

REPUBLIC OF SOUTH AFRICA

SUPERIOR COURTS BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 25282 of 30 July 2003)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To consolidate and amend the laws pertaining to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

Definitions and objects of Act

Definitions 5

1. In this Act, unless the context otherwise indicates—
- “civil case” includes any labour matter;
 - “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - “Department” means the Department responsible for the administration of justice; 10
 - “Division” means any Division of the High Court of South Africa;
 - “full court”, in relation to any Division, means a Court consisting of two or more judges;
 - “High Court” means the High Court of South Africa;
 - “Judicial Service Commission” means the Judicial Service Commission referred 15 to in section 178 of the Constitution;
 - “labour matter” means any justiciable matter arising out of the application (or the interpretation) of—
- (a) the Labour Relations Act, 1995 (Act No. 66 of 1995);
 - (b) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); 20
 - (c) the Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
 - (d) the Skills Development Act, 1998 (Act No. 97 of 1998);
 - (e) the Employment Equity Act, 1998 (Act No. 55 of 1998);
 - (f) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
 - (g) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 25 130 of 1993); and
 - (h) any other Act the administration of which has been assigned to the Cabinet member responsible for labour.
- “lower court” means any court which is lower in status than the High Court and which is required to keep a record of its proceedings, and includes any judicial 30

officer, other than a judge of a Superior Court, holding a preparatory examination into an alleged offence;

“Minister” means the Cabinet member responsible for the administration of justice;

“plaintiff” includes any applicant or other party who seeks relief in civil proceedings; 5

“President” means the President of the Republic of South Africa;

“registrar” means the registrar of the Constitutional Court, the Supreme Court of Appeal or any Division of the High Court, as the case may be, and includes an assistant registrar; 10

“Superior Courts” means the Constitutional Court, the Supreme Court of Appeal and any Division of the High Court.

Objects and interpretation of Act

2. (1) The objects of this Act are—

(a) to bring the structure of the Constitutional Court, the Supreme Court of Appeal and the High Courts of South Africa into line with the provisions of Chapter 8 of the Constitution; 15

(b) to make provision for the adjudication of labour matters by the High Court and the Supreme Court of Appeal; and

(c) to consolidate and rationalise the laws pertaining to those courts. 20

(2) This Act must be read in conjunction with Chapter 8 of the Constitution, which contains the founding provisions for the structure of the Superior Courts and the jurisdiction of those courts and for the appointment of judicial officers of those courts.

CHAPTER 2

Structure of Superior Courts 25

Constitution and seats of Constitutional Court and Supreme Court of Appeal

3. (1) (a) The Constitutional Court consists of the Chief Justice of South Africa, a Deputy Chief Justice and nine other judges.

(b) The seat of the Constitutional Court is in Johannesburg, but whenever it appears to the Chief Justice that it is expedient to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place. 30

(2) The Deputy Chief Justice must—

(a) perform such functions of the Chief Justice in terms of this or any other law as the Chief Justice may assign to him or her; and

(b) in the absence of the Chief Justice, or if the office of Chief Justice is vacant, perform the functions of the Chief Justice. 35

(3) (a) The Supreme Court of Appeal consists of the President of the Supreme Court of Appeal, two Deputy Presidents of the Supreme Court of Appeal and so many other judges as the President may determine.

(b) The seat of the Supreme Court of Appeal is in Bloemfontein, but the Court may hold sittings for the hearing of any matter at any place elsewhere than at the seat of the Court, according to practice established from time to time by the President of the Supreme Court of Appeal. 40

(4) (a) (i) A Deputy President of the Supreme Court of Appeal must perform such functions of the President of the Supreme Court of Appeal in terms of this or any other law as he or she may assign to him or her. 45

(ii) The President, on the advice of the Judicial Service Commission, must designate one of the Deputy Presidents of the Supreme Court of Appeal as being mainly responsible for assisting the President of the Supreme Court of Appeal in managing appeals regarding labour matters. 50

(iii) The Judicial Service Commission must, for the purpose of advising the President as contemplated in subparagraph (ii), consult with the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994).

(b) The President must from time to time designate a Deputy President of the Supreme Court of Appeal to perform the functions of the President of the Supreme Court of Appeal whenever the President of the Supreme Court of Appeal is absent, or if that office is vacant. 55

Constitution and seats of High Court

4. (1) The High Court consists of the following Divisions:
- (a) Eastern Cape Division. 5
 - (b) Free State Division.
 - (c) KwaZulu-Natal Division.
 - (d) Limpopo Division.
 - (e) Mpumalanga Division.
 - (f) Northern Cape Division.
 - (g) Northern Gauteng Division.
 - (h) North West Division. 10
 - (i) Southern Gauteng Division.
 - (j) Western Cape Division.
- (2) Each Division of the High Court—
- (a) has one or more seats, as determined from time to time by the Minister in terms of subsection (4); and 15
 - (b) consists of a Judge President and one or more Deputy Judges President, as determined by the President, each with specified headquarters within the area under the jurisdiction of that Division, and so many other judges as the President may from time to time determine.
- (3) (a) A Deputy Judge President of a Division must— 20
- (i) in the absence of the Judge President of that Division, or if the office of the Judge President is vacant, perform the functions of the Judge President; and
 - (ii) perform such other functions of the Judge President as the Judge President may assign to him or her.
- (b) If more than one Deputy Judge President is appointed in respect of a Division, the President must designate the Deputy Judge President who must perform the functions of the Judge President in the circumstances contemplated in paragraph (a)(i). 25
- (4) (a) The Minister must, after consultation with the Judicial Service Commission, by notice in the *Gazette* determine— 30
- (i) the area under the jurisdiction of a Division; and
 - (ii) one or more seats for a Division,
- and may in the same manner amend or withdraw any such notice.
- (b) The area under the jurisdiction of a Division may comprise more than one province or any part of more than one province.
- (c) Any notice referred to in paragraph (a) must be approved by Parliament before publication thereof in the *Gazette*. 35
- (d) The publication of a notice referred to in paragraph (a) does not affect any proceedings which are pending at the time of such publication.
- (5) (a) If more than one seat is determined for a Division in terms of subsection (4)(a)(ii), the Judge President of that Division may by notice in the *Gazette* divide the area under the jurisdiction of that Division into seat areas, and may from time to time by like notice alter the boundaries of any seat area. 40
- (b) Subject to such directions as may from time to time be issued by the Judge President and subject to section 25(1), any matter in respect of which a Division has jurisdiction may be dealt with at any seat of that Division. 45

Circuit Courts

5. (1) The Judge President of a Division may by notice in the *Gazette* within the area under the jurisdiction of that Division establish circuit districts for the adjudication of civil or criminal matters, and may from time to time by like notice alter the boundaries of any such district. 50
- (2) In each circuit district there must be held at least twice in every year and at such times and places as may be determined by the Judge President concerned, a court which must be presided over by a judge of that Division.
- (3) A court referred to in subsection (2) is called a Circuit Court of the Division in question. 55

CHAPTER 3

Appointment of judges and officers, and finances of Superior Courts

Appointment, remuneration and tenure of office of judges and acting judges

6. (1) Judges and acting judges of the Superior Courts are appointed in accordance with the provisions of the Constitution, and receive such remuneration as determined under the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001). 5

(2) A Deputy Judge President of a Division may be appointed by the President indefinitely or for such period as he or she determines on the recommendation of the Judicial Service Commission. 10

(3) Any person who has been appointed as an acting judge of a Superior Court is deemed to have been so appointed also in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—

(a) in which he or she has participated as such a judge, including an application for leave to appeal in respect of such proceedings; and 15

(b) which have not yet been disposed of at the expiry of the period for which he or she was appointed.

(4) A judge of a Division may, upon the request of the Chief Justice, also serve as a judge of any other Division in the place of any judge of that Division or in addition to the judges of that Division. 20

(5) The President may, on the request of the Judicial Service Commission and with the consent of the judge concerned, transfer a judge of a Division to any other Division.

Appointment of officers and staff of Superior Courts

7. (1) (a) The Minister must, on the request of and in consultation with the head of the court concerned, appoint for the Constitutional Court, the Supreme Court of Appeal and each Division— 25

(i) a court manager;

(ii) one or more assistant court managers;

(iii) a registrar;

(iv) one or more assistant registrars, including assistant registrars dealing specifically with labour matters; and 30

(v) other officers and staff whenever they may be required for the administration of justice or the exercise of the powers and authority of the court concerned.

(b) Any person appointed in terms of paragraph (a) is in the employ of the Department and is subject to the laws governing the public service. 35

(c) A court manager is the senior executive officer of the court where he or she has been appointed, exercises administrative control over the persons referred to in paragraph (a)(ii) to (v) and, under the control and direction of the head of the court concerned, performs such other functions as agreed to from time to time by the Minister and the Chief Justice. 40

(2) (a) The Chief Justice and the President of the Supreme Court of Appeal may, in consultation with the Minister, from time to time appoint for the Constitutional Court or the Supreme Court of Appeal, as the case may be, one or more persons to undertake such research or perform such other duties as the Chief Justice or the President of the Supreme Court of Appeal may determine. 45

(b) The remuneration and other terms and conditions of employment of a person appointed in terms of paragraph (a) are as determined, either generally or in any specific case, by the Chief Justice or the President of the Supreme Court of Appeal in consultation with the accounting officer referred to in section 8(3).

(3) Whenever by reason of absence or incapacity any court manager, registrar or assistant registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the Minister may after consultation with the head of the court concerned authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled. 50 55

(4) Any person appointed under subsection (1) may simultaneously hold more than one of the offices mentioned in that subsection.

(5) The Minister may delegate to an officer in the Department any of the powers vested in him or her by this section.

Finances and accountability

8. (1) Expenditure in connection with the administration and functioning of the Superior Courts must be defrayed from moneys appropriated by Parliament. 5

(2) The Minister must address requests for the funds needed for the administration and functioning of the Superior Courts, as determined by the Chief Justice after consultation with the President of the Supreme Court of Appeal and the Judges President of Divisions, in the manner prescribed for the budgetary processes of departments of state. 10

(3) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General of the Department—

- (a) is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of each Superior Court; and 15
- (b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

CHAPTER 4

Manner of arriving at decisions in Superior Courts

Decisions by Constitutional Court 20

9. (1) In accordance with section 167(2) of the Constitution, any matter before the Constitutional Court must be heard by at least eight judges.

(2) If, at any stage after a hearing has commenced, any judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, and— 25

- (a) the remaining members of the court are not fewer than eight in number—
 - (i) such hearing must continue before the remaining judges of the court; and
 - (ii) the decision of the majority of the remaining judges of the court shall, if that majority is also a majority of the judges of the court before whom the hearing commenced, be the decision of the court; or 30
- (b) the remaining members of the court are fewer than eight in number, the proceedings must be stopped and commenced *de novo*.

Decisions by Supreme Court of Appeal

10. (1) The quorum of the Supreme Court of Appeal is five judges in all proceedings, but the President of the Supreme Court of Appeal may— 35

- (a) direct that an appeal in a criminal or civil matter be heard before a court consisting of three judges; or
- (b) whenever it appears to him or her that any matter should in view of its importance be heard before a court consisting of a larger number of judges, direct that the matter be heard before a court consisting of so many judges as he or she may determine. 40

(2) The judgment of the majority of the judges presiding at proceedings before the Supreme Court of Appeal shall be the judgment of the court and where there is no judgment to which a majority of such judges agree, the hearing must be adjourned and commenced *de novo* before a new court constituted in such manner as the President of the Supreme Court of Appeal may determine. 45

(3) If at any stage after the hearing of an appeal has commenced a judge of the Supreme Court of Appeal is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises—

- (a) the hearing must, where the remaining judges constitute a majority of the judges before whom the hearing was commenced, proceed before the remaining judges, and the decision of a majority of the remaining judges who are in agreement shall, if that majority is also a majority of the judges before whom the hearing was commenced, be the decision of the court; or 50
- (b) in any other case, the appeal must be heard *de novo*. 55

(4) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

(5) Two or more judges of the Supreme Court of Appeal, designated by the President of the Supreme Court of Appeal, have jurisdiction to hear and determine applications for interlocutory relief, including applications for condonation and for leave to proceed *in forma pauperis*, in chambers. 5

Decisions by Divisions

11. (1) (a) Save as provided for in this Act or any other law, a court of a Division must be constituted before a single judge when sitting as a court of first instance for the hearing of any civil matter, but the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may at any time direct that any matter be heard by a full court consisting of not more than three judges, as he or she may determine. 10

(b) A single judge of a Division may at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of that Division as contemplated in paragraph (a). 15

(2) (a) Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a Division must be constituted—

(i) for the hearing of any appeal against a judgment or order of a lower court, before not fewer than two judges; and 20

(ii) for the hearing of any appeal against a judgment or order of a court constituted before a single judge of that Division, before three judges.

(b) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

(3) For the hearing of any criminal case as a court of first instance, a court of a Division must be constituted in the manner prescribed in the applicable law relating to procedure in criminal matters. 25

(4) During any period which may by rule of court be fixed as vacation of a Division, one judge thereof designated by the Judge President may, notwithstanding anything contained in this Act or any other law, but subject to the provisions of subsection (2)(a), exercise all the powers, jurisdiction and authority of a Division. 30

(5) Save as otherwise provided for in this Act or any other law, the decision of the majority of the judges of the full court of a Division is the decision of the court, and where the majority of the judges of any such court are not in agreement, the hearing must be adjourned and commenced *de novo* before a court consisting of three other judges. 35

(6) If at any stage during the hearing of any matter by a full court, any judge of such court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, that hearing must—

(a) if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges; or 40

(b) if the remaining judges do not constitute such a majority, or if only one judge remains, be commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

(7) The provisions of subsection (5) apply, with the changes required by the context, whenever in the circumstances set out in subsection (6) a hearing proceeds before two or more judges. 45

Additional provision in respect of decisions in labour matters

12. (1) Subject to subsection (2), the majority of judges hearing any labour matter in the Supreme Court of Appeal or a Division must, for the purpose of that hearing, be judges whose names appear on the panel of judges referred to in subsection (3). 50

(2) If, during the course of the hearing of any matter by a court referred to in subsection (1), it becomes apparent that the matter concerned is or may be a labour matter and the names of the majority of judges hearing that matter do not appear on the panel referred to in subsection (3), the validity of the hearing or any ensuing judgment is not affected. 55

(3) (a) A Committee comprising—

(i) the President of the Supreme Court of Appeal, as Chairperson;

(ii) the Deputy Presidents of the Supreme Court of Appeal;

- (iii) not more than three representatives of the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), representing organised labour, organised business and the State;
 - (iv) when considering the designation of judges from, or for, a specific Division of the High Court of South Africa, the Judge President of that Division; 5
 - (v) one practising advocate nominated from within the advocates' profession to represent the profession as a whole; and
 - (vi) one practising attorney nominated from within the attorneys' profession to represent the profession as a whole, 10
- must from time to time designate judges of the Superior Courts to a panel of judges for the purpose of concentrating on and developing judicial knowledge of labour matters.
- (b) The Committee must meet at the times and the places determined by the Chairperson, and any meeting must be attended by a majority of its members, which majority must at all times include the members referred to in paragraph (a)(iii). 15
 - (c) The Committee may determine its own procedure, but decisions of the Committee must be supported by a majority of its members, which majority must at all times include a majority of the members referred to in paragraph (a)(iii).
 - (d) The Committee must advise the Judicial Service Commission regarding the development and the content of training courses with the view to building a pool of suitably qualified judges for purposes of dealing with labour matters. 20
 - (e) The Minister must cause a list of the names of the judges appointed to the panel, as well as any changes thereto, to be published in the *Gazette*.

CHAPTER 5

Orders of constitutional invalidity, appeals and settlement of conflicting decisions 25

Referral of order of constitutional invalidity to Constitutional Court

- 13.** (1) (a) Whenever the Supreme Court of Appeal, a Division of the High Court or any competent court declares an Act of Parliament, a provincial Act or conduct of the President invalid as contemplated in section 172(2)(a) of the Constitution, that court must, in accordance with the applicable rules of court, refer the order of constitutional invalidity to the Constitutional Court for confirmation. 30
- (b) Whenever any person or organ of state with a sufficient interest appeals or applies directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court, as contemplated in section 172(2)(d) of the Constitution, the court must deal with the matter in accordance with the rules. 35
- (2) If requested by the Chief Justice to do so, the Minister must appoint counsel to present argument to the Constitutional Court in respect of any matter referred to the Court as contemplated in subsection (1)(a).

Appeals generally

- 14.** (1) Subject to the Constitution and any other law— 40
- (a) an appeal against any decision, other than a decision in a labour matter, of a court of a Division as a court of first instance lies, upon leave having been granted—
 - (i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a full court of that Division depending on the direction issued in terms of section 15(5); or 45
 - (ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;
 - (b) an appeal against any decision of a court of a Division in a labour matter lies, upon leave having been granted, to the Supreme Court of Appeal; 50
 - (c) an appeal against any decision of a court of a Division on appeal to it lies to the Supreme Court of Appeal upon special leave being granted by the Supreme Court of Appeal; and
 - (d) an appeal against a decision of a court of a status similar to the High Court lies to the Supreme Court of Appeal upon leave having being granted by that court or the Supreme Court of Appeal, 55
- and the provisions of section 15 apply with the necessary changes.

(2) (a) (i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs. 5

(b) If at any time prior to the hearing of an appeal the President of the Supreme Court of Appeal or the Judge President, as the case may be, is *prima facie* of the view that it would be appropriate to dismiss the appeal on the ground set out in paragraph (a), he or she must call for written representations from the respective parties as to why the appeal should not be so dismissed. 10

(c) Upon receipt of the representations or, failing which, at the expiry of the time determined for their lodging, the President of the Supreme Court of Appeal or the Judge President, as the case may be, must refer the matter to three judges for their consideration. 15

(d) The judges considering the matter may order that the question whether the appeal should be dismissed on the ground set out in paragraph (a) be argued before them at a place and time appointed, and may, whether or not they have so ordered—

(i) order that the appeal be dismissed, with or without an order as to the costs incurred in any of the courts below or in respect of the costs of appeal, including the costs in respect of the preparation and lodging of the written representations; or 20

(ii) order that the appeal proceed in the ordinary course.

Leave to appeal

15. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that— 25

(a) (i) the appeal would have a real prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard;

(b) the decision sought on appeal does not fall within the ambit of section 14(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties. 30

(2) (a) Leave to appeal as contemplated in section 14(1)(a) or (b) may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same Division. 35

(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave. 40

(c) An application referred to in paragraph (b) must be considered by two judges of the Supreme Court of Appeal designated by the President of the Supreme Court of Appeal and, in the case of a difference of opinion, also by the President of the Supreme Court of Appeal or any other judge of the Supreme Court of Appeal likewise designated. 45

(d) (i) The judges considering the application as contemplated in paragraph (c) may order that it be argued before them at a time and place appointed, and may, whether or not they have so ordered, grant or refuse the application or refer it to the court for consideration. 50

(ii) Where an application has been so referred to the court, the court may thereupon grant or refuse it. 50

(e) The decision of the majority of the judges considering the application, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation. 55

(f) An application for special leave to appeal under section 14(1)(c) may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after the decision of the full Court, or such longer period as may on good cause be allowed, and the provisions of subsection (2)(b) to (e) apply with the necessary changes. 60

- (3) The power to grant leave to appeal—
- (a) is not limited by reason only of the fact that the matter in dispute is incapable of being valued in money; and
 - (b) is subject to the provisions of any other law which specifically limits it or specifically grants or limits any right of appeal. 5
- (4) Any leave to appeal may be granted subject to such conditions as the court concerned may determine, including a condition—
- (a) limiting the issues on appeal;
 - (b) that the appellant pay the costs of the appeal; or
 - (c) that the appellant furnish security for the costs of the appeal in such an amount as the registrar may determine, and the court may fix the time within which the security is to be furnished. 10
- (5) (a) If leave is granted under subsection (2)(a) or (b) to appeal against a decision of a court of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider— 15
- (i) that the decision to be appealed involves a question of law of importance, whether because of its general application or otherwise, or in respect of which a decision of the Supreme Court of Appeal is required to resolve differences of opinion; or 20
 - (ii) that the administration of justice, either generally or in the particular case, requires consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.
- (b) Any direction by the court of a Division in terms of paragraph (a) may be set aside by the Supreme Court of Appeal of its own accord, or on application by any interested party filed with the registrar within one month after the direction was given, or such longer period as may on good cause be allowed, and may be replaced by another direction in terms of paragraph (a). 25
- (6) Subsection (2)(c), (d) and (e) apply with the necessary changes to any application to the Supreme Court of Appeal relating to an issue connected with an appeal. 30

Suspension of decision pending appeal

16. (1) Subject to subsection (2) and unless the court orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal is suspended pending the decision of the application or appeal. 35
- (2) Unless the court under special circumstances orders otherwise, the operation and execution of a decision—
- (a) in connection with an application—
 - (i) by one spouse against the other for maintenance *pendente lite*;
 - (ii) for contribution towards the costs of a pending matrimonial action;
 - (iii) for the interim custody of a child when a matrimonial action between his or her parents is pending or about to be instituted; or 40
 - (iv) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or about to be instituted; or
 - (b) that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal. 45

Powers of Court on hearing of appeals

17. The Supreme Court of Appeal or a full court exercising appeal jurisdiction may—
- (a) dispose of the appeal without the hearing of oral argument; 50
 - (b) receive further evidence;
 - (c) remit the case to the court of first instance, or the court whose judgment is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Supreme Court of Appeal or the full court deems necessary; and 55
 - (d) confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require.

Settlement of conflicting decisions in civil cases

18. Whenever a decision on a question of law given by a court of a Division is in conflict with a decision on the same question of law given by a court of any other Division, the Minister may submit such conflicting decisions to the Supreme Court of Appeal and cause the matter to be argued before that court, in order that it may determine the said question of law for guidance. 5

CHAPTER 6

Provisions applicable to High Court only

Persons over whom and matters in relation to which Divisions have jurisdiction

19. (1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power, subject to the direction of the Judge President concerned— 10

- (a) to hear and determine appeals from all lower courts within its area of jurisdiction; 15
- (b) to review the proceedings of all such courts;
- (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination. 20

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.

(3) Subject to section 26 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), any Division may— 25

- (a) issue an order for attachment of property or arrest of a person to confirm jurisdiction or order the arrest *suspectus de fuga* also where the property or person concerned is outside its area of jurisdiction but within the Republic: Provided that the cause of action arose within its area of jurisdiction; and 30
- (b) where the plaintiff is resident or domiciled within its area of jurisdiction but the cause of action arose outside its area of jurisdiction, issue an order for the attachment of property or arrest of a person to found jurisdiction regardless of where in the Republic the property or person is situated.

Grounds of review of proceedings of lower courts 35

20. (1) The grounds upon which the proceedings of any lower court may be brought under review before a court of a Division are—

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer; 40
- (c) gross irregularity in the proceedings; and
- (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in lower courts. 45

Judgment by default

21. A judgment by default may be granted and entered by the registrar of a Division in the manner and in the circumstances prescribed in the Rules made in terms of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and a judgment so entered is deemed to be a judgment of a court of the Division. 50

Time allowed for appearance

- 22.** The time allowed for entering an appearance to a civil summons served outside the area of jurisdiction of the Division in which it was issued shall be not less than—
- (a) one month if the summons is to be served at a place more than 150 kilometres from the court out of which it was issued; and 5
 - (b) two weeks in any other case.

Circumstances in which security for costs not required

- 23.** If a plaintiff in civil proceedings in a Division resides within the Republic, but outside the area of jurisdiction of that Division, he or she shall not by reason only of that fact be required to give security for costs in those proceedings. 10

Disposal of records and execution of judgments of Circuit Courts

- 24.** (1) Within one month after the termination of the sittings of any Circuit Court, the registrar thereof must, subject to any directions of the presiding judge, transmit all records in connection with the proceedings in that court to the registrar of the Division concerned to be filed as records of that Division. 15
- (2) Any judgment, order or sentence of a Circuit Court may, subject to any applicable rules for the time being in force, be carried into execution by means of process of the Division concerned.

Removal of proceedings from one Division to another

- 25.** (1) If any proceedings have been instituted in a Division, and it appears to the court concerned that such proceedings— 20
- (a) should have been instituted in another Division; or
 - (b) would be more conveniently or more appropriately heard or determined—
 - (i) at another seat of that Division; or
 - (ii) in another Division, 25
- that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.
- (2) An order for removal under subsection (1) must be transmitted to the registrar of the court to which the removal is ordered, and upon receipt of such order that court may 30
- hear and determine the proceedings in question.

Prohibition on attachment to found jurisdiction or arrest where defendant resides within Republic

- 26.** (1) No attachment of person or property to found jurisdiction shall be ordered by a Division against a person who is resident in the Republic. 35
- (2) No writ shall be issued out of any such Division in or in connection with civil proceedings instituted or to be instituted for the arrest of a person residing within the Republic to secure his or her appearance as a defendant in those proceedings by reason only of the fact that such person has departed or is about to depart to a place outside the jurisdiction of that Division but within the Republic. 40

CHAPTER 7*General provisions***Part 1****Nature of courts and rules of court****Nature of courts and seals** 45

- 27.** (1) Every Superior Court is a court of record.
- (2) Every Superior Court must have for use as occasion may require a seal of such design as may be prescribed by the President by proclamation in the *Gazette*.
- (3) The seal of a Superior Court must be kept in the custody of the registrar.

Proceedings to be carried on in open court

28. Save as is otherwise provided for in this Act or any other law, all proceedings in any Superior Court must, except in so far as any such court may in special cases otherwise direct, be carried on in open court.

More than one court may sit at the same time

5

29. The Supreme Court of Appeal and any Division may at any time sit in so many courts constituted in the manner provided for in this Act as the available judges may allow.

Rules of court

30. (1) (a) The Chief Justice may by notice in the *Gazette* make rules relating to the manner in which the Constitutional Court may be engaged in any matter in respect of which it has jurisdiction, including the matters referred to in section 172 of the Constitution, and all matters relating to the proceedings of and before the Court. 10

(b) The President of the Supreme Court of Appeal may by notice in the *Gazette* make rules relating to the manner in which the Supreme Court of Appeal may be engaged in any matter in respect of which it has jurisdiction, and all matters relating to the proceedings of and before the court. 15

(c) Every rule made under paragraph (a) and every amendment or repeal thereof must be submitted to Parliament before the promulgation thereof and tabled as soon as possible. 20

(2) The rules of the Constitutional Court must, when it is in the interests of justice and with leave of the court, allow a person—

(a) to bring a matter directly to the court; or

(b) to appeal directly to the court from any other court.

(3) Subject to the provisions of section 173 of the Constitution, rules for the High Court must be made in accordance with the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985). 25

Part 2**Adducing of evidence and procedural matters****Certified copies of court records admissible as evidence**

30

31. Whenever a judgment, order or other record of any Superior Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, order or other record duly certified as such by the registrar of that court under its seal shall be *prima facie* evidence thereof without proof of the authenticity of such registrar's signature. 35

Manner of securing attendance of witnesses or production of any document or thing in proceedings and penalties for failure

32. (1) A party to proceedings before any Superior Court in which the attendance of witnesses or the production of any document or thing is required may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of that court. 40

(2) Whenever any person subpoenaed to attend any proceedings as a witness or to produce any document or thing—

(a) fails without reasonable excuse to obey the subpoena and it appears from the return of the person who served such subpoena, or from evidence given under oath, that— 45

(i) the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff framed under section 34(1) have been paid or offered to him or her; or

(ii) he or she is evading service; or 50

(b) without leave of the court fails to remain in attendance,

the court concerned may issue a warrant directing that he or she be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder in any prison or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing his or her attendance as a witness or production of any document or thing at the proceedings concerned: Provided that any judge of the court concerned may release him or her on a recognisance with or without sureties to attend as a witness or to produce any document or thing as required. 5

(4) Any person subpoenaed to attend any proceedings as a witness or to produce any document or thing who fails without reasonable excuse to obey such subpoena, is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months. 10

(5) If a person who has entered into any recognisance in terms of subsection (3) to attend such proceedings as a witness or to produce any document or thing fails without reasonable excuse so to attend or to produce such document or thing, he or she forfeits his or her recognisance and is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months. 15

Manner in which witness may be dealt with on refusal to give evidence or produce documents

33. (1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 32 or who is present and is verbally required by the Superior Court concerned to give evidence in any proceedings— 20

- (a) refuses to take an oath or to make an affirmation;
- (b) having taken an oath or having made an affirmation, refuses to answer any questions put to him or her; or 25
- (c) refuses or fails to produce any document or thing which he or she is required to produce,

without any just excuse for such refusal or failure, the Court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing to prison unless he or she sooner consents to do what is required of him or her. 30

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him or her, the Court may again adjourn the proceedings and commit him or her for a like period and so again from time to time until such person consents to do what is required of him or her. 35

(3) Nothing contained in this section prevents the Court from giving judgment in any matter or otherwise disposing of the proceedings according to any other sufficient evidence taken.

(4) No person is bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it in Court. 40

(5) When a subpoena is issued to procure the attendance of any person as a witness or the production of any book, paper or document in any proceedings, and it appears that—

- (a) he or she is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings; or 45
- (b) such book, paper or document could properly be produced by some other person; or

(c) to compel him or her to attend would be an abuse of the process of the court, any judge of the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena. 50

Witness fees

34. (1) The Minister may, in consultation with the Minister of Finance, from time to time by notice in the *Gazette* prescribe a tariff of allowances which must be paid to a witness in civil proceedings or to any person who is to accompany any such witness on account of the youth or infirmity due to old age or any other infirmity of such witness. 55

(2) Such notice may differentiate between persons according to—

- (a) the distances which they have to travel to attend the court to which they are summoned or subpoenaed; or
- (b) their professions, callings or occupations,

and may empower such officers in the service of the State as may be specified therein to order payment of allowances in accordance with a higher tariff than the tariff so prescribed in cases where payment of allowances in accordance with the prescribed tariff may cause undue hardship. 5

(3) Notwithstanding any other law, a Superior Court may order that no allowances or only a portion of the allowances prescribed shall be paid to any witness.

Reference of particular matters for investigation by referee 10

35. (1) The Constitutional Court and, in any civil proceedings, any Division may, with the consent of the parties, refer—

- (a) any matter which requires extensive examination of documents or a scientific, technical or local investigation which in the opinion of the court cannot be conveniently conducted by it; or 15
- (b) any matter which relates wholly or in part to accounts; or
- (c) any other matter arising in such proceedings,

for enquiry and report to a referee appointed by the parties, and the court may adopt the report of any such referee, either wholly or in part, and either with or without modifications, or may remit such report for further enquiry or report or consideration by such referee, or make such other order in regard thereto as may be necessary or desirable. 20

(2) Any such report or any part thereof which is adopted by the court, whether with or without modifications, shall have effect as if it were a finding by the court in the proceedings in question. 25

(3) Any such referee shall for the purpose of such enquiry have such powers and must conduct the enquiry in such manner as may be prescribed by a special order of the court or by the rules of the court.

(4) For the purpose of procuring the attendance of any witness (including any witness detained in custody under any law) and the production of any document or thing before a referee, an enquiry under this section shall be deemed to be civil proceedings. 30

(5) (a) Any person summoned to attend as a witness or to produce any document or thing before a referee and who, without sufficient cause—

- (i) fails to attend at the time and place specified;
- (ii) fails to remain in attendance until the conclusion of the enquiry or until he or she is excused by the referee from further attendance; 35
- (iii) refuses to take an oath or to make an affirmation as a witness; or
- (iv) having taken an oath or made an affirmation, fails to—

- (aa) answer fully and satisfactorily any question put to him or her; or
- (bb) produce any document or thing in his or her possession or custody, or under his or her control, which he or she was summoned to produce, 40

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

(b) Any person who, after having taken an oath or having made an affirmation, gives false evidence before a referee at an enquiry, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalties prescribed by law for perjury. 45

(6) Any referee shall be entitled to such remuneration as may be prescribed by the rules of court or, if no such remuneration has been so prescribed, as the court may determine and to any reasonable expenditure incurred by him or her for the purposes of the enquiry, and any such remuneration and expenditure must be taxed by the taxing master of the court and shall be costs in the cause. 50

Examination by interrogatories

36. (1) The Constitutional Court and, in connection with any civil proceedings pending before it, any Division may order that the evidence of a person be taken by means of interrogatories if— 55

- (a) in the case of the Constitutional Court, the court deems it in the interests of the administration of justice; or

(b) in the case of a Division, that person resides or is for the time being outside the area of jurisdiction of the court.

(2) Whenever an order is made under subsection (1), the registrar of the court must certify that fact and transmit a copy of his or her certificate to a commissioner of the court, together with any interrogatories duly and lawfully framed which it is desired to put to the said person and the fees and the amount of the expenses payable to the said person for his or her appearance as hereinafter provided. 5

(3) Upon receipt of the certificate, the interrogatories and the amounts contemplated in subsection (2), the commissioner must, in respect of the person concerned—

- (a) summon that person to appear before him or her; 10
- (b) upon his or her appearance, take that person's evidence as if he or she was a witness in a civil case in the said court;
- (c) put to him or her the said interrogatories, with any other question calculated to obtain full and true answers to the said interrogatories;
- (d) take down or cause to be taken down the evidence so obtained; and 15
- (e) transmit the evidence, certified as correct, to the registrar of the court wherein the proceedings in question are pending.

(4) The commissioner must further transmit to the said registrar a certificate showing the amount paid to the person concerned in respect of the expenses of his or her appearance, and the cost of the issue and service of the process for summoning such person before him or her. 20

(5) Any person summoned to appear in terms of subsection (3) who without reasonable excuse fails to appear at the time and place mentioned in the summons is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months. 25

(6) Any interrogatories taken and certified under the provisions of this section shall, subject to all lawful exceptions, be received as evidence in the proceedings concerned.

Manner of dealing with commissions *rogatoire*, letters of request and documents for service originating from foreign countries

37. (1) Whenever a commission *rogatoire* or letter of request in connection with any civil proceedings received from any state or territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to such court by the agents, if any, of the parties to the action or matter, the registrar must submit the same to a judge in chambers in order to give effect to such commission *rogatoire* or letter of request. 35

(2) Whenever a request for the service on a person in the Republic of any civil process or citation received from a state, territory or court outside the Republic is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto, the registrar must cause service of the said process or citation to be effected in accordance with the rules of court by the sheriff or a deputy-sheriff or any person specially appointed thereto by a judge of the court concerned. 40 45

(3) The registrar concerned must, after effect has been given to any such commission *rogatoire*, letter of request, process or citation, return all the relevant documents, duly verified in accordance with the rules of court, to the Director-General of the Department for transmission.

(4) Except where the Minister directs otherwise, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service referred to in this section has been performed. 50

Court may order removal of certain persons

38. (1) Any person who, during the sitting of any Superior Court—

- (a) wilfully insults any member of the court or any officer of the court present at the sitting, or who wilfully hinders or obstructs any member of any Superior Court or any officer thereof in the exercise of his or her powers or the performance of his or her duties; 55

- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in the place where the sitting of the court is held; or
- (c) does anything calculated improperly to influence any court in respect of any matter being or to be considered by the court,
- may, by order of the court, be removed and detained in custody until the rising of the court. 5
- (2) Removal and detention in terms of subsection (1) does not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court.

Part 3

Process of Superior Courts 10

Scope and execution of process

39. (1) The process of the Constitutional Court and the Supreme Court of Appeal runs throughout the Republic, and their judgments and orders must, subject to any applicable rules of court, be executed in any area in like manner as if they were judgments or orders of the Division or the magistrate's court having jurisdiction in such area. 15
- (2) The civil process of a Division runs throughout the Republic and may be served or executed within the jurisdiction of any Division.
- (3) Any warrant or other process for the execution of a judgment given or order issued against any juristic person, partnership or firm may be executed by attachment of the property or assets of such juristic person, partnership or firm. 20

Execution of process by sheriff

40. (1) The sheriff must, subject to the rules referred to in section 30, execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands and processes of any Superior Court directed to the sheriff and must make return of the manner of execution thereof to the court and to the party at whose instance they were issued. 25
- (2) The return of the sheriff or a deputy-sheriff of what has been done upon any process of a court, is *prima facie* evidence of the matters therein stated.
- (3) The sheriff must receive and cause to be detained all persons arrested by order of the court or committed to his or her custody by any competent authority. 30
- (4) A refusal by the sheriff or a deputy-sheriff to do any act which he or she is by law empowered to do, is subject to review by the court concerned on application *ex parte* or on notice as the circumstances may require.

Transmission of summonses, writs and other process and of notice of issue thereof

41. (1) (a) In any civil proceedings before a Superior Court, any summons, writ, warrant, rule, order, notice, document or other process of a Superior Court, or any other communication which by any law, rule of court or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, fax, or by means of any other electronic media as may be provided for by the rules of that court. 35
- (b) The document received or printed as a result of the transmission contemplated in paragraph (a) is of the same force and effect as if the original had been shown to or a copy thereof served or executed upon the person concerned, or left as aforesaid, as the case may be. 45
- (2) (a) A notice sent by telegram, fax, or any other electronic media as may be authorised by the rules of the court—
- (i) from any judicial or police officer, registrar, assistant registrar, sheriff, deputy-sheriff or clerk of the court; and
- (ii) stating that a warrant or writ has been issued for the arrest or apprehension of any person required to appear in or to answer any civil suit, action or proceeding, 50
- is sufficient authority to any officer authorised by law to execute any such warrant or writ for the arrest and detention of such person.

(b) A person arrested as contemplated in paragraph (a) may be detained until a sufficient time, but not exceeding 14 days, has elapsed to allow for the original warrant or writ to be delivered at the place where such person was arrested or detained, unless the discharge of such person is ordered by a judge of a Superior Court.

(c) A judge of a Superior Court may upon good cause shown order the further detention of a person referred to in paragraph (b) for a period to be stated in such order, but not exceeding 28 days from the date of the arrest of such person. 5

Property not liable to be seized in execution

42. The sheriff or a deputy-sheriff may not seize in execution of any process—

- (a) the necessary beds and bedding and wearing apparel of the person against whom execution is levied or any member of his or her family; 10
- (b) the necessary furniture, other than beds, and household utensils in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;
- (c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*; 15
- (d) any food or drink sufficient to meet the needs of such person and the members of his or her family for one month;
- (e) tools and implements of trade in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*; 20
- (f) professional books, documents or instruments necessarily used by the debtor in his profession in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;
- (g) such arms and ammunition as the debtor is in terms of any law, regulation or disciplinary order required to have in his or her possession as part of his or her equipment: 25

Provided that the Court concerned may, in exceptional circumstances and on such conditions as it may determine, in its discretion increase the amount specified in paragraph (b), (c), (e) or (f). 30

Offences relating to execution

43. Any person who—

- (a) obstructs a sheriff or deputy-sheriff in the execution of his or her duty;
- (b) being aware that goods are under arrest, interdict or attachment by a Superior Court, makes away with or disposes of those goods in a manner not authorised by law, or knowingly permits those goods, if in his or her possession or under his or her control, to be made away with or disposed of in such a manner; 35
- (c) being a judgment debtor and being required by a sheriff or deputy-sheriff to point out property to satisfy a warrant issued in execution of judgment against such person— 40
 - (i) falsely declares to that sheriff or deputy-sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or
 - (ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff when requested to do so; or 45
- (d) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution, 45

shall be guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine. 50

No process to be issued against judge except with consent of court

44. (1) Notwithstanding any other law, no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of— 55

- (a) the Chief Justice, in the case of the President of the Supreme Court of Appeal or any judge of the Constitutional Court;
- (b) the President of the Supreme Court of Appeal, in the case of—
- (i) the Chief Justice;
 - (ii) any judge of the Supreme Court of Appeal; or
 - (iii) any Judge President of a Division; or
- (c) the Judge President concerned, in the case of any other judge of a Division.
- (2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge must attend court must be determined in consultation with the judge from whom such consent has been obtained.

CHAPTER 8

Transitional provisions, amendment and repeal of laws, and commencement

Existing High Courts

- 45.** (1) On the date of the commencement of this Act, but subject to the subsequent issuing of any notice referred to in section 4(4)(a), the High Court seated in—
- (a) Bisho becomes a seat of the Eastern Cape Division;
 - (b) Bloemfontein becomes a seat of the Free State Division;
 - (c) Cape Town becomes a seat of the Western Cape Division;
 - (d) Durban becomes a seat of the KwaZulu-Natal Division;
 - (e) Grahamstown becomes a seat of the Eastern Cape Division;
 - (f) Johannesburg becomes a seat of the Southern Gauteng Division;
 - (g) Kimberley becomes a seat of the Northern Cape Division;
 - (h) Mmabatho becomes a seat of the North West Division;
 - (i) Pietermaritzburg becomes a seat of the KwaZulu-Natal Division;
 - (j) Port Elizabeth becomes a seat of the Eastern Cape Division;
 - (k) Pretoria becomes a seat of the Northern Gauteng Division;
 - (l) Thohoyandou becomes a seat of the Limpopo Division; and
 - (m) Umtata becomes a seat of the Eastern Cape Division,
- of the High Court of South Africa, and the area of jurisdiction of each of those courts becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the Division in question.
- (2) Notwithstanding section 4(1), the Northern Gauteng Division shall also function as the Limpopo and Mpumalanga Divisions respectively until a notice published in terms of section 4(4) in respect of those Divisions comes into operation.
- (3) Any circuit Local Division established under any law repealed by this Act and in existence immediately before the commencement of this Act, shall be deemed to have been duly established in terms of this Act as a Circuit Court of the Division concerned.
- (4) Anyone holding office as the Judge President, a Deputy Judge President or a judge of a court referred to in subsection (1) when this Act takes effect, becomes the Judge President, a Deputy Judge President or a judge of such a court under this Act.

Labour Court and Labour Appeal Court

- 46.** (1) Any judge of a Superior Court who, immediately before the commencement of section 55, holds concurrent tenure of office as—
- (a) President of the Labour Court and the Labour Appeal Court;
 - (b) Deputy President of the Labour Court and the Labour Appeal Court; or
 - (c) judge of the Labour Court and the Labour Appeal Court,
- ceases to hold the latter office and is deemed to have been designated to the panel of judges referred to in section 12(3).
- (2) The remuneration of a judge referred to in subsection (1) is not affected on account of the discontinuation of his or her holding of an office referred to in paragraphs (a), (b) or (c) of that subsection.
- (3) Any person who, immediately before the commencement of section 55, holds office as a judge of the Labour Court but who is not a judge of a Superior Court ceases to hold such office on the date of the commencement of section 55.
- (4) A person referred to in subsection (3) is entitled to such benefits as determined by the President, after consultation with the Judicial Service Commission: Provided that such benefits may not be less than the benefits accruing to judges of the Land Claims

Court at the expiry of their term of office, as contemplated in section 26 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

(5) If a person who is or was a judge of the Labour Court is appointed as a judge of a Superior Court, whether before or after the commencement of this Act, the period of service of that person as a judge of the Labour Court is, for the purposes of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), deemed to be active service as defined in that Act. 5

(6) Any person who, immediately before the date of the commencement of section 55, is an officer of the Labour Court or the Labour Appeal Court must, subject to the laws governing the public service, be transferred to an equivalent post as an officer of a Superior Court designated by the Minister after consultation with the Chief Justice. 10

(7) Proceedings that are pending before the Labour Court or the Labour Appeal Court, in respect of which—

- (a) no evidence has been led, must be transferred in the manner, and to the appropriate court, as the Chief Justice or a judge designated thereto by the Chief Justice may direct, which directives must be conveyed to the parties concerned in such manner as the Chief Justice or the judge concerned deems appropriate; 15
- (b) the hearing was concluded but judgment was reserved, must be concluded as if this Act had not commenced, but that judgment shall be deemed to be the judgment of the court having jurisdiction in terms of this Act; or 20
- (c) evidence has been led but the hearing of evidence has not been concluded, must be stopped and transferred to the court having jurisdiction in terms of this Act, provided that—
 - (i) the record of any evidence led shall be admissible as evidence in the subsequent proceedings; and 25
 - (ii) if the judge hearing the matter is also a judge of the court to which the proceedings are to be transferred, or is a judge whose name appears on the panel of judges referred to in section 12(3), that judge may continue to hear the matter. 30

Existing rules remain in force

47. The rules applicable to the Superior Courts, the Labour Court and the Labour Appeal Court immediately before the commencement of this Act remain in force to the extent that they are not inconsistent with this Act, until repealed or amended by a competent authority. 35

Pending proceedings, other than labour matters

48. (1) Subject to section 25, proceedings pending at the commencement of this Act, other than proceedings in labour matters, must be continued and concluded as if this Act had not been passed.

(2) Proceedings must, for the purposes of this section, be deemed to be pending if, at the commencement of this Act a summons had been issued but judgment had not been passed. 40

(3) Subsections (1) and (2) are also applicable, with the changes required by the context, in respect of proceedings pending on a date when the notice contemplated in section 45(2) comes into operation. 45

References in other laws

49. Any reference in any law—

- (a) to the Supreme Court Act, 1959, or a provision of the said Act, must be construed as a reference to this Act or a corresponding provision of this Act; and 50
- (b) to a Supreme Court, a High Court, or a provincial or local division of a Supreme Court, must be construed as a reference to the High Court of South Africa or a Division referred to in this Act, as the context may require; and
- (c) to the Appellate Division of a Supreme Court, must be construed as a reference to the Supreme Court of Appeal; and 55
- (d) to the Labour Court or the Labour Appeal Court must be construed as a reference to the High Court or the Supreme Court of Appeal, respectively.

Insertion of section 5B in Act 107 of 1985

50. The following section is hereby inserted in the Rules Board for Courts of Law Act, 1985, after section 5A:

“Standing Labour Matters Rules Committee

- 5B.** (1) The Minister must establish a Standing Labour Matters Rules Committee to make recommendations to the Board on rules of court for the Supreme Court of Appeal and the Divisions of the High Court when they deal with labour matters as defined in section 1 of the Superior Courts Act, 2003. 5
- (2) The Committee referred to in subsection (1) shall consist of— 10
- (a) the Deputy President of the Supreme Court of Appeal who is charged with the management of labour matters, as contemplated in section 3(4)(a) of the Superior Courts Act, 2003, who is the chairperson of the Committee;
- (b) a Judge President of a Division of the High Court nominated by the Judges President of the various Divisions of the High Court, who is the deputy chairperson of the Committee; 15
- (c) the following persons, to be appointed by the Minister for a period of three years, acting on the advice of the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994): 20
- (i) A practising advocate with knowledge, experience and expertise in labour law;
- (ii) a practising attorney with knowledge, experience and expertise in labour law; 25
- (iii) a person who represents the interests of employees;
- (iv) a person who represents the interests of employers; and
- (v) a person who represents the interests of the State.
- (3) The Committee must, when necessary, submit recommendations to the Board in the form of draft rules, that are either new rules, rules amending existing rules or measures repealing existing rules, in order to regulate the conduct of proceedings in the Supreme Court of Appeal and the Divisions of the High Court when they deal with labour matters as defined in section 1 of the Superior Courts Act, 2003, including— 30 35
- (a) the process by which proceedings are brought before those courts, and the form and content of that process;
- (b) the period and process for noting appeals;
- (c) the taxation of bills of costs;
- (d) after consulting with the Cabinet member responsible for finance, the fees payable and the costs and expenses allowable in respect of the service or execution of any process of those courts, and the tariff of costs and expenses that may be allowed in respect of that service or execution; and 40
- (e) all other matters incidental to performing the functions of the courts in question, including any matters not expressly mentioned in this subsection that are similar to matters in respect of which the Board may make rules in terms of section 6. 45
- (4) (a) Pending publication in the *Gazette* of rules made by the Board in respect of labour matters as defined in section 1 of the Superior Courts Act, 2003, matters before the courts referred to in subsection (1) must be dealt with in accordance with such general directions as the Deputy President of the Supreme Court of Appeal who is charged with the management of labour matters as contemplated in section 3(4)(a) of the Superior Courts Act, 2003, or the Judge President of the High Court contemplated in subsection (2)(b), as the case may be, may consider appropriate and issue in writing. 50 55
- (b) Those directions cease to be of force on the date of the publication of the Board’s rules in the *Gazette*, except in relation to proceedings already instituted before that date. With regard to those proceedings, those 60

directions continue to apply unless the Deputy President or the Judge President referred to in paragraph (a), as the case may be, has withdrawn them in writing.

(5) The provisions of section 4 apply with the necessary changes to meetings of this Committee.”

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Amendment of section 6 of Act 107 of 1985, as amended by section 4 of Act 77 of 1989, section 24 of Act 139 of 1992 and section 23 of Act 62 of 2000

51. Section 6 of the Rules Board for Courts of Law Act, 1985, is amended—

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

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“The Board may, with a view to the efficient, expeditious and uniform administration of justice in the [**Supreme Court of Appeal, the High Courts**] High Court of South Africa and the lower courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the [**Supreme Court of Appeal, the High Courts**] High Court of South Africa and the lower courts regulating—”;

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(b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) the practice and procedure in connection with the reference of any matter to a referee under [**section 19bis of the Supreme Court Act, 1959 (Act No. 59 of 1959)**] section 35 of the Superior Courts Act, 2003, and the remuneration payable to any such referee;”;

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(c) by the substitution for paragraph (p) of subsection (1) of the following paragraph:

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“(p) the custody and disposal of records or minutes of evidence and proceedings in the [**Supreme Court of Appeal and the High Courts**] High Court of South Africa;”;

(d) by the substitution for paragraph (t) of subsection (1) of the following paragraph:

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“(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the [**Supreme Court of Appeal, the High Courts**] High Court of South Africa and the lower courts in civil as well as in criminal proceedings.”;

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(e) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) Different rules may be made in respect of the [**Supreme Court of Appeal, the High Courts**] High Court of South Africa and the lower courts and in respect of different kinds of proceedings.”;

40

(f) by the deletion of subparagraph (i) of subsection (2)(b); and

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

“(ii) the different Divisions of the High Court of South Africa; or”.

Amendment of section 157 of Act 66 of 1995, as amended by section 14 of Act 127 of 1998

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52. Section 157 of the Labour Relations Act, 1995, is amended by the deletion of subsections (1) and (2).

Amendment of section 213 of Act 66 of 1995, as amended by section 52 of Act 42 of 1996 and section 54 of Act 12 of 2002

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53. Section 213 of the Labour Relations Act, 1995, is hereby amended by the insertion after the definition of “issue in dispute” of the following definitions:

“‘Labour Appeal Court’ means the Supreme Court of Appeal when dealing with a matter arising from the application of this Act;

‘Labour Court’ means any Division of the High Court of South Africa when dealing with a matter arising from the application of this Act;”.

55

Amendment of section 1 of Act 75 of 1997, as amended by section 1 of Act 11 of 2002

- 54.** Section 1 of the Basic Conditions of Employment Act, 1997, is amended—
- (a) by the substitution for the definition of “Labour Appeal Court” of the following definition:
- “ ‘Labour Appeal Court’ means the [**Labour Appeal Court**] Supreme Court of Appeal established by [section 167 of the Labour Relations Act, 1995] section 166 of the Constitution;” 5
- (b) by the substitution for the definition of “Labour Court” of the following definition:
- “ ‘Labour Court’ means [**the Labour Court established by section 151 of the Labour Relations Act, 1995**] any Division of the High Court of South Africa;” 10

Repeal of laws

- 55.** (1) The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule. 15
- (2) Anything done under any provision of a law repealed by subsection (1), must be deemed to have been done under the corresponding provision of this Act.

Short title and commencement

- 56.** This Act is called the Superior Courts Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 20

SCHEDULE 1**(Section 55(1))**

No. and year of Act	Short title	Extent of repeal	
Act No. 59 of 1959	Supreme Court Act, 1959	The whole	5
Act No. 59 of 1959 (Venda)	Supreme Court Act, 1959	The whole	
Act No. 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	The whole	10
Act No. 15 of 1976 (Transkei)	Republic of Transkei Constitution Act, 1976	Sections 44 up to and including 53	
Act No. 18 of 1977 (Bophuthatswana)	Republic of Bophuthatswana Constitution Act, 1977	Sections 8(2), (3) and (4); 22(1)(b); 53(2); 59 up to and including 67; 78; 89(1), (2) and (3); 90(1) and (2); 91(1)(b), (c)(iii) and (d); and 93(1)(f).	15 20
Act No. 9 of 1979 (Venda)	Republic of Venda Constitution Act, 1979	Sections 42 up to and including section 52; and section 72.	
Act No. 32 of 1982 (Bophuthatswana)	Supreme Court of Bophuthatswana Act, 1982	The whole	25
Act No. 5 of 1983 (Transkei)	Supreme Court Act, 1983	The whole	
Decree No. 43 of 1990 (Ciskei)	Supreme Court Decree, 1990	The whole	30
Decree No. 45 of 1990 (Ciskei)	Republic of Ciskei Constitution Decree, 1990	Sections 27 and 28	
Act No. 13 of 1995	Constitutional Court Complementary Act, 1995	The whole	35
Act No. 66 of 1995	Labour Relations Act, 1995	Sections 151; 152; 153; 154; 155; 156; 159, 160; 163; 164; 165; 166; 167; 168; 169; 170; 171; 172; 173; 174; 175; 176; 177; 178; 180; 181; 182; 183 and 184.	40
Act No. 75 of 1977	Basic Conditions of Employment Act, 1997	Section 77	

MEMORANDUM ON THE OBJECTS OF THE SUPERIOR COURTS BILL, 2003

1. PURPOSE OF BILL

The purpose of the Bill is to rationalise and to consolidate the laws pertaining to the Constitutional Court, the Supreme Court of Appeal and the High Courts in a single Act of Parliament.

2. OBJECTS OF BILL

2.1 The Superior Courts Bill was drafted under the auspices of a Steering Committee on the rationalisation of the courts, appointed by the Minister for Justice and Constitutional Development and headed by the Chief Justice. The Bill deals with the Constitutional Court, the Supreme Court of Appeal and the High Courts, referred to collectively as the “Superior Courts”. The main thrust of the Bill is to rationalise the various Superior Courts and the legislation applicable to them in order to establish a judicial system suited to the Constitution. It repeals the outdated *Supreme Court Act, 1959 (Act No. 59 of 1959)*, and the corresponding legislation of the former TBVC states. It also consolidates the laws pertaining to the Constitutional Court, the Supreme Court of Appeal and the High Courts in a single Act of Parliament and, lastly, makes provision for the merging of the existing Labour Court and Labour Appeal Court with the (new) High Court of South Africa and the Supreme Court of Appeal, respectively.

2.2 Since the structure and functioning of the **Constitutional Court** are comprehensively dealt with in the Constitution itself, the Bill does not contain any significant new provisions relating to that Court, other than to incorporate the applicable provisions of the *Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995)*, into the Bill.

2.3 Regarding the **Supreme Court of Appeal**, provision is made for the appointment of a second Deputy President of that Court, who will mainly be responsible for managing appeals in regard to labour matters. Provision is also made that, although Bloemfontein will remain the seat of that Court, the Court may hold sittings at any place elsewhere than at the seat of the Court, according to practice as established from time to time by the President of that Court. A third important change relating to this Court is the fact that the Supreme Court of Appeal will also deal with appeals from the High Court in labour matters, due to the abolition of the Labour Appeal Court.

2.4 The High Courts

2.4.1 The Bill provides for the restructuring of the existing High Courts into a single **High Court of South Africa**, comprising one Division in each province, with the exception of Gauteng, where there will be a Northern Gauteng Division as well as a Southern Gauteng Division. Each Division will have a Judge President and, if the President so determines, one or more Deputy Judges President.

2.4.2 The Bill does not make provision for “Local Divisions”. The Minister for Justice and Constitutional Development must, instead, determine one or more *seats* for each Division. If a Division has more than one seat, the Judge President may divide the area under the jurisdiction of that Division into seat areas, but the principle is established that a Division may deal with any matter falling under its jurisdiction at any seat of that Division. This structure is confirmed by the transitional provisions of the Bill, that provide for each existing High Court to become a *seat* of the Division of the High Court in the province concerned.

2.5 Labour matters

The Bill also makes provision for the abolition of the Labour Court and Labour Appeal Court. Jurisdiction in labour matters is bestowed on the High Court of South Africa, whilst labour appeals will be dealt with by the Supreme Court of Appeal. However, the specialist nature of and special interests involved in “labour adjudication” is affirmed by establishing a panel of specially selected judges who may hear labour matters. This selection will be done by a committee comprising—

- * the President and Deputy Presidents of the Supreme Court of Appeal;
- * three representatives of NEDLAC, representing business, labour and the State;

- * the Judges President; and
- * an advocate and an attorney.

As pointed out in paragraph 2.3 above, provision is also made for the appointment to the Supreme Court of Appeal of a second Deputy President, who will be primarily responsible for managing labour appeals in the Supreme Court of Appeal.

2.6 The remaining provisions of the Superior Courts Bill are largely procedural in nature and are mostly carried over from the existing laws.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- * The Chief Justice, President of the Supreme Court of Appeal and Judges President of the High Courts
- * The Department of Labour
- * NEDLAC

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

The establishment of new courts in Limpopo and Mpumalanga will require major expenditure. The Department of Justice and Constitutional Development will have to obtain funding for this through the Department's ordinary budgetary process, but this will require a comprehensive costing of the draft legislation. It is unavoidable that such costing will to a considerable extent have to be informed by changes that Parliament may effect to the legislation. The Bill, if enacted in its present form, will not require any immediate significant expenditure, as provision is made for the Northern Gauteng Division of the High Court to continue functioning as the Limpopo and Mpumalanga Divisions until such time as their seats are formally established.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.