



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 38

1999

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 1 of 1999: Magistrates' Courts Amendment Act, 1999.

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## Act No. 1, 1999 MAGISTRATES' COURTS AMENDMENT ACT, 1999

**EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[            ] Words in bold type in square brackets indicate omissions from existing provisions.

**ACT**

To amend the Magistrates' Courts Act, 1944, so as to provide for the minimum qualification for appointment as a regional court magistrate; to repeal the provisions with regard to imprisonment for failure to satisfy a judgment or order of court to pay a judgment debt; to amend the jurisdiction of regional courts to include jurisdiction for murder trials; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Substitution of section 9 of Act No. 32 of 1944, as substituted by section 2 of Act No. 8 of 1967 and amended by section 4 of Act No. 53 of 1970, section 4 of Act No. 102 of 1972, section 11 of Act No. 29 of 1974, section 24 of Act No. 94 of 1974 and section 3 of Act No. 11 of 1985.

1. The following section is hereby substituted for section 9 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act):

**“Appointment of judicial officers**

9. (1) (a) Subject to the provisions of the laws governing the Public Service and section 10 of this Act, the Minister may appoint for any regional division, district division, district or subdistrict a magistrate and one or more additional magistrates.
- (b) The Minister may, in a particular case or generally and subject to such direction as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to the Permanent Secretary: Justice or any other staff member in the Ministry of Justice.
- (c) A magistrate or additional magistrate of a regional division or district division may also be a magistrate or additional magistrate of a district, and shall for the purposes of section 12(5) be deemed to have been duly appointed as the magistrate or additional magistrate for each district falling wholly or partly within the regional division or district division of which he or she is the magistrate or additional magistrate, as the case may be.
- (d) A magistrate or an additional magistrate -
- (i) of a district division may at the same time also be a magistrate or an additional magistrate of another district division;
- (ii) of a district or subdistrict may at the same time also be a magistrate or an additional magistrate of another district or subdistrict.

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- (2) (a) No person holding any appointment in terms of subsection (1) shall perform the functions of a judicial officer in any magistrate's court, unless he or she has taken an oath or made an affirmation subscribed by him or her, in the form set out below, namely-

'I..... (full name), do hereby swear / solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of a judicial officer in any magistrate's court, I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the law and customs of the Republic of Namibia.'

- (b) Any oath or affirmation referred to in paragraph (a) shall be taken or made in an open court before the most senior magistrate available, who shall at the foot thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

(3) Whenever by reason of absence or incapacity any magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his or her office or whenever such office becomes vacant, the Minister, or a staff member in the Ministry of Justice authorized thereto in writing by the Minister, may appoint any other competent staff member in the Public Service or any competent retired staff member of the Public Service to act in the place of the absent or incapacitated magistrate during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(4) The Minister, or a staff member in the Ministry of Justice authorized thereto in writing by the Minister, may temporarily appoint any competent person to act -

- (a) either generally or in a particular matter as a magistrate of a regional division or district division in addition to any magistrate or acting magistrate of any such division; or
- (b) as an additional or assistant magistrate for any district or subdistrict in addition to any magistrate or additional or assistant magistrate of any such district or subdistrict."

**Amendment of section 12 of Act No. 32 of 1944, as amended by section 9 of Act No. 40 of 1952, section 25 of Act No. 94 of 1974 and section 4 of Act No. 11 of 1985**

2. Section 12 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (5).

**Amendment of section 65A of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

3. Section 65A of the principal Act is hereby amended -

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

"(1) If a court has given judgment for the payment of a sum of money or has ordered the payment in specified instalments or otherwise of such an amount, and such judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or on which such an amount became payable or from the expiry of the period of suspension ordered in terms of section 48(e), as the case may be, the judgment creditor may issue, from the court of the district in which the judgment debtor resides,

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carries on business or is employed, or if the judgment debtor is a juristic person, from the court of the district in which the registered office or main place of business of the juristic person is situated, a notice calling upon the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as representative of the juristic person and in his or her personal capacity, to appear before the court in chambers on a date specified in such notice **[to show cause why he should not be committed for contempt of court and why the judgment debtor should not be ordered to pay the judgment debt in instalments or otherwise] in order to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court deems just and equitable.**”;

- (b) by the deletion of subsection (2);
- (c) by the substitution for subsection (4) of the following subsection:

“(4) If the court has given judgment for the payment of an amount of money in instalments, no notice under subsection (1) shall be issued unless the judgment creditor has delivered an affidavit or affirmation or his or her legal practitioner has delivered a certificate to the clerk of the court in which is mentioned the outstanding balance of the judgment debt, in what respects the judgment debtor has failed to comply with the court order, to what extent he or she is in arrears with the payment of the instalments, the accumulative costs to date, the balance owing and that the judgment debtor was advised by registered letter of the terms of the judgment **[and of the consequences of his failure to satisfy it].**”; and

- (d) by the addition of the following subsection:

“(5) If -

- (a) a judgment debtor fails to satisfy an order to pay the judgment debt in instalments or otherwise made at a hearing of proceedings in terms of a notice issued under subsection (1);
- (b) an emoluments attachment order has not been satisfied;
- (c) the judgment creditor wants to place proceedings postponed in terms of section 65E (1) on the roll again; or
- (d) the judgment creditor satisfies the clerk of the court that it is probable that the situation of the judgment debtor has changed to such an extent that a new enquiry should be held,

a judgment creditor may again issue a notice in terms of subsection (1) in order to enable the court to inquire into the financial position of the judgment debtor and to make an order as the court deems just and equitable.”.

**Substitution of section 65C of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

4. The following section is hereby substituted for section 65C of the principal Act:

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**65C.** If, under section 65A (1), two or more notices have been served on any judgment debtor or director or officer to **[show cause]** appear on the same day as provided in that section, the proceedings in terms of such notices may be heard concurrently.”.

**Amendment of section 65D of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

5. Section 65D of the principal Act is hereby amended-

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

“(1) On the appearance before the court of the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person summonsed as the representative of the juristic person or in his or her personal capacity, on the return day of the notice referred to in section 65A (1) or on any date to which the proceedings have been postponed, the court in chambers shall, subject to the provisions of subsection (2) of this section, call upon him or her to give evidence under oath or affirmation on his or her financial position or the financial position of the juristic person, as the case may be, and the court shall permit the examination or cross-examination of the judgment debtor or the said director or officer on all matters relevant to the judgment debtor’s financial position and his or her or the juristic person’s ability to pay the judgment debt **[and his failure to do so]**, and the court shall receive such further evidence as may be adduced either orally or by affidavit or in such other manner as the court may deem just, by or on behalf of either the judgment debtor or the judgment creditor, as is material to the determination of the judgment debtor’s financial position and his or her or the juristic person’s ability to pay the judgment debt **[and his failure so to do]**, and for the purposes of such evidence witnesses may be summoned in the manner prescribed in the rules.”;

(b) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:

“In determining the ability of the judgment debtor to **[satisfy]** pay the judgment debt in instalments or otherwise the court shall take into consideration - ”; and

(c) by the substitution for subsection (5) of the following subsection:

“(5) In determining the ability of the judgment debtor to pay the judgment debt in instalments or otherwise the court may, in its discretion, refuse to take account of the periodical payments that a judgment debtor has undertaken to make in terms of a hire-purchase agreement for the purchase of goods which have not been exempted from seizure in terms of section 67 or which cannot, in the opinion of the court, be regarded as the judgment debtor’s household requirements.”.

**Amendment of section 65E of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

6. Section 65E of the principal Act is hereby amended -

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- (a) by the deletion of subsection (3); and
- (b) by the substitution for subsection (6) of the following subsection:

“(6) Upon an order referred to in subsection (1)(c) of this section or section 57, 58 or 65 having been made and if the judgment debtor was not present or represented in court when the order was made, the judgment creditor or his [attorney] or her legal practitioner shall forthwith by registered letter advise the judgment debtor of the terms of the order **[and of the consequences of his failure to satisfy it].**”.

**Substitution of section 65F of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

7. The following section is hereby substituted for section 65F of the principal Act:

**“Failure to appear or remain in attendance**

**65F. (1)** Any person who fails to appear upon a notice in terms of section 65A(1) at the place and on the date and at the time specified in the notice or who fails to remain in attendance at such proceedings, shall be guilty of an offence.

(2) The court shall, if satisfied from the return of service of the notice, that the notice was served on the judgment debtor personally within the prescribed time limit, and that the judgment debtor has failed to appear at the place and on the date and at the time specified in the notice, or if satisfied that the judgment debtor has failed to remain in attendance at the proceedings in question, issue a warrant for his or her arrest, and if he or she is brought before the court, in a summary manner inquire into his or her failure so to appear or so to remain in attendance and may, unless the judgment debtor satisfies the court that his or her failure was not due to fault on his or her part, convict him or her of the offence referred to in subsection (1), and sentence him or her to a fine not exceeding N\$1000 or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

(3) Subject to the provisions of any other law, a person found guilty of an offence referred to in subsection (1) may be sentenced to periodical imprisonment for a period of imprisonment of not less than 100 hours and not more than 2 000 hours.”.

**Repeal of section 65G of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

8. Section 65G of the principal Act is hereby repealed.

**Substitution of section 65H of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

9. The following section is hereby substituted for section 65H of the principal Act:

**“Warrant for arrest of judgment debtor**

**65H.** A warrant for the arrest of a judgment debtor for the purposes of section 65F or, if the judgment debtor is a juristic person, of the director or officer of the juristic person summoned in his or her personal capacity, shall be prepared

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by the clerk of the court, issued by the court, and executed by the messenger of the court.”.

**Amendment of section 65J of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976 and amended by section 8 of Act No. 11 of 1985**

10. Section 65J of the principal Act is hereby amended-

- (a) by the deletion of paragraph (a) of subsection (1);
- (b) by the substitution of paragraph (c) of subsection (1) of the following paragraph:

“(c) notwithstanding the fact that the judgment debtor has, where applicable, served before the commencement of the Magistrates' Courts Amendment Act, 1999, the term of imprisonment or periodical imprisonment imposed by the court for his or her failure to comply with the order, the judgment debt remains unpaid; or”;

- (c) by the deletion of subparagraph (ii) of paragraph (b) of subsection (2);
- (d) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(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 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) [(a) or (b) and may, subject to the provisions of section 65G, be committed for contempt of court for failing to comply with the said order].”; and

- (e) by the deletion of paragraph (b) of subsection (9).

**Amendment of section 65K of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

11. Section 65K of the principal Act is hereby amended by the deletion of subsection (2).

**Repeal of section 65L of Act No. 32 of 1944, as inserted by section 2 of Act No. 63 of 1976**

12. Section 65L of the principal Act is hereby repealed.

**Amendment of section 89 of Act No. 32 of 1944, as substituted by section 1 of Act No. 75 of 1959 and amended by section 7 of Act No. 91 of 1977:**

13. The following section is hereby substituted for subsection (2) of section 89:

“(2) The court of the regional division shall have jurisdiction over all offences except treason [**and murder**].”.

Act No. 1, 1999      **MAGISTRATES' COURTS AMENDMENT ACT, 1999****Substitution of section 106 of Act No. 32 of 1944, as substituted by section 8 of Act No. 63 of 1976**

14. The following section is hereby substituted for section 106 of the principal Act:

**“Penalty for disobedience of order of court**

106. Any person wilfully disobeying or neglecting to comply with any order or judgment of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects, shall be guilty of contempt of court and shall, upon conviction, be liable to a fine not exceeding [R200] N\$1000 or, in default of payment, to imprisonment for a period not exceeding [six] three months or to such imprisonment without the option of a fine: Provided that for the purposes of this section the word ‘order’ or judgment shall not include -

- (a) a judgment to pay a sum of money; or
- (b) an order referred to in section 65, 65E, [65G,] 65I, 65J, 65K, 72, 74 or 74J, unless the court is satisfied that the person against whom the order was given -
  - (i) has persistently failed to comply with an order given under any of those sections; and
  - (ii) has the means to comply with such order.”

**Substitution of section 106A of Act No. 32 of 1944, as inserted by section 8 of Act No. 63 of 1976**

15. The following section is hereby substituted for section 106A of the principal Act:

**“Offence by garnishee**

106A. Any garnishee who, by reason of an emoluments attachment order having been served on him or her in respect of the emoluments of a judgment debtor not occupying a position of trust in which he or she handles or has at his or her disposal moneys, securities or other articles of value, dismiss or otherwise terminates the services of such judgment debtor, shall be guilty of an offence and on conviction liable to a fine not exceeding [R100] N\$ 1000 or, in default of payment, to imprisonment for a period not exceeding 3 months.”.

**Substitution of section 106B of Act No. 32 of 1944, as inserted by section 8 of Act No. 63 of 1976**

16. The following section is hereby substituted for section 106B of the principal Act:

**“Offence by employer**

106B. Any employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee’s emoluments, fails or neglects to do so within a reasonable time, or who wilfully or negligently furnishes incorrect relevant particulars, shall be guilty of an offence and on conviction liable to a fine not exceeding [R100] N\$1000 or, in default of payment, to imprisonment for a period not exceeding 3 months.”.



Act No. 1, 1999      **MAGISTRATES' COURTS AMENDMENT ACT, 1999****Amendment of section 109 of Act No. 32 of 1944, as substituted by section 9 of Act No. 63 of 1976**

17. The following section is hereby substituted for section 109 of the principal Act:

**“Judgment debtor to inform court of change of address**

**109.** (1) Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith, shall, if he or she has changed his or her place of residence, business, or employment, within 14 days from the date of every such change notify the clerk of the court which gave such judgment or made such order and the judgment creditor or the judgment creditor’s legal practitioner or, if his or her estate is under administration, the administrator or his or her legal practitioner, fully and correctly in writing of his or her new place of residence, business or employment.

(2) Any judgment debtor against whom a court has given judgment or has made an order and who fails to comply with the provisions of subsection (1) shall be guilty of an offence, and liable upon conviction to a fine not exceeding N\$1000 or in default of payment, to imprisonment for a period not exceeding three months.”.

**Short title**

18. This Act shall be called the Magistrates’ Courts Amendment Act, 1999.

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