

## THE PRIVATE FORESTS ACT

*Date of commencement: 16th March, 1961.*

*An Act to provide for the better regulation and protection of private forests in Swaziland.*

*Short title.*

1. This Act may be cited as the Private Forests Act, 1951.

*Interpretation.*

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

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

“district commissioner”, means the administrative officer in charge of the district and includes any administrative officer acting under his direction or sitting in a judicial capacity;

“fire-belt” means a strip of land, whether under trees or not, which is set aside and maintained for the purpose of preventing the spread of veld or forest fires;

“forest officer” means any person upon whom the powers of a forest officer under this Act may be conferred in writing by the Minister;

“forest produce” includes any of the following things when found in or removed from any private forest:

Trees, timber, wood, firewood, wattle, kraal-wood, slabs, chips, plants, rushes, bedding, grass, reeds, peat, fibres, leaves, moss, flowers, ferns, seeds, roots, bulbs, galls, spices, bark, gum, rubber and anything which is grown within a forest or removed from a forest; game, birds, fish, skins, horns, ivory, sawdust, charcoal, honey, wax, shells, earth, stones and anything which is contained in a forest;

“Minister” means the Minister for Agriculture;

“peace officer” means any person defined as such by section 2 of the Criminal Procedure and Evidence Act;

“private forest” means lands which the Minister by notice published once in the Gazette and in an issue of a newspaper circulating in Swaziland has declared to be a private forest and upon which a notice to this effect in the English and siSwati languages is prominently displayed;

“timber” means all wood contained in trees whether standing, fallen or felled and all wood produced in Swaziland whether sawn, split, hewn, planed or otherwise finished or processed;

“tree” means the whole or any part of any tree as ordinarily understood or of any shrub, bush, seedling, transplant, sapling, reshoot, underbrush or regrowth.

(ISSUE 1)

(2) For the purposes of the definition of "private forest", publication in an issue of a newspaper shall be presumed to have been effected unless the contrary is proved. (Amended P.3/1963; P.25/1964.)

*Major offences.*

3. Any person who —

(a) without the authority of the owner or his agent in or on a private forest —

- (i) cuts, injures, destroys, collects, takes or removes any tree, timber or other forest produce; or
- (ii) injures, alters, shifts or removes, or interferes with any beacon, boundary mark or fence; or
- (iii) lights or assists in lighting or uses, rekindles, or adds fuel to any fire;

(b) on any private forest or within one mile of the boundary of such forest —

- (i) leaves unattended a fire which he has lighted or assisted in lighting or used or rekindled or to which he has added fuel, before such fire is thoroughly extinguished;
- (ii) personally or through his servant or agent acting in the course of his employment, lights or uses, rekindles or adds fuel to any fire which through his negligence spreads or causes damage or injury,

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or imprisonment for a period not exceeding one year or to imprisonment without the option of a fine or to both such fine and imprisonment:

Provided that for the purpose of this section fire shall not include fires used for cooking and domestic purposes within the precincts of any settled dwelling place.

*Minor offences.*

4. A person, who in or on a private forest, without the authority of the owner or person lawfully in control —

- (a) clears, breaks or cultivates land;
- (b) in any manner hunts or destroys or attempts to hunt or destroy game, birds or other animals, or fishes for or destroys or attempts to fish or destroy fish or enters with dog or gun;
- (c) robs or attempts to rob any beehive or disturbs or removes any swarm of bees;
- (d) enters any part where entry is by notice prohibited, or climbs through or over any fence or gate;
- (e) smokes, where smoking is by notice prohibited, or negligently lights or throws down any burning match or other burning material;
- (f) allows any stock to trespass;
- (g) alters, shifts or in any way interferes with any notice or notice board;
- (h) camps, squats, resides, or builds any structure,

shall be guilty of an offence and liable, on conviction, to a fine not exceeding forty rand, or in default of payment thereof, to imprisonment not exceeding two months.

*Responsibility for child's conduct.*

5. Any person having the custody of a child who by his act, omission or neglect has conducted to the commission of an offence under this Act by that child shall be guilty of an offence, may be liable on conviction to the penalties prescribed under section 4, and may be charged jointly with such child.

*Clearing of fire belts on boundaries of private forests.*

6. (1) Notwithstanding anything in this Act or any other law, a forest officer in charge of a private forest, may after having given not less than seven days' notice in the form prescribed in the Schedule, to the person in charge of any land adjacent to a private forest, on the day stated in that notice or upon a day to be agreed upon by the parties concerned, by burning or in any other manner —

- (a) clear a fire-belt on the private forest side of the common boundary between the lands concerned; or
- (b) at his own expense or the expense of his employer, clear a fire-belt on each side of any boundary common to such private forest and adjacent land:

Provided that the fire-belt on the property adjoining shall not exceed a maximum width of thirty yards nor in any case be of greater width than the fire-belt within the private forest at the same point and provided further that such fire-belt shall not cause damage to any improvements or dwellings or interfere with any grave sites on any such land.

(2) Any person who fails to give notice as required by this section shall be guilty of an offence and liable on conviction to the penalties specified in section 4.

*Procedure in regard to extinguishing fire.*

7. (1) If there is good reason to believe that any fire in the open air or within one mile of a private forest may become dangerous to life or property, any person acting in good faith 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 such fire be on or within one mile measured on the ground from the boundary of a private forest, the forest officer present shall have the right to take full control.

(3) A person acting in terms of sub-section (1) —

- (a) shall have the control of persons under his command and all persons who voluntarily place their services at his disposal;
- (b) may take such measures as in the circumstances are reasonable and necessary or expedient for the protection of life and property or for the 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 cutting, burning, ploughing, or otherwise;

- (c) may call upon any 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 fire;
- (d) 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 operation in connection with the fire, to remove himself or any vehicle or other thing under his control.

(4) A person who fails to comply with any requirements or order under sub-section (3) shall be guilty of an offence and liable, on conviction, to the penalties specified in section 4.

(5) No liability shall attach to the owner of the private forest or to any other person in respect of any loss or damage arising out of the lawful exercise by a forest officer or such other person of any power conferred by this section, and no person shall be entitled to any compensation or reward whatever in respect of any act performed or service rendered by him in pursuance of any requirement or order under sub-section (3);

Provided that the owner of the private forest concerned may pay to any person who has so suffered loss or damage or who has performed any such act or has rendered any such service with respect to the protection from fire of the private forest, such compensation or reward as the owner of the private forest may determine.

(6) No action shall lie for trespass or for damages caused in good faith by any person in charge of any operations lawfully undertaken under this section, or by any persons assisting any such operations, but the person in charge of the operations shall at the first convenient opportunity report the circumstances and the action taken to the nearest police officer or justice of the peace or to the district commissioner of the district concerned.

#### *Wrongful possession of forest produce.*

8. (1) If a forest officer on reasonable grounds suspects that any forest produce found in or obtained from or in transit from a private forest, is about to be or has been wrongfully removed, he may seize and detain such forest produce pending enquiry:

Provided that the detention of any forest produce shall be reported to the district commissioner, the nearest justice of the peace or the nearest police officer within twenty-four hours.

(2) A forest officer may without warrant arrest any person found in possession of any forest produce in or within one mile of a private forest unless such person produces evidence of authority authorising the removal or gives a satisfactory account of the manner in which he became possessed of such forest produce.

(3) If any person so arrested is unable to satisfy the court that he had a lawful right to be in possession of the said forest produce, he shall be guilty of an offence and liable on conviction to the penalties specified in section 4.

#### *Special powers of forest officers.*

9. (1) Every forest officer may demand the production of an authority from any person found within the precincts of a private forest which such person is required under this Act to have.

(2) Any person failing to produce such authority on demand shall be guilty of an

offence and liable on conviction to the penalties specified in section 4 unless such authority is produced to the district commissioner of the district or to any forest officer or public officer within seventy-two hours.

(3) Every forest officer shall in or in connection with private forests or in respect of any offence, attempted offence or suspected offence under this Act, have all the powers vested by law in peace officers.

(4) Every forest officer may, in addition to the powers conferred upon him by sub-section (2) —

- (a) arrest without warrant any person reasonably suspected of having been a party to any of the offences mentioned in section 3;
- (b) arrest without warrant any person reasonably suspected of having been a party to any offence under this Act if such officer has reason to believe that the said person will fail to appear in answer to a summons;
- (c) seize any forest produce in respect of which such officer has reason to believe that an offence under this Act has been committed;
- (d) seize any weapon, vehicle, instrument, animal or any other thing which such officer has reason to believe has been used in the commission of an offence under this Act.

(5) A seizure under sub-section (4) shall forthwith be reported to the district commissioner who may, if he thinks fit, declare the seized property to be forfeit to the Government:

Provided that such declaration shall not affect any rights which any person other than the person in whose possession it was found may have to the property in question if it is proved that he did not know that such property was being used in the commission of an offence under this Act. (Amended P.25/1964.)

*Officer shall produce letter of appointment.*

10. A forest officer, exercising or purporting to exercise the powers conferred upon him by this Act shall produce on demand to any person concerned his letter of appointment.

*Special powers of civil nature by district commissioners in case of squatting, camping and cultivating on private forests.*

11. (1) If a person without proper authority camps, squats, or resides or builds any structure upon, or clears or cultivates land in a private forest, the district commissioner having jurisdiction in the district where that forest is situate may, upon the request of a forest officer, summon such person to appear before him to show cause why he should not be ordered to leave such forest or remove such structure; and if he fails to appear, or having appeared, fails to prove that he has proper authority for the acts aforesaid, the district commissioner may direct that, within a period fixed by him, such person shall leave such forest and not return, and shall remove any structure erected by him in such forest and any crops belonging to him.

(2) The district commissioner may at the same time authorise the forest officer concerned to remove, destroy or otherwise dispose of such structure or crops unless the order is complied with by such person within the period so fixed.

(ISSUE 1)

*Restitution of, and damages in respect of forest produce.*

12. (1) If upon the hearing of any charge under this Act the district commissioner finds as a fact that forest produce has been unlawfully removed from a private forest, he may order that it be returned by the person in possession thereof or that damages in respect thereof in an amount fixed by him within the limits of his jurisdiction be paid by the accused to the owner.

(2) Every such order may be enforced in the same manner as judgments of such court in civil actions are enforced.

(3) Sub section (1) relating to damage shall apply in respect of any unlawful cutting of or injury to forest produce, or any damage wilfully or negligently caused by fire to forest produce in a private forest.

*Evidence.*

13. (1) If in any proceedings under this Act the question arises whether any forest produce is the property of the owner of a private forest, it shall be presumed to be the property of the owner of the private forest unless the contrary is proved.

(2) Any person charged with doing any act for which by this Act authority is required, shall be deemed to be without such authority unless he produce the same to the court or give other satisfactory proof of possessing the same.

## SCHEDULE

## NOTICE OF INTENTION TO CLEAR A FIRE-BELT

To....., being a person  
in charge of.....  
Address.....

Take notice in terms of section 6(1) of the Private Forests Act, that it is my intention to clear a fire-belt on the boundary common to the private forest known as.....  
.....\* and the property known as.....  
in the District of.....

I intend to clear the fire-belt by burning, skoffeling, ploughing, slashing, raking or..... † and to commence work at..... o'clock a.m./p.m. † on the..... day of....., 19..... or the first suitable day thereafter.

Signature .....

Address .....

Date .....

\*Give No. and/or name of property.

†Delete what is inapplicable.