



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 31 December 2013

No. 5384

CONTENTS

Page

GOVERNMENT NOTICE

No. 352 Promulgation of High Court Amendment Act, 2013 (Act No. 12 of 2013), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 352

2013

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 12 of 2013: High Court Amendment Act, 2013.

Act No. 12, 2013 HIGH COURT AMENDMENT ACT, 2013**EXPLANATORY NOTE:**

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the High Court Act, 1990, so as to give powers to the Judge President to make rules to regulate the execution of immovable property where such property is the primary home of the judgment debtor and to make court-ordered alternative dispute resolution mechanisms compulsory in certain causes and matters as preliminary to the hearing or trial; to make rules for the filing of witness statements which constitute evidence-in-chief in lieu of oral evidence; to make rules for the more effective control of the litigation process by judges; to make rules for electronic filing of process and documents with the court; and to provide for incidental matters.

(Signed by the President on 24 December 2013)

BE IT ENACTED as passed by the Parliament, and assented to by the President of the Republic of Namibia, as follows:

Amendment of section 39 of Act No. 16 of 1990

1. Section 39 of the High Court Act 1990, is amended by the substitution for subsection (1) of the following subsection -

- “(1) The Judge-President, with the approval of the President, may make rules -
- | | |
|--|--|
| <p>(a) to regulate the conduct of the proceedings of the High Court, and may prescribe therein -</p> <p>(i) the process of the court;</p> <p>(ii) the time and manner of appeal to the court;</p> <p>(iii) the practice and procedure in connection with the service of any summons, pleading, subpoena or other document or in connection with the issue of interrogatories or the execution of any writ or warrant;</p> <p>(iv) the compulsory examination by one or more duly registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant for the determination of such damages or compensation, and the manner, time, place</p> | |
|--|--|

Act No. 12, 2013**HIGH COURT AMENDMENT ACT, 2013**

- and responsibility for the cost of the examination, and the making available to the opposing party of any documentary report on the examination;
- (v) the procedure at or in connection with any enquiry as to the mental state of any person and the judgments or orders which may be given or issued at any such enquiry;
 - (vi) the appointment and admission of commissioners to take evidence and examine witnesses;
 - (vii) the manner in which documents executed outside Namibia may be authenticated to permit of their being produced or used in any court or produced or lodged in any public office in Namibia;
 - (viii) the appointment and admission of sworn translators;
 - (ix) the proceedings of the sheriff and other officers of the court;
 - (x) the tariff of court fees;
 - (xi) the fees payable in respect of the service or execution of any process of the court (except subpoenas or warrants issued at the instance of any governmental authority in criminal matters) or in respect of the summoning of persons to answer interrogatories;
 - (xii) the tariff of costs and expenses which may be allowed in respect of the service or execution of any process referred to in paragraph (xi) or to persons appearing to answer interrogatories;
 - (xiii) the manner of determining the amount of security to be given in any case where security is required to be given and the form and manner in which such security may be given;
 - (xiv) the hours during which the office of the registrar is open for the transaction of business;
 - (xv) the manner of recording or noting of evidence and of proceedings in the court, and the custody and disposal of records or minutes of such evidence and proceedings;
 - (xvi) the tariff of fees chargeable by legal practitioners;
 - (xvii) the taxation of bills of costs, including bills of costs not relating to litigation, and the recovery of costs; and

Act No. 12, 2013**HIGH COURT AMENDMENT ACT, 2013**

- (xviii) generally any matter which it may be necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the business of the court;
- (b) to regulate the execution of judgments sounding in money against the property, salary, earnings or emoluments of a judgment debtor and in particular to provide for -
- (i) the setting out of circumstances in which the process of execution of judgment debts in the High Court shall not be issued against the property of the judgment debtor;
- (ii) the procedure to be followed in the execution of orders for the payment of judgment debts by way of installments;
- (iii) the transfer of execution of certain judgments to a magistrate's court established in terms of the Magistrates' Court Act, 1944 (Act 32 of 1944), the circumstances in which such execution is transferred to a magistrate's court, and the procedure to be followed to effect such transfer;
- (iv) any other procedure to be followed to effect the transfer of the execution of certain judgments to a magistrate's court, having regard to the jurisdiction of the magistrate's court, the function of the magistrate's court as a debt collecting forum and its prescribed procedures for debt collection, so as to ensure that the High Court remains efficient for the purpose of its functions, being the delivery of justice in complex matters and matters which are excluded from the jurisdiction of magistrates' courts;
- (c) to regulate execution against an immovable property of a judgment debtor where the property is the primary home of such judgment debtor, and may prescribe therein that -
- (i) the sale of such property is by reserve price that is prescribed by the Judge President in the rules;
- (ii) the property is sold to the highest bidder upon conditions prescribed in the rules and further that the bid of such highest bidder may not be less than the prescribed reserve price contemplated in subparagraph (i);
- (d) to regulate compulsory alternative dispute resolution mechanisms in certain causes and matters that are before the court, and prescribe therein that -

Act No. 12, 2013**HIGH COURT AMENDMENT ACT, 2013**

- (i) a judge may order the parties to refer their dispute to any of the prescribed alternative dispute resolution mechanisms; and
 - (ii) it is only when the alternative dispute resolution is unsuccessful and a certificate in that behalf is issued, that the parties or one of them may set the matter down for hearing or trial;
- (e) to regulate the control of the litigation process by judges so as to speed up litigation in a fair, just and cost-effective manner, and may prescribe therein the power of a judge -
- (i) to require the filing of witness statement and the manner of reception of such statement, and may prescribe therein that such witness statement constitutes evidence-in-chief which is in lieu of oral evidence, subject to a party's right to cross-examine the maker of the statement;
 - (ii) to appoint court experts;
 - (iii) to require the electronic filing of process and documents with the court in all proceedings;
 - (iv) to impose any appropriate sanction for failure by a party to comply with the rules of the court or orders made by the court;
 - (v) to do all that is necessary or expedient to speed up the litigation process in the court in order to reduce costs of litigation as much as is reasonably practicable; and
- (f) in which are set out -
- (i) the objectives that must guide the litigation process in the court; and
 - (ii) the obligations of parties and legal practitioners in relation to the litigation process.".

Short title and commencement

2. This Act is called the High Court Amendment Act, 2013, and commences on the date determined by the Minister by notice in the *Gazette*.
