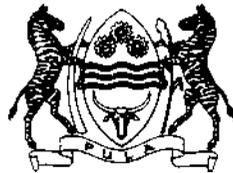


THE FOREST ACT, 1968

No. 23



of 1968

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AN ACT TO PROVIDE FOR THE BETTER REGULATION AND PROTECTION OF FORESTS AND FOREST PRODUCE IN BOTSWANA AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO

Date of Assent: 6.3.68.

Date of Commencement: 10.3.68.

ENACTED by the Parliament of Botswana.

**PART I
PRELIMINARY**

Short Title

1. This Act may be cited as the Forest Act, 1968.

Interpretation

2. In this Act, unless the context otherwise requires —

“Chief”, “tribal territory” or “tribe” has the same meaning as in the Chieftainship Law, 1965 (No. 29 of 1965);

“child” means any person who in the opinion of the court is under the age of fourteen years;

“firewood” means fallen dead wood of trees, branches, waste wood and refuse wood, but does not include sound wood or wood suitable for any purpose other than burning;

“forest offence” means any contravention of this Act;

“Forest Officer” means the holder of the public office of that name or in the absence thereof such other public officer as may be appointed by the Minister by notice in the *Gazette* to exercise the functions conferred upon the Forest Officer by or under this Act;

“Forest Official” means the Forest Officer, a Forester, a Forest Assistant, or a Forest Guard;

“forest produce” includes trees, timber, brushwood, firewood, poles, bamboos, slabs, chips, saw-dust, plants, grass, reeds, thatch, bedding, creeper, fibre, leaves, fruits, seeds, roots, bark, resin, rubber, sap, charcoal, honey, wax, fungi, galls, earth and such other things as the Minister may by notice in the *Gazette* declare to be forest produce;

“Forest Reserve” or “Reserve” means any area hereafter declared as Forest Reserve by the President in pursuance of the provisions of this Act;

- “licence” means a permit in writing issued in pursuance of the terms of this Act;
- “livestock” means cattle, horses, donkeys, mules, pigs, sheep and goats, and young thereof;
- “Local Authority” in respect of any area means a District Council or Town Council lawfully established in respect thereof;
- “Local Authority Land” means any area —
- (a) owned by a local authority, or
 - (b) granted by a Chief in pursuance of section 20 of the Chieftainship Law, 1965 (No. 29 of 1965), to a local authority;
- “major forest produce” means any tree to part thereof other than seeds, fruits, leaves or twigs;
- “Officer” means an administrative officer, a Forest Official or a Police Officer;
- “private land” means land which is not State land or Local Authority Land but does not include land in a tribal territory;
- “protected tree” means a tree declared to be a protected tree in pursuance of the provisions of section 11;
- “recognized road” means a road recognized for the purposes of section 17 by the Forest Officer;
- “river” includes streams and all natural water courses in which water flows or remains either throughout the year or at certain seasons;
- “State Land” has the same meaning as in the State Land Law, 1966 (No. 29 of 1966);
- “trees” includes palms, shrubs, bushes, climbers, seedlings, saplings and regrowth of all ages and of all kinds, and any part thereof.

PART II

DELEGATION BY FOREST OFFICER

Delegation

3. The Forest Officer may, with the approval of the Minister, delegate any of his powers and functions to a Forester either generally or subject to such limitations as may be deemed fit.

PART III
DECLARATION OF FOREST RESERVES

Declaration of Forest Reserves on State Land

4. The President may, by notice in the *Gazette*, declare any area on State Land to be a Forest Reserve.

Application by Local Authority for Establishment of Forest Reserve

5. (1) A Local Authority may propose to the Minister that a Forest Reserve be established in any area of its Local Authority Land.

(2) Upon being satisfied that the proposed establishment of a Forest Reserve has been approved under the provisions of the Town and Country Planning Proclamation, 1961, the Minister shall refer such proposal to the President.

Application by Chief to Establish Forest Reserve

6. A Chief acting in accordance with the advice of the Local Authority may propose to the President that a Forest Reserve be established on any area of his Tribal Territory.

Declaration of Forest Reserve on Local Authority Land and Land in Tribal Territory

7. (1) The President may, after considering any proposals referred to him in terms of sections 5 or 6, by notice in the *Gazette*, declare the area referred to therein to be a Forest Reserve.

(2) The President may, by the same or other notice in the *Gazette*, authorise the Local Authority to make bye-laws in respect of —

- (a) a Forest Reserve declared over the land of such Local Authority; or
- (b) a Forest Reserve declared on tribal territory within the area of such Local Authority.

(3) Any such bye-laws referred to in subsection (3) may be made for the purpose of —

- (a) taking measures, including the appointment of officers, for the protection, control and management of such Forest Reserve;
- (b) issuing licences for the felling and taking of forest produce within such Reserve;
- (c) collecting fees or royalties in respect of such produce and paying such fees or royalties into the revenue of such Local Authority.

(4) The President may amend or revoke any authorisation granted by him under subsection (2).

(5) A notice made in terms of subsection (2) or (3) may provide that the protection control and management of such Forest Reserve shall be subject to the general control and directions of the Forest Officer.

Notice

8. A notice made in terms of section 4 or section 7 shall describe in detail the delimitations of the proposed Forest Reserve.

Variation of Forest Reserve

9. The President may at any time, by notice in the *Gazette*, declare that any Forest Reserve shall cease to be such a Reserve, or that the boundaries of any such reserve shall be varied:

Provided that no such declaration shall be made in respect of a Forest Reserve on Local Authority Land or on land in tribal territory unless the authority referred to in section 5 or section 6, as the case may be, has made a request therefor.

Marking of Boundaries

10. The boundaries of any Forest Reserve established under this Part shall be marked by notice boards thereon, in the English language and in the languages of the inhabitants of the area in which the Forest Reserve is established, and by a fence or beacons, to the satisfaction of the Forest Officer.

PART IV PROTECTED TREES

Declaration of Protected Trees

11. (1) The Minister may by notice in the *Gazette* declare any tree or class of tree to be a protected tree in Botswana or in any part thereof;

Provided that no such declaration shall be made in respect of a tree —

- (a) in tribal territory without the consent of the Chief acting in accordance with the advice of the Local Authority;
- (b) on private land, without the consent of the owner thereof.

(2) No person shall fell, cut, take, work, burn, injure or remove any protected tree unless he is the holder of a licence so to do issued under the provisions of this Act.

PART V
CONTROL OF FOREST PRODUCE

Prohibited Acts in Forest Reserve

12. (1) No person shall in a Forest Reserve —
- (a) fell, cut, take, work, burn, injure or remove any forest produce ;
 - (b) squat, reside or build any hut or other living place or livestock enclosure, or construct or re-open any saw-pit or road ;
 - (c) set fire to any grass or undergrowth, or light or assist in lighting any fire, or leave unattended a fire which he has lit, or caused by his negligence, before such fire has been thoroughly extinguished, or leave therein any object likely to cause fire ;
 - (d) graze livestock or allow livestock to trespass ;
 - (e) clear, cultivate or break up land for cultivation or other purpose ;
 - (f) be in possession of any implement for the cutting taking, working or removal of forest produce ;

unless he is the holder of a licence so to do, issued under the provision of this Act, or any other written law, or is exempted under section 17.

(2) No person shall allow any fire lighted by himself or his servants to spread into a Forest Reserve unless he is the holder of a licence so to do, issued under the provisions of this Act.

Prohibited Acts on State Land

13. (1) No person shall on State Land fell, cut, take, work, burn, injure or remove —
- (a) any tree which is growing within ten yards of the bank of any river ;
 - (b) any forest produce, other than forest produce —
 - (i) used for domestic purposes in his private household or in that of his employer or for the construction of household or garden implements and furniture for himself ; or
 - (ii) gathered by any person belonging to a community which is entirely dependent for its living on hunting, the gathering of foodstuffs and the gathering of forest produce and who is himself so dependent and where the forest produce is gathered for the reasonable requirements of the members of the community to which he belongs ;

unless he is the holder of a licence so to do, issued under the provisions of this Act.

(2) For the purposes of subsection (1)(b) "State Land" does not include —

- (a) any area of land for which a Town Council has been established in terms of the Town Council Regulations, 1936 (Legal Notice No. 37 of 1966) and in respect of which such Town Council has made provision in its bye-laws for the protection of any forest produce ;
- (b) any area of land occupied by a public officer as quarters provided by the Government ;
- (c) any other area of land which the Minister has declared, by notice in the Gazette, not to be State Land.

Forest Offences

14. Any person who —

- (a) contravenes sections 11 (2), 12 or 13 or the conditions of any licence issued to him under the provisions of section 15 to do any of the acts prohibited under such sections ;
- (b) knowingly receives or is in possession of any Forest produce in respect of which a forest offence has been committed ;
- (c) without authority makes upon or fixes to any forest produce a mark used by any Forest Official for any purpose under this Act to indicate that such forest produce is the property of the State or to indicate that forest produce may lawfully be cut or removed, or removes, damages or defaces any boundary mark, beacon, notice or fence posted or erected to indicate the boundary of a Forest Reserve ;
- (d) without authority, alters, obliterates or defaces any stamp, mark or sign placed upon forest produce by or on the authority of a Forest Official, or counterfeits or alters any licence which may be issued under this Act ;

shall be guilty of an offence, and liable on conviction to a fine not exceeding two hundred rand, or, in default of payment thereof, to imprisonment for a period not exceeding one year ; and, if he is the holder of a licence, to forfeiture of such licence.

Licence to Do Prohibited Acts

15. The Forest Officer, or any Forester deputed thereto by him in pursuance of section 3, may issue to any person a licence to do any act prohibited under the provisions of sections 11 (2), 12, 13 on such conditions as the officer issuing the licence may impose.

Application for Licence

16. An application for a licence under section 15 shall be made to the appropriate licensing officer in the prescribed form.

Exemption

17. Notwithstanding anything contained in section 12 —

- (a) a *bona fide* inhabitant of a town, village or habitation, specified by the Minister by notice in the *Gazette*, may perform such acts as may be specified in such notice in a Forest Reserve adjacent to such town, village or habitation and referred to in the aforesaid notice;
- (b) a *bona fide* traveller may, while travelling on a lawful journey on a recognised road through or in a forest reserve —
 - (i) light a fire for the purposes of cooking, warmth or protection;
 - (ii) take firewood for his own use and for the use of his servants for the purposes referred to in sub-paragraph (i);
 - (iii) be in possession of implements for the cutting and taking of firewood;
 - (iv) graze any transport animals required for his journey;
 - (v) cut forest produce for the purpose of releasing or extracting any vehicle bogged down in such road.

Exclusive Licences

18. Notwithstanding anything to the contrary contained in this Act, the Minister may, subject to such general or special directions as he may think fit, authorise the Forest Officer to issue licences in respect of forest produce being the property of the State —

- (a) granting the exclusive right to take such produce; or
- (b) granting the right to take such produce free, or at a reduced fee;

on such conditions as the Forest Officer, in the absence of general or special directions by the Minister, may think fit.

Application of Certain Sections to Private Land

19. (1) The Minister may, in respect of Local Authority Land or of private land, on the application of the Local Authority concerned or of the occupier of such private land, as the case may be, declare by notice in the *Gazette* that the provisions of section 13 and section 14 shall apply to such land as if such land was State Land, whereupon the provisions of those sections shall apply to such land; and the Minister may direct the control and management of such land shall be under the general control and direction of the Forest Officer.

(2) The Minister may, in respect of any land to which the provisions of sections 13 and 14 have been applied by subsection (1), declare, by notice in the *Gazette*, that the said provisions shall cease to apply to such land, whereupon the provisions shall cease to apply to such land, whereupon the provisions of those sections shall so cease and the Forest Officer shall cease to direct and control the management of such land.

PART VI
MISCELLANEOUS

Production of Licences

20. It shall be lawful for an Officer to demand from any person the production of his licence to do any act in respect of which a licence is required under this Act and if such licence is not immediately produced, to restrain such person from further acts of a like nature.

Production of Proof of Appointment

21. Any Officer exercising or purporting to exercise any power conferred upon him by this Act shall produce on demand to any person concerned proof of his appointment.

Civil Remedy Reserved

22. Nothing in this Act contained shall abrogate from or interfere with the right of the State or of any person to sue for and recover damages, or relief against injury, caused by a forest offence:

Provided that in assessing any such damages, the court shall take into account the amount of any damages awarded in accordance with the provisions of section 23.

Assessment of Damages on Conviction

23. (1) Upon conviction of any person for a forest offence, the court may assess the amount of any damage which may have been caused by the accused as a result of such offence, and may forthwith award as compensation for such injury the amount so assessed, provided that the amount so awarded shall not exceed the civil jurisdiction of the court; such award shall have the effect of a civil judgment of the court, and may be enforced accordingly.

(2) If an award under subsection (1) is in respect of a forest offence —

- (a) committed on State Land, such award shall operate in favour of the State and any amount recovered thereunder shall be paid into the Consolidated Fund;
- (b) committed on Local Authority Land, or land in tribal territory such award shall operate in favour of the Local Authority Council and any amount recovered thereunder shall be paid into the revenue of the Local Authority;
- (c) committed on private land, such award shall operate in favour of the occupier of such land.

Power to Confiscate Property

24. (1) If any person is convicted of a forest offence, the court may order that, in addition to any penalty imposed upon the accused, any forest produce in respect of which the offence was committed, and any livestock, tools, instru-

ments, vehicles or property used in connection with the committing of such offence shall be confiscated to the State.

(2) If any person is convicted of a contravention of section 12 (1) (b) the court may order that, any hut, living place, enclosure or saw-pit shall be destroyed, and that the materials thereof shall be confiscated to the State. If the accused fails to comply with such order, the Forest Officer may cause it to be carried out, and any expense incurred thereby by the Forest Officer shall be a debt due by the accused to Government.

(3) Any property so confiscated shall be sold and the proceeds paid into the Consolidated Fund, or be otherwise disposed of as the Minister may direct.

Search without Warrant

25. (1) If the Forest Officer or a Forester believes on reasonable grounds that any person has been guilty of a forest offence, he may enter upon any land without warrant for the purpose of investigating the suspected offence.

(2) If an Officer believes on reasonable grounds that any person has been guilty of a forest offence, or that there is upon any person or upon any land or premises anything as to which there are reasonable grounds of suspicion that it will afford evidence as to the Commission of any such offence, he may without warrant enter upon such land or premises, and search such premises or such person or any baggage, package, parcel, conveyance, tent, building or enclosure under the control of such person, his agent or servant:

Provided that whenever a woman is searched, the search shall be made only in private and by a woman.

Arrest Without Warrant

26. Any Officer may, without warrant, arrest any person whom he reasonably suspects of having committed a forest offence, if such person refuses to give his name and address, or gives a name or address which such Officer has reason to believe is false, or if such officer has reason to believe that such person will abscond. Every Officer making an arrest under this section shall without unnecessary delay cause the person so arrested to be brought before a court having jurisdiction, to be dealt with according to law.

Seizure of Property Liable to Confiscation

27. (1) If there is reason to believe that a forest offence has been committed in respect of any forest produce, such forest produce, together with all livestock tools, instruments, vehicles or property used in committing such offence may be seized by any Officer, and detained by him until the offender can be brought before a court of competent jurisdiction and an order of such court obtained as to the disposal thereof.

(2) The State shall not be responsible for any loss or damage which may occur to any property during the act of seizure or whilst such property is detained under subsection (1), and no Officer shall be responsible for any such loss or

damage unless he shall have caused the same negligently, maliciously or fraudulently.

Summary Disposal of Charges

28. When any person has been summoned or warned to appear in a Subordinate Court, or has been arrested, or has been informed by a Forest Officer or a Forester that it is intended to institute criminal proceedings against him for any offence under sections 12 or 13 the functions of an officer holding a rank or post designated by the President in terms of section 306(1) of the Criminal Procedure and Evidence Proclamation (Chapter 18) for the purposes of section 306 of that Proclamation may be performed or exercised by any Forest Officer or Forester empowered thereto by the Minister by notice in the *Gazette*.

Evidence

29. Whenever in any proceedings under this Act the question arises whether any forest produce is the property of the State, a Local Authority or a Tribe it shall be presumed to be the property of the State, the Local Authority or a Tribe, as the case may be, unless the contrary is proved.

Extinguishing Fires

30. (1) If there is good reason to believe that any fire in the open air within one mile of the boundary of a Forest Reserve may become dangerous to life or property any person may, either alone or with persons under his control enter upon the land on which such fire is burning for the purpose of extinguishing that fire or preventing the extension thereof.

(2) If the Forest Officer or a Forester is present at the scene of such fire he shall have the right to take control of operations directed to extinguishing that fire or preventing the extension thereof.

(3) Any person controlling any safety measures taken in terms of this section—

(a) may take such measures as in the circumstances are reasonable and necessary or expedient for extinguishing or preventing the spread of the fire, and may for such purpose cause reasonable destruction of any trees, grass, crops or other vegetation by burning, cutting, ploughing or otherwise;

(b) may call upon any able-bodied persons present at or in the vicinity of such fire to assist or to do any act or perform any service which may reasonably be considered necessary or expedient to control or extinguish or prevent the spread of the fire;

(c) may order any person whose life may be or may become endangered or whose presence at or in the vicinity of the fire may interfere with the fire, to remove himself or any vehicle or other thing under his control.

(4) Any person who fails to comply with any requirement or order under subsection (3) shall be guilty of an offence and liable on conviction to a fine not

exceeding fifty rand, or in default of payment thereof to imprisonment for a period not exceeding three months.

(5) No liability shall attach to the Forest Officer or a Forester or other person in respect of any loss or damage arising out of the lawful exercise by them of any power conferred by this section; and no action shall lie for trespass or for damages caused in good faith by any person in charge of any operations lawfully undertaken under section, or by any person assisting any such operations.

Vicarious Liability

31. If the manager, agent, servant or other employee of any person (hereinafter called the employer) does or omits to do anything in contravention of any of the provisions of this Act such employer shall be deemed himself to have contravened such provision and be liable on conviction to the penalties therefor, unless he proves to the satisfaction of the court that —

- (a) in doing or omitting to do such thing such manager, agent, servant or employee was acting without his connivance or permission; and
- (b) all reasonable steps were taken by him to prevent any act or omission of the kind in question; and
- (c) it was not under any condition or in any circumstances within the scope of authority or the course of the employment of the manager, agent servant or employee to do or omit to do acts whether lawful or unlawful of the character of the act or omission charged:

Provided that the fact that the employer issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

Responsibility for Child's Conduct

32. Where any person having charge of a child —

- (a) by his act has conduced to the commission by that child of any act or omission which if committed by an adult would constitute an offence under this Act; or
- (b) fails to prevent the commission by that child of an act or omission which if committed by an adult would constitute an offence under this Act in circumstances where it was reasonably possible for that person to prevent the commission of that act or omission;

he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty rand, or in default of payment to imprisonment for a period not exceeding one month.

Regulations

33. (1) The President may make regulations for carrying this Act into effect.

(2) In particular, and without derogating from the generality of the foregoing, the President may make regulations concerning —

- (a) the issue, termination, cancellation, suspension or extension of licences and the conditions which may be attached thereto;
- (b) the fees to be paid or which may be refunded in respect of licences and exemptions from the payment of fees;
- (c) dimensions, seasoning, names and marks of any forest produce and registration of and the rendering of returns by persons engaged in the transport, sale, manufacture and use of forest produce;
- (d) providing for the survey and demarcation of Forest Reserve;
- (e) the position, use and registration of marking hammers, instruments or devices;
- (f) the marking and numbering of trees and the listing of trees in relation to their markings, numbers and location;
- (g) the removal of felled timber from a Forest Reserve and the conditions relating to its removal;

(3) Regulations made under this section may provide for penalties for contravention thereof not exceeding a fine of two hundred rand or imprisonment not exceeding six months.

(4) Different forms and different fees may be prescribed for, and different conditions may be attached to, different licences.

Repeal

34. The Forests Proclamation (Chapter 138) is hereby repealed.

Passed by the National Assembly this day, the 17th January, 1968.

G.T. MATENGE,
Clerk of the National Assembly.