PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 22 OF 2018

by the

President of the Republic of South Africa

COMMENCEMENT OF THE COURTS OF LAW AMENDMENT ACT, 2017 (ACT NO. 7 OF 2017)

Under section 16(1) of the Courts of Law Amendment Act, 2017 (Act No. 7 of 2017), I hereby fix 1 August 2018 as the date on which the said Act, except section 14, comes into operation.

Given under my Hand and the Seal of the Republic of South Africa at Johannesburg on this 25th day of July Two thousand and eighteen.

President

By Order of the President-in-Cabinet:

Minister of the Cabinet



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THE PRESIDENCY

No. 769 02 August 2017

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 7 of 2017: Courts of Law Amendment Act, 2017

DIE PRESIDENSIE

No. 769 02 Augustus 2017

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 7 van 2017: Wysigingswet op Geregshowe, 2017

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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.

(English text signed by the President)
(Assented to 31 July 2017)

ACT

To amend the Magistrates' Courts Act, 1944, so as to insert definitions; to regulate the rescission of judgments where the judgment debt has been paid; to further regulate jurisdiction by consent of parties; to regulate the factors a court must take into consideration to make a just and equitable order; to further regulate the payment of debts in instalments or otherwise; to further regulate consent to judgments and orders for the payment of judgment debts in instalments; to further regulate offers by judgment debtors after judgment; to further regulate the issuing of emoluments attachment orders; to further regulate debt collection proceedings pursuant to judgments granted by a court for a regional division; to further regulate the suspension of execution of a debt; to further regulate the abandonment of judgments; and to provide for certain offences and penalties relating to judgments, emoluments attachment orders and instalment orders; to amend the Superior Courts Act, 2013, so as to provide for the rescission of judgments by consent and the rescission of judgments where the judgment debt has been paid; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts, as follows:—

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974, section 1 of Act 105 of 1982, section 2 of Act 34 of 1986, section 1 of Act 4 of 1991, section 1 of Act 66 of 1998 and section 1 of Act 31 of 2008

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended—

(a) by the insertion after the definition of "court" of the following definition:

" **'court day'** means any day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by this Act or fixed by any order of court;"; and

(b) by the insertion after the definition of "Minister" of the following definition:

" **'National Credit Act'** means the National Credit Act, 2005 (Act No. 34 of 2005);".

Amendment of section 36 of Act 32 of 1944, as substituted by section 1 of Act 55 of 2002

2. Section 36 of the Magistrates' Courts Act, 1944, is hereby amended—

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

"(2) If a plaintiff in whose favour a default judgment has been granted has **[agreed]** consented in writing that the judgment be rescinded or varied, a court **[must]** may rescind or vary such judgment on application by any person affected by it."; and

(b) by the addition of the following subsections:

"(3) *(a)* Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid in full, whether the consent of the judgment creditor for the rescission of the judgment has been obtained or not, a court may, on application by the judgment debtor or any other person affected by the judgment rescind that judgment.

(b) The application contemplated in paragraph *(a)*—

(i) must be made on a form which corresponds substantially with the form prescribed in the rules;

(ii) must be accompanied by reasonable proof that the judgment debt, the interest and the costs have been paid;

(iii) must be accompanied by proof that the application has been served on the judgment creditor, at least 10 court days prior to the hearing of the intended application;

(iv) may be set down for hearing on any day, not less than 10 court days, after service thereof; and

(v) may be heard by a magistrate in chambers.

(4) A court may make any cost order it deems fit with regard to an application contemplated in paragraph *(a)*.".

Amendment of section 45 of Act 32 of 1944

3. Section 45 of the Magistrates' Courts Act, 1944, is hereby amended—

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

"(1) **[Subject to the provisions of section *forty-six*, the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction if the parties consent in writing thereto: Provided that no court other than a court having jurisdiction under section *twenty-eight* shall, except where such consent is given specifically with reference to particular proceedings already instituted or about to be instituted in such court, have jurisdiction in any such matter.]** Subject to the provisions of section 46, the parties may consent in writing to the jurisdiction of either the court for the district or the court for the regional division to determine any action or proceedings otherwise beyond its jurisdiction in terms of section 29(1).."; and

(b) by the addition of the following subsection:

"(3) Any consent given in proceedings instituted in terms of section 57, 58, 65 or 65J by a defendant or a judgment debtor to the jurisdiction of a court which does not have jurisdiction over that defendant or judgment debtor in terms of section 28, is of no force and effect.".

Insertion of section 55A in Act 32 of 1944

4. The following section is hereby inserted in the Magistrates' Courts Act, 1944, after section 55:

"**Factors to be taken into account when considering an order which is just and equitable**

55A. For purposes of Chapters VIII and IX of this Act, the factors a court must take into account when considering whether an order is just and equitable, include, but are not limited to—

(a) the size of the debt;
(b) the circumstances in which the debt arose;
(c) the availability of alternatives to recover the debt;
(d) the interests of the plaintiff or judgment creditor;
(e) the rights and needs of the elderly, children, persons with disabilities and households headed by women;
(f) social values and implications;
(g) the amount and nature of the defendant's or judgment debtor's income;
(h) the amounts needed by the defendant or judgment debtor for necessary expenses and those of the persons dependent on him or her and for the making of periodical payments which he or she is obliged to make in terms of an order of court, agreement or otherwise in respect of his or her other commitments; and
(i) whether the order would, in the circumstances of the case, be grossly disproportionate.".

Substitution of section 57 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976 and amended by section 2 of Act 81 of 1997

5. The following section is hereby substituted for section 57 of the Magistrates' Courts Act, 1944:

"**Admission of liability and undertaking to pay debt in instalments or otherwise**

57. (1) If any person (in this section called the defendant) has received a letter of demand or has been served with a summons demanding payment of any debt, the defendant may in writing—
(a) admit liability to the plaintiff for the amount of the debt and costs claimed in the letter of demand or summons or for any other amount;
(b) offer to pay the amount of the debt and costs for which he or she admits liability, in instalments or otherwise;
(c) undertake on payment of any instalment in terms of his or her offer to pay the collection fees for which the plaintiff is liable in respect of the recovery of such instalment; and
(d) agree that, in the event of his or her failure to carry out the terms of his or her offer, the plaintiff shall, without notice to the defendant, be entitled to apply for judgment for the amount of the outstanding balance of the debt for which he or she admits liability, with costs, and for an order of the court for payment of the judgment debt and costs in instalments or otherwise in accordance with his or her offer,

and if the plaintiff or his or her attorney accepts the said offer, he or she shall advise the defendant of such acceptance in writing by registered letter.

(1A) The offer referred to in subsection (1)*(b)* must—
(a) set out full particulars of the defendant's—
(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof in the possession of the defendant;
(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments; and
(b) indicate the amount of the offered instalment.

(2) If, after having been advised by the plaintiff or his or her attorney in writing that his or her offer has been accepted, the defendant fails to carry out the terms of his or her offer, **[the clerk of]** the court **[shall]** may, upon the written request of the plaintiff or his or her attorney **[accompanied by—**
***(a)* if no summons has been issued, a copy of the letter of demand;**

(b) **the defendant's written acknowledgment of debt and offer and a copy of the plaintiff's or his attorney's written acceptance of the offer;**

(c) **an affidavit or affirmation by the plaintiff or a certificate by his attorney stating in which respects the defendant has failed to carry out the terms of his offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at]** and subject to subsection (2A)—

[(i)]*(a)* enter judgment in favour of the plaintiff for the amount or the outstanding balance of the amount of the debt for which the defendant has admitted liability, with costs; and

[(ii)]*(b)* order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his or her offer, and such order shall be deemed to be an order of the court mentioned in section 65A(1).

(2A) The written request referred to in subsection (2) must be accompanied by—

(a) the summons or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of liability and offer;

(c) all the particulars and documentary evidence referred to in subsection (1A), in order for the court to be apprised of the defendant's financial position at the time the offer was made and accepted;

(d) a copy of the plaintiff's or his or her attorney's written acceptance of the offer and proof of postage thereof to the defendant; and

(e) an affidavit or affirmation by the plaintiff or a certificate by his or her attorney stating in which respects the defendant has failed to carry out the terms of his or her offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at.

(2B) The court—

(a) may request any relevant information from the plaintiff or his or her attorney in order for the court to be apprised of the defendant's financial position at the time judgment is requested;

(b) must act in terms of the provisions of the National Credit Act and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment, when considering a request for judgment in terms of this section, based on a credit agreement under the National Credit Act;

(c) may, if the defendant is employed, and after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate, authorise an emoluments attachment order referred to in section 65J; and

(d) may, notwithstanding the defendant's consent to pay any scale of costs, make a costs order as it deems fit.

(3) When the judgment referred to in subsection (2) has been entered and an order made, and if the judgment debtor was not present or represented when the judgment was entered **[by the clerk of the court]** and the order made, the judgment creditor or his or her attorney **[shall forthwith]** must, within 10 days after it has received knowledge that judgment has been entered and an order made, advise the judgment debtor by registered letter of the terms of the judgment and order.

(4) Any judgment entered in favour of the plaintiff under subsection (2) **[shall have]** has the effect of a judgment by default.

(5) The provisions of this section apply subject to the relevant provisions of the National Credit Act where the request for judgment is based on a credit agreement under the National Credit Act.".

Substitution of section 58 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976

6. The following section is hereby substituted for section 58 of the Magistrates' Courts Act, 1944:

"**Consent to judgment or to judgment and an order for payment of judgment debt in instalments**

58. (1) If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him or her of a summons demanding payment of debt, consents in writing to judgment in favour of the creditor (in this section called the plaintiff) for the amount of the debt and the costs claimed in the letter of demand or summons, or for any other amount, **[the clerk of]** the court **[shall]** may, on the written request of the plaintiff or his or her attorney **[accompanied by—**

(a) **if no summons has been issued, a copy of the letter of demand; and**

(b) **the defendant's written consent to judgment,]** and subject to subsection (1B)—

[i]*(a)* enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and

[ii]*(b)* if it appears from the defendant's written consent to judgment that he or she has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he or she has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with this consent, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

(1A) If the defendant consents to an order of court for payment in specified instalments referred to in subsection (1)*(b)*, the consent must—

(a) set out full particulars of his or her—

(i) monthly or weekly income and expenditure, supported where reasonably possible by the most recent proof in the possession of the defendant;

(ii) other court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments; and

(b) indicate the amount of the offered instalment.

(1B) The written request referred to in subsection (1) must be accompanied by—

(a) the summons or if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written consent to judgment; and

(c) if the defendant consents to an order of court for payment in specified instalments referred to in subsection (1)*(b)*—

(i) the written consent; and

(ii) the full particulars and documentary evidence referred to in subsection (1A) in order for the court to be apprised of the defendant's financial position at the time the defendant consented to judgment.

(1C) The court—

(a) may request any relevant information from the plaintiff or his or her attorney in order for the court to be apprised of the defendant's financial position at the time the judgment is requested;

(b) must act in terms of the provisions of the National Credit Act and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment, when considering a request for judgment in terms of this section, based on a credit agreement under the National Credit Act;

(c) may, if the defendant is employed, and after satisfying itself that it is just and equitable that an emoluments attachment order be issued and

that the amount is appropriate, authorise an emoluments attachment order referred to in section 65J; and

(d) may, notwithstanding the defendant's consent to pay any scale of costs, make a costs order as it deems fit.

(2) The provisions of section 57(3) and (4) **[shall]** apply in respect of the judgment and court order referred to in subsection (1) of this section.

(3) The provisions of this section apply, subject to the relevant provisions of the National Credit Act, where the application for judgment is based on a credit agreement under the National Credit Act.".

Substitution of section 65 of Act 32 of 1944, as substituted by section 2 of Act 63 of 1976

7. The following section is hereby substituted for section 65 of the Magistrates' Courts Act, 1944:

"**Offer by judgment debtor after judgment**

65. (1) If at any time after a court has given judgment for the payment of a sum of money and before the issue of a notice under section 65A(1), the judgment debtor makes a written offer to the judgment creditor to pay the judgment debt in specified instalments or otherwise and such offer is accepted by the judgment creditor or his or her attorney, **[the clerk of]** the court **[shall]** may, subject to subsection (2), at the written request of the judgment creditor or his or her attorney, accompanied by the offer order the judgment debtor to pay the judgment debt in specified instalments or otherwise in accordance with his or her offer **[, and such order shall be deemed to be an order of the court mentioned in section 65A(1)]**.

(2) The offer referred to in subsection (1) must be supported, where reasonably possible, by the most recent proof in the possession of the debtor relating to his or her income and expenditure, other court orders or agreements with other creditors for payment of a debt in instalments and assets and liabilities as prescribed by the rules.

(3) The court—

(a) may request any relevant information from the judgment creditor or his or her attorney in order for the court to be apprised of the judgment debtor's financial position at the time the written request, for an order to pay the judgment debt in specified instalments or otherwise, is made;

(b) must act in terms of the provisions of the National Credit Act and the regulations thereunder dealing with over-indebtedness, reckless credit and affordability assessment when considering a request for an order in terms of this section, if the judgment is based on a credit agreement under the National Credit Act; and

(c) may, if the debtor is employed, and after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate, authorise an emoluments attachment order referred to in section 65J.

(4) An order made under subsection (1) is deemed to be an order of the court mentioned in section 65A(1).".

Amendment of section 65E of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976 and amended by section 7 of Act 81 of 1997

8. Section 65E of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If at the hearing of the proceedings in terms of a notice under section 65A(1) the court is satisfied—

(a) that the judgment debtor has movable or immovable property which may be attached and sold in order to satisfy the judgment debt or any part thereof, the court may—

(i) authorise the issue of a warrant of execution against such movable or immovable property or such part thereof as the court may deem fit; or

(ii) authorise the issue of such a warrant together with an order in terms of section 73; or

(b) that there is a debt due to the judgment debtor which may be attached in terms of section 72 to satisfy the judgment debt and costs or part thereof, the court may authorise the attachment of that debt in terms of that section; or

(c) that the judgment debtor or, if the judgment debtor is a juristic person, the director or officer summoned as representative of the juristic person, at any time after receipt of a notice referred to in section 65A(1), has made an offer in writing to the judgment creditor or his or her attorney to pay the judgment debt and costs in specified instalments or otherwise, **[whether by way of an emoluments attachment order or otherwise,]** or, if such an offer has not been made, that the judgment debtor is able to pay the judgment debt and costs in reasonable instalments, the court may order the judgment debtor to pay the judgment debt and costs in specified instalments and, **[if the judgment debtor is employed by any person who resides, carries on business or is employed in the district, or if the judgment debtor is employed by the State in the district,]** where the judgment debtor is a natural person and is employed and after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate, in addition authorise the issue of an emoluments attachment order by virtue of section 65J(1) for the payment of the judgment debt and costs by the employer of the judgment debtor,

and postpone any further hearings of the proceedings.".

Substitution of section 65J of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976 and amended by section 2 of Act 53 of 1983 and section 11 of Act 81 of 1997

9. The following section is hereby substituted for section 65J of the Magistrates' Courts Act, 1944:

"**Emoluments attachment orders**

65J. (1) *(a)* Subject to the provisions of subsection (2), a judgment creditor may cause an order (hereinafter referred to as an emoluments attachment order) to be issued from the court of the district in which the **[employer of the]** judgment debtor resides, carries on business or is employed**[, or, if the judgment debtor is employed by the State, in which the judgment debtor is employed]**.

(b) An emoluments attachment order—

(i) **[shall]** must attach the emoluments at present or in future owing or accruing to the judgment debtor by or from his or her employer (in this section called the garnishee), to the amount necessary to cover the judgment and the costs of the attachment, whether that judgment was obtained in the court concerned or in any other court; and

(ii) **[shall]** must oblige the garnishee to pay from time to time to the judgment creditor or his or her attorney specific amounts out of the emoluments of the judgment debtor in accordance with the order of court laying down the specific instalments payable by the judgment debtor, until the relevant judgment debt and costs have been paid in full.

(1A) *(a)* The amount of the instalment payable or the total amount of instalments payable where there is more than one emoluments attachment order payable by the judgment debtor, may not exceed 25 per cent of the judgment debtor's basic salary.

(b) For purposes of this section, "basic salary" means the annual gross salary a judgment debtor is employed on divided by 12 and excludes additional remuneration for overtime or other allowances.

(c) (i) When a court considers—

(aa) the authorisation of an emoluments attachment order; or

(bb) any other order contemplated in this section,

and after having considered all submissions before the court and after having called for and considered all further available documents, the court is satisfied that other emoluments attachment orders exist against the judgment debtor, the court must postpone the further consideration of the authorisation or other order and set the matter down for hearing.

(ii) The party applying for the authorisation of an emoluments attachment order or other order contemplated in this section, must serve notice of the date of the hearing referred to in subparagraph (i) on the other creditors or their attorneys, and on the judgment debtor, if he or she was not present or represented when the consideration of the authorisation of an emoluments attachment order or other order was postponed.

(iii) The court may after hearing all parties at the ensuing hearing, make an order regarding the division of the amount available to be committed to each of the emoluments attachment orders, after satisfying itself that each order is just and equitable and the sum of the total amount of the emoluments attachment orders is appropriate and does not exceed 25 per cent of the judgment debtor's basic salary.

(2) An emoluments attachment order **[shall not]** may only be issued **[—**

(a) **unless the judgment debtor has consented thereto in writing or]** if the court has so authorised, after satisfying itself that it is just and equitable that an emoluments attachment order be issued and that the amount is appropriate, whether on application to the court or otherwise, and such authorisation has not been suspended**[; or**

(b) **unless the judgment creditor or his or her attorney has first—**

(i) sent a registered letter to the judgment debtor at his or her last known address advising him or her of the amount of the judgment debt and costs as yet unpaid and warning him or her that an emoluments attachment order will be issued if the said amount is not paid within ten days of the date on which that registered letter was posted; and

(ii) filed with the clerk of the court an affidavit or an affirmation by the judgment creditor or a certificate by his or her attorney setting forth the amount of the judgment debt at the date of the order laying down the specific instalments, the costs, if any, which have accumulated since that date, the payments received since that date and the balance owing and declaring that the provisions of sub-paragraph (i) have been complied with on the date specified therein].

(2A) A judgment creditor or his or her attorney must serve, on the judgment debtor and on his or her employer, a notice, which corresponds substantially with the form prescribed in the rules, of the intention to have an emoluments attachment order issued against the judgment debtor in accordance with the authorisation of the court referred to in subsection (2).

(2B) The notice referred to in subsection (2A) must inform the judgment debtor and his or her employer—

(a) of the judgment creditor's intention to have an emoluments attachment order issued against the judgment debtor in accordance with the authorisation of the court referred to in subsection (2);

(b) of the full amount of the capital debt, interest and costs outstanding, substantiated by a statement of account; and

(c) that, unless the judgment debtor or his or her employer files a notice of intention to oppose the issuing of the emoluments attachment order within 10 days after service of the notice on them, an emoluments attachment order will be sought.

(2C) *(a)* The notice of intention to oppose contemplated in subsection (2B)*(c)* must state the grounds upon which the judgment debtor or employer wishes to oppose the issuing of the emoluments attachment order.

(b) The grounds which may be used to oppose the issuing of the emoluments attachment order include, but are not limited to, the following:

(i) That the amounts claimed are erroneous or not in accordance with the law; or

(ii) that 25 per cent of the judgment debtor's basic salary is already committed to other emoluments attachment orders and that the debtor will not have sufficient means left for his or her own maintenance or that of his or her dependants.

(c) The notice of intention to oppose must be accompanied by—

(i) a certificate by the employer of the judgment debtor setting out particulars of—

(aa) all existing court orders against the judgment debtor or agreements with other creditors for payment of a debt and costs in instalments; and

(bb) when reasonably attainable, the amounts needed by the debtor for necessary expenses and those of the persons dependent on him or her and for the making of periodical payments which he or she is obliged to make in terms of an agreement or otherwise in respect of his or her other commitments.

(ii) the contact details of all the relevant judgment creditors or their attorneys; and

(iii) the latest salary advice of the judgment debtor.

(2D) If a notice of intention to oppose is filed and the judgment creditor or his or her attorney does not accept the reasons for the opposition, he or she or his or her attorney may set the matter down for hearing in court with notice to the judgment debtor and employer and if the opposition is based on overcommitment of the judgment debtor's salary to existing court orders or agreements with other creditors for payment of a debt and costs in instalments, notice must be given to the other judgment creditors or their attorneys.

(2E) The court may, after hearing all parties and after satisfying itself that the order is just and equitable—

(a) rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above the sufficient means necessary for his or her maintenance and that of his or her dependants; or

(b) make any order, including an order regarding the division of the amount available to be committed to all the emoluments attachment orders, after satisfying itself that the amount is appropriate and does not exceed 25 per cent of the judgment debtor's basic salary and an order as to costs.

(3) *(a)* Any emoluments attachment order **[shall]** must be prepared **[by the judgment creditor or his attorney, shall be]** and signed by the judgment creditor or his or her attorney **[and the clerk of the court, and shall be served on the garnishee by the messenger of the court in the manner prescribed by the rules for the service of process]**.

(b) The clerk of the court must ensure that the court—

(i) has authorised the emoluments attachment order; and

(ii) has jurisdiction as provided for in subsection (1)*(a)*,

before issuing an emoluments attachment order authorised in terms of subsection (2) by signing it and may either ask the judgment creditor or his or her attorney for more information or refer the order to the court in the case of any uncertainty.

(c) The emoluments attachment order must be served on the employer of the judgment debtor, (hereinafter called the garnishee) and if the judgment

debtor was not present or represented when the emoluments attachment order was authorised, also on the judgment debtor, by the sheriff in the manner prescribed by the rules for the service of process.

(4) *(a)* Deductions in terms of an emoluments attachment order shall be made, if the emoluments of the judgment debtor are paid monthly, at the end of the month following the month in which it is served on the garnishee, or, if the emoluments of the judgment debtor are paid weekly, at the end of the second week of the month following the month in which it is so served on the garnishee, and all payments thereunder to the judgment creditor or his or her attorney shall be made monthly with effect from the end of the month following the month in which the said order is served on the garnishee.

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

(5) An emoluments attachment order may be executed against the garnishee as if it were a court judgment, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order or the correctness of the balance claimed.

(6) *(a)* If, after the service of such an emoluments attachment order on the garnishee, the garnishee believes or becomes aware or it is otherwise shown that the—

(i) judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his or her own **[and his dependants']** maintenance**[, the court shall rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above the sufficient means]** or that of his or her dependants; or

(ii) amounts claimed are erroneous or not in accordance with the law,

the garnishee, judgment debtor or any other interested party must without delay and in writing notify the judgment creditor or his or her attorney accordingly.

(b) The written notification referred to in paragraph *(a)* must set out the reasons for believing or knowing that the judgment debtor will not have sufficient means for his or her own maintenance or that of his or her dependants or that the amounts claimed are erroneous or not in accordance with the law.

(c) The judgment creditor or his or her attorney must, after receiving the notice contemplated in paragraph *(a)*, without delay indicate whether he or she accepts the reasons given in that notification and if not, set the matter down for hearing in court with notice to the garnishee, judgment debtor or any other interested party referred to in paragraph *(a)*.

(d) The court may, after hearing all parties and after satisfying itself that the order is just and equitable—

(i) rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above the sufficient means necessary for his or her maintenance and that of his or her dependants; or

(ii) make any order including an order regarding the division of the amount available to be committed to all the emoluments attachment orders, after satisfying itself that the amount is appropriate and does not exceed 25 per cent of the judgment debtor's basic salary and an order as to costs.

(7) Any emoluments attachment order may at any time on good cause shown be suspended, amended or rescinded by the court, and when suspending any such order the court may impose such conditions as it may deem just and reasonable.

(8) *(a)* Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of a garnishee before the judgment debt has been paid in full, such judgment debtor **[shall]** must forthwith advise the judgment creditor or his or her attorney in writing of the name and address of his or her new employer, and the judgment creditor or his or her attorney may cause a certified copy of such emoluments attachment order to be served on the said new employer, together with an affidavit or affirmation by him or her or a certificate by his or her attorney specifying the payments received by him or her since such order was issued, the costs, if any, incurred since the date on which that order was issued and the balance outstanding.

(b) An employer on whom a certified copy referred to in paragraph *(a)* has been so served, **[shall]** is thereupon **[be]** bound thereby and **[shall then be]** is deemed to have been substituted for the original garnishee, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order and the correctness of the balance claimed.

(9)**[*(a)*]** Whenever any judgment debtor to whom an emoluments attachment order relates, leaves the service of the garnishee before the judgment debt has been paid in full and becomes self-employed or is employed by someone else, he or she **[shall, or shall]** is, or is pending the service of the emoluments attachment order on his or her new employer, again **[be]** obliged to comply with the relevant order referred to in subsection (1)*(b)*.

(10) *(a)* Any garnishee may, in respect of the services rendered by him or her in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him or her from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

(b) A garnishee who—

(i) unreasonably fails to timeously deduct the amount of the emoluments attachment order provided for in subsection (4)*(a)*; or

(ii) unreasonably fails to timeously stop the deductions when the judgment debt and costs have been paid in full,

is liable to repay to the judgment debtor any additional costs and interest which have accrued or any amount deducted from the salary of the judgment debtor after the judgment debt and costs have been paid in full as a result of such failure.

(c) The Rules Board for Courts of Law must make a reference to the provisions of paragraph *(b)* on Form 38 of Annexure 1 to the rules, containing the emoluments attachment order.".

Substitution of section 65M of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976

10. The following section is hereby substituted for section 65M of the Magistrates' Courts Act, 1944:

"**Enforcement of certain judgments of [Supreme] division of High Court or court for regional division**

65M. If a judgment for the payment of any amount of money has been given by a division of the **[Supreme]** High Court of South Africa or a court for a regional division, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of section 65A(1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his or her attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings

may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate.".

Amendment of section 73 of Act 32 of 1944, as amended by section 18 of Act 40 of 1952 and section 5 of Act 63 of 1976

11. Section 73 of the Magistrates' Courts Act, 1944, is hereby amended by—

(a) the substitution for the heading of the following heading: "**Suspension of execution of debt**"; and

(b) the substitution for subsection (1) of the following subsection:

"(1) The court may, **[upon]** on the application of any judgment debtor or under section 65E(1) *(a)* (ii) or 65E (1) *(c)* and if it appears to the court that the judgment debtor is unable to satisfy the judgment debt in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof or if the judgment debtor consents to **[an emoluments attachment order or]** a garnishee order being made against him or her, suspend execution against that debtor either wholly or in part on such conditions as to security or otherwise as the court may determine.".

Amendment of section 86 of Act 32 of 1944

12. Section 86 of the Magistrates' Courts Act, 1944, is hereby amended by the addition of the following subsection:

"(5) If a party abandons a judgment given in his or her favour because the judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid, no judgment referred to in subsection (2) or (3) shall be entered in favour of the other party.".

Insertion of section 106C in Act 32 of 1944

13. The following section is hereby inserted in the Magistrates' Courts Act, 1944, after section 106B:

"**Offences relating to judgments, emoluments attachment orders and instalment orders**

106C. (1) Any person who requires the applicant to consent to a judgment or any instalment order or emoluments attachment order prior to the granting of the loan, is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding three years.

(2) Any person who fraudulently obtains or issues a judgment, or any instalment order or emoluments attachment order in terms of this Act, is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding three years.".

Insertion of section 23A in Act 10 of 2013

14. The Superior Courts Act, 2013, is hereby amended by the insertion of the following section after section 23:

"**Rescission of judgment with consent of plaintiff or where judgment debt has been paid**

23A. (1) If a plaintiff in whose favour a default judgment has been granted has consented in writing that the judgment be rescinded, a court may rescind such judgment on application by any person affected by it.

(2) *(a)* Where a judgment debt, the interest thereon at the rate granted in the judgment and the costs have been paid, whether the consent of the judgment creditor for the rescission of the judgment has been obtained or not, a court may, on application by the judgment debtor or any other person affected by the judgment, rescind that judgment.

(b) The application contemplated in paragraph *(a)*—

(i) must be made on a form which corresponds substantially with the form prescribed in the rules;

(ii) must be accompanied by reasonable proof that the judgment debt, the interest thereon and the costs have been paid;

(iii) must be accompanied by proof that the application has been served on the judgment creditor, at least 10 business days prior to the hearing of the intended application;

(iv) may be set down for hearing on any day, not less than 10 business days after service thereof; and

(v) may be heard by a judge in chambers.

(c) A court may make any cost order it deems fit with regard to an application contemplated in paragraph *(a)*.".

Transitional provisions

15. (1) All legal proceedings in terms of sections 36, 45, 57, 58, 65, 65E, 65J, 65M, 73 or 86 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), which were instituted prior to the commencement of this Act and which are not concluded before the commencement of this Act, must be continued and concluded in all respects as if this Act had not been passed: Provided that, where applicable, the original judgment, instalment order or emoluments attachment order, upon which the proceedings in question are based, was obtained and granted in accordance with the law.

(2) *(a)* A judgment creditor in whose favour a default judgment has been granted and a subsequent instalment order or emoluments attachment order (hereinafter referred to as a subsequent order) made, based on that default judgment, or a judgment debtor or any other person affected by that default judgment or subsequent order based on that default judgment, who has reason to believe that that default judgment or subsequent order was not obtained and granted in accordance with the law, may apply for the review of that default judgment or subsequent order.

(b) This subsection applies only to default judgments and subsequent orders in terms of the Magistrates' Courts Act, 1944.

(c) The application contemplated in paragraph *(a)*—

(i) must be made on a form which corresponds substantially with the form prescribed in the Schedule to this Act;

(ii) must be accompanied by a supporting affidavit;

(iii) must be accompanied by proof that the application has been served on the other party, at least 10 court days prior to the hearing of the intended application;

(iv) may be set down for hearing on any day, being not less than 10 court days after service thereof; and

(v) may be heard by a magistrate in chambers.

(d) The court must rescind a default judgment or subsequent order contemplated in paragraph *(a)*, if it is proved that the default judgment or subsequent order was not obtained and granted in accordance with the law or may give any other order it deems fit in the circumstances.

(e) No cost order shall be made with regard to an application contemplated in paragraph *(a)*: Provided that the judgment debtor or affected person who applies for the review contemplated in paragraph *(a)* acted reasonably in bringing the application.

(f) The clerk or registrar of the court must render reasonable assistance to a party wishing to bring an application contemplated in paragraph *(a)*: Provided that the State or that clerk or registrar shall not be liable for any damage or loss resulting from assistance given in good faith by that clerk or registrar to such party in the compilation or preparation of any process or document.

(g) The operation of this subsection shall cease after a period of three years after the date on which this Act, or the date on which the last provisions of this Act, has come into operation.

(3) Despite the amendment of any provision of the Magistrates' Courts Act, 1944, by this Act, such provision, for purposes of the disposal of any legal proceedings referred to in subsection (1), remains in force as if such provision had not been amended.

(4) An investigation or prosecution or other legal proceedings in respect of conduct which would have constituted an offence referred to in section 106C of the Magistrates' Courts Act, 1944, which was initiated before the commencement of this Act must be concluded, instituted and continued as if this Act had not been passed.

Short title and commencement

16. (1) This Act is called the Courts of Law Amendment Act, 2017, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

SCHEDULE

APPLICATION TO REVIEW DEFAULT JUDGMENT AND SUBSEQUENT ORDER

(Section 15(2))

IN THE MAGISTRATE'S COURT FOR THE DISTRICT/REGION .....

HELD AT .....

CASE NO.....

In the matter between

.....Applicant

and

.....Respondent

Take notice that application will be made on behalf of the above-mentioned applicant for the review of the default judgment and subsequent order/s granted in this case, on ..... at ..... (time) on the basis that the judgment and subsequent order/s have not been obtained and granted in accordance with the law.

The affidavit of ....., annexed hereto, will be used in support of the application.

DATED AT ..... on .....

.....(Applicant/applicant's attorney)

Address .....

.....

TO: (1) ..... (Respondent or respondent's attorney)

Address: .....

.....

(2) The clerk/registrar of the court .....

Address: .....

.....