

South Africa

## Magistrates' Courts Act, 1944

Act 32 of 1944

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# Magistrates' Courts Act, 1944

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## South Africa

### Magistrates' Courts Act, 1944

Act 32 of 1944

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 [Amended by [Magistrates Act, 1993 \(Act 90 of 1993\)](#) on 11 March 1994]  
 [Amended by [Abolition of Restrictions on the Jurisdiction of Courts Act, 1996 \(Act 88 of 1996\)](#) on 22 November 1996]  
 [Amended by [Judicial Matters Amendment Act, 1996 \(Act 104 of 1996\)](#) on 14 February 1997]  
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 [Amended by [Abolition of Corporal Punishment Act, 1997 \(Act 33 of 1997\)](#) on 5 September 1997]  
 [Amended by [Magistrates' Courts Second Amendment Act, 1997 \(Act 80 of 1997\)](#) on 10 December 1997]  
 [Amended by [Magistrates' Courts Amendment Act, 1997 \(Act 81 of 1997\)](#) on 10 December 1997]  
 [Amended by [Magistrates Amendment Act, 1998 \(Act 66 of 1998\)](#) on 7 October 1998]  
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 [Amended by [Judicial Matters Amendment Act, 2002 \(Act 55 of 2002\)](#) on 17 January 2003]  
 [Amended by [Debt Collectors Act, 1998 \(Act 114 of 1998\)](#) on 7 February 2003]  
 [Amended by [Judicial Officers \(Amendment of Conditions of Service\) Act, 2003 \(Act 28 of 2003\)](#) on 1 November 2003]

[Please note: The provisions of section 10(1)(a) and (b) of the Magistrates' Courts Amendment [Act 40 of 1952](#) shall be deemed to have been in force as from the second day of July, 1945.]

[Please note: Sections [14](#), [15](#), [18](#), [18A](#) and [107](#) of this Act repealed, in respect of the territories of the former Republics of Transkei, Venda and Ciskei and the former self-governing territories of Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa, by section 23 of [Act 74 of 1998](#).]

## ACT

**To consolidate and amend the law relating to Magistrates' Courts.**

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

### 1. Definitions

In this Act, except where the context otherwise indicates—

"**administrative region**" means an administrative region created by the Minister under [section 2](#) (2);

[definition of "administrative region" inserted by section 1(a) of [Act 66 of 1998](#)]

"**court**" means a magistrate's court;

"**court of appeal**" means the High Court to which an appeal lies from the magistrates court;

[definition of "court of appeal" substituted by section 1 of [Act 105 of 1982](#) and by section 1(b) of [Act 66 of 1998](#)]

"**head of the administrative region**" means the magistrate designated as such by the Minister, after consultation with the Magistrates Commission;

*[definition of "head of the administrative region" inserted by section 1(c) of [Act 66 of 1998](#)]*

"**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;

"**Magistrates Commission**" means the Magistrates Commission established by section 2 of the Magistrates Act, 1993 ([Act No. 90 of 1993](#));

*[definition of "Magistrates Commission" inserted by section 1(d) of [Act 66 of 1998](#)]*

"**Minister**", means the Minister of Justice;

*[definition of "Minister" substituted by section 23 of [Act 94 of 1974](#), by section 2 of [Act 34 of 1986](#) and by section 1(e) of [Act 66 of 1998](#)]*

"**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 referred to in section 6 of the Rules Board for Courts of Law Act, 1985 ([Act No. 107 of 1985](#));

*[definition of "the rules" substituted by section 1 of [Act 4 of 1991](#)]*

"**this Act**" includes the rules.

*[section 1 amended by section 2 of [Act 40 of 1952](#) and section 15 of [Act 15 of 1969](#) and substituted by section 1 of [Act 53 of 1970](#)]*

## Part I – Courts

### Chapter I Establishment and nature of courts

#### 2. Minister's powers relative to districts and courts

- (1) 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;
  - (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;
  - (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 or 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 sub-district 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, sub-district or other area of jurisdiction and the court thereof.
- (2) The Minister may, by notice in the *Gazette* and after consultation with the Magistrates Commission, join any group of districts together to create an administrative region for administrative purposes.

*[subsection (2) added by section 2 of [Act 66 of 1998](#)]*

*[section 2 amended by section 3 of [Act 40 of 1952](#), section 37 of [Act 68 of 1957](#), section 5 of [Act 17 of 1970](#) and by section 7 of [Act 102 of 1972](#) and substituted by section 2 of [Act 53 of 1970](#)]*

### 3. Existing courts and districts to continue

- (1) The courts and districts existing immediately before the commencement of this Act shall be deemed to have been established under this Act.
- (2) All references in any other law to magistrates' courts or courts of resident magistrate shall be read as referring to courts established under this Act.
- (3) After the commencement of this Act no new district or sub-district and no regional division shall be created until a report upon the proposal to create such district or sub-district or division has been obtained from the Public Service Commission.

*[subsection (3) amended by section 4 of [Act 40 of 1952](#)]*

### 4. Nature of the courts and force of process

- (1) Every court shall be a court of record.
- (2) *[subsection (2) deleted by section 5(a) of [Act 40 of 1952](#)]*
- (3) Every process issued out of any court shall be of force throughout the Republic.

*[subsection (3) amended by section 5(b) of [Act 40 of 1952](#) and by section 3 of [Act 53 of 1970](#)]*

- (4) Any process issued out of any court may be served or executed by the messenger of the court appointed for the area within which such process is to be served or executed.

*[subsection (4) substituted by section 26 of [Act 70 of 1968](#)]*

## 5. Courts to be open to the public, with exception

- (1) Except where otherwise provided by law, the proceedings in every court in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and recorded by the presiding officer or other officer appointed to record such proceedings.
- (2) The court may in any case, in the interests of good order or public morals, direct that a civil trial shall be held with closed doors, or that (with such exceptions as the court may direct) minors or the public generally shall not be permitted to be present thereat.

*[subsection (2) substituted by section 1(a) of [Act 91 of 1977](#) and by section 3 of [Act 132 of 1993](#)]*

- (3) If any person present at any civil proceedings in any court disturbs the peace or order of the court, the court may order that person to be removed and detained in custody until the rising of the court, or, if in the opinion of the court peace cannot be otherwise secured, may order the court room to be cleared and the doors thereof to be closed to the public.

*[subsection (3) substituted by section 1(a) of [Act 91 of 1977](#)]*

- (4) *[subsection (4) amended by section 6 of [Act 40 of 1952](#) and deleted by section 1(b) of [Act 91 of 1977](#)]*

## 6. Medium to be employed in proceedings

- (1) Either of the official languages may be used at any stage of the proceedings in any court and the evidence shall be recorded in the language so used.

*[subsection (1) amended by section 7 of [Act 40 of 1952](#)]*

- (2) If, in a criminal case, evidence is given in a language with which the accused is not in the opinion of the court sufficiently conversant, a competent interpreter shall be called by the court in order to translate such evidence into a language with which the accused professes or appears to the court to be sufficiently conversant, irrespective of whether the language in which the evidence is given, is one of the official languages or of whether the representative of the accused is conversant with the language used in the evidence or not.

## 7. Public access to records and custody thereof

- (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 Director-General: Justice may from time to time determine: Provided that the said 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 Director-General: Justice 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.

*[section 7 amended by section 23 of [Act 93 of 1962](#) and by section 7 of [Act 80 of 1964](#) and substituted by section 1 of [Act 8 of 1967](#) and amended by section 27 of [Act 70 of 1968](#), by section 14 of [Act 80 of 1971](#) and by section 2 of [Act 91 of 1977](#) and substituted by section 1 of [Act 25 of 1987](#)]*

## 7A. Custody of civil summonses and returns thereto

- (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.

*[section 7A inserted by section 2 of [Act 25 of 1987](#)]*

## Chapter II Judicial officers

### 8. Before whom courts to be held

Every court held under this Act shall be presided over by a judicial officer appointed in the manner provided by this Act.

### 9. Appointment of judicial officers

- (1) (a) Subject to the Magistrates Act, 1993, and the provisions of paragraph (b) of this subsection and of [section 10](#), the Minister may appoint for any district or subdistrict a magistrate, one or more additional magistrates or one or more assistant magistrates and for every regional division a magistrate or magistrates.

*[paragraph (a) substituted by section 17 of [Act 90 of 1993](#)]*

- (aA) The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to the Director-General of his or her department or another officer of that department with the rank of director or an equivalent or higher rank or a magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate.

*[paragraph (aA) inserted by section 11 of [Act 29 of 1974](#), substituted by section 1 of [Act 28 of 1981](#), by section 3(a) of [Act 104 of 1996](#) and by section 3(a) of [Act 66 of 1998](#)]*

- (b) No person shall be appointed as a magistrate of a regional division unless he or she has satisfied all the requirements for the degree of *baccalaureus legum* of a university in the Republic or has passed the Public Service Senior Law Examination or an examination deemed by the Minister to be equivalent or superior to the said examination, and the Magistrates Commission has informed the Minister that he or she is suitable for appointment as a magistrate of a regional division.

*[paragraph (b) substituted by section 3(b) of [Act 66 of 1998](#)]*

- (c) A magistrate of a regional division may also be the magistrate of a district and shall for the purposes of [section 12\(5\)](#) be deemed to have been duly appointed as an additional magistrate

for each district, except the district of which he is the magistrate, falling wholly or partly within the regional division of which he is a magistrate;

*[paragraph (c) substituted by section 24(1)(a) of [Act 94 of 1974](#)]*

- (d) A magistrate, an additional magistrate or an assistant magistrate of a district or subdistrict may at the same time also be a magistrate, an additional magistrate or an assistant magistrate of another district.

*[paragraph (d) added by section 24(1)(b) of [Act 94 of 1974](#)]*

- (2) (a) A person appointed as judicial officer under this section shall, before commencing with his or her functions in terms of this Act for the first time, take an oath or make an affirmation subscribed by him or her, in the form set out below:

'I \_\_\_\_\_ (full name) do hereby swear/solemnly affirm that in my capacity as a judicial officer I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.'

*[paragraph (a) substituted by section 4 of [Act 53 of 1970](#) and by section 1 of [Act 62 of 2000](#)]*

- (b) Any such oath or affirmation shall be taken or made in open court before the senior available magistrate of the district concerned or a justice of the peace who shall at the foot thereof endorse a statement of the fact 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.
- (3) Subject to subsections (4) and (5), the Minister, after consultation with the head of the court concerned, may appoint any appropriately qualified and fit and proper person to act—
  - (a) in the place of any magistrate, additional magistrate or assistant magistrate who is not available; or
  - (b) in any vacant office of magistrate; or
  - (c) as a magistrate in addition to any magistrate of a regional division or a district.

*[subsection (3) substituted by section 3(b) of [Act 104 of 1996](#), by section 3(c) of [Act 66 of 1998](#) and by section 1 of [Act 28 of 2003](#)]*

- (4) (a) A magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may—
  - (i) whenever a magistrate, additional magistrate or assistant magistrate is for any reason unavailable to carry out the functions of his or her office; and
  - (ii) in consultation with the Minister or an officer in the Department of Justice and Constitutional Development designated by the Minister,
 temporarily appoint any competent person in the place of the magistrate concerned.
- (b) An appointment in terms of paragraph (a) remains valid for the duration of the unavailability of the magistrate in question, or for a period not exceeding five consecutive court days, whichever period is the shortest.
- (c) Any person appointed in terms of paragraph (a) may—
  - (i) upon the expiry of the appointment in terms of paragraph (b); and

- (ii) if the magistrate in whose place the appointment has been made is still unavailable, be reappointed once only in terms of paragraph (a) in the place of that magistrate.

*[subsectionn (4) substituted by section 3(b) of [Act 104 of 1996](#), by section 3(c) of [Act 66 of 1998](#) and by section 1 of [Act 28 of 2003](#)]*

- (5) (a) Any person appointed in terms of subsection (3)—
  - (i) holds that office for a period determined by the Minister at the time of the appointment, but the period so determined may not exceed three months; and
  - (ii) may be reappointed to that office in terms of subsection (3).
- (b) The Minister must cause Parliament and the Magistrates Commission to be informed whenever any vacancy in the office of a magistrate has remained unfilled for a continuous period exceeding three months.

*[subsection (5) deleted by section 2 of [Act 34 of 1986](#), inserted by section 3(c) of [Act 104 of 1996](#) and substituted by section 1 of [Act 28 of 2003](#)]*

- (6) Any person appointed in terms of subsection (3) or (4) is also deemed to have been so appointed in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—
  - (a) in which he or she has participated as such a magistrate, including an application for leave to appeal in respect of such proceedings; and
  - (b) which have not yet been disposed of at the expiry of the period for which he or she was appointed.

*[subsection (6) added by section 1 of [Act 28 of 2003](#)]*

*[section 9 amended by section 8 of [Act 40 of 1952](#), by section 17 of [Act 50 of 1956](#), by section 38 of [Act 68 of 1957](#), by section 24 of [Act 93 of 1962](#), by section 1 of [Act 19 of 1963](#) and by section 1 of [Act 48 of 1965](#) and substituted by section 2 of [Act 8 of 1967](#)]*

#### 9bis. \*\*\*

*[section 9bis inserted by section 2 of [Act 48 of 1965](#), amended by section 5 of [Act 53 of 1970](#), by section 2 of [Act 28 of 1981](#) and repealed by section 4(a) of [Act 104 of 1996](#)]*

### 10. Qualifications for appointments of judicial officers

Subject to the provisions of the Magistrates Act, 1993 ([Act No. 90 of 1993](#)), and of [section 11](#)—

- (a) a person who has not before the commencement of the Magistrates Amendment Act, 1998, held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of the Magistrates Amendment Act, 1998, held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he or she has passed the civil service lower law examination or an examination declared by the Minister to be equivalent thereto;
- (b) in recommending any person for appointment as a magistrate, additional magistrate or assistant magistrate the Magistrate Commission may give preference to a person who holds a degree in law of a university in South Africa, or has passed the Civil Service Higher Law Examination or an examination deemed by the Commission to be equivalent thereto.

*[section 10 substituted by section 4 of [Act 66 of 1998](#)]*



## 11. Existing judicial officers to continue in office

- (1) All magistrates, additional magistrates and assistant magistrates holding office at the commencement of this Act shall be deemed to have been appointed under this Act.
- (2) References in any other law to chief magistrates, resident magistrates, magistrates, additional magistrates, civil magistrates or criminal magistrates, shall be read as referring to magistrates appointed under this Act.
- (3) All such references to assistant resident magistrates or to assistant magistrates shall be read as referring to assistant magistrates appointed under this Act.

## 12. Powers of judicial officers

- (1) A magistrate—
  - (a) may hold a court: Provided that a court of a regional division may only be held by a magistrate of the regional division;  
*[paragraph (a) amended by section 9 of [Act 40 of 1952](#)]*
  - (b) shall possess the powers and perform the duties conferred or imposed upon magistrates by any law for the time being in force within the province wherein his district is situate.
  - (c) shall be subject to the administrative control of the head of the administrative region in which his or her district is situate.  
*[paragraph (c) added by section 5 of [Act 66 of 1998](#)]*
- (2) An additional magistrate or an assistant magistrate—
  - (a) may hold a court;
  - (b) shall possess such powers and perform such duties conferred or imposed upon magistrates as he is not expressly prohibited from exercising or performing either by the Minister or by the magistrate of the district.
- (3) An acting magistrate, additional magistrate, or assistant magistrate, respectively, shall possess the powers and jurisdiction and perform the duties of the magistrate, additional magistrate, or assistant magistrate in whose place he is appointed to act, for the particular case or during the time or in the circumstances for which he is appointed to act.
- (4) Every additional magistrate and every assistant magistrate shall, in each district for which he has been appointed, be subject to the administrative direction of the magistrate; and the magistrate shall allocate the work among the additional magistrates and assistant magistrates.
- (5) A magistrate of a regional division may, in his capacity as additional magistrate for a district in terms of [section 9\(1\)\(c\)](#), hold a court of that district for the hearing of any civil matter within the jurisdiction of such court.  
*[subsection (5) added by section 25 of [Act 94 of 1974](#)]*

## Chapter III Officers of the court

### 13. Clerk of the court

- (1) There shall be appointed for every court by the magistrate of the district in which such court is situated so many clerks of the court and assistant clerks of the court as may be necessary.  
*[subsection (1) substituted by section 3 of [Act 91 of 1977](#)]*

- (2) A refusal by the clerk of the court to do any act which he is by any law empowered to do shall be subject to review by the court on application either *ex parte* or on notice, as the circumstances may require.

#### 14. Messengers of the court

- (1) *[subsection (1) amended by section 10(a) of [Act 40 of 1952](#), by section 28(1)(a) of [Act 70 of 1968](#), by section 12 of [Act 29 of 1974](#), by section 3 of [Act 28 of 1981](#) and repealed by section 64(1) of [Act 90 of 1986](#)]*
- (1A) *[subsection (1A) inserted by section 28(1)(b) of [Act 70 of 1968](#) and repealed by section 64(1) of [Act 90 of 1986](#)]*
- (2) *[subsection (2) amended by section 28(1)(c) of [Act 70 of 1968](#) and repealed by section 64(1) of [Act 90 of 1986](#)]*
- (3) *[subsection (3) repealed by section 64(1) of [Act 90 of 1986](#)]*
- (4) *[subsection (4) repealed by section 64(1) of [Act 90 of 1986](#)]*
- (5) *[subsection (5) repealed by section 64(1) of [Act 90 of 1986](#)]*
- (6) *[subsection (6) substituted by section 10(b) of [Act 40 of 1952](#) with effect from 2 July 1945 and repealed by section 64(1) of [Act 90 of 1986](#)]*
- (7) A messenger receiving any process for service or execution from a practitioner or plaintiff by whom there is due and payable to the messenger any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to the magistrate of the court out of which the process was issued with particulars of the sum due and payable by the, practitioner or plaintiff; and the magistrate may, if he is satisfied that a sum is due and payable by the practitioner or plaintiff to the messenger as aforesaid which notwithstanding request has not been paid, by writing under his hand authorize the messenger to refuse to serve or execute such process until the sum due and payable to the messenger has been paid.
- [subsection (7) amended by section 10(c) of [Act 40 of 1952](#)]*
- (8) A magistrate granting any such authority shall forthwith transmit a copy thereof to the practitioner or plaintiff concerned and a messenger receiving any such authority shall forthwith return to the practitioner or plaintiff the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.
- [subsection (8) amended by section 10(c) of [Act 40 of 1952](#)]*
- (9) *[subsection (9) substituted by section 6 of [Act 53 of 1970](#) and repealed by section 64(1) of [Act 90 of 1986](#)]*

#### 15. Service of process by the police

- (1) (a) Whenever process of the court in a civil case is to be served or executed within any area for which no messenger has been appointed, and whenever process of any court in a criminal case is to be served, a member of the police force shall be as qualified to serve or execute all such process and all other documents in such a case as if he had been duly appointed messenger.
- (b) The fees payable in respect of or in connection with any such service to a messenger shall in any such case be chargeable but shall be paid into the Consolidated Revenue Fund.
- [subsection (1) amended by section 11(i) and (ii) of [Act 40 of 1952](#) and substituted by section 29 of [Act 70 of 1968](#)]*
- (2) Whenever under any law a public body has the right to prosecute privately in respect of any offence or whenever under any law any fine imposed on conviction in respect of any offence is to be paid

into the revenue of a public body, the process of the court and all other documents in the case in which prosecution takes place for such offence, shall be served—

- (a) by a person authorized in writing by such public body;
- (b) where it is expedient that such process shall be served in the area of jurisdiction of another public body, by a person authorized as contemplated in paragraph (a) by such other public body; or
- (c) with the consent of the Minister by a member of the police force, in which case fees in accordance with the scale set out in the rules shall be paid by the public body or such compounded amount in respect of all such process and other documents in any year as may be agreed between the said public body and the Minister, and such fees or such amount shall be paid into the National Revenue Fund.

*[paragraph (c) amended by section 4 of [Act 18 of 1996](#)]*

*[subsection (2) amended by section 11(iii) of [Act 40 of 1952](#) and substituted by section 1 of [Act 59 of 1982](#)]*

- (3) An officer in the service of a province of a class defined by the Premier of that province by notice in the *Provincial Gazette* of the province concerned, shall be competent to serve any process of the court or any other document in a case in which a prosecution takes place for an offence in terms of any law of that province as if he had been appointed as a deputy messenger of the court.

*[subsection (3) added by section 2(b) of [Act 19 of 1963](#) and amended by section 4 of [Act 18 of 1996](#)]*

- (4) An officer or employee in the service of the State of a class defined by the Minister by notice in the *Gazette*, shall be competent to serve any process of the court or any other document in a case in which a prosecution takes place for an offence in terms of a provision of any law specified by the Minister in such notice, as if he had been appointed as a sheriff of the court.

*[subsection (4) added by section 26 of [Act 94 of 1974](#) and amended by section 64(1) of [Act 90 of 1986](#)]*

## 16. Messengers' duties respecting detention of persons by order of court

The messenger shall receive and cause to be lodged in a prison all persons arrested by such messenger or committed to his custody.

*[section 16 amended by section 1 of [Act 17 of 1969](#)]*

## 17. Messengers' return to be evidence

The return of a messenger or of any person authorized to perform any of the functions of a messenger to any civil process of the court, shall be *prima facie* evidence of the matters therein stated.

*[section 17 substituted by section 4 of [Act 91 of 1977](#)]*

## 18. \*\*\*

*[section 18 repealed by section 64(1) of [Act 90 of 1986](#)]*

## 18A. \*\*\*

*[section 18A inserted by section 1 of [Act 53 of 1983](#) and repealed by section 64(1) of [Act 90 of 1986](#)]*

## 19. Officers appointed previously to remain in office

Every officer of the court holding office immediately prior to the commencement of this Act shall be deemed to be duly appointed under this Act, and shall be invested with power, duties and authority accordingly.

## Chapter IV Practitioners

### 20. Advocates and attorneys

An advocate or attorney of any division of the Supreme Court may appear in any proceeding in any court.

### 21. Candidate attorneys

A candidate attorney as defined in section 1 of the Attorneys Act, 1979 ([Act No. 53 of 1979](#)), may, subject to section 8 of that Act, appear instead and on behalf of the attorney to whom he has been articulated, or under whom he serves community service in terms of a contract of service, in any proceedings in any court.

*[section 21 amended by section 18 of [Act 50 of 1956](#), substituted by section 35 of [Act 87 of 1989](#) and by section 22 of [Act 115 of 1993](#)]*

### 22. Agents

- (1) A person who, immediately prior to the commencement of this Act, was entitled to practise as an agent in any court may practise in any court in which he was so entitled, and shall be entitled to be enrolled and to practise in any other court in which he would have been entitled to be enrolled if this Act had not been passed.
- (2) The Supreme Court shall possess in respect of any such agent the same powers as it possesses in respect of attorneys of the Supreme Court.
- (3) The law society of any Province may bring to the notice of the Supreme Court any facts regarding the conduct of any such agent which, in the opinion of the said Society, ought to be brought to the notice of the Supreme Court, in the same manner as if such agent were an attorney of the Supreme Court.

### 23. Misconduct of practitioners

Whenever in the opinion of a judicial officer a practitioner has been guilty of misconduct or dishonourable practice he shall report the fact—

- (a) in the case of an advocate, to the branch of the Society of Advocates or Bar Council at the centre in which such advocate practises; and
- (b) in the case of all other practitioners, to the law society concerned.

## Chapter V Rules of Court

### 24. \*\*\*

*[section 24 repealed by section 7 of [Act 53 of 1970](#)]*

### 25. \*\*\*

*[section 25 amended by section 19 of [Act 50 of 1956](#), by section 2 of [Act 93 of 1963](#), by section 2 of [Act 101 of 1969](#), by section 8 of [Act 53 of 1970](#), by section 1 of [Act 19 of 1985](#) and repealed by section 10 of [Act 107 of 1985](#)]*

## Part II – Civil matters

### Chapter VI Civil jurisdiction

#### 26. Area of jurisdiction

- (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).

*[section 26 substituted by section 9 of [Act 53 of 1970](#)]*

#### 27. Jurisdiction of periodical courts

The jurisdiction of a periodical court within the area for which it has been appointed shall be subject to the following provisions—

- (a) The court of a district within which the said area or any part thereof is situate shall retain concurrent jurisdiction with the periodical court within such portions of such area as shall be situate within such district; and
- (b) no person shall, without his own consent, be liable to appear as a party before any periodical court to answer any claim unless he resides nearer to the place where the periodical court is held than to the seat of magistracy of the district.

#### 28. Jurisdiction in respect of persons

- (1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall have jurisdiction shall be the following and no other—
  - (a) any person who resides, carries on business or is ' employed within the district;
  - (b) any partnership which has business premises situated or any member whereof resides within the district;
  - (c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself;
  - (d) any person, whether or not he resides, carries on business or is employed within the district, if the cause of action arose wholly within the district;
  - (e) any party to interpleader proceedings, if—
    - (i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on business, or are employed within the district; or
    - (ii) the subject matter of the proceedings has been attached by process of the court; or

*[subparagraph (ii) amended by section 12(b) of [Act 40 of 1952](#)]*

- (iii) such proceedings are taken under sub-section (2) of section sixty-nine and the person therein referred to as the "third party" resides, carries on business, or is employed within the district; or

*[subparagraph (iii) added by section 12(b) of [Act 40 of 1952](#)]*

- (iv) all the parties consent to the jurisdiction of the court;

*[subparagraph (iv) added by section 12(b) of [Act 40 of 1952](#)]*

- (f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court;
- (g) any person who owns immovable property within the district in actions in respect of such property or in respect of mortgage bonds thereon.

*[subsection (1) amended by section 12(a) of [Act 40 of 1952](#)]*

- (2) "Person" and "defendant" in this section include the State.

## 29. Jurisdiction in respect of causes of action

- (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 in value the amount determined by the Minister from time to time by notice in the *Gazette*;
- (b) actions of ejectment 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 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 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 the amount determined by the Minister from time to time by notice in the *Gazette*;
- (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 the amount determined by the Minister from time to time by notice in the *Gazette*;
- (fA) actions, including an application for liquidation, in terms of the Close Corporations Act, 1984 ([Act No. 69 of 1984](#));

*[paragraph (fA) inserted by section 2 of [Act 132 of 1993](#)]*

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

- (2) In subsection (1) 'action' includes a claim in reconvention.

*[section 29 amended by section 13 of [Act 40 of 1952](#), by section 39 of [Act 68 of 1957](#), by section 3 of [Act 19 of 1963](#) and by section 10 of [Act 53 of 1970](#), substituted by section 27 of [Act 94 of 1974](#), amended by section 1(a), (b), (c), (d) and (e) of [Act 56 of 1984](#), by section 35 of [Act 88 of 1984](#) and substituted by section 3 of [Act 25 of 1987](#)]*

### 29A. Jurisdiction in respect of appeals against decisions of Black chiefs, headmen and chiefs' deputies

- (1) If a party appeals to a magistrate's court in terms of the provisions of section 12 (4) of the Black Administration Act, 1927 (*Act No. 38 of 1927*), the said court may confirm, alter or set aside the judgment after hearing such evidence as may be tendered by the parties to the dispute, or as may be deemed desirable by the court.
- (2) A confirmation, alteration or setting aside in terms of subsection (1), shall be deemed to be a decision of a magistrate's court for the purposes of the provisions of Chapter XI.

[section 29A inserted by section 2 of [Act 34 of 1986](#)]

### 30. Arrests and interdicts

- (1) Subject to the limits of jurisdiction prescribed by this Act, the court may grant against persons and things orders for arrest *tanquam suspectus de fuga*, attachments, interdicts and *mandamenten van spolie*.
- (2) Confirmation by the court of any such attachment or interdict in the judgment in the action shall operate as an extension of the attachment or interdict until execution or further order of the court.
- (3) No order of personal arrest *tanquam suspectus de fuga* shall be made unless—
  - (a) the cause of action appears to amount, exclusive of costs, to at least forty rand;
 

[paragraph (a) amended by section 4 of [Act 19 of 1963](#)]
  - (b) the applicant appears to have no security for the debt or only security falling short of the amount of the debt by at least forty rand; and
 

[paragraph (b) amended by section 4 of [Act 19 of 1963](#)]
  - (c) it appears that the respondent is about to remove from the Republic.
 

[paragraph (c) amended by section 11 of [Act 53 of 1970](#)]

### 30bis. Attachment to found or confirm jurisdiction

The court may order attachment of person or property to found or confirm jurisdiction against any person who does not reside in the Republic, in respect of an action within its jurisdiction, where the claim or the value of the matter in dispute amounts to at least forty rand, exclusive of any costs in respect of the recovery thereof, and may grant an order allowing service of any process in such action to be effected in such manner as may be stated in such order.

[section 30bis inserted by section 8(1) of [Act 80 of 1964](#)]

### 31. Automatic rent interdict

- (1) When a summons is issued in which is claimed the rent of any premises, the plaintiff may include in such summons a notice prohibiting any person from removing any of the furniture or other effects thereon which are subject to the plaintiff's hypothec for rent until an order relative thereto has been made by the court.
- (2) The messenger shall, if required by the plaintiff and at such plaintiff's expense, make an inventory of such furniture or effects.
- (3) Such notice shall operate to interdict any person having knowledge thereof from removing any such furniture or effects.
- (4) Any person affected by such notice may apply to the court to have the same set aside.

### 32. Attachment of property in security of rent

- (1) Upon an affidavit by or on behalf of the landlord of any premises situate within the district, that an amount of rent not exceeding the jurisdiction of the court is due and in arrear in regard to the said premises, and that the said rent has been demanded in writing for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property upon the said premises, in order to avoid the payment of such rent, and upon security being given to the satisfaction of the clerk to the court to pay all damages, costs and charges which the tenant of such premises, or any other person, may sustain or incur by reason of the attachment hereinafter mentioned, if the said attachment be thereafter set aside, the court may, upon application, issue an order to the messenger requiring him to attach so much of the movable property upon the premises in question and subject to the landlord's hypothec for rent as may be sufficient to satisfy the amount of such rent, together with the costs of such application and of any action for the said rent.
- (2) Any person affected by such order may apply to have it set aside.
- (3) A respondent whose property has been so attached may by notice in writing to the clerk of the court admit that such property is subject to the landlord's hypothec for an amount to be specified in such notice and may consent that such property (other than property protected from seizure by the provisions of section sixty-seven) be sold in satisfaction of such amount and costs; and such notice shall have the same effect as a consent to judgment for the amount specified.

### 33. Curator ad litem

The court may appoint a *curator ad litem* in any case in which such a curator is required or allowed by law for a party to any proceedings brought or to be brought before the court.

### 34. Assessors

In any action the court may, upon the application of either party, summon to its assistance one or two persons of skill and experience in the matter to which the action relates who may be willing to sit and act as assessors in an advisory capacity.

### 35. Transfer from one court to another

- (1) An action or proceeding may, with the consent of all the parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court.
- (2) An interpleader summons, if issued in the court of the district in which the property was attached, may, at the discretion of the court, be remitted for trial to the court in which the judgment was given.
- (3) An action commenced in a periodical court may, at the discretion of the court, be transferred to the court of the district, or (subject to the provisions of paragraph (b) of section twenty-seven) vice versa.

### 36. What judgments may be rescinded

- (1) The court may, upon application by any person affected thereby, or, in cases falling under paragraph (c), *suo motu*—
  - (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;



- (b) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties;
  - (c) correct patent errors in any judgment in respect of which no appeal is pending;
  - (d) rescind or vary any judgment in respect of which no appeal lies.
- (2) If a plaintiff in whose favour a default judgment has been granted has agreed in writing that the judgment be rescinded or varied, a court must rescind or vary such judgment on application by any person affected by it.

[section 36 substituted by section 1 of [Act 55 of 2002](#)]

### 37. Incidental jurisdiction

- (1) In actions wherein the sum claimed, being within the jurisdiction, is the balance of an account, the court may enquire into and take evidence if necessary upon the whole account, even though such account contains items and transactions exceeding the amount of the jurisdiction.
- (2) Where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction shall not be ousted merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction.
- (3) In considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general or alternative relief shall be taken into account.

### 38. Abandonment of part claim

- (1) In order to bring a claim within the jurisdiction, a plaintiff may in his summons or at any time thereafter explicitly abandon part of such claim.
- (2) If any part of a claim be so abandoned it shall thereby be finally extinguished: Provided that, if the claim be upheld in part only, the abandonment shall be deemed first to take effect upon that part of the claim which is not upheld.

### 39. Deduction of admitted debt

In order to bring a claim within the jurisdiction a plaintiff may, in his summons or at any time after the issue thereof, deduct from his claim, whether liquidated or unliquidated, any amount admitted by him to be due by himself to the defendant.

### 40. Splitting of claims disallowed

A substantive claim exceeding the jurisdiction may not be split with the object of recovering the same in more than one action if the parties to all such actions would be the same and the point at issue in all such actions would also be the same.

### 41. Joinder of plaintiffs

- (1) Any number of persons, each of whom has a separate claim against the same defendant, may join as plaintiffs in one action if their right to relief depends upon the determination of some question of law or fact which if separate actions were instituted would arise in each action: Provided that if such joint action be instituted the defendant may apply to court for an order directing that separate trials be held and the court in its discretion may make such order as it deems just and expedient.
- (2) In any joint action instituted as aforesaid judgment may be given for such one or more of the plaintiffs as may be found entitled to relief.
- (3) If all the plaintiffs fail in any such action, the court may make such order as to costs as to it may seem just; in particular, it may order that the plaintiffs pay the costs of the defendant jointly and

severally, the one paying the other to be absolved, and that if one plaintiff pays more than his *pro rata* share of the costs of the defendant, he shall be entitled to recover from the other plaintiffs their *pro rata* share of such excess.

- (4) If some of the plaintiffs succeed and others fail, the court may make such order as to costs as it may deem just.

#### 42. Joinder of defendants

- (1) Several defendants may be sued in the alternative or both in the alternative and jointly in one action, whenever it is alleged by the plaintiff that he has suffered damages and that it is uncertain which of the defendants is in law responsible for such damages: Provided that on the application of any of the defendants the court may in its discretion order that separate trials be held, or make such other order as it may deem just and expedient.
- (2) If judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may make such order as to costs as to it may seem just; in particular, it may order—
- (a) the plaintiff to pay such defendant's costs; or
- (b) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the unsuccessful defendants.
- (3) If judgment is given in favour of the plaintiff against more than one of the defendants the court may make such order as to costs as to it may seem just; in particular it may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

#### 43. Jurisdiction cumulative

- (1) If two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the same jurisdiction to decide each such claim as it would have had if each, claim had formed the sole subject of a separate action.
- (2) If a claim for the confirmation of an interdict or arrest granted *pendente lite* be joined in the same summons with a claim for relief of any other character, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action, even though all the claims arise from the same cause of action.

#### 44. Application of sections 34, 35 and 37 to 43 inclusive to claims in reconvention

In sections thirty-four, thirty-five and thirty-seven to forty-three inclusive, "action", "claim" and "summons" include "claim in reconvention", and "plaintiff" and "defendant" include "plaintiff in reconvention" and "defendant in reconvention" respectively.

#### 45. Jurisdiction by consent of parties

- (1) Subject to the provisions of section forty-six, the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction, if the parties consent in writing thereto: Provided that no court other than a court having jurisdiction under section twenty-eight shall,

except where such consent is given specifically with reference to particular proceedings already instituted or about to be instituted in such court, have jurisdiction in any such matter.

- (2) Any provision in a contract existing at the commencement of the Act or thereafter entered into, whereby a person undertakes that, when proceedings have been or are about to be instituted, he will give such consent to jurisdiction as is contemplated in the proviso to sub-section (1), shall be null and void.

#### 46. Matters beyond the jurisdiction

- (1) Subject to the provisions of the Indian Immigration Law, No. 25 of 1891 of Natal; the court shall have no jurisdiction in matters in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought.
- (2) A court shall have no jurisdiction in matters—
  - (a) in which the validity or interpretation of a will or other testamentary document is in question;
  - (b) in which the status of a person in respect of mental capacity is sought to be affected;
  - (c) in which is sought specific performance without an alternative of payment of damages, except in—
    - (i) the rendering of an account in respect of which the claim does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*;  
*[subparagraph (i) substituted by section 4 of [Act 25 of 1987](#)]*
    - (ii) the delivery or transfer of property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the *Gazette*; and  
*[subparagraph (ii) substituted by section 4 of [Act 25 of 1987](#)]*
    - (iii) the delivery or transfer of property, movable or immovable, exceeding 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](#);  
*[subparagraph (iii) substituted by section 4 of [Act 25 of 1987](#)]*

*[paragraph (c) amended by section 5 of [Act 19 of 1963](#), substituted by section 28 of [Act 94 of 1974](#) and by section 2 of [Act 56 of 1984](#)]*

- (d) in which is sought a decree of perpetual silence.

#### 47. Counterclaim exceeding jurisdiction

- (1) When in answer to a claim within the jurisdiction the defendant sets up a counterclaim exceeding the jurisdiction, the claim shall not on that account be dismissed; but the court may, if satisfied that the defendant has *prima facie* a reasonable prospect on his counterclaim of obtaining, a judgment in excess of its jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court. The plaintiff in the magistrate's court may (notwithstanding his action therein) counterclaim in such competent court and in that event all questions as to the costs incurred in the magistrate's court shall be decided by that competent court.
- (2) If the period for which such action has been stayed has expired and the defendant has failed to issue and serve a summons in a competent court in relation to the matters and the subject of such counterclaim the magistrate's court shall on application either—
  - (a) stay the action for a further reasonable period; or
  - (b) dismiss the counterclaim (whether the defendant does or does not reduce such counterclaim to an amount within the jurisdiction of the court).

- (3) If the defendant has failed to institute action within such further period or if the action instituted by the defendant be stayed, dismissed, withdrawn, or abandoned, or if the competent court has granted absolution from the instance thereon, the magistrate's court shall, upon application, dismiss the counterclaim and shall proceed to determine the claim.

#### 48. Judgment

The court may, as a result of the trial of an action, grant—

- (a) judgment for the plaintiff in respect of his claim in so far as he has proved the same;
- (b) judgment for the defendant in respect of his defence in so far as he has proved the same;
- (c) absolution from the instance, if it appears to the court that the evidence does not justify the court in giving judgment for either party;
- (d) such judgment as to costs (including costs as between attorney and client) as may be just;  
*[paragraph (d) substituted 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;  
*[paragraph (e) substituted by section 12 of [Act 53 of 1970](#)]*
- (f) an order against a party for the payment of an amount of money for which judgment has been granted in specified installments or otherwise, including an order contemplated by section [65](#) or [73](#).

*[paragraph (f) added by section 1 of [Act 81 of 1997](#)]*

#### 49. Cession of costs

Costs awarded in interlocutory proceedings shall not be ceded without the consent of the court awarding such costs.

#### 50. Removal of actions from court to provincial or local division

- (1) Any action in which the amount of the claim exceeds 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—
- (a) notice of intention to make such application shall be given to the plaintiff, and to other defendants (if any) before the date on which the action is set down for hearing;
  - (b) the notice shall state that the applicant objects to the action being tried by the court or any magistrate's court;
  - (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 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.

*[paragraph (c) substituted by section 5(b) of [Act 25 of 1987](#)]*

Upon compliance by the applicant with those provisions, all proceedings in the action in the court shall be stayed, and the action and all proceedings therein shall, if the plaintiff so requires, be

as to the defendant or defendants, forthwith removed from the court into the provincial or local division aforesaid having jurisdiction. Upon the removal, the summons in the court shall, as to the defendant or defendants, stand as the summons in the division to which the action is removed, the return date thereof being the date of the order of removal in an action other than one founded on a liquid document, and, in an action founded on a liquid document, being such convenient day on which the said division sits for the hearing of provisional sentence cases, as the court may order: Provided that the plaintiff in the action may, instead of requiring the action to be so removed, issue a fresh summons against the defendant or defendants in any competent court and the costs already incurred by the parties to the action shall be costs in the cause.

*[subsection (1) amended by section 6 of [Act 19 of 1963](#) and by section 5(a) of [Act 25 of 1987](#)]*

- (2) If the plaintiff is successful in an action so removed to a provincial or local division, he may be awarded costs as between attorney and client.

## Chapter VII

### Witnesses and evidence

#### 51. Modes of procuring attendance of witnesses and penalty for non-attendance

- (1) Any party to any civil action or other proceeding where the attendance of witnesses is required may procure the attendance of any witness (whether residing or for the time being within the district or not) in the manner in the rules provided.
- (2) (a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed and that his reasonable expenses, calculated in accordance with the tariff prescribed under [section 51bis](#), have been paid or offered to him, impose upon the said person a fine not exceeding R300, and in default of payment, imprisonment for a period not exceeding three months, whether or not such person is otherwise subject to the jurisdiction of the court.

*[paragraph (a) amended by section 7 of [Act 19 of 1963](#), by section 9(1) of [Act 80 of 1964](#), by section 5 of [Act 91 of 1977](#) and substituted by section 2 of [Act 19 of 1985](#)]*

- (b) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the trial the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to the court to exist, issue a warrant for his apprehension in order that he may be brought up to give his evidence and to be otherwise dealt with according to law, whether or not such person is otherwise subject to the jurisdiction of the court.
  - (c) The court may, on cause shown, remit the whole or any part of any fine or imprisonment which it has imposed under this sub-section.
  - (d) The court may order the costs of any postponement or adjournment occasioned by the default of a witness or any portion of such costs to be paid out of any fine imposed upon such witness.
- (3) Notwithstanding anything in this section contained, when a subpoena is issued to procure the attendance of a judicial officer to give evidence or to produce any book, paper or document in a criminal case, civil action or other proceeding, if it appears—
    - (i) that he is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such case, action or proceedings; or

- (ii) that such book, paper or document could properly be produced by some other person; or
  - (iii) that the compelling of his attendance would be an abuse of the process of the court,
- the court may, after reasonable notice to the party suing out the subpoena, make an order cancelling such subpoena.

### **51bis.Witness fees**

- (1) The Minister may in consultation with the Minister of Finance from time to time by notice in the *Gazette* prescribe a tariff of allowances which shall be paid to a witness in civil proceedings or to any person necessarily required to accompany any such witness on account of his youth or infirmity due to old age or any other infirmity.
- (2) Such notice may differentiate between persons according to the distances which they have to travel to attend the court to which they are summoned or subpoenaed or according to their professions, callings or occupations or between different classes of persons, and may empower such officers in the service of the State as may be specified therein, in cases where payment of allowances in accordance with the tariffs so prescribed may cause undue hardship, to order payment of allowances in accordance with a higher tariff than the tariff so prescribed.
- (3) Notwithstanding anything to the contrary in any law contained, the court may order that no allowances or only a portion of the allowances prescribed shall be paid to any witness.

*[section 51bis inserted by section 10 of [Act 80 of 1964](#)]*

### **52. Interrogatories**

- (1) Whenever a witness resides or is in a district other than that wherein the case is being heard, the court may, if it appears to be consistent with the ends of justice, upon the application of either party approve of such interrogatories as either party shall desire to have put to such witness and shall transmit the same, together with any further interrogatories framed by the court, to the court of the district within which such witness resides or is.
- (2) The last-mentioned court shall thereupon subpoena such witness to appear and upon his appearance shall take his evidence in manner and form as if he were a witness in a case pending before that court, and shall put to the witness the said interrogatories and such other questions as may seem to it necessary to obtain full and true answers to the interrogatories and shall record the evidence of the witness and shall transmit such record to the court in which such case is pending. The said record shall (subject to all lawful objections) be received as evidence in that case.
- (3) Every witness so subpoenaed to appear shall be liable to the like penalties in case of non-attendance or failure to give evidence or to produce books, papers or documents as if he had been subpoenaed to give (evidence in the court of the district in which he resides or is).

### **53. Commissions de bene esse**

- (1) The court may in any case which is pending before it, where it may be expedient and consistent with the ends of justice to do so, appoint a person to be a commissioner to take evidence of any witness, whether within the Republic or elsewhere, upon the request of one of the parties to such case and after due notice to the other party.

*[subsection (1) amended by section 13 of [Act 53 of 1970](#)]*

- (2) The person so appointed shall put to such witness such questions as have been transmitted to him on agreement between the parties, or otherwise shall allow the parties to examine such witness, and may himself examine such witness as if the witness were being examined in court, and shall

record the evidence or cause it to be recorded, whereupon the evidence recorded shall be read over to the witness and shall be signed by him.

*[subsection (2) amended by section 14 of [Act 40 of 1952](#)]*

- (3) The said record shall (subject to all lawful objections) be received as evidence in the case.

#### **54. Pre-trial procedure for formulating issues**

- (1) The court may at any stage in any legal proceedings in its discretion *suo motu* or upon the request in writing of either party direct the parties or their representatives to appear before it in chambers for a conference to consider—
- (a) the simplification of the issues;
  - (b) the necessity or desirability of amendments to the pleadings;
  - (c) the possibility of obtaining admissions of fact and of documents with a view to avoiding unnecessary proof.
  - (d) the limitation of the number of expert witnesses;
  - (e) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.
- (2) The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or their representatives.
- (3) Such order shall be binding on the parties unless altered at the trial to prevent manifest injustice.
- (4) If a party refuses or neglects to appear at the conference the court may, without derogation from its power to punish for contempt of court, make such order as it considers equitable in the circumstances and upon conclusion of the proceedings may order the party who has so absented himself to pay such costs as in the opinion of the court were incurred as a result of the said absence.
- (5) The Court may make such order as to the costs of any proceedings under this section as it deems fit.

#### **54A. \*\*\***

*[section 54A inserted by section 2 of [Act 34 of 1986](#) and repealed by section 2 of [Act 45 of 1988](#)]*

### **Chapter VIII Recovery of debts**

#### **55. Definition**

In this Chapter, unless the context otherwise indicates—

"debt" means any liquidated sum of money due.

#### **56. Recovery of costs of letter of demand**

If any person (in this section called the debtor) pays any debt due by him to any other person (in this section called the creditor) after the creditor has caused a registered letter of demand to be sent to the debtor through an attorney demanding payment of the debt, the creditor shall be entitled to recover from the debtor the fees and costs prescribed in the rules for a registered letter of demand: Provided that the amount of such fees and costs was stated in the letter of demand.



**57. Admission of liability and undertaking to pay debt in instalments or otherwise**

- (1) If any person (in this section called the defendant) has received a letter of demand or has been served with a summons demanding payment of any debt, the defendant may in writing—
  - (a) admit liability to the plaintiff for the amount of the debt and costs claimed in the letter of demand or summons or for any other amount;
  - (b) offer to pay the amount of the debt and costs for which he admits liability, in instalments or otherwise;
  - (c) undertake on payment of any instalment in terms of his offer to pay the collection fees for which the plaintiff is liable in respect of the recovery of such instalment; and
  - (d) agree that in the event of his failure to carry out the terms of his offer the plaintiff shall, without notice to the defendant, be entitled to apply for judgment for the amount of the outstanding balance of the debt for which he admits liability, with costs, and for an order of court for payment of the judgment debt and costs in instalments or otherwise in accordance with his offer,and if the plaintiff or his attorney accepts the said offer, he shall advise the defendant of such acceptance in writing by registered letter.
- (2) If, after having been advised by the plaintiff or his attorney in writing that his offer has been accepted, the defendant fails to carry out the terms of his offer, the clerk of the court shall, upon the written request of the plaintiff or his attorney accompanied by—
  - (a) if no summons has been issued, a copy of the letter of demand;
  - (b) the defendant's written acknowledgment of debt and offer and a copy of the plaintiff's or his attorney's written acceptance of the offer;
  - (c) an affidavit or affirmation by the plaintiff or a certificate by his attorney stating in what respects the defendant has failed to carry out the terms of his offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at—
    - (i) enter judgement in favour of the plaintiff for the amount or the outstanding balance of the amount of the debt for which the defendant has admitted liability, with costs; and
    - (ii) order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his offer, and such order shall be deemed to be an order of the court mentioned in [section 65A\(1\)](#).
- (3) When the judgment referred to in subsection (2) has been entered and an order made, and if the judgment debtor was not present or represented when the judgment was entered by the clerk of the court and the order made, the judgment creditor or his or her attorney shall forthwith advise the judgment debtor by registered letter of the terms of the judgment and order.

*[subsection (3) substituted by section 2 of [Act 81 of 1997](#)]*
- (4) Any judgment entered in favour of the plaintiff under subsection (2) shall have the effect of a judgment by default.

**58. Consent to judgement or to judgment and an order for payment of judgment debt in instalments**

- (1) If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him of a summons demanding payment of any debt, consents in writing to judgment in favour of the creditor (in this section called the plaintiff) for the amount of the debt and the costs claimed



in the letter of demand or summons, or for any other amount, the clerk of the court shall, on the written request of the plaintiff or his attorney accompanied by—

- (a) if no summons has been issued, a copy of the letter of demand; and
  - (b) the defendant's written consent to judgment,
    - (i) enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and
    - (ii) if it appears from the defendant's written consent to judgment that he has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his consent, and such order shall be deemed to be an order of the court mentioned in [section 65A\(1\)](#).
- (2) The provisions of [section 57\(3\)](#) and (4) shall apply in respect of the judgment and court order referred to in subsection (1) of this section.

#### **58A. Judgment by default shall be deemed to be judgment of court**

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.

*[section 58A inserted by section 6 of [Act 25 of 1987](#)]*

#### **59. Written request constitutes first document in an action**

If no summons is issued in an action the written request referred to in sections [57\(2\)](#) and [58\(1\)](#) shall constitute the first document to be filed in the action and shall contain the particulars prescribed in the rules.

#### **60. Prohibition of recovery of fees or remuneration by certain persons in connection with the collection of debts**

- (1) Unless expressly otherwise provided in this Act or the rules and subject to the provisions of section 19 of the Debt Collectors Act, 1998, no person other than an attorney or an agent referred to in [section 22](#) shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt.

*[subsection (1), previously unnumbered, numbered by section 2 of [Act 4 of 1991](#) and substituted by section 27 of [Act 114 of 1998](#)]*

- (2) Any person who contravenes any provision of subsection (1), shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000, or, in default of payment, to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

*[subsection (2) added by section 2 of [Act 4 of 1991](#)]*

*[Chapter VIII amended by section 8, 9(a) and 9(b) of [Act 19 of 1963](#), by section 14 and 15 of [Act 53 of 1970](#) and substituted by section 1 of [Act 63 of 1976](#)]*

### **Chapter IX Execution**

#### **61. Definitions**

In this Chapter—

"**emoluments**" includes—

- (i) salary, wages or any other form of remuneration;  
and

- (ii) any allowances,

whether expressed in money or not; and

"**debts**" includes any income from whatever source other than emoluments.

## **62. Power to grant or set aside a warrant**

- (1) Any court which has jurisdiction to try an action shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.
- (2) A court (in this sub-section called a second court), other than the court which gave judgment in an action, shall have jurisdiction on good cause shown to stay any warrant of execution or arrest issued by another court against a party who is subject to the jurisdiction of the second court.
- (3) Any court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by itself, including an order under section seventy-two.

## **63. Execution to be issued within three years**

Execution against property may not be issued upon a judgment after three years from the day on which it was pronounced or on which the last payment in respect thereof was made, except upon an order of the court in which judgment was pronounced or of any court having jurisdiction, in respect of the judgment debtor, on the application and at the expense of the judgment creditor, after due notice to the judgment debtor to show cause why execution should not be issued.

## **64. Execution in case of judgment debt ceded**

Any person who has, either by cession or by operation of law, become entitled to the benefit of a judgment debt may, after notice to the judgment creditor, and the judgment debtor, be substituted on the record for the judgment creditor and may obtain execution in the manner provided for judgment creditors.

## **65. Offer by judgment debtor after judgment**

If at any time after a court has given judgment for the payment of a sum of money and before the issue of a notice under [section 65A](#) (1), the judgment debtor makes a written offer to the judgment creditor to pay the judgment debt in specified instalments or otherwise and such offer is accepted by the judgment creditor or his attorney, the clerk of the court shall, at the written request of the judgment creditor or his attorney, accompanied by the offer, order the judgment debtor to pay the judgment debt in specified instalments or otherwise in accordance with his offer, and such order shall be deemed to be an order of the court mentioned in [section 65A\(1\)](#).

*[section 65 substituted by section 15 of [Act 40 of 1952](#), amended by section 1(a), (b), (c) and (d) of [Act 14 of 1954](#), by section 20 of [Act 50 of 1956](#), by section 10 of [Act 19 of 1963](#), by section 30 of [Act 70 of 1968](#), by section 2 of [Act 17 of 1969](#) and substituted by section 2 of [Act 63 of 1976](#)]*

### **65A. Notice to judgment debtor if judgment remains unsatisfied**

- (1) (a) If a court has given judgment for the payment of a sum of money or has ordered the payment in specified instalments or otherwise of such an amount, and such judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or on which such an amount became payable or from the expiry of the period of suspension ordered in terms of [section 48](#) (e), as the case may be, the judgment creditor may issue, from the 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, from the court of the district in which the registered office or main place of business of the juristic person is situated, a notice calling upon the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as representative of the juristic person and in his personal capacity, to appear before the court in chambers on a date specified in such notice in order to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.

- (b) A notice referred to in paragraph (a) shall be drawn up by the judgment creditor or his or her attorney, signed by the judgment creditor or his or her attorney and the clerk of the court, and served by the sheriff, or by the attorney of the judgment creditor or any candidate attorney in his or her employ, on the judgment debtor or, if the judgment debtor is a juristic person, on the director or officer summonsed as the representative of the juristic person and in his or her personal capacity, in the manner prescribed by the rules for the service of process in general and at least ten days before the date fixed in the notice for the appearance before the court.
- (c) The fees and charges in respect of a notice served by any attorney or candidate attorney shall be determined in accordance with the tariffs prescribed by the rules for the service of process by a sheriff: Provided that no such fees and charges shall be payable unless personal service of the notice has been effected.

*[subsection (1) substituted by section 3(a) of [Act 81 of 1997](#)]*

- (2) If the minutes of the proceedings do not show that the judgment debtor was present in person or represented by any person when judgment was given and if no warrant of execution pursuant to the judgment has been served on the judgment debtor personally, no notice under subsection (1) shall be issued unless the judgment creditor or his or her attorney provides proof to the satisfaction of the clerk of the court that he has advised the judgment debtor by registered letter of the terms of the judgment or of the expiry of the period of suspension ordered under [section 48](#) (e), as the case may be, and a period of 10 days has elapsed since the date on which the said letter was posted.

*[subsection (2) substituted by section 3(b) of [Act 81 of 1997](#)]*

- (3) The court may, at any stage of the proceedings, if a director or officer mentioned in subsection (1) ceases to be a director or officer of the juristic person concerned or absconds, at the request of the judgment creditor, from time to time replace such director or officer by any other person who at the time of such replacement may be a director or officer of the juristic person, and the proceedings shall then continue as if there has been no replacement.
- (4) If the court has given judgment for the payment of an amount of money in instalments, no notice under subsection (1) shall be issued unless the judgment creditor has delivered an affidavit or affirmation or his attorney has delivered a certificate to the clerk of the court in which is mentioned the outstanding balance of the judgment debt, in what respects the judgment debtor has failed to comply with the court order, to what extent he or she is in arrear with the payment of the instalments and that the judgment debtor was advised by registered letter of the terms of the judgment.

*[subsection (4) substituted by section 3(c) of [Act 81 of 1997](#)]*

- (5) If a judgment debtor fails to satisfy an order to pay the judgment debt in instalments or otherwise, or if an emoluments attachment order has not been satisfied, a judgment creditor may issue anew a notice in accordance with subsection (1).

*[subsection (5) added by section 3(d) of [Act 81 of 1997](#)]*

- (6) If the court is satisfied on the ground of sufficient proof or otherwise—
  - (a) that the judgment debtor, director or officer concerned has knowledge of a notice referred to in subsection (1) and that he or she has failed to appear before the court and on the date and at the time specified in the notice;

- (b) that the judgment debtor, director or officer concerned. in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by the court, has failed to appear before the court on that date and at that time; or
- (c) that the judgment debtor, director or officer concerned has failed to remain in attendance at the relevant proceedings or authorise the proceedings as so postponed,

the court may, at the request of the judgment creditor or his or her attorney, authorise the issue of a warrant directing a sheriff to arrest the said judgment debtor, director or officer and to bring him or her before a competent court at the earliest possible opportunity in order to enable that court to conduct an inquiry referred to in subsection (1).

*[subsection (6) added by section 3(d) of [Act 81 of 1997](#)]*

- (7) A warrant authorised under subsection (6) shall be prepared by the judgment creditor or his or her attorney, signed by the judgment creditor or his or her attorney and the clerk of the court, and executed by the sheriff.

*[subsection (7) added by section 3(d) of [Act 81 of 1997](#)]*

- (8)
  - (a) Any person arrested under a warrant referred to in subsection (6) shall, in accordance with section 35(1)(d) of the [Constitution of the Republic of South Africa, 1996 \(Act No. 108 of 1996\)](#), be brought as soon as reasonably possible before the court within the district of which that person was arrested: Provided that any such person, if it is not possible to bring him or her before the court concerned, maybe detained at any police station pending his or her appearance before that court.
  - (b) In lieu of arresting a person contemplated in paragraph (a), the sheriff may, if the judgment creditor or his or her attorney consents thereto, hand to that person a notice in writing which —
    - (i) specifies the name, the residential address and the occupation or status of that person;
    - (ii) calls upon that person to appear before the court and on the date and at the time specified in the notice; and
    - (iii) contains a certificate signed by the sheriff to the effect that he or she has handed the original of the notice to that person and that he or she has explained to that person the import thereof.
  - (c) The sheriff shall forthwith forward a duplicate original of the notice to the clerk of the court concerned. and the mere production in the court of such a duplicate original shall be *prima facie* proof that the original thereof was handed to the person specified therein.
  - (d) The provisions of subsection (6) shall *mutatis mutandis* apply in respect of a notice referred to in paragraph (b).

*[subsection (8) added by section 3(d) of [Act 81 of 1997](#)]*

- (9) Any person who—
  - (a) is called upon to appear before a court under a notice referred to in subsection (1) or (8)(b) and who wilfully fails to appear before the court and on the date and at the time specified in the notice;
  - (b) in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by a court, wilfully fails to appear before the court on that date and at that time;

- (c) wilfully fails to remain in attendance at the relevant proceedings or at the proceedings as so postponed, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

*[subsection (9) added by section 3(d) of [Act 81 of 1997](#)]*

- (10) (a) Notwithstanding anything to the contrary contained in this Act—
  - (i) the court which authorised the issue of a warrant referred to in subsection (6) and the court contemplated in subsection (8)(a), if the latter court is not the court which authorised the issue of the warrant concerned, shall have jurisdiction to inquire in a summary manner into the commission of an offence referred to in subsection (9), and upon proof beyond reasonable doubt that the person concerned is guilty of such an offence, to so convict him or her and to impose on him or her any penalty provided for in the said subsection (9);
  - (ii) the court contemplated in subsection (8)(a), if the court is not the court which authorised the issue of the warrant concerned, shall have jurisdiction to conduct an inquiry referred to in subsection (1) and to perform such other acts as the court which authorised the issue of the warrant concerned could lawfully have performed.
- (b) On the appearance before the court of the judgment debtor, director or officer concerned in pursuance of either his or her arrest under a warrant referred to in subsection (6) or the delivery to him or her of a notice referred to in subsection (8)(b), the court shall inform him or her—
  - (i) that the court intends to inquire in a summary manner into his or her alleged wilful failure to appear before the court and on the date and at the time specified in a notice referred to in subsection (1) or (8)(b), or to appear, in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by any court, before that court on that date and at that time, or to remain in attendance at the relevant proceedings or at the proceedings as so postponed, as the case may be;
  - (ii) that the court, if the court so convicts him or her, may impose on him or her any penalty provided for in subsection (9); and
  - (iii) that he or she has the right to choose, and be represented by, a legal practitioner.
- (c) A court before which proceedings under paragraph (b) are pending—
  - (i) shall have due regard to the following rights, namely—
    - (aa) the right of an accused person to be presumed innocent, to remain silent and not to testify;
    - (bb) the right of an accused person to adduce and to challenge evidence; and
    - (cc) the right of an accused person not to be compelled to give self-incriminating evidence;
  - (ii) may adjourn such proceedings to any date on such conditions not inconsistent with a provision of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)), and in the court may think fit;
  - (iii) if the court is of the opinion that it is in the interests of the administration of justice, may at any time before the judgment debtor, director or officer concerned is acquitted or convicted of an offence referred to in subsection (9) suspend such proceedings and refer the matter to the public prosecutor concerned to take a decision on the prosecution of the said judgment debtor, director or officer for such an offence.

*[subsection (10) added by section 3(d) of [Act 81 of 1997](#)]*

- (11) After the court has dealt with the inquiry referred to in subsection (10)(b), the court shall proceed to the inquiry referred to in subsection (1) and deal with the matter in accordance with the other sections of this Chapter: Provided that the court—

- (a) if the court is not the court which authorised the issue of the warrant concerned; and
- (b) if the court is of the opinion that it is in the interests of the administration of justice, may transfer the matter to the court which authorised the issue of that warrant.

*[subsection (11) added by section 3(d) of [Act 81 of 1997](#)]*

- (12) (a) If the court before which proceedings under subsections (10)(b) and (11) are pending is not the court which authorised the issue of the warrant concerned, the clerk of the former court shall without any delay notify the clerk of the latter court of the appearance of the judgment debtor, director or officer concerned before the former court, and shall inform the judgment creditor or his or her attorney accordingly.
- (b) The clerk of the court which authorised the issue of the warrant concerned shall without any delay furnish the court before which proceedings under subsections (10)(b) and (11) are pending with such records or documents relating to such proceedings as the latter court may direct.

*[subsection (12) added by section 3(d) of [Act 81 of 1997](#)]*

*[section 65A inserted by section 2 of [Act 63 of 1976](#)]*

#### **65B. \*\*\***

*[section 65B inserted by section 2 of [Act 63 of 1976](#) and repealed by section 4 of [Act 81 of 1997](#)]*

#### **65C. Joinder of proceedings**

If, under [section 65A](#) (1), two or more notices have been served on any judgment debtor or director or officer to appear on the same day as provided in that section, the proceedings in terms of such notices may be heard concurrently.

*[[section 65C inserted by section 2 of [Act 63 of 1976](#) and substituted by section 5 of [Act 81 of 1997](#)]*

#### **65D. Determination of judgment debtor's financial position**

- (1) On the appearance before the court of the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person summoned as the representative of the juristic person or in his personal capacity, on the return day of the notice referred to in [section 65A](#) (1) or (8)(b), in pursuance of his or her arrest under a warrant referred to in [section 65A](#)(6), or on any date to which the proceedings have been postponed, the court in chambers shall, subject to the provisions of subsection (2) of this section, call upon him or her to give evidence under oath or affirmation on his financial position or the financial position of the juristic person, as the case may be, and the court shall permit the examination or cross-examination of the judgment debtor or the said director or officer on all matters relevant to the judgment debtor's financial position and his or her ability to pay the judgment debt, and the court shall receive such further evidence as may be adduced either orally or by affidavit or such other manner as the court may deem just, by or on behalf of either the judgment debtor or the judgment creditor, as is material to the determination of the judgment debtor's financial position and his ability to pay the judgment debt, and for the purposes of such evidence witnesses may be summoned in the manner prescribed in the rules.

*[subsection (1) substituted by section 6(a) of [Act 81 of 1997](#)]*

- (2) The court may at any time in the presence of the judgment debtor or the said director or officer postpone the proceedings to such date as the court may determine.

- (3) When postponing the proceedings under subsection (2) the court—
  - (a) shall inform the judgment debtor or the director or officer concerned of the provisions of [section 65E](#) (1) (c);
  - (b) may order the judgment debtor or the director or officer to produce such documents as the court may specify at the hearing on the date determined by the court; and
  - (c) may determine such conditions as it may deem fit.
- (4) In determining the ability of the judgment debtor to pay the judgment debt in installments or otherwise the court shall take into consideration—
  - (a) in the case of a judgment debtor who is a natural person, the nature of his income, the amounts needed by him for his necessary expenses and those of the persons dependent on him, and for the making of periodical payments which he is obliged to make in terms of an order of court, agreement or otherwise in respect of his other commitments as disclosed in the evidence presented at the hearing of the proceedings; or
  - (b) in the case of a judgment debtor who is a juristic person, the amounts required by such juristic person to meet its necessary administrative expenses and for the making of periodical payments which it is obliged to make in terms of an order of court, agreement or otherwise in respect of its other commitments as disclosed in the evidence presented at the hearing of the proceedings.

*[subsection (4) amended by section 6(b) of [Act 81 of 1997](#)]*

- (5) In determining the ability of the judgment debtor to pay the judgment debt in installments or otherwise the court may, in its discretion, refuse to take account of the periodical payments that a judgment debtor has undertaken to make in terms of a hire-purchase agreement for the purchase of goods which have not been exempted from seizure in terms of [section 67](#) or which cannot, in the opinion of the court, be regarded as the judgment debtor's household requirements.

*[subsection (5) substituted by section 6(c) of [Act 81 of 1997](#)]*

*[section 65D inserted by section 2 of [Act 63 of 1976](#)]*

## **65E. Postponement of proceedings pending execution**

- (1) If at the hearing of the proceedings in terms of a notice under [section 65A](#) (1) the court is satisfied—
  - (a) that the judgment debtor has movable or immovable property which may be attached and sold in order to satisfy the judgment debt or any part thereof, the court may—
    - (i) authorize the issue of a warrant of execution against such movable or immovable property or such part thereof as the court may deem fit; or
    - (ii) authorize the issue of such a warrant, together with an order in terms of [section 73](#); or
  - (b) that there is a debt due to the judgment debtor which may be attached in terms of [section 72](#) to satisfy the judgment debt and costs or a part thereof, the court may authorize the attachment of that debt in terms of that section; or
  - (c) that the judgment debtor or, if the judgment debtor is a juristic person, the director or officer summoned as representative of the juristic person, at any time after receipt of a notice referred to in [section 65A](#) (1), has made an offer in writing to the judgment creditor or his attorney to pay the judgment debt and costs in specified instalments or otherwise, whether by way of an emoluments attachment order or otherwise, or, if such an offer has not been made, that the judgment debtor is able to pay the judgment debt and costs in reasonable instalments, the court may order the judgment debtor to pay the judgment debt and costs in specified instalments and, if the judgment debtor is employed by any person who resides, carries on business or is employed in the district, or if the judgment debtor is employed by



the State in the district, in addition authorize the issue of an emoluments attachment order by virtue of [section 65I](#) (1) for the payment of the judgment debt and costs by the employer of the judgment debtor,

and postpone the further hearing of the proceedings.

- (2) Any authorization under subsection (1) (a) shall, pending the execution of the warrant, serve as an interdict against the alienation of the property concerned by the judgment debtor.
- (3) Proceedings postponed under subsection (1) may again be placed on the roll by the judgment creditor or his attorney by notice delivered personally or served by registered letter addressed to the judgment debtor or, if the judgment debtor is a juristic person, to the director or officer summoned as the representative of the juristic person and in his personal capacity and delivered or posted at least 10 days before the day appointed therein for the hearing.
- (4) If the judgment creditor issues or causes to be issued a warrant of execution against movable property belonging to any judgment debtor before the hearing of proceedings in terms of a notice under [section 65A](#) (1) and a *nulla bona* return is made, the judgment creditor shall not be entitled to costs in connection with the issue and execution of such warrant unless the court on good cause shown orders otherwise at the hearing of the proceedings.
- (5) The court may from time to time suspend, amend or rescind an order for the payment of a judgment debt and costs in specified instalments made in terms of subsection (1) (c) of this section or [section 57](#), [58](#) or [65](#).
- (6) Upon an order referred to in subsection (1) (c) of this section or [section 57](#), [58](#) or [65](#) having been made and if the judgment debtor was not present or represented in court when the order was made, the judgment creditor or his attorney shall forthwith by registered letter advise the judgment debtor of the terms of the order.

*[subsection (6) substituted by section 7 of [Act 81 of 1997](#)]*

*[section 65E inserted by section 2 of [Act 63 of 1976](#)]*

#### **65F. \*\*\***

*[section 65F inserted by section 2 of [Act 63 of 1976](#) and repealed by section 8 of [Act 81 of 1997](#)]*

#### **65G. \*\*\***

*[section 65G inserted by section 2 of [Act 63 of 1976](#) and repealed by section 9 of [Act 81 of 1997](#)]*

#### **65H. \*\*\***

*[section 65H inserted by section 2 of [Act 63 of 1976](#) and repealed by section 10 of [Act 81 of 1997](#)]*

### **65I. Application for administration order has preference**

- (1) If, before or during the hearing of the proceedings in terms of a notice under [section 65A](#) (1) a judgment debtor has lodged or lodges with the court an application for an administration order for hearing on a date not later than the earliest date on which such application may be heard and it appears that he has complied with the provisions of [section 74](#), the court shall postpone the hearing of the proceedings until the application for an administration order has been disposed of.
- (2) If a judgment debtor has not lodged or does not lodge with the court an application for an administration order before or during the hearing of such proceedings and it appears at the hearing that the judgment debtor has other debts as well, the court shall consider whether all the judgment debtor's debts should be treated collectively and if it is of opinion that they should be so treated, it may, with a view to granting an administration order, postpone further hearing of the proceedings to a date determined by the court and order the judgment debtor to submit to the court a full



statement of his affairs in the form prescribed in the rules, and containing the particulars for which the said rules make provision and to cause a copy thereof to be delivered by registered post to each of his creditors at least 3 days before the date appointed for the further hearing.

- (3) If upon receipt of the statement referred to in subsection (2) it appears that the judgment debtor's total debts do not exceed 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.

*[subsection (3) substituted by section 4 of [Act 19 of 1985](#) and by section 7 of [Act 25 of 1987](#)]*

- (4) If the court grants an administration order in respect of the judgment debtor's estate, it shall stay the proceedings in terms of the notice under [section 65A](#) (1), but may grant the judgment creditor costs already incurred in connection with such proceedings, and such costs may be added to the judgment debt.

*[section 65I inserted by section 2 of [Act 63 of 1976](#)]*

## 65J. Emoluments attachment orders

- (1) (a) Subject to the provisions of subsection (2), a judgment creditor may cause an order (hereinafter referred to as an emoluments attachment order) to be issued from the court of the district in which the employer of the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is employed by the State, in which the judgment debtor is employed.
- (b) An emoluments attachment order—
- (i) shall attach the emoluments at present or in future owing or accruing to the judgment debtor by or from his or her employer (in this section called the garnishee), to the amount necessary to cover the judgment and the costs of the attachment, whether that judgment was obtained in the court concerned or in any other court; and
- (ii) shall oblige the garnishee to pay from time to time to the judgment creditor or his or her attorney specific amounts out of the emoluments of the judgment debtor in accordance with the order of court laying down the specific installments payable by the judgment debtor, until the relevant judgment debt and costs have been paid in full.

*[subsection (1) substituted by section 11(a) of [Act 81 of 1997](#)]*

- (2) An emoluments attachment order shall not be issued—
- (a) unless the judgment debtor has consented thereto in writing or the court has so authorised, whether on application to the court or otherwise, and such authorisation has not been suspended; or
- (b) unless the judgment creditor or his or her attorney has first—
- (i) sent a registered letter to the judgment debtor at his or her last known address advising him or her of the amount of the judgment debt and costs as yet unpaid and warning him or her that an emoluments attachment order will be issued if the said amount is not paid within ten days of the date on which that registered letter was posted; and
- (ii) filed with the clerk of the court an affidavit or an affirmation by the judgment creditor or a certificate by his or her attorney setting forth the amount of the judgment debt at the date of the order laying down the specific installments, the costs, if any, which have accumulated since that date, the payments received since that date and

the balance owing and declaring that the provisions of subparagraph (i) have been complied with on the date specified therein.

*[subsection (2) substituted by section 11(b) of [Act 81 of 1997](#)]*

- (3) Any emoluments attachment order shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be served on the garnishee by the messenger of the court in the manner prescribed by the rules for the service of process.

*[subsection (3) substituted by section 2 of [Act 53 of 1983](#)]*

- (4) (a) Deductions in terms of an emoluments attachment order shall be made, if the emoluments of the judgment debtor are paid monthly, at the end of the month following the month in which it is served on the garnishee, or, if the emoluments of the judgment debtor are paid weekly, at the end of the second week of the month following the month in which it is so served on the garnishee, and all payments thereunder to the judgment creditor or his attorney shall be made monthly with effect from the end of the month following the month in which the said order is served on the garnishee.

*[paragraph (a), previously unnumbered, numbered by section 11(c) of [Act 81 of 1997](#)]*

- (b) The judgment creditor or his or her attorney shall, at the reasonable request of the garnishee or the judgment debtor, furnish him or her free of charge with a statement containing particulars of the payments received up to the date concerned and the balance owing.

*[paragraph (b) added by section 11(c) of [Act 81 of 1997](#)]*

- (5) An emoluments attachment order may be executed against the garnishee as if it were a court judgment, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order or the correctness of the balance claimed.
- (6) If, after the service of such an emoluments attachment order on the garnishee, it is shown that the judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his own and his dependants' maintenance, the court shall rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above such sufficient means.
- (7) Any emoluments attachment order may at any time on good cause shown be suspended, amended or rescinded by the court, and when suspending any such order the court may impose such conditions as it may deem just and reasonable.
- (8) (a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of a garnishee before the judgment debt has been paid in full, such judgment debtor shall forthwith advise the judgment creditor in writing of the name and address of his new employer, and the judgment creditor may cause a certified copy of such emoluments attachment order to be served on the said new employer, together with an affidavit or affirmation by him or a certificate by his attorney specifying the payments received by him since such order was issued, the costs, if any, incurred since the date on which that order was issued and the balance outstanding.
- (b) An employer on whom a certified copy referred to in paragraph (a) has been so served, shall thereupon be bound thereby and shall then be deemed to have been substituted for the original garnishee, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order and the correctness of the balance claimed.
- (9) (a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of the garnishee before the judgment debt has been paid in full and becomes self-employed or is employed by someone else he or she shall, or shall pending the service of the

emoluments attachment order on his new employer, again be obliged to comply with the relevant order referred to in subsection 1(b).

*[paragraph (a) substituted by section 11(d) of [Act 81 of 1997](#)]*

(b) *[paragraph (b) deleted by section 11(e) of [Act 81 of 1997](#)]*

- (10) Any garnishee may, in respect of the services rendered by him in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

*[section 65] inserted by section 2 of [Act 63 of 1976](#)]*

### **65K. Orders as to costs relating to certain proceedings**

- (1) Unless at the hearing of any proceedings in terms of a notice under [section 65A](#) (1) it appears to the court that the judgment debtor, after learning of the judgment upon which such proceedings were founded, made an offer to pay the judgment debt in instalments which the court deems reasonable, or notified the judgment creditor that he was not able to make an offer and the court finds this to be true, the court may order the judgment debtor to pay the costs of such proceedings, but if it appears that the judgment creditor refused such offer, the court may order the judgment creditor to pay such costs, including the loss of wages suffered by the judgment debtor through having to appear in court in connection with the proceedings.
- (2) *[subsection (2) deleted by section 12 of [Act 81 of 1997](#)]*
- (3) The provisions of this section shall not preclude the court from making such order regarding costs as it may deem just in any proceedings in terms of a notice under [section 65A](#) (1).

*[section 65K inserted by section 2 of [Act 63 of 1976](#)]*

### **65L. \*\*\***

*[section 65L inserted by section 2 of [Act 63 of 1976](#) and repealed by section 13 of [Act 81 of 1997](#)]*

### **65M. Enforcement of certain judgments of Supreme Court**

If a judgment for the payment of any amount of money has been given by a division of the Supreme Court of South Africa, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of [section 65A](#) (1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate.

*[section 65M inserted by section 2 of [Act 63 of 1976](#)]*

### **66. Manner of execution**

- (1) (a) Whenever a court gives judgment for the payment of money or makes an order for the payment of money in instalments, such judgment, in case of failure to pay such money forthwith, or such order in case of failure to pay any instalment at the time and in the manner ordered by the court, shall be enforceable by execution against the movable property and, if there is not found sufficient movable property to satisfy the judgment or order, or the

court, on good cause shown, so orders, then against the immovable property of the party against whom such judgment has been given or such order has been made.

- (b) Upon such failure to pay any instalment in accordance with any court order, execution may be effected in respect of the whole of the judgment debt and of costs then still unpaid, unless the court, on the application of the party that is liable, orders otherwise.

*[subsection (1) amended by section 16 of [Act 40 of 1952](#) and substituted by section 3(a) of [Act 63 of 1976](#)]*

- (2) No immovable property which is subject to any claim preferent to that of the judgment creditor shall be sold in execution unless—
  - (a) the judgment creditor has caused such notice in writing of the intended sale in execution to be served personally upon the preferent creditor as may be prescribed by the rules; or
  - (b) the magistrate or an additional or assistant magistrate of the district in which the property is situate has, upon the application of the judgment creditor and after enquiry into the circumstances of the case, directed what steps shall be taken to bring the intended sale to the notice of the preferent creditor, and those steps have been carried out,and unless
  - (c) the proceeds of the sale are sufficient to satisfy the claim of such preferent creditor, in full; or
  - (d) the preferent creditor confirms the sale in writing, in which event he shall be deemed to have agreed to accept such proceeds in full settlement of his claim.
- (3) A sale in execution of such immovable property as is referred to in sub-section (2) shall take place within such period of the date of attachment and in such manner as may be provided by the rules.
- (4) If a sale referred to in subsection (3) does not take place or the immovable property concerned is not released from attachment within a period of one year from the date of attachment, such attachment shall lapse.

*[subsection (4) added by section 3(b) of [Act 63 of 1976](#)]*

- (5) The court may, upon the application and at the expense of the judgment creditor, after due notice of such application has been given to the judgment debtor, extend the period of one year referred to in subsection (4) by further periods of one year each.

*[subsection (5) added by section 3(b) of [Act 63 of 1976](#)]*

- (6) A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a magistrate's court) desiring to attach immovable property that is already under attachment (whether made by a deputy sheriff or by a messenger) and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the deputy sheriff or messenger of the court, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of his warrant.

*[subsection (6) added by section 3(b) of [Act 63 of 1976](#)]*

- (7) A messenger who is directed to attach immovable property, shall not be precluded merely by the absence of the execution debtor from his place of residence or business, from discharging his duties, but may discharge his duties if he is able to do so and shall endorse a return of service to the court on the warrant.

*[subsection (7) added by section 3(b) of [Act 63 of 1976](#)]*

- (8) If the execution debtor, having been requested by the messenger of the court to point out property in order to satisfy a warrant of execution against movable property, declares that he has no movable property or insufficient movable property and the messenger is unable to find sufficient movable property to satisfy the warrant, the messenger shall request the execution debtor to declare

whether he has immovable property which is executable and shall enter the execution debtor's reply in his return of service endorsed on such warrant.

*[subsection (8) added by section 3(b) of [Act 63 of 1976](#)]*

## 67. Property exempt from execution

In respect of any process of execution issued out of any court the following property shall be protected from seizure and shall not be attached or sold, namely:

- (a) the necessary beds, bedding and wearing apparel of the execution debtor and of his family;
- (b) the necessary furniture (other than beds) and household utensils in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

*[paragraph (b) amended by section 25 of [Act 93 of 1962](#), substituted by section 5(a) of [Act 19 of 1985](#) and by section 1(a) of [Act 204 of 1993](#)]*

- (c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

*[paragraph (c) amended by section 25 of [Act 93 of 1962](#), substituted by section 5(b) of [Act 19 of 1985](#) and by section 1(a) of [Act 204 of 1993](#)]*

- (d) the supply of food and drink in the house sufficient for the needs of such debtor and of his family during one month;

- (e) tools and implements of trade, in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

*[paragraph (e) amended by section 25 of [Act 93 of 1962](#), substituted by section 5(c) of [Act 19 of 1985](#) and by section 1(b) of [Act 204 of 1993](#)]*

- (f) professional books, documents or instruments necessarily used by such debtor in his profession, in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

*[paragraph (f) amended by section 25 of [Act 93 of 1962](#), substituted by section 5(d) of [Act 19 of 1985](#) and by section 1(b) of [Act 204 of 1993](#)]*

- (g) such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment:

Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the amounts determined by the Minister in respect of paragraphs (b), (c), (e) and (f).

*[proviso substituted by section 5(e) of [Act 19 of 1985](#) and by section 1(c) of [Act 204 of 1993](#)]*

## 68. Property executable

- (1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.
- (2) The messenger may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which have been seized or taken, as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied; and the execution creditor may, when the time of payment has arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.

- (3) The messenger may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.
- (4) Whenever, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass the property to a purchaser, the messenger may so endorse the document or execute the cession, as to any property sold by him in execution.
- (5) The messenger may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer. Anything done by the messenger under this sub-section or sub-section (4) shall be as valid and effectual as if he were the execution debtor.
- (6) Where judgment is given against a member of a partnership or syndicate in an action in which he individually was plaintiff or defendant, his interest in the partnership or syndicate may be attached and sold in execution.

## **69. Interpleader claims**

- (1)
  - (a) Where any person, not being the judgment debtor makes any claim to or in respect of any property attached or about to be attached in execution under the process of any court, or to the proceeds of such property sold in execution, his claim shall be adjudicated upon after issue of a summons in the manner provided by the rules.
  - (b) Upon the issue of such summons any action which may have been brought in any court whatsoever in respect of such property shall be stayed and shall abide the result of the proceedings taken upon such summons.
- (2) Where two or more persons make adverse claims to any property in the custody or possession of a third party such claims shall be adjudicated upon after issue of a summons in the manner provided by the rules.

## **70. Sale in execution gives good title**

A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.

## **71. Surplus after execution**

If, after a sale in execution, there remains any surplus in the hands of the messenger, it shall be liable to attachment for any other unsatisfied judgment debt.

## **71A. Movable property which messenger cannot dispose of in terms of this Act, shall be sold by public auction**

- (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.

[section 71A inserted by section 16 of [Act 53 of 1970](#)]

## 72. Attachment of debts

- (1) The court may, on *ex parte* application by the judgment creditor or under [section 65E](#) (1) (b), order the attachment of any debt at present or in future owing or accruing to a judgment debtor by or from any other person (excluding the State), residing, carrying on business or employed in the district, to an amount sufficient to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may make an order (hereinafter called a garnishee order) against such person (hereinafter called the garnishee) to pay to the judgment creditor or his attorney at the address of the judgment creditor or his attorney, so much of the debt as may be sufficient to satisfy the judgment and costs, and may enforce such garnishee order as if it were a judgment of the court.
- (2) If, after any such garnishee order in respect of any debt has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of the garnishee order, be left to the judgment debtor, the court shall set aside the garnishee order or amend it in such manner that it will affect only the balance of the debt over and above such sufficient means.
- (3) Any order under this section may at any time for good cause be suspended, amended or rescinded by the court.
- (4) The court may, if it appears that there are unsatisfied claims owing to other creditors, postpone the application to enable the judgment debtor to make application for an administration order under [section 74](#).

[section 72 substituted by section 17 of [Act 40 of 1952](#), amended by section 26 of [Act 93 of 1962](#) and substituted by section 4 of [Act 63 of 1976](#)]

## 73. Order for payment by instalments

- (1) The court may, upon the application of any judgment debtor or under [section 65E](#) (1) (a) (ii) or [65E](#) (1) (c) and if it appears to the court that the judgment debtor is unable to satisfy the judgment debt in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof or if the judgment debtor consents to an emoluments attachment order or a garnishee order being made against him, suspend execution against that debtor either wholly or in part on such conditions as to security or otherwise as the court may determine.

[subsection (1) amended by section 18 of [Act 40 of 1952](#) and substituted by section 5 of [Act 63 of 1976](#)]

- (2) Nothing in this section contained shall be construed as authorizing the court to suspend the execution of a judgment upon any property subject to a hypothec for the judgment debt existing irrespective of attachment in execution.
- (3) An order under paragraph (e) of section forty-eight or under this section may at any time and for good cause be varied or rescinded by the court.

## 74. Granting of administration orders

- (1) Where a debtor—
  - (a) is unable forthwith to pay the amount of any judgment obtained against him in court, or to meet his financial obligations, and has not sufficient assets capable of attachment to satisfy such judgment or obligations; and
  - (b) states that the total amount of all his debts due does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*,

such court or the court of the district in which the debtor resides or carries on business or is employed may, upon application by the debtor or under [section 65I](#), subject to such conditions as the court may deem fit with regard to security, preservation or disposal of assets, realization of movables subject to hypothec (except movables referred to in [section 34bis](#) of the Land Bank Act, 1944 ([Act No. 13 of 1944](#)), or otherwise, make an order (in this Act called an administration order) providing for the administration of his estate and for the payment of his debts in instalments or otherwise.

*[paragraph (b) amended by section 6(a) of [Act 19 of 1985](#) and by section 8(a) of [Act 25 of 1987](#)]*

- (2) An administration order shall not be invalid merely because at some time or other the total amount of the debtor's debts are found to exceed 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.

*[subsection (2) substituted by section 6(b) of [Act 19 of 1985](#) and by section 8(b) of [Act 25 of 1987](#)]*

*[section 74 amended by [section 19\(a\), \(b\), \(c\), \(d\), \(e\), \(f\) \(g\) and \(h\) of Act 40 of 1952](#), by [section 2\(a\), \(b\), \(c\), \(d\) and \(e\) of Act 13 of 1954](#), by [section 27\(a\), \(b\) and \(c\) of Act 93 of 1962](#), by [section 12\(a\) and \(b\) of Act 19 of 1963](#) and substituted by section 6 of [Act 63 of 1976](#)]*

### 74A. Documents to be submitted with application for administration order

- (1) With an application referred to in [section 74\(1\)](#) the debtor shall submit a full statement of his affairs in the form prescribed in the rules.
- (2) In the form referred to in subsection (1) provision shall be made for the following particulars, *inter alia*, namely—
  - (a) the name and business address of the debtor's employer or, if the debtor is not employed, the reason why he is unemployed;
  - (b) a detailed list of the debtor's assets and their current market values and full particulars of interests in property and claims in his favour, including moneys in a savings or other account with a bank or elsewhere;
  - (c) the debtor's trade or occupation and his gross weekly or monthly income and that of his wife living with him, and particulars of all deductions from such income by stop order or otherwise, supported as far as possible by written statements by the employers of the debtor and his wife;
  - (d) a detailed list of the debtor's essential weekly or monthly expenses and those of the persons dependent on him, including his own transport expenses and those of his wife to and from work, and those of his children to and from school;
  - (e) a complete list of all the debtor's creditors and their addresses, and the amount owing to each creditor, in which a clear distinction shall be made between—
    - (i) debts the whole amount of which is owing, including judgment debts payable in instalments in terms of a court order, an emoluments attachment order or a garnishee order; and



- (ii) obligations which are payable *in futuro* in periodical payments or otherwise or which will become payable under a maintenance order, agreement, stop order or otherwise, and in which the nature of such periodical payments is specified in each case or when the obligations will be payable and how they are then to be paid, the balance owing in each case and when, in each case, the obligation will terminate;
  - (f) the security and the estimated value of the security that a creditor has or the name and address of any other person who, in addition to the debtor, is liable for any debt;
  - (g) full particulars, supported as far as possible by a statement and a copy of the credit transaction defined in section 1 of the Credit Agreements Act, 1980 ([Act No. 75 of 1980](#)), of goods purchased under such credit transaction, the purchase price, the instalments payable, the balance owing and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the remaining instalments;  
*[paragraph (g) substituted by section 47(a) of [Act 120 of 1993](#)]*
  - (h) full particulars of any mortgage bond on immovable property owned by the debtor, the instalments payable, the balance owing, the date on which the mortgage debt will be paid in full and the reasons adduced by the debtor why provision should be made for the payment of the instalments payable in terms of such mortgage bond;
  - (i) full particulars of any asset purchased under a written agreement other than a credit transaction referred to in paragraph (g), the instalments payable, the balance owing, and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the instalments that become payable under such agreement;  
*[paragraph (i) amended by section 47(b) of [Act 120 of 1993](#)]*
  - (j) whether any administration order was made at any time in respect of the debtor's estate and, if so, whether such order lapsed or was set aside and, if so, when and for what reasons;
  - (k) the number and ages of the persons dependent on the debtor and his wife and their kinship with them;
  - (l) if an administration order is made, the amount of the weekly or monthly or other instalments which the debtor offers to pay towards settlement of the debts referred to in paragraph (e) (i).
- (3) The statement referred to in subsection (1) shall be confirmed by an affidavit in which the debtor declares that to the best of his knowledge the names of all his creditors and the amounts owed to him to each of them severally are set forth in the statement and that the declarations made therein are true.
- (4) The clerk of the court shall, if requested thereto by an illiterate debtor and upon payment of the fee prescribed in the rules, assist the debtor in completing the statement referred to in subsection (1).
- (5) The debtor shall lodge an application for an administration order and the statement referred to in subsection (1) with the clerk of the court and shall deliver to each of his creditors, at least 3 days before the date appointed for the hearing, personally or by registered post a copy of such application and statement on which shall appear the case number under which the original application was filed.

*[section 74A inserted by section 6 of [Act 63 of 1976](#)]*

**74B. Hearing of application for administration order**

- (1) At the hearing of an application for an administration order—
  - (a) any creditor, whether he has received notice in terms of [section 74A](#) (5) or not, may attend the hearing and provide proof of his debt and object to any debt listed by the debtor in the statement of his affairs referred to in [section 74A](#) (1);
  - (b) every debt listed by the debtor in the said statement shall be deemed to be proved, subject to any amendments made thereto by the court, unless any creditor raises objections thereto or the court rejects it or requires substantiation thereof by evidence;
  - (c) any creditor to whose debt an objection is raised by the debtor or any other creditor or who is required by the court to substantiate his debt with evidence shall provide proof of debt;
  - (d) the court may defer proof of debt and postpone consideration of the application for an administration order or proceed to deal with such application and, if an administration order is granted, the debt shall subsequently when proved be added to the debts listed;
  - (e) the debtor may be interrogated by the court and by any creditor whose debt has been acknowledged or proved, or, by leave of the court, by any creditor the proof of whose debt has been deferred, or by the legal representative of such creditor with regard to—
    - (i) his assets and liabilities;
    - (ii) his present and future income and that of his wife living with him;
    - (iii) his standard of living, and the possibility of economising; and
    - (iv) any other matter that the court may deem relevant.
- (2) If at the hearing it appears to the court that any debt other than a debt on the ground of or arising from any judgment debt is a matter of contention between the debtor and the creditor or between the creditor and any other creditor of the debtor, the court may, upon inquiry into the objection, allow or reject the debt or a part thereof.
- (3) Any person whose debt has been rejected in accordance with subsection (2) may, notwithstanding the provisions of [section 74P](#), institute proceedings or proceed with an action already instituted in respect of such debt.
- (4) If any person referred to in subsection (3) has obtained judgment in respect of any debt referred to in that subsection, the amount of the judgment shall be added to the list of proved debts referred to in subsection (1).
- (5) No administration order shall be granted at the request of any debtor if it is proved that any administration order was rescinded within the preceding period of 6 months because of the debtor's non-compliance therewith, unless the debtor proves to the satisfaction of the court that his non-compliance with the order was not wilful.

*[section 74B inserted by section 6 of [Act 63 of 1976](#)]*

**74C. Contents of administration order**

- (1) An administration order shall be in the form prescribed by the rules and—
  - (a) shall lay down the amount of the weekly or monthly or other payment to be made in terms thereof; and
  - (b) may specify—
    - (i) the assets, if any, of the estate under administration which may be realized by the administrator for the purpose of distributing the proceeds among the creditors:

Provided that no such asset that is the subject of any credit transaction regulated by the Credit Agreements Act, 1980 ([Act No. 75 of 1980](#)), shall be realized without the written permission of the seller;

*[subparagraph (i) amended section 48(a) of [Act 120 of 1993](#)]*

- (ii) *[subparagraph (ii) deleted by section 48(b) of [Act 120 of 1993](#)]*
  - (iii) the debtor's obligations which the court took account of in determining the amount of the weekly or monthly or other instalments to be paid by the debtor to the administrator;
  - (iv) the assets, if any, which shall not be disposed of by the debtor except by leave of the administrator or the court;
  - (v) such other provisions or conditions as the court may deem necessary or expedient.
- (2) The amount of the weekly or monthly or other payments to be made by the debtor to the administrator, in terms of the administration order shall, as nearly as possible, approximate the difference between the debtor's future income and the sum of—
- (a) the amount determined by the court as the reasonable amount required by the debtor for his necessary expenses and those of the persons dependent on him;
  - (b) the periodical payments which the debtor is obliged to make under a credit transaction as defined in section 1 of the Credit Agreements Act, 1980: Provided that the court may in its discretion refuse to take into account the periodical payments which the debtor undertook to pay under such a transaction for the purchase of goods which are not exempt from execution in terms of [section 67](#) or which, in the opinion of the court, cannot be regarded as the debtor's household requirements, unless the court is of opinion that in all the circumstances it is desirable to safeguard the goods concerned;
- [paragraph (b) amended by section 48(c) of [Act 120 of 1993](#)]*
- (c) the periodical payments to be made by the debtor in terms of an existing maintenance order;
  - (d) the periodical payments to be made by the debtor under a mortgage bond or any other written agreement for the purchase of any asset in terms of which the liabilities thereunder are payable in instalments, if in all the circumstances the court is of opinion that the instalments payable are reasonable in view of the judgment debtor's income and the sums of money due by him to other creditors or that it is desirable to safeguard the mortgaged property or the asset to which the written agreement relates; and
  - (e) the payments to be made by the debtor by virtue of any other obligation referred to in [section 74A](#) (2) (e) (ii).
- (3) The court may take into account the income of the debtor's wife, who is living with him, in determining the amount referred to in subsection (2) (a) and, where the debtor is married in community of property, in determining the debtor's income.

*[section 74C inserted by section 6 of [Act 63 of 1976](#)]*

#### **74D. Authorizing of issue of emoluments attachment order or garnishee order**

Where the administration order provides for the payment of instalments out of future emoluments or income, the court shall authorize the issue of an emoluments attachment order in terms of [section 65](#) in order to attach emoluments at present or in future owing or accruing to the debtor by or from his employer, or shall authorize the issue of a garnishee order under [section 72](#) in order to attach any debt at present or in future owing or accruing to the debtor by or from any other person (excluding the State), in so far as either of the said sections is applicable, and the court may suspend such an authorization on such conditions as the court may deem just and reasonable.

*[section 74D inserted by section 6 of [Act 63 of 1976](#)]*

**74E. Appointment of administrator**

- (1) When an administration order has been granted under [section 74\(1\)](#), the court shall appoint a person as administrator, which appointment shall become effective only after a copy of the administration order has been handed or sent to him by registered post and, in the event of his being required as administrator to give security, after he has given such security.
- (2) An administrator may on good cause shown be relieved of his appointment by the court, and the court may appoint any other person in his place.
- (3) An administrator who is not an officer of the court or a practitioner shall, before a copy of the administration order is handed or sent to him by registered post, give security to the satisfaction of the court and thereafter as required by the court for the due and prompt payment by him to the parties entitled thereto of all moneys which come into his possession by virtue of his appointment as an administrator.
- (4) An administrator shall not be obliged to give security in respect of his appointment as an administrator of the estate of any particular debtor if he has given or gives security to the satisfaction of the court for the due and prompt payment by him to the parties entitled thereto of all moneys which may come into his possession by virtue of his appointment as administrator of the estate of any debtor, irrespective of whether such appointment was made before or after the date on which the said security was given.

*[section 74E inserted by section 6 of [Act 63 of 1976](#)]*

**74F. Notice of and objections to administration orders**

- (1) A copy of an administration order shall be handed or sent by registered post to the debtor and the administrator by the clerk of the court.
- (2) The administrator shall forward a copy of the administration order by registered post to each creditor whose name is mentioned by the debtor in the statement of his affairs or who has given proof of a debt.
- (3) A creditor who has not received notice of the application for an administration order and who wishes to object to any debt listed with the order or to the manner in which payments shall be made in terms of the order shall, within a reasonable time as laid down in the rules, give notice of his objection and the grounds therefor to the clerk of the court, the debtor and the administrator and, if he objects to the inclusion of any debt, also to the creditor concerned.
- (4) In considering the objection referred to in subsection (3) the court may—
  - (a) uphold it;
  - (b) refuse it; or
  - (c) postpone consideration thereof for hearing after notice given to the persons concerned and on such conditions as to costs or otherwise as the court may deem fit.

*[section 74F inserted by section 6 of [Act 63 of 1976](#)]*

**74G. List of creditors and debts and additions thereto**

- (1) The administrator shall as soon as may be draw up and lodge with the clerk of the court a complete list on which shall appear the case number under which the application for an administration order has been filed, and which shall contain the names of the creditors and the amounts owing to them severally as at the date on which the administration order was granted.
- (2) Any creditor who wishes to provide proof of a debt owing before the making of an administration order and not listed in such order, shall lodge his claim in writing with the administrator, who shall thereupon give the debtor notice thereof in the form prescribed in the rules.

- (3) If, within the period allowed in the notice referred to in subsection (2), the debtor admits the claim or does not dispute it, the claim shall be deemed to be proved, subject to the right of any other creditor who has not received notice of the claim to object to the debt, and the administrator shall by notice lodged with the clerk of the court add the name of the creditor and the amount of the debt owing to him to the list referred to in subsection (1) and shall inform the creditor in the form prescribed in the rules that this has been done.
- (4) If, within the period allowed in the notice referred to in subsection (2), the debtor gives notice in writing to the administrator that he disputes the claim, the administrator shall notify the creditor thereof and the creditor may request the clerk of the court to appoint a day and time for the hearing of the objection by the court and shall notify the debtor in writing of such day and time.
- (5) At the hearing of the objection referred to in subsection (4) the court may—
- (a) refuse the claim as a whole;
  - (b) allow the claim as a whole or in part;
  - (c) require that the claim be supported by evidence; or
  - (d) postpone the hearing on such conditions as it may deem fit.
- (6) If the court allows a claim as a whole or in part under subsection (5), the debt shall, to the extent to which it has been allowed, be added to the list referred to in subsection (1).
- (7) If any person who sold and delivered goods to the debtor under a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 ([Act No. 75 of 1980](#)), before the administration order was granted, is entitled or becomes entitled, by reason of the debtor's failure to fulfil any obligation under such transaction, to demand immediate payment of the sum of the purchase price then still owing, and if such person advises the administrator in writing that he elects so to do, such transaction shall be deemed to create a hypothec on the goods in favour of the seller whereby the amount still owing to him in terms of the transaction is secured, and any term or condition of the transaction with regard to the seller's right to dissolve or terminate such transaction or his right to the return of the goods to which the transaction relates shall not, in consequence of the debtor's non-compliance with any term or condition thereof, notwithstanding anything to the contrary in any law contained, be enforceable.
- [subsection (7) substituted by section 49 of [Act 120 of 1993](#)]*
- (8) The court may by order of court authorize the seller referred to in subsection (7) to take possession of the goods referred to in that subsection and to sell them by public auction by an auctioneer nominated by the court after giving the administrator and all the creditors written notice of the time and place of the sale and, if the court has so ordered, after publishing the notice or notices in the manner prescribed by the court, in one or more newspapers designated by the court or, if the seller, buyer and administrator so agree, to sell them by private treaty.
- (9) Where the seller has sold the goods in terms of a court order referred to in subsection (8) he shall, if the sale was by public auction, forthwith lodge the auction list with the administrator and pay to the administrator the amount of the proceeds of the sale in excess of the amount of his debt and the costs connected with the sale or, if the net proceeds of the sale are insufficient to pay his debt in full, he may lodge a claim with the administrator in respect of the balance of the purchase price owing to him for inclusion in the list of creditors who are entitled to share in the *pro rata* distribution of funds received by the administrator.
- (10) (a) The list of creditors referred to in subsection (1) shall be open to inspection by the creditors or their attorneys in the office of the clerk of the court and the office of the administrator at any time during office hours.
- (b) Any creditor may, in the manner and within the period prescribed in the rules, object to any debt included in the list of creditors.

*[section 74G inserted by section 6 of [Act 63 of 1976](#)]*

**74H. Inclusion of creditors in list after granting of administration order**

- (1) Any person who becomes a creditor of the judgment debtor after an administration order has been granted and who is desirous of providing proof of debt, shall lodge his claim in writing with the administrator, who shall thereupon advise the debtor thereof in the form prescribed in the rules.
- (2) If the debtor admits the claim or does not dispute it within the period allowed in the notice referred to in subsection (1), the provisions of [section 74G](#) (3) shall, *mutatis mutandis*, apply, but the creditor shall not be entitled to a dividend in terms of the administration order until the creditors who were creditors on the date of the granting of the order have been paid in full.
- (3) If the debtor disputes the claim within the period allowed in the notice referred to in subsection (1), the provisions of [section 74G](#) (4), (5) and (6) shall, *mutatis mutandis*, apply but if the court allows the claim as a whole or in part, such claim shall be subject to the rights referred to in subsection (2), of creditors who were creditors on the date on which the administration order was granted.
- (4) The provisions of [section 74G](#) (7), (8) and (9) and of subsections (1), (2) and (3) of this section shall, *mutatis mutandis*, apply to any person who after the granting of an administration order sold and delivered goods to the debtor under a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 ([Act No. 75 of 1980](#)), and is desirous of providing proof of debt.

*[subsection (4) substituted by section 50 of [Act 120 of 1993](#)]*

*[section 74H inserted by section 6 of [Act 63 of 1976](#)]*

**74I. Payments by debtor in terms of administration order**

- (1) The debtor shall, subject to the provisions of this section, pay the administrator the amounts of the weekly or monthly or other payments that he is required to make in terms of the administration order.
- (2) If a debtor fails to make the payments to the administrator that he is required to make in terms of the administration order, the provisions of [sections 65A to 65L](#) shall *mutatis mutandis* apply, while any reference in the said provisions to the judgment concerned, the judgment creditor or the judgment debtor shall be construed as a reference to the administration order concerned, the administration or the debtor, respectively.
- (3) If, in addition to the administration order, the court has authorized the issue of an emoluments attachment order or a garnishee order and has suspended such authorization conditionally and the debtor fails to comply with the conditions of suspension; the administrator may lodge a certificate to this effect with the clerk of the court, and the clerk of the court shall thereupon issue the emoluments attachment order or garnishee order, as the case may be.
- (4) An emoluments attachment order or garnishee order referred to in subsection (3) shall be prepared by the administrator or his attorney, shall be signed by the administrator or his attorney and the clerk of the court, and shall be served on the garnishee by the messenger of the court by registered post.
- (5)
  - (a) When an emoluments attachment order or garnishee order referred to in subsection (3) has been served on the garnishee, he shall be obliged to pay to the administrator the amounts concerned as provided by the order and such payments shall constitute a first preference against the debtor's income.
  - (b) The provisions of [section 65I](#) (4) to (8) and (10) shall *mutatis mutandis* apply to the emoluments attachment order referred to in paragraph (a), and in such application any reference in the said provisions to the judgement creditor shall be construed as a reference to the administrator.

*[paragraph (b) substituted by section 4 of [Act 28 of 1981](#)]*

*[section 74I inserted by section 6 of [Act 63 of 1976](#)]*

**74J. Duties of administrator**

- (1) An administrator shall collect the payments to be made in terms of the administration order concerned and shall keep up to date a list (which shall be available for inspection, free of charge, by the debtor and creditors or their attorneys during office hours) of all payments and other funds received by him from or on behalf of the debtor, indicating the amount and date of each payment, and shall, subject to [section 74L](#), distribute such payments *pro rata* among the creditors at least once every three months, unless all the creditors otherwise agree, or the court otherwise orders in any particular case.
- (2) If any debt or the balance of a debt be less than R10, the administrator may in his discretion pay such debt in full if such action will facilitate the distribution of funds in his possession.
- (3) Claims that would enjoy preference under the laws relating to insolvency shall be paid out in the order prescribed by those laws.
- (4) An administrator may, out of the moneys which he controls, pay any urgent or extraordinary medical, dental or hospital expenses incurred by the debtor after the date of the administration order.
- (5) Every distribution account in respect of the periodical payments and other funds received by an administrator shall be numbered consecutively, shall bear the case number under which the administration order has been filed, shall be in the form prescribed in the rules, shall be signed by the administrator and shall be lodged at the office of the clerk of the court where it may be inspected free of charge by the debtor and the creditors or their attorneys during office hours.
- (6) A distribution account referred to in subsection (5) shall at the request of any interested party be subject to review free of charge by any judicial officer.  
*[subsection (6) substituted by section 2 of [Act 88 of 1996](#)]*
- (7) An administrator shall deposit all moneys received by him from or on behalf of debtors whose estates are under administration—
  - (a) if he is not a practising attorney, in a separate trust account with any bank in the Republic, and no amount with which any such account is credited shall be deemed to be part of the administrator's assets or, in the event of his death or insolvency, of his deceased or insolvent estate;
  - (b) if he is practicing attorney, in the trust account that he keeps in terms of section 33 of the Attorneys, Notaries and Conveyancers Admission Act, 1934 ([Act No. 23 of 1934](#)).
- (8) If a debtor should at any time, despite a registered letter of demand from the administrator, be 14 days in arrear with the payment of any instalment and if steps in terms of [section 74I](#) (3) cannot be taken or have been taken unsuccessfully, or if the debtor had disappeared, the administrator shall forthwith notify the creditors in writing thereof and request their instructions.
- (9) If within the period allowed in a notice contemplated in subsection (8) the majority of the creditors instruct him to do so, or fail to respond, the administrator shall institute legal proceedings against the debtor for his committal for contempt of court or take such steps as may be necessary to trace the debtor who has disappeared, as the circumstances may require.
- (10) If within the period allowed in a notice contemplated in subsection (8) the majority of the creditors instruct him to do so, the administrator shall apply to the court for the rescission of the administration order.
- (11) If an administrator fails to lodge a distribution account with the clerk of the court within one month from the time his obligation to do so commenced, any interested party may apply to the court for an order directing him to lodge a distribution account with the clerk of the court within the time laid down in the order or relieving him of his office as administrator.



- (12) If an administrator has lodged a distribution account with the clerk of the court but has failed to pay any amount of money due to any creditor in terms of such account within one month thereafter, the court may upon the application of the creditor order the administrator to pay the creditor the amount concerned within such period as may be fixed in the order and furthermore to pay to the debtor's estate an amount which is double the amount which he failed so to pay.
- (13) The court may order an administrator to pay the costs of an application in terms of subsection (11) or (12) *de bonis propriis*.
- (14) If any debt which was due at the time of the granting of an administration order in respect of a debtor's estate is paid in full or in part to the creditor by the debtor after the granting of the order, otherwise than by way of payments in terms of the administration order, such payment shall be invalid and the administrator may recover the amount paid from the creditor, unless the creditor proves that the payment was effected without his knowledge of the administration order, and, in addition, the creditor shall forfeit his claim against the estate of the debtor if the payment was effected at the request of the creditor whilst he had knowledge of the administration order.

[section 74J inserted by section 6 of [Act 63 of 1976](#)]

#### **74K. Realization of assets by administrator**

- (1) An administrator may, if authorized thereto by the court, subject to the provisions of subsection (2), realize any asset of the estate under administration, and in granting any such authorization the court may impose any such conditions as it may deem fit.
- (2) An asset mentioned in subsection (1) which is the subject of any credit transaction regulated by the Credit Agreements Act, 1980 ([Act No. 75 of 1980](#)), shall not be realized except with the written permission of the seller.
- (3) If the credit grantor as defined in section 1 of the Credit Agreements Act, 1980, is obliged to pay to the debtor an amount in terms of [section 15](#) of the said Act, that amount shall be paid to the administrator for *pro rata* distribution among the creditors.
- (4) Whenever the court authorizes any administrator to realize any asset, the court may amend the payments to be made in terms of the administration order accordingly.

[section 74K inserted by section 6 of [Act 63 of 1976](#) and substituted by section 53 of [Act 120 of 1993](#)]

#### **74L. Remuneration and expenses of administrator**

- (1) An administrator may, before making a distribution—
  - (a) deduct from the money collected his necessary expenses and a remuneration determined in accordance with a tariff prescribed in the rules;
  - (b) retain a portion of the money collected, in the manner and up to an amount prescribed in the rules, to cover the costs that he may have to incur if the debtor is in default or disappears.
- (2) The expenses and remuneration mentioned in subsection 1 (a) shall not exceed 12 ½ per cent of the amount of collected moneys received and such expenses and remuneration shall, upon application by any interested party, be subject to taxation by the clerk of the court and review by any judicial officer.

[section 74L inserted by section 6 of [Act 63 of 1976](#)]

#### **74M. Furnishing of information by administrator**

The administrator shall upon payment of the fees prescribed in the rules—

- (a) furnish any creditor applying therefor with such information about the progress made in regard to the administration as he may desire; and



- (b) furnish any person applying therefor with a copy of the debtor's application and statement of his affairs mentioned in sections 74 and 74A (1), or with a list or account mentioned in section 74G (1) or 74I, or with the debtor's statement of his affairs mentioned in section 65I (2).

[section 74M inserted by section 6 of [Act 63 of 1976](#)]

#### **74N. Failure by administrator to perform his duties**

An administrator shall take the proper steps to enforce an administration order, and if he fails to do so, any creditor may, by leave of the court, take those steps, and the court may thereupon order the administrator to pay the costs of the creditor *de bonis propriis*.

[section 74N inserted by section 6 of [Act 63 of 1976](#)]

#### **74O. Costs of application for administration order**

Unless the court otherwise orders or this Act otherwise provides, no costs in connection with any application in terms of section 74(1) shall be recovered from any person other than the administrator concerned, and then as a first claim against the moneys controlled by him.

[section 74O inserted by section 6 of [Act 63 of 1976](#)]

#### **74P. Remedies restricted by administration order**

- (1) As long as any administration order is of force and effect in respect of the estate of any debtor, no creditor shall have any remedy against the debtor or his property for collecting money owing, except in regard to any mortgage bond or any debt referred to in section 74B (3) or by leave of the court and on such conditions as the court may impose.
- (2) Any court in which proceedings have been instituted against a debtor in respect of any debt except a debt due under a mortgage bond or a debt referred to in section 74B (3) shall, upon receiving notice of the administration order, suspend such proceedings but may grant costs already incurred by the creditor, and such costs may be added to the judgment debt.

[section 74P inserted by section 6 of [Act 63 of 1976](#)]

#### **74Q. Suspension, amendment or rescission of administration order**

- (1) The court under whose supervision any administration order is being executed, may at any time upon application by the debtor or any interested party re-open the proceedings and call upon the debtor to appear for such further examination as the court may deem necessary, and the court may thereupon on good cause shown suspend, amend or rescind the administration order, and when it suspends such an order it may impose such conditions as it may deem just and reasonable.
- (2) The court may at any time at the request of the administrator in writing and with the written consent of the debtor, amend any administration order.
- (3) Upon any application for the rescission of an administration order the court may—
- (a) rescind the order under subsection (1); or
  - (b) if it appears to the court that the debtor is unable to pay any instalment, suspend the order for such period and on such conditions as it may deem fit or amend the instalments to be paid in terms thereof and make the necessary amendments to any emoluments attachment order or garnishee order issued so as to ensure payment in terms of the administration order, or set aside the said emoluments attachment order or garnishee order; or
  - (c) authorize the issue of an emoluments attachment order or garnishee order to ensure the payments in terms of the administration order; or

- (d) set aside or amend any emoluments attachment order or garnishee order issued so as to ensure payments in terms of the administration order.
- (4) Any order rescinding an administration order shall be in the form prescribed in the rules and a copy thereof shall be delivered personally or sent by post by the administrator to the debtor and to each creditor, who shall also be informed of the debtor's last known address by the administrator.
- (5) When an order of court for the payment of any judgment debt in instalments or any emoluments attachment order or garnishee order has lapsed in consequence of the granting of an administration order and such judgment debt has not been paid in full upon the rescission of the administration order, such court order, emoluments attachment order or garnishee order shall revive in respect of such judgment debt, unless the court otherwise orders.

[section 74Q inserted by section 6 of [Act 63 of 1976](#)]

#### **74R. Administration order no bar to sequestration**

The granting of an order under [section 74](#) (1) shall be no bar to the sequestration of the debtor's estate.

[section 74R inserted by section 6 of [Act 63 of 1976](#)]

#### **74S. Incurring of debts by person subject to administration order**

- (1) Any person who is subject to an administration order and who during the currency of such order incurs any debt without disclosing that he is subject to an administration order shall be guilty of an offence and on conviction liable to imprisonment for a period not exceeding 90 days or to periodical imprisonment for a period not exceeding 2 160 hours in accordance with the laws relating to prisons and, in addition, the court may, upon application by any interested person, set aside the administration order.
- (2) The provisions of the Criminal Procedure Act, 1955 ([Act No. 56 of 1955](#)), with regard to periodical imprisonment shall *mutatis mutandis* apply to periodical imprisonment imposed in terms of subsection (1).

[section 74S inserted by section 6 of [Act 63 of 1976](#)]

#### **74T. Change of address by debtor subject to administration order**

- (1) Any debtor subject to an administration order who changes his place of residence, business or employment shall forthwith notify the clerk of the court and the administrator of his new place of residence, business or employment.
- (2) When any debtor subject to an administration order moves to any other district, the court under whose supervision the administration order is being executed may transfer the proceedings to the court of that district.

[section 74T inserted by section 6 of [Act 63 of 1976](#)]

#### **74U. Lapsing of administration order**

As soon as the costs of the administration and the listed creditors have been paid in full, an administrator shall lodge a certificate to that effect with the clerk of the court and send copies thereof to the creditors (who shall also be informed therein of the debtor's last known address), and thereupon the administration order shall lapse.

[section 74U inserted by section 6 of [Act 63 of 1976](#)]

**74V. Interruption of prescription**

- (1) In the case of any debt mentioned in the statement referred to in [section 74A](#) (1), prescription shall be interrupted on the date on which such statement is lodged and, in the case of any debt not mentioned in such statement, prescription shall be interrupted on the date on which any claim against the debtor is lodged with the court or the administrator.
- (2) If the relevant prescriptive period of a debt referred to in subsection (1), had it not been for the provisions of subsection (1), would be completed on or before or within one year of, the day on which the restriction referred to in subsection 74P (1) has ceased to exist, the prescriptive period shall not be completed until a year after the said day has elapsed.

*[section 74V inserted by section 6 of [Act 63 of 1976](#)]*

**74W. Failure of administrator to carry out certain duty**

Any Administrator who fails to carry out the duty assigned to him by [section 74I](#) (7) shall be guilty of an offence and on conviction liable to a fine not exceeding R500 or in default of payment to imprisonment for a period not exceeding six months

*[section 74W inserted by section 6 of [Act 63 of 1976](#) and substituted by section 7 of [Act 19 of 1985](#)]*

**75. Jurisdiction to decide disputes arising out of garnishee orders**

- (1) If the garnishee disputes that the debt or emoluments sought to be attached are owing or accruing or alleges that they are subject to a set-off or belong to or are subject to a claim by some third person, the court may determine the rights and liabilities of all the parties and may declare the claim of that third person to be barred, provided that the claim or value of the matter in dispute is otherwise within the jurisdiction of the court.
- (2) If it be proved that such third person neither resides nor carries on business nor is employed within the Republic and that he has a *prima facie* claim to the debt, the court shall not have jurisdiction under this section.

*[subsection (2) amended by section 17 of [Act 53 of 1970](#)]*

**75bis. Review of conditions of sale of immovable property to be sold in execution of a Supreme Court judgment**

Notwithstanding anything to the contrary in any law contained, the court may, on the application of any interested party, review and confirm, modify or settle the conditions of sale in respect of any immovable property to be sold in execution of any judgment of any division of the Supreme Court of South Africa.

*[section 75bis inserted by section 11 of [Act 80 of 1964](#)]*

**76. Execution or payment is discharge *pro tanto***

Payment made by or execution levied upon the garnishee under the provisions of this Act shall be valid discharge of the debt or amount of emoluments due from him to the judgment debtor to the extent of the amount paid or levied.

**77. Saving of existing laws prohibiting attachment**

Save where under [section 65E](#) (1) an order may be granted against the State, nothing in this Act contained shall be construed as authorizing the attachment of any debt or emoluments or any moneys or property specially declared by any law not to be liable to attachment.

*[section 77 substituted by section 7 of [Act 63 of 1976](#)]*

**78. Execution or suspension in case of appeal, etc.**

Where an appeal has been noted or an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application. The direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

**79. Person who has made a *nulla bona* return not to incur debts**

Any person shall be guilty of an offence and liable to a fine not exceeding R300 if after a return of *nulla bona* has been made in respect of a judgment against him and before satisfaction of the said judgment, he obtains credit to an amount or amounts exceeding one hundred rand in the aggregate without previously informing all persons from whom he so obtains credit that there is an unsatisfied judgment against him and that a return of *nulla bona* has been made in respect thereof.

[section 79 amended by section 13 of [Act 19 of 1963](#), by section 6 of [Act 91 of 1977](#) and substituted by section 8 of [Act 19 of 1985](#)]

## Chapter X

### Costs

**80. Costs to be in accordance with scales and to be taxed**

- (1) The stamps, fees, costs and charges in connection with any civil proceedings in magistrates' courts shall, as between party and party, be payable in accordance with the scales prescribed by the rules.
- (2) As between attorney and client, the clerk of the court may in his discretion (subject to the review hereinafter mentioned) allow costs and charges for services reasonably performed by the attorney at the request of the client for which no remuneration is recoverable as between party and party and for which no provision is made in the rules.
- (3) Payment of costs awarded by the court (otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired) may not be enforced until they have been taxed by the clerk of the court.
- (4) Any person who is liable to pay or who is sued for costs of any civil proceedings in a court otherwise than under an award by the court or under a special agreement, may require that those costs shall be taxed by the clerk of the court as between attorney and client; and thereupon any action for the recovery of those costs shall be stayed pending the taxation. The costs of and incidental to such a taxation shall be borne, if not more than one-sixth of such costs is disallowed on taxation, by the person requiring the taxation, and, if more than one-sixth is so disallowed, by the person claiming the costs.

**81. Review of taxation**

Taxation by the clerk of the court shall be subject to review free of charge by a judicial officer of the district; and the decision of such judicial officer may at any, time within one month thereafter be brought in review before a judge of the court of appeal in the manner prescribed by the rules.

## Chapter XI

### Appeal and review

#### 82. By consent, decision of magistrate's court may be final

No appeal shall lie from the decision of a court if, before the hearing is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.

#### 83. Appeal from magistrate's court

Subject to the provisions of [section 82](#), a party to any civil suit or proceeding in a court may appeal to the provincial or local division of the Supreme Court having jurisdiction to hear the appeal, against—

- (a) any judgment of the nature described in [section 48](#);
- (b) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;
- (c) any decision overruling an exception, when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs.

*[section 83 substituted by section 16 of [Act 15 of 1969](#) and amended by section 2 of [Act 105 of 1982](#)]*

#### 84. Time, manner and conditions of appeal

Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

#### 85. No peremption of appeal by satisfaction of judgment

A party shall not lose the right to appeal through satisfying or offering to satisfy the judgment in respect of which he appeals or any part thereof or by accepting any benefit from such judgment, decree or order.

#### 86. Respondent may abandon judgment

- (1) A party may by notice in writing abandon the whole or any part of a judgment in his favour.
- (2) Where the party so abandoning was the plaintiff, or applicant, judgment in respect of the part abandoned shall be entered for the defendant or respondent with costs.
- (3) Where the party so abandoning was the defendant or respondent, judgment in respect of the part abandoned shall be entered for the plaintiff or applicant in terms of the claim in the summons or application.
- (4) A judgment so entered shall have the same effect in all respects as if it had been the judgment originally pronounced by the court in the action or matter.

#### 87. Procedure of court of appeal

The court of appeal may—

- (a) confirm, vary or reverse the judgment appealed from, as justice may require;
- (b) if the record does not furnish sufficient evidence or information for the determination of the, appeal, remit the matter to the court from which the appeal is brought, with instructions in regard to the taking of further evidence or the setting out of further information;

- (c) order the parties or either of them to produce at some convenient time in the court of appeal such further proof as shall to it seem necessary or desirable; or
- (d) take any other course which may lead to the just, speedy and as much as may be inexpensive settlement of the case; and
- (e) make such order as to costs as justice may require.

## **88. Execution of judgment of court of appeal**

The judgment of the court of appeal shall be recorded in the court appealed from, and may be enforced as if it had been given in such last-mentioned court.

# **Part III – Criminal matters**

## **Chapter XII Criminal jurisdiction**

## **89. Jurisdiction in respect of offences**

- (1) The court, other than the court of a regional division shall have jurisdiction over all offences except treason, murder and rape.
- (2) The court of a regional division shall have jurisdiction over all offences except treason.

*[subsection (2) substituted by section 17 of [Act 107 of 1990](#)]*

*[proviso to subsection (2) deleted by section 7 of [Act 91 of 1977](#)]*

*[section 89 substituted by section 1 of [Act 75 of 1959](#)]*

## **90. Local limits of jurisdiction**

- (1) Subject to the provisions of section eighty-nine, any person charged with any offence committed within any district or regional division may be tried by the court of that district or of that regional division, as the case may be.
- (2) When any person is charged with any offence—
  - (a) committed within the distance of four kilometres beyond the boundary of the district or of the regional division; or  
*[paragraph (a) amended by section 8(a) of [Act 91 of 1977](#)]*
  - (b) committed in or upon any vehicle on a journey which or part whereof was performed in, or within the distance of four kilometres of, the district or the regional division; or  
*[paragraph (b) amended by section 8(a) of [Act 91 of 1977](#)]*
  - (c) committed on board any vessel on a journey upon any river within the Republic or forming the boundary of any portion thereof, and such journey or part thereof was performed in, or within the distance of four kilometres of, the district or the regional division; or  
*[paragraph (c) amended by section 8(a) of [Act 91 of 1977](#)]*
  - (d) committed on board any vessel on a voyage within the territorial waters of the Republic (including the territory of South-West Africa), and the said territorial waters adjoin the district or the regional division; or

- (e) begun or completed within the district or within the regional division,

such person may be tried by the court of the district or of the regional division, as the case may be, as if he had been charged with an offence committed within the district or within the regional division respectively.

*[subsection (2) substituted by section 3 of [Act 17 of 1969](#)]*

- (3) Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.
- (4) A person charged with an offence may be tried by the court of any district, or any regional division, as the case may be, wherein any act or omission or event which is an element of the offence took place.
- (5) A person charged with theft of property or with obtaining property by an offence, or with an offence which involves the receiving of any property by him, may also be tried by the court of any district or of any regional division, as the case may be, wherein he has or had part of the property in his possession.
- (6) A person charged with kidnapping, childstealing or abduction may also be tried by the court of any district or of any regional division, as the case may be, through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.
- (7) Where by any special provision of law a magistrate's court has jurisdiction in respect of an offence committed beyond the local limits of the district, or of the regional division, as the case may be, such court shall not be deprived of such jurisdiction by any of the provisions of this section.
- (8) Where an accused is alleged to have committed various offences within different districts within the area of jurisdiction of any attorney-general, the attorney-general concerned may in writing direct that criminal proceedings in respect of such various offences be commenced in the court of any particular district within his area of jurisdiction, whereupon such court shall have jurisdiction to act with regard to any such offence as if such offence had been committed within the area of jurisdiction of that court, and the court of the regional division within whose area of jurisdiction the court of such district is situated, shall likewise have jurisdiction in respect of any such offence if such offence is an offence which may be tried by the court of a regional division.

*[subsection (8) substituted by section 8(b) of [Act 91 of 1977](#)]*

- (9) Notwithstanding anything contained in this section, the provisions of section 125 of the Criminal Procedure Act, 1977, shall *mutatis mutandis* apply in respect of the trial of any person by any court.

*[subsection (9) added by section 2 of [Act 75 of 1959](#) and substituted by section 8(b) of [Act 91 of 1977](#)]*

*[section 90 substituted by section 20 of [Act 40 of 1952](#)]*

## 91. Criminal jurisdiction of periodical court

The jurisdiction of the periodical court in criminal matters shall be subject, *mutatis mutandis*, to the provisions contained in section twenty-seven and in sub-section (3) of section thirty-five.

## 92. Limits of jurisdiction in the matter of punishments

- (1) Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence—
  - (a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding three years, where the court is not the court of a regional division, or not exceeding 15 years, where the court is the court of a regional division.

*[paragraph (a) substituted by section 9 of [Act 91 of 1977](#) and by section 6 of [Act 66 of 1998](#)]*



- (b) by fine, may impose a fine not exceeding the amount determined by the Minister from time to time by notice in the *Gazette* for the respective courts referred to in paragraph (a);  
[paragraph (b) substituted by section 9 of [Act 91 of 1977](#), by section 1 of [Act 109 of 1984](#) and by section 9 of [Act 25 of 1987](#)]
- (c) [paragraph (c) deleted by section 2 of [Act 33 of 1997](#)]
- (d) by correctional supervision, may impose correctional supervision for a period as contemplated in section 276A(1)(b) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)).  
[paragraph (d) added by section 2 of [Act 129 of 1993](#)]
- (2) (a) The court shall have jurisdiction to impose any punishment prescribed in respect of an offence under an ordinance of a province or the territory which relates to vehicles and the regulation of traffic on public roads, notwithstanding that such punishment exceeds the jurisdiction referred to in subsection (1).
- (b) Where a person is convicted of culpable homicide arising out of the driving of a vehicle as defined in any applicable ordinance referred to in paragraph (a), the court shall have jurisdiction to impose any punishment which the court may impose under that paragraph in respect of the offence of driving a vehicle recklessly on a public road.  
[section 92 substituted by section 1 of [Act 16 of 1959](#) and amended by section 14 of [Act 19 of 1963](#) and substituted by section 30 of [Act 94 of 1974](#)]

**93. \*\*\***

[section 93 amended by section 22 of [Act 40 of 1952](#), by section 24 of [Act 62 of 1955](#), by section 12 of [Act 80 of 1964](#) and repealed by section 344(1) of [Act 51 of 1977](#)]

**93bis.\*\*\***

[section 93bis added by section 23 of [Act 40 of 1952](#), substituted by section 31 of [Act 70 of 1968](#) and by section 18 of [Act 53 of 1970](#) and repealed by section 344(1) of [Act 51 of 1977](#)]

**93ter. Magistrate may be assisted by assessors**

- (1) The judicial officer presiding at any trial may, if he deems it expedient for the administration of justice—
  - (a) before any evidence has been led; or
  - (b) in considering a community-based punishment in respect of any person who has been convicted of any offence,

summon to his assistance any one or two persons who, in his opinion, may be of assistance at the trial of the case or in the determination of a proper sentence, as the case may be, to sit with him as assessor or assessors: Provided that if an accused is standing trial in the court of a regional division on a charge of murder, whether together with other charges or accused or not, the judicial officer shall at that trial be assisted by two assessors unless such an accused requests that the trial be proceeded with without assessors, whereupon the judicial officer may in his discretion summon one or two assessors to assist him.

[subsection (1) substituted by section 10(a) of [Act 91 of 1977](#) and by section 1(a) of [Act 118 of 1991](#)]
- (2) (a) In considering whether summoning assessors under subsection (1) would be expedient for the administration of justice, the judicial officer shall take into account—
  - (i) the cultural and social environment from which the accused originates;
  - (ii) the educational background of the accused;



- (iii) the nature and the seriousness of the offence of which the accused stands accused or has been convicted;
  - (iv) the extent or probable extent of the punishment to which the accused will be exposed upon conviction, or is exposed, as the case may be;
  - (v) any other matter or circumstance which he may deem to be indicative of the desirability of summoning an assessor or assessors,
- and he may question the accused in relation to the matters referred to in this paragraph.
- (b) For the purposes of subsection (1)(b) a community-based punishment means—
- (i) correctional supervision as defined in section 1 of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#));
  - (ii) a punishment contemplated in section 297(1)(a)(i)(cc) of the Criminal Procedure Act, 1977; or
  - (iii) a punishment contemplated in section 297(1)(b) or (4) of the Criminal Procedure Act, 1977, and where the performance of community service as referred to in the said section 297(1)(a)(i)(cc), is a condition for the suspension.

*[subsection (2) amended by section 2(a) of [Act 16 of 1959](#), deleted by section 10(b) of [Act 91 of 1977](#) and inserted by section 1(b) of [Act 118 of 1991](#)]*

- (3) Before the trial or the imposition of punishment, as the case may be, the said judicial officer shall administer an oath to the person or persons whom he has so called to his assistance that he or they will give a true verdict or a considered opinion, as the case may be, according to the evidence upon the issues to be tried or regarding the punishment, as the case may be, and thereupon he or they shall be a member or members of the court subject to the following provisions:
- (a) any matter of law arising for decision at such trial, and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding judicial officer and no assessor shall have a voice in any such decision;
  - (b) the presiding judicial officer may adjourn the argument upon any such matter or question as is mentioned in paragraph (a) and may sit alone for the hearing of such argument and the decision of such matter or question;
  - (c) whenever the said judicial officer shall give a decision in terms of paragraph (a) he shall give his reasons for that decision;
  - (d) upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court, except when only one assessor sits with the presiding judicial officer in which case the decision or finding of such judicial officer shall be the decision or finding of the court if there is a difference of opinion;
  - (e) it shall be incumbent on the court to give reasons for its decision or finding on any matter made under paragraph (d);
  - (f) in the event of a conviction the question of the punishment to be inflicted shall, except in a case contemplated in subsection (1)(b), be deemed, for the purposes of paragraph (a), to be a question of law.

*[paragraph (f) substituted by section 1(d) of [Act 118 of 1991](#)]*

*[subsection (3) amended by section 1(c) of [Act 118 of 1991](#)]*

- (4) If any such assessor is not a person employed in a full-time capacity in the service of the State he shall be entitled to such compensation as the Minister, in consultation with the Minister of Finance,

may determine in respect of expenses incurred by him in connection with his attendance at the trial, and in respect of his services as assessor.

*[subsection (4) substituted by section 10(c) of [Act 91 of 1977](#)]*

- (5) Every assessor shall, upon registration on the roll of assessors referred to in subsection (1), in writing take an oath or make an affirmation subscribed by him or her before the magistrate of the district concerned in the form set out below, namely—

'I \_\_\_\_\_ (full name) do hereby swear/solemnly affirm that whenever I may be called upon to perform the functions of an assessor in terms of section 93ter of the Magistrates' Courts Act, 1944, I shall to the best of my ability make a considered finding or decision, or give a considered opinion, as the case may be, according to the evidence tendered in the matter.'

*[subsection (5) added by section 2(b) of [Act 16 of 1959](#), substituted by section 10(d) of [Act 91 of 1977](#) and by section 2 of [Act 67 of 1998](#)]*

*[Please note: Subsections (6) - (9) have been added by section 2 of the Magistrates' Courts Amendment Act 67 of 1998, these provisions which, in so far as they add these subsections, have not yet commenced.]*

- (10) (a) A judicial officer who is assisted by an assessor may, on application by the prosecutor or the accused person, order the recusal of the assessor from the proceedings if the judicial officer is satisfied that—
- (i) the assessor has a personal interest in the proceedings concerned;
  - (ii) there are reasonable grounds for believing that there is likely to be a conflict of interests as a result of the assessor's participation in the proceedings concerned; or
  - (iii) there are reasonable grounds for believing that there is a likelihood of bias on the part of the assessor.
- (b) An assessor may recuse himself or herself from the proceedings for the reasons contemplated in paragraph (a).
- (c) The prosecutor and the accused person shall—
- (i) before the recusal of an assessor is ordered in terms of paragraph (a); or
  - (ii) in so far as it is practicable, before the recusal of an assessor in terms of paragraph (b),
- be given an opportunity to address arguments to the judicial officer on the desirability of such recusal.
- (d) The assessor concerned shall be given an opportunity to respond to any arguments referred to in paragraph (c), and the judicial officer may put such questions regarding the matter to the assessor as he or she may deem fit.
- (e) The judicial officer shall give reasons for an order referred to in paragraph (a).

*[subsection (10) added by section 2 of [Act 67 of 1998](#)]*

- (11) (a) If an assessor—
- (i) dies;
  - (ii) in the opinion of the presiding officer becomes unable to act as an assessor;
  - (iii) is for any reason absent; or
  - (iv) has been ordered to recuse himself or herself or has recused himself or herself in terms of subsection (10),

at any stage before the completion of the proceedings concerned, the presiding judicial officer may, in the interests of justice and after due consideration of the arguments put forward by the accused person and the prosecutor—

- (aa) direct that the proceedings continue before the remaining member or members of the court;
- (bb) direct that the proceedings start afresh; or
- (cc) in the circumstances contemplated in subparagraph (iii), postpone the proceedings in order to obtain the assessor's presence:

Provided that if the accused person has legal representation and the prosecutor and the accused person consent thereto, the proceedings shall, in the circumstances contemplated in subparagraphs (i), (ii) or (iv), continue before the remaining member or members of the court.

- (b) If, at proceedings which are continued in terms of this subsection, the judicial officer is assisted by the remaining assessor, the finding or decision of the judicial officer shall, in respect of any matter where there is a difference of opinion between the judicial officer and the assessor, be the finding or decision of the court.
- (c) The judicial officer shall give reasons for any direction referred to in paragraph (a), and for any finding or decision referred to in paragraph (b).

*[subsection (11) added by section 2 of [Act 67 of 1998](#)]*

*[section 93ter added by section 3 of [Act 14 of 1954](#)]*

### Chapter XIII Remittal

94. \*\*\*

*[section 94 substituted by section 3 of [Act 16 of 1959](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

95. \*\*\*

*[section 95 amended by section 24(a) and (b) of [Act 40 of 1952](#), by section 15 of [Act 19 of 1963](#), by section 31 of [Act 94 of 1974](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

### Chapter XIV Review

*[heading amended by section 17 of [Act 19 of 1963](#)]*

96. \*\*\*

*[section 96 amended by section 25 of [Act 40 of 1952](#), by section 25 of [Act 62 of 1955](#), by section 4 of [Act 16 of 1959](#), by section 16 of [Act 19 of 1963](#), by section 4 of [Act 17 of 1969](#) and substituted by section 32 of [Act 94 of 1974](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

97. \*\*\*

*[section 97 repealed by section 344(1) of [Act 51 of 1977](#)]*

98. \*\*\*

*[section 98 amended by section 40 of [Act 68 of 1957](#), by section 28 of [Act 93 of 1962](#) and by section 18(a) and (b) of [Act 19 of 1963](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

**98bis.\*\*\***

*[section 98bis inserted by section 19 of [Act 19 of 1963](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

**99. \*\*\***

*[section 99 repealed by section 344(1) of [Act 51 of 1977](#)]*

## **Chapter XV Execution of sentences**

**100. \*\*\***

*[section 100 amended by section 26 of [Act 40 of 1952](#) and by section 5 of [Act 16 of 1959](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

**101. \*\*\***

*[section 101 amended by section 6(a) and (b) of [Act 16 of 1959](#), by section 6(b) of [Act 16 of 1959](#) and by section 20 of [Act 19 of 1963](#) and substituted by section 1 of [Act 37 of 1963](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

**102. \*\*\***

*[section 102 amended by section 7 of [Act 16 of 1959](#) and by section 2 of [Act 37 of 1963](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

## **Chapter XVI Criminal appeals**

**103. \*\*\***

*[section 103 amended by section 8 of [Act 16 of 1959](#), by section 29 of [Act 93 of 1962](#) and by section 17 of [Act 15 of 1969](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

**104. \*\*\***

*[section 104 amended by section 26 of [Act 62 of 1955](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

**105. \*\*\***

*[section 105 amended by section 18 of [Act 15 of 1969](#) and repealed by section 344(1) of [Act 51 of 1977](#)]*

## **Part IV**

### **Chapter XVII Offences**

**106. Penalty for disobedience of order of court**

Any person wilfully disobeying or refusing or failing to comply with any judgment or order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects,

shall be guilty of contempt of court and shall, upon conviction, be liable to a fine, or to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

*[section 106 amended by section 27 of [Act 40 of 1952](#), by section 21 of [Act 19 of 1963](#) and substituted by section 8 of [Act 63 of 1976](#), by section 9 of [Act 19 of 1985](#) and by section 14 of [Act 81 of 1997](#)]*

#### **106A. Offence by garnishee**

Any garnishee who, by reason of an emoluments attachment order having been served on him in respect of the emoluments of a judgment debtor not occupying a position of trust in which he handles or has at his disposal moneys, securities or other articles of value, dismisses or otherwise terminates the service of such judgment debtor, shall be guilty of an offence and on conviction liable to a fine not exceeding R300 or, in default of payment, to imprisonment for a period not exceeding three months.

*[section 106A inserted by section 8 of [Act 63 of 1976](#) and substituted by section 10 of [Act 19 of 1985](#)]*

#### **106B. Offence by employer**

Any employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee's emoluments, fails or neglects to do so within a reasonable time, or who wilfully or negligently furnishes incorrect relevant particulars, shall be guilty of an offence and on conviction liable to a fine not exceeding R300 or, in default of payment, to imprisonment for a period not exceeding three months.

*[section 106B inserted by section 8 of [Act 63 of 1976](#) and substituted by section 11 of [Act 19 of 1985](#)]*

### **107. Offences relating to execution**

Any person who—

- (1) obstructs a messenger or deputy sheriff 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 sheriff 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 sheriff 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 sheriff in regard to the delivery of documents in his possession or under his control relating to the title of immovable property under execution,

Shall be guilty of an offence and liable upon conviction to a fine not exceeding R500 or, in default of payment, to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

*[section 107 amended by section 22 of [Act 19 of 1963](#), substituted by section 19 of [Act 53 of 1970](#), by section 12 of [Act 19 of 1985](#) and amended by section 64(1) of [Act 90 of 1986](#)]*

### **108. Custody and punishment for contempt of court**

- (1) If any person, whether in custody or not, wilfully insults a judicial officer during his sitting or a clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is

held, he shall (in addition to his liability to being removed and detained as in subsection (3) of [section 5](#) provided) be liable to be sentenced summarily or upon summons to a fine not exceeding R2 000 or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine. In this subsection the word 'court' includes a preparatory examination held under the law relating to criminal procedure.

*[subsection (1) amended by section 23 of [Act 19 of 1963](#), substituted by section 13 of [Act 19 of 1985](#) and amended by section 3 of [Act 4 of 1991](#)]*

- (2) In any case in which the court commits or fines any person under the provisions of this section, the judicial officer shall without delay transmit to the registrar of the court of appeal for the consideration and review of a judge in chambers, a statement, certified by such judicial officer to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement.

### 109. Judgment debtor to inform court of his address

- (1) Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and paid all costs for which he is liable in connection therewith, shall, if he has changed his place of residence, business or employment, within 14 days from the date of every such change notify the clerk of the court which gave such judgment or made such order and the judgment creditor or the judgment creditor's attorney or, if his estate is under administration, the administrator or his attorney, fully and correctly in writing of his new place of residence, business or employment.
- (2) Any judgment debtor who fails to comply with the provisions of subsection (1) shall be guilty of an offence and upon conviction, be liable to a fine, or to imprisonment for a period not exceeding three months.

*[subsection (2) substituted by section 15(a) of [Act 81 of 1997](#)]*

- (3) *[subsection (3) deleted by section 15(b) of [Act 81 of 1997](#)]*
- (4) *[subsection (4) deleted by section 15(b) of [Act 81 of 1997](#)]*
- (5) *[subsection (5) deleted by section 15(b) of [Act 81 of 1997](#)]*
- (6) *[subsection (6) deleted by section 15(b) of [Act 81 of 1997](#)]*
- (7) *[subsection (7) deleted by section 15(b) of [Act 81 of 1997](#)]*
- (8) *[subsection (8) deleted by section 15(b) of [Act 81 of 1997](#)]*

*[section 109 substituted by section 28 of [Act 40 of 1952](#) and amended by section 24 of [Act 19 of 1963](#) and substituted by section 9 of [Act 63 of 1976](#)]*

## Part V

### Chapter XVIII General and supplementary

### 110. Pronouncements on validity of law or conduct of President

- (1) A court shall not be competent to pronounce on the validity of any law or conduct of the President.
- (2) If in any proceedings before a court it is alleged that—
  - (a) any law or any conduct of the President is invalid on the grounds of its inconsistency with a provision of the [Constitution](#): or

- (b) any law is invalid on any ground other than its constitutionality, the court shall decide the matter on the assumption that such law or conduct is valid: Provided that the party which alleges that a law or conduct of the President is invalid, may adduce evidence regarding the invalidity of the law or conduct in question.

*[section 110 substituted by section 20 of [Act 53 of 1970](#) and by section 1 of [Act 80 of 1997](#)]*

### 111. Amendment of proceedings

- (1) In any civil proceedings, the court may, at any time before judgment, amend any summons or other document forming part of the record: Provided that no amendment shall be made by which any party other than the party applying for such amendment may (notwithstanding adjournment) be prejudiced in the conduct of his action or defence.
- (2) In civil proceedings an amendment may be made upon such terms as to costs and otherwise as the court may judge reasonable.
- (3) No misnomer in regard to the name of any person or place shall vitiate any proceedings of the court if the person or place is described as commonly known, and the court may, on application, correct such misnomer at any time before or after judgment is given.

*[subsection (3) substituted by section 10(a) of [Act 63 of 1976](#)]*

- (4) *[subsection (4) added by section 10(b) of [Act 63 of 1976](#) and deleted by section 4 of [Act 132 of 1993](#)]*

### 112. Administration of oath or affirmation

The oath to be taken by any witness in any civil proceedings in any court shall be administered by the officer presiding at such proceedings or by the clerk of the court (or any person acting in his stead) in the presence of the said officer, or if the witness is to give his evidence through an interpreter, by the said officer through the interpreter or by the interpreter in the said officer's presence.

*[section 112 substituted by section 11 of [Act 91 of 1977](#)]*

### 113. \*\*\*

*[section 113 repealed by section 33 of [Act 94 of 1974](#)]*

### 114. Savings and non-application of Act

- (1) Nothing in this Act contained shall be construed as affecting the operation of the Criminal Procedure Act, 1977.
- [subsection (1) substituted by section 9 of [Act 16 of 1959](#) and amended by section 12 of [Act 91 of 1977](#)]*
- (2) Nothing in this Act contained shall be construed as depriving any superior court of any power to review and correct the proceedings of any magistrate's court.
- (3) Nothing in this Act contained shall be construed as affecting the provisions of section one hundred and five of the South Africa Act, 1909, relating to appeals to the Appellate Division.
- (4) *[subsection (4) deleted by section 5 of [Act 104 of 1996](#)]*

### 115. Saving of pending proceedings

- (1) Nothing in this Act shall affect proceedings pending at the commencement of this Act and such proceedings shall be continued and concluded in every respect as if this Act had not been passed.
- (2) Proceedings shall, for the purposes of this section, be deemed to be pending if, at the commencement of this Act, summons had been issued or the accused had pleaded but judgment had not been given; and to be concluded when judgment is given.

- (3) At the expiration of one year from the commencement of this Act, sub-section (1) of this section shall cease to have effect; and any cases pending at the commencement of this Act and not concluded within one year thereafter shall become subject to the provisions of this Act.

### **115A. Application of Act to the territory of South West Africa**

- (1) This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.
- (2) *[subsection (2) deleted by section 13 of [Act 91 of 1977](#)]*
- (3) *[subsection (3) deleted by section 13 of [Act 91 of 1977](#)]*
- [section 115A inserted by section 21 of [Act 53 of 1970](#)]*

### **116. Laws repealed**

The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

### **117. Short title**

This Act may be cited for all purposes as the Magistrates' Courts Act, 1944, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.



## Schedule

### Laws repealed

No. and Year	Title	Extent of repeal
<a href="#">Act No. 32 of 1917.</a>	Magistrates' Courts Act	The whole, except the Second Schedule
<a href="#">Act No. 13 of 1921.</a>	Magistrates' Courts Act Amendment Act.	So much as remains unrepealed.
<a href="#">Act No. 9 of 1923.</a>	Magistrates' Courts Act, 1917, Further Amendment Act.	So much as remains unrepealed.
<a href="#">Act No. 39 of 1926.</a>	Criminal and Magistrates' Courts Procedure (Amendment) Act.	Sections forty-nine to sixty inclusive.
<a href="#">Act No. 17 of 1932.</a>	Magistrates' Courts Amendment Act.	The whole.
<a href="#">Act No. 46 of 1935.</a>	General Law Amendment Act.	Sections eighty-three to ninety-nine inclusive.
<a href="#">Act No. 21 of 1942.</a>	Civil Imprisonment Restriction Act.	Sections one, two and three.

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