



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

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### STATE PRESIDENT'S OFFICE

No. 1054.

30 May 1989

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

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

### KANTOOR VAN DIE STAATSPRESIDENT

No. 1054.

30 Mei 1989

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

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

Act No. 63, 1989

SMALL CLAIMS COURTS AMENDMENT ACT, 1989

**GENERAL EXPLANATORY NOTE:**

**[ ]** Words in bold type in square brackets indicate omissions from existing enactments.

**—** Words underlined with solid line indicate insertions in existing enactments.

**ACT**

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

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

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

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

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

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

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

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

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

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

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

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

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**ALGEMENE VERDUIDELIKENDE NOTA:**

- [ ]** Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- \_\_\_\_\_** Woorde met 'n volstreep daaronder, dui inwoegings in bestaande verordenings aan.
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**WET**

Tot wysiging van die Wet op Howe vir Klein Eise, 1984, ten einde die aanstelling van kommissarisse verder te reël; die regsvvoegdheid van die hof verder te reël; die instel van aksies wat voortspruit uit 'n besigheid of 'n professie deur 'n eiser gedryf of beoefen, te reël; sekere tydperke vas te stel waarbinne aansoeke om die nietigverklaring van sekere vonnisse gedoen kan word; en voorsiening te maak vir die oorplasing van vonnisse na die landdroshof vir tenuitvoerlegging; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)  
(Goedgekeur op 17 Mei 1989.)*

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**D**AAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

**Wysiging van artikel 9 van Wet 61 van 1984, soos gewysig deur artikel 5 van Wet 92 van 1986**

- 5    1. Artikel 9 van die Wet op Howe vir Klein Eise, 1984 (hieronder die Hoofwet genoem), word hierby gewysig—  
 (a) deur die woorde wat op paragraaf (c) van subartikel (2) volg deur die volgende woorde te vervang:  
 “en vir 'n ononderbroke tydperk van minstens **[sewel]** vyf jaar as 'n advokaat of prokureur gepraktiseer het of die amp van landdros beklee het, of vir daardie tydperk by onderrig in die reg betrokke was en ook as 'n advokaat of prokureur gepraktiseer het vir dié tydperk wat hom, na die oordeel van die Minister, geskik maak om as 'n kommissaris aangestel te word, of oor die ander ervaring beskik wat hom, na die oordeel van die Minister, geskik maak om as 'n kommissaris aangestel te word.”; en  
 (b) deur subartikel (3) deur die volgende subartikel te vervang:  
 “(3) 'n Kommissaris beklee sy amp **[vir 'n tydperk van drie jaar, of vir die korter tydperk wat]** solank dit die Minister **[ten tyde van sy aanstelling bepaal]** behaag.”.
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20 **Wysiging van artikel 16 van Wet 61 van 1984, soos gewysig deur artikel 9 van Wet 92 van 1986**

2. Artikel 16 van die Hoofwet word hierby gewysig deur die volgende paragraaf by te voeg:  
 “(g) waarin 'n interdik aangevra word.”.

Act No. 63, 1989

SMALL CLAIMS COURTS AMENDMENT ACT, 1989

**Amendment of section 29 of Act 61 of 1984**

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

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

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**Substitution of section 36 of Act 61 of 1984**

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

**"Rescission of certain judgments**

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

- (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted, provided the application is set down for hearing on a date within six weeks after the applicant first had knowledge of the judgment; 15  
 (b) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or as a result of a mistake common to the parties, provided the application is made not later than one year after the applicant first had knowledge of the voidness, fraud or mistake; 20  
 (c) correct patent errors in any judgment, provided, in the case of an application, the application is made not later than one year after the applicant first had knowledge of any errors.".

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**Amendment of section 39 of Act 61 of 1984**

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

- (a) by the deletion of paragraph (b) of subsection (2); and  
 (b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:  
 (c) [authorize the issue of a warrant under paragraph (b) and make an order under paragraph (a), and] suspend the [execution of the warrant and the] order under paragraph (a) either wholly or in part on such conditions as to security or otherwise as the court may determine.".

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**Substitution of section 41 of Act 61 of 1984**

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

**"Manner of execution**

41. (1) When a court has granted judgment for the payment of money or made an order for the payment of money in instalments, that judgment, in the case of failure to pay the money within 10 days, or that order, in the case of failure to pay an instalment at the time and in the manner determined by the court, shall be enforceable [by execution against the movable property and, if insufficient movable property is found to satisfy the judgment or order or the court on good cause shown so orders, against the immovable property of the party against whom such judgment has been given or such order has been made] by execution in the magistrate's court having jurisdiction in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the judgment creditor may proceed as if the judgment was granted in the magistrate's court in his favour for the amount mentioned in the affidavit referred to in subsection (2). 40  
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## WYSIGINGSWET OP HOWE VIR KLEIN EISE, 1989

Wet No. 63, 1989

**Wysiging van artikel 29 van Wet 61 van 1984**

3. Artikel 29 van die Hoofwet word hierby gewysig deur die volgende paragraaf by subartikel (1) te voeg, terwyl die bestaande subartikel paragraaf (a) word:

- 5        "(b) Totdat uitspraak gelewer is in 'n aksie wat voortspruit uit 'n besigheid of professie wat deur die eiser gedryf of beoefen word, mag die eiser nie 'n dagvaarding in paragraaf (a) bedoel ten opsigte van 'n ander aksie wat uit daardie besigheid of professie voortspruit by die klerk van die hof inlewer nie.".

**Vervanging van artikel 36 van Wet 61 van 1984**

10      4. Artikel 36 van die Hoofwet word hierby deur die volgende artikel vervang:

**"Nietigverklaring van sekere vonnisse"**

36. Die hof kan, op aansoek van enige persoon wat daardeur geraak word of, in 'n geval in paragraaf (c) bedoel ook *suo motu*—

- 15        (a) 'n vonnis wat deur hom gegee is in die afwesigheid van die persoon teen wie daardie vonnis gegee is, nietig verklaar of wysig, mits die aansoek ter rolle geplaas word vir verhoor op 'n datum binne ses weke nadat die aansoeker vir die eerste keer van die vonnis te wete gekom het;
- 20        (b) 'n vonnis deur hom gegee wat *ab origine* nietig is of wat deur bedrog of as gevolg van 'n gemene dwaling deur die party verkry is, nietig verklaar of wysig, mits die aansoek gedoen word nie later nie as een jaar nadat die aansoeker vir die eerste keer van die nietigheid, bedrog of dwaling te wete gekom het;
- 25        (c) klaarblyklike foute in 'n vonnis regstel, mits, in die geval van 'n aansoek, die aansoek gedoen word nie later nie as een jaar nadat die aansoeker vir die eerste keer van enige foute te wete gekom het."

**Wysiging van artikel 39 van Wet 61 van 1984**

5. Artikel 39 van die Hoofwet word hierby gewysig—

- 30        (a) deur paragraaf (b) van subartikel (2) te skrap; en
- 35        (b) deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:  
 "(c) die **[uitreiking van 'n lasbrief kragtens paragraaf (b) magtig en 'n]**  
**lasgewing kragtens paragraaf (a) [uitrek, en die uitvoering van die lasbrief en die lasgewing]** geheel of ten dele opskort op die voorwaardes ten aansien van sekerheidstelling of andersins wat die hof bepaal.".

**Vervanging van artikel 41 van Wet 61 van 1984**

6. Artikel 41 van die Hoofwet word hierby deur die volgende artikel vervang:

**"Wyse van tenuitvoerlegging"**

- 40        41. (1) Wanneer 'n hof vonnis vir die betaling van geld gegee het of 'n lasgewing uitgereik het vir die betaling van geld in paaiememente, **[kan]** is die vonnis, in die geval van versuim om die geld binne 10 dae te betaal, of die bevel, in die geval van versuim om 'n paaiement te betaal op die tyd en wyse deur die hof bepaal, **[by eksekusie afdwing word teen die roerende goed en, indien onvoldoende roerende goed gevind word ter voldoening aan die vonnis of lasgewing of die hof om 'n gegronde rede aangevoer aldus gelas, teen die onroerende goed van die party teen wie die vonnis gegee of die lasgewing uitgereik is]** in die landdroshof wat regsbevoeg is by eksekusie afdwingbaar ooreenkomsdig die bepalings van die Wet op Landdroshewe, 1944 (Wet No. 32 van 1944), en die vonnisskuldeiser kan optree asof die vonnis in die landdroshof ten gunste van hom gegee is vir die bedrag vermeld in die beëdigde verklaring bedoel in subartikel (2).

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

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

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#### **Repeal of section 44 of Act 61 of 1984**

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

#### **Amendment of section 47 of Act 61 of 1984**

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

(a) by the deletion of paragraphs (b), (c) and (d); and

(b) by the substitution for the words following upon paragraph (e) of the following words:

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

#### **Short title and commencement**

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

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

## WYSIGINGSWET OP HOWE VIR KLEIN EISE, 1989

Wet No. 63, 1989

- 5                     (2) **[By versuim om 'n paaiement ooreenkomstig 'n lasgewing te betaal, kan tenuitvoerlegging geskied ten opsigte van die hele vonnisskuld en die koste wat dan nog betaalbaar is, tensy die hof, op aansoek van die party wat aanspreeklik is, anders gelas]** Die klerk van die hof moet op die skriftelike aansoek van die vonnisskuldeiser, wat vergesel moet gaan van 'n beëdigde verklaring waarin uiteengesit word wat die bedrag en die koste is wat nog kragtens die vonnis of bevel verskuldig is en hoe dit bereken word, daardie verklaring tesame met 'n gewaarmerkte afskrif van daardie vonnis of bevel waarin die aard van die skuldoorsaak weergegee word aan die klerk van die landdroshof van die distrik waarin die vonnisskuldenaar woon, besigheid dryf of in diens is of, indien die vonnisskuldenaar 'n regspersoon is, van die distrik waarin sy geregistreerde kantoor of hoofbesigheidsplek is, stuur.
- 10                  (3) By ontvangs van die stukke in subartikel (2) bedoel, moet die klerk van die betrokke landdroshof die besonderhede van die betrokke vonnis of bevel en verskuldigde bedrag in die beëdigde verklaring vermeld in sy registers aanteken.”.
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**Herroeping van artikel 44 van Wet 61 van 1984**

7. Artikel 44 van die Hoofwet word hierby herroep.
- 20 **Wysiging van artikel 47 van Wet 61 van 1984**
8. Artikel 47 van die Hoofwet word hierby gewysig—  
 (a) deur paragrawe (b), (c) en (d) te skrap; en  
 (b) deur die woorde wat op paragraaf (e) volg deur die volgende woorde te vervang:  
 25                  “is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens **R500** R2 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande, of met daardie gevangenisstraf sonder die keuse van 'n boete.”.
- Kort titel en inwerkingtreding**
- 30                  9. (1) Hierdie Wet heet die Wysigingswet op Howe vir Klein Eise, 1989, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.  
 (2) Verskillende datums kan aldus ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

