

HERALDRY ACT

NO. 18 OF 1962,

AS AMENDED

ACT

To make provision for the establishment of a bureau of heraldry, a heraldry committee and a heraldry council; for the registration and protection of coats of arms, badges, other emblems, names and uniforms; and for other matters incidental thereto.

1. Definitions.-In this Act, unless the context otherwise indicates-

"application" means an application referred to in section 7 and "applicant" has a corresponding meaning;

"approve" means approve under this Act; and "approval" has a corresponding meaning;

"association" means any association of persons in the Republic, the territory or a foreign country formed for the promotion of sport or for any other lawful purpose, the pursuit of which in the opinion of the Minister is not contrary to the public interest;

"badge" means any object or figure, being a symbolic representation, but not displayed on a shield, used for official or municipal purposes or by any association, institution or person as a mark of recognition or as a distinguishing token;

"bureau" means the bureau of heraldry established by section 3;

"coat of arms" means any object or figure, being a symbolic representation displayed in colours on a shield in conformity with the principles and rules of heraldry, with or without a crown, helmet, crest, mantling, supporters, motto or other accessories;

"committee" means the heraldry committee referred to in section 6(3);

"council" means the heraldry council established by section 6 (1);

"deletion" means the deletion in the register of particulars of a registered heraldic representation, name, special name or uniform;

"differencing" means the incorporation of a brisure in a heraldic representation in conformity with the principles and rules of heraldry in order to distinguish between the different owners of such representation;

"heraldic representation" means a coat of arms, badge or other emblem;

"institution" means any institution, including any university, university college, teachers' college, training college, normal college, technical college, school or research institute in the Republic, the territory or a foreign country, for the promotion of education, arts, science or any other lawful human activity, and any union or society of the present or past members, students or scholars of any such institution;

"Minister" means the Minister of National Education;

"municipal" means of or belonging to an institution or body referred to in section 84(1)(f)(i) or (ii) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), and any similar institution or body in the territory;

"name" means any name referred to in section 7(3);

"official" means of or belonging to the Government of the Republic or any provincial administration;

"other emblem" means any flag, pennant, gonfalon,

"other emblem" means any flag, pennant, gonfalon, decoration, medal, seal, insignia of rank, any office or order or other or kindred symbolic representation, but does not include a coat of arms or badge;

"owner", in relation to any heraldic representation, name, special name or uniform, means the authority, association, institution or person in whose name such representation, name, special name or uniform has been registered;

"prescribed" means prescribed by regulation;

"province" includes the territory;

"provincial administration" means the administration of a province;

"register" means the register kept in terms of section 5;

"registration" means an entry in the register; and "registered" has a corresponding meaning;

"regulation" means any regulation made under section 25;

"special name" means any special name referred to in section 7;

"state herald" means the officer appointed in terms of section 4;

"territory" means the territory of South-West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38(5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968);

"this Act" includes any regulation;

"uniform" means any article or articles of wearing apparel, being distinctive in design and colour, but without a heraldic representation as part thereof, intended to be used by members of an association or institution which is not of a political or religious character.

2. [S. 2 repealed by s. 2 of Act No. 54 of 1969.]
3. Bureau of heraldry.-(1) There is hereby established a bureau of heraldry for the registration of heraldic representations, names, special names or uniforms and for the performance of such other functions as are assigned to the bureau by or under this Act.
  - (2) The functions of the bureau shall be to-
    - (a) receive and examine applications for registration or deletion of, and objections against the registration or deletion of, heraldic representations, names, special names or uniforms;
    - (b) keep the register and the documents lodged in terms of this Act;
    - (c) issue certificates of registration of heraldic representations, names, special names and uniforms;
    - (d) give advice, in so far as is possible, regarding heraldic representations, names, special names or uniforms, and render assistance with the design of heraldic representations and uniforms;
    - (e) carry out such other duties as may be assigned to the bureau by the Minister, council or committee in terms of this Act.
4. State herald.-There shall be appointed, subject to the laws governing the public service, a state herald as head of the bureau.
5. Register of heraldic representations, names, special names and uniforms.-A register shall be kept in the bureau in which the bureau shall on application and in the manner determined by the state herald after consultation with the council enter the particulars which he determines in respect of-
  - (a) the coat of arms of the Republic, the national flag of the Republic, the coats of arms of the provinces and any other heraldic representation

instituted, constituted or created by any law, and any amendment thereof effected by any law;

- (b) any official or municipal heraldic representation granted by competent authority, or adopted in terms of any law, before the commencement of this Act;
  - (c) any official or municipal heraldic representation granted in terms of section 2 before the commencement of the Heraldry Amendment Act, 1969, or adopted after the commencement of this Act in terms of any law, and any amendment thereof;
  - (d) any other heraldic representation, the application for registration of which has been approved and any approved amendment thereof; and
  - (e) any name, special name of uniform, the application for registration of which has been approved and any approved amendment thereof.
6. Heraldry council and heraldry committee.-(1) There is hereby established a heraldry council which shall consist of the state herald and at least six other members appointed by the Minister on such conditions and for such period as he may determine: Provided that the Minister may at any time remove any member appointed by him from office if in his opinion sufficient reasons exist for doing so.
- (2) The functions of the council shall be to-
- (a) determine policy to be applied as to heraldic matters;
  - (b) consider and decide upon such matters as the state herald or the committee may refer to it;
  - (c) consider appeals noted under section 9; and
  - (d) carry out such other duties as may be assigned to the council by the Minister.
- (3) There is hereby established a heraldry committee consisting of the chairman and the state herald and such number of other members of the council as the Minister may designate, to-
- (a) determine which applications shall be referred to it by the state herald;
  - (b) decide upon applications which the state herald may refer to it; and
  - (c) consider objections lodged in terms of section 7B.

- (4) (a) The Minister shall-
- (i) designate one of the members of the council who was appointed as a member by him, as chairman to preside at a meeting of the council;
  - (ii) designate one of the members of the committee who was appointed as a member by him, as chairman to preside at a meeting of the committee:

Provided that in the absence of the chairman of the council or the chairman of the committee from any meeting of the council or committee (as the case may be), the members present at such meeting shall elect one of their number to preside at such meeting.

- (b) Subject to any directions by the Minister, the council and the committee shall determine when and where they shall meet and the procedure and quorum at their meetings, including the number of votes required for a decision.

- (5) A member of the council or the committee who is not in the full-time employment of the State shall out of moneys appropriated by Parliament for the purpose, be paid in respect of his services as a member of the council or the committee such allowances as the Minister in consultation with the Minister of Finance may determine.

7. Applications and appeals.-(1) Any official or municipal authority, association, institution or person may apply to the bureau for registration of a heraldic representation, or of any amendment or the deletion of a heraldic representation which has been registered in its or his name.

- (2) Any official authority established in a foreign country may with the consent of the council apply to the bureau for the registration of a heraldic representation, or for an amendment of or the deletion of any heraldic representation registered in its name: Provided that the council's decision shall be final: Provided further that the provisions of section 19 shall not apply in respect of the exercise of the council's power under this subsection.

- (3) Any association or institution which is not of a political or religious character may apply to the bureau for registration of its name or of a special name or designation used by the association or institution for its members or for the members of any organization constituted by the association or institution in accordance with its rules and regulations, or of any uniform used by the association or institution or of any

amendment of deletion of any name, special name or uniform which has been registered in its name.

- (4) The state herald may, subject to the provisions of section 19 and with the consent of the committee, delete any heraldic representation, name, special name or uniform if he is satisfied that the official or municipal authority, association or institution in whose name it has been registered no longer exists.
  - (5) Any person in whose name a family coat of arms has been registered may apply to the bureau for the registration, upon his death, with or without differencing, of that family coat of arms in the name of any of his descendants, or in the name of any other person who bears the same family name.
  - (6) Any descendant of any person who lawfully bears or bore a particular family coat of arms, or any adopted child, as defined in the Children's Act, 1960 (Act No. 33 of 1960), of such person bearing the same lawfully conferred family name as that person, may apply to the bureau for the registration, with or without differencing, of that family coat of arms in his name.
  - (7) Any person may apply to the bureau for the issue to him of a certificate by the state herald stating that the representation to which the certificate relates is a true representation of the family coat of arms lawfully borne by any person mentioned therein.
  - (8) An application for registration of a heraldic representation, name, special name or uniform or for any amendment or the deletion of a registered heraldic representation, name, special name or uniform or an appeal in terms of section 9 shall be made to the bureau in the form determined by the state herald and shall be accompanied by the documents and designs determined by the state herald and the fees determined by the Minister with the concurrence of the Minister of Finance.
- 7A. Notice of applications. The bureau shall give notice in the Gazette of any application made to it in terms of section 7, and of the period within which and the manner in which any objection in terms of section 7B shall be lodged with the bureau.
- 7B. Objections.-Any official or municipal authority, association, institution or person wishing to object to the registration of any heraldic representation, name, special name of uniform or to the amendment or deletion of a registered heraldic representation, name, special name or uniform on the grounds that such registration, amendment or deletion would encroach upon rights to which it or he is legally entitled, shall lodge such objection with the bureau in such manner and within such period as the bureau may by notice in the Gazette determine.

8. Consideration of applications by state herald.-(1) If an application is in the form determined by the state herald under section 7, he may, subject to the provisions of sections 6(3)(a) and 19, approve or reject the application, or may refer it to the committee: Provided that if any objection is lodged against the registration of the heraldic representation, name, special name or uniform concerned, or against the amendment or deletion concerned of any registered heraldic representation, name, special name or uniform, he shall refer the application to the committee.

(2) and (3) [Sub-ss. (2) and (3) deleted by s. 7 (b) of Act No. 63 of 1980.]

- (4) (a) An application for registration or amendment may be rejected by the state herald if-
- (i) the heraldic representation (except a family coat of arms), name, special name or uniform is similar to a heraldic representation, name, special name or uniform or any material part thereof protected by copyright, this Act or any other law;
  - (ii) the design of the heraldic representation does not accord with the principles and rules of heraldry;
  - (iii) the application does not comply with the provisions of this Act or is defective in other respects; or
  - (iv) the further information or particulars referred to in section 8B are not furnished.
- (b) When considering an application referred to in section 7 (7)-
- (i) the state herald may require the applicant to submit proof of the correctness of the allegation to which the application applies;
  - (ii) the state herald shall take into consideration the fact (if it is proved) that the representation concerned in a representation of a family coat of arms which was granted by a competent authority to a person with the family name in question or which was lawfully borne by any such person.

- 8A. Consideration of applications by committee.-(1) Whenever an application or an application together with an objection is referred to the committee by the state herald, the committee may, subject to the provisions of section 19, approve the application or uphold the objection and reject the application.

- (2) The provisions of section 3(4) shall apply to the consideration of an application by the committee.

- 8B. Request for further information or particulars.-The bureau may, with regard to an application, require from the applicant such further information or particulars as the state herald, the committee or the council, as the case may be, desires.
9. Appeal against decision of state herald or committee.-(1) If an application-
- (a) is rejected by the state herald or the committee, the applicant,
  - (b) is approved by the committee, any person who in terms of section 7B lodged an objection, may within six weeks after the bureau has informed him thereof, appeal to the council in writing and specifying the grounds of appeal against the rejection of his application or objection, and the council may subject to the provisions of section 19 uphold the appeal and, in the case of an appeal-
    - (i) by such applicant, approve the application concerned;
    - (ii) by such objector, refuse the application concerned, or may reject the appeal.
  - (2) At the hearing of any such appeal against the rejection of an application or objection, the state herald shall not take part in the decision.
10. Registration, amendment or deletion of heraldic representation, name, special name or uniform.- If an application for the registration, amendment or deletion of a heraldic representation, name, special name or uniform is approved by the state herald, committee or council-
- (a) the bureau shall, in the case of an application for registration, enter in the register the particulars determined by the state herald in respect of that heraldic representation, name, special name or uniform, and the bureau shall give notice in the Gazette of the registration and issue to the applicant a certificate of registration in the form determined by the state herald;
  - (b) the bureau shall, in the case of an application for deletion, delete the particulars concerned and give notice thereof in the Gazette:
- Provided that in the case of the approval of any such application by the state herald or committee, such entry shall not be made or such deletion shall not be effected and such notice shall not be given if an appeal has been lodged in terms of section 9 and such appeal has not yet been disposed of.

14. [S. 14 substituted by s. 12 of Act No. 54 of 1969 and repealed by s. 11 of Act No. 63 of 1980.]
15. Seal of office.-The bureau shall have a seal of office the heraldic particulars whereof shall be entered in the register.
16. Register open for inspection.-The register shall be open for inspection by the public during the prescribed hours on payment of the fees fixed by the Minister in consultation with the Minister of Finance and subject to the prescribed conditions.
17. Information from register.-The bureau may at the request of-
  - (a) any person and on payment of the fees determined by the Minister in consultation with the Minister of Finance, furnish such person with an extract from the register or a reproduction of a registered heraldic representation, name, special name or uniform;
  - (c) the owner of any heraldic representation, name, special name or uniform, and with the approval of the council, issue to such person a duplicate of the certificate of registration concerned, on payment of the fees determined by the Minister in consultation with the Minister of Finance.
18. Correction of clerical errors and rectification of register.-Upon a request in writing accompanied by the prescribed fees or without such a request and subject to the provisions of section nineteen, the state herald or the council may authorize the correction of any clerical error in any document lodged or issued in terms of this Act or in the register.
19. Exercise of discretionary powers.-Whenever any discretionary power is by this Act given to the state herald, the council or the committee, such power shall not be exercised adversely to an applicant or an objector or other person who according to the register appears to be an interested party, without affording such applicant, objector or interested party a reasonable opportunity of being heard.
20. Savings.-
  - (1) Nothing in this Act shall prevent any person from using any registered heraldic representation, name, special name or uniform in the course of or for the purpose of any stage play, historical pageant or other form of performance or entertainment or any cinematographic film, provided it is not used in such a manner or under such circumstances as to bring it into ridicule or contempt.
  - (2) Nothing in this Act shall prevent the continued use of any mark or design registered under the Designs, Trade Marks and Copyright Act, 1916, or any mark or design not protected under that Act but which has been bona fide used as a trade mark before the commencement of this

Act: Provided that the onus of proving such bona fide use shall be upon the person making such claim.

- (3) Nothing in this Act shall deprive any person of the right to use any heraldic representation, name, special name or uniform which at the commencement of this Act is not unlawfully in regular use by such person: Provided that the onus of proving such use shall be upon such person.
- (4) Nothing in this Act shall deprive any person of the right to use any heraldic representation, name, special name or uniform to the use of which he has become entitled by reason of his membership or past membership of an association or institution, within or outside the Republic or the territory: Provided that the onus of proving such right shall be upon the person claiming such right.

21. Damages for misuse of registered heraldic representations, names, special names or uniforms.-Any person who-

- (a) without the written authority of the association or institution in whose name any name, special name or uniform has been registered, or without being a member of such association or institution, uses such name, special name or uniform or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such name, special name or uniform; or
- (b) without the written authority of the official or municipal authority, association, institution or person in whose name any heraldic representation has been registered or, if such person has died, of the widow of such person in the case of a family coat of arms, or without any other lawful reason, wears, uses, sells, barter or trades in any such heraldic representation or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such heraldic representation,
- (c) may be sued in any court of law by any such official or municipal authority, association, or person or widow of such person for-
  - (i) an amount not exceeding one thousand rand, and such court may without proof of any damages, and in addition to the cost of the action, award such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or
  - (ii) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to be reasonable in the circumstances, or grant an interdict or both award damages and grant an interdict.

22. Penalties for misuse of registered representations, names, special names or uniforms.-Any person who-
- (a) without the written permission of the official or municipal authority in whose name any official or municipal heraldic representation has been registered, or without any other lawful reason, sells, barter or uses for gain or trades in such heraldic representation or any material part thereof or any replica or reproduction thereof or any imitation thereof which might reasonably be confused therewith; or
  - (b) uses a registered name, special name or an abbreviation thereof or a uniform in such a manner that it could reasonably be inferred that he is the owner or lawful user thereof or that he is a member of an association or institution, while in fact he is not such owner, user or member,
- shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.
- 22A. Any person who commits any act which displays contempt for the coat of arms of the Republic or which is likely to hold it up to ridicule, shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand rand or in default of payment to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
23. Penalty for false entries.-Any person who, knowing the same to be false-
- (a) makes or causes to be made a false entry in the register;
  - (b) makes or causes to be made any document falsely purporting to be a copy of an entry in the register;
  - (c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof; or
  - (d) makes any false statement or representation for the purpose of deceiving the state herald, the committee or the council in the execution of the provisions of this Act, shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand rand or in default of payment to imprisonment for a period not exceeding one year.
- 23A. (1) Any person who furnishes any representation which he alleges or which on the face of it purports to be a true representation of a family coat of arms which was or could have been lawfully borne by any person with a particular family name, while he does not have at his disposal a certificate as contemplated in section 7(7) issued in respect of such representation, shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand rand or in default of 12

payment to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

- (2) If in any prosecution for a contravention of subsection (1) it is proved that the accused furnished a representation which on the face of it purports to be a true representation of a family coat of arms, a statement, made by the accused in connection with the furnishing of the representation, to the effect that it is not claimed or implied that the representation concerned is such a true representation, shall not be a defence to the charge.

24. Annual report.-(1) The state herald shall report annually to the Minister on the activities of the bureau and the council.

- (2) The Minister shall lay a copy of such report on the Table of the Senate and of the House of Assembly within fourteen days after receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

25. Regulations.-(1) The Minister may make regulations with regard to-

- (a) [Para.(a) deleted by s. 17(a) of Act No. 63 of 1980.]
- (b) all matters which by this Act are required or permitted to be prescribed; and
- (c) generally, all matters which he considers it necessary or expedient to prescribe to give effect to the provisions of this Act, or in order that the objects of this Act may be achieved.
- (2) The generality of the powers conferred by paragraph (c) of subsection (1) shall not be limited by the provisions of the other paragraphs of the said subsection.

26. [S. 26 repealed by s. 21 of Act No. 54 of 1969.]

27. Application to the territory.-This Act and any amendment thereof shall also apply to the territory.

28. Short title and date of commencement.-This Act shall be called the Heraldry Act, 1962, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.