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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1499.

3 July 1991

No. 1499.

3 Julie 1991

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. 103 of 1991: Short Process Courts and Mediation in Certain Civil Cases Act, 1991

No. 103 van 1991: Wet op Howe vir Kort Proses en Bemiddeling in Sekere Siviele Sake, 1991

ACT

To provide for an alternative forum for the adjudication of certain civil cases; mediation in certain civil cases; and for matters connected therewith.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 27 Junie 1991.)

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

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) "adjudicator" means an Adjudicator for Short Process referred to in section 5, appointed under section 6; (iii) 5
 - (ii) "clerk of the court" means a clerk of the magistrate's court appointed in terms of section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); (viii)
 - (iii) "court" means a court established under section 4; (vii) 10
 - (iv) "district" means a district established under section 2(1)(a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); (v)
 - (v) "magistrate's court" means a court established under section 2(1)(f) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); (ix)
 - (vi) "mediation proceedings" means the proceedings contemplated in section 3; (ii) 15
 - (vii) "mediator" means a mediator appointed under section 2; (i)
 - (viii) "Minister" means the Minister of Justice; (x)
 - (ix) "prescribed" means prescribed by the rules; (xii)
 - (x) "record" means to take down in writing or in shorthand or to record by mechanical means; (xi) 20
 - (xi) "the rules" means the rules made and in force under section 13; (iv) and
 - (xii) "this Act" includes the rules. (vi)

CHAPTER I**Mediation**

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Appointment of mediators

2. (1) The Minister may appoint one or more mediators for an area or district for which a court has been established from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice. 30

(2) The provisions of sections 6(1)(b), (2), (3) and (4) and 7 shall apply *mutatis*

mutandis in relation to any mediator appointed or to be appointed under subsection (1).

(3) Any person appointed under subsection (1) shall, before commencing with his functions as a mediator for the first time, take an oath or make an affirmation subscribed by him in the form set out below:

I,, do hereby swear/solemnly and
(full name)

sincerely affirm and declare that whenever I may be called upon to perform the functions of a mediator in mediation proceedings, 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 applying to the case concerned.

(4) Such an oath or affirmation shall be taken or made in chambers before the most senior available magistrate of the district in 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.

(5) Whenever by reason of absence or incapacity a mediator is unable to complete mediation proceedings, those proceedings shall be commenced *de novo* before another mediator.

(6) Any mediator shall be subject to the administrative control of the magistrate in whose district the seat of the court concerned is situated.

Mediation proceedings

3. (1) (a) At any time prior to or after the issuing of a summons for the institution of a civil action in a court or magistrate's court, but before judgment, the parties or their legal representatives may—

- (i) in the case of an intended action in the court or magistrate's court, in the prescribed manner give notice to the clerk of the court that the parties have agreed to submit their dispute to mediation proceedings; or
- (ii) in the case of an action which has already been instituted in the court or magistrate's court, in the prescribed manner give notice to the court concerned that the parties have agreed to submit their dispute to mediation proceedings, and request that court to adjourn the action for such mediation proceedings.

(b) Within 14 days after—

- (i) receipt of the notice referred to in subparagraph (i) of paragraph (a); or
- (ii) the adjournment referred to in subparagraph (ii) of paragraph (a), if the court concerned is satisfied that mediation proceedings will not delay the trial unreasonably and will not prejudice any of the parties,

the clerk of the court shall in the prescribed manner give notice to the parties or their legal representatives to appear at a specified time, date and place in chambers before a mediator for an interview and investigation for consideration of a settlement out of court between the parties or, if such settlement cannot be reached—

- (i) the simplification of the issues between the parties;
- (ii) the necessity for or desirability of amending the pleadings with a view to the intended or further trial;
- (iii) the possibility of obtaining admissions of—
 - (aa) fact; or
 - (bb) information contained in or on written documents, photographic material, sound recordings, video recordings or computer print-outs, tapes or discs or any other computer storage media, from the parties with a view to avoiding the unnecessary adducing of evidence at the intended or further trial;
- (iv) the limitation of the number of witnesses at the intended or further trial; and
- (v) any other matter which may contribute to the expeditious and cost-saving disposal of the case.

(c) The clerk of the court shall in the prescribed manner make the prescribed

documents available to the mediator in preparation of mediation proceedings.

(d) A mediator entrusted with mediation proceedings may make such enquiries and institute such investigation as he may deem necessary.

(2) (a) After completion of the interview and investigation referred to in subsection (1) the mediator shall issue an order in respect of— 5

(i) the settlement, if any, reached between the parties; or

(ii) the amendments to the pleadings to which the parties have agreed or which have been allowed by the mediator;

(iii) the agreements reached by the parties in relation to one or more of the matters considered; and 10

(iv) the settlement reached in which the issues with a view to the intended or further trial are restricted to those which were not settled by way of admission or agreement by the parties or their legal representatives.

(b) An order referred to in paragraph (a) shall be recorded by the mediator.

(3) If a civil action is instituted or proceeded with in a court or other court of law after completion of mediation proceedings, the order referred to in subsection (2) shall form part of the record of the case in the court concerned, and such order shall be binding on the parties, unless it is amended at the trial so as to prevent any manifest injustice. 15

(4) If the parties to a dispute reach a settlement before they appear before a mediator in accordance with subsection (1) or during the mediation proceedings, the mediator may at such appearance or during such proceedings, as the case may be, record such settlement in the prescribed manner, and thereupon it shall be deemed to be an order of the court or magistrate's court, as the case may be, for the area or district in respect of which the court or magistrate's court, as the case may be, has jurisdiction: Provided that if an action in relation to such a dispute has not been instituted yet, such recorded settlement shall be deemed to be an order of the court concerned. 20 25

(5) If any party fails to be present at an interview referred to in paragraph (b) of subsection (1) on notice duly given in terms of that paragraph, the mediator may issue any order which he may deem fair in the circumstances, including the granting of judgment for the plaintiff. 30

(6) A mediator may subject to the rules issue such order as he may deem fit in respect of the costs of any proceedings in terms of this section.

(7) An order issued under any provision of this section shall be final and no appeal shall lie from it. 35

CHAPTER II

Establishment and Nature of Short Process Courts

Establishment and nature of courts

4. (1) The Minister may by notice in the *Gazette*— 40

(a) establish for any area consisting of one or more districts or a part of a district a court for the adjudication of civil cases in terms of this Act, called a short process court;

(b) determine the seat of such a court;

(c) determine one or more places in the area concerned for the holding of sessions of such a court; 45

(d) alter the area for which such a court has been established by including therein or excising therefrom any district or districts or part thereof;

(e) abolish a court established under this section; and

(f) amend or withdraw any notice issued in terms of this section. 50

(2) Subject to the provisions of this Act a court established under subsection (1), shall for all purposes be deemed to be a magistrate's court, and an adjudicator shall, in relation to the court for which he has been appointed, have the same powers and jurisdiction as those which a magistrate has in relation to the magistrate's court of the district for which he has been appointed. 55

(3) If the Minister exercises the power contemplated in paragraph (d), (e) or (f) of subsection (1), any partly heard case affected thereby shall be proceeded with as if such power had not been exercised.

Presiding officers

5. The officer presiding at a court shall be called an Adjudicator for Short Process and shall be appointed under section 6. 5

Appointment of adjudicators

6. (1) (a) Subject to the provisions of this section and section 7 the Minister may, for a court established by him under section 4(1), appoint one or more adjudicators from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice. 10

(b) An officer in the service of the State shall not be appointed as an adjudicator.

(c) The Minister may appoint a mediator as an adjudicator and in such case such person shall be competent to exercise or perform the powers, duties and functions conferred or assigned by or in terms of this Act in respect of both such offices: Provided that a mediator who presided at mediation proceedings from which an action arises in a court and in which the same parties are involved, shall not preside at that court in respect of that action unless the parties agree thereto: Provided further that an adjudicator who presided at a court at an action from which mediation proceedings arise and in which the same parties are involved, shall not preside at those mediation proceedings unless the parties agree thereto. 15 20

(2) (a) An adjudicator shall hold office during the Minister's pleasure and shall vacate his office automatically, unless the Minister specifically otherwise determines. 25

(b) An adjudicator shall vacate his office if at any time after his appointment he no longer meets with the qualifications referred to in section 7.

(3) An adjudicator may resign by notice in writing to the Minister.

(4) The Minister may at any time withdraw the appointment of an adjudicator if in his opinion there is sufficient reason for doing so. 30

(5) A person appointed under subsection (1)(a) or (c) shall, before commencing with his functions as an adjudicator for the first time, take an oath or make an affirmation subscribed by him in the form set out below:

I,, do hereby swear/solemnly and sincerely
(full name) 35

affirm and declare that whenever I may be called upon to perform the functions of an adjudicator in a 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 applying to the case concerned. 40

(6) Such an oath or affirmation shall be taken or made in open court before the most senior available magistrate of the district in 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. 45

(7) Whenever by reason of absence or incapacity an adjudicator is unable to complete the hearing of a civil case, that hearing shall be commenced *de novo* before another adjudicator.

(8) An adjudicator shall be subject to the administrative control of the magistrate in whose district the seat of the court concerned is situated. 50

Qualifications for appointment as adjudicator

7. No person shall be appointed as an adjudicator unless he is qualified—

(a) to be admitted to practise as an advocate under the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or 55

(b) to be admitted to practise as an attorney under the Attorneys Act, 1979 (Act No. 53 of 1979); or

(c) to be appointed as a magistrate under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and for an uninterrupted period of at least five years has practised as an advocate or attorney or has occupied the office 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, renders him suitable for appointment as an adjudicator, or possesses such other experience as, in the opinion of the Minister, renders him suitable for appointment as an adjudicator. 5

CHAPTER III

Jurisdiction 10

Area of jurisdiction

8. The area of jurisdiction of a court shall be the area or district for which it was established.

Additional matters regarding jurisdiction of courts

9. (1) After a dispute has been submitted to mediation proceedings and the parties have not reached a settlement or have only reached a partial settlement, the adjudication of the dispute may thereafter— 15

(a) if an action has not yet been instituted, be instituted in the ordinary manner in any competent court of law, unless the defendant at the request of the plaintiff consents in writing that the adjudication of the dispute be instituted in the court concerned, whereupon the adjudication of the dispute shall be instituted in the prescribed manner in the court concerned; or 20

(b) if an action has already been instituted, be proceeded with in the court or court of law concerned, as the case may be: Provided that the adjudication of an action already instituted in the magistrate's court, may, with the written consent of the defendant at the request of the plaintiff, be proceeded with in the court concerned, whereupon the adjudication of the action shall be proceeded with in the prescribed manner in the court concerned. 25 30

(2) If the adjudication of an action instituted in the magistrate's court is proceeded with in a court under the proviso to paragraph (b) of subsection (1), the proceedings of the magistrate's court shall form part of the record of that court: Provided that the court may order that any evidence which has been adduced in the magistrate's court, shall be adduced *de novo* before it if it deems it necessary in the interests of justice. 35

(3) Any provision in an agreement to the effect that the jurisdiction of a court shall be excluded, or that a party thereto shall or may not institute an action in a court, excluding a provision to the effect that a dispute arising from the agreement shall be resolved by mediation or arbitration, shall be void. 40

CHAPTER IV

Procedure and Evidence

Procedure in courts

10. (1) A court may, at the request of any of the parties or their legal representatives and in consultation with them, take any steps in relation to the hearing of any action which may lead to the expeditious and cost-saving disposal of the case, including the abandonment of the application of any rule of evidence: Provided that if any party or its legal representative opposes any request directed to the court by any other party and it later appears in the opinion of the court that such opposition delayed the disposal of the proceedings unnecessarily, the court may subject to the rules make such order as to costs as it may deem fit in the circumstances. 45 50

(2) Evidence to prove or disprove any fact in issue, may be adduced in writing or orally: Provided that a court may, notwithstanding subsection (1), order that evidence shall be adduced orally if it deems it necessary in the interests of justice.

(3) Subject to the provisions of subsections (1) and (2), a party may call one or more witnesses to prove his claim, counterclaim or defence. 5

(4) No person shall testify or be questioned in a court unless the oath has been administered to him or the affirmation has been accepted from him which is usually administered to a witness or accepted from him in a court of law by the presiding adjudicator or by the clerk of the court, or any person acting in his place, in the presence of that adjudicator, or, if the witness concerned is to give his evidence through an interpreter, by the adjudicator through the interpreter. 10

(5) A plaintiff may at any time, whether before or during the hearing of his action, withdraw his claim with the consent of the court and on such conditions as the court may determine, whereupon the proceedings shall be ceased.

(6) If proceedings are ceased as contemplated in subsection (5), the plaintiff 15 may in the prescribed manner institute a fresh action with the consent of the court.

CHAPTER V

Appeal and Review

Judgment or order final

11. The judgment or order of a court shall be final and no appeal shall lie from it. 20

Review of mediation proceedings and of proceedings of courts

12. (1) Notwithstanding the provisions of section 24(1) of the Supreme Court Act, 1959 (Act No. 59 of 1959), the grounds upon which mediation proceedings and the proceedings of a court may be brought under review before a provincial or local division of the Supreme Court of South Africa shall be— 25

- (a) absence of jurisdiction;
- (b) interest in the cause, bias, malice or corruption on the part of the mediator or the presiding adjudicator, as the case may be; and
- (c) gross irregularity with regard to the proceedings. 30

CHAPTER VI

Rules of Short Process Courts and Mediation Proceedings

Power of Minister to make rules

13. (1) The Minister may make rules regulating the following matters in respect of courts and mediation proceedings: 35

- (a) The practice and procedure in respect of an interview with and investigation by a mediator contemplated in section 3;
- (b) the practice and procedure of the court, including the procedure when the proceedings are taken under review;
- (c) fees and costs; 40
- (d) the payment by the State of remuneration and allowances to a mediator and an adjudicator for services rendered, the method of calculation of such remuneration and allowances, and the recovery or partial recovery by the State of such remuneration and allowances from a party or parties in mediation proceedings or a case in respect of which the services of a mediator or an adjudicator have been so rendered; 45
- (e) the duties and powers of mediators and adjudicators;
- (f) the duties and powers of officers of the court;
- (g) the establishment, functioning, duties and powers of one or more boards to advise the Minister regarding the functioning of courts and mediation proceedings; 50

- (h) any matter which may or shall be prescribed in terms of the provisions of this Act;
- (i) any other matter which he may deem necessary or expedient to prescribe for carrying out the provisions of this Act or the attainment of the objects thereof. 5
- (2) Different rules may be made under subsection (1) in respect of different classes of cases.
- (3) No rule relating to State revenue or State expenditure shall be made under subsection (1) except with the concurrence of the Minister of Finance.
- (4) No rule and no amendment or repeal of a rule shall come into operation 10 unless it has been published in the *Gazette* at least 30 days before the day upon which it is declared to come into operation.

CHAPTER VII

General and Supplementary Provisions

Legal representation 15

14. Any advocate or attorney of any division of the Supreme Court of South Africa may appear at any proceedings in any court, including an interview contemplated in section 3(1)(b), on behalf of any party.

Short title and commencement

15. This Act shall be called the Short Process Courts and Mediation in Certain Civil Cases Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. 20