

THE MATIMELA ACT, 1968

No. 25



of 1968

AN ACT TO PROVIDE FOR THE COLLECTION AND DISPOSAL OF STRAY LIVESTOCK IN TRIBAL TERRITORIES AND ELSEWHERE AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO

Date of Assent: 6.3.68.

Date of Commencement: On a day to be appointed.

ENACTED by the Parliament of Botswana.

Short Title, Application and Commencement

1. This Act may be cited as the Matimela Act, 1968, and shall apply within the tribal areas and shall come into operation on a day to be appointed by the Minister by notice in the Gazette

Interpretation

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

“animals” means horses, donkeys, mules, cattle, sheep, goats, and pigs;

“Chief” means Chief of the tribal area and includes any person performing the functions of Chief;

“District Council” in relation to any tribal area means the District Council within the area of which the tribal area is situated;

“matimela” means any stray animals and any animals which having been stray animals continue to be matimela by virtue of section 14;

“matimela fund” means a fund established under section 13;

“matimela kraal” means a kraal established or deemed to have been established under section 3;

“matimela master” in relation to any matimela kraal means the person appointed under section 4 as matimela master of that kraal, and in the absence or incapacity of such person means the District Council Secretary;

“tribal area” means —

(a) any tribal territory as defined in section 2 of the Chieftainship Law 1965 (No. 29 of 1965); and

(b) such other areas, being community areas within the meaning of the Chieftainship Law, 1965, as may be prescribed;

but excludes the area of the Government camp at Machaneng.

Establishment of Matimela Kraals

3. (1) A district council may by resolution establish any kraal or enclosure as a matimela kraal for the purpose of this Act.

(2) Any kraal or enclosure in the vicinity of any kgotla in which matimela has, prior to the coming into operation of this Act, been customarily placed shall be deemed to have been established as a matimela kraal under this section.

Matimela Masters

4. (1) The District Council shall appoint a matimela master for every matimela kraal established or deemed under section 3 to have been established in its area.

(2) In the exercise of their functions under this Act matimela masters shall act in accordance with such instructions as may be given them by the District Council.

District Councils may Make Arrangements for Collection of Matimela

5. (1) A District Council may at any time, and shall at least once in every year, in consultation with the Chief, make arrangements for the collection of matimela and may, for that purpose employ persons out of moneys available in the matimela fund.

(2) Any matimela collected under the provisions of subsection (1) shall be soon as is practicable be placed in a matimela kraal.

Reporting of Matimela

6. (1) Any person (including any person mentioned in this subsection) who —

(a) finds matimela knowing them to be matimela;

(b) has in his possession upon the coming into operation of this Act any animals which, under customary law, are matimela;

shall report the presence of such animals to his nearest matimela master, Chief, sub-chief or headman within —

(i) one month; or

(ii) three months of the coming into operation of this Act. //

(2) Any Chief, sub-chief or headman who receives a report in terms of subsection (1) shall pass on such report to the matimela master within thirty days of receiving such report.

(3) Any person failing to comply with the provisions of subsection (1) shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 26.

Handing Over of Matimela

7. (1) Any person who finds any matimela shall, unless he first delivers such matimela to a person collecting the same in terms of section 5, deliver such matimela to a matimela kraal within three months of such finding. //

(2) Any person who, upon the coming into operation of this Act, has matimela in his possession shall, unless he first delivers such matimela to a person collecting the same in terms of section 5, deliver such matimela to a matimela kraal within three months of such coming into operation.

(3) Any person who fails without reasonable cause to deliver matimela to a matimela kraal in accordance with the provisions of this section shall be guilty of an offence and liable, on conviction to the penalties prescribed in section 26.

Driving Fees

8. Any person who delivers matimela to a matimela kraal, not being a person employed under the provisions of section 5, shall be entitled to receive from the matimela master driving fee at the rate prescribed:

Provided that no fees shall be claimable where the claimant has previously had the opportunity of and has failed to deliver such matimela to any person collecting matimela under the provisions of section 5.

Collecting of Matimela

9. (1) Any person collecting matimela with the authority of the District Council under the provisions of section 5 may if so instructed by the District Council enter upon any land for the purpose of ascertaining whether any matimela are there and may, if he finds any animals which he has reason to believe are matimela, seize such animals and take them to a matimela kraal:

“Provided that no such person shall take such animals from a kraal unless he has first informed —

- (a) the occupier of that kraal; or
- (b) any servant or member of the family of such occupier; or
- (c) in the absence of all such persons as are referred to in paragraphs (a) and (b), the occupier of any neighbouring land or any servant or member of the family thereof.”

Provided further that such person shall, in the exercise of the powers conferred upon him by this subsection, have in his possession, and shall produce on request, a letter or other document as evidence of such authority issued by the District Council and such letter or other document shall be sufficient proof of such authority.

(2) No person shall collect matimela which is in the possession of another person without the authority of the District Council other than the owner of the matimela or a person acting on the owner's behalf.

(3) Any person who obstructs any person authorized to collect matimela under the provisions of section 5 in the exercise of the powers vested in him under subsection (1) or who contravenes the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to the penalties prescribed in section 26.

Notification of Presence of Matimela

10. (1) The matimela master shall as soon as is practicable after any matimela have been placed in a matimela kraal notify the District Council of the presence of such matimela.

(2) The District Council shall, on receiving any notification given it under the provisions of subsection (1) post details thereof in a conspicuous position at the Council offices and such other places as it may deem necessary and take such steps to publicise the details as may be prescribed.

Claiming of Matimela

11. (1) The owner of any animal placed in a matimela kraal may claim such animal in such manner and on payment of such fees as may be prescribed.

(2) Any person who refuses to pay the fees mentioned in subsection (1) shall be deemed to have abandoned the animal.

(3) No animal placed in a matimela kraal under the provisions of this Act may be claimed after the lapse of twelve months from the date when it was first so placed.

Sale of Matimela

12. (1) Whenever —

(a) any animal has not been claimed under the provisions of section 11 (1) within twelve months from the date on which it was placed in a matimela kraal;

(b) any animal is deemed to have been abandoned under the provisions of section 11(2)

the District Council may direct the matimela master to sell such matimela and, in such event, the matimela master shall then give notice of the date of such sale and of the animals to be sold.

(2) A notice advertising the sale of matimela shall be in the prescribed form and published in the prescribed manner.

(3) Unless the Minister otherwise directs all matimela shall sold either by public auction or to the Botswana Meat Commission and the proceeds thereof shall accrue to the Matimela fund.

(4) Prior to the delivery to the purchaser of matimela stock sold under the provisions of this section the animal shall be permanently marked in a distinctive manner by the matimela master.

(5) The title of the purchaser of any stock sold under the provisions of this section shall not be impeachable in any court of law on any grounds other than fraud.

Matimela Fund

13. (1) Every District Council shall establish a matimela fund.

(2) There shall be paid into the matimela fund any moneys which may accrue to the fund from the sale of matimela under the provisions of section 12, and any fees which may accrue to it under the provisions of section 11.

(3) There shall be paid from the Matimela fund any moneys due under the provisions of sections 5(1), 8 or 19 or which may be prescribed as an expense which may lawfully be met out of the moneys of the fund.

(4) Moneys standing to the credit of any fund may be appropriated by the Minister by order under his hand to the general revenues of the District Council where the Minister is satisfied that the fund has in it moneys surplus to its requirements.

Matimela to Continue to be Matimela

14. Any animals which become or becomes matimela whether before or after the coming into operation of this Act shall continue to be matimela for the pur-

poses of this Act until and unless they are recovered by their owner or sold under the provisions of section 12.

Matimela master's Duty to Care for Animals.

15. Every matimela master shall take proper care of any matimela kraaled under this Act, in accordance with such instructions as the District Council may issue.

Marking of Matimela

16. (1) Where necessary the matimela master may cause any matimela to be marked with a distinctive mark;

Provided that no matimela may be marked by means of a brand until 30 days after the day on which they were first placed in the matimela kraal have elapsed.

(2) Where an animal which has been branded under the provisions of subsection (1) is claimed under the provisions of section 11 or sold under the provisions of section 12 the brand made under the provisions of subsection (1) shall be cancelled in such manner as may be prescribed.

Details of Death or Injury of Animals to be Kept

17. In case of the death or injury of any matimela in his charge, the matimela master shall enter in his matimela kraal book a description of such animal and the cause of its death or injury; and the absence of any such entry, or its falsity in any material respect, shall be held to be *prima facie* proof of the fact that the death or injury in question was due to the default of the matimela master.

Duty to Destroy Certain Animals

18. (1) It shall be lawful for every matimela master to destroy, subject to the provisions of this section, any matimela in his charge suffering from a contagious disease, or likely to prove dangerous to human life or destructive to other animals impounded or being in such condition as to render its destruction a humane act.

(2) No such animals shall be destroyed unless a Chief, Veterinary Officer, Agriculture and Livestock Officer, police officer, a Justice of the Peace, a member or officer of the District Council, an administrative officer or any other person authorized thereto by the Minister by notice in the *Gazette* shall have examined them and shall agree with the matimela master as to the necessity for their destruction.

(3) The matimela master shall summon the owner of such animals, if known and if this is practicable, to attend the examination aforesaid.

(4) If the owner of the animals objects to their destruction he shall subject to the provisions of any other law be given the opportunity of claiming such

animals under the provisions of section 11 and, if he fails so to reclaim them, then such animals may be destroyed.

(5) Nothing in this section shall apply to sheep or goats suffering merely from scab.

Carcases and Hides of Matimela

19. (1) Where matimela dies while in the possession of the matimela master or is destroyed under the provisions of section 18 the matimela master may sell the carcasses or hides thereof unless such matimela suffered from a contagious disease.

(2) The proceeds of any sale under the provisions of subsection (1) shall be paid into the matimela fund and may be claimed by the owner of the matimela if such claim is made to the District Council within twelve months of the date when the animal which has died or which has been slaughtered was first placed in the matimela kraal.

Matimela Kraal Book

20. (1) Every matimela master shall keep a matimela kraal book in which the following particulars shall be legibly entered by him —

- (a) the date when all matimela received by him were so received;
- (b) the number and description of such animals;
- (c) the name and residence of the person delivering such animals to the matimela kraal;
- (d) the date and particulars of the release or sale of such animals as the case may be and the name and residence of the person to whom such animals were sold or released;
- (e) any other matters which he may be directed by the District Council to ascertain and record.

(2) The entries required under the provisions of subsection (1) shall be made at the time when the acts in respect of which they are made were done, or so soon thereafter as possible, but not after any dispute concerning them has arisen.

(3) Any matimelamaster who fails to comply with the provisions of this section shall be guilty of an offence and shall be liable on conviction to the penalties prescribed in section 26.

Matimela Pound Book to be Open for Inspection

21. Every matimela kraalbook shall be kept at the office of the matimela master, and shall at all reasonable times be open for inspection by any person free of charge.

False Entries in Matimela Kraal Book

22. Every matimela master who —

- (a) knowingly makes a false entry in his matimela kraal book;
- (b) fraudulently destroys or erases any entry already made;
- (c) fails to make available for inspection his matimela kraal book in accordance with the provisions of section 21

shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 26.

Legal Proceedings

23. (1) The District Council may bring action in any court of competent jurisdiction for the delivery to it of matimela.

(2) In the event of there being any dispute —

- (a) as to whether any stock is or is not matimela;
- (b) as to whether any person is or is not the owner of any animals in a matimela kraal; or
- (c) whether any person is entitled to the proceeds of the sale of carcasses or hides in accordance with the provisions of section 19 (2);

the District Council or any interested party may make application to a Subordinate Court of the First Class for a declaration of its or his rights in the matter, and the Subordinate Court shall make such order in the matter as it may think fit.

(3) The Minister may by notice in the *Gazette* authorise any African Court to exercise the jurisdiction conferred under the provisions of subsection (2) upon a Subordinate Court of the First Class.

Variation of Prescribed Periods and Times

24. Where, under this Act, anything is required or permitted to be done within a specified time or after the lapse of a specified period the Minister may after consultation with the appropriate District Council or councils by order in the *Gazette* either generally or in relation to any tribal area vary such time or period.

Regulations

25. The Minister may, after consultation with the appropriate District Council make regulations for any tribal area —

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) prescribing the form of any brand or mark used for the purposes of this Act;
- (c) generally for the better carrying out of the provisions of this Act.

Penalties

26. (1) A person who is guilty of an offence under section 6 (3), 7 (3), 9 (3), or 22 shall be liable to a fine of R200 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) A person who is guilty of an offence under section 20 (3), shall be liable to a fine of R100 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Protection of Councils etc.

27. No District Council, Matimela master or other person shall be subject or liable to any action or proceedings for damages by reason of any act or omission done or omitted to be done by any person in exercise or purported exercise of his duties or functions under this Act unless such act or omission was done or omitted to be done *mala fide*.

Amendment to Law No. 35 of 1965

28. (1) The Schedule to the Local Government (District Councils) Law, 1965 is amended by the deletion of sub-item (2) of item 5.

(2) As from the date of coming into operation of this Act every bye-law made or adopted by a District Council relating to the collection and disposal of stray livestock or other domestic animals shall lapse, but any livestock collected under the authority of such bye-laws shall be matimela for the purposes of this Act unless they have lawfully been disposed of prior to the coming into operation of this Act under the authority of such bye-laws.

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

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

Signature

84