, by reference to date of appointment, of the Justices sitting shall preside.

### **8 Appointment of Judge of Appeal**

- (1) A person is not qualified for appointment as a Judge of Appeal unless he is qualified for appointment as a Judge of the High Court.
- (2) A Judge of Appeal shall be appointed by the Governor General, acting in accordance with the advice of the Cabinet, on such terms as are specified in the instrument of his appointment.
- (3) A Judge of Appeal may be appointed under subsection (2) for a period of time or for the hearing and determination of any appeal or appeals.

## 9 Jurisdiction of Court of Appeal

- (1) Except as provided in section 135(1) (a) or (b) of the Constitution, and subject to subsection (2) and to any other law which restricts, or regulates the exercise of, its jurisdiction —
  - (a) the Court of Appeal has jurisdiction to hear and determine appeals from decisions of the High Court, whether in the exercise of its appellate or any other jurisdiction; and
  - (b) an appeal lies as of right to the Court of Appeal from any such decision of the High Court.
- (2) No appeal shall lie to the Court of Appeal —
  - (a) from an order allowing an extension of time for appealing from a decision;
  - (b) from an order of a Judge giving unconditional leave to defend an action;
  - (c) from a decision which, by an Act, is declared to be final;
  - (d) without the leave of the Court —
    - (i) from an order of the High Court made with the consent of the parties or as to costs only; or
    - (ii) from any interlocutory order or judgment made or given by the High Court, except in such cases as are prescribed by Rules of Court; or
  - (e) in such cases as are prescribed by Rules of Court.

## 10 Exercise of jurisdiction of Court of Appeal

- (1) Notwithstanding section 7(2), a single Justice may exercise any power or authority vested in the Court of Appeal not involving the decision of the matter before the Court, save that —
  - (a) in criminal matters, if any such Justice refuses or grants an application in the exercise of any such power or authority, any person affected thereby shall be entitled to have the application determined by the Court of Appeal as duly constituted; and
  - (b) in civil matters, any order, direction or decision made or given in pursuance of the power conferred by this subsection may be varied, discharged or reversed by the Court of Appeal as duly constituted, and the Court of Appeal, as so duly constituted, may include the single Justice concerned.
- (2) A Judge shall not sit on the hearing of an appeal —
  - (a) from any judgment which he has given; or

- (b) against a conviction or sentence if he was the Judge before whom the appellant was convicted or sentenced.
- (3) The determination of an appeal shall be according to the opinion of the majority of the Justices hearing the appeal.
- (4) The Court of Appeal may have its decision on an appeal delivered by anyone of the Justices who heard the appeal or by the Registrar of the Court of Appeal.

## **11 Powers and authorities of Court of Appeal**

For the purposes of hearing and determining any appeal within its jurisdiction and the amendment, execution or enforcement of any decision on any such appeal, and for the purposes of any other authority expressly or by necessary implication given to the Court of Appeal by any other law, the Court of Appeal has the powers, authorities and jurisdiction vested in the High Court for the purposes of hearing and determining any appeal within its jurisdiction.

## **12 Sittings of Court of Appeal**

- (1) Sittings of the Court of Appeal shall be held from time to time as occasion requires.
- (2) The Court of Appeal may sit —
  - (a) at any place in Tuvalu; or
  - (b) when authorised to do so by the Minister, after obtaining the agreement of the Chief Justice, at any place outside Tuvalu identified in the authority.
- (3) The Registrar of the Court of Appeal shall ordinarily publish in advance notice of all sittings of the Court of Appeal.

# **PART IV - APPEALS TO THE SOVEREIGN IN COUNCIL**

## **13 Right of appeal**

- (1) An appeal may be made from a decision of the Court of Appeal to the Sovereign in Council with leave of the Court of Appeal —
  - (a) in the cases referred to in section 136(1) (a) of the Constitution; or
  - (b) in the case of a final decision in —
    - (i) any civil proceedings when the matter in dispute on the appeal is of the value of \$2,000 or upwards or when the

appeal involves, directly or indirectly, a claim to or question respecting property or a right of that value or upwards; or

- (ii) proceedings for dissolution or nullity of marriage.
- (2) Nothing in this Act or any other law shall be construed as conferring on, or continuing the right of, the Sovereign to grant special leave to appeal to the Sovereign in Council from the decision of any court in Tuvalu in any civil or criminal matter.

#### **14 Further provisions**

- (1) Schedule I applies to and in relation to appeals to the Sovereign in Council.
- (2) The Rules of Court Committee may make rules amending Schedule 1.

#### **15 Enforcement**

An Order made by the Sovereign in Council on an appeal from a decision of the Court of Appeal may be enforced in like manner as a decision of that Court should or might have been executed

### **PART V - GENERAL**

#### **16 Seals**

- (1) The High Court shall have, and use as required, a seal bearing on it the Tuvalu Coat of Arms and the words “The High Court of Tuvalu”.
- (2) The Court of Appeal shall have, and use as required, a seal bearing on it the Tuvalu Coat of Arms and the words “The Court of Appeal of Tuvalu”.

#### **17 Registrar**

- (1) There shall be the office of Registrar of the High Court, which shall be an office in the public service.
- (2) The Registrar of the High Court shall perform the functions assigned by this Act or by or under any other enactment to the Registrar of the Court of Appeal.

**18 Court officers**

- (1) There shall be the office of Sheriff of the High Court, which shall be an office in the public service.
- (2) The Sheriff of the High Court —
  - (a) is charged with the service and executing of all writs, orders, warrants and process of the High Court that are directed to him;
  - (b) shall take, receive and detain all persons who are committed to his custody by the High Court, and shall discharge all such persons when directed by the Court or required by law; and
  - (c) subject to Rules of Court, shall perform the like functions for or in relation to the Court of Appeal, and for that purpose the references in paragraphs (a) or(b) to the High Court shall be deemed to be a reference to the Court of Appeal.
- (3) Every duty of the Sheriff of the High Court in execution of any process of the High Court or the Court of Appeal may be performed by such police officers, or other persons, as may be authorised by the Sheriff; and a police officer, or other person, who is in possession of any such process shall be —
  - (a) deemed to be duly so authorised; and
  - (b) for all purposes of such execution, and connected therewith, an officer of the court.
- (4) Bailiffs may be appointed by the Sheriff of the High Court, with the approval of the Registrar of the High Court.
- (5) A bailiff appointed under subsection (4) —
  - (a) shall, when directed either generally or in any particular case by the Sheriff of the High Court to do so, perform all the functions of the Sheriff; and
  - (b) shall, when directed by the Sheriff of the High Court to do so, attend the High Court or the Court of Appeal and obey all the directions of the Court for preserving order and decorum therein.

**19 Proceedings to be in public**

- (1) Subject to subsection (2), except with the consent of all the parties to the proceedings, all proceedings before the High Court or the Court of Appeal shall be held in public.
- (2) The High Court or the Court of Appeal may exclude from proceedings before the Court persons (other than the parties and their representatives)

to such extent as the Court thinks it necessary or desirable to do so on any ground such as is referred to in section 22(13) of the Constitution.

## 20 Costs

Except as otherwise provided by Rules of Court, the High Court or the Court of Appeal has jurisdiction to award costs in all proceedings before the Court.

## 21 Interest on debts, etc.

Subject to Rules of Court and if the High Court so orders, debts or damages under a decision of the High Court carry interest at the rate of 5 percent per annum (or such other rate as may be prescribed by Rules of Court) from the date of the decision or from such later date as may be so prescribed.

## 22 Rules of Court

- (1) There shall be a Rules of Court Committee which shall consist of —
  - (a) the Chief Justice, who shall be chairman; and
  - (b) the Attorney-General,and the Committee may co-opt such other persons, not exceeding 2 in number, as it considers suitably qualified, to be members of the Committee.
- (2) The Chief Justice and the Attorney-General constitute a quorum of the Rules of Court Committee.
- (3) The Rules of Court Committee may make Rules of Court for and with respect to the practice and procedure of the High Court and the Court of Appeal, including rules —
  - (a) regulating the admission of legal practitioners to practise as advocates or barristers and solicitors or in any of those capacities;
  - (b) prescribing the fees to be paid in respect of any proceedings or the service or execution of process;
  - (c) for the procedures to be followed for the making and hearing of appeals to the High Court or the Court of Appeal;
  - (d) for the prevention of frivolous and vexatious proceedings;
  - (e) for the service and execution of process of either such court, including service of process or notice of process, out of the jurisdiction of such court;
  - (f) for the enforcement and execution of decisions of either such court;

- (g) for the stay of proceedings in, or under, decisions of either such court;
- (h) for the furnishing of security for costs or for compliance with decisions of either such court;
- (i) in relation to the means by which particular facts may be proved and the mode in which evidence of particular facts may be given;
- (j) for the taking of accounts and the making of inquiries by officers of either such court or referees, or otherwise;
- (k) in relation to the time and manner of instituting appeals to either such court;
- (l) prescribing the duties of —
  - (i) officers of either such court; or
  - (ii) the Sheriff of the High Court or bailiffs, in relation to the service and execution of the process, or the enforcement and execution of the decisions, of either such court; and
- (m) the fees to be charged by practitioners practising in either such court for the work done by them in relation to proceedings in the court and the taxation of their bills of cost.

## **23 Contempt of court**

- (1) The High Court, as a superior court of record, has the power to punish the offence against itself commonly known as contempt of court.
- (2) The Court of Appeal has the same power to punish contempt of its power and authority as is possessed by the High Court in respect of the offence against itself commonly known as contempt of court.

## **24 Protection of judicial and court officers**

- (1) No action or suit shall be brought or maintained against any person who is or was a Justice for any nonfeasance or misfeasance in connection with his judicial duties.
- (2) No action or suit shall be brought or maintained against any person referred to in section 17 or 18 for anything done by him in good faith in the performance of any function under this or any other Act or under Rules of Court.

## PART VI - AMENDMENTS AND TRANSITIONAL

### 25 Repeals and amendments

- (1) The imperial enactments specified in Schedule 2 shall cease to have effect in Tuvalu.
- (2) Section 43 of the Magistrates' Courts Act (Criminal appeals) is amended in subsection (1) by repealing the words "Act or by any rules of court made under section 80 of the Constitution" and substituting the word "law".

*Cap.2*

- (3) The Criminal Procedure Code is amended —

*Cap. 7*

- (a) in section 2 (Interpretation), by repealing in the definition of "Registrar of the High Court" the words "under the provisions of section 73 of the Constitution" and substituting "under section 17(1) of the Superior Courts Act 1987";
  - (b) by the repeal of section 57 (Place and date of session of the High Court);
  - (c) in section 64 (Court to be open) —
    - (i) by deleting the words "The place" at the beginning of the section and substituting the expression —
 

“(1) Subject to subsection (2) and to section 19(2) of the Superior Courts Act 1987, the place”;
    - (ii) by deleting all the words beginning "Provided that" to the end of the section;
    - (iii) by adding the following subsection —
 

“(2) A presiding magistrate has the same powers to exclude persons (other than the complainant, the defendant and their representatives) from proceedings for trying or inquiring into any offence before him as are conferred upon the High Court by section 19(2) of the Superior Courts Act 1987.”;

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  - (d) by the repeal of section 301 (Power of High Court to issue writs).
- (4) The Oaths and Statutory Declarations Act is amended by the insertion in Schedule 2 (Judicial Officers) after "Chief Justice" of the words "Judge of Appeal".

*Cap.6*

- (5) The Tuvalu (Appeals to the Privy Council) Order 1975 is -revoked to the extent that it is part of the law of Tuvalu.

*Supplement II*

**26 Transitional provisions**

The transitional provisions in Schedule 3 shall have effect.

**SCHEDULE 1**

(Section 14)

**APPEALS TO THE SOVEREIGN IN COUNCIL****1. Definitions**

In this Schedule unless the context otherwise requires —

“**appeal**” means appeal from a decision of the Court to the Sovereign in Council;

“**Court**” means the Court of Appeal;

“**decision**” means a decision given in exercise of any jurisdiction, powers or authorities conferred upon the Court in relation to appeals from the High Court;

“**record**” means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and decisions) proper to be laid before the Sovereign in Council on the hearing of an appeal;

“**Registrar**” means the Registrar of the Court or other proper officer having custody of the records of the Court.

**2. Application for leave to appeal**

Applications to the Court for leave to appeal shall be made by motion or petition within 60 days of the date of the decision to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

**3. Conditional leave to appeal**

Leave to appeal shall, in the first instance, be granted by the Court only —

- (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding 90 days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding \$1,000 for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial

Committee ordering the appellant to pay the costs of the appear (as the case may be); and

- (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

#### **4. Powers of a single Justice**

A single Justice shall have power and jurisdiction —

- (a) to determine any application to the Court for leave to appeal;
- (b) generally in respect of any appeal pending before the Sovereign in Council, to make such order and to give such other directions as he shall consider the interest of justice or circumstances of the case require:

Provided that any order, directions or decisions made or given in pursuance of this paragraph may be varied, discharged or reversed by the Court as duly constituted, which may include the Justice who made or gave the order, directions or decision.

#### **5. Stay of execution**

Where the decision appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said decision shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said decision to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security to the satisfaction of the Court for the due performance of such Order as the Sovereign in Council shall think fit to make on it.

#### **6. Manner of providing security**

For the purposes of paragraphs 3 and 5, a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

## 7. Preparation of record

- (1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection with it to the decision of the Court, and the Court shall give such directions on it as the justice of the case may require.
- (2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.
- (3) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed (whether in Tuvalu or in England or elsewhere) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the documents was objected to.
- (4) The reason given by Justices for or against any decision pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

## 8. Printing of the Record

- (1) The record may be printed in Tuvalu or in England or elsewhere if the parties agree to its being printed, but in the absence of agreement that it be so printed, shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed it shall be printed in accordance with the Rules set forth in the Appendix to this Schedule.
- (2) Where the record is printed outside England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council 40 copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.
- (3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record

shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

- (4) Where part of the record is printed outside England and part is to be printed or duplicated in England, sub-paragraphs (2) and (3) shall, as far as possible, apply to such parts as are printed outside England and such as are to be printed or duplicated in England respectively.

## **9. Consolidation of appeals**

Where there are 2 or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

## **10. Failure to prosecute appeal**

Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him, by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

## **11. Notice to other parties**

- (1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.
- (2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

**12. Prosecution of appeal**

An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to the Sovereign in Council.

**13. Withdrawal of appeal**

- (1) An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.
- (2) Where an appellant, having obtained final leave to appeal, desires, prior to the despatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of the Sovereign in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

**14. Dismissal for non-prosecution**

Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the record to England, any respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of the Sovereign in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

**15. Substituting parties**

- (1) Where at any time between the order granting final leave to appeal and the despatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall

thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of the Sovereign in Council.

- (2) Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

#### **16. Printing of case**

The case of each party to the appeal may be printed in Tuvalu or elsewhere or printed or duplicated in England and shall, if it is to be printed, be printed in accordance with the Rules set forth in the Appendix to this Schedule, and it shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

#### **17. Form of case**

The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case and the reason of appeal. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer, in taxing the costs of the appeal, shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case and shall disallow the costs occasioned by it.

#### **18. Local costs**

Where the Judicial Committee directs a party to bear the costs of an appeal incurred outside England, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

#### **19. Proceedings of Judicial Committee**

The Judicial Committee Act 1833, and the Judicial Committee Act 1844, of the Parliament of the United Kingdom, as amended from time to time by Act of the Parliament of the United Kingdom, and any subsidiary legislation made from time to time under or for the purposes of either of those Acts, apply with respect

to proceedings before the Judicial Committee on an appeal and otherwise to and in relation to an appeal.

### **APPENDIX**

(Paras. 9(1) & 16)

- I. Records and cases in appeals to the Sovereign in Council shall be printed in the form known as demy quarto.
- II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8.5 inches in width.
- III. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.
- IV. The number of lines on each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

**SCHEDULE 2**

(Section 25(1))

**IMPERIAL ENACTMENTS CEASING TO HAVE EFFECT IN TUVALU**

Habeas Corpus Act 1640 (16 Car I, c.10)

Habeas Corpus Act 1679 (31 Car II, c.2)

Habeas Corpus Act 1803 (43 Geo III, c.140)

Habeas Corpus Act 1804 (44 Geo III, c.102)

Habeas Corpus Act 1816 (56 Geo III, c.100)

Habeas Corpus Act 1862 (25 & 26 Vict, c.20)

Administration of Justice Act 1960 (8 & 9 Eliz II, c.65) sections 14 & 15.

**SCHEDULE 3**

(Section 26)

**TRANSITIONAL PROVISIONS****1 Seals**

Until the seal referred to in section 16(1) or (2) is available for use, the High Court or, as the case may be, the Court of Appeal may use as the seal of the court such device as the Chief Justice may approve.

**2 Rules of Court**

(1) Subject to this paragraph, until Rules of Court are made under section 22 in relation to proceedings before the Court of Appeal or to civil proceedings before the High Court, the following rules shall have effect and shall apply as if they were Rules' of Court:

- (a) in relation to proceedings before the Court of Appeal —
  - (i) the Court of Appeal Rules (No.2) 1956 (other than Rules 3, 12(1), 13, 34, 40, 55(2), 56 and 58); and
  - (ii) the Court of Appeal (Geneva Conventions) Rules 1959,

made under Article 101 of the Pacific Order in Council 1893;

- (b) in relation to civil proceedings before the High Court, the High Court (Civil Procedure) Rules 1964, as amended by the High Court (Civil Procedure) (Amendment) Rules 1969 and 1971, made under section 22 of the Western Pacific (Courts) Order in Council 1961.
- (2) The rules specified in subsection (1) shall be construed with such changes as to names, titles, offices and institutions, and to such other formal and non-substantial changes, as are necessary to adapt them to the provisions of the Constitution or any Act.
- (3) The Attorney-General may, by order, make any amendments to the rules specified in subsection (1) as appear to him to be necessary or expedient for bringing them into conformity with any provision of the Constitution or any Act.

I certify that this is a correct copy of the Bill passed by the Parliament of Tuvalu on the 15th day of December 1987.

**A.IELEMIA**

*Clerk of Parliament*

I certify that this Bill is in order for the Governor-General's assent as Head of State

**R. M. WEBSTER RD**

*4th February 1988 Attorney-General*

Published by exhibition at the Public Office of the Government this 5th day of February 1988.

**GREGORY POLSON**

*Secretary to Government*

## SUPERIOR COURTS ACT 1987

**EXPLANATORY MEMORANDUM**

*(This memorandum is not part of the Act)*

The purpose of this Act is to make detailed provision for the superior courts of Tuvalu, that is the High Court, the Court of Appeal and the Privy Council (referred to in the Act as “the Sovereign in Council”). Since Independence detailed provision has not previously been made by an Act of the Parliament of Tuvalu. It has been prepared in the course of Professor Patchett’s project on the Patriation of Inherited Imperial Laws.

The Act provides for the jurisdiction, powers and authorities of the High Court (Part 0) and the Court of Appeal (Part III) and for appeals to the Privy Council (Part IV) as well as making general provisions (Part V and VI).

In Part II, section 5 sets out the powers and authorities of the High Court and section 6 deals with the times and places of sittings of the High Court.

As provided in the Constitution, there is a Court of Appeal and section 7 details its composition while section 8 provides for the appointment of Judges of Appeal. Section 9 sets out the cases in which it may hear appeals and section 12 deals with the times and places of sittings of the Court of Appeal. (All Part III).

Part IV covers the cases where a further appeal may be taken to the Privy Council in London (section 13) with the detailed provisions given in Schedule 1 (section 14).

Part V deals with other general matters such as the courts seals (section 16) and the Registrar and other officials (sections 17 & 18) and specifies that court proceedings are to be held in public except in certain circumstances (section 19). Costs may be awarded (section 20) as may interest on debts etc. (section 21). Rules of Court are to be made by a Rules of Court Committee on specified matters (section 22). The High Court and Court of Appeal can punish those in contempt of court (section 23). Protection from action is given to judicial and court officers doing their duty (section 24).

Part VI makes repeals and consequential amendments (section 25 and Schedule 2) and transitional provisions (section 26 and Schedule 3).

The Act comes into operation on the date of its publication.

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>

**Table of Endnote References**