

eSwatini

## Compulsion of Witnesses Act, 1907

Act 8 of 1907

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/1907/8/eng@1998-12-01

There may have been updates since this file was created.

PDF created on 21 February 2024 at 15:32.

*Collection last checked for updates: 1 December 1998.*

[Check for updates](#)



### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)  
[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.  
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Compulsion of Witnesses Act, 1907  
 Contents

Part I – General ..... 1

    1. Short title ..... 1

    2. Interpretation ..... 1

Part II – Procuring attendance of witnesses before Swaziland courts ..... 1

    3. Subpoenae issued out of certain countries in southern Africa to be endorsed for service in Swaziland ..... 1

    4. Chief Justice to make and amend tariff of expenses ..... 2

    5. Penalty for non-attendance of person subpoenaed and how recoverable ..... 2

    6. How non-attendance of person subpoenaed to be proved ..... 2

    7. Privilege of freedom from arrest during attendance at court in Swaziland ..... 2

Part III – Procuring attendance of witnesses before courts of other countries ..... 2

    8. Examination by interrogatories of persons whose evidence is required in civil cases in magistrate’s courts in neighbouring countries ..... 2

    9. Chief Justice to make and amend tariff of expenses ..... 3

    10. Penalty on person summoned for non-attendance ..... 3

    11. Interrogatories lawfully taken in other countries ..... 3

Part IV – Application of Part II and III ..... 3

    12. Taking effect of either Part (Schedule) ..... 3

Schedule ..... 3

## eSwatini

# Compulsion of Witnesses Act, 1907

## Act 8 of 1907

Commenced on 4 March 1907

*[This is the version of this document at 1 December 1998.]*

**An Act to make provision for the reciprocal compulsion of witnesses required to give evidence before the courts of Swaziland and those of neighbouring countries and for their examination in Swaziland by means of interrogatories.**

### Part I – General

#### 1. Short title

This Act may be cited as the Compulsion of Witnesses Act, 1907.

#### 2. Interpretation

For the purposes of this Act, unless the context otherwise requires—

“**judicial officer**” means a person presiding over a magistrate’s court;

“**magistrate’s court**” means a court established under the Magistrates Courts Act, [No. 66 of 1938](#);

“**registrar**” means the Registrar of the High Court.

### Part II – Procuring attendance of witnesses before Swaziland courts

#### 3. Subpoenae issued out of certain countries in southern Africa to be endorsed for service in Swaziland

- (1) If a subpoena purporting to have been issued by the proper officer of a competent court in a country in southern Africa, to which this Part of this Act applies, has been transmitted by such officer to the Registrar or to a judicial officer in any district in which the person, whose attendance is required in such competent court resides or is, such Registrar or judicial officer, as the case may be, shall subject to subsection (4) endorse on such subpoena an order that it be served on the person named therein.
- (2) Such subpoena so endorsed shall subject to subsection (5) thereupon be delivered to the deputy sheriff or the messenger, as the case may be, or to such other person as the officer effecting such endorsement may specially appoint for the purpose.
- (3) The deputy sheriff or the messenger or the person appointed in terms of subsection (2) shall subject to subsection (5) serve any such subpoena on the person named therein as soon as practicable.
- (4) The necessary expenses of the service of such subpoena and the necessary travelling expenses to be incurred by the person subpoenaed in going to and returning from the court named therein and the expenses of his detention at the place where his evidence is to be given shall be transmitted together with the subpoena to the Registrar of the High Court or the District Officer to whom the subpoena was transmitted.
- (5) The portion of the expenses assigned to the person named in such subpoena shall be paid to him by the person serving the subpoena.

#### **4. Chief Justice to make and amend tariff of expenses**

The Chief Justice may make, alter or rescind a tariff of such expenses as are mentioned in [section 3](#) in respect of any country to which this Part applies.

#### **5. Penalty for non-attendance of person subpoenaed and how recoverable**

- (1) Any person who has been served with a subpoena under [section 3](#) and who does not attend at the time and place mentioned therein shall be liable to a penalty not exceeding two hundred rand unless he offers a valid and lawful excuse for such non-attendance.
- (2) Such penalty shall be recoverable at the instance of the Government of Swaziland in the magistrate's court of the district in which he shall be residing.

#### **6. How non-attendance of person subpoenaed to be proved**

The return of the person authorised by [section 3](#) to serve a subpoena showing that service has been duly made, together with a certificate under the hand and seal of the presiding judge, magistrate or other judicial officer of the court from which it was issued showing that the person summoned did not attend when called upon and did not establish any valid and lawful excuse for his default, shall be deemed sufficient proof of such person's non-attendance for the purpose of enforcing the penalty mentioned in [section 5](#).

#### **7. Privilege of freedom from arrest during attendance at court in Swaziland**

No person resident in a country to which this Part applies who is summoned as a witness before any court of Swaziland and whose attendance before such court is enforced by any law of such country or territory shall be liable while so attending to be arrested upon any civil or criminal process for any debt formerly due or for any offence formerly committed by him in Swaziland.

### **Part III – Procuring attendance of witnesses before courts of other countries**

#### **8. Examination by interrogatories of persons whose evidence is required in civil cases in magistrate's courts in neighbouring countries**

- (1) If any civil cause or matter is pending in a magistrate's court of a country in southern Africa to which this Part applies and the magistrate of such court certifies that the evidence of a person resident or being in Swaziland is required in such cause or matter and transmits such certificate to the magistrate of the district in which such person resides or is, together with any interrogatories duly and lawfully framed which it is desired to put to such person, such judicial officer, shall upon receipt of such certificate and interrogatories; the expenses payable to such person for his appearance as provided herein; and the amount payable in fees or stamps for the issue and service of the summons herein mentioned, shall summon such person to appear before him and upon such appearance take the evidence of such person as if he were a witness in a civil case in the court of such judicial officer and to put such interrogatories to such person together with any other questions calculated to obtain full and true answers to such interrogatories, and take down the evidence so obtained or cause it to be taken down and transmit it certified as correct to the magistrate in whose court such civil cause or matter is pending.
- (2) The judicial officer who has obtained such evidence shall also transmit to the magistrate in whose court the cause or matter is pending a certificate showing the amount paid to such person in respect of the expenses of appearance and the cost of the issue and service of any such summons.
- (3) The term "magistrate" in this section when used in reference to a court of a country or territory in southern Africa to which this Part applies shall include an assistant magistrate, commissioner and assistant commissioner or other judicial officer of such country or territory having like jurisdiction.

## 9. Chief Justice to make and amend tariff of expenses

The Chief Justice may make, alter and rescind a tariff of expenses payable to persons summoned before a judicial officer under [section 8](#) and the tariff of the fees and stamps payable in respect of the issue and service of any such summons.

## 10. Penalty on person summoned for non-attendance

Any person required to appear before a judicial officer under [section 8](#) shall be summoned in like manner and be liable to like penalties in the event of his non-attendance as if he had been summoned to give evidence before a magistrate's court.

## 11. Interrogatories lawfully taken in other countries

If, under any law in force in any country of southern Africa to which this Part applies, the evidence of persons who reside or may be in such country or territory has been taken by means of interrogatories for the purpose of using them in any civil cause or matter pending in any court of Swaziland, such evidence, if certified by the proper officer as having been taken in accordance with the law of such country or territory, shall (subject to all lawful objections) be received as evidence in such civil cause or matter.

## Part IV – Application of Part II and III

## 12. Taking effect of either Part (Schedule)

- (1) Part II shall apply to the countries specified in the Schedule and shall take effect so far as concerns any other country in southern Africa as soon as the Chief Justice shall by notice in the *gazette* declare that such country has made due provision to compel the attendance of persons resident in such country as witnesses before the courts of Swaziland.
- (2) Part III shall apply to the countries specified in the Schedule and shall take effect so far as concerns any other country in southern Africa as soon as the Chief Justice shall by notice in the *gazette* declare that such country has made due provision for taking by interrogatories of the evidence of persons resident in such country when such evidence is required in civil cases in courts of Swaziland.

## Schedule

Botswana

Lesotho

Republic of South Africa