



Tuvalu

MAGISTRATES' COURTS ACT

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Tuvalu

MAGISTRATES' COURTS ACT

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Tuvalu

MAGISTRATES' COURTS ACT

AN ACT TO PROVIDE FOR THE CONSTITUTION OF A SENIOR MAGISTRATE'S COURT AND MAGISTRATES' COURTS, FOR THE APPOINTMENT OF MAGISTRATES AND OTHER OFFICERS OF SUCH COURTS AND OF JUSTICES OF THE PEACE, AND FOR THE REGULATION OF THEIR DUTIES AND JURISDICTION, AND FOR APPEALS FROM SUCH COURTS AND FOR CERTAIN APPELLATE JURISDICTION AND REVISIONAL POWERS OF SUCH COURTS, AND FOR MATTERS CONNECTED THEREWITH¹

Commencement [14th October 1963]

PART I – PRELIMINARY

1 Short title

This Act may be cited as the Magistrates' Courts Act.

2 Interpretation

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

“**bailiff**” means a person appointed to be a bailiff pursuant to section 17 and includes any assistant bailiff or any other person assisting a bailiff in the performance of his duties;

“**cause**” shall include any action, suit, or other original proceeding between a plaintiff and a defendant and any criminal proceeding;

“**cause of action**” in suits founded on contract shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen

within the jurisdiction if the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere;

“**clerk of court**” and “**clerk**” means any person appointed to be a clerk of court pursuant to section 14 and includes any assistant clerk and any other person assisting a clerk in the performance of his duties;

“**criminal**” includes quasi-criminal, and with reference to matters of jurisdiction, comprehends all such matters not falling within the term “**civil**”;

“**island court**” means an island court established under the Island Courts Act;²

“**judgment**” and “**decree**” shall be deemed synonymous terms;

“**lands court**” means any court established by the Native Lands Act;³

“**legal practitioner**” means any person entitled to practise in the High Court in accordance with section 80 of the Constitution;

“**magistrate**” means any person appointed to hold a magistrate’s court under section 7 or under section 9;

“**matter**” includes every proceeding in a court not in a cause;

“**rules of court**” means rules of court made under the provisions of section 75;

“**Senior Magistrate**” means the Senior Magistrate for the time being appointed under section 7(1);

“**Sheriff**” means any person for the time being acting as Sheriff of the High Court and includes any deputy sheriff or under sheriff and any person lawfully authorised to execute the process of the High Court or any magistrates’ court;

“**suit**” includes action, and means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by rules of court, and does not include a criminal proceeding.

- (2) References to “**magistrate**” or to “**magistrates’ courts**” or to “**magistrate’s court**” shall in this and any other Act, unless otherwise specified or the context necessarily otherwise requires, include reference to the Senior Magistrate’s Court or to the Senior Magistrate, as the case may be.

PART II - CONSTITUTION OF THE COURTS

3 Establishment of the Senior Magistrate's Court and magistrates' courts

- (1) There shall be and there are hereby established in Tuvalu courts having summary jurisdiction, and such appellate jurisdiction as may be conferred by this or any other Act, and such courts shall be known respectively as the Senior Magistrate's Court and magistrates' courts and shall be subordinate to the High Court and shall be presided over as respects the Senior Magistrate's Court by a Senior Magistrate and as respects magistrates' courts by magistrates appointed under this Act and such courts, subject to the provisions of any other Act, shall exercise jurisdiction as is by this Act prescribed.
- (2) A magistrate's court shall be deemed to be constituted whenever a magistrate exercises any jurisdiction, power, authority, function or discretion vested in a magistrate by any law and the Senior Magistrate's Court shall be deemed to be constituted whenever the Senior Magistrate exercises any jurisdiction, power, authority, function or discretion vested in the Senior Magistrate's Court or conferred on the Senior Magistrate by any law.
- (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 Territorial jurisdiction of magistrate's courts

Subject to any express provisions of this or any other Act every magistrate's court shall exercise jurisdiction throughout Tuvalu:

Provided that the Senior Magistrate may direct the distribution of business between such courts.

5 Seals

Magistrates' courts shall use seals of such nature and pattern as the Governor-General shall approve.

6 Contempt of court

The Senior Magistrate's Court shall have the same powers as the High Court to deal with contempt of its authority and such power shall extend to upholding the authority of magistrates' courts.

PART III - OFFICERS OF THE COURT

7 Appointment of Senior Magistrate and magistrates

- (1) Subject to subsection (4), the Governor-General may, by warrant under his hand, appoint any fit and proper person to be a Senior Magistrate to hold the Senior Magistrate's Court and to exercise all of the jurisdiction of the Senior Magistrate's Court and every such person when so appointed shall have and exercise all the powers and jurisdiction conferred upon a Senior Magistrate and the Senior Magistrate's Court by this or any other Act.
- (2) Subject to subsection (4), the Governor-General may, by warrant under his hand, appoint any fit and proper person to be a magistrate to hold a magistrate's court and to exercise all of the jurisdiction of a magistrate's court and every such person when so appointed shall have and exercise all the powers and jurisdiction conferred upon magistrates and magistrates' courts by this or any other Act:

Provided that the Governor-General may, by the terms of any such warrant of appointment, restrict the powers to be exercised by any person thereby appointed in manner and extent, and thereupon such person shall have and exercise the powers and jurisdiction conferred by this Act only to the extent authorised by such appointment.

- (3) Subject to subsection (4), the Governor-General may, by writing under his hand, cancel or suspend any warrant of appointment given in pursuance of subsection (2), or may extend or remove either wholly or in part any restriction of the powers to be exercised, contained in such warrant.
- (4) The Governor-General shall exercise his powers under this section in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, the Chief Justice or a person authorised by him for the purpose.

8 Territorial jurisdiction

- (1) Subject to the terms of his warrant, every magistrate may exercise jurisdiction throughout Tuvalu but may be assigned by the Senior Magistrate to any particular place or places and transferred from one place to another.
- (2) Notwithstanding any such assignment a magistrate so assigned may, without special notification or appointment to that effect, exercise jurisdiction in any other place or places.

9 Special appointments

- (1) Subject to subsection (3), the Governor-General, in case of illness, absence, or incapacity of any magistrate, or for any other good and sufficient reason may, by writing under his hand, appoint any other fit and proper person to hold a magistrate's court.
- (2) Every appointment under the preceding subsection shall specify the powers to be exercised thereunder, and shall define the area in which such powers are to be exercised, and shall continue in force until revoked by the Governor-General or by expiration of any time prescribed in any such appointment for its determination.
- (3) The powers of the Governor-General under this section shall be exercised in accordance with the advice of the Public Service Commission and subject to the approval, either general or specific, of the Chief Justice or a person authorised by him for the purpose.

10 Procedure where magistrate is unable to adjudicate on any cause or matter by reason of personal interest, etc.

Where a magistrate is a party to any cause or matter, or is unable, from personal interest or any other sufficient reason, to adjudicate on any cause or matter, the Senior Magistrate shall direct some other magistrate to act instead of such aforesaid magistrate for the hearing and determination of such particular cause or matter, or shall direct that such cause or matter shall be heard and determined in a magistrate's court in any other place.

11 Records and returns

Every magistrate's court shall keep such written records and furnish such returns as may be required by this Act or as the Senior Magistrate may from time to time direct.⁴

12 Appointment and removal of justices of the peace

- (1) The Governor-General may appoint any person to be a justice of the peace in and for Tuvalu or in and for such part of Tuvalu as the Governor-General may specify, and the Governor-General may remove any person so appointed from the office of justice of the peace.
- (2) The Chief Justice and every magistrate shall be *ex officio* a justice of the peace for Tuvalu.

13 Powers and functions of justices of the peace

Subject to the provisions of this and of any other Act, every justice of the peace shall, subject to any exceptions which may be contained in his appointment, within the area in and for which he holds such office, have —

- (a) all the powers, rights and duties of a magistrate under this or any other Act to —
 - (i) issue summonses and warrants for the purpose of compelling the attendance of any accused persons or witnesses before a court;
 - (ii) issue search warrants; and
- (b) such other powers and rights and shall perform such duties of magistrates as may be conferred or imposed upon him by rules of court made under this or any other Act not involving the trial of causes or, in criminal cases, the holding of preliminary investigations.

14 Clerks of court

- (1) There shall be a clerk of court attached to each magistrate's court who shall be appointed by the Senior Magistrate and shall, subject to the general supervision and control of the Senior Magistrate, be under the immediate direction and control of the magistrate for the time being exercising the jurisdiction of the magistrate's court to which he is attached:

Provided that in the event of the absence or incapacity of a clerk of court the magistrate may appoint any person temporarily to perform the duties of clerk of court or may himself perform any such duties.

- (2) The Registrar for the time being of the High Court shall *ex officio* be the Clerk of the Senior Magistrate's Court.

15 Duties of clerks of court

The duties of every clerk of court shall be —

- (a) to attend at such sittings of the magistrate's court as the magistrate exercising its jurisdiction may direct;
- (b) to fill up or cause to be filled up all summonses, warrants, orders, convictions, recognizances, writs of execution, and other documents and to submit the same for the signature of such magistrate;
- (c) to issue civil processes in accordance with the rules of court for the time being in force;
- (d) to make or cause to be made copies of proceedings when required to do so by such magistrate, and to record the judgment, convictions and orders of the magistrate's court;

- (e) to receive or cause to be received all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the magistrate's court, and to keep or cause to be kept accounts of the same; and
- (f) to perform or cause to be performed such other duties as may be assigned to him by such magistrate.

16 Sheriff

- (1) The Sheriff shall be charged with the execution of all orders and processes of the magistrate's court and for this purpose shall have the same powers, authority and immunities as may be conferred upon him by the law for the time being in respect of the orders and processes of the High Court.
- (2) Every duty of the Sheriff in execution of any process of the court may be performed by such police officers, or other persons, as may be authorised by the Sheriff; and any police officer, or other person who is in possession of any such process shall be deemed to be duly so authorised, and shall for all purposes of such execution, and connected therewith, be an officer of the court.
- (3) The Sheriff shall not be liable to be sued for any act or omission of any police officer, or other person, in the execution of any process which shall have been done or may have occurred, either through disobedience or neglect of the orders or instructions given by the Sheriff, or in the absence of any order or instructions given by the Sheriff.

17 Bailiffs

The bailiffs shall be appointed by the Sheriff, with the approval of the magistrate exercising the jurisdiction of the magistrate's court to which they are to be attached, and may themselves or by their assistants serve and execute any process issued out of the magistrate's court; and when so directed by such magistrate they shall attend such court and obey all the directions of the magistrate for preserving order and decorum therein.

18 Other officers

The Senior Magistrate may from time to time appoint such other officers as may be necessary for the efficient exercise of jurisdiction by magistrate's courts and may attach such officers to any magistrate exercising judicial functions in a court under the provisions of this Act.

19 Transfer of officers

The Senior Magistrate may transfer any officer attached to any magistrate's court from time to time to any other magistrate's court, either for temporary or permanent duty.

PART IV - JURISDICTION OF MAGISTRATES' COURTS

20 Powers of magistrates' courts

Subject to any other provision of this Act and to the provisions of any other law for the time being in force in Tuvalu, every magistrate's court shall have and exercise jurisdiction in civil and criminal matters as in this Act provided.

21 *[repealed by 8 of 1987]*

22 Civil jurisdiction

- (1) The jurisdiction of a magistrate's court in civil causes and matters shall be limited as provided by this section and by any other law for the time being in force.
- (2) No magistrate's court shall have jurisdiction in any civil cause or matter in respect of which original jurisdiction to hear and determine the same is conferred on a lands court by the Native Lands Act.
- (3) The Governor-General in consultation with the Chief Justice may by order limit the civil jurisdiction of magistrates' courts in such manner as he may think fit and such an order may make different provision for the Senior Magistrate's Court from that made for other magistrates' courts.⁵
- (4) Subject to any law for the time being in force, 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 shall —
 - (a) where original jurisdiction to hear and determine such dispute or question is conferred by law upon any lands court, transfer the dispute or question to that lands court for adjudication or determination and until such adjudication or determination (and if any appeal lies therefrom the effluxion of the time within which such appeal may be lodged and, if any such appeal is lodged, its final determination) adjourn the suit, civil cause or matter wherein such dispute or question arose; or
 - (b) where original jurisdiction to hear and determine such dispute or question is not conferred by law on any lands court, if all the parties interested therein consent, adjudicate thereon or, if they do not so

consent, apply to the High Court to transfer such suit, cause or matter to itself.

23 Law and equity

- (1) *[repealed by 8 of 1987]*
- (2) In exercise of any jurisdiction vested in him by this Act, any magistrate shall have power to grant and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or relief whatsoever, interlocutory or final, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter; so that, as far as possible, all matters in controversy between the said parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

24 Extension of civil jurisdiction

The Chief Justice may, by order under his hand and the seal of the High Court, authorise an increased jurisdiction in civil causes and matters to be exercised by the magistrate named in any such order, within the district prescribed in the order and to the extent specified in the order. Such an order may at any time be revoked by the Chief Justice by an instrument under his hand and the seal of the High Court.⁶

25 Criminal jurisdiction

- (1) Subject to the provisions of any other law for the time being in force, the Senior Magistrate's Court shall have jurisdiction to try summarily any criminal offence —
 - (a) for which the maximum punishment prescribed by law for such offence does not exceed —
 - (i) 14 years' imprisonment; or
 - (ii) a fine; or
 - (iii) both such imprisonment and such fine; or
 - (b) in respect of which jurisdiction is by any law expressly conferred upon the Senior Magistrate's Court or it is expressly provided that such offence may be tried summarily:

Provided that the maximum punishment which the Senior Magistrate's Court may impose shall not exceed —

 - (i) a term of imprisonment for 5 years; or
 - (ii) a fine of \$1,000; or
 - (iii) both such imprisonment and such fine.

- (2) Subject to the provisions of any other law for the time being in force, a magistrate's court shall have jurisdiction to try summarily any criminal offence —
- (a) for which the maximum punishment prescribed by law for such offence does not exceed —
- (i) imprisonment for a term of 1 year; or
 - (ii) a fine of \$200 dollars; or
 - (iii) both such imprisonment and such fine; or
- (b) in respect of which jurisdiction is by any law expressly conferred upon a magistrate's court or it is expressly provided that such offence may be tried summarily.
- (3) Notwithstanding the provisions of the preceding subsections, the Senior Magistrate, by order under his hand, may invest a magistrate's court, and the Chief Justice, by order under his hand and the seal of the High Court, may invest the Senior Magistrate's Court and any magistrate's court with jurisdiction to try summarily any offence which would otherwise be beyond its jurisdiction.^{7 8 9}
- (4) In the case of consecutive sentences imposed by a magistrate's court in respect of 2 or more distinct offences arising out of the same facts it shall not be necessary for such magistrate's court to send the offender for trial before the High Court by reason only that the aggregate punishment for the several offences in respect of which such sentences are imposed is in excess of the punishment which it is competent to impose on conviction for a single offence:

Provided that the aggregate punishment imposed in the form of consecutive sentences shall not exceed twice the amount of the punishment which such magistrate's court is competent to impose in respect of one offence in the exercise of its ordinary jurisdiction.

26 Special jurisdiction in certain cases

Where an offence over which a magistrate's court has jurisdiction is committed or any cause or matter arises in any vessel, such offence may be prosecuted or such cause or matter heard and determined either by the magistrate's court exercising jurisdiction over the place where such vessel is at the time when such offence is committed or such cause or matter arises, or by the magistrate's court exercising jurisdiction over any place where such vessel calls after such commission or arising.

27 General powers of magistrates

Every magistrate shall have power to issue writs of summons for the commencement of actions in a magistrate's court, to administer oaths and take solemn affirmations and declarations, to require production of books and documents and to make such

decrees and orders and issue such process and exercise such judicial and administrative powers in relation to the administration of justice as shall from time to time be prescribed by this or any other Act, or by rules of court, or subject thereto by any special order of the Chief Justice.

28 Acts of magistrates not to be affected by error as to venue

- (1) Subject to the provisions of any other Act, no act done within Tuvalu by or under the authority of any magistrate shall be void or impeachable by reason only that such act was done, or that any act, offence or matter in respect of or in relation to which such act was done, occurred or was situated beyond the area of the jurisdiction of the magistrate's court exercised by him.
- (2) If the defendant in any civil cause or matter, before, but not after, the time when he is required to state his answer in such cause or matter, specially alleges that any of the grounds referred to in the preceding subsection exist, which, but for the provisions of that subsection, would be of force, the court shall consider the same, and if there is *prima facie* proof thereof such court shall report such cause or matter to the Senior Magistrate who shall make an order directing where the cause or matter shall be heard and determined, and such order shall not be subject to appeal.

29 Proceedings by or against an officer of a magistrate's court

Subject to the provisions of section 10, any civil proceedings by or against any magistrate or other officer of a magistrate's court for any offence or matter cognisable by a magistrate's court may be brought in a magistrate's court in any other district.

30 Administration of oaths

- (1) Every magistrate and every justice of the peace is hereby authorised to administer all oaths which may require to be taken before him in exercise of the jurisdiction and powers conferred upon him by this or any other Act.
- (2) Any such oath may also be administered by any clerk of court or other officer of the magistrate's court under the direction and in the presence of a magistrate.
- (3) Every magistrate shall be a commissioner for oaths and shall have and may exercise the powers by law conferred thereon.

31 Jurisdiction of judges of High Court concurrent with that of magistrates

No jurisdiction conferred upon any magistrate shall in any way restrict or affect the jurisdiction of the judges of the High Court, but such judges shall have in all causes and matters, civil and criminal, an original jurisdiction concurrent with the jurisdiction of the several magistrates.

32 Reconciliation

- (1) In criminal cases a magistrate's court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by such court, and may thereupon order the proceedings to be stayed or terminated.
- (2) In civil causes a magistrate's court and the officers thereof shall, as far as there is proper opportunity, promote reconciliation among persons subject to its jurisdiction and encourage and facilitate settlement in an amicable way and without recourse to litigation of matters in difference between them.
- (3) Where a civil suit or proceedings is pending a magistrate's court and the officers thereof may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.

33 Transfer between magistrates in the same area

Where the Senior Magistrate assigns 2 or more magistrates to any area, any such magistrate within such area may, at any stage of the proceedings before final judgment, transfer, within the limits of such area, any cause or matter before him to any other such magistrate and such cause or matter shall be commenced *de novo*, inquired into, tried and disposed of by any magistrate of competent jurisdiction to whom it has been transferred as if it had been instituted before him:

Provided that no cause or matter which has been specifically transferred by the High Court for inquiry or trial by a particular magistrate shall again be transferred without leave of the Senior Magistrate.

34 A cause may be reported for transfer

- (1) A magistrate's court may, of its own motion or on the application of any person concerned, report to the Senior Magistrate the pendency of any cause or matter which in the opinion of the magistrate exercising jurisdiction in such magistrate's court ought to be transferred from it to any other magistrate's court or to the Senior Magistrate's Court; and the Senior Magistrate shall by

order direct in what mode and where the cause or matter shall be heard and determined.

- (2) Subsection (1) shall apply to the Senior Magistrate's Court as if reference to a magistrate's court were a reference to the Senior Magistrate's Court and reference to the Senior Magistrate's Court were a reference to the High Court.

35 Transfer of cases by the Senior Magistrate

- (1) The Senior Magistrate's 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 Senior Magistrate's 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 power of transfer shall be exercised by means of an order under the hand of the Senior Magistrate, 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 Senior Magistrate's Court may at all times cancel, alter, add to or amend any order under the preceding subsection.
- (4) The Senior Magistrate's 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.

36 Effect of an order of transfer

- (1) Every order of transfer shall operate as a stay of proceedings in the magistrate's court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process and proceedings in every such cause or matter, and an attested copy of all entries in the books of such court relative thereto, shall be transmitted to the court to which the same shall be transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.
- (2) An order given under section 34 or section 35 shall not be subject to appeal.

37 Judgment may be entered in High Court on a judgment of a magistrate's court

- (1) A judge, if satisfied that a person, whether resident in Tuvalu or not, against whom judgment for an amount exceeding \$40 has been obtained (whether by way of claim or counterclaim or costs or otherwise) in a magistrate's court, has no goods or chattels within Tuvalu which can be seized conveniently to satisfy the judgment, may, if he thinks fit, and upon such terms as to costs as he may direct, by order under his hand and the seal of the High Court, remove the judgment into the High Court.
- (2) Upon the removal of a judgment into the High Court in pursuance of this section no further proceedings shall be had or taken thereon in the magistrate's court and the judgment shall be entered in the High Court for the amount due and payable under the judgment of the magistrate's court together with the costs as aforesaid, and a judgment so entered shall have the same force and effect and the same proceedings may be had thereon as if it were a judgment originally obtained in the High Court.
- (3) This section applies to orders obtained in a magistrate's court as it applies to judgments therein obtained.

PART V - APPEALS FROM MAGISTRATES' COURTS AND CASES STATED**38 Powers of judge in relation to Senior Magistrate's Court**

For the purposes of this Part, in relation to the Senior Magistrate's Court, a judge shall have and may exercise all of the powers of the Senior Magistrate as though the Senior Magistrate's Court were a magistrate's court and the judge were the Senior Magistrate.

39 Civil appeals

- (1) Subject to the provisions of this or any other Act, an appeal shall lie to the Senior Magistrate's Court —
 - (a) from all final judgments and decisions of any magistrate's court in any suit or matter before it; and
 - (b) from all interlocutory orders and decisions of any magistrate's court made in the course of any suit or matter before it:

Provided that where the magistrate's court in question is the Senior Magistrate's Court, the appeal shall lie to the High Court.

- (2) Notwithstanding the provisions of subsection (1), no appeal shall lie, except by special leave of the magistrate's court or of the Senior Magistrate's Court

or of the High Court, as the case may be, from any order or decision made by consent, *ex parte* or as to costs only.

40 Conditions precedent to appeal

Subject to section 42, neither the Senior Magistrate's Court nor the High Court shall entertain any appeal arising from any suit or matter unless the appellant has fulfilled all the conditions of appeal imposed by the magistrate's court or by the Senior Magistrate's Court or the High Court, as the case may be, or as prescribed by rules of court.

41 Power to reserve question of law for the opinion of the High Court

In addition to, and without prejudice to, the right of appeal conferred by this Act, a magistrate may reserve for the consideration of the Senior Magistrate and the Senior Magistrate for the consideration of the High Court on a case to be stated by him any question of law which may arise on the trial of any suit or matter, and may give any judgment or decision subject to the opinion of the Senior Magistrate or of the High Court, as the case may be, and the Senior Magistrate or the High Court shall have power to determine, with or without hearing argument, every such question.

42 Discretionary power to entertain appeals

Notwithstanding anything hereinbefore contained the Senior Magistrate's Court and the High Court may entertain any appeal on any terms which it may think fit.

43 Criminal appeals

- (1) Where by any other law, appeals in criminal causes lie to the High Court from any magistrate's court, such appeals shall lie to the Senior Magistrate's Court, except where such appeals are from the Senior Magistrate's Court, in which case they shall lie to the High Court.¹⁰
- (2) In respect of every appeal in a criminal cause to the Senior Magistrate's Court from a magistrate's court, the provisions of sections 281, 282, 283 and 284 of the Criminal Procedure Code shall apply as if every reference therein to the High Court were a reference to the Senior Magistrate's Court.

PART VI - APPELLATE JURISDICTION AND REVISIONAL POWERS OF MAGISTRATES' COURTS

44 Appellate jurisdiction and revisional powers of magistrates' courts

- (1) A magistrate's court shall have power to review any judgment, sentence or order of any island court within the limits of the district within which such magistrate's court is situated and shall have the jurisdiction to hear and determine appeals from any judgment, sentence or order (including any question of law reserved for its consideration by way of case stated) of any such court and may for those purposes exercise such powers and authority as may be conferred upon it by or under any law for the time being in force; and, subject to the provisions of any such law, for all the purposes of and incidental to any such review or the hearing and determination of any such appeal, a magistrate's court shall have all the powers, authority and jurisdiction vested in the island court which dealt with or determined the case under review or from which such appeal is brought.
- (2) If any person considers himself aggrieved by the decision of any magistrate's court either in exercise of its power of review or upon any appeal, such person may appeal to the Senior Magistrate's Court and the Senior Magistrate's Court shall have like power, authority and jurisdiction as had the magistrate's court from which the appeal is brought.

PART VII - REVISION OF DECISIONS OF MAGISTRATES

45 Monthly lists of criminal cases

At the end of every month, every magistrate shall send to the Senior Magistrate, either generally or in respect of any particular district, in such form as the Senior Magistrate may from time to time direct,¹¹ a complete list of all criminal cases decided by or brought before such magistrate during that month, setting out the names, sex, and age of each defendant, the offence with which he was charged, such defendant's plea thereto and, if convicted, the date of the conviction and the sentence or order in full; and in the case of criminal cases decided by or brought before the Senior Magistrate, the Senior Magistrate shall in like manner send such list to the Chief Justice.

46 Power to revise decisions of magistrates and Senior Magistrate

- (1) Upon receipt of the list referred to in the preceding section the Senior Magistrate receiving the same may, if he thinks fit, call for a copy of the record of any of the cases included therein and, either without seeing such

record or after seeing such record, as he may determine, and either without hearing argument or after hearing argument, as he may determine, may —

- (a) subject to any enactment fixing a minimum penalty, reduce or alter the nature of but not increase a sentence; or
- (b) subject to any enactment requiring a particular order to be made, set aside an order or modify an order in such form as he thinks fit; or
- (c) set aside the conviction, in which case the person convicted if under detention shall be forthwith set at liberty, or in the case of a fine such fine, if already paid, shall be refunded to the person fined, or if security has been required and given, he shall be freed from such security; or
- (d) set aside the conviction and convict the accused person on the evidence of any offence of which he has not been specifically acquitted and of which he might have been convicted and sentence him accordingly; or
- (e) set aside the conviction and substitute a special finding to the effect that the person convicted was guilty of the act or omission charged, but was insane so as not to be responsible for his action at the time when he did the act or made the omission, and order such person to be kept in custody as a criminal lunatic in such place and manner as the Senior Magistrate may direct, and such special finding shall be forthwith reported for the order of the Governor-General who may order the person convicted to be confined in a mental health wing, prison or other suitable place of safe custody; or
- (f) set aside the conviction and order a new trial or a preliminary enquiry before the magistrate who made the conviction in question or before any other magistrate; or
- (g) order further evidence to be taken either generally or on some particular point by the magistrate who passed the sentence or by any other magistrate, and order in the meantime any person who shall have been convicted and imprisoned to be liberated on bail or on his own recognizance; and
- (h) make such other order as justice may require and give all necessary and consequential directions:

Provided always that when a person convicted shall have appealed against such conviction or any sentence imposed in respect thereof, or shall have applied for a case to be stated by the magistrate under the provisions in that behalf contained in any other Act for the time being in force relating to criminal procedure or in any rules of court made under the provisions of section 78 of the Constitution, the Senior Magistrate shall not exercise the powers conferred by this section.

- (2) When action upon the list as prescribed in subsection (1) is complete or if the Senior Magistrate shall decide to take no such action, the Senior Magistrate shall direct that the list be filed; but such direction shall not have the effect of

preventing him or his successor from subsequently taking any action prescribed in that subsection if he shall think fit:

Provided that 6 months after the last day of the month to which such list relates the Senior Magistrate shall become *functus officio* in respect of all cases upon the list in respect of which he shall not up till then have taken any action.

- (3) Proceedings under this section may be taken by the Senior Magistrate of his own motion or on the petition of any person interested praying for the exercise of the revisional powers of the Senior Magistrate and such powers may be exercised notwithstanding that the relevant monthly list shall not have been transmitted to or received by the Senior Magistrate.
- (4) Nothing in this section contained shall be deemed to authorise the conversion of a finding of acquittal into one of conviction.
- (5) This section shall apply to criminal cases decided by or brought before the Senior Magistrate and to a list of such cases as if references therein to the Senior Magistrate were references to the Chief Justice.

47 Reports by magistrates

The Senior Magistrate and any judge may, whenever he shall so think fit to do, require any magistrate to render to him, in such form as he may direct, a report of any case civil or criminal which may be brought before him and such report shall be rendered accordingly.

PART VIII - SITTINGS OF THE COURT

48 Place for sittings of magistrates' courts

Magistrates' courts shall ordinarily be held at such places as the Senior Magistrate may direct, but should necessity arise they may also be held at any other places within the limits of their jurisdiction, and in the absence of any such directions magistrates' courts shall continue to be held at such places as existing courts of like character have been held.¹²

49 Time for sittings

Subject to the directions, if any, of the Senior Magistrate, each magistrate's court shall be held at such time as the magistrate exercising the jurisdiction of such court shall deem most expedient for the despatch of the business thereof.

50 Nature of business at any sitting

At any sitting of any magistrate's court both civil and criminal causes and matters may be heard, determined, and dealt with, or either one or the other.

51 Adjournments

- (1) Any magistrate exercising the jurisdiction of a magistrate's court may adjourn such court from day to day or to any convenient day.
- (2) If a magistrate is not present at the time and place appointed for any sitting of a magistrate's court, any other officer of such court or other person authorised in that behalf by the magistrate, may, by public notice, written or oral, adjourn the sitting until such time and to such place as may have been communicated to him by the magistrate, and, in the absence of any such communication, to such time and place as may be convenient; and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time and place appointed by such notice.

52 Adjournment over Sunday or public holiday

When any day appointed for the sitting or any adjourned sitting of a magistrate's court falls on a Sunday or a public holiday, the sitting shall not take place on such day, and the magistrate shall in such case, if practicable, attend and transact the business appointed to be heard at such sitting as aforesaid on the day (not being a Sunday or public holiday) next after the day appointed for such sitting.

PART IX - PRACTICE AND PROCEDURE OF THE COURTS**53 Practice and procedure**

Subject to the provisions of any other law for the time being in force, the jurisdiction vested in magistrates' courts shall be exercised (so far as regards practice and procedure) in the manner provided by this Act or by any other Act for the time being in force relating to criminal or civil procedure, or by rules of court, and in default thereof, in substantial conformity with the law and practice for the time being observed in England in county courts and courts of summary jurisdiction.

54 Completion by magistrate of process begun by his predecessor

Where a magistrate has issued any summons or warrant or otherwise taken or commenced any proceeding or matter, whether civil or criminal, under any authority howsoever conferred, and subsequently ceases to act as such magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or

serve the same in the same manner as if the magistrate who issued the summons or warrant had not ceased to act as such magistrate and any successor of such magistrate, or any person acting for such magistrate, may hear, determine, execute, enforce, and carry to completion any proceeding or matter so commenced as aforesaid save that, except where otherwise provided by any other Act for the time being in force relating to criminal or civil procedure, such magistrate shall commence the trial of any such cause or matter *ab initio*.

55 Process of magistrate valid throughout Tuvalu

Subject to the provisions of any other Act for the time being in force relating to criminal or civil procedure, all summonses, warrants, orders, judgments, writs of execution, or other process or proceedings, whether civil or criminal, issued or taken by or by the authority of any magistrate respecting any cause or matter within his jurisdiction shall have force and effect, and may be served or executed anywhere within Tuvalu by the sheriff, bailiff or the member of the Police Force to whom the same are directed or by any other member of such Force.

56 Issue of process

All summonses, warrants, orders, convictions and recognizances, and all other processes, whether civil or criminal, shall be issued or made under the hand of a magistrate or, where so authorised by or under this or any other Act, under the hand of a justice of the peace:

Provided that, where expressly authorised by rules of court, writs of summons and other civil process may be issued under the hand of a clerk of court.

57 Duty of Police Force to obey magistrates

All members of the Police Force are hereby authorised and required to obey the warrants, orders and directions of a magistrate in the exercise of his criminal jurisdiction, and, in so far as such obedience may be authorised and required by any Act in that behalf, of his civil jurisdiction.

58 Language of the magistrates' courts and interpretation

- (1) The language of the magistrate's court shall be English.
- (2) In any proceedings in any magistrate's court in which the language spoken by any witness or party requires to be interpreted into English, the magistrate having jurisdiction in the proceedings may appoint suitable persons as interpreters.

PART X - EVIDENCE

59 Summoning witnesses

- (1) In any cause or matter, and at any stage thereof, the magistrate may, either of his own motion or on the application of any party, summon any person within Tuvalu to attend to give evidence, or to produce any document in his possession or power, and may examine such person as a witness, and require him to produce any document in his possession or power subject to just exceptions.
- (2) Subject to the provisions of any other Act for the time being in force relating to criminal procedure, in a criminal case a magistrate, in addition to the powers conferred by subsection (1), if satisfied by evidence on oath that any person can give material evidence and will not attend unless compelled to do so, may forthwith issue a warrant for the arrest and production of such witness before a magistrate's court at a time and place to be therein stated.
- (3) When any witness is arrested under a warrant issued under the provisions of subsection (2), a magistrate may, upon the witness furnishing security for his appearance at the hearing of the case, with or without a surety or sureties, to the satisfaction of the magistrate, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained until the date of the hearing at which he is required to give evidence.

60 Penalty for non-attendance of persons summoned

If any person summoned as provided in section 59, having reasonable notice of the time and place at which he is required to attend, after tender of his reasonable travelling expenses to and from the magistrate's court, fails to attend accordingly, and does not excuse such failure to the satisfaction of the court, he shall, independently of any other liability, be guilty of a contempt of court, and may be proceeded against by warrant to compel his attendance.

61 Refusal to be sworn or to give evidence

If, in any civil suit or matter, any person, whether appearing in obedience to a summons or brought up under warrant, being required to give evidence, refuses to take an oath, or to answer any question lawfully put to him, or to produce any document in his possession or power, and does not excuse his refusal to the satisfaction of the court, he shall, independently of any other liability, be guilty of a contempt of court.

62 Bystander may be required to give evidence

Any person present in court, whether a party or not in a cause or matter, may be compelled by any magistrate's court to give evidence, or produce any document in his possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the court.

63 Prisoners may be brought up in order to give evidence

A magistrate may issue an order under his hand to bring up any person confined as a prisoner under any sentence or otherwise to be examined as a witness in any suit or matter depending in any magistrate's court, and the gaoler, or person in whose custody such prisoner shall be, shall obey such order and shall provide for the safe custody of the prisoner during his absence from prison for the purpose aforesaid.

64 Allowances to witnesses

Subject to the provisions of this or any other Act and to any rules of court for the time being in force, a magistrate may, in civil or criminal proceedings, order and allow to all persons required to attend or be examined as witnesses, such sum or sums of money as shall seem fit, as well for defraying the reasonable expenses of such witnesses as for allowing them a reasonable compensation for their trouble and loss of time, but it shall not be lawful, in any criminal proceeding, for any person to refuse to attend as a witness or to give evidence, when so required by process of the court, on the ground that his expenses have not been first paid or provided for.

65 How allowances defrayed

All sums of money allowed under the provisions of the preceding section shall be paid in civil proceedings by the party on whose behalf the witness is called, and shall be recoverable as ordinary costs of the suit, if the magistrate shall so order, and, in criminal proceedings, they shall, where not ordered to be paid by the party convicted or prosecuted, be paid out of the Consolidated Fund.

66 Inspection

In any cause or matter, a magistrate may make such order for inspection by the court, parties or witnesses of any real or personal property, the inspection of which may be material to the determination of the matter in dispute, and may give such directions with regard to such inspection as to the court may seem fit.

67 No person entitled to inspection of the record of evidence

No person shall be entitled, as of right, at any time or for any purpose, to inspect the record of evidence given in any case before any magistrate's court, or to receive a copy of the notes of such court, save as may be expressly provided by any rules of court, or, in the absence of any such rules, unless the leave of a magistrate to make such inspection or receive such copy has been first had and obtained.

68 Recording evidence before a magistrate's court

- (1) Subject to the provisions of any other Act, in every case heard before a magistrate's court, and at every stage thereof, the magistrate hearing such case shall, save as hereinafter provided, take down in writing the oral evidence given before the court or so much thereof as he deems material:

Provided that, should such magistrate, in any case, find himself temporarily incapacitated from taking down such evidence, he may direct that such evidence shall be taken down by the clerk of court or other officer performing the duties of such clerk.

- (2) Such clerk of court or other officer referred to in the preceding subsection shall take down in writing the oral evidence in manner as aforesaid, under the supervision and control of the magistrate presiding, who may, at any time before appending his signature to such writing, amend anything therein which he may consider requires amendment; and, before so appending his signature, such magistrate shall peruse and examine such writing, and satisfy himself that it is, in substance, an accurate and faithful record of the oral evidence given.

PART XI - PROTECTION OF MAGISTRATES, JUSTICES OF THE PEACE AND OFFICERS OF THE MAGISTRATE'S COURT

69 Protection of magistrates, justices of the peace and other officers

No magistrate, justice of the peace or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he, at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person bound to execute the lawful warrants or orders of any such magistrate, justice of the peace or other person acting judicially shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

PART XII - MISCELLANEOUS

70 Representation of Crown, public officers in their official capacity and departments of the Government

In any suit or matter in which the Crown or any public officer in his official capacity or any department of the Government is a party or in any suit or matter affecting the revenues of Tuvalu, the Crown or that officer or department may be represented by the Attorney-General, a Crown counsel, legal practitioner or other person duly authorised in that behalf by the Governor-General or by the public officer or the officer in charge of the department concerned.

71 Employment of legal practitioners

The employment of legal practitioners shall, save as may be otherwise specifically provided, be allowed in causes and matters, whether civil or criminal, before any magistrate's court.

72 Fees and costs

The fees and costs set forth in the rules of court made under this Act or any other Act for the time being in force relating to criminal or civil procedure may be demanded and received by the clerks of court or other persons appointed to receive such fees and costs for and in respect of the several matters therein mentioned:

Provided that, in the absence of the clerk of court from any magistrate's court or in the event of there being no such clerk or other person appointed to receive such fees and costs in any such court, the magistrate exercising the jurisdiction thereof may demand and receive such fees and costs.

73 By whom fees and costs payable

All fees and costs payable under or by virtue of this Act shall in the first instance be paid by the party applying for the summons, warrant, or other process or document in respect whereof the same are payable:

Provided that no fees shall be payable by any public officer or public department in any case instituted by any public officer when acting in his official capacity or in any case in which the magistrate endorses on the plaint, information or complaint, as the case may be, that it is a fit one for remission of fees on account of the poverty of the party or for any other sufficient reason; and in every such case such fees and costs shall, in the discretion of the magistrate, be recoverable from the other party, if the decision be given against him.

74 All fees and moneys received in magistrates' courts to be subject to foregoing provisions

Sections 72 and 73 shall apply to all moneys received by a clerk of court or other person appointed to receive fees and costs in any magistrate's court under the provisions of this or any other Act, whether the same be fees, costs, fines, forfeitures, penalties or money paid into court for any purpose, or received or recovered under or by virtue of any process of execution or distress.

75 Rules of court

The Chief Justice may make rules of court under this Act for all or any of the following purposes —

- (a) for regulating the practice and procedure of magistrates' courts in matters not specifically provided for in this or any other Act;
- (b) for regulating the forms to be used and all matters connected therewith;
- (c) for regulating the receipt of moneys paid into a magistrate's court, or received or recovered under or by virtue of any process, execution or distress;
- (d) for regulating the payment of moneys out of a magistrate's court to persons entitled thereto;
- (e) for prescribing the books and forms of account to be kept or used in magistrates' courts;
- (f) for prescribing fees, costs and amounts for service of process which may be demanded and received by clerks of court and others in connection with the practice and procedure of the magistrates' courts;
- (g) for prescribing for the acceptance, retention and disposal of fees and costs;
- (h) for fixing tables of fees and costs recoverable by legal practitioners for their services on taxation and providing for the taxation of the same;
- (i) for the better carrying into effect of the provisions and objects and intentions of this Act.

76 Saving

- (1) Nothing in this Act contained shall affect the jurisdiction of any island court or lands court.
- (2) Nothing in this Act contained shall deprive any magistrate's court of the right to observe and enforce the observance, or shall deprive any person of the benefit, of any native law or custom, such law or custom not being repugnant to natural justice, equity, and good conscience, not incompatible either directly or by necessary implication with any Act or other law for the time being in force in Tuvalu.

ENDNOTES

¹ 1990 Revised Edition, Cap. 2 - Acts 5 of 1963, 7 of 1965, 10 of 1965, 10 of 1967, 8 of 1968, 3 of 1969, 3 of 1972, 13 of 1972, 7 of 1974, 5 of 1975, 1 of 1982, 8 of 1987, 9 of 1987, 4 of 1989; LNs 29/1963, 16/1972,

Amended by LN 2/1988, GN 13/1996, LN 8/2004, LN 6/2007

² Cap. 7.32

³ Cap. 46.20

⁴ Direction under section 11 as to records to be kept and returns to be furnished by magistrates' courts (LN 44/1963) -

“Each magistrate’s court shall, subject to the express provisions of this or any other Act for the time being in force, and to the terms of any direction made under section 45, keep written records and shall furnish returns in respect of all proceedings before it in like form and manner to those kept or furnished before 14th October 1963, as the case may be, in respect of proceedings before the High Court.”

⁵ Order under section 22(3) to limit civil jurisdiction (LN 2/1988) -

“1. A Magistrate’s court shall not have jurisdiction in an action where the value of the property, debt, demand or damage claimed is greater than \$500, whether on balance of account or otherwise.

2. A Senior Magistrate’s Court shall not have civil jurisdiction in an action where the value of the property, debt, demand or damage claimed is greater than \$10,000, whether on balance of account or otherwise.”

⁶ Order under section 24 increasing civil jurisdiction (LN 47/1922) -

“The person for the time being holding the office of Senior Magistrate shall have jurisdiction to make adoption orders and such jurisdiction may be exercised within every district.”

⁷ Order under section 25 (3) increasing criminal jurisdiction (LN 2/1975) -

“Subject to the provisions of section 25(3) —

1. All magistrates’ courts shall have jurisdiction to try any offence coming within the provisions of —

(a) sections 53, 82, 83, 89, 100, 108, 109, 110, 111, 112, 113, 117, 124, 132, 133, 134(2), 136, 137, 145, 146, 176, 177, 178, 179, 226, 230, 233, 238, 240, 247, 249, 254, 257, 258, 265(b), 267, 268, 272, 273, 274, 275, 280, 282, 295, 301, 303, 304, 305, 306, 307, 308(2), 318, 319(1), 322, 323, 348, 365, 367 and 372 of the Penal Code;

(b) sections 4(2) (a) (ii), 7, 10(6), 10(7), 14, 23, 27 and 30 of the Arms and Ammunition Act;

(c) any offence within the jurisdiction of an island court from time to time; and

(d) the Passports Act.

2. The Senior Magistrate’s Court shall, in addition to those offences specified in paragraph 1, have jurisdiction to try any offence coming within the provisions of —

sections 116(a), 129, 134 (1), 151, 214, 216, 217, 218, 219, 286, 287, 292, 312, 319(2), 329(1), 335(1), 348(5) and 349 of the Penal Code.”

⁸ By GN 13/1996 the Chief Justice invested all magistrates' courts with jurisdiction to try summarily the following offences under the penal code —

- s. 291 sacrilege
- s. 292 burglary
- s. 293 housebreaking
- s. 294 house-breaking with intent to commit felony
- s. 295 being found by night armed or in possession of housebreaking implements
- s. 334 forgery of other documents with intent to defraud or deceive a misdemeanour
- s. 336 uttering

⁹ By LN 8/2004 the Chief Justice invested the Senior Magistrate's Court with jurisdiction to try summary offences under the Fisheries Act and to impose fines provided for under the Fisheries Act which would be otherwise beyond its jurisdiction

¹⁰ Amended by Act 9 of 1987

¹¹ Directions under section 45 as to the manner of making monthly returns of criminal cases (LN 45/1963) -

“The list to be sent by every magistrate shall be in the following form -

RETURN OF CRIMINAL CASES HELD DURING MONTH OF 20..... AS
REQUIRED BY SECTION 45 OF THE MAGISTRATES' COURTS ACT

1	2	3	4	5	6	7	8	9	10	11
Number of case	Name of Prosecutor	Full Name of Defendant	Sex of Defendant	Age of Defendant	Offence with which Defendant charged	Plea	Finding	Date of Finding	Sentence imposed or other order	Remarks if any (including date any fine paid)

..... Magistrate

..... Place

Date

¹² SITTINGS OF THE MAGISTRATE'S COURT (LN 6/2007)

The Senior Magistrate directed that sittings of the Magistrates' Courts shall be held at Vaiaku in the Old PWD Complex.