



**ASSOCIATION OF REGIONAL MAGISTRATES
OF SOUTHERN AFRICA.**

**VERENIGING VAN STREEKLANDDROSTE
VAN SUIDELIKE AFRIKA**

EXECUTIVE MANAGEMENT COMMITTEE

AC BEKKER (PRESIDENT) LH CLAASSEN (SECRETARY) GN TRAVERS (TREASURER)

SUBMISSIONS ON THE JURISDICTION OF REGIONAL COURTS AMENDMENT BILL

INTRODUCTION

The Association of Regional Magistrates of Southern Africa (ARMSA) represents just over 90% of all regional magistrates in this country. We support the objects of this Bill fully and are committed to ensure that this Bill, if it is put into operation, shall be properly and responsibly applied. We are also committed to providing training and guidance to our members and non-members pertaining to the appropriate use of the new jurisdictional powers extended to us in the Bill. ARMSA completed training in all the provinces on the new Sexual Offences Bill, made possible by the generous support of the Department of Justice. Substantial resource guides and overviews on the Sexual Offences Bill have been drafted, discussed and distributed amongst regional magistrates prior to the implementation. We hope to do the same with the Jurisdiction of Regional Courts Amendment Bill as soon as possible. Attached you will find a implementation plan pertaining to the envisaged training schedule for regional magistrates on the relevant aspects of civil law required to enable them to properly execute their duties. This plan carries the approval of the Regional Court Presidents Forum and we also informed the Department of Justice and Constitutional Development accordingly. We will table this implementation plan for approval at the next Magistrates Commission meeting in February 2008.

We are confident that this Bill, if put into operation, will only enhance speedy access to justice and will be applied appropriately by the Regional Courts.

COMMENTS ON THE CONTENTS OF THE BILL

The purpose of these comments is to highlight certain anticipated problem areas and perhaps suggest some improvements. Please be assured that we respect the fact that it is the prerogative of the Legislature to draft Legislation and our comments are therefore an honest attempt to assist and not to criticize or attack anyone or any institution.

INTRODUCTION:

The above Bill has as its main aim, to extend the jurisdiction of the Regional Courts to adjudicate over Civil and Divorce Matters. This is to be achieved by:

- amending the Magistrates' Court Act to confer on courts of regional division jurisdiction in respect of certain civil disputes incl. divorce matters in terms of the Administration Amendment Act 1929;
- repealing the administration Amendment Act; to effect consequential amendments to certain other laws; and to provide for matters connected therewith.

PREAMBLE TO THE BILL:

Divorce and Related Matters

The Preamble recognizes that the Divorce Courts established under Section 10 of the Administration

Amendment Act of 1929 have their origins based on race.

Even though these courts have now been open to all race groups the stigma attached to them as courts of lower quality than Divorce Courts at High Court level is still present. The High Court legislation, rules and procedure on issues of Divorce, Custody and Access are clear, simple and unambiguous.

The problem with approaching the High Court for a Divorce or related matter is the exorbitant costs involved and not so much the complexity of its procedure and rules. It would therefore be prudent that all courts dealing with the crucial aspects of Divorce and Related Matters of Custody and Access strive to do so in line with most superior legislation, rules and procedure especially as in these matters emotions of the litigants and those affected run high and at the very least they should be assured that their matter was determined by a court applying a uniform set of legislation, rules and procedure.

This submission also relates to one of this Bill's (later the Act's) purposes and that is to ***"promote the development of judicial expertise among the ranks of magistrate with the view to broadening the pool of fit and proper persons qualifying for appointment to superior courts."***

It is submitted that if the Regional Magistrates start applying the High Court Rules and Procedure from now then should the situation arise that they are appointed to the superior court bench then at least there would be a saving in respect of training costs for the appointee to the superior court as he/ she would already be familiar with the legislation and rules that he/ she would be applying.

It is also a well established fact that experience and the gaining of further knowledge will lead to better equipped judicial officers and by familiarizing themselves with the rules and procedure from now will make the transition much easier.

One of the issues that had frequently been raised against magistrates related to the fact that they had insufficient experience with applications, and would not be able to do motion court, due to the restriction of applications in terms of the Magistrates' Court Act and Rules, and the fact that they do not have any jurisdictions to hear applications in terms of legislation such as the Promotion of Administrative Justice Act and the Promotion of Access to Information Act.

If the civil jurisdiction is granted to the Regional Court in terms of the Magistrates' Court Act and Rules, their inexperience regarding applications will continue and still hamper their ability to be considered for the superior court bench.

It is further submitted that by applying superior court legislation, rules and procedure the Regional Magistrates could gain further insight into the great responsibility thrust upon them and approach any prospective matters with a greater degree of diligence and professionalism thereby enhancing the principle of 'access to justice'.

The fact that the Regional Courts would be applying superior court rules and procedure in Divorce and related matters coupled with the geographical layout of the Regional Courts in South Africa will further enhance access to justice as the Regional Courts will be more accessible to people especially in the rural areas who will rest assured that their case has been adjudicated upon by a court applying superior court rules and procedure and which is far more accessible cost wise and with regard to geographical location than the superior courts.

The above submissions are further supported by the proposed amendments to Section 29 of the Magistrates Court Act, more especially Section 29 subsections (1B)(a) and (b) which basically provides that a ***"Regional Court hearing and determining any suits relating to the nullity of a marriage and relating to divorce between persons and related matters – have the same jurisdiction as any High Court."***

Why then the adherence to two separate rules and procedure to be applied. Would it then not be better, given the submissions aforementioned, that the Regional Courts adjudicate over these matters applying superior court legislation and rules? This will again be in sync with the purpose of the Bill.

Civil Matters

The other important recognition in the Preamble is that since courts for regional divisions only deal with criminal matters, while courts for districts deal with criminal and civil matters; in order to further

achieve the aims of access to justice to all, the Regional Courts have to be given jurisdiction in civil matters.

In obtaining jurisdiction in civil matters then it is vital that the Regional Courts exercise this jurisdiction by using superior court legislation, rules and procedure to adjudicate over these matters. This would enable the purpose of the Bill to be met in that:

- Access to justice by conferring jurisdiction on courts for regional divisions which are distributed throughout the national territory to deal with certain civil matters, including matters currently dealt with by the Divorce Courts established under Section 10 of the Administration Amendment Act., would be enhanced as litigants would be satisfied that their matter was adjudicated upon by a court applying superior court legislation, rules and procedure, and;
- It would promote the judicial expertise among the ranks of magistrates with the view to broadening the pool of fit and proper persons qualifying for appointment to the superior courts and this would be easier achieved if they apply superior court legislation, rules and procedure from the outset making the transition to the superior court bench should they be fortunate to be appointed that more easier.

Promotion of Administrative Justice and Promotion of Access to Information Acts

A further motivation for the Regional Courts to apply superior court legislation, rules and procedure is that they could also assist in presiding over matters arising from the Promotion of Administrative Justice Act and Promotion of Access to Information Act which at present magistrates including regional magistrates are unable to preside over.

Clearly with regard to matters arising from the above vital pieces of legislation which are crucial in attaining the maximum access to justice, more people would be able to seek remedy in the Regional Courts which are more favourably located geographically.

However in being restricted to applying the Magistrates Court Act and Rules, they cannot apply Rule 6 of the Uniform Rules of the Superior Courts for most applications arising out of both pieces of legislation until the rules empowering magistrates to preside over these matters have been finalized. These rules are already seven years in the drafting and seem no nearer to being finalized.

The Promotion of Equality and Prevention of Unfair Discrimination Act

Although at present regional magistrates may preside over Equality Court issues i.e. applying the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act, to date no case has come to a Regional Court.

This may entirely be because of the perception that only magistrates courts and higher courts can preside over these matters. In specifically providing for the Regional Courts to adjudicate over these matters applying superior court rules will assist in the accessibility to the Equality courts and therefore access to Justice.

The application of Superior Court rules where not provided for by the Equality Court Rules would enhance the status of these courts. This may however be looked at in future but is mentioned to point out the significance in aligning the Regional Courts in civil jurisdiction to the superior courts.

In respect of the above three Acts, an amendment regarding the designation is further required, as the 'head of an administrative region' is defined as a chief magistrate, and regional magistrates do not fall under chief magistrates, but regional court presidents.

The Prevention of Organized Crime Act

At present the Regional Courts can grant confiscation orders in terms of Section 18 of the Prevention of Organized Crime Act.

By allowing application of superior court rules and procedure, they could be granted jurisdiction to preside over Preservation of Property Orders, Restraint Orders, Forfeiture Orders and Realization Orders in terms of the above Act.

This will further alleviate the burden of busy court rolls in the superior courts. It will enable a matter emanating from the provisions of the Act to start off and be completed in one forum as opposed to the present position of initial orders (which are civil interdicts in nature) being obtained in the superior courts and then being finalized after conviction, in the Regional Court. As these applications are basically civil in nature more experience will be gained by these magistrates within the civil law sphere and thereby again meeting the purpose of this Bill.

TIME PERIODS:

The Regional Courts are geographically, more sparsely located than the District Courts and therefore those litigants wishing to access these courts would have to travel longer distances to do so.

Time periods set out in the Magistrates' Court Act and Rules would be too short therefore for the litigants to comply with. Whilst the litigants may make 'condonation' and 'extension of time' applications, it is submitted that this will make the proceedings longer and lead to the litigants being mulcted in further costs. The time periods laid out in the superior court legislation and rules are therefore more appropriate in order to curtail inordinate delays in the civil trial and to curb costs.

TARIFF OF COSTS:

Attention has also to be paid to a separate tariff of costs applicable to the Regional Courts and commensurate with the higher 'monetary' and 'cause of action' jurisdictions applicable to these courts.

PROPOSALS - BILL IN ITS PRESENT FORM:

1. In order to avoid ambiguity, the definition of 'court, magistrate and judicial officer' should be more clearly defined to reflect regional magistrate without having to resort or refer to other legislation in this respect more especially the Magistrates Act.
2. Section 1 of the Bill also refers to Section 1 of Act 32/1944 which does not include 'regional magistrate' in the definition.
3. *Section(1)(aA)- also provide for Acting Regional Court President
4. Amendment of Section 12 of Magistrates Court Act:
RE: (d):-
 - There should be appropriate training on civil, family and criminal matters especially since the presiding officers of divorce courts may also need training especially on criminal matters.
 - Who determines the appropriateness of the training (should be specifically spelt out)?
 - Suggested: Magistrates Commission training committee, and or in conjunction with the Regional Court Presidents' Forum
5. Amendment of Section 29 of Magistrates Court Act - Causes of Action:
 - After (g) add point (h) to refer to PAJA and (i) to refer to PAIA.
 - See section 13 of MCA – re appointment of clerks and how will impact on fact the regional magistrates not incl. in definition.
 - S 30 – 'a court' – can a Regional Court grant applications without definition change to reflect regional magistrate?
 - Transitional provisions – Section 7 (2) b & c: What about Divorce Court Presidents?

CONCLUDING REMARKS AND NOTIFICATION TO ADDUCE FURTHER ORAL SUBMISSIONS AT THE PUBLIC HEARING

We hope that our input will assist the Legislature in its difficult task of drafting legislation, which will effectively ensure that the envisaged purpose of the Bill is met. We also wish to notify the Committee that we intent delivering additional oral submissions at the public hearing on the Bill on 6 February 2008 and to discuss our submissions in more detail and to field any questions as a result of them.

We wish to thank you for the opportunity to make submissions and for your kind consideration of them.



PRESIDENT: ARMSA

A.C. BEKKER

Civil Jurisdiction Implementation Plan

Introduction

ARMSA had conducted regular training for all regional magistrates over the past five years and will be fully involved with ensuring that regional magistrates will all be able to receive the appropriate training necessary. A comprehensive implementation plan will be developed together with the Regional Court Presidents' Forum and other stake holders, that will not only cover the actions needed for implementation, but also comprehensive training, including:

- Civil Training for current Regional Magistrates
- Court and Case Flow Management (CFM) workshops
- Training for CFM Coordinators
- Training of Facilitators for Judicial Skills Programme
- Judicial Skills Programmes
- Criminal Court Mentors training programme
- Civil Court Mentors training programme

A core group of regional magistrates will be trained by the end of August 2008, to ensure that there will be regional magistrates in each province to hear civil cases. It is envisaged that all Regional Magistrates will be trained by 2010 to deal with civil cases. The aim will be to have trained at least 100 regional magistrates by December 2008. (5 sets of 4 week courses for 2008 and 12 sets of 4 week courses for 2009)

Provincial CFM workshops had already been planned for all regional magistrates (March – July 2008), which will increase and strengthen the effectiveness and efficiency of Regional Courts, and be used to start planning the integration of civil court work within the Regional Courts. Concurrent CFM actions will be undertaken (together with the Department of Justice and Constitutional Development) such as the development of an integrated CFM implementation plan for each Regional Division, and the development of further CFM Tools.

Workshops for CFM Coordinators will be developed and presented to ensure that civil cases are integrated into Regional Court rolls, taking into account the need to enhance access to justice. (5 workshops)

Regional Magistrates in each province that will facilitate provincial Judicial skills programmes will receive facilitators training. The Judicial Skills Programmes will aim to establish a pool of possible candidates for possible acting and would assist people interested in judicial appointment to enhance their skills. A pilot programme will start in Gauteng towards the end of March 2008, where after it will be rolled-out to other provinces. (3 programmes for 2008, thereafter annually in appropriate provinces)

Mentors for candidates from these Judicial Skills programme who might be required to shadow and or act in the Regional Court will receive training as well, and structured mentoring programmes for both civil and criminal court will be developed. Civil court mentors will assist Regional Magistrates starting to do civil work. (2 mentors courses in 2008)