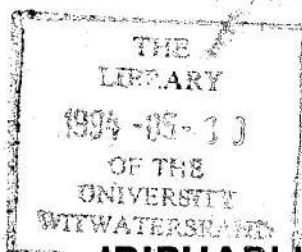
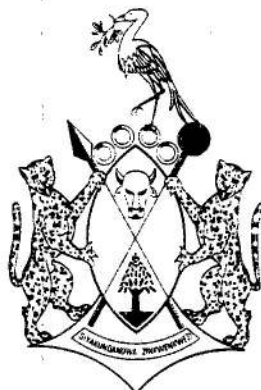


LAW



**IRIPHABLIKI  
YECISKEI**

**REPUBLIC OF  
CISKEI**



**IGAZETHI  
YOBURHULUMENTE**

**GOVERNMENT  
GAZETTE**

DIMBAZA PRINTERS — 46449

Price 30c

**Umq. 22**

**eBISHO  
25/03/94**

**No. 30**

**Vol. 22**

**BISHO  
25/03/94**

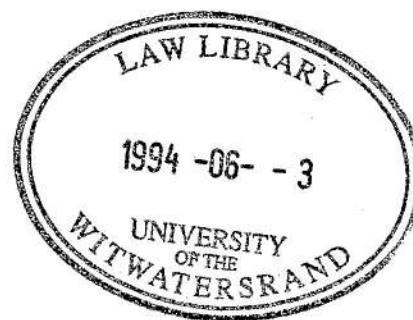
**No. 30**

**DEPARTMENT OF THE COUNCIL OF STATE**

**GOVERNMENT NOTICE No. 15 OF 1994**

**It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-**

**MAGISTRATES' COURTS AMENDMENT DECREE, 1994  
Decree No. 9 of 1994**



# COUNCIL OF STATE — REPUBLIC OF CISKEI

## MAGISTRATES' COURTS AMENDMENT DECREE, 1994

### DECREE

**To amend the Magistrates' Courts Act, 1944.**

*[English text signed by the Chairman of the Council of State. Assented to on 14 March 1994.]*

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

**1. Substitution of section 29 of Act 32 of 1944, as substituted by section 4 of Decree 41 of 1990 and amended by section 27 of Decree 7 of 1992 and section 2 of Decree 8 of 1992.** - The following section is hereby substituted for section 29 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act):

**"29. Jurisdiction in respect of causes of action.** - (1) Subject to the provisions of this Act, the court shall have jurisdiction in respect of causes of action -

(a) in actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding twenty thousand rand in value;

(b) in 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 twenty thousand rand in clear value to the occupier;

(c) in actions for the determination of a right of way, notwithstanding the provisions of section 46;

(d) in actions arising out of a liquid document or a mortgage bond where the claim does not exceed fifty thousand rand;

(e) in actions on or arising out of any credit agreement as defined in section 1 of the Credit Agreements Act, 1980 (Act 75 of 1980) where the claim or the value of the property in dispute does not exceed fifty thousand rand;

(eA) in actions in terms of section 16(1) of the Matrimonial Property Decree, 1992 where the claim or the value of the property in dispute does not exceed fifty thousand rand; and

(f) in actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed twenty thousand rand.

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

**2. Substitution of section 46 of Act 32 of 1944, as substituted by section 5 of Decree 41 of 1990 and amended by section 3 of Decree 8 of 1992.** - The following section is hereby substituted for section 46 of the principal Act:

**"46. Matters beyond the jurisdiction.** - (1) The court shall have no jurisdiction in matters in which the dissolution of a marriage other than a customary marriage 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 twenty thousand rand;

## MAGISTRATES' COURTS AMENDMENT DECREE, 1994

- (ii) the delivery or transfer of property, movable or immovable, not exceeding twenty thousand rand in value; or
- (iii) the delivery or transfer of property, movable or immovable, exceeding twenty thousand rand in value, where the consent of the parties has been obtained in terms of section 45; or
- (d) in which is sought a decree of perpetual silence."

**3. Substitution of section 50 of Act 32 of 1944, as substituted by section 15 of Act 14 of 1983 and amended by section 6 of Decree 41 of 1990 and section 3 of Decree 8 of 1992.** - The following section is hereby substituted for section 50 of the principal Act:

**"50. Removal of action from court to Supreme Court.** - (1) Any action in which the amount of the claim exceeds one thousand five hundred rand, exclusive of interest and costs, may, upon the application to the court by the defendant, or if there is more than one defendant by any defendant, be removed to the Supreme Court, subject to the following provisions:

(a) notice of intention to make such application shall be given to the plaintiff and to the 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 one thousand five hundred rand, for costs already incurred in the action and which may be incurred in the Supreme Court.

Upon compliance by the applicant with the aforesaid provisions, all proceedings in the action in the court shall be stayed and the action and all proceedings therein shall, if the plaintiff so requests, be, as to the defendant or defendants, forthwith removed from the court into the Supreme Court.

Upon such removal the summons in the court shall, as to the defendant or defendants, stand as the summons in the Supreme Court, the return date thereof being, in an action other than one founded on a liquid document, the date of the order of removal and, in an action founded on a liquid document, such convenient day on which the Supreme Court sits for the hearing of provisional sentence cases as the court may order: Provided that the plaintiff in the action may, instead of requesting that the action be so removed, issue a fresh summons against the defendant or defendants in the Supreme court whereupon the costs already incurred by the parties to the action shall be costs in the cause.

(2) If, in an action so removed to the Supreme Court, the plaintiff is successful, he may be awarded costs as between attorney and client."

**4. Amendment of section 51 of Act 32 of 1944, as amended by section 7 of Act 19 of 1963, section 9 of Act 80 of 1964 and section 5 of Act 91 of 1977.** - Section 51 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(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 51*bis* have been paid or offered to him, impose upon the said person a fine not exceeding three hundred rand or, 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."

## MAGISTRATES' COURTS AMENDMENT DECREE, 1994

5. Amendment of section 60 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976 and amended by section 8 of Act 41 of 1990 and section 4 of Decree 8 of 1992. - Section 60 of the principal Act is hereby amended by the addition of the following subsection:

"(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment."

6. Amendment of section 65I of Act 32 of 1944, as substituted by section 10 of Decree 8 of 1992. - Section 65I of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If upon receipt of the statement referred to in subsection (2) it appears that the judgment debtor's total debts do not exceed R20 000, the court may grant an administration order under section 74 in respect of the judgment debtor's estate."

7. Substitution of section 67 of Act 32 of 1944, as amended by section 25 of Act 93 of 1962, section 18 of Decree 41 of 1990 and section 14 of Decree 8 of 1992. - The following section is hereby substituted for section 67 of the principal Act:

"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 sum of one thousand rand;

(c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of one thousand rand;

(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 sum of one thousand rand;

(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 sum of one thousand rand;

(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 sums referred to in paragraphs (b), (c), (d), (e) and (f) to the extent of not more than twice such sums."

8. Substitution of section 74 of Act 32 of 1944, as substituted by section 6 of Act 63 of 1976 and amended by section 19 of Decree 41 of 1990 and section 15 of Decree 8 of 1992. - The following section is hereby substituted for section 74 of the principal Act:

"74. Granting of administration order. - (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 R20 000,

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 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.

## MAGISTRATES' COURTS AMENDMENT DECREE, 1994

(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 R20 000 but in such a case the court may, if it deems fit, rescind the order."

**9. Amendment of section 89 of Act 32 of 1944, as substituted by section 1 of Act 75 of 1959 and amended by section 7 of Act 91 of 1977.** - Section 89 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The court of a regional division shall have jurisdiction over all offences except treason."

**10. Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974 and amended by section 9 of Act 91 of 1977, section 20 of Decree 41 of 1990 and section 18 of Decree 8 of 1992.** - Section 92 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) by fine may impose a fine not exceeding R20 000, where the court is not the court of a regional division, or not exceeding R200 000, where the court is the court of a regional division."

**11. Substitution of section 106 of Act 32 of 1944, as substituted by section 63 of 1976.** - The following section is hereby substituted for section 106 of the principal Act:

**"106. Penalty for disobedience of order of court.** - Any person wilfully disobeying or neglecting to comply with any 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 on conviction be liable to a fine not exceeding R500 or to imprisonment for a period not exceeding 6 months or to such imprisonment without the option of a fine: Provided that, for the purposes of this section "order" shall not include an order referred to in section 65, 65E, 65G, 65I, 65J, 65K, 72, 74 or 74J."

**12. Substitution of section 107 of Act 32 of 1944, as substituted by section 19 of Act 53 of 1970.** - The following section is hereby substituted for section 107 of the principal Act:

**"107. Offences relating to execution.** - Any person who -

(a) obstructs a messenger or deputy-messenger in the execution of his duties, or  
(b) 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; or

(c) being a judgment debtor and being required by a messenger or deputy-messenger to point out property to satisfy a warrant issued in execution of a judgment against such person, either -

(i) falsely declares to that messenger or deputy-messenger that he possesses no property or not sufficient property to satisfy the warrant; or

(ii) although owning such property, neglects or refuses to point out the same; or

(d) being a judgment debtor, refuses or neglects to comply with any requirement of a messenger or deputy-messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine."

**13. Substitution of section 108 of Act 32 of 1944, as amended by section 23 of Act 19 of 1963.** - The following section is hereby substituted for section 108 of the principal Act:

## MAGISTRATES' COURTS AMENDMENT DECREE, 1994

**"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 to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine. In this subsection "court" includes a preparatory examination held under the law relating to criminal procedure.

(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."

**14. Substitution of section 110 of Act 32 of 1944, as substituted by section 28 of Act 14 of 1983. -** The following section is hereby substituted for section 110 of the principal Act:

**"110. Jurisdiction on plea of ultra vires. -** No magistrate's court shall be a competent to pronounce upon the validity of a statutory proclamation of the Head of State or of an ordinance which continues to apply in Ciskei by virtue of the provisions of section 37(1) of the Republic of Ciskei Constitution Decree, 1990 (Decree 45 of 1990) and every such court shall assume that every such proclamation or ordinance is valid; but every such court shall be competent to pronounce upon the validity of any statutory regulation, order or by-law.

**15. Short title. -** This decree shall be called the Magistrates' Courts Amendment Decree, 1994.



OKUQULATHIWEYO			CONTENTS		
<i>Isaziso sika-</i>	<i>Inani</i>	<i>Inani le</i>	<i>Govt.</i>	<i>Page</i>	<i>Gazette</i>
<i>Rhulumente No.</i>	<i>leKhasi</i>	<i>Gazethi</i>	<i>Notice No.</i>	<i>No.</i>	<i>No.</i>
<b>15</b>		<b>30</b>	<b>15</b>		<b>30</b>
DEPARTMENT OF THE COUNCIL OF STATE			DEPARTMENT OF THE COUNCIL OF STATE		
GOVERNMENT NOTICE No. 15 OF 1994			GOVERNMENT NOTICE No. 15 OF 1994		
Magistrates' Courts Amendment Decree, 1994 (Decree No. 9 of 1994)			Magistrates' Courts Amendment Decree, 1994 (Decree No. 9 of 1994)		