

**TO CHAIRPERSON
PORTFOLIO COMMITTEE, JUSTICE & CONSTITUTIONAL DEVELOPMENT
PARLIAMENT CAPE TOWN
RE SUBMISSION TO PUBLIC HEARINGS FOR JURISDICTION OF REGIONAL
COURTS AMENDMENT BILL**

1 It is conceded that the High Courts have been inundated with actions for divorces.

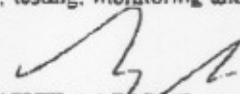
2 It is suggested that one of the main reasons for this is that at the time the jurisdiction of the SOUTHERN, CENTRAL & NORTH EAST DIVORCE COURTS, were extended to deal with divorce actions between persons of all races, the rolls in the High Courts were already cluttered with far too many such actions. Those actions remained in the jurisdiction of the High Courts because no provision was made for the automatic transfer of actions (not part heard) from the High Court to the other courts, nor was any provision made for either party to such an action to have the action transferred from High Court to appropriate divorce court. As a result such matters have remained moribund in the High Courts, as such parties could not afford to pay costs to be incurred in the High Court which it was intended would be avoided. This would not have been so if both or either parties had been given the right to apply for immediate transfer of the action from the High Court to the other appropriate divorce court.

The same situation will continue if Regional Courts are now granted the right to hear divorce actions unless the ability to transfer pending actions (not part heard) from the High Court to the Regional Court is granted to either party. If not the High Courts will still have to deal with the very cases that are presently clogging their rolls.

3 Disputes in divorce matters over property rights can often involve assets of R10 million and over even more. These disputes between divorce litigants are of a civil nature and as has been pointed out often involve very large sums of money. Regional Magistrates would have to be given jurisdiction to make orders in respect of amounts/assets far beyond what Regional Courts should handle and over which they have no present experience which would in turn be manifestly unfair to litigants who might then find themselves having to resort to appeal or review proceedings where inexperienced Regional Magistrates give incorrect rulings/judgements over very large amounts of money, resulting in appeals/reviews clogging up the High Court rolls and enormously increasing the costs to divorce litigant, which the Bill is supposed to prevent!

4 If it is intended that Regional Court Magistrates be granted jurisdiction over limitless amounts of money/assets in divorce proceedings, this appears to be inappropriate and imprudent. Regional Court Magistrates used to handling criminal matters where a particular mindset develops, do not necessarily have the experience and expertise to handle civil disputes potentially involving such large sums of money. Under present circumstances appropriate training and testing of them would have to be done for some time, and each Regional Magistrate's ability to deal effectively with such matters would have to be tested/verified in lengthy training and monitoring by appropriate instructors and a Magistrate only appointed to deal with divorce actions/large claims if approved and appointed by an appropriate committee or commission. Each appointment should be subject to periodic review for the first three years.

5 Alternatively bearing in mind the existing shortfalls of the present system, it would be best for that to be reviewed and upgraded and suitable Regional Magistrates be introduced to strengthen/reinforce the present system subject to training, testing, monitoring and appointed by special committee/commission and periodic reviews.


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