

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.



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Prys 10c Price
Oorsee 15c Overseas
POSVRY—POST FREE

Vol. 63.]

KAAPSTAD, 23 SEPTEMBER 1970.
CAPE TOWN, 23RD SEPTEMBER, 1970.

[No. 2826.

DEPARTEMENT VAN DIE EERSTE MINISTER.

DEPARTMENT OF THE PRIME MINISTER.

No. 1560. 23 September 1970.

No. 1560. 23rd September, 1970.

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:—

No. 53 van 1970: Wysigingswet op Landdroshowe, 1970.

No. 53 of 1970: Magistrates' Courts Amendment Act, 1970

ACT

To amend the Magistrates' Courts Act, 1944, so as to apply that Act to the territory of South-West Africa; to provide for the determination of an area in a district and a place in such area for the holding of a court for such district; to amend the constitution of the Regional Divisions Appointments Advisory Board; to provide for the disposal in certain circumstances of property in respect of which an attachment has been withdrawn; to make further provision for the suspension of judgments; to delete certain references to the civil record book and to the rules contained in the Second Schedule to the Magistrates' Courts Act, 1917; to make further provision for the transfer of proceedings to the court of a regional division; to amend certain penalties; to substitute in certain provisions the word "Republic" for the word "Union"; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 15th September, 1970.)*

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

1. The following section is hereby substituted for section 1 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act):
- "Def-
initions. 1. In this Act, except where the context otherwise indicates—
- 'court' means a magistrate's court;
- 'court of appeal' means the provincial division of the Supreme Court to which an appeal lies from the magistrate's court;
- 'judgment', in civil cases, includes a decree, a rule and an order;
- 'judicial officer' means a magistrate, an additional magistrate or an assistant magistrate;
- 'magistrate' does not include an assistant magistrate;
- 'Minister' in section 15 (2) and in section 113 means the Minister of Justice; in any other provision of this Act, 'Minister' in relation to any matter to be dealt with in a regional division, district or subdistrict administered under the control of the Minister of Justice, and in relation to the creation or abolition of any such regional division, district or subdistrict, means that Minister or any other Minister of State acting
- Substitution of section 1 of Act 32 of 1944, as amended by section 2 of Act 40 of 1952 and section 15 of Act 15 of 1969.

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970

on his behalf, and in relation to any matter to be dealt with in a regional division, district or subdistrict administered under the control of the Minister of Bantu Administration and Development, and in relation to the creation or abolition of any such last-mentioned regional division, district or subdistrict, means the latter Minister or any other Minister of State acting on his behalf;

'offence' means an act or omission punishable by law;

'practitioner' means an advocate, an attorney, an articled clerk such as is referred to in section 21 or an agent such as is referred to in section 22;

'province' includes the territory;

'Republic' includes the territory;

'territory' means the territory of South-West Africa;

'to record' means to take down in writing or in shorthand or to record by mechanical means, and 'recorded' has a corresponding meaning;

'the district', if used in relation to any court, means the district, subdistrict, or area for which such court is established;

'the rules' means the rules made under section 25;

'this Act' includes the rules."

2. The following section is hereby substituted for section 2 of the principal Act:

"Minister's powers relative to districts and courts.

2. The Minister may, by notice in the *Gazette*—

- (a) create districts, define the local limits of each district, which may consist of various non-contiguous areas, and declare the name by which any district shall be known;

Substitution of section 2 of Act 32 of 1944, as amended by section 3 of Act 40 of 1952, section 37 of Act 68 of 1957 and section 5 of Act 17 of 1970.

- (b) create regional divisions consisting of a number of districts, or of a district together with one or more subdistricts, and declare the name by which any regional division shall be known;

- (c) increase or decrease the local limits of any district;

- (d) increase or decrease the limits of any regional division;

- (e) for all purposes or for such purposes as he may declare, annex any district or any portion thereof to another district;

- (f) establish a court for any district;

- (g) establish a court for any regional division for the purpose of the trial of persons accused of committing any offence, which shall have increased jurisdiction as hereinafter provided;

- (h) appoint one or more places within each district for the holding of a court for such district, and may by like notice prescribe the local limits of an area in a district, which area may include any portion of an adjoining district, and declare the name by which such area shall be known, and appoint one or more places in such area for the holding of a court for such district; of which places, if more than one is appointed, one shall be specified as the seat of magistracy;

- (i) appoint one or more places in each regional division for the holding of a court for such regional division;

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970

- (j) within any district appoint places other than the seat of magistracy for the holding of periodical courts, and prescribe the local limits within which such courts shall have jurisdiction, and include within those limits any portion of an adjoining district;
- (k) detach a portion of a district or portions of two or more adjoining districts as a subdistrict to form the area of jurisdiction of a detached court, and declare the name by which such subdistrict shall be known, and appoint the places where such detached court is to be held;
- (l) withdraw or vary any notice under this section and abolish any regional division, district, subdistrict or other area of jurisdiction and the court thereof."

3. Section 4 of the principal Act is hereby amended by the substitution in subsection (3) for the word "Union" of the word "Republic".

Amendment of section 4 of Act 32 of 1944, as amended by section 5 of Act 40 of 1952 and section 26 of Act 70 of 1968.

4. Section 9 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967.

"(a) No person holding any appointment under subsection (1) shall perform the functions of a judicial officer in any magistrate's court, unless he has taken an oath or made an affirmation subscribed by him, in the form set out below, namely—

'I, _____ (full name)
do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of a judicial officer in any magistrate's court I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the law and customs of the Republic of South Africa or of the territory of South-West Africa.'"

5. Section 9*bis* of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of section 9*bis* of Act 32 of 1944, as inserted by section 2 of Act 48 of 1965.

- "(2) The board shall consist of—
- (a) the Secretary for Justice who shall be the chairman thereof;
 - (b) a Deputy Secretary for Justice, nominated by the Minister of Justice, who shall be the vice-chairman thereof;
 - (c) the head of the Training Section of the Department of Justice; and
 - (d) so many officers of the Department of Justice holding the rank of attorney-general or chief magistrate or Deputy Secretary for Justice, as the Minister of Justice may from time to time appoint."

6. Section 14 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

Amendment of section 14 of Act 32 of 1944, as amended by section 10 of Act 40 of 1952, and section 28 of Act 70 of 1968.

"(9) The provisions of subsections (1) to (4) shall not affect a messenger or deputy-messenger holding office as such in the Republic, excluding the territory, on the thirteenth day of May, 1935, whose rights and obligations

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970

shall be governed by the law applicable thereto on that date.”.

7. Section 24 of the principal Act is hereby repealed. Repeal of section 24 of Act 32 of 1944.
8. Section 25 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (3). Amendment of section 25 of Act 32 of 1944, as amended by section 19 of Act 50 of 1956, section 2 of Act 93 of 1963 and section 2 of Act 101 of 1969.
9. The following section is hereby substituted for section 26 of the principal Act: Substitution of section 26 of Act 32 of 1944.
- “Area of jurisdiction. 26. (1) Except where it is otherwise by law provided, the area of jurisdiction of a court shall be the district, subdistrict or area for which such court is established.
- (2) A court established for a district shall have no jurisdiction in a subdistrict or in an area referred to in section 2 (h).
- (3) Nothing in subsection (2) shall affect proceedings pending in the court of a district at the time of the creation of a subdistrict or an area referred to in section 2 (h).”.
10. Section 29 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph: Amendment of section 29 of Act 32 of 1944, as amended by section 13 of Act 40 of 1952, section 39 of Act 68 of 1957 and section 3 of Act 19 of 1963.
- “(e) actions on or arising out of any agreement as defined in section 1 (1) of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), or section 1 (1) of the Hire-Purchase Ordinance, 1942 (Ordinance No. 7 of 1942), of the territory, where the claim or the value of the property in dispute does not exceed two thousand rand;”.
11. Section 30 of the principal Act is hereby amended by the substitution in subsection (3) (c) for the word “Union” of the word “Republic”. Amendment of section 30 of Act 32 of 1944, as amended by section 4 of Act 19 of 1963.
12. Section 48 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph: Amendment of section 48 of Act 32 of 1944, as amended by section 3 of Act 48 of 1965.
- “(e) an order, subject to such conditions as the court thinks fit, against the party in whose favour judgment has been given suspending wholly or in part the taking of further proceedings upon the judgment for a specified period pending arrangements by the other party for the satisfaction of the judgment.”.
13. Section 53 of the principal Act is hereby amended by the substitution in subsection (1) for the word “Union” of the word “Republic”. Amendment of section 53 of Act 32 of 1944.
14. Section 55 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 55 of Act 32 of 1944, as amended by section 8 of Act 19 of 1963.
- “(1) An individual (natural person) who claims to have a right of action against any other person not based on cession, for a sum not exceeding twenty rand for or in respect of goods sold and delivered, money lent, work or labour done, or rent due or in respect of any unconditional

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970.

acknowledgment of debt, a dishonoured cheque, or a promissory note, may personally produce to the clerk of the court a summons as in the rules provided, and the clerk shall sign and issue such summons: Provided that no such summons shall be issued until there has been lodged with the said clerk a copy of a demand in writing previously sent by the plaintiff to the defendant, in terms of which the defendant was allowed at least seven days within which to comply with such demand."

15. Section 57 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 57 of Act 32 of 1944.

"(1) If appearance to defend is entered by the defendant within the period prescribed by the rules, the clerk of the court shall appoint a day for the hearing of the claim."

16. The following section is hereby inserted in the principal Act after section 71: Insertion of section 71A in Act 32 of 1944.

"Movable property which messenger cannot dispose of in terms of this Act, shall be sold by public auction.

71A. (1) Any movable property in the custody of the messenger or any other person acting on his behalf in respect of which attachment has been withdrawn or which is released from attachment and in respect of which the owner or person from whose possession the property has been removed, cannot be traced, and which cannot be disposed of in terms of this Act, shall be sold by the messenger by public auction, and the proceeds of the sale shall, after deduction of the messenger's costs, be paid into the Consolidated Revenue Fund: Provided that such sale shall not take place unless such property has remained unclaimed for a period of fourteen days after the messenger has published, in one English and one Afrikaans newspaper circulating in the district where the last known address of the judgment debtor is situate, a notice containing the name of the judgment debtor, a description of the property and stating the intention to sell such property if it is not claimed within the period specified therein.

(2) After the public auction referred to in subsection (1), the messenger shall draw up a vendue roll as if the sale was a sale in execution of property and shall attach the roll to his return in respect of the relevant process of the court in the case together with proof that the proceeds of the sale have been paid into the Consolidated Revenue Fund.

(3) The proceeds of a sale paid into the Consolidated Revenue Fund in terms of this section, shall be refunded out of accruing revenue to any person who satisfies a judicial officer of the district in which the sale took place that he would have been entitled to receive the property referred to in this section after the attachment thereof had been withdrawn or the property had been released from attachment."

17. Section 75 of the principal Act is hereby amended by the substitution in subsection (2) for the word "Union" of the word "Republic". Amendment of section 75 of Act 32 of 1944.

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970

18. The following section is hereby substituted for section 93*bis* of the principal Act:

"Transfer of proceedings to court of a regional division.

93*bis*. Notwithstanding anything to the contrary in any law contained, the judicial officer presiding at the trial of or who convicts any person being tried before a court which is not a court of a regional division, or a judicial officer acting in the absence of such judicial officer in terms of the provisions of section 186 (4) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), shall, if it appears that the trial may more properly be conducted before the court of a regional division or that the imposition of a sentence in terms of section 334*quat* (2) or 335 (2) of the said Act would have been competent if such person had been so convicted by the court of a regional division, or when the public prosecutor so requests, as the case may be, stop the trial or, if such person has been convicted, set aside the finding in respect of such person and of any other person convicted after having been tried jointly with such firstmentioned person, and the proceedings shall thereupon be commenced afresh before the court of the regional division concerned."

Substitution of section 93*bis* of Act 32 of 1944, as inserted by section 23 of Act 40 of 1952 and substituted by section 31 of Act 70 of 1968.

19. The following section is hereby substituted for section 107 of the principal Act:

"Offences relating to execution.

107. Any person who—

- (1) obstructs a messenger or deputy-messenger in the execution of his duties;
- (2) being aware that goods have been placed under arrest, interdict or attachment by the court, makes away with or disposes of those goods in any manner not authorized by law, or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in any such manner;
- (3) being a judgment debtor and being required by a messenger or deputy-messenger to point out property to satisfy a warrant issued in execution of judgment against such person, either—
 - (a) falsely declares to that messenger or deputy-messenger that he possesses no property or not sufficient property to satisfy the warrant; or
 - (b) although owning such property neglects or refuses to point out the same; or
- (4) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy-messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be guilty of an offence and liable upon conviction to a fine not exceeding two hundred rand or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine."

Substitution of section 107 of Act 32 of 1944, as amended by section 22 of Act 19 of 1963.

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970

20. The following section is hereby substituted for section 110 of the principal Act:

Substitution of section 110 of Act 32 of 1944.

"Jurisdiction as to plea of *ultra vires*."

110. No magistrate's court shall be competent to pronounce upon the validity of a provincial ordinance or an ordinance of the Legislative Assembly of the territory or of a statutory proclamation of the State President or of the Administrator of the territory, and every such court shall assume that every such ordinance or proclamation is valid; but every such court shall be competent to pronounce upon the validity of any statutory regulation, order or bye-law."

21. The following section is hereby inserted in the principal Act after section 115:

Insertion of section 115A in Act 32 of 1944.

"Application of Act to the territory of South-West Africa."

115A. (1) This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.

(2) Any reference in this Act (except in section 93*ter* (5)) to the Criminal Procedure Act, 1955 (Act No. 56 of 1955), or to any provision of the said Act, shall for the purposes of such application be construed as including a reference to the Criminal Procedure Ordinance, 1963 (Ordinance No. 34 of 1963), of the territory, or to the corresponding provision of the said Ordinance, or to such other law relating to criminal procedure or to the corresponding provision of any such other law as may be in force in the territory from time to time.

(3) The reference in section 93*ter* (5) to provisions of section 110 of the Criminal Procedure Act, 1955, shall for the purposes of such application be construed as including a reference to the corresponding provisions of such other law relating to criminal procedure as is referred to in subsection (2)."

22. (1) Section 3 of the South-West Africa Affairs Act, 1922 (Act No. 24 of 1922), is hereby repealed in so far as it relates to the attendance of witnesses in any civil action in any magistrate's court in the territory of South-West Africa.

Repeal of laws and savings.

(2) Subject to the provisions of subsection (3), the laws of the territory of South-West Africa specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(3) Any regulation, rule, notice, approval, authority, return, certificate, document or appointment made, issued or given, and any other act done under any provision of any law repealed by this Act, shall be deemed to have been made, issued, given or done under the corresponding provision of the principal Act.

(4) This section shall apply also in the Eastern Caprivi Zipfel.

23. This Act shall be called the Magistrates' Courts Amendment Act, 1970, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Short title and commencement.

MAGISTRATES' COURTS AMENDMENT ACT, 1970.

Act No. 53, 1970

Schedule.

LAWS REPEALED.

No. and year of law.	Short title.	Extent of repeal.
Ordinance No. 29 of 1963.	Magistrates' Courts Ordinance, 1963.	The whole.
Ordinance No. 36 of 1965.	General Law Amendment Ordinance, 1965.	Sections 6, 7, 8, 9, 10, 11, 12, 13 and 14.
Ordinance No. 4 of 1968.	General Law Amendment Ordinance, 1968.	Sections 2, 3 and 4.