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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 657.

28 March 1991

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

No. 4 of 1991: Judicial Matters Amendment Act, 1991.

No. 657.

28 Maart 1991

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

No. 4 van 1991: Wysigingswet op Geregtelike Aangeleenthede, 1991.

Act No. 4, 1991

JUDICIAL MATTERS AMENDMENT ACT, 1991

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 Magistrates' Courts Act, 1944, so as to bring the definition of "the rules" into line with the provisions of the Rules Board for Courts of Law Act, 1985; to provide that any person other than an attorney or an agent referred to in section 22 commits an offence if he recovers any fees or remuneration from a debtor in connection with the collection of any debt; and to increase the fine which may be imposed in terms of section 108 of the Act; to amend the Supreme Court Act, 1959, so as to effect a technical correction; to provide for the granting of default judgments by registrars; and to further regulate the production of any document or thing; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 15 March 1991.)*

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

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974, section 1 of Act 105 of 1982 and section 2 of Act 34 of 1986

5

1. Section 1 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act); is hereby amended by the substitution for the definition of "the rules" of the following definition:

"the rules" means the rules **[made under section 25]** referred to in section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);

10

Amendment of section 60 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976

2. Section 60 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(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."

15

Amendment of section 108 of Act 32 of 1944, as substituted by section 13 of Act 19 of 1985

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3. Section 108 of the principal Act is hereby amended by the substitution in subsection (1) for the expression "R500" of the expression "R2 000".

WYSIGINGSWET OP GEREGETELIKE AANGELEENTHEDE, 1991

Wet No. 4, 1991

ALGEMENE VERDUIDELIKENDE NOTA:

- []** Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeningen aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeningen aan.

WET

Tot wysiging van die Wet op Landdroshowe, 1944, om die omskrywing van "die reëls" in ooreenstemming te bring met die bepalings van die Wet op die Reëlsraad vir Geregshowe, 1985; te bepaal dat iemand anders as 'n prokureur of 'n in artikel 22 bedoelde agent 'n misdryf pleeg indien hy enige gelde of vergoeding in verband met die invordering van 'n skuld op 'n skuldenaar verhaal; en die boete wat ingevolge artikel 108 van die Wet opgelê kan word, te verhoog; tot wysiging van die Wet op die Hooggereghof, 1959, ten einde 'n tegniese regstelling aan te bring; voorsiening te maak vir die toestaan van verstekvonnisse deur griffiers; en om die oorlegging van 'n stuk of saak verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 15 Maart 1991.)

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

Wysiging van artikel 1 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 53 van 1970 en gewysig deur artikel 23 van Wet 94 van 1974, artikel 1 van Wet 105 van 5 1982 en artikel 2 van Wet 34 van 1986

1. Artikel 1 van die Wet op Landdroshowe, 1944 (hieronder die Hoofwet genoem), word hierby gewysig deur die omskrywing van "die reëls" deur die volgende omskrywing te vervang:

10 "die reëls" **[die kragtens artikel 25 uitgevaardigde reëls]** die reëls bedoel in artikel 6 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985);".

Wysiging van artikel 60 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 63 van 1976

15 2. Artikel 60 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg, terwyl die bestaande artikel subartikel (1) word:

 "(2) Iemand wat 'n bepaling van subartikel (1) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R4 000, of, by wanbetaling, met gevangenisstraf vir 'n tydperk van hoogstens 12 maande, of met daardie boete sowel as daardie gevangenisstraf.".

20 Wysiging van artikel 108 van Wet 32 van 1944, soos vervang deur artikel 13 van Wet 19 van 1985

3. Artikel 108 van die Hoofwet word hierby gewysig deur in subartikel (1) die uitdrukking "R500" deur die uitdrukking "R2 000" te vervang.

Act No. 4, 1991

JUDICIAL MATTERS AMENDMENT ACT, 1991

Amendment of section 10 of Act 59 of 1959, as amended by section 1 of Act 85 of 1963, section 1 of Act 41 of 1970, section 2 of Act 3 of 1977, section 1 of Act 18 of 1985, section 2 of Act 87 of 1985, section 3 of Act 98 of 1987 and section 16 of Act 88 of 1989

4. Section 10 of the Supreme Court Act, 1959, is hereby amended by the addition to subsection (1) of the following paragraphs:

- (b) An appointment under this subsection may in the case of a person holding office in an acting capacity by virtue of any appointment under subsection (3) or (4), be made with retrospective effect from the commencement of the period during which he so held office, or, where he has so held office for two or more periods which together constitute a single uninterrupted period, from the commencement of the first of such periods.
- (c) (i) A deputy judge president of a provincial division may be appointed by the State President indefinitely or for such period as he may determine.
- (ii) A deputy judge president of a provincial division, designated by the State President, shall act as the judge president of that division during the latter's absence, and the deputy judges president shall perform such other functions of that judge president as the judge president may assign to them .".

Insertion of section 27A in Act 59 of 1959

5. The following section is hereby inserted in the Supreme Court Act, 1959, after section 27:

"Judgment by default

27A. (1) A judgment by default may be granted and entered by the registrar in the manner and in the circumstances prescribed in the Rules made in terms of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(2) Any judgment by default entered in terms of subsection (1) shall be submitted to a judge in chambers for confirmation.

(3) Any judgment by default confirmed by a judge in chambers shall be deemed to be a judgment of the court .".

Substitution of section 30 of Act 59 of 1959, as amended by section 7 of Act 85 of 1963, Proclamation 222 of 6 November 1981 and section 3 of Act 18 of 1985

6. The following section is hereby substituted for section 30 of the Supreme Court Act, 1959:

"Manner of securing attendance of witnesses or the production of any document or thing in civil proceedings and penalties for failure

30. (1) A party to civil proceedings before the court of any division in which the attendance of witnesses or the production of any document or thing is required may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of court.

(2) Whenever any person subpoenaed to attend any civil proceedings as a witness or to produce any document or thing fails without reasonable excuse to obey the subpoena and it appears from the return of the proper officer or from evidence given under oath that the subpoena was served upon the person to whom it is directed and that his reasonable expenses calculated in accordance with the tariff framed under section 42 (1) have been paid or offered to him, or that he is evading service, or if any person who has attended in obedience to a subpoena fails to remain in attendance, the court in which the said proceedings are conducted, may issue a warrant directing that he be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible.

Wysiging van artikel 10 van Wet 59 van 1959, soos gewysig deur artikel 1 van Wet 85 van 1963, artikel 1 van Wet 41 van 1970, artikel 2 van Wet 3 van 1977, artikel 1 van Wet 18 van 1985, artikel 2 van Wet 87 van 1985, artikel 3 van Wet 98 van 1987 en artikel 16 van Wet 88 van 1989

5 4. Artikel 10 van die Wet op die Hooggereghof, 1959, word hierby gewysig deur die volgende paragrawe by subartikel (1) te voeg:

- 10 "(b) 'n Aanstelling kragtens hierdie subartikel kan, in die geval van iemand wat dan uit hoofde van 'n aanstelling kragtens subartikel (3) of (4) in waarnemende hoedanigheid dien, terugwerkend gemaak word vanaf die begin van die tydperk wat hy aldus gedien het, of, waar hy vir twee of meer tydperke wat tesame 'n enkele ononderbroke tydperk uitmaak, aldus gedien het, vanaf die begin van die eerste van daardie tydperke.
- 15 (c) (i) 'n Adjunk-regter-president van 'n provinsiale afdeling kan deur die Staatspresident vir 'n onbepaalde tyd of vir die tydperk wat hy bepaal, aangestel word.
- 20 (ii) 'n Adjunk-regter-president van 'n provinsiale afdeling, aangewys deur die Staatspresident, moet optree as die regter-president van daardie afdeling tydens laasgenoemde se afwesigheid, en die adjunk-regters-president verrig die ander werksaamhede van daardie regter-president wat die regter-president aan hulle opdra.'".

Invoeging van artikel 27A in Wet 59 van 1959

5. Die volgende artikel word hierby in die Wet op die Hooggereghof, 1959, na artikel 27 ingevoeg:

"Vonnis by versteek"

- 25 **27A.** (1) 'n Vonnis by versteek kan deur die griffier toegestaan en aangeteken word op die wyse en in die omstandighede wat voorgeskryf word in die Reëls wat ingevolge die Wet op die Reëlsraad vir Gereghowe, 1985 (Wet No. 107 van 1985), gemaak is.
- 30 (2) 'n Vonnis by versteek wat ingevolge subartikel (1) aangeteken is, word aan 'n regter in kamers voorgelê vir bekragtiging.
- (3) 'n Vonnis by versteek bekragtig deur 'n regter in kamers word geag 'n vennis van die hof te wees."

Vervanging van artikel 30 van Wet 59 van 1959, soos gewysig deur artikel 7 van Wet 85 van 1963, Proklamasie 222 van 6 November 1981 en artikel 3 van Wet 18 van 1985

35 6. Artikel 30 van die Wet op die Hooggereghof, 1959, word hierby deur die volgende artikel vervang:

"Manier om verskyning van getuies of die oorlegging van 'n stuk of saak in siviele gedinge te verseker en strawwe vir versuim"

- 40 **30.** (1) 'n Party by 'n siviele geding voor die hof van 'n afdeling in verband waarmee die aanwesigheid van getuies of die oorlegging van 'n stuk of saak vereis word, kan die aanwesigheid van 'n getuie of die oorlegging van 'n stuk of saak verkry op die wyse in die hofreëls bepaal.
- 45 (2) Wanneer iemand wat gedagvaar is om as 'n getuie by 'n siviele geding aanwesig te wees of om 'n stuk of saak oor te lê, sonder redelike verskoning versuim om die dagvaarding te gehoorsaam en dit uit die relaas van die bevoegde beampot of uit getuienis onder eed afgelê, blyk dat die dagvaarding bestel is aan die persoon aan wie dit gerig is en dat sy redelike uitgawes, bereken ooreenkomsdig die tarief kragtens artikel 42 (1) voorgeskryf, aan hom betaal of aangebied is, of dat hy bestelling van die dagvaarding ontwyk, of indien iemand wat ter voldoening aan 'n dagvaarding opgedaan het, versuim om aanwesig te bly, kan die hof waarin die geding gevoer word 'n lasbrief uitrek waarby gelas word dat hy in hegtenis geneem en op 'n tyd en plek in die lasbrief vermeld of so spoedig moontlik daarna voor die hof gebring word.

Act No. 4, 1991**JUDICIAL MATTERS AMENDMENT ACT, 1991**

(3) A person arrested under any such warrant [**or any like warrant issued by the Supreme Court of South West Africa**] may be detained thereunder before the court which issued it or in any gaol or lock-up or other place of detention or in the custody of the person who is in charge of him with a view to securing his presence as a witness or to produce any document or thing at the said proceedings: Provided that the court may release him on a recognizance with or without sureties for his appearance to give evidence or to produce any document or thing as required and for his appearance at the enquiry referred to in subsection (4).

(4) The court may in a summary manner enquire into such person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance, and may, unless it is proved that such person has a reasonable excuse for such evasion or failure, sentence him to a fine not exceeding [R300] R1 000 or to imprisonment for a period not exceeding three months.

(5) Any sentence imposed by the court under subsection (4) shall be enforced and shall be subject to appeal as if it were a sentence imposed in a criminal case.

(6) If a person who has entered into any recognizance for his appearance to give evidence at such proceedings or to produce any document or thing or for his appearance at an enquiry referred to in subsection (4) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to attend such proceedings or appear at such enquiry.”.

Short title and commencement

25

7. (1) This Act shall be called the Judicial Matters Amendment Act, 1991.

(2) Section 4 shall be deemed to have come into operation on 1 April 1989.

(3) Section 5 shall come into operation on a date fixed by the State President by proclamation in the *Gazette* and different dates may be so fixed in respect of different divisions of the Supreme Court referred to in the Supreme Court Act, 1959 (Act No. 59 of 1959).

WYSIGINGSWET OP GEREGETELIKE AANGELEENTHEDE, 1991

Wet No. 4, 1991

- (3) Iemand wat ingevolge so 'n lasbrief [of 'n dergelyke lasbrief uitgereik deur die Hooggereghof van Suidwes-Afrika] in hegtenis geneem word, kan daaronder aangehou word voor die hof wat dit uitgereik het of in 'n tronk of opsluitplek of ander aanhoudingsplek of in die bewaring van die persoon wat hom in bewaring het, ten einde sy aanwesigheid as 'n getuie of om 'n stuk of saak oor te lê, by die betrokke geding te verseker: Met dien verstande dat die hof hom onder borgakte met of sonder borge vir sy verskyning om getuenis af te lê of om 'n stuk of saak oor te lê soos vereis en vir sy verskyning by die in subartikel (4) bedoelde ondersoek kan vrylaat.
- (4) Die hof kan summier ondersoek instel na so iemand se ontwyking van bestelling van die dagvaarding of versuim om die dagvaarding te gehoorsaam of om aanwesig te bly, en kan, tensy bewys word dat so iemand 'n redelike verskoning vir die ontwyking of versuim het, hom vonnis tot 'n boete van hoogstens [R300] R1 000 of tot gevangenisstraf vir 'n tydperk van hoogstens drie maande.
- (5) 'n Vonnis ingevolge subartikel (4) deur die hof opgelê, word ten uitvoer gelê en is onderhewig aan appèl asof dit 'n vonnis is wat in 'n strafsaak opgelê is.
- (6) Indien iemand wat 'n borgakte aangegaan het om te verskyn ten einde in so 'n geding getuenis af te lê of om 'n stuk of saak oor te lê of om by 'n in subartikel (4) bedoelde ondersoek te verskyn, versuim om aldus te verskyn, kan daar, afgesien van die verbeurdverklaring van sy borggeld, met betrekking tot hom gehandel word asof hy versuim het om 'n dagvaarding om by bedoelde geding aanwesig te wees, te gehoorsaam of om by bedoelde ondersoek te verskyn."

Kort titel en inwerkingtreding

7. (1) Hierdie Wet heet die Wysigingswet op Geregetlike Aangeleenthede, 1991.
(2) Artikel 4 word geag op 1 April 1989 in werking te getree het.
30 (3) Artikel 5 tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal en verskillende datums kan aldus ten opsigte van verskillende afdelings van die Hooggereghof bedoel in die Wet op die Hooggereghof, 1959 (Wet No. 59 van 1959), bepaal word.

