

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
MAGISTRATES' COURTS
AMENDMENT BILL**

[B 43—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 43A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP
OP LANDDROSHOWE**

[W 43—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 43A—97]

ISBN 0 621 27500 X

AMENDMENTS AGREED TO

MAGISTRATES' COURTS AMENDMENT BILL
[B 43—97]

NEW CLAUSE

1. That the following be a new Clause to follow Clause 1:

Amendment of section 57 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976

2. Section 57 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(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 advise the judgment debtor by registered letter of the terms of the judgment and order **[and of the consequences of his failure to satisfy them]**.”.

CLAUSE 2

1. On page 4, after line 9, to insert the following paragraphs:

(b) A notice referred to in paragraph *(a)* shall be drawn up by the judgment creditor or his or her attorney, signed by the judgment creditor or his or her attorney and the clerk of the court, and served by the sheriff, or by the attorney of the judgment creditor or any candidate attorney in his or her employ, on the judgment debtor or, if the judgment debtor is a juristic person, on the director or officer summonsed as the representative of the juristic person and in his or her personal capacity, in the manner prescribed by the rules for the service of process in general and at least ten days before the date fixed in the notice for the appearance before the court.

(c) The fees and charges in respect of a notice served by any attorney or candidate attorney shall be determined in accordance with the tariffs prescribed by the rules for the service of process by a sheriff: Provided that no such fees and charges shall be payable unless personal service of the notice has been effected.

2. On page 4, from line 38, to omit subsection (6) and to substitute:

(6) If the court is satisfied on the ground of sufficient proof or otherwise—

(a) that the judgment debtor, director or officer concerned has knowledge of a notice referred to in subsection (1) and that he or she has failed to appear before the court and on the date and at the time specified in the notice;

(b) that the judgment debtor, director or officer concerned, in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by the court, has

failed to appear before the court on that date and at that time;
or
(c) that the judgment debtor, director or officer concerned has failed to remain in attendance at the relevant proceedings or at the proceedings as so postponed,
the court may, at the request of the judgment creditor or his or her attorney, authorise the issue of a warrant directing a sheriff to arrest the said judgment debtor, director or officer and to bring him or her before a competent court at the earliest possible opportunity in order to enable that court to conduct an inquiry referred to in subsection (1).

3. That in the English text, on page 4, in line 50, to omit “be”.

4. That in the English text, on page 4, in line 51, to omit “shall be”.

5. On page 4, from line 53, to omit subsection (8) and to substitute:

(8) (a) Any person arrested under a warrant referred to in subsection (6) shall, in accordance with section 35(1)(d) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), be brought as soon as reasonably possible before the court within the district of which that person was arrested: Provided that any such person, if it is not possible to bring him or her before the court concerned, may be detained at any police station pending his or her appearance before that court.

(b) In lieu of arresting a person contemplated in paragraph (a), the sheriff may, if the judgment creditor or his or her attorney consents thereto, hand to that person a notice in writing which—

- (i) specifies the name, the residential address and the occupation or status of that person;
- (ii) calls upon that person to appear before the court and on the date and at the time specified in the notice; and
- (iii) contains a certificate signed by the sheriff to the effect that he or she has handed the original of the notice to that person and that he or she has explained to that person the import thereof.

(c) The sheriff shall forthwith forward a duplicate original of the notice to the clerk of the court concerned, and the mere production in the court of such a duplicate original shall be *prima facie* proof that the original thereof was handed to the person specified therein.

(d) The provisions of subsection (6) shall *mutatis mutandis* apply in respect of a notice referred to in paragraph (b).

6. On page 4, from line 56, to omit subsection (9) and to substitute:

(9) Any person who—

- (a) is called upon to appear before a court under a notice referred to in subsection (1) or (8)(b) and who wilfully fails to appear before the court and on the date and at the time specified in the notice;
- (b) in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by a court, wilfully fails to appear before the court on that date and at that time;
- (c) wilfully fails to remain in attendance at the relevant proceedings or at the proceedings as so postponed,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

7. On page 6, from line 1, to omit subsection (10) and to substitute:

(10) (a) Notwithstanding anything to the contrary contained in this Act—

- (i) the court which authorised the issue of a warrant referred to in subsection (6) and the court contemplated in subsection (8)(a), if the latter court is not the court which authorised the issue of the warrant concerned, shall have jurisdiction to inquire in a summary manner into the commission of an offence referred to in subsection (9), and upon proof beyond reasonable doubt that the person concerned is guilty of such an offence, to so convict him or her and to impose on him or her any penalty provided for in the said subsection (9);
- (ii) the court contemplated in subsection (8)(a), if the court is not the court which authorised the issue of the warrant concerned, shall have jurisdiction to conduct an inquiry referred to in subsection (1) and to perform such other acts as the court which authorised the issue of the warrant concerned could lawfully have performed.

(b) On the appearance before the court of the judgment debtor, director or officer concerned in pursuance of either his or her arrest under a warrant referred to in subsection (6) or the delivery to him or her of a notice referred to in subsection (8)(b), the court shall inform him or her—

- (i) that the court intends to inquire in a summary manner into his or her alleged wilful failure to appear before the court and on the date and at the time specified in a notice referred to in subsection (1) or (8)(b), or to appear, in the case where the relevant proceedings were postponed in his or her presence to a date and time determined by any court, before that court on that date and at that time, or to remain in attendance at the relevant proceedings or at the proceedings as so postponed, as the case may be;
- (ii) that the court, if the court so convicts him or her, may impose on him or her any penalty provided for in subsection (9); and
- (iii) that he or she has the right to choose, and be represented by, a legal practitioner.

(c) A court before which proceedings under paragraph (b) are pending—

- (i) shall have due regard to the following rights, namely—
 - (aa) the right of an accused person to be presumed innocent, to remain silent and not to testify;
 - (bb) the right of an accused person to adduce and to challenge evidence; and
 - (cc) the right of an accused person not to be compelled to give self-incriminating evidence;
- (ii) may adjourn such proceedings to any date on such conditions not inconsistent with a provision of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and as the court may think fit;
- (iii) if the court is of the opinion that it is in the interests of the administration of justice, may at any time before the judgment debtor, director or officer concerned is acquitted or convicted of an offence referred to in subsection (9) suspend such proceed-

ings and refer the matter to the public prosecutor concerned to take a decision on the prosecution of the said judgment debtor, director or officer for such an offence.

8. On page 6, from line 16, to omit subsection (11) and to substitute:

(11) After the court has dealt with the inquiry referred to in subsection (10)(b), the court shall proceed to the inquiry referred to in subsection (1) and deal with the matter in accordance with the other sections of this Chapter: Provided that the court—

- (a) if the court is not the court which authorised the issue of the warrant concerned; and
 (b) if the court is of the opinion that it is in the interests of the administration of justice,
 may transfer the matter to the court which authorised the issue of that warrant.

9. On page 6, from line 22, to omit subsection (12) and to substitute:

(12) (a) If the court before which proceedings under subsections (10)(b) and (11) are pending is not the court which authorised the issue of the warrant concerned, the clerk of the former court shall without any delay notify the clerk of the latter court of the appearance of the judgment debtor, director or officer concerned before the former court, and shall inform the judgment creditor or his or her attorney accordingly.

(b) The clerk of the court which authorised the issue of the warrant concerned shall without any delay furnish the court before which proceedings under subsections (10)(b) and (11) are pending with such records or documents relating to such proceedings as the latter court may direct.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 2:

Repeal of section 65B of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

3. Section 65B of the principal Act is hereby repealed.

CLAUSE 4

1. On page 6, in line 51, after “65A(1)” to insert:

or (8)(b), in pursuance of his or her arrest under a warrant referred to in section 65A(6),

2. On page 6, in lines 52 and 53, to omit “or on which he or she has been brought before the court in consequence of an arrest in terms of section 65A(6),”.

CLAUSE 9

1. On page 8, in line 46, to omit paragraph (a) and to substitute:

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

“(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 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 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.”;

2. On page 8, in line 47, to omit paragraph (b) and to substitute:

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

“(2) An emoluments attachment order shall not be issued—

- (a) unless the judgment debtor has consented thereto in writing or the court has so authorised, 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 subparagraph (i) have been complied with on the date specified therein.”;

3. On page 8, after line 47, to insert the following paragraph:

(c) by the addition to subsection (4) of the following paragraph, the existing subsection becoming paragraph (a):

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

CLAUSE 12

1. On page 10, in line 23, to omit “or neglecting” and to substitute “, or **[neglecting]** refusing or failing”.
2. On page 10, in lines 25 and 26, to omit “or with an oral notification by a court to appear on a specified date,”.