

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
COURTS OF LAW
AMENDMENT BILL**

[B 8—2016]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 8A—2016]

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AMENDMENTS AGREED TO

COURTS OF LAW AMENDMENT BILL
[B 8—2016]

CLAUSE 1

1. On page 2, in line 8, to omit “after the definition of “Minister” ” and after “following” to omit “definition” and to substitute “definitions”.
2. On page 2, after line 8, to insert:
 - “(a) after the definition of “court”:
 “**‘court day’ means any day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by this Act or fixed by any order of court;’**”
 - (b) after the definition of “Minister”:

CLAUSE 2

1. On page 3, in line 1, after “court” to omit “must” and to substitute “may”.
2. On page 3, from lines 4 to 15, to omit from “(3) up to “fit”, and to substitute:

“(3) (a) Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid in full, whether the consent of the judgment creditor for the rescission of the judgment has been obtained or not, a court may, on application by the judgment debtor or any other person affected by the judgment rescind that judgment.

(b) The application contemplated in paragraph (a)—

 - (i) must be made on a form which corresponds substantially with the form prescribed in the rules;
 - (ii) must be accompanied by reasonable proof that the judgment debt, the interest and the costs have been paid;
 - (iii) must be accompanied by proof that the application has been served on the judgment creditor, at least 10 court days prior to the hearing of the intended application;
 - (iv) may be set down for hearing on any day, not less than 10 court days, after service thereof; and
 - (v) may be heard by a magistrate in chambers.

(4) A court may make any cost order it deems fit with regard to an application contemplated in paragraph (a).”

NEW CLAUSE

That the following be a new clause:

“Insertion of section 55A in Act 32 of 1944

4. The following section is hereby inserted in the Magistrates’ Courts Act, 1944, after section 55:

“Factors to be taken into account when considering an order which is just and equitable

55A. For purposes of Chapters VIII and IX of this Act, the factors a court must take into account when considering whether an order is just and equitable, include, but are not limited to—

- (a) the size of the debt;
- (b) the circumstances in which the debt arose;
- (c) the availability of alternatives to recover the debt;
- (d) the interests of the plaintiff or judgment creditor;
- (e) the rights and needs of the elderly, children, persons with disabilities and households headed by women;
- (f) social values and implications;
- (g) the amount and nature of the defendant’s or judgment debtor’s income;
- (h) the amounts needed by the defendant or judgment debtor for necessary expenses and those of the persons dependent on him or her and for the making of periodical payments which he or she is obliged to make in terms of an order of court, agreement or otherwise in respect of his or her other commitments; and
- (i) whether the order would, in the circumstances of the case, be grossly disproportionate.”

CLAUSE 4

1. On page 4, in line 5, after “expenditure” to insert “, supported where reasonably possible by the most recent proof in the possession of the defendant”.
2. On page 4, in line 8, to omit “(iii) assets and liabilities;”.
3. On page 4, in line 9, to omit “;” and to substitute “.”.
4. On page 4, from lines 10 to 17, subclause (1A)(c) and (d) rejected.
5. On page 4, in line 20, to omit “must” and to substitute “may”.
6. On page 4, in line 55, to omit “may”.
7. On page 4, in line 56, before “request” to insert “may”.
8. On page 4, in line 56, after “request” to insert “any relevant information”.
9. On page 4, in lines 56 to 58, after “attorney” to omit “more information or the latest documentary evidence of the particulars of the defendant referred to in subsection (1A)”.
10. On page 4, in line 60, before “act” to insert “must”.
11. On page 5, in line 3, before “if” to insert “may,”.
12. On page 5, in lines 3 to 5, after “and” to omit “if the court is satisfied that the defendant will have sufficient means for his or her own maintenance and that of his or her dependants after payment of the instalment” and to substitute “after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate”.
13. On page 5, in line 8, before “notwithstanding” to insert “may,”.

14. On page 5, in line 14, after “days” to omit “from the date the judgment was entered” and to substitute “after it has received knowledge that judgment has been entered and an order made”.

CLAUSE 5

1. On page 5, in line 32, to omit “must” and to substitute “may”.
2. On page 5, in line 52, after “expenditure” to insert “, supported where reasonably possible by the most recent proof in the possession of the defendant”.
3. On page 5, in line 55, to omit “(iii) assets and liabilities;”.
4. On page 5, in line 56, to omit “;” and to substitute “.”.
5. On page 5, from lines 57 to 60, subclause (1A)(c) rejected.
6. On page 6, from lines 1 to 4, subclause (1A)(d) rejected.
7. On page 6, in line 17, after “court” to omit “may”.
8. On page 6, in line 18, before “request” to insert “may”.
9. On page 6, in line 18, after “request” to insert “any relevant information”.
10. On page 6, in lines 18 to 20, after “attorney” to omit “more information or the latest documentary evidence of the particulars of the defendant referred to in subsection (1A)”.
11. On page 6, in line 23, before “act” to insert “must”.
12. On page 6, in line 28, before “if” to insert “may,”.
13. On page 6, in lines 28 to 30, after “and” to omit “if the court is satisfied that the defendant will have sufficient means for his or her own maintenance and that of his or her dependants after payment of the instalment” and to substitute “after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate”.
14. On page 6, in line 33, before “notwithstanding” to insert “may,”.

CLAUSE 6

1. On page 6, in line 50, to omit “must” and to substitute “may”.
2. On page 6, in lines 55 to 59, after “supported” to omit from “by—” to “and”.
3. On page 7, in lines 1 to 2, to omit from “(b)” up to “debtor’s” and to insert “, where reasonably possible, by the most recent proof in the possession of the debtor relating to his or her income and”.
4. On page 7, in line 5, to omit “may”.
5. On page 7, in line 6, before “request” to insert “may”.
6. On page 7, in line 6, after “request” to insert “any relevant information”.

7. On page 7, in lines 6 to 9, after “attorney” to omit “more information or the latest documentary evidence of the particulars of the judgment debtor referred to in subsection (2) and as prescribed by the rules”.
8. On page 7, in line 12, before “act” to insert “must”.
9. On page 7, in line 17, before “if” to insert “may”.
10. On page 7, in line 17, after “and” to omit “if the court is satisfied that the judgment debtor will have sufficient means for his or her own maintenance and that of his or her dependants after payment of the instalment” and to substitute “after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate”.

CLAUSE 7

1. On page 7, in line 50, after “person” to omit “, if the court is satisfied that the defendant will have sufficient means for his or her own maintenance and that of his or her dependants after payment of the instalment” and to substitute “and is employed and after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate”.

CLAUSE 8

1. On page 8, in line 24, after “(1A)” to insert “(a)”.
2. On page 8, in line 27, after “debtor’s” to insert “basic”.
3. On page 8, after line 27, to insert:

“(b) For purposes of this section, “basic salary” means the annual gross salary a judgment debtor is employed on divided by 12 and excludes additional remuneration for overtime or other allowances.

(c) (i) When a court considers—

(aa) the authorisation of an emoluments attachment order; or

(bb) any other order contemplated in this section,

and after having considered all submissions before the court and after having called for and considered all further available documents, the court is satisfied that other emoluments attachment orders exist against the judgment debtor, the court must postpone the further consideration of the authorisation or other order and set the matter down for hearing.

(ii) The party applying for the authorisation of an emoluments attachment order or other order contemplated in this section, must serve notice of the date of the hearing referred to in subparagraph (i) on the other creditors or their attorneys, and on the judgment debtor, if he or she was not present or represented when the consideration of the authorisation of an emoluments attachment order or other order was postponed.

(iii) The court may after hearing all parties at the ensuing hearing, make an order regarding the division of the amount available to be committed to each of the emoluments attachment orders, after satisfying itself that each order is just and equitable and the sum of the total amount of the emoluments attachment orders is appropriate and does not exceed 25 per cent of the judgment debtor’s basic salary.”.

4. On page 8, in line 30, after “authorised” to insert “after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate,”.
5. On page 8, in lines 31 to 33, after “otherwise” to omit “upon proof to the satisfaction of the court that the judgment debtor will have sufficient means for his or her own maintenance and that of his or her dependants after payment of the instalment,”.
6. On page 8, in lines 52 to 54, after “notice,” to omit “in the form prescribed by the rules, of the intention to obtain an emoluments attachment order against the judgment debtor” and to substitute “which corresponds substantially with the form prescribed in the rules, of the intention to have an emoluments attachment order issued against the judgment debtor in accordance with the authorisation of the court referred to in subsection (2).”.
7. On page 8, in line 57, after “to” to omit “obtain” and to substitute “have”.
8. On page 8, in line 58, after “order” to insert “issued against the judgment debtor”.
9. On page 9, in line 14, after “debtor’s” to insert “basic”.
10. On page 9, in lines 19 to 22, to omit all the words after “a” up to “instalments” and to substitute:

“a certificate by the employer of the judgment debtor setting out particulars of—
 (aa) all existing court orders against the judgment debtor or agreements with other creditors for payment of a debt and costs in instalments; and
 (bb) when reasonably attainable, the amounts needed by the debtor for necessary expenses and those of the persons dependent on him or her and for the making of periodical payments which he or she is obliged to make in terms of an agreement or otherwise in respect of his or her other commitments.”.
11. On page 9, after line 33, to insert:

“(2E) The court may, after hearing all parties and after satisfying itself that the order is just and equitable—
 (a) 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 the sufficient means necessary for his or her maintenance and that of his or her dependants; or
 (b) make any order, including an order regarding the division of the amount available to be committed to all the emoluments attachment orders, after satisfying itself that the amount is appropriate and does not exceed 25 per cent of the judgment debtor’s basic salary and an order as to costs.”.
12. On page 9, in line 44, after “the” to omit “authorisation”.
13. On page 9, in line 47, after “and” to insert “if”.
14. On page 9, in line 48, after “debtor” to insert “was not present or represented when the emoluments attachment order was authorised, also on the judgment debtor,”.
15. On page 9, in line 61, after “a”, to omit “monthly” and substitute “quarterly”.

16. On page 10, after line 15, to insert:
- “(b) The written notification referred to in paragraph (a) must set out the reasons for believing or knowing that the judgment debtor will not have sufficient means for his or her own maintenance or that of his or her dependants or that the amounts claimed are erroneous or not in accordance with the law.”.
17. On page 10, in line 16, to omit “(b)” and to substitute “(c)”.
18. On page 10, in line 17, after “delay” to insert “indicate whether he or she accepts the reasons given in that notification and if not,”.
19. On page 10, in line 20, to omit “(c)” and to substitute “(d)”.
20. On page 10, in line 20, after “parties” to insert “and after satisfying itself that the order is just and equitable”.
21. On page 10, in line 23, after “above”, to omit “such” and to substitute “the” and after “means” to insert “necessary for his or her maintenance and that of his or her dependants”.
22. On page 10, in line 24, after “order” to omit “it deems fit and reasonable in the circumstances” and to substitute “including an order regarding the division of the amount available to be committed to all the emoluments attachment orders, after satisfying itself that the amount is appropriate and does not exceed 25 per cent of the judgment debtor’s basic salary and an order as to costs.”.
23. On page 10, in lines 25 to 26, to omit from “(d) to “subsection” ”.
24. On page 10, in line 61, before “fails” to insert “unreasonably”.
25. On page 11, in line 1, before “fails” to insert “unreasonably”.

CLAUSE 11

1. On page 11, in line 49, after the first “judgment” to insert “debt, the interest thereon at the rate granted in the judgment” and to omit “settled” and to substitute “paid”.

CLAUSE 13

1. On page 12, in line 15, to omit **“settled”** and to substitute **“paid”**.
2. On page 12, in lines 19 to 30, to omit from “Where” up to “fit” and to substitute:

“Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid, whether the consent of the judgment creditor for the rescission of the judgment has been obtained or not, a court may, on application by the judgment debtor or any other person affected by the judgment, rescind that judgment.

(b) The application contemplated in paragraph (a)—

- (i) must be made on a form which corresponds substantially with the form prescribed in the rules;
- (ii) must be accompanied by reasonable proof that the judgment debt, the interest thereon and the costs have been paid;
- (iii) must be accompanied by proof that the application has been served on the judgment creditor, at least 10 business days prior to the hearing of the intended application;

- (iv) may be set down for hearing on any day, not less than 10 business days after service thereof; and
- (v) may be heard by a judge in chambers.
- (c) A court may make any cost order it deems fit with regard to an application contemplated in paragraph (a).”.

CLAUSE 14

1. On page 12, in line 49, after “on” to insert “a form which corresponds substantially with”.
2. On page 12, in line 51, after “the” to omit “the other party has been notified, at least five” and to substitute “application has been served on the other party, at least 10 court”.
3. On page 12, in line 52, after “prior” to omit “,” and to insert “to the hearing”.
4. On page 12, in line 53, after “than” to omit “five days after the lodging” and to substitute “10 court days after service”.
5. On page 12, in line 55, after “heard” to insert “by a magistrate”.
6. On page 13, in line 6, after “(a)” to insert “: Provided that the judgment debtor or affected person who applies for the review contemplated in paragraph (a) acted reasonably in bringing the application”.
7. On page 13, in line 10, after “party” to omit “in the form of legal advice or”.

CLAUSE 15

1. On page 13, in line 25, after “(2)” to omit “Subject to subsection (3), different” and to substitute “Different”.
2. On page 13, in line 27, subclause (3) rejected.

SCHEDULE

1. On page 14, in the heading, to omit “14” and to substitute “15”.
2. On page 14, in the first paragraph, in the third line, to omit “09:00 or as soon as the matter may be heard” and to substitute “..... (time)”.

LONG TITLE

1. On page 2, in the first line, after “insert” to omit “a definition” and to substitute “**definitions**”.
2. On page 2, in the second line, to omit “settled” and to substitute “**paid**”.
3. On page 2, in the third line, after “parties;” to insert “**to regulate the factors a court must take into consideration to make a just and equitable order;**”.
4. On page 2, in the 13th line, after “been” to omit “settled” and to substitute “**paid**”.