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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1394.

24 June 1987

No. 1394.

24 Junie 1987

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

— 25 of 1987: Magistrates' Courts Amendment Act, 1987.

No. 25 van 1987: Wysigingswet op Landdroshowe, 1987.

Act No. 25, 1987

MAGISTRATES' COURTS AMENDMENT ACT, 1987

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Magistrates' Courts Act, 1944, so as to further regulate the access to and preservation of a civil summons; to empower the Minister of Justice from time to time to adjust the monetary limit in respect of certain causes of action and the punitive jurisdiction relating to fines of magistrates' courts and the courts of regional divisions; and to provide that a judgment by default shall be deemed to be a judgment of the court; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 16 June 1987.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Substitution of section 7 of Act 32 of 1944, as substituted by section 1 of Act 8 of 1967 and amended by section 27 of Act 70 of 1968, section 14 of Act 80 of 1971 and section 2 of Act 91 of 1977.

1. The following section is hereby substituted for section 7 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act):

"Public access to records and custody thereof.

7. (1) Subject to the provisions of section 7A and the rules the records of the court, other than a record with reference to which a direction has been issued under section 153 (2) or 154 (1) of the Criminal Procedure Act, 1977, or with reference to which the provisions of section 154 (2) (a) or 154 (3) of that Act apply, shall be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of the fees prescribed from time to time by the Minister in consultation with the Minister of Finance, and for this purpose and for all other purposes the records of any magistrate's court which has at any time existed within the Republic, shall be deemed to be the records of the court of the district in which the place where such court was held is situated, and such records shall be preserved at the seat of magistracy of that district for such periods as the **[Secretary for] Director-General**: Justice may from time to time determine: Provided that the said **[Secretary] Director-General** may order that the records of a court for any regional division shall be so preserved at such a place or places within that division as he may from time to time determine: Provided further that payment of such fees shall not be required from any person who satisfies the magistrate of the district where the records of the court are preserved, or any judicial officer designated by the said magistrate from among the members of his staff, that he desires access to the records of the court in connection with research for academic purposes.

(2) The **[Secretary for] Director-General**: Justice

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may order that after expiry of the periods referred to in subsection (1) the records so preserved be removed to a central place of custody or be destroyed or otherwise disposed of."

Insertion of section 7A in Act 32 of 1944.

2. The following section is hereby inserted in the principal Act after section 7:

"Custody of civil summonses and returns there-
to.

7A. (1) Notwithstanding the provisions of section 7, but subject to the provisions of the rules, a summons issued to institute a civil action and the return of service of such summons, shall be preserved by the person who caused the summons to be issued or by his attorney.

(2) A summons and return of service preserved in terms of subsection (1) shall not be accessible to the public."

Substitution of section 29 of Act 32 of 1944, as substituted by section 27 of Act 94 of 1974 and amended by section 1 of Act 56 of 1984 and section 35 of Act 88 of 1984.

3. The following section is hereby substituted for section 29 of the principal Act:

"Jurisdiction in respect of causes of action.

29. (1) Subject to the provisions of this Act, the court, in respect of causes of action, shall have jurisdiction in—

(a) actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding [R5 000] in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(b) actions of ejection against the occupier of any premises or land within the district: Provided that, where the right of occupation of any such premises or land is in dispute between the parties, such right does not exceed [R5 000] the amount determined by the Minister from time to time by notice in the *Gazette* in clear value to the occupier;

(c) actions for the determination of a right of way, notwithstanding the provisions of section 46;

(d) actions on or arising out of a liquid document or a mortgage bond, where the claim does not exceed [R10 000] the amount determined by the Minister from time to time by notice in the *Gazette*;

(e) actions on or arising out of any credit agreement as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980), where the claim or the value of the property in dispute does not exceed [R10 000] the amount determined by the Minister from time to time by notice in the *Gazette*;

[(eA)](f) actions in terms of section 16 (1) of the Matrimonial Property Act, 1984, where the claim or the value of the property in dispute does not exceed [R5 000] the amount determined by the Minister from time to time by notice in the *Gazette*;

[(f)](g) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed [R5 000] the amount determined by the Minister from time to time by notice in the *Gazette*.

(2) In subsection (1) 'action' includes a claim in re-convention."

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Amendment of section 46 of Act 32 of 1944, as amended by section 5 of Act 19 of 1963, section 28 of Act 94 of 1974 and section 2 of Act 56 of 1984.

4. Section 46 of the principal Act is hereby amended by the substitution for subparagraphs (i), (ii) and (iii) of paragraph (c) of subsection (2) of the following subparagraphs:

- “(i) the rendering of an account in respect of which the claim does not exceed **[R5 000]** the amount determined by the Minister from time to time by notice in the *Gazette*;
- (ii) the delivery or transfer of property, movable or immovable, not exceeding **[R5 000]** in value the amount determined by the Minister from time to time by notice in the *Gazette*; and
- (iii) the delivery or transfer of property, movable or immovable, exceeding **[R5 000]** in value the amount determined by the Minister from time to time by notice in the *Gazette*, where the consent of the parties has been obtained in terms of section 45;”

Amendment of section 50 of Act 32 of 1944, as amended by section 6 of Act 19 of 1963.

5. Section 50 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “(1) Any action in which the amount of the claim exceeds **[two hundred rand]** the amount determined by the Minister from time to time by notice in the *Gazette*, exclusive of interest and costs, may, upon application to the court by the defendant, or if there is more than one defendant, by any defendant, be removed to the provincial or local division having jurisdiction where the court is held, subject to the following provisions—”; and
- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
- “(c) the applicant shall give such security as the court may determine and approve, for payment of the amount claimed and such further amount to be determined by the court not exceeding **[two hundred rand]** the amount determined by the Minister from time to time by notice in the *Gazette*, for costs already incurred in the action and which may be incurred in the said provincial or local division.”

Insertion of section 58A in Act 32 of 1944.

6. The following section is hereby inserted in the principal Act after section 58:

58A. Any judgment by default entered in terms of this Act by the clerk of the court, shall be deemed to be a judgment of the court.”

Amendment of section 65I of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976 and amended by section 4 of Act 19 of 1985.

7. Section 65I of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If upon receipt of the statement referred to in subsection (2) it appears that the judgment debtor's total debts do not exceed **[R10 000]** the amount determined by the Minister from time to time by notice in the *Gazette*, the court may grant an administration order under section 74 in respect of the judgment debtor's estate.”

Amendment of section 74 of Act 32 of 1944, as substituted by section 6 of Act 63 of 1976 and amended by section 6 of Act 19 of 1985.

8. Section 74 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) states that the total amount of all his debts due does not exceed **[R10 000]** the amount determined by the Minister from time to time by notice in the *Gazette*.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) An administration order shall not be invalid

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merely because at some time or other the total amount of the debtor's debts are found to exceed **[R10 000]** the amount determined by the Minister from time to time by notice in the *Gazette*, but in such a case the court may, if it deems fit, rescind the order." 5

Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974 and amended by section 9 of Act 91 of 1977 and section 1 of Act 109 of 1984.

9. Section 92 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) by fine, may impose a fine not exceeding **[R2 000, where the court is not the court of a regional division, or not exceeding R20 000, where the court is a court of a regional division]** the amount determined by the Minister from time to time by notice in the *Gazette* for the respective courts referred to in paragraph (a);" 10

Short title and commencement.

10. (1) This Act shall be called the Magistrates' Courts 15 Amendment Act, 1987.

(2) Sections 1, 2, 3, 4, 5, 7, 8 and 9 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(3) Different dates may be determined under subsection (2) in 20 respect of different provisions of this Act.