

REPUBLIC OF SOUTH AFRICA

---

# SUPERIOR COURTS BILL

---

*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill published in Gazette No. 33216 of 21 May 2010)  
(The English text is the official text of the Bill)*

---

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B 7—2011]**

ISBN 978-1-77037-832-2

No. of copies printed ..... 1 800



**AND WHEREAS** section 171 of the Constitution provides that all courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation;

**AND WHEREAS** section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution;

**AND WHEREAS** item 16(6)(a) of Schedule 6 to the Constitution provides that as soon as practical after the Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the Constitution;

**AND NOTING** that, with the advent of the democratic constitutional dispensation in 1994, the Republic inherited a fragmented court structure and infrastructure which were largely derived from our colonial history and were subsequently further structured to serve the segregation objectives of the apartheid dispensation;

**AND NOTING** that, before the advent of the democratic constitutional dispensation in 1994, the Lower Courts were not constitutionally recognised as part of the judicial authority and were largely dealt with as an extension of the public service;

**AND NOTING** that, since the Constitution provides that the judicial authority is vested in all the courts, it is desirable to provide for a uniform framework for judicial management, by the judiciary, of the judicial functions of all courts;

**AND RECOGNISING** that the rationalisation envisaged by item 16(6)(a) of Schedule 6 to the Constitution is an on-going process that is likely to result in further legislative and other measures in order to establish a judicial system suited to the requirements of the Constitution,

**P**ARLIAMENT of the Republic of South Africa therefore enacts, as follows:—

## CHAPTER 1

### *Introductory Provisions*

<b>Definitions</b>	5
1. In this Act, unless the context otherwise indicates—	
“ <b>business day</b> ” means a day that is not a public holiday, Saturday or Sunday;	
“ <b>Constitution</b> ” means the Constitution of the Republic of South Africa, 1996;	
“ <b>Department</b> ” means the Department responsible for the administration of justice;	10
“ <b>Director-General</b> ” means the Director-General of the Department;	
“ <b>Division</b> ” means any Division of the High Court;	
“ <b>full court</b> ”, in relation to any Division, means a Court consisting of three judges;	
“ <b>head of court</b> ”, in relation to—	
(i) the Constitutional Court, means the Chief Justice;	15
(ii) the Supreme Court of Appeal, means the President of that Court;	
(iii) any Division of the High Court, means the Judge President of that Division;	
and	
(iv) any court of a status similar to the High Court, the most senior judge of such court;	20
“ <b>High Court</b> ” means the High Court of South Africa referred to in section 6(1);	
“ <b>judicial officer</b> ” means any person referred to in section 174(1) of the Constitution;	
“ <b>Judicial Service Commission</b> ” means the Judicial Service Commission referred to in section 178 of the Constitution;	25

- “**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;
- “**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
- “**prescribed**” means prescribed by regulation made in terms of this Act;
- “**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
- “**rules**” means the applicable rules of court;
- “**Rules Board**” means the Rules Board for Courts of Law, established by the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);
- “**Superior Court**” means the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court; 15
- “**this Act**” includes any regulation.

### **Objects and interpretation of Act**

2. (1) The objects of this Act are—
- (a) to consolidate and rationalise the laws pertaining to Superior Courts as contemplated in item 16(6) of Schedule 6 to the Constitution; 20
- (b) to bring the structure of the Superior Courts in line with the provisions of Chapter 8 and the transformation imperatives of the Constitution; and
- (c) to make provision for the administration of the judicial functions of all courts, including governance issues, over which the Chief Justice exercises responsibility. 25
- (2) This Act must be read in conjunction with Chapter 8 of the Constitution, which contains the founding provisions for the structure and jurisdiction of the Superior Courts, the appointment of judges of the Superior Courts and matters related to the Superior Courts. 30
- (3) The provisions of this Act relating to Superior Courts other than the Constitutional Court, the Supreme Court of Appeal or the High Court of South Africa, are complementary to any specific legislation pertaining to such Courts, but in the event of a conflict between this Act and such legislation, such legislation must prevail.

### **Introduction of legislation dealing with court structures** 35

3. The Minister must be consulted prior to the introduction in Parliament, by a person other than the Minister, of any bill—
- (a) providing for the establishment of any court of law;
- (b) providing for the establishment of any tribunal contemplated in section 34 of the Constitution; or 40
- (c) that amends the structure or functions of any court of law or tribunal referred to in paragraph (a) or (b).

## **CHAPTER 2**

### *Constitutional Court, Supreme Court of Appeal and High Court of South Africa*

#### **Constitution and seat of Constitutional Court** 45

4. (1) (a) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice of South Africa and nine other judges of the Constitutional Court.
- (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. 50
- (2) The Deputy Chief Justice must—
- (a) exercise such powers or 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, exercise the powers or perform the functions of the Chief Justice, as Acting Chief Justice.

### Constitution and seat of Supreme Court of Appeal

5. (1) (a) The Supreme Court of Appeal consists of— 5
- (i) the President of the Supreme Court of Appeal;
  - (ii) the Deputy President of the Supreme Court of Appeal; and
  - (iii) so many other judges as may be determined in accordance with the prescribed criteria, and approved by the President.
- (b) Subject to section 9(1), the seat of the Supreme Court of Appeal is in Bloemfontein, but whenever it appears to the President of the Supreme Court of Appeal 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. 10
- (2) The Deputy President of the Supreme Court of Appeal must—
- (a) exercise such powers or perform such functions of the President of the Supreme Court of Appeal in terms of this or any other law as the latter may assign to him or her; and 15
  - (b) in the absence of the President of the Supreme Court of Appeal, or if the office of President of the Supreme Court of Appeal is vacant, perform the functions of the President of the Supreme Court of Appeal, as Acting President of the Supreme Court of Appeal. 20

### Constitution of High Court of South Africa

6. (1) The High Court of South Africa consists of the following Divisions:
- (a) Eastern Cape Division, with its main seat in Grahamstown.
  - (b) Free State Division, with its main seat in Bloemfontein. 25
  - (c) Gauteng Division, with its main seat in Pretoria.
  - (d) KwaZulu-Natal Division, with its main seat in Pietermaritzburg.
  - (e) Limpopo Division, with its main seat in Polokwane.
  - (f) Mpumalanga Division, with its main seat in Nelspruit.
  - (g) Northern Cape Division, with its main seat in Kimberley. 30
  - (h) North West Division, with its main seat in Mafikeng.
  - (i) Western Cape Division, with its main seat in Cape Town.
- (2) Each Division of the High Court consists of—
- (a) 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 35
  - (b) so many other judges as may be determined in accordance with the prescribed criteria, and approved by the President.
- (3) (a) The Minister must, after consultation with the Judicial Service Commission, by notice in the *Gazette*, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice. 40
- (b) The area under the jurisdiction of a Division may comprise more than one province or any part of more than one province.
- (c) The Minister may, after consultation with the Judicial Service Commission, by notice in the *Gazette* establish one or more local seats for a Division, in addition to the main seats referred to in subsection (1), and determine the area under the jurisdiction of such a local seat, and may in the same manner amend or withdraw such a notice. 45
- (d) The publication of a notice referred to in paragraph (a) or (c) does not affect any proceedings which are pending at the time of such publication.
- (4) If a Division has one or more local seats— 50
- (a) the main seat of that Division has concurrent appeal jurisdiction over the area of jurisdiction of any local seat of that Division, and the Judge President of the Division may direct that an appeal against a decision of a single judge or of a Lower Court within that area of jurisdiction may be heard at the main seat of the Division; 55
  - (b) the Judge President of that Division must compile a single court roll for that Division; and
  - (c) the Judge President of that Division may deploy all the judges of that Division within the Division as he or she deems fit.

(5) If a judge of one Division is to be temporarily deployed in another Division, such deployment must take place by way of an acting appointment in terms of section 175(2) of the Constitution.

(6) (a) Subject to paragraph (b), a Deputy Judge President of a Division must—

- (i) exercise such powers or perform such functions of the Judge President in terms of this or any other law as the latter may assign to him or her; and
- (ii) in the absence of the Judge President of that Division, or if the office of the Judge President is vacant, exercise the powers or perform the functions of the Judge President, as the Acting Judge President of that Division.

(b) If more than one Deputy Judge President is appointed in respect of a Division, the President must, after consultation with the Minister and the Chief Justice, designate one Deputy Judge President as Acting Judge President of that Division, who must exercise the powers or perform the functions of the Judge President in the circumstances referred to in paragraph (a)(ii).

(7) Whenever it appears to the Judge President of a Division that it is expedient to hold a sitting for the hearing of any matter at a place elsewhere than at the seat or a local seat of the Division, he or she may, after consultation with the Minister, hold such sitting at that place.

### **Circuit Courts**

7. (1) The President of the Supreme Court of Appeal may by notice in the *Gazette* establish circuit districts for the Supreme Court of Appeal, for the hearing of appeals emanating from the areas of jurisdiction of those districts, and may by like notice add to or alter such districts.

(2) The Supreme Court of Appeal must at least twice a year and at such times and places as may be determined by the President of the Supreme Court of Appeal, hear appeals in each district referred to in subsection (1).

(3) 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 by like notice alter the boundaries of any such district.

(4) In each circuit district of a Division there must be held, at least twice a 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.

(5) A court referred to—

- (a) in subsection (1), is called a circuit court of the Supreme Court of Appeal; and
- (b) in subsection (3), is called a circuit court of the Division in question.

## **CHAPTER 3**

### ***Governance and administration of all courts***

#### **Judicial management of judicial functions**

8. (1) For the purpose of any consultation regarding any matter referred to in this section, the Chief Justice may convene any forum of judicial officers that he or she deems appropriate, but when considering—

- (a) matters relating to the Lower Courts, those courts must also be represented on the forum in question; or
- (b) a protocol or directive contemplated in subsection (3), the forum must include all the heads of Superior Courts.

(2) The Chief Justice, as the head of the judiciary as contemplated in section 165(6) of the Constitution, exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

(3) The Chief Justice may, subject to subsection (5), issue written protocols or directives, or give guidance or advice, to judicial officers—

- (a) in respect of norms and standards for the performance of the judicial functions as contemplated in subsection (6); and
- (b) regarding any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts.

(4) (a) Any function or any power in terms of this section, vesting in the Chief Justice or any other head of court, may be delegated to any other judicial officer.

(b) The management of the judicial functions of each court is the responsibility of the head of that court, including the head of each Lower Court.

(c) Subject to subsections (2) and (3), the Judge President of a Division is also responsible for the co-ordination of the judicial functions of all Lower Courts falling within the jurisdiction of that Division. 5

(5) Any protocol or directive in terms of subsection (3)—

(a) may only be issued by the Chief Justice if it enjoys the majority support of a forum convened in terms of subsection (1); and

(b) must be published in the *Gazette*.

(6) The judicial functions referred to in subsection (2) and subsection (4)(b) include 10 the—

(a) determination of sittings of the specific courts;

(b) assignment of judicial officers to sittings;

(c) assignment of cases and other judicial duties to judicial officers; 15

(d) determination of the sitting schedules and places of sittings for judicial officers;

(e) determination of standards applicable, and procedures to be adhered to in respect of—

(i) case flow management;

(ii) the finalisation of any matter before a judicial officer, including any 20 outstanding judgment, decision or order; and

(iii) recesses of Superior Courts.

(7) The Chief Justice may designate any judge to assist him or her in his or her judicial leadership functions.

#### **Access to courts, recess periods and attendance at courts** 25

**9.** (1) All Superior Courts—

(a) must be open to the public every business day; and

(b) may conduct business on any Saturday, Sunday or public holiday as may be required from time to time.

(2) Superior Courts may have such recess periods as may be determined by the Chief 30 Justice in consultation with the heads of court and the Minister.

(3) The purpose of recess periods is to enable a judge of a Superior Court to do research and to attend to outstanding or prospective judicial functions that may be assigned to him or her by the head of court.

(4) During each recess period, the head of each court must ensure that an adequate 35 number of judges are available in that court to deal with any judicial functions that may be required, in the interests of justice, to be dealt with during that recess period.

(5) Subject to subsections (1) to (4), the head of each Superior Court is responsible to—

(a) ensure that sufficient judges of that court are available to conduct the business 40 of the court at all times that the court is open for business;

(b) issue directions to the judges of that court with respect to their attendance at the court and absences from the court during recess periods;

(c) approve any extraordinary absence of a judge from the court; and

(d) keep a register, in the prescribed manner and form, of vacation periods 45 allocated to, or extraordinary absence approved for, a judge of that court.

#### **Finances and accountability**

**10.** (1) Expenditure in connection with the administration and functioning of the Superior Courts must be defrayed from moneys appropriated by Parliament in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 50

(2) The Minister must address requests for funds needed for the administration and functioning of the Superior Courts, as determined by the Chief Justice after consultation with the other heads of court, in the manner prescribed for the budgetary processes of departments of state.

(3) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the 55 Director-General is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Superior Courts, and must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

### **Appointment of officers and staff**

**11.** (1) (a) Subject to paragraph (b), the Minister must appoint for the Constitutional Court, the Supreme Court of Appeal and each Division a court manager, one or more assistant court managers, a registrar, assistant registrars and other officers and staff whenever they may be required for the administration of justice or the execution of the powers and authorities of the said court. 5

(b) Any appointment by the Minister in terms of paragraph (a) must be made—

- (i) at the request of and in consultation with the head of court; and
- (ii) in accordance with the laws governing the public service.

(c) 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. 10

(d) A court manager is the senior executive officer of the court where he or she has been appointed, and exercises administrative control over the other persons referred to in paragraph (a), and, under the control and direction of the head of court concerned performs such other functions as may be determined by the Director-General and the Chief Justice. 15

(2) 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 court concerned, authorise any other competent officer in 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. 20

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

(4) The Minister may delegate any of the powers vested in him or her under this section to an officer in the Department or Office of the Chief Justice. 25

## **CHAPTER 4**

### ***Manner of arriving at decisions by Superior Courts***

#### **Manner of arriving at decisions by Constitutional Court**

**12.** (1) In accordance with section 167(2) of the Constitution, any matter before the Constitutional Court must be heard by at least eight judges. 30

(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—

- (a) the remaining members of the court are not less than eight in number— 35
  - (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

- (b) the remaining members of the court are fewer than eight in number, the proceedings must be stopped and commenced *de novo*. 40

(3) 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.

#### **Manner of arriving at decisions by Supreme Court of Appeal**

**13.** (1) Proceedings of the Supreme Court of Appeal must ordinarily be presided over by five judges, but the President of the Supreme Court of Appeal may— 45

- (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. 50

(2) (a) The judgment of the majority of the judges presiding at proceedings before the Supreme Court of Appeal shall be the judgment of the court.

(b) 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.

(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— 5

(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 10

(b) in any other case, the appeal must be heard *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, if only one judge remains, the decision of that judge as the decision of the court. 15

(4) 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) 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. 20

#### **Manner of arriving at decisions by Divisions**

**14.** (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 court consisting of not more than three judges, as he or she may determine. 25

(b) A single judge of a Division may, in consultation with the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, 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). 30

(2) 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. 35

(3) Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a Division must be constituted before two judges for the hearing of any civil or criminal appeal: Provided that the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may in the event of the judges hearing such appeal not being in agreement, at any time before a judgment is handed down in such appeal, direct that a third judge be added to hear that appeal. 40

(4) (a) Save as otherwise provided for in this Act or any other law, the decision of the majority of the judges of a full court of a Division is the decision of the court. 45

(b) 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.

(5) 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— 50

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

(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. 55

(6) The provisions of subsection (4) apply, with the changes required by the context, whenever in the circumstances set out in subsection (5) a hearing proceeds before two or more judges. 60

(7) During any recess period, one judge designated by the Judge President shall, notwithstanding anything contained in this Act or any other law, but subject to subsection (3), exercise all the powers, jurisdiction and authority of a Division.

(8) 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

## CHAPTER 5

### *Orders of constitutional invalidity, appeals and settlement of conflicting decisions*

#### **Referral of order of constitutional invalidity to Constitutional Court**

**15.** (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 rules, refer the order of constitutional invalidity to the Constitutional Court for confirmation.

(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.

(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 in subsection (1).

20

#### **Appeals generally**

**16.** (1) Subject to section 15(1), the Constitution and any other law—

(a) an appeal against any decision 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 17(6); or

(ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;

(b) an appeal against any decision of a Division on appeal to it, lies to the Supreme Court of Appeal upon special leave having been granted by the Supreme Court of Appeal; and

(c) an appeal against any decision of a court of a status similar to the High Court, lies to the Supreme Court of Appeal upon leave having been granted by that court or the Supreme Court of Appeal, and the provisions of section 17 apply with the changes required by the context.

(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.

(b) If, at any time prior to the hearing of an appeal, the President of the Supreme Court of Appeal or the Judge President or the judge presiding, 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.

(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.

(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
  - (ii) order that the appeal proceed in the ordinary course. 5
- (3) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application—
- (a) by one spouse against the other for maintenance *pendente lite*;
  - (b) for contribution towards the costs of a pending matrimonial action;
  - (c) for the interim custody of a child when a matrimonial action between his or her parents is pending or is about to be instituted; or 10
  - (d) 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.

### Leave to appeal

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

- (a) (i) the appeal would have a reasonable prospect of success; or
- (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
- (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and 20
- (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.

(2) (a) Leave to appeal 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 court or Division. 25

(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. 30

(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. 35

(d) (i) The judges considering the application 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.

(ii) Where an application has been so referred to the court, the court may thereupon grant or refuse it. 40

(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. 45

(3) An application for special leave to appeal under section 16(1)(b) may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after the decision sought to be appealed against, or such longer period as may on good cause be allowed, and the provisions of subsection (2)(c) to (e) shall apply with the changes required by the context. 50

(4) 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 55
- (b) is subject to the provisions of any other law which specifically limits it or specifically grants or limits any right of appeal.

(5) 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; or 60
- (b) that the appellant pay the costs of the appeal.

(6) (a) If leave is granted under subsection (2)(a) or (b) to appeal against a decision 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—

- (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
- (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).

(7) Subsection (2)(c), (d) and (e) apply with the changes required by the context to any application to the Supreme Court of Appeal relating to an issue connected with an appeal.

### **Suspension of decision pending appeal**

**18.** (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances 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.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision 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.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise, as contemplated in subsection (1)—

- (i) the court must immediately record its reasons for doing so;
- (ii) the aggrieved party has an automatic right of appeal to the next highest court;
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.

### **Powers of court on hearing of appeals**

**19.** The Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law—

- (a) dispose of an appeal without the hearing of oral argument;
- (b) receive further evidence;
- (c) remit the case to the court of first instance, or to the court whose decision 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 Division deems necessary; or
- (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

20. Whenever a decision on a question of law is given by a court of a Division which 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 Chief Justice, who must cause the matter to be argued before the Constitutional Court or the Supreme Court of Appeal, as the case may be, in order to 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 10

21. (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—

- (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 28 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 to confirm jurisdiction; and
- (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 to found jurisdiction regardless of where in the Republic the property or person is situated. 30

(4) Notwithstanding any provision in this or any other law, any contractual obligation, term or provision which is in conflict with this section is null and void and is not enforceable.

#### Grounds for review of proceedings of Lower Court 35

22. (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

23. 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, and a judgment so entered is deemed to be a judgment of a court of the Division.

#### Time allowed for appearance 50

24. 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
- (b) two weeks in any other case.

#### **Circumstances in which security for costs shall not be required**

25. 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. 5

#### **Disposal of records and execution of judgments of Circuit Courts**

26. (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 or judges, transmit all records in connection with the proceedings in that court to the registrar of the Supreme Court of Appeal or the Division concerned, as the case may be, to be filed as records of that Court or Division. 10

(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 Supreme Court of Appeal or the Division concerned, as the case may be. 15

#### **Removal of proceedings from one Division to another or from one seat to another in same Division**

27. (1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court that such proceedings— 20

- (a) should have been instituted in another Division or at another seat of that Division; or
- (b) would be more conveniently or more appropriately heard or determined—
  - (i) at another seat of that Division; or
  - (ii) by 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 the receipt of such order that court may hear and determine the proceedings in question. 30

#### **Prohibition on attachment to found jurisdiction within Republic**

28. No attachment of property to found jurisdiction shall be ordered by a Division against a person who is resident in the Republic.

### **CHAPTER 7 35**

#### ***Rules of court***

##### **Rules of Constitutional Court**

29. (1) The Chief Justice, after consultation with the Minister, makes rules relating to the manner in which the Constitutional Court may be engaged in any matter, including the matters referred to in section 172 of the Constitution, and all matters relating to the proceedings of and before the Court. 40

(2) Every rule and every amendment or repeal thereof must be submitted to Parliament by the Minister before the promulgation thereof and tabled as soon as possible.

(3) The rules must, when it is in the interest of justice and with the leave of the Court, allow a person— 45

- (a) to bring a matter directly to the Court; or
- (b) to appeal directly to the Court from any other court.

## Rules of Supreme Court of Appeal and High Court

**30.** (1) Rules for the Supreme Court of Appeal, the High Court and the Lower Courts are made in accordance with the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985).

(2) Every rule and every amendment or repeal thereof must be submitted to Parliament by the Minister before the promulgation thereof and tabled as soon as possible. 5

### CHAPTER 8

#### *General provisions applicable to all Superior Courts*

#### **Part 1** 10

##### **Nature of courts**

##### **Nature of courts and seals**

**31.** (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*. 15

(3) The seal of a Superior Court must be kept in the custody of the Registrar.

##### **Proceedings to be carried on in open court**

**32.** 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. 20

##### **More than one court may sit at same time**

**33.** 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 or any other applicable law as the available judges may allow.

#### **Part 2** 25

#### **Adducing of evidence and procedural matters**

##### **Certified copies of court records admissible as evidence**

**34.** 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. 30

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

**35.** (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. 35

(2) Whenever any person subpoenaed to attend any proceedings as a witness or to produce any document or thing— 40

(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—

(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 37(1) have been paid or offered to him or her; or 45

- (ii) he or she is evading service; or
  - (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 presence 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.
- (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.
- (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.

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

- 36.** (1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 35 or who is present and is verbally required by the Superior Court concerned to give evidence in any proceedings—
- (a) refuses to take an oath or to make an affirmation;
  - (b) having taken an oath or having made an affirmation, refuses to answer such questions as are put to him or her; or
  - (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 the person consents to do what is required of him or her before he or she is so committed to prison.
- (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.
- (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.
- (5) When a subpoena is issued to procure the attendance of any person as a witness or to produce 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
  - (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.

### **Witness fees**

- 37.** (1) The Minister may, in consultation with the Minister of Finance, 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.
- (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

**38.** (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 is entitled to such remuneration as may be prescribed by the rules 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**

**39.** (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 questions 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**

40. (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 any 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 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 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**

41. (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

42. (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 Lower 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

43. (1) The sheriff must, subject to the applicable rules, 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, shall be *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.
- (4) A refusal by the sheriff or a deputy sheriff to do any act which he or she is by law required to do, is subject to review by the court concerned on application *ex parte* or on notice as the circumstances may require. 30

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

44. (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 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 fax or by means of any other electronic medium as provided by the rules. 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. 40
- (2) A notice sent by fax, or any other electronic medium authorised by the rules—
- (a) from any judicial or police officer, registrar, assistant registrar, sheriff, deputy sheriff or clerk of the court; and
  - (b) 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,
- is sufficient authority to any officer authorised by law to execute any such warrant or writ for the arrest and detention of such person. 50
- (3) (a) A person arrested as contemplated in subsection (2) may be detained for the shortest period reasonably necessary, but not exceeding 48 hours, in order to bring the person before a judge of a Superior Court.

(b) The judge referred to in paragraph (a) must make an order regarding the attendance by the person in question of any further court proceedings and warn the person that any failure to abide by the order is an offence punishable by a fine or by imprisonment not exceeding one year.

(c) Any person who fails to abide by an order referred to in paragraph (b), is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year. 5

#### **Property not liable to be seized in execution**

45. 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 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 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 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 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).

#### **Offences relating to execution** 30

46. 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, destroys 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 destroyed 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 that person—
  - (i) falsely declares to the sheriff or deputy sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or 40
  - (ii) although knowing of such property, neglects or refuses to point out that property or to deliver it to the sheriff or deputy sheriff when requested to do so; or
- (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 immovable property under execution, 45

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year. 50

#### **Issuing of summons or subpoena in civil proceedings against judge**

47. (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 the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be. 55

(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 relevant head of court.

### **Acting judges of Superior Courts**

**48.** Any person who has been appointed as an acting judge of a Superior Court must be regarded as having been appointed also for any period during which he or she is necessarily engaged in the disposal of any proceedings in which he or she has participated as such a judge, including an application for leave to appeal that has not yet been disposed of at the expiry of his or her period of appointment. 5

### **Regulations** 10

**49.** (1) The Minister may, on the advice of the Chief Justice, make regulations regarding—

- (a) any matter that may be necessary or expedient to prescribe regarding the administrative functions of courts and the efficient and effective functioning and administration of the courts, including the furnishing of periodical returns of statistics relating to any aspect of the functioning and administration of courts and the performance of judicial functions; 15
- (b) the criteria to be applied for determining the number of judges to be appointed to the Supreme Court of Appeal and to any specific Division;
- (c) any protocol to be observed in respect of any process of consultation required in terms of this Act; 20
- (d) the determination of recess periods of the Superior Courts;
- (e) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation and administration of this Act. 25

(2) Any regulation made under subsection (1) must be submitted to Parliament before publication thereof in the *Gazette*.

## **CHAPTER 9**

### ***Transitional provisions, amendment and repeal of laws, and commencement***

#### **Existing High Courts** 30

**50.** (1) On the date of the commencement of this Act, but subject to the issuing of any notice referred to in section 6(3)(a) or (c), the—

- (a) Eastern Cape High Court, Bhisho, becomes a local seat of the Eastern Cape Division;
- (b) Eastern Cape High Court, Grahamstown, becomes the Eastern Cape Division; 35
- (c) Eastern Cape High Court, Mthatha, becomes a local seat of the Eastern Cape Division;
- (d) Eastern Cape High Court, Port Elizabeth, becomes a local seat of the Eastern Cape Division;
- (e) Free State High Court, Bloemfontein, becomes the Free State Division; 40
- (f) KwaZulu-Natal High Court, Durban, becomes a local seat of the KwaZulu-Natal Division;
- (g) KwaZulu-Natal High Court, Pietermaritzburg, becomes the KwaZulu-Natal Division;
- (h) Limpopo High Court, Thohoyandou, subject to subsection (2)(a), becomes a local seat of the Limpopo Division; 45
- (i) Northern Cape High Court, Kimberley, becomes the Northern Cape Division;
- (j) North Gauteng High Court, Pretoria, becomes the Gauteng Division;
- (k) North West High Court, Mafikeng, becomes the North West Division;
- (l) South Gauteng High Court, Johannesburg, becomes a local seat of the Gauteng Division; and 50

(m) Western Cape High Court, Cape Town, becomes the Western 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. 55

(2) Notwithstanding section 6(1), the Gauteng Division shall also function as the Limpopo and Mpumalanga Divisions, respectively, until a notice published in terms of section 6(3) in respect of those Divisions comes into operation.

(3) Any circuit court 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. 5

(4) Any person holding office as the Judge President, a Deputy Judge President or a judge of a High Court referred to in subsection (1) when this Act takes effect, becomes the Judge President, a Deputy Judge President or a judge of the Division in question, as the case may be. 10

(5) The President may, with the view to facilitating and promoting the effective and efficient administration of justice in the Divisions established in terms of this Act, after consultation with the Chief Justice, the Minister and the judge concerned, transfer any judge of a Division to the Limpopo, Mpumalanga or North West Division.

#### **Rules in existence immediately before commencement of Act** 15

**51.** The rules applicable to the Constitutional Court, Supreme Court of Appeal and the various High Courts immediately before the commencement of this section remain in force to the extent that they are not inconsistent with this Act, until repealed or amended.

#### **Pending proceedings when Act commences**

**52.** (1) Subject to section 27, proceedings pending in any court at the commencement of this Act, must be continued and concluded as if this Act had not been passed. 20

(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.

(3) Subsections (1) and (2) are also applicable, with the changes required by the context, in respect of proceedings pending on the date when a notice contemplated in section 50(2) comes into operation. 25

#### **References in other laws**

**53.** 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; 30
- (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. 35

#### **Repeal and amendment of laws**

**54.** (1) The laws mentioned—

- (a) in Schedule 1 are hereby repealed to the extent set out in the fourth column of that Schedule; 40
- (b) in Schedule 2 are hereby amended to the extent set out in the fourth column of that Schedule.

(2) Anything done under any provision of a law repealed or amended by subsection (1), shall, in so far as it may be necessary or appropriate, be deemed to have been done under the corresponding provision of this Act. 45

#### **Short title and commencement**

**55.** This Act is called the Superior Courts Act, 2011, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE 1*****Laws repealed (Section 54(1)(a))***

<b>Item No.</b>	<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
1	Act No. 59 of 1959	Supreme Court Act, 1959	The whole
2	Act No. 59 of 1959 (Venda)	Supreme Court Act, 1959	The whole
3	Act No. 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	The whole
4	Act No. 15 of 1976 (Transkei)	Republic of Transkei Constitution Act, 1976	Sections 44 up to and including 53
5	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).
6	Act No. 9 of 1979 (Venda)	Republic of Venda Constitution Act, 1979	Sections 42 up to and including section 52; and section 72.
7	Act No. 32 of 1982 (Bophuthatswana)	Supreme Court of Bophuthatswana Act, 1982	The whole
8	Act No. 5 of 1983 (Transkei)	Supreme Court Act, 1983	The whole
9	Decree No. 43 of 1990 (Ciskei)	Supreme Court Decree, 1990	The whole
10	Decree No. 45 of 1990 (Ciskei)	Republic of Ciskei Constitution Decree, 1990	Sections 27 and 28
11	Act No. 13 of 1995	Constitutional Court Complementary Act, 1995	The whole
12	Act No. 41 of 2001	Interim Rationalisation of Jurisdiction of High Courts Act, 2001	The whole
13	Act No. 30 of 2008	Renaming of High Courts Act, 2008	The whole

## SCHEDULE 2

*Laws amended (Section 54(1)(b))*

Item No.	No. and year of law	Short title	Extent of amendment
1	Act No. 107 of 1985	Rules Board for Courts of Law Act, 1985	<p>1. Amendment of section 6—</p> <p>(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:</p> <p>“The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the <b>[High Courts and the lower courts]</b> <u>High Court of South Africa and the Lower Courts</u>, 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 <b>[High Courts and the lower courts]</b> <u>High Court of South Africa and the Lower Courts</u> regulating—”;</p> <p>(b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p> <p>“(e) the practice and procedure in connection with the reference of any matter to a referee under <b>[section 19 of the Supreme Court Act, 1959 (Act No. 59 of 1959)]</b> <u>section 38 of the Superior Courts Act, 2011</u>, and the remuneration payable to any such referee;”;</p> <p>(c) by the substitution for paragraph (p) of subsection (1) of the following paragraph:</p> <p>“(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the <b>[High Courts]</b> <u>High Court of South Africa</u>;”;</p> <p>(d) by the substitution for paragraph (t) of subsection (1) of the following paragraph:</p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>“(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 <b>[High Courts and the lower courts]</b> <u>High Court of South Africa and the Lower Courts</u> in civil as well as in criminal proceedings.”;</p> <p>(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 <b>[High Courts and the lower courts]</b> <u>High Court of South Africa and the Lower Courts</u> and in respect of different kinds of proceedings.”;</p> <p>(f) by the deletion of subparagraph (i) of subsection (2)(b); and</p> <p>(g) by the substitution for subparagraph (ii) of subsection (2)(b) of the following subparagraph:  “(ii) the different <b>[High Courts]</b> <u>Divisions of the High Court of South Africa; or</u>”.</p>
2	Act No. 66 of 1995	Labour Relations Act, 1995	<p>1. Amendment of section 151 by the substitution for subsection (2) of the following subsection:  “(2) The Labour Court is a superior court that has authority, inherent powers and standing, in relation to matters under its jurisdiction, equal to that which a court of a <b>[provincial division]</b> <u>Division</u> of the <b>[Supreme Court]</b> <u>High Court of South Africa</u> has in relation to matters under its jurisdiction.”.</p> <p>2. Amendment of section 154—</p> <p>(a) by the substitution for subsection (1) of the following subsection:  “(1) A judge of the Labour Court <b>[must be appointed for a period determined by the President at the time of appointment]</b> <u>holds office until discharged from active service in terms of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).</u>”;</p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>(b) by the substitution for subsection (2) of the following subsection:  “(2) A judge of the Labour Court who is also a judge of the High Court may resign as a judge of the Labour Court by giving written notice to the President.”;</p> <p>(c) by the deletion of subsection (3);</p> <p>(d) by the substitution for subsection (4) of the following subsection:  “(4) Neither the tenure of office nor the remuneration and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges’ Remuneration and Conditions of Employment Act, [1989 (Act No. 88 of 1989)] 2001, is affected by that judge’s appointment and concurrent tenure of office as a judge of the Labour Court.”;</p> <p>(e) by the substitution for subsection (5) of the following subsection:  “(5) [(a) <b>The remuneration payable to a judge of the Labour Court who is a person referred to in section 153(6)(a)(ii), must be the same as that payable to a judge of the High Court.</b>  (b) <b>The terms and conditions of appointment of a judge of the Labour Court referred to in paragraph (a) must be similar to those of a judge of the High Court]</b> <u>The Judges’ Remuneration and Conditions of Employment Act, 2001, as applicable to a judge of the High Court, apply, read with the changes required by the context, to a judge of the Labour Court who is not a judge of the High Court.</u>”;</p> <p>(f) by the deletion of subsection (7);</p> <p>(g) by the substitution for subsection (9) of the following subsection:  “(9) The provisions of subsections [(2) to (8)] (4), (5), (6) and (8) apply, read with the changes required by the context, to acting judges appointed in terms of section 153(5).”; and</p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>(h) by the addition of the following subsection:  <u>“(10)(a) Any judge of the Labour Court holding office immediately before the commencement of Schedule 2 of the Superior Courts Act, 2011, who is not a judge of the High Court, may not later than 30 days after such commencement, inform the Minister of Justice in writing that he or she chooses to continue in office in terms of this section as it existed prior to such commencement.</u></p> <p><u>(b) Any judge referred to in paragraph (a) who does not choose to continue in office in terms of this section as it existed prior to such commencement—</u></p> <p><u>(i) shall continue to hold that office in accordance with this section as amended by Schedule 2 to the Superior Courts Act, 2011; and</u></p> <p><u>(ii) his or her period of service as a Labour Court judge prior to such commencement shall, for the purposes of the Judges’ Remuneration and Conditions of Employment Act, 2001, be deemed to be active service as contemplated in that Act.”.</u></p> <p>3. Amendment of section 170—</p> <p>(a) by the substitution for subsection (2) of the following subsection:  <u>“(2) A judge of the Labour Appeal Court may resign from that office by giving written notice to the President.”;</u></p> <p>(b) by the substitution for subsection (4) of the following subsection:  <u>“(4) Neither the tenure of office nor the remuneration and terms and conditions of appointment applicable to a judge of the High Court in terms of the Judges’ Remuneration and Conditions of Employment Act, [1989 (Act No. 88 of 1989)] 2001 (Act No. 47 of 2001), is affected by that judge’s appointment and concurrent tenure of office as a judge of the Labour Appeal Court.”; and</u></p> <p>(c) by the deletion of subsection (5).</p>

## **MEMORANDUM ON THE OBJECTS OF THE SUPERIOR COURTS BILL, 2011**

### **1. SUMMARY**

1.1 The Superior Courts Bill, 2011 (the Bill), aims to rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Courts in a single Act of Parliament; to unite the various High Courts into a single “High Court of South Africa”; to make provision for the administration of the judicial functions of all courts; to make provision for administrative and budgetary matters relating to the Superior Courts; and to provide for matters incidental to the functioning of the courts.

1.2 The establishment of a single “High Court of South Africa” as envisaged by the Bill, as well as the provisions relating to the role of the Chief Justice, as the head of the judiciary, require amendments to the Constitution, and the processing (and constitutionality) of the Bill is therefore dependent on the promulgation of the amendments contained in the Constitution Seventeenth Amendment Bill, 2011.

1.3 The Bill will largely be giving effect to item 16(6) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, in terms of which all courts must be rationalised with the view to establishing a judicial system suited to the requirements of the Constitution. It is also aimed at promoting the achievement of a single, integrated, accessible and affordable court system, as well as establishing an integrated system of court governance, within a single judiciary, with the Chief Justice as the head of the judiciary.

### **2. PROVISIONS OF THE BILL**

The provisions of the Bill are summarised below:

2.1 The objects of the Bill are—

- (a) to consolidate and rationalise the laws pertaining to Superior Courts, as contemplated in item 16(6) of Schedule 6 to the Constitution;
- (b) to bring the structure of the Superior Courts into line with the provisions of Chapter 8 of the Constitution (as amended by the Constitution Seventeenth Amendment Bill, 2011) and the transformation imperatives of the Constitution; and
- (c) to make provision for the administration of the judicial functions of all courts, including governance issues, over which the Chief Justice exercises responsibility. (Clause 2)

2.2 Draft legislation dealing with the establishment or functioning of courts may only be introduced in Parliament after consultation with the Minister of Justice and Constitutional Development. This would contribute towards the realisation of a single, integrated, accessible and streamlined court system. (Clause 3)

2.3 All laws dealing with the structure and functioning of the Superior Courts (that is, the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa) are consolidated into a single Act of Parliament. Presently the provisions relating to the Constitutional Court and the Supreme Court of Appeal are, apart from the founding provisions contained in Chapter 8 of the Constitution, contained in the Constitutional Court Complementary Act, 1995, and the Supreme Court Act, 1959, respectively. The various High Courts are subject to the legislative regimes contained in the Supreme Court Act, 1959, of the pre-1994 Republic and the various Constitutions, Supreme Courts Acts and Decrees that applied in the former territories of Bophuthatswana, Ciskei, Transkei and Venda. (See Schedule 1 to the Bill.)

2.4 The Chief Justice is the head of the judiciary as contemplated in section 165(6) of the Constitution (in accordance with the amendment sought to be effected by the Constitution Seventeenth Amendment Bill, 2011) and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts. (Clauses 8, 10 and 11)

2.5 The Bill also seeks to rationalise and strengthen the rule-making mechanism to improve the efficiency of the courts. The envisaged provisions seek to enhance the role of the judiciary in making the rules for all courts and provide for a meaningful role by the Minister and Parliament in the processing and approval thereof, which are legislative measures geared to enhance access to justice. (Clauses 29 and 30)

2.6 The Bill also amends the Labour Relations Act, 1995 (Act No. 66 of 1995), in order to align the tenure of office of judges of the Labour Court with that of judges of the Superior Courts, as envisaged by section 174(2) of the Constitution and regulated in terms of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001). (Schedule 2)

### **3. DEPARTMENTS/BODIES/PERSONS CONSULTED**

3.1 During August 2003, a forerunner of this Bill (namely the Superior Courts Bill, 2003) together with the Constitution of the Republic of South Africa Amendment Bill, 2003, were introduced in Parliament and referred to the Portfolio Committee on Justice and Constitutional Development (National Assembly) for consideration. The Portfolio Committee embarked on extensive public hearings regarding the draft legislation and received substantial inputs from a wide range of interested parties.

3.2 After the elections in 2004, the Constitution Amendment Bill in question was allowed to lapse but the development of the legislation continued and earlier versions of both Bills were extensively discussed at a Judicial Colloquium hosted by former Minister Mabandla during April 2005. In December 2005, a draft Constitution Fourteenth Amendment Bill was subsequently published in the *Gazette* with the view to the introduction and consideration thereof along with a comprehensively revised version of the Superior Courts Bill of 2003. The Portfolio Committee in question held public hearings on the Bills early in 2006, during the course of which it became clear that more consensus needed to be developed between role-players on certain aspects of the draft legislation. As a result, the Constitution Fourteenth Amendment Bill was not introduced and the processing of the Superior Courts Bill, 2003, was put on hold pending the further development of broad policy guidelines on the transformation of the judiciary and the courts.

3.3 Following the elections in 2009, the Superior Courts Bill, 2003, was allowed to lapse, paving the way for the introduction of the new, revised Constitution Seventeenth Amendment Bill, 2011, and a new Superior Courts Bill, 2011, in Parliament. Both Bills result from further consultation with, particularly, the Judiciary. Draft versions of both Bills have also been published in *Gazette* No. 33216 of 21 May 2010 for public comment.

3.4 On consideration of the comments received, and particularly as a result of further consultation with the Heads of the Superior Courts, certain changes were effected to the Bill, most notably the omission of the proposed integration of existing specialist courts, such as the Labour, Electoral, Competition Appeal and Land Claims Courts, into the High Court of South Africa as "Special Divisions" of that Court.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will have significant organisational and personnel implications, especially concerning the establishment of Divisions of the High Court in Limpopo and Mpumalanga, and (to a lesser degree) the creation of capacity in the Office of the Chief Justice. However, the Bill allows for an incremental approach to be followed in these matters, since it provides that the Gauteng Division would continue to function as the Limpopo and Mpumalanga Divisions respectively until seats for those Divisions have been formally established. The budget for the establishment of those Divisions is included in the Department's MTEF budget.

### **5. PARLIAMENTARY PROCEDURE**

5.1 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.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.





Printed by Creda Communications

ISBN 978-1-77037-832-2