

COURT (REMOTE PARTICIPATION) ACT, 2018

Assented to 21 June, 2018.

Date of Commencement: 2 July, 2018.

Arrangement of Sections

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An act to provide for remote participation of parties in court proceedings and for incidental matters.

PART I

PRELIMINARY PROVISIONS

Short title and Commencement

1. (1) This Act may be cited as the Court (Remote Participation) Act, 2018.
(2) This Act shall come into force on the date of its publication in the *Gazette*.

Interpretation

2. In this Act unless the context otherwise requires—

“Audio-visual link or AVL”, in relation to the appearance of a participant at any proceeding, means facilities that enable both audio and visual communication between participants, when some or all of them are not physically present at the place of hearing of all or pan of the proceeding;

“civil proceedings” means any proceedings in a court, other than criminal proceedings;

“criminal procedural matter” means any matter, in a criminal proceeding, in respect of which no evidence is to be called;

“criminal substantive matter” means any matter, in a criminal proceeding, in respect of which evidence is to be called;

“court” refers to all the courts in the country;

“compelling circumstances” are those circumstances which do not serve the interest of justice;

“participant”, in relation to a proceeding, means a person who is, in that proceeding, any of the following—

- (a) a party;
- (b) accused person;
- (c) counsel;
- (d) amicus curiae;
- (e) a witness;
- (f) a member of the bench such as but not limited to court assessor;
- (g) registrar, assistant registrar or clerk;
- (h) a judicial officer who is presiding over the proceedings; or
- (i) any other person who has a direct interest in the matter or who the judicial officer considers appropriate;

“Registrar” means a Registrar of the court and includes a Deputy Registrar.

Application

3. This Act binds all participants.

PART II

USE OF AUDIO-VISUAL LINKS IN PROCEEDINGS

General criteria for allowing use of audio-visual Links

4. (1) In every criminal or civil proceeding, the judicial officer shall make a determination on whether or not to use AVL for the appearance of any participant in the proceeding.

(2) In making the determination, the judicial officer shall consider the following as criteria for the use of AVL—

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of technology on the effective maintenance of the rights of other parties to the proceeding, including—
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court,
 - (ii) the level of contact with other participants; and
- (d) any other relevant matters.

(3) The Registrar may make a determination on the use of AVL in the allocation of hearing dates where counsel or parties need to be consulted and in matters falling within the ambit of the office of the Registrar including—

- (a) civil or criminal pre-trial conferences;
- (b) security for costs; and
- (c) taxation.

Additional criteria for allowing use of Audio-Visual Links in criminal proceedings

5. A judicial officer shall also consider, in making a determination under this Act, whether or not to allow the use of AVL for the appearance of any participant in a criminal proceeding, the potential impact of the use of the technology on the effective maintenance of the right of the accused person to a fair trial, and on the accused person's right associated with the hearing and, in particular—

- (a) the ability of the accused person—
 - (i) to comprehend the proceedings,
 - (ii) to participate effectively in the conduct of their defense,
 - (iii) to consult and instruct counsel privately,
 - (iv) to access relevant evidence, and
 - (v) to examine the witnesses for the prosecution;
- (b) the level of contact the accused person has with other participants; and
- (c) any adverse impression that may arise through the accused person or any participant appearing by means of AVL, and whether that adverse impression may be mitigated.

Use of Audio-Visual Links in civil proceedings

6. (1) AVL shall be used in civil proceeding for the appearance of a participant unless due to the existence of compelling circumstances, the judicial officer determines otherwise.

(2) A judicial officer may make a determination under subsection (1)—

- (a) on the motion of that judicial officer; or
- (b) on the application of any participant in the proceeding.

(3) A determination under subsection (1) shall be made in accordance with the criteria in section 5.

Use of Audio-Visual Links in criminal procedural matters

7. (1) A Judicial officer may determine whether to require any one or more of the participants in a criminal procedural matter to use AVL for the participant's court appearance, if AVL is available for that appearance.

(2) Any determination made under this section shall be made in accordance with the criteria in sections 5 and 6.

Use of Audio-Visual Links in criminal substantive matters

8. (1) AVL shall not be used in any criminal substantive matter for the appearance of a participant unless a judicial officer determines to allow its use for the appearance of that participant in the proceeding—

(a) in accordance with the criteria in sections 5 and 6; and

(b) taking into account whether the parties to the proceedings consent to the use.

(2) Notwithstanding subsection (1) and subject to subsection (3), AVL shall not be used for the appearance of the accused person in the trial that determines the guilt or innocence of the accused person unless the accused person consents to its use.

(3) Where however, the judicial officer after due determination, is of the view that justice shall best be served by the use of AVL and that the objection in terms of subsection (2) by accused person to the use of AVL is meant to delay or frustrate the criminal trial the judicial officer shall order the use of AVL.

Judicial officer or Registrar may vary or revoke determination

9. A judicial officer or Registrar may at any time revoke a determination to the use of AVL for the appearance of a participant if the judicial officer or Registrar considers that any reason for the determination, with respect to the criteria in section 5 and 6 (as the case may be), no longer applies or that justice shall no longer be attained by its continued use.

Judicial officer may make a direction

10. A judicial officer who makes a determination under this Act in relation to the use of the appearance of a participant in a proceeding may make a direction in accordance with that determination.

Attendance at hearing

11. (1) A participant who appears at a proceeding, or part of a proceeding by the use of AVL under this Act is regarded as being present in the place of hearing at the proceeding, or that part of the proceeding for the duration of that use.

(2) Subsection (1) applies whether or not that participant is in Eswatini.

Documents and other exhibits when a person appears at proceeding by use of AVL

12. A document may be put to or by a person appearing at a proceeding by the use of AVL, or other exhibit may be shown to or by that person—

- (a) by transmitting the document or other exhibit electronically;
- (b) by use of AVL; or
- (c) by any other method that the judicial officer deems fit.

PART III
GENERAL

Relationship of this Act with other enactments

13. (1) The appearance by a participant in proceeding by the use of AVL to the extent that is authorized by this Act fulfils the corresponding legal requirements in relation to appearance in person at the proceeding under every enactment and rule of court, unless that other enactment or rule of court expressly provides otherwise.

(2) If an enactment or rule of court provides for the appearance by a participant at a proceeding by the use of AVL or video link in a court proceeding, then this Act shall be read subject to that enactment or rule of court.

AVL does not affect exercise of judicial officer's powers

14. For the avoidance of avoid doubt, a judicial officer presiding in a proceeding in which AVL is used shall have all the powers that the judicial officer would have if the participant appeared in person.

Regulations

15. (1) The Chief Justice may make regulations—

- (a) prescribing the procedure to be followed, the type of equipment to be used, and the arrangement to be made where a person is to appear by the use of AVL;
- (b) prescribing any method or technology of AVL as one which is suitable for use as AVL under this Act;
- (c) prescribing forms for the purpose of this Act; and
- (d) providing for any other matters contemplated by this Act, necessary for giving it full effect.

(2) Before making the regulation under subsection (1) (b), the Chief Justice—

- (a) shall be satisfied that the method or technology is appropriate for use in proceedings; and
- (b) may consult with other persons as the Chief Justice considers appropriate.

[ISSUE 1]

Amendment

16. (1) The Provisions of the Criminal Procedure and Evidence Act No. 37 of 1938 and the Rules of Court are amended to read in accordance with this Act.

(2) Any law contrary to the provisions of this Act shall be deemed to be repealed.

(3) Nothing in this section shall be construed to deprive a party of the right to appear in person before a Judicial Officer.
