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THE PRESIDENCY

No. 769 02 August 2017

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

Act No. 7 of 2017: Courts of Law Amendment Act, 2017

DIE PRESIDENSIE

No. 769 02 Augustus 2017

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

Wet No. 7 van 2017: Wysigingswet op Geregshowe, 2017

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GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 31 July 2017)

ACT

To amend the Magistrates' Courts Act, 1944, so as to insert definitions; to regulate the rescission of judgments where the judgment debt has been paid; to further regulate jurisdiction by consent of parties; to regulate the factors a court must take into consideration to make a just and equitable order; to further regulate the payment of debts in instalments or otherwise; to further regulate consent to judgments and orders for the payment of judgment debts in instalments; to further regulate offers by judgment debtors after judgment; to further regulate the issuing of emoluments attachment orders; to further regulate debt collection proceedings pursuant to judgments granted by a court for a regional division; to further regulate the suspension of execution of a debt; to further regulate the abandonment of judgments; and to provide for certain offences and penalties relating to judgments, emoluments attachment orders and instalment orders; to amend the Superior Courts Act, 2013, so as to provide for the rescission of judgments by consent and the rescission of judgments where the judgment debt has been paid; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts, 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, section 2 of Act 34 of 1986, section 1 of Act 4 of 1991, section 1 of Act 66 of 1998 and section 1 of Act 31 of 2008

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended—

(a) by the insertion after the definition of ''court'' of the following definition:

'' **'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;''; and

(b) by the insertion after the definition of ''Minister'' of the following definition:

'' **'National Credit Act'** means the National Credit Act, 2005 (Act No. 34 of 2005);''.

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ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vetdruk in vierkantige hake dui weglatings uit bestaande verordeninge aan.
__________	Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 31 Julie 2017)

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde woordomskrywings in te voeg; die tersydestelling van vonnisse waar die vonnisskuld betaal is, te reël; jurisdiksie met toestemming van partye verder te reël; die faktore wat 'n hof moet oorweeg om 'n regverdige en billike bevel te gee, te reël; die betaling van skulde in paaiemente of andersins verder te reël; toestemming tot vonnis en bevele vir betaling van vonnisskulde in paaiemente verder te reël; aanbiedinge deur vonnisskuldenaars na vonnis verder te reël; die uitreiking van besoldigingbeslagbevele verder te reël; die skuldinvorderingsprosedure na vonnisse deur 'n hof van 'n streekafdeling gevel, verder te reël; die opskorting van eksekusie van 'n skuld verder te reël; die afstanddoening van vonnisse verder te reël; vir sekere misdrywe en strawwe betreffende vonnisse, besoldigingbeslagbevele en paaiementsbevele voorsiening te maak; en tot wysiging van die Wet op Hoër Howe, 2013, ten einde voorsiening te maak vir die tersydestelling van vonnisse met toestemming en die tersydestelling van vonnisse waar die vonnisskuld betaal is; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

Die Parlement van die Republiek van Suid-Afrika bepaal, 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 1982, artikel 2 van Wet 34 van 1986, artikel 1 van Wet 4 van 1991, artikel 1 van Wet 66 van 1998 en artikel 1 van Wet 31 van 2008

1. Artikel 1 van die Wet op Landdroshowe, 1944 word hierby gewysig—

(*a*) deur die volgende omskrywing na die omskrywing van ''hof'' in te voeg:

'' **'hofdag'** enige dag wat nie 'n Saterdag, Sondag of openbare vakansiedag is nie en slegs hofdae word by die berekening van 'n tydperk van dae by hierdie Wet voorgeskryf of in 'n hofbevel bepaal, ingesluit;''; en

(*b*) deur die volgende omskrywing na die omskrywing van ''misdryf'' in te voeg:

'' **'National Credit Act'** die 'National Credit Act', 2005 (Wet No. 34 van 2005);''.

Amendment of section 36 of Act 32 of 1944, as substituted by section 1 of Act 55 of 2002

2. Section 36 of the Magistrates' Courts Act, 1944, is hereby amended—

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

''(2) If a plaintiff in whose favour a default judgment has been granted has **[agreed]** consented in writing that the judgment be rescinded or varied, a court **[must]** may rescind or vary such judgment on application by any person affected by it.''; and

(b) by the addition of the following subsections:

''(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)*.''.

Amendment of section 45 of Act 32 of 1944

3. Section 45 of the Magistrates' Courts Act, 1944, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) **[Subject to the provisions of section *forty-six*, the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction if the parties consent in writing thereto: Provided that no court other than a court having jurisdiction under section *twenty-eight* shall, except where such consent is given specifically with reference to particular proceedings already instituted or about to be instituted in such court, have jurisdiction in any such matter.]** Subject to the provisions of section 46, the parties may consent in writing to the jurisdiction of either the court for the district or the court for the regional division to determine any action or proceedings otherwise beyond its jurisdiction in terms of section 29(1).''; and

(b) by the addition of the following subsection:

''(3) Any consent given in proceedings instituted in terms of section 57, 58, 65 or 65J by a defendant or a judgment debtor to the jurisdiction of a court which does not have jurisdiction over that defendant or judgment debtor in terms of section 28, is of no force and effect.''.

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—

Wysiging van artikel 36 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 55 van 2002

2. Artikel 36 van die Wet op Landdroshowe, 1944, word hierby gewysig—

(a) deur die vervanging van subartikel (2) deur die volgende subartikel:

"(2) Indien 'n eiser of eiseres in wie se guns 'n bestekbevel verleen is skriftelik **[ooreenkom]** toestem dat die vonnis vernietig of gewysig word, **[moet]** kan 'n hof, op aansoek van enige persoon wat daardeur geraak word, sodanige vonnis vernietig of wysig."; en

(b) deur die byvoeging van die volgende subartikels:

"(3) *(a)* Waar 'n vonnisskuld, die rente teen die koers waarvoor vonnis verleen is en die koste ten volle betaal is, hetsy die toestemming van die vonnisskuldeiser vir die tersydestelling van die vonnis verkry is al dan nie, kan 'n hof, op aansoek van die vonnisskuldenaar of enige ander persoon wat deur die vonnis geraak word, daardie vonnis tersyde stel.

(b) Die aansoek in paragraaf *(a)* beoog—

(i) moet gebring word op 'n vorm wat wesenlik moet ooreenstem met die vorm soos in die reëls voorgeskryf;

(ii) moet vergesel wees van redelike bewys dat die vonnisskuld, die rente en die koste betaal is;

(iii) moet vergesel wees van bewys dat die aansoek aan die vonnisskuldeiser beteken is, ten minste 10 hofdae voor die aanhoor van die beoogde aansoek;

(iv) kan ter rolle geplaas word vir verhoor op enige dag nie minder nie as 10 hofdae na betekening daarvan; en

(v) kan in kamers deur 'n landdros aangehoor word.

(4) 'n Hof kan enige kostebevel maak wat die hof goed ag rakende 'n aansoek in paragraaf *(a)* beoog.".

Wysiging van artikel 45 van Wet 32 van 1944

3. Artikel 45 van die Wet op Landdroshowe, 1944, word hierby gewysig—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel:

"(1) **[Met inagneming van die bepalings van artikel *ses-en-veertig* het die hof, met die skriftelike toestemming van die partye, jurisdiksie om enige aksie of proses wat anders buite sy jurisdiksie val, te beslis: Met dien verstande dat geen hof jurisdiksie in so 'n saak het nie behalwe 'n hof wat kragtens artikel *agt-en-twintig* jurisdiksie het, tensy sodanige toestemming gegee is spesifiek met betrekking tot 'n bepaalde proses wat in daardie hof alreeds ingestel is of op die punt staan om ingestel te word.]** Behoudens die bepalings van artikel 46, kan die partye skriftelik toestem tot die jurisdiksie van óf die hof van die distrik óf die hof van die streekafdeling om enige aksie of proses wat anders buite sy jurisdiksie ingevolge artikel 29(1) val, te beslis."; en

(b) deur die byvoeging van die volgende subartikel:

"(3) Enige toestemming gegee in verrigtinge ingestel ingevolge artikels 57, 58, 65 of 65J deur 'n verweerder of 'n vonnisskuldenaar tot die jurisdiksie van 'n hof wat nie ingevolge artikel 28 jurisdiksie oor daardie verweerder of vonnisskuldenaar het nie, is van nul en gener waarde.".

Invoeging van artikel 55A in Wet 32 van 1944

4. Die volgende artikel word ná artikel 55 in die Wet op Landdroshowe, 1944, ingevoeg:

"**Faktore wat in ag geneem moet word by die oorweging van 'n bevel wat regverdig en billik is**

55A. By die toepassing van Hoofstukke VIII en IX van hierdie Wet, sluit die faktore wat 'n hof by die oorweging of 'n bevel regverdig en billik is in ag moet neem, in, maar is nie beperk nie tot—

(*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.''.

Substitution of section 57 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976 and amended by section 2 of Act 81 of 1997

5. The following section is hereby substituted for section 57 of the Magistrates' Courts Act, 1944:

''**Admission of liability and undertaking to pay debt in instalments or otherwise**

57. (1) If any person (in this section called the defendant) has received a letter of demand or has been served with a summons demanding payment of any debt, the defendant may in writing—
(*a*) admit liability to the plaintiff for the amount of the debt and costs claimed in the letter of demand or summons or for any other amount;
(*b*) offer to pay the amount of the debt and costs for which he or she admits liability, in instalments or otherwise;
(*c*) undertake on payment of any instalment in terms of his or her offer to pay the collection fees for which the plaintiff is liable in respect of the recovery of such instalment; and
(*d*) agree that, in the event of his or her failure to carry out the terms of his or her offer, the plaintiff shall, without notice to the defendant, be entitled to apply for judgment for the amount of the outstanding balance of the debt for which he or she admits liability, with costs, and for an order of the court for payment of the judgment debt and costs in instalments or otherwise in accordance with his or her offer,

and if the plaintiff or his or her attorney accepts the said offer, he or she shall advise the defendant of such acceptance in writing by registered letter.

(1A) The offer referred to in subsection (1)(*b*) must—
(*a*) set out full particulars of the defendant's—
(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof in the possession of the defendant;
(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments; and
(*b*) indicate the amount of the offered instalment.

(2) If, after having been advised by the plaintiff or his or her attorney in writing that his or her offer has been accepted, the defendant fails to carry out the terms of his or her offer, **[the clerk of]** the court **[shall]** may, upon the written request of the plaintiff or his or her attorney **[accompanied by—**
(a) **if no summons has been issued, a copy of the letter of demand;**

(a) die grootte van die skuld;
(b) die omstandighede waarin die skuld ontstaan het;
(c) die beskikbaarheid van alternatiewe vir die invordering van die skuld;
(d) die belange van die eiser of vonnisskuldeiser;
(e) die regte en behoeftes van bejaardes, kinders, persone met gestremdhede en huishoudings met vrouens aan die hoof daarvan;
(f) sosiale waardes en implikasies;
(g) die bedrag en aard van die verweerder of vonnisskuldenaar se inkomste;
(h) die bedrae wat die verweerder of vonnisskuldenaar nodig het vir noodsaaklike uitgawes en dié van die persone wat van hom of haar afhanklik is en vir die betaling van periodieke betalings wat hy of sy verplig is om te betaal ingevolge 'n hofbevel, ooreenkoms of andersins ten opsigte van sy of haar ander verpligtinge; en
(i) of die bevel, in die omstandighede van die saak, erg buite verhouding sou wees.''.

Vervanging van artikel 57 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 63 van 1976 en gewysig deur artikel 2 van Wet 81 van 1997

5. Die volgende artikel vervang artikel 57 van die Wet op Landdroshowe, 1944:

''**Erkenning van aanspreeklikheid en onderneming om skuld in paaiemente of andersins te betaal**

57. (1) Indien iemand (in hierdie artikel die verweerder genoem) 'n aanmaning ontvang het of aan hom of haar 'n dagvaarding beteken is waarin betaling van 'n skuld geëis word, kan die verweerder skriftelik—
(a) aanspreeklikheid teenoor die eiser erken vir die bedrag van die skuld en koste wat in die aanmaning of dagvaarding geëis word of vir 'n ander bedrag;
(b) aanbied om die bedrag van die skuld en koste waarvoor hy of sy aanspreeklikheid erken, in paaiemente of andersins te betaal;
(c) onderneem om by betaling van 'n paaiement ingevolge sy of haar aanbod die invorderingsgelde te betaal waarvoor die eiser ten opsigte van die invordering van daardie paaiement aanspreeklik is; en
(d) instem dat, in geval hy of sy versuim om sy of haar aanbod na te kom, die eiser geregtig sal wees om sonder kennisgewing aan die verweerder aansoek te doen om vonnis vir die bedrag of die uitstaande saldo van die bedrag van die skuld waarvoor hy of sy aanspreeklikheid erken, met koste, en om 'n hofbevel vir die betaling van die vonnisskuld en koste in paaiemente of andersins ooreenkomstig sy of haar aanbod, en indien die eiser of sy of haar prokureur bedoelde aanbod aanneem,

stel hy of sy die verweerder van bedoelde aanname skriftelik per geregistreerde brief in kennis.

(1A) Die aanbod in subartikel (1)*(b)* bedoel moet—
(a) volle besonderhede uiteensit van die verweerder se—
 (i) maandelikse of weeklikse inkomste en uitgawes gestaaf, waar redelikerwys moontlik, deur die mees onlangse bewys in die besit van die verweerder;
 (ii) ander hofbevele of ooreenkomste, indien enige, met ander skuldeisers vir die betaling van 'n skuld en koste in paaiemente; en
(b) die bedrag van die aangebode paaiement aandui.

(2) Indien die verweerder, nadat hy of sy deur die eiser of sy of haar prokureur skriftelik in kennis gestel is dat sy of haar aanbod aangeneem is, versuim om sy of haar aanbod na te kom, **[moet die klerk van]** kan die hof, op die skriftelike versoek van die eiser of sy of haar prokureur **[vergesel van—**
(a) indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) **the defendant's written acknowledgment of debt and offer and a copy of the plaintiff's or his attorney's written acceptance of the offer;**

(c) **an affidavit or affirmation by the plaintiff or a certificate by his attorney stating in which respects the defendant has failed to carry out the terms of his offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at]** and subject to subsection (2A)—

[(i)]*(a)* enter judgment in favour of the plaintiff for the amount or the outstanding balance of the amount of the debt for which the defendant has admitted liability, with costs; and

[(ii)]*(b)* order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his or her offer, and such order shall be deemed to be an order of the court mentioned in section 65A(1).

(2A) The written request referred to in subsection (2) must be accompanied by—

(a) the summons or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of liability and offer;

(c) all the particulars and documentary evidence referred to in subsection (1A), in order for the court to be apprised of the defendant's financial position at the time the offer was made and accepted;

(d) a copy of the plaintiff's or his or her attorney's written acceptance of the offer and proof of postage thereof to the defendant; and

(e) an affidavit or affirmation by the plaintiff or a certificate by his or her attorney stating in which respects the defendant has failed to carry out the terms of his or her offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at.

(2B) The court—

(a) may request any relevant information from the plaintiff or his or her attorney in order for the court to be apprised of the defendant's financial position at the time judgment is requested;

(b) must act in terms of the provisions of the National Credit Act and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment, when considering a request for judgment in terms of this section, based on a credit agreement under the National Credit Act;

(c) may, if the defendant 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, authorise an emoluments attachment order referred to in section 65J; and

(d) may, notwithstanding the defendant's consent to pay any scale of costs, make a costs order as it deems fit.

(3) When the judgment referred to in subsection (2) has been entered and an order made, and if the judgment debtor was not present or represented when the judgment was entered **[by the clerk of the court]** and the order made, the judgment creditor or his or her attorney **[shall forthwith]** must, within 10 days after it has received knowledge that judgment has been entered and an order made, advise the judgment debtor by registered letter of the terms of the judgment and order.

(4) Any judgment entered in favour of the plaintiff under subsection (2) **[shall have]** has the effect of a judgment by default.

(5) The provisions of this section apply subject to the relevant provisions of the National Credit Act where the request for judgment is based on a credit agreement under the National Credit Act.''.

(b) **die verweerder se skriftelike erkenning van skuld en aanbod en 'n afskrif van die eiser of sy prokureur se skriftelike aanname van die aanbod;**

(c) **'n beëdigde verklaring of 'n bevestiging deur die eiser of 'n sertifikaat deur sy prokureur waarin verklaar word in watter opsigte die verweerder versuim het om sy aanbod na te kom en, indien die verweerder sedert die datum van die aanmaning of dagvaarding betalings gemaak het, waarin aangetoon word hoe die saldo wat geëis word, bereken word]** en behoudens subartikel (2A)—

[(i)]*(a)* vonnis aanteken ten gunste van die eiser vir die bedrag of die uitstaande saldo van die bedrag van die skuld waarvoor die verweerder aanspreeklikheid erken het, met koste; en

[(ii)]*(b)* die verweerder beveel om die vonnisskuld en koste in bepaalde paaiemente of andersins ooreenkomstig sy of haar aanbod te betaal, en so 'n bevel word geag 'n in artikel 65A (1) genoemde bevel van die hof te wees.

(2A) Die skriftelike versoek bedoel in subartikel (2) moet vergesel wees van—

(a) die dagvaarding, of indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike erkenning van skuld en aanbod;

(c) al die besonderhede en dokumentêre bewys bedoel in subartikel (1A), sodat die hof sigself kan vergewis van die verweerder se finansiële posisie ten tyde van die maak en aanvaarding van die aanbod;

(d) 'n afskrif van die eiser of sy of haar prokureur se skriftelike aanname van die aanbod en bewys dat dit aan die verweerder gepos is; en

(e) 'n beëdigde verklaring of 'n bevestiging deur die eiser of 'n sertifikaat deur sy of haar prokureur waarin verklaar word in watter opsigte die verweerder versuim het om sy of haar aanbod na te kom en, indien die verweerder sedert die datum van die aanmaning of dagvaarding betalings gemaak het, waarin aangetoon word hoe die saldo wat geëis word, bereken is.

(2B) Die hof—

(a) kan versoek dat die eiser of sy of haar prokureur enige tersaaklike inligting aan die hof verstrek ten einde sigself te vergewis van die verweerder se finansiële posisie ten tyde van die versoek om vonnis;

(b) moet optree ingevolge die bepalings van die 'National Credit Act' en die regulasies daarkragtens wat met oormatige skuldlas, roekelose krediet en bekostigbaarheidsbepaling handel, wanneer die hof 'n vonnis ingevolge hierdie artikel oorweeg wat op 'n kredietooreenkoms ingevolge die 'National Credit Act' berus;

(c) kan, indien die verweerder werk en as die hof tevrede is dat dit regverdig en billik is dat 'n besoldigingbeslagbevel uitgereik word en dat die bedrag gepas is, 'n besoldigingbeslagbevel bedoel in artikel 65J, magtig; en

(d) kan, ondanks die verweerder se toestemming om enige skaal van koste te betaal, 'n bevel ten opsigte van koste gee wat die hof goed ag.

(3) Nadat 'n in subartikel (2) bedoelde vonnis aangeteken en bevel gegee is, en indien die vonnisskuldenaar nie **[by die klerk van die hof]** teenwoordig of verteenwoordig was toe die vonnis aangeteken en die bevel gegee is nie, stel die vonnisskuldeiser of sy of haar prokureur die vonnisskuldenaar **[onverwyld]** binne 10 dae nadat hy of sy kennis gekry het dat vonnis aangeteken en 'n bevel gegee is, per geregistreerde brief in kennis van die bepalings van die vonnis en bevel.

(4) 'n Vonnis wat ten gunste van die eiser kragtens subartikel (2) aangeteken is, het die uitwerking van 'n vonnis by verstek.

(5) Die bepalings van hierdie artikel is van toepassing behoudens die tersaaklike bepalings van die 'National Credit Act' waar die versoek om vonnis op 'n kredietooreenkoms ingevolge die 'National Credit Act' berus.''.

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Substitution of section 58 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976

6. The following section is hereby substituted for section 58 of the Magistrates' Courts Act, 1944:

''**Consent to judgment or to judgment and an order for payment of judgment debt in instalments**

58. (1) If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him or her of a summons demanding payment of debt, consents in writing to judgment in favour of the creditor (in this section called the plaintiff) for the amount of the debt and the costs claimed in the letter of demand or summons, or for any other amount, **[the clerk of]** the court **[shall]** may, on the written request of the plaintiff or his or her attorney **[accompanied by—**

(a) **if no summons has been issued, a copy of the letter of demand; and**

(b) **the defendant's written consent to judgment,]** and subject to subsection (1B)—

[i]*(a)* enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and

[ii]*(b)* if it appears from the defendant's written consent to judgment that he or she has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he or she has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with this consent, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

(1A) If the defendant consents to an order of court for payment in specified instalments referred to in subsection (1)*(b)*, the consent must—

(a) set out full particulars of his or her—

(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof in the possession of the defendant;

(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments; and

(b) indicate the amount of the offered instalment.

(1B) The written request referred to in subsection (1) must be accompanied by—

(a) the summons or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written consent to judgment; and

(c) if the defendant consents to an order of court for payment in specified instalments referred to in subsection (1)*(b)*—

(i) the written consent; and

(ii) the full particulars and documentary evidence referred to in subsection (1A) in order for the court to be apprised of the defendant's financial position at the time the defendant consented to judgment.

(1C) The court—

(a) may request any relevant information from the plaintiff or his or her attorney in order for the court to be apprised of the defendant's financial position at the time the judgment is requested;

(b) must act in terms of the provisions of the National Credit Act and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment, when considering a request for judgment in terms of this section, based on a credit agreement under the National Credit Act;

(c) may, if the defendant is employed, and after satisfying itself that it is just and equitable that an emoluments attachment order be issued and

Vervanging van artikel 58 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 63 van 1976

6. Die volgende artikel vervang artikel 58 van die Wet op Landdroshowe, 1944:

''**Toestemming tot vonnis of tot vonnis en 'n bevel vir die betaling van vonnisskuld in paaiemente**

58. (1) Indien iemand (in hierdie artikel die verweerder genoem), nadat hy of sy 'n aanmaning ontvang het of aan hom of haar 'n dagvaarding beteken is waarin betaling van 'n skuld geëis word, skriftelik toestem tot vonnis ten gunste van die skuldeiser (in hierdie artikel die eiser genoem) vir die bedrag van die skuld en die koste wat in die aanmaning of dagvaarding geëis word, of vir 'n ander bedrag, **[moet]** kan die **[klerk van die]** hof, op die skriftelike versoek van die eiser of sy of haar prokureur **[vergesel van—**

(a) **indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning; en**

(b) **die verweerder se skriftelike toestemming tot vonnis,]** en behoudens subartikel (1B)—

[(i)]*(a)* vonnis aanteken ten gunste van die eiser vir die bedrag van die skuld en die koste waarvoor die verweerder tot vonnis toegestem het; en

[(ii)]*(b)* indien dit uit die verweerder se skriftelike toestemming tot vonnis blyk dat hy of sy ook toegestem het tot 'n hofbevel vir die betaling van die bedrag van die skuld en koste waarvoor hy of sy tot vonnis toegestem het in bepaalde paaiemente of andersins, die verweerder beveel om die vonnisskuld en koste in bepaalde paaiemente of andersins ooreenkomstig sy of haar toestemming te betaal, en so 'n bevel word geag 'n in artikel 65A(1) genoemde bevel van die hof te wees.

(1A) Indien 'n verweerder toestem tot 'n hofbevel vir betaling in bepaalde paaiemente soos bedoel in subartikel (1)*(b)*, moet die toestemming—

(a) volle besonderhede uiteensit van die verweerder se—

(i) maandelikse of weeklikse inkomste en uitgawes, ondersteun, waar redelikerwys moontlik, deur die mees onlangse bewys in die besit van die verweerder;

(ii) ander hofbevele of ooreenkomste met ander skuldeisers vir die betaling van 'n skuld en koste in paaiemente; en

(b) die bedrag van die aangebode paaiement aandui.

(1B) Die skriftelike versoek bedoel in subartikel (1) moet vergesel wees van—

(a) die dagvaarding, of indien geen dagvaarding uitgereik is nie, 'n afskrif van die aanmaning;

(b) die verweerder se skriftelike toestemming tot vonnis; en

(c) indien die verweerder toestem tot 'n hofbevel vir betaling in bepaalde paaiemente soos bedoel in subartikel (1)*(b)*—

(i) die skriftelike toestemming; en

(ii) die volle besonderhede en dokumentêre bewys bedoel in subartikel (1A) sodat die hof sigself kan vergewis van die verweerder se finansiële posisie ten tyde van die verweerder se toestemming tot vonnis.

(1C) Die hof—

(a) kan versoek dat die eiser of sy of haar prokureur enige tersaaklike inligting verstrek ten einde sigself te vergewis van die verweerder se finansiële posisie ten tyde van die versoek om vonnis;

(b) moet optree ingevolge die bepalings van die 'National Credit Act' en die regulasies daarkragtens wat met oormatige skuldlas, roekelose krediet en bekostigbaarheidsbepaling handel, wanneer die hof 'n versoek om vonnis ingevolge hierdie artikel oorweeg wat op 'n kredietooreenkoms ingevolge die 'National Credit Act' berus;

(c) kan, indien die verweerder werk, en as die hof tevrede is dat dit regverdig en billik is dat 'n besoldigingbeslagbevel uitgereik word en

that the amount is appropriate, authorise an emoluments attachment order referred to in section 65J; and

(d) may, notwithstanding the defendant's consent to pay any scale of costs, make a costs order as it deems fit.

(2) The provisions of section 57(3) and (4) **[shall]** apply in respect of the judgment and court order referred to in subsection (1) of this section.

(3) The provisions of this section apply, subject to the relevant provisions of the National Credit Act, where the application for judgment is based on a credit agreement under the National Credit Act.''.

Substitution of section 65 of Act 32 of 1944, as substituted by section 2 of Act 63 of 1976

7. The following section is hereby substituted for section 65 of the Magistrates' Courts Act, 1944:

''**Offer by judgment debtor after judgment**

65. (1) If at any time after a court has given judgment for the payment of a sum of money and before the issue of a notice under section 65A(1), the judgment debtor makes a written offer to the judgment creditor to pay the judgment debt in specified instalments or otherwise and such offer is accepted by the judgment creditor or his or her attorney, **[the clerk of]** the court **[shall]** may, subject to subsection (2), at the written request of the judgment creditor or his or her attorney, accompanied by the offer order the judgment debtor to pay the judgment debt in specified instalments or otherwise in accordance with his or her offer **[, and such order shall be deemed to be an order of the court mentioned in section 65A(1)]**.

(2) The offer referred to in subsection (1) must be supported, where reasonably possible, by the most recent proof in the possession of the debtor relating to his or her income and expenditure, other court orders or agreements with other creditors for payment of a debt in instalments and assets and liabilities as prescribed by the rules.

(3) The court—

(a) may request any relevant information from the judgment creditor or his or her attorney in order for the court to be apprised of the judgment debtor's financial position at the time the written request, for an order to pay the judgment debt in specified instalments or otherwise, is made;

(b) must act in terms of the provisions of the National Credit Act and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment when considering a request for an order in terms of this section, if the judgment is based on a credit agreement under the National Credit Act; and

(c) may, if the debtor 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, authorise an emoluments attachment order referred to in section 65J.

(4) An order made under subsection (1) is deemed to be an order of the court mentioned in section 65A(1).''.

Amendment of section 65E of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976 and amended by section 7 of Act 81 of 1997

8. Section 65E of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) If at the hearing of the proceedings in terms of a notice under section 65A(1) the court is satisfied—

(a) that the judgment debtor has movable or immovable property which may be attached and sold in order to satisfy the judgment debt or any part thereof, the court may—

dat die bedrag gepas is, 'n besoldigingbeslagbevel bedoel in artikel 65J, magtig; en

(d) kan, nieteenstaande die verweerder se toestemming om enige skaal van koste te betaal, 'n bevel ten opsigte van koste gee wat die hof goed ag.

(2) Die bepalings van artikel 57(3) en (4) is ten opsigte van die vonnis en hofbevel in subartikel (1) van hierdie artikel bedoel van toepassing.

(3) Die bepalings van hierdie artikel is van toepassing behoudens die tersaaklike bepalings van die 'National Credit Act' waar die aansoek om vonnis op 'n kredietooreenkoms ingevolge die 'National Credit Act' berus.''.

Vervanging van artikel 65 van Wet 32 van 1944, soos vervang deur artikel 2 van Wet 63 van 1976

7. Die volgende artikel vervang artikel 65 van die Wet op Landdroshowe, 1944:

''**Aanbod deur vonnisskuldenaar na vonnis**

65. (1) Indien, te eniger tyd nadat 'n hof vonnis gevel het vir die betaling van 'n bedrag geld en voordat 'n kennisgewing kragtens artikel 65A(1) uitgereik word, die vonnisskuldenaar aan die vonnisskuldeiser 'n skriftelike aanbod doen om die vonnisskuld en koste in bepaalde paaiemente of andersins te betaal, en so 'n aanbod deur die vonnisskuldeiser of sy of haar prokureur aangeneem word, **[beveel die klerk van die]** kan die hof, behoudens subartikel (2), op die skriftelike versoek van die vonnisskuldeiser of sy of haar prokureur, vergesel van die aanbod, die vonnisskuldenaar beveel om die vonnisskuld en koste in bepaalde paaiemente of andersins ooreenkomstig sy of haar aanbod te betaal**[, en so 'n bevel word geag 'n in artikel 65A (1) genoemde bevel van die hof te wees]**.

(2) Die aanbod bedoel in subartikel (1) moet ondersteun word, waar redelikerwys moontlik, deur die mees onlangse bewys in die besit van die skuldenaar betreffende sy of haar inkomste en uitgawes, ander hofbevele of ooreenkomste met ander skuldeisers vir die betaling van 'n skuld in paaiemente en bates en laste soos in die reëls voorgeskryf.

(3) Die hof—

(a) kan versoek dat die eiser of sy of haar prokureur enige tersaaklike inligting verstrek ten einde sigself te vergewis van die verweerder se finansiële posisie ten tyde van die versoek om 'n bevel vir die betaling van die vonnisskuld in paaiemente of andersins;

(b) moet optree ingevolge die bepalings van die 'National Credit Act' en die regulasies daarkragtens wat met oormatige skuldlas, roekelose krediet en bekostigbaarheidsbepaling handel, wanneer die hof 'n versoek vir 'n bevel ingevolge hierdie artikel oorweeg, as die vonnis op 'n kredietooreenkoms ingevolge die 'National Credit Act' berus; en

(c) kan, indien die verweerder werk, en as die hof tevrede is dat dit regverdig en billik is dat 'n besoldigingbeslagbevel uitgereik word en dat die bedrag gepas is, 'n besoldigingbeslagbevel bedoel in artikel 65J, magtig.

(4) 'n Bevel ingevolge subartikel (1) gegee, word geag 'n in artikel 65A(1) genoemde bevel van die hof te wees.''.

Wysiging van artikel 65E van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976 en gewysig deur artikel 7 van Wet 81 van 1997

8. Artikel 65E van die Wet op Landdroshowe, 1944, word hierby gewysig deur die vervanging van subartikel (1) deur die volgende subartikel:

''(1) Indien by die verhoor van die verrigtinge ingevolge 'n kennisgewing kragtens artikel 65A (1) die hof oortuig is—

(a) dat die vonnisskuldenaar roerende of onroerende goed het waarop beslag gelê kan word en wat verkoop kan word ter voldoening aan die vonnisskuld of 'n gedeelte daarvan, kan die hof—

(i) authorise the issue of a warrant of execution against such movable or immovable property or such part thereof as the court may deem fit; or

(ii) authorise the issue of such a warrant together with an order in terms of section 73; or

(b) that there is a debt due to the judgment debtor which may be attached in terms of section 72 to satisfy the judgment debt and costs or part thereof, the court may authorise the attachment of that debt in terms of that section; or

(c) that the judgment debtor or, if the judgment debtor is a juristic person, the director or officer summoned as representative of the juristic person, at any time after receipt of a notice referred to in section 65A(1), has made an offer in writing to the judgment creditor or his or her attorney to pay the judgment debt and costs in specified instalments or otherwise, **[whether by way of an emoluments attachment order or otherwise,]** or, if such an offer has not been made, that the judgment debtor is able to pay the judgment debt and costs in reasonable instalments, the court may order the judgment debtor to pay the judgment debt and costs in specified instalments and, **[if the judgment debtor is employed by any person who resides, carries on business or is employed in the district, or if the judgment debtor is employed by the State in the district,]** where the judgment debtor is a natural person 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, in addition authorise the issue of an emoluments attachment order by virtue of section 65J(1) for the payment of the judgment debt and costs by the employer of the judgment debtor,

and postpone any further hearings of the proceedings.''.

Substitution of section 65J of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976 and amended by section 2 of Act 53 of 1983 and section 11 of Act 81 of 1997

9. The following section is hereby substituted for section 65J of the Magistrates' Courts Act, 1944:

''**Emoluments attachment orders**

65J. (1) *(a)* Subject to the provisions of subsection (2), a judgment creditor may cause an order (hereinafter referred to as an emoluments attachment order) to be issued from the court of the district in which the **[employer of the]** judgment debtor resides, carries on business or is employed**[, or, if the judgment debtor is employed by the State, in which the judgment debtor is employed]**.

(b) An emoluments attachment order—

(i) **[shall]** must attach the emoluments at present or in future owing or accruing to the judgment debtor by or from his or her employer (in this section called the garnishee), to the amount necessary to cover the judgment and the costs of the attachment, whether that judgment was obtained in the court concerned or in any other court; and

(ii) **[shall]** must oblige the garnishee to pay from time to time to the judgment creditor or his or her attorney specific amounts out of the emoluments of the judgment debtor in accordance with the order of court laying down the specific instalments payable by the judgment debtor, until the relevant judgment debt and costs have been paid in full.

(1A) *(a)* The amount of the instalment payable or the total amount of instalments payable where there is more than one emoluments attachment order payable by the judgment debtor, may not exceed 25 per cent of the judgment debtor's basic salary.

(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.

(i) magtiging verleen vir die uitreiking van 'n lasbrief vir eksekusie teen daardie roerende of onroerende goed of dié gedeelte daarvan wat die hof goedvind; of

(ii) magtiging verleen vir die uitreiking van so 'n lasbrief, gepaard met 'n bevel kragtens artikel 73; of

(b) dat daar 'n skuld aan die vonnisskuldenaar verskuldig is waarop kragtens artikel 72 beslag gelê kan word ter voldoening aan die vonnisskuld en koste of 'n gedeelte daarvan, kan die hof magtiging verleen vir die inbeslagneming van daardie skuld ingevolge daardie artikel; of

(c) dat die vonnisskuldenaar of, as die vonnisskuldenaar 'n regspersoon is, die direkteur of beampte gedaag as verteenwoordiger van die regspersoon, te eniger tyd nadat hy of sy **[in]** 'n in artikel 65A(1) genoemde kennisgewing ontvang het, 'n skriftelike aanbod aan die vonnisskuldeiser of sy of haar prokureur gedoen het om die vonnisskuld en koste in bepaalde paaiemente of andersins te betaal, **[hetsy by wyse van 'n besoldigingbeslagbevel of andersins,]** of, indien so 'n aanbod nie gemaak is nie, dat die vonnisskuldenaar die vonnisskuld en koste in redelike paaiemente kan betaal, kan die hof die vonnisskuldenaar beveel om die vonnisskuld en koste in bepaalde paaiemente te vereffen en, **[indien die vonnisskuldenaar in diens is by iemand wat in die distrik woon, besigheid dryf of in diens is, of indien die vonnisskuldenaar in die distrik in diens van die Staat is,]** indien die vonnisskuldenaar 'n natuurlike persoon is en werk het, en as die hof tevrede is dat dit regverdig en billik is dat 'n besoldigingbeslagbevel uitgereik word en dat die bedrag gepas is, daarbenewens die uitreiking van 'n besoldigingbeslagbevel uit hoofde van artikel 65J(1) magtig vir die betaling van die vonnisskuld en koste deur die werkgewer van die vonnisskuldenaar,

en die verdere verhoor van die verrigtinge uitstel.''.

Vervanging van artikel 65J van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976 en gewysig deur artikel 2 van Wet 53 van 1983 en artikel 11 van Wet 81 van 1997

9. Die volgende artikel vervang artikel 65J van die Wet op Landdroshowe, 1944:

''**Besoldigingbeslagbevele**

65J. (1) *(a)* Behoudens die bepalings van subartikel (2), kan 'n vonnisskuldeiser 'n bevel (hieronder 'n besoldigingbeslagbevel genoem) laat uitreik uit die hof van die distrik waarin **[die werkgewer van]** die vonnisskuldenaar woon, besigheid dryf of in diens is**[, of, indien die vonnisskuldenaar in diens van die Staat is, waarin die vonnisskuldenaar in diens is]**.

(b) 'n Besoldigingbeslagbevel—

(i) lê beslag op die besoldiging wat dan of in die toekoms aan die vonnisskuldenaar verskuldig is of hom of haar toekom deur of van sy of haar werkgewer (in hierdie artikel die beslagskuldenaar genoem) tot die bedrag wat nodig is om die vonnis en die koste van die inbeslagneming te dek, hetsy daardie vonnis in die betrokke hof of in 'n ander hof verkry is; en

(ii) verplig die beslagskuldenaar om van tyd tot tyd aan die vonnisskuldeiser of sy of haar prokureur bepaalde bedrae uit die besoldiging van die vonnisskuldenaar te betaal ooreenkomstig die hofbevel wat die bepaalde paaiemente vasgestel het wat deur die vonnisskuldenaar betaalbaar is, totdat die betrokke vonnisskuld en koste ten volle betaal is.

(1A) *(a)* Die bedrag van die paaiement betaalbaar of die totale bedrag van paaiemente betaalbaar waar daar meer as een besoldigingbeslagbevel deur die vonnisskuldenaar betaalbaar is, mag nie 25 persent van die vonnisskuldenaar se basiese salaris oorskry nie.

(b) By die toepassing van hierdie artikel, beteken 'basiese salaris' die jaarlikse bruto salaris van 'n vonnisskuldenaar gedeel deur 12 en sluit dit bykomende vergoeding vir oortyd en ander toelaes uit.

(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.

(2) An emoluments attachment order **[shall not]** may only be issued **[—**

(a) **unless the judgment debtor has consented thereto in writing or]** if the court has so authorised, after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate, whether on application to the court or otherwise, and such authorisation has not been suspended**[; or**

(b) **unless the judgment creditor or his or her attorney has first—**

(i) sent a registered letter to the judgment debtor at his or her last known address advising him or her of the amount of the judgment debt and costs as yet unpaid and warning him or her that an emoluments attachment order will be issued if the said amount is not paid within ten days of the date on which that registered letter was posted; and

(ii) filed with the clerk of the court an affidavit or an affirmation by the judgment creditor or a certificate by his or her attorney setting forth the amount of the judgment debt at the date of the order laying down the specific instalments, the costs, if any, which have accumulated since that date, the payments received since that date and the balance owing and declaring that the provisions of sub-paragraph (i) have been complied with on the date specified therein].

(2A) A judgment creditor or his or her attorney must serve, on the judgment debtor and on his or her employer, a notice, 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).

(2B) The notice referred to in subsection (2A) must inform the judgment debtor and his or her employer—

(a) of the judgment creditor's 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);

(b) of the full amount of the capital debt, interest and costs outstanding, substantiated by a statement of account; and

(c) that, unless the judgment debtor or his or her employer files a notice of intention to oppose the issuing of the emoluments attachment order within 10 days after service of the notice on them, an emoluments attachment order will be sought.

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(c) (i) Wanneer 'n hof—

(aa) die magtiging van 'n besoldigingbeslagbevel; of

(bb) enige ander bevel beoog in hierdie artikel,

oorweeg, en nadat die hof alle voorleggings voor die hof geplaas, oorweeg het en nadat die hof alle verdere beskikbare dokumente aangevra en oorweeg het, die hof tevrede is dat daar ander besoldigingbeslagbevele teen die vonnisskuldenaar bestaan, moet die hof die verdere oorweging van die magtiging of ander bevel, uitstel en die saak vir verhoor ter rolle plaas.

(ii) Die party wat aansoek doen om die magtiging van 'n besoldigingbeslagbevel of ander bevel in hierdie artikel beoog, moet kennis van die datum van die verhoor in subparagraaf (i) bedoel, aan die ander skuldeisers of hulle prokureurs beteken, en aan die vonnisskuldenaar, as hy of sy nie teenwoordig of verteenwoordig was toe die oorweging van die magtiging van 'n besoldigingbeslagbevel of ander bevel uitgestel is nie.

(iii) Die hof kan na aanhoor van alle partye by die daaropvolgende verhoor, 'n bevel gee rakende die verdeling van die bedrag beskikbaar vir toedeling aan elk van die besoldigingbeslagbevele, as die hof tevrede is dat elke bevel regverdig en billik is en dat die som van die totale bedrag van die besoldigingbeslagbevele gepas is en nie 25 persent van die vonnisskuldenaar se basiese salaris oorskry nie.

(2) 'n Besoldigingbeslagbevel word **[nie uitgereik nie]** slegs uitgereik**[—**

(a) **tensy]** indien **[die vonnisskuldenaar, skriftelik daarin toegestem het of]** die hof magtiging daartoe verleen het, as die hof tevrede is dat dit regverdig en billik is dat 'n besoldigingbeslagbevel uitgereik word en dat die bedrag gepas is, hetsy op aansoek by die hof of andersins, en so 'n magtiging nie opgeskort het nie**[; of**

(b) **tensy die vonnisskuldeiser of sy of haar prokureur eers—**

(i) 'n geregistreerde brief gestuur het aan die vonnisskuldenaar by sy of haar jongsbekende adres waarin hy of sy in kennis gestel word van die bedrag van die vonnisskuld en koste wat nog onbetaald is en gewaarsku word dat 'n besoldigingbeslagbevel uitgereik sal word indien genoemde bedrag nie binne tien dae vanaf die datum waarop daardie geregistreerde brief gepos is, betaal word nie; en

(ii) 'n beëdigde verklaring of 'n bevestiging deur die vonnisskuldeiser of 'n sertifikaat deur sy of haar prokureur by die klerk van die hof ingedien het waarin die bedrag van die vonnisskuld op die datum van die bevel waarby die bepaalde paaiemente vasgestel is, die koste, indien daar is, opgeloop sedert daardie datum, die betalings ontvang sedert daardie datum en die saldo verskuldig, uiteengesit word en verklaar word dat die bepalings van subparagraaf (i) nagekom is op die datum wat daarin vermeld word.]

(2A) 'n Vonnisskuldeiser of sy of haar prokureur moet 'n kennisgewing, wat wesenlik met die vorm soos in die reëls voorgeskryf, ooreenstem, van sy of haar voorneme om 'n besoldigingbeslagbevel teen die vonnisskuldenaar te laat uitreik in ooreenstemming met die hof se magtiging bedoel in subartikel (2), aan die vonnisskuldenaar en aan sy of haar werkgewer beteken.

(2B) Die kennisgewing bedoel in subartikel (2A) moet die vonnisskuldenaar en sy of haar werkgewer inlig—

(a) van die vonnisskuldeiser se voorneme om 'n besoldigingbeslagbevel te laat uitreik in ooreenstemming met die hof se magtiging bedoel in subartikel (2);

(b) van die volle bedrag van die uitstaande kapitale skuld, rente en koste, gestaaf deur 'n rekeningstaat; en

(c) dat, tensy die vonnisskuldenaar of sy of haar werkgewer 'n kennisgewing van voorneme om die uitreiking van die besoldigingbeslagbevel te opponeer binne 10 dae na betekening van die kennisgewing aan hulle, indien, 'n versoek om 'n besoldigingbeslagbevel te laat uitreik, ingedien sal word.

(2C) *(a)* The notice of intention to oppose contemplated in subsection (2B)*(c)* must state the grounds upon which the judgment debtor or employer wishes to oppose the issuing of the emoluments attachment order.

(b) The grounds which may be used to oppose the issuing of the emoluments attachment order include, but are not limited to, the following:

(i) That the amounts claimed are erroneous or not in accordance with the law; or

(ii) that 25 per cent of the judgment debtor's basic salary is already committed to other emoluments attachment orders and that the debtor will not have sufficient means left for his or her own maintenance or that of his or her dependants.

(c) The notice of intention to oppose must be accompanied by—

(i) 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.

(ii) the contact details of all the relevant judgment creditors or their attorneys; and

(iii) the latest salary advice of the judgment debtor.

(2D) If a notice of intention to oppose is filed and the judgment creditor or his or her attorney does not accept the reasons for the opposition, he or she or his or her attorney may set the matter down for hearing in court with notice to the judgment debtor and employer and if the opposition is based on overcommitment of the judgment debtor's salary to existing court orders or agreements with other creditors for payment of a debt and costs in instalments, notice must be given to the other judgment creditors or their attorneys.

(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.

(3) *(a)* Any emoluments attachment order **[shall]** must be prepared **[by the judgment creditor or his attorney, shall be]** and signed by the judgment creditor or his or her attorney **[and the clerk of the court, and shall be served on the garnishee by the messenger of the court in the manner prescribed by the rules for the service of process]**.

(b) The clerk of the court must ensure that the court—

(i) has authorised the emoluments attachment order; and

(ii) has jurisdiction as provided for in subsection (1)*(a)*,

before issuing an emoluments attachment order authorised in terms of subsection (2) by signing it and may either ask the judgment creditor or his or her attorney for more information or refer the order to the court in the case of any uncertainty.

(c) The emoluments attachment order must be served on the employer of the judgment debtor, (hereinafter called the garnishee) and if the judgment

(2C) *(a)* Die kennisgewing van voorneme om te opponeer in subartikel (2B)*(c)* beoog, moet die gronde waarop die vonnisskuldenaar of werkgewer die uitreiking van die besoldigingbeslagbevel wil opponeer, uiteensit.

(b) Die gronde wat aangevoer kan word om die uitreiking van die besoldigingbeslagbevel te opponeer, sluit in, maar is nie beperk nie tot, die volgende:

(i) Dat die geëiste bedrae foutief is of nie in ooreenstemming met die reg is nie; of

(ii) dat 25 persent van die vonnisskuldenaar se basiese salaris alreeds toegedeel is aan ander besoldigingbeslagbevele en dat die skuldenaar nie genoegsame middele vir sy of haar eie onderhoud of dié van sy of haar afhanklikes sal hê nie.

(c) Die kennisgewing van voorneme om te opponeer moet vergesel wees van—

(i) ’n sertifikaat van die vonnisskuldenaar se werkgewer wat besonderhede uiteensit van—

(aa) alle bestaande hofbevele teen die vonnisskuldenaar of ooreenkomste met ander skuldeisers vir die betaling van ’n skuld en koste in paaiemente; en

(bb) waar redelikerwys bekombaar, die bedrae wat die skuldenaar nodig het vir noodsaaklike uitgawes en dié van die persone wat van hom of haar afhanklik is en vir die betaling van periodieke betalings wat hy of sy verplig is om te betaal ingevolge ’n ooreenkoms of andersins ten opsigte van sy of haar ander verpligtinge.

(ii) die kontakbesonderhede van die tersaaklike vonnisskuldeisers of hulle prokureurs; en

(iii) die vonnisskuldenaar se nuutste salarisadvies.

(2D) Indien ’n kennisgewing van voorneme om te opponeer ingedien word en die vonnisskuldeiser of sy of haar prokureur nie die redes vir die opponering aanvaar nie, kan hy of sy of sy of haar prokureur die saak ter rolle plaas vir verhoor met kennisgewing aan die vonnisskuldenaar of werkgewer en indien die opponering op die oortoedeling van die vonnisskuldenaar se salaris vir bestaande hofbevele of ooreenkomste met ander skuldeisers vir die betaling van ’n skuld en koste in paaiemente, berus, moet kennis aan die ander vonnisskuldeisers of hulle prokureurs gegee word.

(2E) Die hof kan, na aanhoor van alle partye en as die hof tevrede is dat die bevel regverdig en billik is—

(a) die besoldigingbeslagbevel tersyde stel of op so ’n manier wysig dat dit slegs die saldo van die besoldiging van die vonnisskuldenaar bo en behalwe die genoegsame middele benodig vir sy of haar onderhoud en dié van sy of haar afhanklikes, sal raak; of

(b) enige bevel gee, met inbegrip van ’n bevel rakende die verdeling van die bedrag beskikbaar vir toedeling aan al die besoldigingbeslagbevele, as die hof tevrede is dat die bedrag gepas is en nie 25 persent van die vonnisskuldenaar se basiese salaris oorskry nie en ’n bevel rakende koste.

(3) *(a)* ’n Besoldigingbeslagbevel word opgestel en geteken deur die vonnisskuldeiser of sy of haar prokureur**[, word deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken, en word aan die beslagskuldenaar beteken deur die geregsbode op die wyse deur die reëls vir die betekening van prosesstukke voorgeskryf]**.

(b) Die klerk van die hof moet verseker dat die hof—

(i) die besoldigingbeslagbevel gemagtig het; en

(ii) jurisdiksie het soos bepaal in subartikel (1)*(a)*,

alvorens hy of sy ’n besoldigingbeslagbevel wat ingevolge subartikel (2) gemagtig is, uitreik deur dit te onderteken en kan óf die vonnisskuldeiser of sy of haar prokureur vir meer besonderhede vra óf die bevel na die hof verwys in die geval van enige onsekerheid.

(c) Die besoldigingbeslagbevel moet deur die balju aan die werkgewer van die vonnisskuldenaar, (hierna die beslagskuldenaar genoem) en, indien die vonnisskuldenaar nie teenwoordig of verteenwoordig was toe die

debtor was not present or represented when the emoluments attachment order was authorised, also on the judgment debtor, by the sheriff in the manner prescribed by the rules for the service of process.

(4) *(a)* Deductions in terms of an emoluments attachment order shall be made, if the emoluments of the judgment debtor are paid monthly, at the end of the month following the month in which it is served on the garnishee, or, if the emoluments of the judgment debtor are paid weekly, at the end of the second week of the month following the month in which it is so served on the garnishee, and all payments thereunder to the judgment creditor or his or her attorney shall be made monthly with effect from the end of the month following the month in which the said order is served on the garnishee.

(b) The judgment creditor or his or her attorney **[shall, at the reasonable request of the garnishee or the judgment debtor,]** must furnish **[him or her]** the garnishee and the judgment debtor, free of charge with a quarterly statement containing particulars of the payments received up to the date concerned and the balance owing.

(5) An emoluments attachment order may be executed against the garnishee as if it were a court judgment, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order or the correctness of the balance claimed.

(6) *(a)* If, after the service of such an emoluments attachment order on the garnishee, the garnishee believes or becomes aware or it is otherwise shown that the—

(i) judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his or her 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 the sufficient means]** or that of his or her dependants; or

(ii) amounts claimed are erroneous or not in accordance with the law,

the garnishee, judgment debtor or any other interested party must without delay and in writing notify the judgment creditor or his or her attorney accordingly.

(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.

(c) The judgment creditor or his or her attorney must, after receiving the notice contemplated in paragraph *(a)*, without delay indicate whether he or she accepts the reasons given in that notification and if not, set the matter down for hearing in court with notice to the garnishee, judgment debtor or any other interested party referred to in paragraph *(a)*.

(d) The court may, after hearing all parties and after satisfying itself that the order is just and equitable—

(i) 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

(ii) 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.

(7) Any emoluments attachment order may at any time on good cause shown be suspended, amended or rescinded by the court, and when suspending any such order the court may impose such conditions as it may deem just and reasonable.

besoldigingbeslagbevel gemagtig is nie, ook aan die vonnisskuldenaar, beteken word op die wyse deur die reëls vir die betekening van prosesstukke voorgeskryf.

(4) *(a)* Aftrekkings moet ingevolge 'n besoldigingbeslagbevel gemaak word, indien die besoldiging van die vonnisskuldenaar maandeliks betaal word, aan die einde van die maand wat volg op die maand waarin dit aan die beslagskuldenaar beteken word of indien die besoldiging van die vonnisskuldenaar weekliks betaal word, aan die einde van die tweede week van die maand wat volg op die maand waarin dit aan die beslagskuldenaar aldus beteken word, en alle betalings daarkragtens aan die vonnisskuldeiser of sy of haar prokureur word maandeliks met ingang van die einde van die maand wat volg op die maand waarin daardie bevel aan die beslagskuldenaar beteken word, gedoen.

(b) Die vonnisskuldeiser of sy of haar prokureur moet**[, op billike versoek van]** kosteloos aan die beslagskuldenaar **[of]** en die vonnisskuldenaar**[, kosteloos [aan hom of haar]** 'n kwartaallikse staat verstrek waarin besonderhede van die betalings ontvang tot die betrokke datum en die saldo verskuldig, vervat is.

(5) 'n Besoldigingbeslagbevel kan teen die beslagskuldenaar ten uitvoer gelê word asof dit 'n vonnis van die hof is, onderworpe aan die reg van die vonnisskuldenaar, die beslagskuldenaar of 'n ander belanghebbende om die bestaan of geldigheid van die bevel of die juistheid van die gevorderde saldo te betwis.

(6) *(a)* Indien na betekening van so 'n besoldigingbeslagbevel aan die beslagskuldenaar, die beslagskuldenaar glo of daarvan bewus word of dit andersins bewys word dat die—

(i) 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,]** vir sy of haar eie onderhoud of dié van sy of haar afhanklikes nie; of

(ii) geëiste bedrae foutief of nie volgens die reg is nie,

moet die beslagskuldenaar, vonnisskuldenaar of 'n ander belanghebbende die vonnisskuldeiser of sy of haar prokureur onverwyld skriftelik dienooreenkomstig in kennis stel.

(b) Die skriftelike kennisgewing bedoel in paragraaf *(a)* moet die redes uiteensit waarom geglo word of vir die kennis dat die vonnisskuldenaar nie genoegsame middele sal hê vir sy of haar eie onderhoud of dié van sy of haar afhanklikes nie of die geëiste bedrae foutief of nie volgens die reg is nie.

(c) Die vonnisskuldeiser of sy of haar prokureur moet, na ontvangs van die kennisgewing bedoel in paragraaf *(a)*, sonder versuim aandui of hy of sy die redes in daardie kennisgewing gegee, aanvaar en indien nie, die aangeleentheid ter rolle plaas met kennisgewing aan die beslagskuldenaar, vonnisskuldenaar en enige ander belanghebbende bedoel in paragraaf *(a)*.

(d) Die hof kan, na aanhoor van alle partye en as die hof tevrede is dat die bevel regverdig en billik is—

(i) die besoldigingbeslagbevel tersyde stel of dit op so 'n wyse wysig dat dit slegs die saldo van die besoldiging van die vonnisskuldenaar bo en behalwe die genoegsame middele benodig vir sy of haar eie onderhoud of dié van sy of haar afhanklikes, sal raak; of

(ii) enige bevel gee, met inbegrip van 'n bevel rakende die verdeling van die bedrag beskikbaar vir toedeling aan al die besoldigingbeslagbevele, as die hof tevrede is dat die bedrag gepas is en nie 25 persent van die vonnisskuldenaar se basiese salaris oorskry nie en 'n bevel rakende koste.

(7) 'n Besoldigingbeslagbevel kan te eniger tyd om 'n gegronde rede aangevoer, deur die hof opgeskort, gewysig of ingetrek word en by opskorting van so 'n bevel kan die hof die voorwaardes oplê wat hy billik en redelik ag.

(8) *(a)* Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of a garnishee before the judgment debt has been paid in full, such judgment debtor **[shall]** must forthwith advise the judgment creditor or his or her attorney in writing of the name and address of his or her new employer, and the judgment creditor or his or her attorney may cause a certified copy of such emoluments attachment order to be served on the said new employer, together with an affidavit or affirmation by him or her or a certificate by his or her attorney specifying the payments received by him or her since such order was issued, the costs, if any, incurred since the date on which that order was issued and the balance outstanding.

(b) An employer on whom a certified copy referred to in paragraph *(a)* has been so served, **[shall]** is thereupon **[be]** bound thereby and **[shall then be]** is deemed to have been substituted for the original garnishee, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order and the correctness of the balance claimed.

(9)**[*(a)*]** Whenever any judgment debtor to whom an emoluments attachment order relates, leaves the service of the garnishee before the judgment debt has been paid in full and becomes self-employed or is employed by someone else, he or she **[shall, or shall]** is, or is pending the service of the emoluments attachment order on his or her new employer, again **[be]** obliged to comply with the relevant order referred to in subsection (1)*(b)*.

(10) *(a)* Any garnishee may, in respect of the services rendered by him or her 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 or her from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

(b) A garnishee who—

(i) unreasonably fails to timeously deduct the amount of the emoluments attachment order provided for in subsection (4)*(a)*; or

(ii) unreasonably fails to timeously stop the deductions when the judgment debt and costs have been paid in full,

is liable to repay to the judgment debtor any additional costs and interest which have accrued or any amount deducted from the salary of the judgment debtor after the judgment debt and costs have been paid in full as a result of such failure.

(c) The Rules Board for Courts of Law must make a reference to the provisions of paragraph *(b)* on Form 38 of Annexure 1 to the rules, containing the emoluments attachment order.''.

Substitution of section 65M of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

10. The following section is hereby substituted for section 65M of the Magistrates' Courts Act, 1944:

''**Enforcement of certain judgments of [Supreme] division of High Court or court for regional division**

65M. If a judgment for the payment of any amount of money has been given by a division of the **[Supreme]** High Court of South Africa or a court for a regional division, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of section 65A(1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his or her attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings

(8) *(a)* Wanneer 'n vonnisskuldenaar op wie 'n besoldigingbeslagbevel betrekking het, die diens van die beslagskuldenaar verlaat voordat die vonnisskuld ten volle vereffen is, stel die vonnisskuldenaar onverwyld die vonnisskuldeiser skriftelik in kennis van die naam en adres van sy of haar nuwe werkgewer en kan die vonnisskuldeiser of sy of haar prokureur 'n gesertifiseerde afskrif van die besoldigingbeslagbevel aan daardie nuwe werkgewer laat beteken, tesame met 'n beëdigde verklaring of 'n bevestiging deur hom of haar of 'n sertifikaat deur sy of haar prokureur waarin die betalings deur hom of haar sedert die uitreiking van die besoldigingbeslagbevel ontvang, die koste, indien daar is, wat sedert die datum waarop daardie bevel uitgereik is, aangegaan is, en die saldo wat verskuldig is, vermeld word.

(b) 'n Werkgewer aan wie 'n in paragraaf *(a)* genoemde gesertifiseerde afskrif aldus beteken is, is deur die besoldigingbeslagbevel gebonde en word geag in die plek van die oorspronklike beslagskuldenaar gestel te wees, onderworpe aan die reg van die vonnisskuldenaar, die beslagskuldenaar of 'n ander belanghebbende om die bestaan of geldigheid van die bevel en die juistheid van die gevorderde saldo te betwis.

(9) **[*(a)*]** Wanneer 'n vonnisskuldenaar op wie 'n besoldigingbeslagbevel betrekking het, die diens van die beslagskuldenaar verlaat voordat die vonnisskuld ten volle vereffen is en vir homself of haarself begin werk of in die diens van iemand anders tree, is hy of sy, of is hy of sy hangende die betekening van die besoldigingbeslagbevel aan sy of haar nuwe werkgewer, weer verplig om te voldoen aan die toepaslike bevel in subartikel (1)*(b)* genoem.

(10) *(a)* 'n Beslagskuldenaar kan vir die dienste deur hom of haar gelewer ingevolge 'n besoldigingbeslagbevel 'n kommissie van hoogstens 5 persent van alle bedrae deur hom of haar 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.

(b) 'n Beslagskuldenaar wat—

(i) onredelikerwys versuim om die bedrag van die besoldigingbeslagbevel betyds af te trek soos in subartikel (4)*(a)* bepaal; of

(ii) onredelikerwys versuim om die aftrekkings betyds te stop wanneer die vonnisskuld en koste ten volle betaal is,

is aanspreeklik vir die terugbetaling aan die vonnisskuldenaar van enige ekstra koste en rente wat opgeloop het of enige bedrag wat van die besoldiging van die vonnisskuldenaar afgetrek is, nadat die vonnisskuld en koste as gevolg van so 'n versuim ten volle betaal is.

(c) Die Reëlsraad vir Geregshowe moet 'n verwysing na die bepalings van paragraaf *(b)* op Vorm 38 van Bylae 1 tot die reëls, wat die besoldigingbeslagbevel bevat, aanbring.''.

Vervanging van artikel 65M van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976

10. Die volgende artikel vervang artikel 65M van die Wet op Landdroshowe, 1944:

''**Afdwing van sekere vonnisse van afdeling van Hooggeregshof of hof vir streekafdeling**

65M. Indien 'n vonnis vir die betaling van 'n bedrag geld deur 'n afdeling van die Hooggeregshof van Suid-Afrika of 'n hof vir 'n streekafdeling gevel is, kan die vonnisskuldeiser 'n gewaarmerkte afskrif van daardie vonnis en 'n beëdigde verklaring of 'n bevestiging van die vonnisskuldeiser of 'n sertifikaat van sy of haar prokureur waarin uiteengesit word die bedrag wat nog kragtens die vonnis verskuldig is en hoe dit bereken is, by die klerk van die hof waaruit die vonnisskuldeiser 'n kennisgewing ingevolge artikel 65A(1) moet uitreik, laat indien, en daarna het daardie vonnis, hetsy die bedrag van daardie vonnis andersins die jurisdiksie van die hof sou oorskry het of nie, al die gevolge van 'n vonnis van daardie hof, en kan stappe daarop gedoen word asof dit 'n vonnis was

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may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate.''.

Amendment of section 73 of Act 32 of 1944, as amended by section 18 of Act 40 of 1952 and section 5 of Act 63 of 1976

11. Section 73 of the Magistrates' Courts Act, 1944, is hereby amended by—

(a) the substitution for the heading of the following heading: ''**Suspension of execution of debt**''; and

(b) the substitution for subsection (1) of the following subsection:

''(1) The court may, **[upon]** on the application of any judgment debtor or under section 65E(1) *(a)* (ii) or 65E (1) *(c)* and if it appears to the court that the judgment debtor is unable to satisfy the judgment debt in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof or if the judgment debtor consents to **[an emoluments attachment order or]** a garnishee order being made against him or her, suspend execution against that debtor either wholly or in part on such conditions as to security or otherwise as the court may determine.''.

Amendment of section 86 of Act 32 of 1944

12. Section 86 of the Magistrates' Courts Act, 1944, is hereby amended by the addition of the following subsection:

''(5) If a party abandons a judgment given in his or her favour because the judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid, no judgment referred to in subsection (2) or (3) shall be entered in favour of the other party.''.

Insertion of section 106C in Act 32 of 1944

13. The following section is hereby inserted in the Magistrates' Courts Act, 1944, after section 106B:

''**Offences relating to judgments, emoluments attachment orders and instalment orders**

106C. (1) Any person who requires the applicant to consent to a judgment or any instalment order or emoluments attachment order prior to the granting of the loan, is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding three years.

(2) Any person who fraudulently obtains or issues a judgment, or any instalment order or emoluments attachment order in terms of this Act, is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding three years.''.

Insertion of section 23A in Act 10 of 2013

14. The Superior Courts Act, 2013, is hereby amended by the insertion of the following section after section 23:

''**Rescission of judgment with consent of plaintiff or where judgment debt has been paid**

23A. (1) If a plaintiff in whose favour a default judgment has been granted has consented in writing that the judgment be rescinded, a court may rescind such judgment on application by any person affected by it.

wat wettiglik in daardie hof gevel is ten gunste van die vonnisskuldeiser vir die bedrag vermeld in die beëdigde verklaring of die bevestiging of die sertifikaat as nog verskuldig kragtens daardie vonnis, dog onderworpe aan die reg van die vonnisskuldenaar om die juistheid van die bedrag wat in bedoelde beëdigde verklaring of bevestiging of sertifikaat vermeld word, te betwis.''.

Wysiging van artikel 73 van Wet 32 van 1944, soos gewysig deur artikel 18 van Wet 40 van 1952 en artikel 5 van Wet 63 van 1976

11. Artikel 73 van die Wet op Landdroshowe, 1944, word hierby gewysig—

(a) deur die vervanging van die opskrif deur die volgende opskrif:

''**Opskorting van eksekusie teen skuld**''; en

(b) deur die vervanging van subartikel (1) deur die volgende subartikel:

''(1) Die hof kan, op aansoek van 'n vonnisskuldenaar of kragtens artikel 65E(1)*(a)*(ii) of 65E(1)*(c)* en indien dit vir die hof blyk dat die vonnisskuldenaar nie by vermoë is om onmiddellik ten volle aan die vonnisskuld te voldoen nie, dog wel by vermoë is om dit in redelike periodieke paaiemente af te betaal of waar die vonnisskuldenaar toestem dat 'n **[besoldigingbeslagbevel of 'n]** skuldbeslagbevel teen hom of haar verleen word, eksekusie teen daardie vonnisskuldenaar geheel en al of ten dele opskort op die voorwaardes ten aansien van sekerheidstelling of andersins wat die hof bepaal.''.

Wysiging van artikel 86 van Wet 32 van 1944

12. Artikel 86 van die Wet op Landdroshowe, 1944, word hierby gewysig deur die byvoeging van die volgende subartikel:

''(5) Indien 'n party van 'n vonnis in sy of haar guns afstand doen omdat die vonnisskuld, die rente daarop teen die koers waarvoor vonnis gegee is en die koste betaal is, word geen vonnis bedoel in subartikel (2) of (3) ten gunste van die ander party aangeteken nie.''.

Invoeging van artikel 106C in Wet 32 van 1944

13. Die volgende artikel word hierby in die Wet op Landdroshowe, 1944, na artikel 106B ingevoeg:

''**Misdrywe betreffende vonnisse, besoldigingbeslagbevele en paaiementsbevele**

106C. (1) Enige persoon wat van die aansoeker vereis om tot vonnis of enige paaiementsbevel of besoldigingbeslagbevel toe te stem voor die toestaan van die lening, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf van hoogstens drie jaar.

(2) Enige persoon wat op bedrieglike wyse 'n vonnis of enige paaiementsbevel of besoldigingbeslagbevel ingevolge hierdie Wet verkry of uitreik, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf van hoogstens drie jaar.''.

Invoeging van artikel 23A in Wet 10 van 2013

14. Die Wet op Hoër Howe, 2013, word hierby gewysig deur die invoeging van die volgende artikel na artikel 23:

''**Tersydestelling van vonnis met toestemming van eiser of by betaling van vonnisskuld**

23A. (1) Indien 'n eiser of eiseres in wie se guns 'n verstekvonnis verleen is, skriftelik toestem dat die vonnis tersyde gestel kan word, kan 'n hof, op aansoek van enige persoon wat daardeur geraak word, sodanige vonnis tersyde stel.

(2) *(a)* 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)*.''.

Transitional provisions

15. (1) All legal proceedings in terms of sections 36, 45, 57, 58, 65, 65E, 65J, 65M, 73 or 86 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), which were instituted prior to the commencement of this Act and which are not concluded before the commencement of this Act, must be continued and concluded in all respects as if this Act had not been passed: Provided that, where applicable, the original judgment, instalment order or emoluments attachment order, upon which the proceedings in question are based, was obtained and granted in accordance with the law.

(2) *(a)* A judgment creditor in whose favour a default judgment has been granted and a subsequent instalment order or emoluments attachment order (hereinafter referred to as a subsequent order) made, based on that default judgment, or a judgment debtor or any other person affected by that default judgment or subsequent order based on that default judgment, who has reason to believe that that default judgment or subsequent order was not obtained and granted in accordance with the law, may apply for the review of that default judgment or subsequent order.

(b) This subsection applies only to default judgments and subsequent orders in terms of the Magistrates' Courts Act, 1944.

(c) The application contemplated in paragraph *(a)*—

(i) must be made on a form which corresponds substantially with the form prescribed in the Schedule to this Act;

(ii) must be accompanied by a supporting affidavit;

(iii) must be accompanied by proof that the application has been served on the other party, at least 10 court days prior to the hearing of the intended application;

(iv) may be set down for hearing on any day, being not less than 10 court days after service thereof; and

(v) may be heard by a magistrate in chambers.

(d) The court must rescind a default judgment or subsequent order contemplated in paragraph *(a)*, if it is proved that the default judgment or subsequent order was not obtained and granted in accordance with the law or may give any other order it deems fit in the circumstances.

(e) No cost order shall be made with regard to an application contemplated in paragraph *(a)*: Provided that the judgment debtor or affected person who applies for the review contemplated in paragraph *(a)* acted reasonably in bringing the application.

(f) The clerk or registrar of the court must render reasonable assistance to a party wishing to bring an application contemplated in paragraph *(a)*: Provided that the State or that clerk or registrar shall not be liable for any damage or loss resulting from assistance given in good faith by that clerk or registrar to such party in the compilation or preparation of any process or document.

(g) The operation of this subsection shall cease after a period of three years after the date on which this Act, or the date on which the last provisions of this Act, has come into operation.

(2) *(a)* Waar 'n vonnisskuld, die rente teen die koers waarvoor vonnis verleen is en die koste, ten volle betaal is, hetsy die toestemming van die vonnisskuldeiser vir die tersydestelling van die vonnis verkry is al dan nie, kan 'n hof, op aansoek van die vonnisskuldenaar of enige ander persoon wat deur die vonnis geraak word, daardie vonnis tersyde stel.

(b) Die aansoek in paragraaf *(a)* beoog—

(i) moet gebring word op 'n vorm wat wesenlik moet ooreenstem met die vorm soos in die reëls voorgeskryf;

(ii) moet vergesel wees van redelike bewys dat die vonnisskuld, die rente en die koste betaal is;

(iii) moet vergesel wees van bewys dat die aansoek aan die vonnisskuldeiser beteken is, ten minste 10 sakedae voor die aanhoor van die beoogde aansoek;

(iv) kan ter rolle geplaas word vir verhoor op enige dag nie minder nie as 10 sakedae na betekening daarvan; en

(v) kan in kamers deur 'n regter aangehoor word.

(c) 'n Hof kan enige kostebevel maak wat hy goed ag rakende 'n aansoek in paragraaf *(a)* beoog.''.

Oorgangsbepalings

15. (1) Alle geregtelike verrigtinge ingevolge artikels 36, 45, 57, 58, 65, 65E, 65J, 65M, 73 of 86 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), wat voor die inwerkingtreding van hierdie Wet ingestel is en wat nie voor die inwerkingtreding van hierdie Wet afgehandel is nie, moet in alle opsigte voortgaan en afgehandel word asof hierdie Wet nie deurgevoer is nie: Met dien verstande dat, waar toepaslik, die oorspronklike vonnis, paaiementsbevel of besoldigingbeslagbevel waarop die betrokke verrigtinge berus, ooreenkomstig die reg verkry en aangeteken is.

(2) *(a)* 'n Vonnisskuldeiser in wie se guns 'n verstekvonnis verleen is of 'n daaropvolgende paaiementsbevel of besoldigingbeslagbevel (hierna 'n daaropvolgende bevel genoem) gemaak is, wat op daardie verstekvonnis berus, of 'n vonnisskuldenaar of enige ander persoon wat deur daardie verstekvonnis of daaropvolgende bevel wat op daardie verstekvonnis gegrond is, geraak word, wat rede het om te glo dat daardie verstekvonnis of daaropvolgende bevel nie ooreenkomstig die reg verkry of toegestaan is nie, kan aansoek doen vir die hersiening van daardie verstekvonnis of daaropvolgende bevel.

(b) Hierdie subartikel is net op verstekvonnisse en daaropvolgende bevele ingevolge die Wet op Landdroshowe, 1944, van toepassing.

(c) Die aansoek in paragraaf *(a)* beoog—

(i) moet gebring word op 'n vorm wat wesenlik moet ooreenstem met die vorm soos voorgeskryf in die Bylae tot hierdie Wet;

(ii) moet vergesel wees van 'n ondersteunende eedsverklaring;

(iii) moet vergesel wees van bewys dat die aansoek aan die ander party beteken is, ten minste 10 hofdae voor die aanhoor van die beoogde aansoek;

(iv) kan ter rolle geplaas word vir verhoor op enige dag nie minder nie as 10 dae na betekening daarvan; en

(v) kan in kamers deur 'n landdros aangehoor word.

(d) Die hof moet 'n verstekvonnis of daaropvolgende bevel in paragraaf *(a)* beoog, tersyde stel as dit bewys word dat die verstekvonnis of daaropvolgende bevel nie ooreenkomstig die reg verkry of toegestaan is nie of kan enige ander bevel gee wat die hof in die omstandighede goed ag.

(e) Geen kostebevel word gemaak met betrekking tot 'n aansoek in paragraaf *(a)* beoog nie: Met dien verstande dat die vonnisskuldenaar of geraakte persoon wat aansoek doen om die hersiening in paragraaf *(a)* beoog, redelik gehandel het by die doen van die aansoek.

(f) Die klerk of griffier van die hof moet redelike bystand verleen aan 'n party wat 'n aansoek in paragraaf *(a)* beoog, wil bring: Met dien verstande dat die Staat of daardie klerk of griffier nie aanspreeklik is vir enige skade of verlies voortspruitend uit bystand wat ter goeder trou deur daardie klerk of griffier aan daardie party in die samestelling of voorbereiding van enige prosesstuk of dokument, gegee is nie.

(g) Die werking van hierdie subartikel kom tot 'n einde na 'n tydperk van drie jaar na die datum waarop hierdie Wet, of die datum waarop die laaste bepalings van hierdie Wet, in werking getree het.

(3) Despite the amendment of any provision of the Magistrates' Courts Act, 1944, by this Act, such provision, for purposes of the disposal of any legal proceedings referred to in subsection (1), remains in force as if such provision had not been amended.

(4) An investigation or prosecution or other legal proceedings in respect of conduct which would have constituted an offence referred to in section 106C of the Magistrates' Courts Act, 1944, which was initiated before the commencement of this Act must be concluded, instituted and continued as if this Act had not been passed.

Short title and commencement

16. (1) This Act is called the Courts of Law Amendment Act, 2017, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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

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(3) Ondanks die wysiging van enige wetsbepaling van die Wet op Landdroshowe, 1944 deur hierdie Wet, bly sodanige bepaling, vir doeleindes van die beskikking oor enige geregtelike verrigtinge in subartikel (1) bedoel, van krag asof sodanige bepaling nie gewysig is nie.

(4) 'n Ondersoek of vervolging of enige ander geregtelike verrigtinge ten opsigte van optrede wat 'n misdryf in artikel 106C van die Wet op Landdroshowe, 1944, bedoel, sou uitmaak en wat 'n aanvang geneem het voor die inwerkingtreding van hierdie Wet, moet afgehandel, ingestel of mee voortgegaan word asof hierdie Wet nie deurgevoer is nie.

Kort titel en inwerkingtreding

16. (1) Hierdie Wet heet die Wysigingswet op Geregshowe, 2017 en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

(2) Verskillende datums kan ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

SCHEDULE

APPLICATION TO REVIEW DEFAULT JUDGMENT AND SUBSEQUENT ORDER

(Section 15(2))

IN THE MAGISTRATE'S COURT FOR THE DISTRICT/REGION ....

HELD AT ....

CASE NO..

In the matter between

....Applicant

and

....Respondent

Take notice that application will be made on behalf of the above-mentioned applicant for the review of the default judgment and subsequent order/s granted in this case, on .... at .... (time) on the basis that the judgment and subsequent order/s have not been obtained and granted in accordance with the law.

The affidavit of ...., annexed hereto, will be used in support of the application.

DATED AT .... on ....

....(Applicant/applicant's attorney)

Address ....

....

TO: (1) .... (Respondent or respondent's attorney)

Address: ....

....

(2) The clerk/registrar of the court ....

Address: ....

....

BYLAE

AANSOEK OM VERSTEKVONNIS EN DAAROPVOLGENDE BEVEL TE HERSIEN

(Artikel 15(2))

IN DIE LANDDROSHOF VIR DIE DISTRIK/STREEK ....

GEHOU TE ....

SAAKNO ....

In die saak tussen

....Applikant

en

....Respondent

Neem kennis dat aansoek namens die bogemelde applikant gedoen sal word vir die hersiening van die verstekvonnis en daaropvolgende bevel/e toegestaan in hierdie saak, op .... om .... (tyd) op grond daarvan dat die vonnis en daaropvolgende bevel/e nie ooreenkomstig die reg verkry en toegestaan is nie.

Die eedsverklaring van ...., hierby aangeheg, sal ter ondersteuning van die aansoek gebruik word.

GEDATEER TE .... op ....

....(Applikant/applikant se prokureur)

Adres: ....

....

AAN: (1) .... (Respondent of respondent se prokureur)

Adres: ....

....

(2) Die klerk/griffier van die hof ....

Adres: ....

....

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