

(2 August 2017 – to date)

[This is the **current** version and applies as from **2 August 2017**, i.e. the date of commencement of the Judicial Matters Amendment Act 8 of 2017 – to date]

SMALL CLAIMS COURTS ACT 61 OF 1984

Government Notice 900 in Government Gazette 9209, dated 2 May 1984. Commencement date: 24 August 1985 [Proc. R137, Gazette No. 9899, dated 23 August 1985].

as amended by:

Small Claims Courts Amendment Act 92 of 1986 - Government Notice 1865 in Government Gazette 10427, dated 10 September 1986. Commencement date: 10 September 1986, except sections 8 and 9. Commencement date of sections 8 and 9: 1 January 1987 [Proc. R240, Gazette No. 10572, dated 31 December 1986].

Small Claims Courts Amendment Act 63 of 1989 - Government Notice 1054 in Government Gazette 11902, dated 30 May 1989. Commencement date of sections 1, 2, 3 and 8: 1 September 1989. [Proc. R159, Gazette No. 12081, dated 1 September 1989].

Small Claims Courts Amendment Act 14 of 1990 - Government Notice 590 in Government Gazette 12357, dated 23 March 1990. Commencement date: 23 March 1990.

Small Claims Courts Amendment Act 63 of 1989 - Government Notice 1054 in Government Gazette 11902, dated 30 May 1989. Commencement date of sections 5, 6 and 7: 20 May 1991. [Proc. R46, Gazette No. 13132, dated 20 May 1991].

Small Claims Courts Amendment Act 63 of 1989 - Government Notice 1054 in Government Gazette 11902, dated 30 May 1989. Commencement date of section 4: 1 August 1992. [Proc. 77, Gazette No. 14176, dated 31 July 1992].

Small Claims Courts Amendment Act 2 of 1992 - Government Notice 918 in Government Gazette 13880, dated 20 March 1992. Commencement date: 1 August 1992. [Proc. 78, Gazette No. 14176, dated 31 July 1992].

General Law Amendment Act 139 of 1992 - Government Notice 1926 in Government Gazette 14142, dated 15 July 1992. Commencement date: 7 August 1992. [Proc. R89, Gazette No. 14218, dated 7 August 1992].

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General Law Fourth Amendment Act 132 of 1993 - Government Notice 1852 in Government Gazette 15160, dated 6 October 1993. Commencement date: 1 December 1993. [Proc. R123, Gazette No. 15308, dated 1 December 1993].

Justice Laws Rationalisation Act 18 of 1996 - Government Notice 632 in Government Gazette 17129, dated 19 April 1996. Commencement date: 1 April 1997. [Proc. R23, Gazette No. 17849, dated 12 March 1997].

Judicial Matters Amendment Act 26 of 1999 - Government Notice 507 in Government Gazette 19975, dated 28 April 1999. Commencement date: 28 April 1999.

Judicial Matters Amendment Act 26 of 1999 - Government Notice 507 in Government Gazette 19975, dated 28 April 1999. Commencement date: 28 April 1999.

Prevention and Combating of Corrupt Activities Act 12 of 2004 - Government Notice 559 in Government Gazette 26311, dated 28 April 2004. Commencement date: 27 April 2004.

National Credit Act 34 of 2005 - Government Notice 230 in Government Gazette 28619, dated 15 March 2006. Commencement date: 1 June 2006. [Proc. 22, Gazette No. 28824, dated 11 May 2006].

Judicial Matters Amendment Act 42 of 2013 - Government Notice 38 in Government Gazette 37254, dated 22 January 2014. Commencement date: 22 January 2014.

*Judicial Matters Amendment Act 8 of 2017 - Government Notice 770 in Government Gazette 41018 dated 2 August 2017. Commencement date: **2 August 2017.***

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

ACT

To provide for courts for the adjudication of small civil claims and for matters connected therewith.

(English text signed by the State President.)

(Assented to 19 April 1984.)

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

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1. Definitions

In this Act, unless the context indicates otherwise-

"**commissioner**" means a Commissioner for Small Claims appointed under section 9;

"**court**" means a court established under section 2;

"**district**" means a district created under section 2(1)(a) of the Magistrates' Court Act, 1944 (Act No. 32 of 1944);

"**Minister**" means the Minister of Justice;

"**prescribed**" means prescribed under section 25;

"**record**" means to take down in writing or in shorthand;

"**the rules**" means the rules made under section 25;

"**this Act**" includes the rules.

CHAPTER I

ESTABLISHMENT AND NATURE OF SMALL CLAIMS COURTS

2. Establishment of courts

- (1) The Minister may by notice in the *Gazette* -
 - (a) establish for any area consisting of one or more districts or a part of a district a court for the adjudication of claims in terms of this Act, called a small claims court;
 - (aA) determine the seat of such a court;
(Section 2(1)(aA) amended by section 1 of Act 14 of 1990)
 - (b) determine one or more places in the area concerned for the holding of sessions of such a court.

- (c) alter the area for which such a court has been established by including therein or excising therefrom any district or districts or part thereof;

(Section 2(1)(c) added by section 1 of Act 14 of 1990)

- (d) abolish a court established in terms of this section; and

(Section 2(1)(d) added by section 1 of Act 14 of 1990)

- (e) amend or withdraw any notice issued in terms of this section.

(Section 2(1)(e) added by section 1 of Act 14 of 1990)

- (2) If it is in the opinion of the Minister or a magistrate of a district authorized thereto by him expedient, the Minister or such magistrate may, notwithstanding the provisions of subsection (1) –

- (a) establish for that district a court for the adjudication of any particular claim or claims in terms of this Act; and

- (b) determine the place in that district for the holding of sessions of such a court.

(Section 2 substituted by section 1 of Act 92 of 1986)

3. Nature of courts and force of process

- (1) Subject to the provisions of subsection (2), a court shall not be a court of record.

- (2) The presiding officer shall record or cause to be recorded the verdict, judgment or order of the court and shall sign it.

- (3) The process of a court shall be served or executed in the prescribed manner.

- (4) Every process of a court shall be of force throughout the Republic.

4. Courts open to public

- (1) Subject to the provisions of subsection (2), the proceedings in a court shall take place in open court.

- (2) A court may in the interest of the administration of justice or of good order or of public morals or at the request of the parties to the proceedings for reasons considered sufficient by the court, order that the proceedings shall be held behind closed doors or that specified persons shall not be present thereat.

- (3) If any person present at the proceedings of a court disturbs the order of the court, the court may order that such person be removed and detained in custody until the court adjourns, or the court may, in its opinion order cannot be otherwise maintained, order that the court room be cleared and that the public shall not be present at the proceedings.

5. Language medium at proceedings

- (1) Either of the official languages of the Republic may be used at any stage of the proceedings of a court.
- (2) If evidence is given in a language with which one of the parties is in the opinion of the court not sufficiently conversant, a competent interpreter may be called by the court to interpret that evidence into a language with which that party appears to be sufficiently conversant, irrespective of whether the language in which the evidence is given is one of the official languages.

(Section 5(2) substituted by section 2 of Act 92 of 1986)

6. Inspection of documents by public and custody thereof

- (1) Subject to the provisions of the rules, the documents of a court shall be available for inspection by the public under the supervision of the clerk of the court at the prescribed times and upon payment of the prescribed fees, and those documents shall be preserved at the seat of the magistracy of the district in which the seat of that court is situated for such period as the Director-General: Justice may determine.

(Section 6(1) substituted by section 3 of Act 92 of 1986)

- (2) The Director-General: Justice may order that after the expiry of the period contemplated in subsection (1) the documents so preserved shall be removed to a specified place of custody or be destroyed or otherwise disposed of.

7. Parties who may appear in court

- (1) Only a natural person may institute an action in a court and, subject to the provisions of section 14(2), a juristic person may become a party to an action in a court only as defendant.
- (2) A party to an action shall appear in person before the court and, subject to the provisions of subsection (4), shall not be represented by any person during the proceedings.

(Section 7(2) substituted by section 4(a) of Act 92 of 1986)

- (3)

(Section 7(3) deleted by section 4(b) of Act 92 of 1986)

- (4) A juristic person shall be represented in a court by its duly nominated director or other officer.

CHAPTER II PRESIDING OFFICERS AND OFFICERS OF THE COURT

8. Presiding officers

The officer presiding at a court shall be called a Commissioner for Small Claims and shall be appointed under section 9.

9. Appointment of commissioners

(1)

- (a) Subject to the provisions of this section, the Minister or any officer of the Department of Justice with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may appoint one or more commissioners for any court.

(Section 9(1)(a) substituted by section 5(a) of Act 92 of 1986)

(Section 9(1)(a) substituted by section 4 of Act 26 of 1999)

- (b) An officer in the employ of the State shall not be appointed as a commissioner.

- (c) A commissioner appointed in terms of paragraph (a) in respect of a specific court shall be deemed to be appointed for any court established under section 2 in that province.

(Section 9(1)(c) inserted by section 18 of Act 42 of 2013)

- (1A) A magistrate who establishes a court in terms of section 2(2), may, subject to the provisions of this section, appoint a commissioner for such a court.

(Section 9(1A) inserted by section 5(b) of Act 92 of 1986)

(2) No person shall be appointed as a commissioner unless he is qualified –

- (a) to be admitted to practise as an advocate under the Admission of Advocates Act, 1964 (Act No. 67 of 1964); or

- (b) to be admitted to practise as an attorney under the Attorneys Act, 1979 (Act No. 53 of 1979); or

- (c) to be appointed as a magistrate under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993),

(Section 9(2)(c) amended by section 4 of Act 18 of 1996)

and for an uninterrupted period of at least five years practised as an advocate or attorney or occupied the post of magistrate, or for that period was involved in the tuition of law and also practised as an advocate or attorney for such period as, in the opinion of the Minister, makes him suitable for appointment as a commissioner, or possesses such other experience as, in the opinion of the Minister, renders him suitable for appointment as a commissioner.

(Words following upon section 9(2)(c) substituted by section 1(a) of Act 63 of 1989)

(3) A commissioner shall hold office during the Minister's pleasure.

(Section 9(3) substituted by section 1(b) of Act 63 of 1989)

- (4) A commissioner may resign by notice in writing to the Minister.
- (5) The Minister may at any time withdraw the appointment of a commissioner if in his opinion there is sufficient reason for doing so.
- (6) A person appointed under subsection (1) or subsection (1A) shall, before commencing with his functions as a commissioner, take an oath or make an affirmation subscribed by him in the form set out below:

I, A.B., do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of a commissioner in any court I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa.

(Section 9(6) substituted by section 5(c) of Act 92 of 1986)

- (7) Such an oath or affirmation shall be taken or made in open court before the most senior available magistrate of the district in which the seat of the court concerned is situated, and he shall at the foot thereof make a note to the effect that it was taken or made before him, and of the date on which it was so taken or made, and append his signature thereto.

(Section 9(7) substituted by section 5(d) of Act 92 of 1986)

10. Procedure in case of absence or incapacity of commissioners

When by reason of absence or incapacity a commissioner is unable to complete the hearing of an action, that hearing shall be commenced *de novo* before another commissioner.

11. Officers of court

- (1) The magistrate of the district in which the seat of a court is situated, shall appoint so many clerks and assistant clerks of the court, interpreters and legal assistants for that court as may be necessary for the performance of the prescribed functions.

(Section 11(1) substituted by section 6(a) of Act 92 of 1986)

- (2) The messenger of the court appointed under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), for the magistrate's court of a district, shall act as messenger of the court for a court in that part of the said district falling within the area of jurisdiction of that court.

(Section 11(2) substituted by section 6(b) of Act 92 of 1986)

- (3) The State, a clerk of the court, an assistant clerk of the court or a legal assistant shall not be liable for any damage or loss resulting from assistance given in good faith by that clerk of the court, assistant clerk of the court or legal assistant to any party or prospective party to an action before a court or to the

enforcement of a judgment or order in terms of section 41 in the form of legal advice or the compilation or preparation of a summons, statement or other document.

(Section 11(3) substituted by section 22 of Act 139 of 1992)

CHAPTER III JURISDICTION

12. Area of jurisdiction

The area of jurisdiction of a court shall be the area or district for which it was established.

(Section 12 substituted by section 7 of Act 92 of 1986)

13. Transfer of actions

An action may, with the consent of all the parties, or upon the application of one of the parties who satisfies the court that the hearing of the action in that court may result in undue expense or inconvenience to him, be transferred by the court to any other court, and in such a case the latter court shall, notwithstanding anything to the contrary in this Act contained, have jurisdiction to hear that action.

14. Jurisdiction in respect of persons

- (1) Subject to the provisions of subsection (2), a court shall have jurisdiction in respect of -
- (a) any person who resides, carries on business or is employed within the area of jurisdiction of the court;
 - (b) any partnership, as defendant, which has business premises situated or any member of which resides within the area of jurisdiction of the court;
 - (c) any person in respect of any proceedings incidental to any action instituted in that court by such person;
 - (d) any person, whether or not he resides, carries on business or is employed within the area of jurisdiction of the court, if the cause of action arose wholly within that area;
 - (e) any defendant, whether in convention or reconvention, who appears and takes no objection to the jurisdiction of the court;
 - (f) any person who owns immovable property within the area of jurisdiction of the court in actions in respect of such property or a mortgage bond thereon.
- (2) No action shall be instituted against the State in a court.

(3)

(Section 14(3) deleted by section 23 of Act 139 of 1992)

(4) A court shall not have jurisdiction in respect of any claim or counterclaim based in whole or in part upon a cession or assignment of rights.

15. Jurisdiction in respect of causes of action

Subject to the provisions of this Act, a court shall have jurisdiction in respect of causes of action in -

- (a) actions for the delivery or transfer of any property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the *Gazette*;
- (b) actions for ejection against the occupier of any premises or land within the area of jurisdiction of the court: Provided that where the right of occupation of the premises or land is in dispute between the parties, that right does not exceed in clear value to the occupier the amount determined by the Minister from time to time by notice in the *Gazette*;
- (c) actions based on or arising out of a liquid document or a mortgage bond, where the claim does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*;
- (d) actions based on or arising out of a credit agreement as defined in section 1 of the National Credit Act, 2005 where the claim or the value of the property in dispute does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*;
(Section 15(d) substituted by section 172(2) of Act 34 of 2005)
- (e) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*;
- (f) actions for counterclaims not exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, in respect of any cause of action mentioned in paragraphs (a) to (e).
(Section 15 substituted by section 8 of Act 92 of 1986 with effect from 1 January 1987)

16. Matters beyond jurisdiction

A court shall have no jurisdiction in matters -

- (a) in which the dissolution of any marriage, or of a customary union as defined in section 35 of the Black Administration Act, 1927 (Act No. 38 of 1927), is sought;

- (b) concerning the validity or interpretation of a will or other testamentary document;
- (c) concerning the status of a person in respect of his mental capacity;
- (d) in which is sought specific performance without an alternative claim for payment of damages, except in the case of –
 - (i) the rendering of an account in respect of which the claim does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*;
 - (ii) the delivery or transfer of any property, movable or immovable not exceeding in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(Section 16(d) substituted by section 9 of Act 92 of 1986 with effect from 1 January 1987)
- (e) in which is sought a decree of perpetual silence;
- (f) in which is sought damages in respect of –
 - (i) defamation;
 - (ii) malicious prosecution;
 - (iii) wrongful imprisonment;
 - (iv) wrongful arrest;
 - (v) seduction;
 - (vi) breach of promise to marry.
- (g) in which an interdict is sought.

(Section 16(g) added by section 2 of Act 63 of 1989)

17. Incidental jurisdiction

- (1) In an action in which the sum claimed does not exceed the jurisdiction of a court and is the balance of an account, the court may enquire into and hear evidence upon the whole account, even though that account relates to items and transactions exceeding the jurisdiction of a court.
- (2) Where the amount claimed or other relief sought does not exceed the jurisdiction of a court, the court shall not be deprived of that jurisdiction merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond its jurisdiction.

- (3) In determining whether a claim falls within the jurisdiction of a court, no claim for interest on a principal sum claimed or for costs or for general or alternative relief shall be taken into account.

18. Abandonment of part of claim

- (1) In order to bring a claim or counterclaim within the jurisdiction of a court, a party may in his summons or statement of defence, or at any time thereafter, explicitly abandon a part of that claim or counterclaim.
- (2) That part of a claim or counterclaim so abandoned, shall thereby be extinguished: Provided that if the claim or counterclaim is granted in part only, the abandonment shall be deemed first to apply to that part of the claim or counterclaim which was not granted.

19. Deduction of admitted debt

In order to bring a claim or counterclaim within the jurisdiction of a court a party may, in his summons or statement of defence or at any time thereafter, deduct from his claim or counterclaim, whether liquidated or unliquidated, any amount admitted by him to be due by him to the other party concerned.

20. Splitting of claims disallowed

A claim exceeding the jurisdiction of a court and based on one and the same cause of action may not be split with the object of recovering it in more than one action, if the parties to those actions and the point in issue in those actions would be the same.

21. Cumulative jurisdiction

If two or more claims, each based upon a different cause of action, are combined in one summons, a court shall have the same jurisdiction to adjudicate upon each claim as it would have had if each claim had formed the sole object of a separate action.

22. No jurisdiction by virtue of consent of parties

A court shall not have jurisdiction to hear any action, which otherwise exceeds its jurisdiction, by virtue of the consent of the parties.

23. Cessation of action

- (1) If a court is of the opinion that a case contains difficult or complex questions of law or of fact which cannot adequately or fairly or should not be decided by it, it shall stop the proceedings.

- (2) If the proceedings are stopped as contemplated in subsection (1), the plaintiff may institute a fresh action in another competent court of law.

24. Defendants subject to jurisdiction of courts

- (1) No person shall be bound to institute an action in terms of this Act in respect of a claim which may also be adjudicated upon in another court of law, but if an action is so instituted, the defendant shall be subject to the jurisdiction of the court in question.
- (2) Any provision in an agreement to the effect that the jurisdiction of a court shall be excluded, or that a party thereto shall not institute an action in terms of this Act, other than a provision to the effect that a dispute arising from the agreement shall be resolved by arbitration, shall be void.

**CHAPTER IV
RULES OF COURT**

25. Power of Rules Board for Courts of Law to make rules

(Heading of section 25 substituted by section 15(a) of Act 8 of 2017)

- (1) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may, subject to the approval of the Minister make, amend or repeal rules regulating the following matters in respect of small claims courts:

(Words preceding section 25(1)(a) substituted by section 15(b) of Act 8 of 2017)

- (a) The practice and procedure, including the procedure when proceedings are reviewed;
- (b) fees and costs;
- (c) the duties and powers of officers of the court;
- (d) the establishment, duties and powers of one or more boards to advise the Minister on the functioning of courts; or
- (e) any other matter which is necessary or expedient to prescribe for carrying out the provisions of this Act or the attainment of its objects.

(Section 25(1)(d) amended by section 15(c) of Act 8 of 2017)

(Section 25(1)(e) substituted by section 15(d) of Act 8 of 2017)

- (2) Different rules may be made under subsection (1) with regard to different classes of cases.
- (3) No rule relating to State revenue or State expenditure shall be made under subsection (1), except with the concurrence of the Minister of Finance.

- (4) No new rule and no amendment or repeal of a rule shall come into operation unless it has been published in the *Gazette* at least 30 days before the day upon which it is expressed to come into operation.

CHAPTER V PROCEDURE AND EVIDENCE

26. Procedure

- (1) Subject to the provisions of this Chapter, the rules of the law of evidence shall not apply in respect of the proceedings in a court, and a court may ascertain any relevant fact in such manner as it may deem fit.
- (2) Evidence to prove or disprove any fact in issue, may be submitted in writing or orally.
- (3) A party shall not question or cross-examine any other party to the proceedings in question or a witness called by the latter party, but the presiding commissioner shall proceed inquisitorially to ascertain the relevant facts, and to that end he may question any party or witness at any stage of the proceedings: Provided that the commissioner may in his discretion permit any party to put a question to any other party or any witness.

27. Evidence

- (1) Subject to the provisions of subsection (2), a party may call one or more witnesses to prove his claim, counterclaim or defence.
- (2) The provisions of subsection (1) shall not affect a court's power to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that no further evidence shall be adduced.

28. Evidence to be given under oath

No person shall testify or be questioned in a court unless the prescribed oath has been administered to him or the prescribed affirmation has been accepted from him by the presiding commissioner or by the clerk of the court, or any person acting in his place, in the presence of that commissioner, or, if the person concerned is to give his evidence through an interpreter, by the commissioner through the interpreter.

29. Institution of actions

- (1)

- (a) The plaintiff shall deliver a summons as prescribed personally or through his authorized representative to the clerk of the court, together with a copy of a written demand which was on a prior occasion delivered to the defendant by the plaintiff by hand or by registered post and in which the defendant was, notwithstanding anything to the contrary in any law contained, allowed at least 14 days, calculated from the date of receipt of that demand by the defendant, to satisfy the plaintiff's claim.

(Section 29(1) renumbered to 29(1)(a) by section 3 of Act 63 of 1989)

- (b) Until judgment has been given in an action arising from a business or profession carried on or exercised by the plaintiff, the plaintiff may not deliver a summons referred to in paragraph (a) to the clerk of the court in respect of any other action arising from that business or profession.

(Section 29(1)(b) added by section 3 of Act 63 of 1989)

- (2) Upon production of the prescribed proof that the reminder contemplated in subsection (1) was delivered to the defendant, and if the clerk of the court is satisfied that the plaintiff is a natural person and that his summons complies with the prescribed requirements, the clerk of the court shall set a date and time for the hearing of the action and issue the summons and hand it to the plaintiff or his authorized representative, who shall personally serve it on the defendant, or deliver it to the messenger of the court for service on the defendant.
- (3) Apart from the summons no pleadings shall be required of the parties, but the defendant may at any time before the hearing lodge with the clerk of the court a written statement setting forth the nature of his defence and particulars of the grounds on which it is based, and a copy of that statement shall be furnished to the plaintiff by the defendant.

30. Withdrawal of claims

- (1) A plaintiff may at any time, whether before or during the hearing of his action, withdraw his claim with the consent of the court and on such conditions as the court may determine, whereupon the proceedings shall be ceased.
- (2) If proceedings are ceased as contemplated in subsection (1), the plaintiff may bring a fresh action with the consent of the court.

31. Joinder of plaintiffs

- (1) Any number of persons each of whom has a separate claim against the same defendant, may join as plaintiffs in one action if the right of each to relief depends upon the determination of some question of law or fact which, if separate actions were instituted, would arise in each action: Provided that if such a joint action is instituted the defendant may apply to the court that separate trials be held, and the court may in its discretion make such order as it may deem just and expedient.

- (2) In a joint action judgment may be granted for one or more of the plaintiffs.

32. Joinder of defendants

Two or more defendants may be sued in the alternative or both in the alternative and jointly in one action, if the plaintiff alleges that he is uncertain which of the defendants is in law liable for his claim: Provided that on application by one or more of the defendants the court may in its discretion order that separate trials be held, or make such other order as it may deem just and expedient.

33. Amendment of documents

- (1) A court may at any time before judgment amend any summons or other document in connection with a case: Provided that no amendment shall be made if any party other than the party applying for the amendment may be prejudiced thereby in his case.
- (2) The amendment may be made upon such conditions as the court may deem reasonable.
- (3) In documents before the court the name of any person or place as commonly known may be employed, and the court may, on application, at any time before or after judgment substitute the correct name for that name.
- (4)

(Section 33(4) deleted by s. 28 of Act 132 of 1993)

CHAPTER VI JUDGMENT AND COSTS

34. Judgment

A court may, after the hearing of an action, grant -

- (a) judgment for the plaintiff in respect of his claim in so far as he has proved it;
- (b) judgment for the defendant in respect of his defence or counterclaim in so far as he has proved it;
- (c) absolution from the instance, if the court is of the opinion that the evidence does not enable it to give judgment for either party;
- (d) such judgment as to costs contemplated in section 37 as may be just;

- (e) an order, on such conditions as the court may deem fit, against the party for whom judgment has been granted, deferring wholly or in part further proceedings upon the judgment for a specified period pending arrangements by the other party for the satisfaction of the judgment.

35. Judgment by default or by consent

- (1) If a defendant, upon a summons having been served on him in terms of section 29 --

- (a) admits liability and consents to judgment in writing; or
- (b) fails to appear before the court on the trial date or on any date to which the proceedings have been postponed,

the court may, on application by the plaintiff, grant judgment for the plaintiff in so far as he has proved the defendant's liability and the amount of the claim to the satisfaction of the court, and the court may dismiss any counterclaim by the defendant.

- (2) If a plaintiff fails to appear before the court on the trial date or on any other date to which the proceedings have been postponed, the court may, on application by the defendant –

- (a) dismiss the plaintiff's claim: Provided that the plaintiff may again institute an action for that claim with the consent of the court; and
- (b) with regard to a counterclaim, grant judgment for the defendant in so far as he has proved the plaintiff's liability and the amount of the counterclaim to the satisfaction of the court.

36. Rescission of certain judgments

The court may, upon application by any person affected thereby or, in a case contemplated in paragraph (c) also *suo motu* –

- (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted, provided the application for set down for hearing is made on a date within six weeks after the applicant first had knowledge of the judgment;

(Section 36(a) substituted by section 1 of Act 2 of 1992)

- (b) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or as a result of a mistake common to the parties, provided the application is made not later than one year after the applicant first had knowledge of the voidness, fraud or mistake;
- (c) correct patent errors in any judgment, provided, in the case of an application, the application is made not later than one year after the applicant first had knowledge of any errors.

(Section 36 substituted by section 4 of Act 63 of 1989)

37. Costs

Costs awarded in terms of this Act may only include -

- (a) court fees;
- (b) the prescribed amount for the issue of the summons;
- (c) the fees and travelling expenses of the messenger of the court.

CHAPTER VII EXECUTION

38. Money to be paid direct to judgment creditor

Money payable in terms of a judgment or order of a court, shall be paid by the judgment debtor direct to the judgment creditor.

39. Inquiry into financial position

- (1) When a court grants judgment for the payment of a sum of money, the court shall enquire from the judgment debtor whether he is able to comply with the judgment without delay, and if he indicates that he is unable to do so, the court may, *in camera*, conduct an inquiry into the financial position of the judgment debtor and into his ability to pay the judgment debt and costs.
- (2) After such an inquiry the court may –
 - (a) order the judgment debtor to pay the judgment debt and costs in specified instalments or otherwise;
 - (b)

(Section 39(2)(b) deleted by section 5(a) of Act 63 of 1989)

- (c) suspend the order under paragraph (a) either wholly or in part on such conditions as to security or otherwise as the court may determine.

(Section 39(2)(c) substituted by section 5(b) of Act 63 of 1989)

40. Offer by judgment debtor after judgment

If no order has been made in terms of section 39(2), the judgment debtor may within 10 days after the court has granted judgment for the payment of a sum of money, make a written offer to the judgment creditor to pay the judgment debt and costs in specified instalments or otherwise, and if such an offer is accepted by the judgment creditor, the clerk of the court shall, at the written request of the judgment creditor, accompanied by the offer, order the judgment debtor to pay the judgment debt and costs in accordance with his offer, and such an order shall be deemed to be an order of the court in terms of section 39.

41. Manner of execution

- (1) When a court has granted judgment for the payment of money or made an order for the payment of money in instalments, that judgment, in the case of failure to pay the money within 10 days, or that order, in the case of failure to pay an instalment at the time and in the manner determined by the court, shall be enforceable by execution in the magistrate's court having jurisdiction in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the judgment creditor may proceed as if the judgment was granted in the magistrate's court in his favour for the amount mentioned in the affidavit referred to in subsection (2).
- (2) The clerk of the court shall, upon the written application of the judgment creditor accompanied by an affidavit specifying the amount and the costs still owing under the judgment or order and how that amount is arrived at, transmit that affidavit, together with a certified copy of that judgment or order reflecting the nature of the cause of action, to the clerk of the magistrate's court of the district in which the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is a juristic person, of the district in which its registered office or main place of business is situated.
- (3) Upon receipt of the documents referred to in subsection (2) the clerk of the magistrate's court concerned shall record the details of the judgment or order concerned and the amount owing mentioned in the affidavit in his registers.

(Section 41 substituted by section 6 of Act 63 of 1989)

42. Property exempt from execution

The provisions of section 67 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall apply *mutatis mutandis* in respect of a warrant of execution in terms of this Act.

43. Notice of change of address by judgment debtor

Any person against whom a court has granted judgment or made any order and who has not satisfied in full that judgment or order, and paid all costs for which he is liable in connection therewith, shall, if he has changed his place of residence, business or employment, within 14 days from the date of every such change notify the judgment creditor fully and correctly in writing of his new place of residence, business or employment.

44.

(Section 44 amended by section 10 of Act 92 of 1986)

(Section 44 repealed by section 7 of Act 63 of 1989)

CHAPTER VIII

REVIEW

45. Judgment or order final

A judgment or order of a court shall be final and no appeal shall lie from it.

46. Grounds of review

The grounds upon which the proceedings of a court may be taken on review before a provincial or local division of the Supreme Court of South Africa are -

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the commissioner; and
(Section 46(b) substituted by section 36 of Act 12 of 2004)
- (c) gross irregularity with regard to the proceedings.

CHAPTER IX

OFFENCES

47. Offences relating to execution

Any person who -

- (a) obstructs a messenger or deputy messenger of the court in the execution of his duties under this Act;
- (b)
(Section 47(b) deleted by section 8(a) of Act 63 of 1989)
- (c)
(Section 47(c) deleted by section 8(a) of Act 63 of 1989)

(d)

(Section 47(d) deleted by section 8(a) of Act 63 of 1989)

(e) fails to give notice of change of address in terms of section 43,

shall be guilty of an offence and liable upon conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

(Words following upon section 47(e) substituted by section 8(b) of Act 63 of 1989)

48. Contempt of court

- (1) Any person who wilfully insults a commissioner during the session of his court, or a clerk or messenger or other officer present at that session, or who wilfully interrupts the proceedings of a court or otherwise misbehaves himself in the place where the session of a court is held, shall, without prejudice to the provisions of section 4(3), be liable to be sentenced summarily or upon summons to a fine not exceeding R500 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.
- (2) When a commissioner sentences any person under this section, he shall without delay transmit to the registrar of the Supreme Court having jurisdiction for consideration and review by a judge in chambers, a statement, certified by him to be true and correct, of the grounds and reasons for the action taken by him, and shall also furnish to the person sentenced a copy of that statement.

CHAPTER X GENERAL AND SUPPLEMENTARY PROVISIONS

49. Jurisdiction as to plea of *ultra vires*

No court shall be competent to pronounce upon the validity of a provincial ordinance, a regulation, order or by-law made under a statute or a statutory proclamation of the State President, and every court shall assume that every such ordinance, regulation, order, by-law or proclamation is valid.

50. Pending proceedings

The provisions of this Act shall not affect any matter pending in any other court of law at the commencement of this Act, and such a matter shall be disposed of in the court in question as if this Act were not passed.

51. Short title and commencement

- (1) This Act shall be called the Small Claims Courts Act, 1984, and shall come into operation on a date determined by the State President by proclamation in the *Gazette*.

- (2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.