



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Selling price • Verkoopprys
(GST excluded/AVB uitgesluit)

Local **60c** Plaaslik
Other countries 95c Buitelands
Post free • Posvry

Vol. 287

CAPE TOWN, 30 MAY 1989

No. 11902

KAAPSTAD, 30 MEI 1989

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1054.

30 May 1989

No. 1054.

30 Mei 1989

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:—

No. 63 of 1989: Small Claims Courts Amendment Act, 1989.

No. 63 van 1989: Wysigingswet op Howe vir Klein Eise, 1989.

Act No. 63, 1989

SMALL CLAIMS COURTS AMENDMENT ACT, 1989

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 Small Claims Courts Act, 1984, so as to further regulate the appointment of commissioners; to further regulate the jurisdiction of the court; to regulate the institution of actions arising from a business or a profession carried on or exercised by a plaintiff; to determine certain periods within which applications for rescission of certain judgments may be made; and to provide for the transfer of judgments to the magistrate's court for execution; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 17 May 1989.)

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

Amendment of section 9 of Act 61 of 1984, as amended by section 5 of Act 92 of 1986

1. Section 9 of the Small Claims Courts Act, 1984 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the words following paragraph (c) of subsection (2) of the following words:

“and for an uninterrupted period of at least **[seven]** five years practised as an advocate or attorney or occupied the post of magistrate, or for that period was involved in the tuition of law and also practised as an advocate or attorney for such period as, in the opinion of the Minister, makes him suitable for appointment as a commissioner, or possesses such other experience as, in the opinion of the Minister, renders him suitable for appointment as a commissioner.”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) A commissioner shall hold office **[for a period of three years, or for such shorter period as the Minister may determine at the time of his appointment]** during the Minister's pleasure.”.

Amendment of section 16 of Act 61 of 1984, as amended by section 9 of Act 92 of 1986

2. Section 16 of the principal Act is hereby amended by the addition of the following paragraph:

“(g) in which an interdict is sought.”.

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Amendment of section 29 of Act 61 of 1984

3. Section 29 of the principal Act is hereby amended by the addition of the following paragraph to subsection (1), the existing subsection becoming paragraph (a):

“(b) Until judgment has been given in an action arising from a business or profession carried on or exercised by the plaintiff, the plaintiff may not deliver a summons referred to in paragraph (a) to the clerk of the court in respect of any other action arising from that business or profession.” 5

Substitution of section 36 of Act 61 of 1984

4. The following section is hereby substituted for section 36 of the principal Act: 10

“Rescission of certain judgments

36. The court may, upon application by any person affected thereby or, in a case contemplated in paragraph (c) also *suo motu*—

(a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted, provided the application is set down for hearing on a date within six weeks after the applicant first had knowledge of the judgment; 15

(b) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or as a result of a mistake common to the parties, provided the application is made not later than one year after the applicant first had knowledge of the voidness, fraud or mistake; 20

(c) correct patent errors in any judgment, provided, in the case of an application, the application is made not later than one year after the applicant first had knowledge of any errors.” 25

Amendment of section 39 of Act 61 of 1984

5. Section 39 of the principal Act is hereby amended—

(a) by the deletion of paragraph (b) of subsection (2); and

(b) by the substitution for paragraph (c) of subsection (2) of the following paragraph: 30

“(c) [authorize the issue of a warrant under paragraph (b) and make an order under paragraph (a), and] suspend the [execution of the warrant and the] order under paragraph (a) either wholly or in part on such conditions as to security or otherwise as the court may determine.”

Substitution of section 41 of Act 61 of 1984 35

6. The following section is hereby substituted for section 41 of the principal Act:

“Manner of execution

41. (1) When a court has granted judgment for the payment of money or made an order for the payment of money in instalments, that judgment, in the case of failure to pay the money within 10 days, or that order, in the case of failure to pay an instalment at the time and in the manner determined by the court, shall be enforceable **[by execution against the movable property and, if insufficient movable property is found to satisfy the judgment or order or the court on good cause shown so orders, against the immovable property of the party against whom such judgment has been given or such order has been made]** by execution in the magistrate's court having jurisdiction in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the judgment creditor may proceed as if the judgment was granted in the magistrate's court in his favour for the amount mentioned in the affidavit referred to in subsection (2). 40 45 50

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(2) **【Upon failure to pay an instalment in accordance with an order of court, execution may be levied in respect of the whole of the judgment debt and costs then still unpaid, unless the court, on application by the party that is liable, orders otherwise】** The clerk of the court shall, upon the written application of the judgment creditor accompanied by an affidavit specifying the amount and the costs still owing under the judgment or order and how that amount is arrived at, transmit that affidavit, together with a certified copy of that judgment or order reflecting the nature of the cause of action, to the clerk of the magistrate's court of the district in which the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is a juristic person, of the district in which its registered office or main place of business is situated.

(3) Upon receipt of the documents referred to in subsection (2) the clerk of the magistrate's court concerned shall record the details of the judgment or order concerned and the amount owing mentioned in the affidavit in his registers.”.

Repeal of section 44 of Act 61 of 1984

7. Section 44 of the principal Act is hereby repealed.

Amendment of section 47 of Act 61 of 1984

8. Section 47 of the principal Act is hereby amended—

- (a) by the deletion of paragraphs (b), (c) and (d); and
 (b) by the substitution for the words following upon paragraph (e) of the following words:

“shall be guilty of an offence and liable upon conviction to a fine not exceeding **【R500】** R2 000 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.”.

Short title and commencement

9. (1) This Act shall be called the Small Claims Courts Amendment Act, 1989, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed under subsection (1) in respect of different provisions of this Act.