

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1865.

10 September 1986

No. 1865.

10 September 1986

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

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

—o. 92 van 1986: Wysigingswet op Howe vir Klein Eise, 1986.

No. 92 of 1986: Small Claims Courts Amendment Act, 1986.

SMALL CLAIMS COURTS AMENDMENT ACT, 1986

Act No. 92, 1986

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 provide for the establishment of a small claims court also for more than one magisterial district or for a part of such a district; the granting of the power to the Minister of Justice or to a magistrate to establish a small claims court for a district for the adjudication of a particular claim or claims; to relieve the small claims court of the obligation of making use of the services of an interpreter; to amend the provisions relating to the right of appearance of certain persons; to empower the Minister of Justice to adjust the monetary limit in respect of certain causes of action; and to effect an improvement in the English text; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 3 September 1986.)*

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

1. The following section is hereby substituted for section 2 of the Small Claims Courts Act, 1984 (hereinafter referred to as the principal Act): Substitution of section 2 of Act 61 of 1984.

5 “Establishment of courts. 2. (1) The Minister may by notice in the Gazette—
 10 (a) establish for any [district] area consisting of one or more districts or a part of a district a court for the adjudication of claims in terms of this Act, called a small claims court;
 15 (aA) determine the seat of such a court; and
 (b) determine one or more places in [that district] the area concerned for the holding of sessions of such a court.
 20 (2) If it is in the opinion of the Minister or a magistrate of a district authorized thereto by him expedient, the Minister or such magistrate may, notwithstanding the provisions of subsection (1)—
 (a) establish for that district a court for the adjudication of any particular claim or claims in terms of this Act; and
 (b) determine the place in that district for the holding of sessions of such a court.”

2. Section 5 of the principal Act is hereby amended by the Amendment of section 5 of Act 61 of 1984.
 substitution for subsection (2) of the following subsection:
 “(2) If evidence is given in a language with which one of the parties is in the opinion of the court not sufficiently con-

SMALL CLAIMS COURTS AMENDMENT ACT, 1986

Act No. 92, 1986

5 versant, a competent interpreter **[shall]** may be called by the court to interpret that evidence into a language with which that party appears to be sufficiently conversant, irrespective of whether the language in which the evidence is given is one of the official languages.”

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 6 of Act 61 of 1984.

10 “(1) Subject to the provisions of the rules, the documents of a court shall be available for inspection by the public under the supervision of the clerk of the court at the prescribed times and upon payment of the prescribed fees, and those documents shall be preserved at the seat of the magistracy of the district **[for which]** in which the seat of that court [was established] is situated for such period as the Director-General: Justice may determine.”

4. Section 7 of the principal Act is hereby amended— Amendment of section 7 of Act 61 of 1984.

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

20 “(2) A party to an action shall appear in person before the court and, subject to the provisions of **[subsections] subsection [(3) and] (4)**, shall not be **[assisted or]** represented by any person during the proceedings.”; and

(b) by the deletion of subsection (3).

25 5. Section 9 of the principal Act is hereby amended— Amendment of section 9 of Act 61 of 1984.

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

30 “(a) Subject to the provisions of this section, the Minister may appoint one or more commissioners for any **[district] court**.”;

(b) by the insertion after subsection (1) of the following subsection:

35 “(1A) A magistrate who establishes a court in terms of section 2 (2), may, subject to the provisions of this section, appoint a commissioner for such a court.”;

(c) by the substitution for subsection (6) of the following subsection:

40 “(6) A person appointed under subsection (1) or subsection (1A) shall, before commencing with his functions as a commissioner, take an oath or make an affirmation subscribed by him in the form set out below:

45 I, A.B., do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of a commissioner in any court I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa.”; and

50 (d) by the substitution for subsection (7) of the following subsection:

55 “(7) Such an oath or affirmation shall be taken or made in open court before the most senior available magistrate of the district in **[question]** which the seat of the court concerned is situated, and he shall at the foot thereof make a note to the effect that it was taken or made before him, and of the date on which it was so taken or made, and append his signature thereto.”

60 6. Section 11 of the principal Act is hereby amended— Amendment of section 11 of Act 61 of 1984.

(a) by the substitution for subsection (1) of the following subsection:

“(1) The magistrate of the district **[for which]** in which the seat of a court [has been established] is situated, shall appoint so many clerks and assistant clerks

SMALL CLAIMS COURTS AMENDMENT ACT, 1986

Act No. 92, 1986

of the court, interpreters and legal assistants for that court as may be necessary for the performance of the prescribed functions.”; and

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

“(2) The messenger of the court appointed under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), for the magistrates’ court of a district, shall act as messenger of the court for a court **[established for that district]** in that part of the said district falling within the area of jurisdiction of that court.”.

7. The following section is hereby substituted for section 12 of the principal Act:

Substitution of section 12 of Act 61 of 1984.

“Area of jurisdiction. **12.** The area of jurisdiction of a court shall be the area or district for which it was established.”.

8. The following section is hereby substituted for section 15 of the principal Act:

Substitution of section 15 of Act 61 of 1984.

“Jurisdiction in respect of causes of action. **15.** Subject to the provisions of this Act, a court shall have jurisdiction in respect of causes of action in—

(a) actions for the delivery or transfer of any property, movable or immovable, not exceeding **[R1 000]** in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(b) actions for ejectment against the occupier of any premises or land within the area of jurisdiction of the court: Provided that where the right of occupation of the premises or land is in dispute between the parties, that right does not exceed **[R1 000]** in clear value to the occupier the amount determined by the Minister from time to time by notice in the *Gazette*;

(c) actions based on or arising out of a liquid document or a mortgage bond, where the claim does not exceed **[R1 000]** the amount determined by the Minister from time to time by notice in the *Gazette*;

(d) actions based on or arising out of a 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 **[R1 000]** the amount determined by the Minister from time to time by notice in the *Gazette*;

(e) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed **[R1 000]** the amount determined by the Minister from time to time by notice in the *Gazette*;

(f) actions for counterclaims not exceeding **[R1 000]** the amount determined by the Minister from time to time by notice in the *Gazette*, in respect of any cause of action mentioned in paragraphs (a) to (e).”.

9. Section 16 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

Amendment of section 16 of Act 61 of 1984.

“(d) in which is sought specific performance without an

SMALL CLAIMS COURTS AMENDMENT ACT, 1986

Act No. 92, 1986

alternative claim for payment of damages, except in the case of—

- 5 (i) the rendering of an account in respect of which the claim does not exceed **[R1 000]** the amount determined by the Minister from time to time by notice in the *Gazette*;
- 10 (ii) the delivery or transfer of any property, movable or immovable, not exceeding **[R1 000]** in value the amount determined by the Minister from time to time by notice in the *Gazette*;”.

10. Section 44 of the principal Act is hereby amended by the substitution in the English text for subsection (1) of the following subsection:

Amendment of section 44 of Act 61 of 1984.

- 15 “(1) If a court has granted judgment for the payment of a sum of money and the clerk of the court is satisfied that such judgment has remained unsatisfied after the judgment **[debtor]** creditor has acted in terms of all the provisions of this Chapter available to him, the clerk of the court shall, upon the written application of the judgment creditor accompanied by an affidavit specifying the amount still owing under the judgment and how that amount is arrived at, transmit a certified copy of that judgment, together with that affidavit, 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.”.

11. (1) This Act shall be called the Small Claims Courts Amendment Act, 1986.

Short title and commencement.

- 30 (2) Sections 8 and 9 shall come into operation on a date fixed by the State President by notice in the *Gazette*.