



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 397

2023

#### 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. 18 of 2023: Magistrates' Courts Amendment Act, 2023.

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Act No. 18, 2023      **MAGISTRATES' COURTS AMENDMENT ACT, 2023****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 Magistrates' Courts Act, 1944, so as to insert a definition of "primary home"; to empower the Rules Board to make rules in connection with sales in execution of immovable property; to increase the jurisdiction of magistrates' courts; to impose restrictions on the sale in execution of immovable property; and to deal with incidental matters.**

*(Signed by the President on 12 December 2023)*

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

**Amendment of section 1 of Act No. 32 of 1944 as amended by section 13 of Act No. 40 of 1952, section 100 of Act No. 42 of 1964, section 15 of Act No. 15 of 1969, section 1 of Act No. 53 of 1970, section 23 of Act No. 94 of 1974, section 2 of AG Proclamation No. 3 of 1979, section 1 of Act No. 29 of 1985, section 1 of Act No. 9 of 1990 and section 31 of Act No. 3 of 2003**

1. Section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) (hereafter called "the principal Act") is amended by the insertion after the definition of "practitioner" of the following definition:

"primary home" means a dwelling which a person uses as his or her main place of residence irrespective of whether that person occasionally resides at any other place of residence or owns another place of residence;"

**Amendment of section 25 of Act No. 32 of 1944 as amended by section 19 of Act No. 50 of 1956, section 2 of Act No. 93 of 1963, section 2 of Act No. 101 of 1969, section 8 of Act No. 53 of 1970, section 5 of Act No. 11 of 1985 and section 1 of Act No. 6 of 2009**

2. Section 25 of the principal Act is amended in paragraph (a) of subsection (3) by the insertion after subparagraph (i)*bis* of the following subparagraph:

"(i) *ter* regulation of 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 -

(aa) the sale of such property is by reserve price which shall be based on the market value of the property as prescribed in the rules;

(bb) 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 item (aa);"

**Act No. 18, 2023            MAGISTRATES' COURTS AMENDMENT ACT, 2023**

**Amendment of section 29 of Act No. 32 of 1944 as amended by section 13 of Act No. 40 of 1952, section 39 of Act No. 68 of 1957, section 3 of Act No. 19 of 1963 and section 10 of Act No. 53 of 1970 and substituted by section 27 of Act No. 94 of 1974 and amended by section 6 of Act No. 11 of 1985 and substituted by section 1 of Act No. 9 of 1997**

3. Section 29 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of this Act, the court, in respect of causes of action, shall have jurisdiction in -

- (a) actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding [N\$25 000] N\$1 000 000 in value;
- (b) actions of ejectment against the occupier of any premises or land within the district: Provided that, where the right of occupation of any such premises or land is in dispute between the parties, such right does not exceed [N\$25 000] N\$1 000 000 in clear value to the occupier;
- (c) actions for the determination of a right of way, notwithstanding the provisions of section 46;
- (d) actions on or arising out of a liquid document or a mortgage bond, where the claim does not exceed [N\$100 000] N\$1 000 000;
- (e) actions on or arising out of any credit agreement as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980), where the claim or the value of the property in dispute does not exceed [N\$100 000] N\$1 000 000; and
- (f) actions other than those already mentioned in this subsection, where the claim or the value of the matter in dispute does not exceed [N\$25 000] N\$500 000.”.

**Amendment of section 46 of Act No. 32 of 1944 as amended by section 5 of Act No. 19 of 1963, section 28 of Act No. 94 of 1974, section 7 of Act No. 11 of 1985 and section 2 of Act No. 9 of 1997**

4. Section 46 of the principal Act is amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) in which is sought specific performance without an alternative of payment of damages, except in -

- (i) the rendering of an account in respect of which the claim does not exceed [N\$25 000] N\$1 000 000;
- (ii) the delivery or transfer of property, movable or immovable, not exceeding [N\$25 000] N\$1 000 000 in value; and
- (iii) the delivery or transfer of property, movable or immovable, exceeding [N\$25 000] N\$1 000 000 in value, where the consent of the parties has been obtained in terms of section 45;”.

**Act No. 18, 2023      MAGISTRATES' COURTS AMENDMENT ACT, 2023****Amendment of section 65E of Act No. 32 of 1944 as inserted by section 2 of Act No. 63 of 1976 and amended by section 6 of Act No. 1 of 1999**

5. Section 65E of the principal Act is amended in subsection (1) by the substitution for paragraph (a) of the following paragraph:

- “(a) that the judgment debtor has movable or immovable property which may be attached and sold in order to satisfy the judgment debt or any part thereof, the court may -
- (i) subject to the provisions of section 66A, authorize the issue of a warrant of execution against such movable or immovable property or such part thereof as the court may deem fit; or
  - (ii) authorize the issue of such a warrant, together with an order in terms of section 73; or”.

**Amendment of section 66 of Act No. 32 of 1944 as amended by section 16 of Act No. 40 of 1952, section 3 of Act No. 63 of 1976 and section 31 of Act No. 3 of 2003**

6. Section 66 of the principal Act is amended in subsection (1) by the substitution for paragraph (a) of the following paragraph:

“(a) Whenever a court gives judgment for the payment of money or makes an order for the payment of money in instalments, such judgment, in case of failure to pay such money forthwith, or such order in case of failure to pay any instalment at the time and in the manner ordered by the court, shall be enforceable by execution against the movable property and, if, subject to the provisions of section 66A, there is not found sufficient movable property to satisfy the judgment or order, or the court, on good cause shown, so orders, then, against the immovable property of the party against whom such judgment has been given or such order has been made.”.

**Insertion of section 66A into Act No. 32 of 1944**

7. The principal Act is amended by the insertion after section 66 of the following section:

**“Restriction on sale in execution of immovable property**

**66A.** (1) Notwithstanding anything to the contrary contained in this Act or in any other law, including the common law, no person shall sell any immovable property in execution of a judgment of a court unless the sale in execution is carried out under the authority of, and in accordance with, an order of the court issued, after the following requirements have been complied with -

- (a) the court, upon return of service of process by the messenger of the court, is satisfied that the judgment debtor has insufficient movable property to satisfy the judgment debt;
- (b) the court, upon application by the judgment creditor, has declared the immovable property to be executable.

(2) A person does not need to comply with subsection (1)(a), relating to the requirement for return of service that the judgment debtor has insufficient movable property to satisfy the judgment debt, if -

**Act No. 18, 2023      MAGISTRATES' COURTS AMENDMENT ACT, 2023**

- (a) the immovable property to be sold in execution in satisfaction of the judgment is subject to a mortgage bond registered in favour of the judgment creditor; and
- (b) failure to satisfy the mortgage bond referred to in paragraph (a) in full or in part by the judgment debtor gave rise to the judgment debt which is the subject matter of the sale in execution.
- (3) The court shall not issue an order authorising execution against immovable property of a judgment debtor which immovable property is used by the judgment debtor or by any other person as a primary home, unless the court is satisfied, after holding an inquiry in the manner set out in the rules of the court, that the sale of such immovable property is the most appropriate order to satisfy the judgment debt.
- (4) If the court after conducting an inquiry as contemplated in subsection (3) is satisfied that a sale in execution of the immovable property is not appropriate in the circumstances of the case it may, having due regard to the interests of the judgment creditor, judgment debtor and any other person using the immovable property as a primary home, make an alternative order which may include but is not limited to -
- (a) an order attaching alternative immovable property owned by the judgment debtor;
- (b) an order varying the repayment period of the judgment debt or the instalments which are payable in terms of the agreement between the judgment debtor and the judgment creditor;
- (c) an order that the debt be taken over by another person chosen by the judgment debtor, including a family member or relative of the judgment debtor who is willing and able to fulfil the obligation to repay the debt, but subject to an agreement between the judgment debtor and such other person which agreement shall include a condition that ownership of the property remains vested in the judgment debtor, unless the court determines otherwise;
- (d) an order allowing the judgment debtor to voluntarily dispose of the immovable property within a specified period of time; or
- (e) any other order that the court considers proper and just in the circumstances of the case.
- (5) The court on application made to it by any person affected by an order made under subsection (4) may, unless the order has been appealed and the appeal is pending, on good cause shown at any time vary, correct or rescind an order made under that subsection.
- (6) A sale in execution of such immovable property as referred to in this section shall take place within such period from the date of attachment, and in such manner, as may be provided by the rules.”.

**Short title and commencement**

8. (1) This Act is called the Magistrates' Courts Amendment Act, 2023, and comes into operation on a date determined by the Minister by notice in the *Gazette*.
- (2) Different dates may be determined in terms of subsection (1) for different provisions of the Act.
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