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GOVERNMENT NOTICE GOEWERMENSKENNISGEWING

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. R. 880

23 July 2004

MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE

Definitions

1. In these rules "the rules" means the rules published under Government Notice No. R. 1108 of 21 June 1968, as amended by Government Notices Nos. R. 3002 of 25 July 1969, R. 490 of 26 March 1970, R. 947 of 2 June 1972, R. 1115 of 25 June 1974, R. 1285 of 19 July 1974, R. 689 of 23 April 1976, R. 261 of 25 February 1977, R. 2221 of 28 October 1977, R. 327 of 24 February 1978, R. 2222 of 10 November 1978, R. 1449 of 29 June 1979, R. 1314 of 27 June 1980, R. 1800 of 28 August 1981, R. 1139 of 11 June 1982, R. 1689 of 29 July 1983, R. 1946 of 9 September 1983, 1338 of 29 June 1984, R. 1994 of 7 September 1984, R. 2083 of 21 September 1984, R. 391 of 7 March 1986, R. 2165 of 2 October 1987, R. 1451 of 22 July 1988, R. 1765 of 26 August 1988, R. 211 of 10 February 1989, R. 607 of 31 March 1989, R. 2629 of 1 December 1989, R. 186 of 2 February 1990, R. 1887 of 8 August 1990, R. 1928 of 10 August 1990, R. 1990 of 17 August 1990, R. 1261 of 30 May 1991, R. 2407 of 27 September 1991, R. 2409 of 30 September 1991, R. 405 of 7 February 1992, R. 1510 of 29 May 1992, R. 1882 of 3 July 1992, R. 871 of 21 May 1993, R. 959 of 28 May 1993, R. 1134 of 25 June 1993, R. 1355 of 30 July 1993, R. 1844 of 1 October 1993, R. 2530 of 31 December 1993, R. 150 of 28 January 1994, R. 180 of 28 January 1994, R. 498 of 11 March 1994, R. 625 of 28 March 1994, R. 710 of 12 April 1994, R. 1062 of 28 June 1996, R. 1130 of 5 July 1996, R. 419 of 14 March 1997, R. 492 of 27 March 1997, R. 570 of 18 April 1997, R. 790 of 6 June 1997, R. 797 of 13 June 1997, R. 784 of 5 June 1998, R. 910 of 3 July 1998, R. 1025 of 7 August 1998, R. 1126 of 4 September 1998, R. 569 of 30 April 1999, R. 501 of 19 May 2000, R. 1087 of 26 October 2001, R. 37 of 18 January 2002, R. 38 of 18 January 2002, R. 1299 of 18 October 2002, R. 228 of 20 February 2004 and R. 295 of 5 March 2004.

Amendment of Form 38 of Annexure 1 to the Rules**2. Substitute the following for Form 38 of Annexure 1 to the Rules:**

"No. 38. - Emoluments Attachment Order - Section 65J of the Magistrates' Courts Act, 1944 (Act 32 of 1944).

IMPORTANT NOTICE:

YOUR ATTENTION IS DIRECTED to section 65J(3) of the Magistrates' Courts Act, 1944 (read with section 3(1) of the Sheriffs Act, 1986), which provides that only a sheriff may serve this order on a garnishee in the manner prescribed by rule 9 of the Magistrates' Courts Rules. Service of this order by a person who is not a sheriff appointed in terms of section 2 of the Sheriffs Act, 1986, constitutes a criminal offence in terms of section 60(1)(gA) of the Sheriffs Act, 1986, and renders such service invalid and of no effect. A person who is convicted of an offence in terms of section 60(1)(gA) of the Sheriffs Act, 1986, shall be liable to a fine or to imprisonment for a period not exceeding three years or both such fine and such imprisonment.

YOUR ATTENTION IS FURTHER DIRECTED to section 65J(6) of the Magistrates' Courts Act, 1944, which provides as follows:

"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."

In the Magistrate's Court for the District ofheld at

.....

Case No. of

In the matter between

.....Judgment Creditor.

and

..... Judgment Debtor.
Particulars for the identification
of the judgment debtor inclusive
of his or her identity or work
number or date of birth and address.

.....Garnishee.
Address of garnishee.

Whereas it has been made to appear to the above-mentioned Court that emoluments are at present or in future owing or accruing to the judgment debtor by or from the garnishee and that after satisfaction of the following order sufficient means will be left to the judgment debtor to maintain himself or herself and those dependent upon him or her;

It is ordered:

- (1) That the said emoluments are attached;
- (2) That the garnishee pay to the judgment creditor or his or her attorney on the day of each and every month/week after this order has been granted the sum of R..... of the emoluments of the said judgment debtor until a sufficient amount has been paid to satisfy a judgment or order obtained against the judgment debtor by the judgment creditor in the Court at on the day of for the amount of R.....(on which judgment or order the amount of R.....remains unpaid) with costs amounting to R..... and the costs of attachment amounting to R..... as well as R..... sheriff's fees.

Dated at this day of....., 20.....

By Order of the Court,

.....
 Clerk of the Court.

.....
 Judgment Creditor/Attorney for Judgment
 Creditor.

Address of Judgment Creditor/Attorney for
Judgment Creditor.

.....
.....
.....

Attention is directed to the provisions of section 65J(10) of the Magistrates' Courts Act, 1944, which reads as follows:

"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."

Commencement

3. These rules shall come into operation on **23 August 2004**.

No. R. 880

23 Julie 2004

LANDDROSHOE: WYSIGING VAN DIE REËLS VAN DIE HOF

Die Reëlsraad vir Geregshoe het kragtens artikel 6 van die Wet op die Reëlsraad vir Geregshoe, 1985 (Wet No. 107 van 1985), met die goedkeuring van die Minister van Justisie en Staatkundige Ontwikkeling, die reëls in die Bylae gemaak.

BYLAE**Woordomskrywing**

1. In hierdie reëls beteken "die Reëls" die reëls afgekondig by Goewermmentskennisgewing No. R. 1108 van 21 Junie 1968, soos gewysig by Goewermmentskennisgewings Nos. R. 3002 van 25 Julie 1969, R. 490 van 26 Maart 1970, R. 947 van 2 Junie 1972, R. 1115 van 28 Junie 1974, R. 1285 van 19 Julie 1974, R. 689 van 23 April 1976, R. 261 van 25 Februarie 1977, R. 2221 van 28 Oktober 1977, R. 327 van 24 Februarie 1978, R. 2222 van 10 November 1978, R. 1449 van 29 Junie 1979, R. 1314 van 27 Junie 1980, R. 1800 van 28 Augustus 1981, R. 1139 van 11 Junie 1982, R. 1689 van 29 Julie 1983, R. 1946 van 9 September 1983, R. 1338 van 29 Junie 1984, R. 1994 van 7 September 1984, R. 2083 van 21 September 1984, R. 391 van 7 Maart 1986, R. 2165 van 2 Oktober 1987, R. 1451 van 22 Julie 1988, R. 1765 van 26 Augustus 1988, R. 211 van 10 Februarie 1989, R. 607 van 31 Maart 1989, R. 2629 van 1 Desember 1989, R. 186 van 2 Februarie 1990, R. 1887 van 8 Augustus 1990, R. 1928 van 10 Augustus 1990, R. 1967 van 17 Augustus 1990, R. 1261 van 30 Mei 1991, R. 2407 van 27 September 1991, R. 2409 van 30 September 1991, R. 405 van 7 Februarie 1992, R. 1510 van 29 Mei 1992, R. 1882 van 3 Julie 1992, R. 871 van 21 Mei 1993, R. 959 van 28 Mei 1993, R. 1134 van 25 Junie 1993, R. 1355 van 30 Julie 1993, R. 1844 van 1 Oktober 1993, R. 2530 van 31 Desember 1993, R. 150 van 28 Januarie 1994, R. 180 van 28 Januarie 1994, R. 498 van 11 Maart 1994, R. 625 van 28 Maart 1994, R. 710 van 12 April 1994, R. 1062 van 28 Junie 1996, R. 1130 van 5 Julie 1996, R. 419 van 14 Maart 1997, R. 492 van 27 Maart 1997, R. 570 van 18 April 1997, R. 790 van 6 Junie 1997, R. 797 van 13 Junie 1997, R. 784 van 5 Junie 1998, R. 910 van 3 Julie 1998, R. 1025 van 7 Augustus 1998, R. 1126 van 4 September 1998, R. 569 van 30 April 1999, R. 501 van 19 Mei 2000, R. 1087 van 26 Oktober 2001, R. 37 van 18 Januarie 2002, R. 38 van

18 Januarie 2002, R. 1299 van 18 Oktober 2002, R. 228 van 20 Februarie 2004
en R. 295 van 5 Maart 2004.

Wysiging van Vorm 38 van Bylae 1 van die Reëls

2. Vervang Vorm 38 van Bylae 1 van die Reëls deur die volgende:

"No. 38 – Besoldigingbeslagbevel – Artikel 65J van die Wet op Landdroshowe, 1944 (Wet 32 van 1944)

BELANGRIKE KENNISGEWING:

U AANDAG WORD GEVESTIG op artikel 65J(3) van die Wet op Landdroshowe, 1944 (gelees met artikel 3(1) van die Wet op Balju's, 1986) wat bepaal dat hierdie bevel slegs deur 'n balju op 'n beslagskuldenaar beteken mag word op die wyse by reël 9 van die Landdroshowereëls voorgeskryf. Betekening van hierdie bevel deur 'n persoon wat nie as balju ingevolge artikel 2 van die Wet op Balju's, 1986, aangestel is nie, maak ingevolge artikel 60(1)(gA) van die Wet op Balju's, 1986, 'n misdryf uit en sodanige betekening is ongeldig en sonder effek. 'n Persoon wat skuldig bevind word aan 'n misdryf ingevolge artikel 60(1)(gA) van die Wet op Balju's 1986, is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens drie jaar of met sowel sodanige boete en sodanige gevangenisstraf.

U AANDAG WORD VERDER GEVESTIG op artikel 65J(6) van die Wet op Landdroshowe, 1944, wat soos volg bepaal:

'Indien na betekening van so 'n besoldigingbeslagbevel aan die beslagskuldenaar, dit bewys word dat die vonnisskuldenaar, nadat aan die besoldigingbeslagbevel voldoen is, nie genoegsame middele sal hê om homself en sy afhanklikes te onderhou nie, trek die hof die besoldigingbeslagbevel in of wysig hy dit op so 'n wyse dat dit slegs die saldo van die besoldiging van die vonnisskuldenaar bo en behalwe sodanige voldoende middele, sal raak.'

In die Landdroshof vir die distrik gehou te
.....

Saak No. van

In die saak tussen

.....Vonnisskuldeiser.
en

.....Vonnisskuldenaar.

.....Identifiserende besonderhede van
.....vonnisskuldenaar met inbegrip van
.....sy of haar identiteits- of
.....werksnommer of geboortedatum en
.....adres.

.....Beslagskuldenaar.

.....Adres van beslagskuldenaar.

Nademaal dit vir bogenoemde Hof geblyk het dat besoldiging tans of in die toekoms deur die beslagskuldenaar aan die vonnisskuldenaar verskuldig is of van die beslagskuldenaar aan die vonnisskuldenaar toekom en dat nadat aan ondergenoemde bevel voldoen is, die vonnisskuldenaar genoegsame middele sal hê om hom of haar en sy of haar afhanklikes te onderhou;

Word daar beveel:

- (1) Dat daar op genoemde besoldiging beslag gelê word;
- (2) Dat die beslagskuldenaar aan die vonnisskuldeiser of sy of haar prokureur op die dag van elke maand/week na uitreiking van hierdie bevel die bedrag van R..... van genoemde vonnisskuldenaar se besoldiging betaal totdat daar 'n bedrag betaal is wat voldoende is om die vonnis of bevel te dek wat die vonnisskuldeiser in die Hof te op die dag van vir die bedrag van R (ten opsigte van welke vonnis of bevel die bedrag van R..... nog verskuldig is) met koste ten bedrae van R..... en die koste van beslaglegging ten bedrae van R..... teen die vonnisskuldenaar verkry het asook R aan baljugelede.

Gedateer te op hede die dag van, 20.....

Op Las van die Hof,

.....

Klerk van die Hof.

.....
Vonnisskuldeiser/Prokureur vir

Vonnisskuldeiser.

Adres van Vonnisskuldeiser/Prokureur vir

Vonnisskuldeiser:

.....

.....

.....

Die aandag word gevestig op die bepalings van artikel 65J(10) van die Wet op Landdroshowe, 1944, wat soos volg lui:

" 'n Beslagskuldenaar kan vir die dienste deur hom gelewer ingevolge 'n besoldigingbeslagbevel 'n kommissie van hoogstens 5 persent van alle bedrae deur hom afgetrek van die vonnisskuldenaar se besoldiging op die vonnisskuldeiser verhaal deur daardie kommissie af te trek van die bedrag wat aan die vonnisskuldeiser betaalbaar is."

Inwerkingtreding

3. Hierdie reëls tree op **23 Augustus 2004** in werking.

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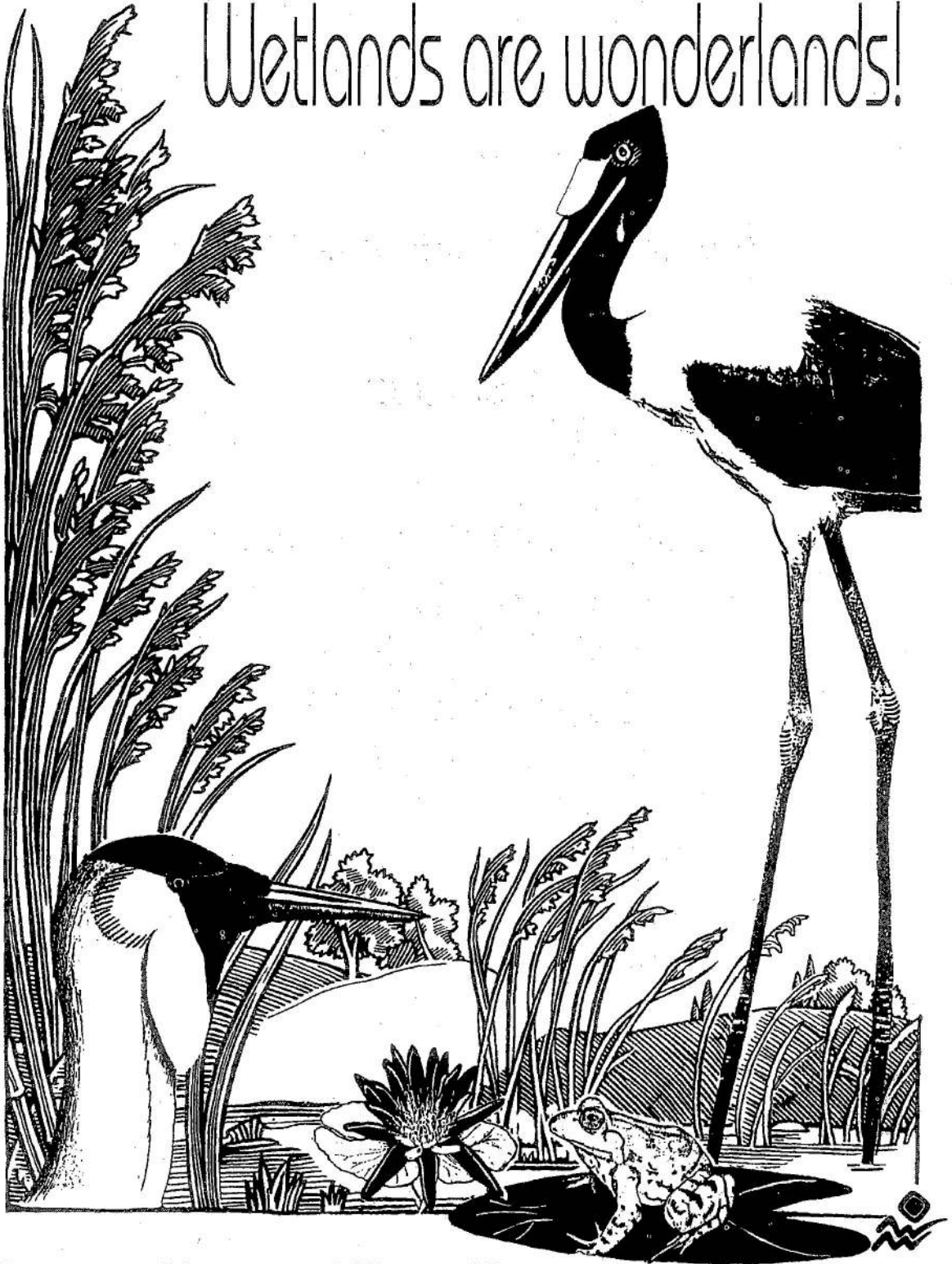
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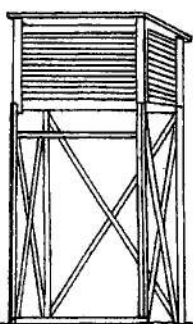
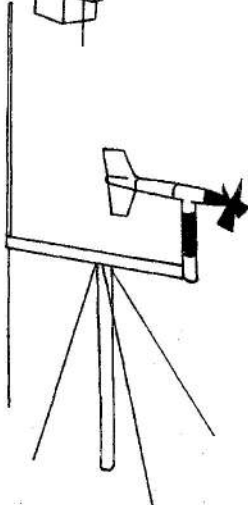
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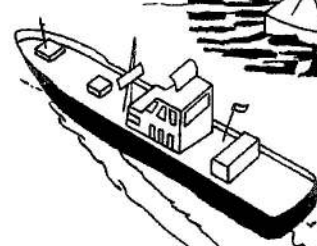
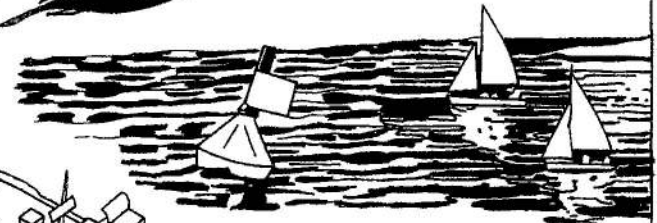
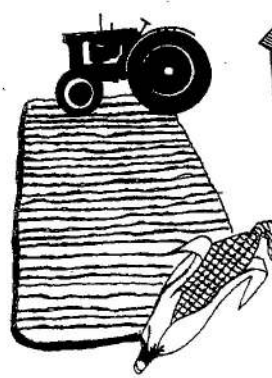
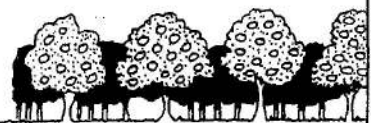
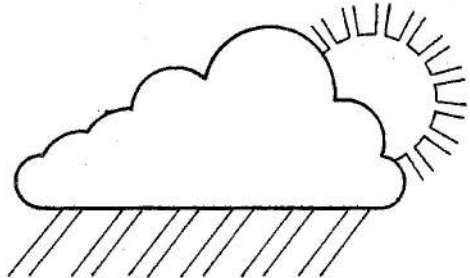


Department of Environmental Affairs and Tourism

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