

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**MAGISTRATES' COURT
AMENDMENT BILL**

(As read a First Time)

(Introduced by the Minister of Justice)

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.

BILL

To amend the Magistrates' Courts Act, 1944, so as to increase the jurisdiction of magistrates' courts; to impose restrictions on the sale in execution of immovable property; and to deal with incidental matters.

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

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

1. Section 29 of the Magistrates Courts' Act, 1944 (Act No. 32 of 1944) (hereafter called "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

- (t) 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 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

2. 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

3. 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 there is not found sufficient movable property to satisfy the judgment or order, or the court, on good cause shown, so orders, then, subject to the provisions of section 66A, against the immovable property of the party against whom such judgment has been given or such order has been made."

Insertion of section 66A in Act No.32 of 1944

4. 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 judgement 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 where -

- (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 judgement debt;

(b) the court, upon application by the judgment creditor, has declared the immovable property to be executable.

(2) Subsection (I)(a) shall not apply if-

(a) the immovable property to be sold in execution in satisfaction of the judgement 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 judgement debt which is the subject matter of the sale in execution.

(3) In the case of immovable property that is being used as a primary home by the judgment debtor or by any other person, an order referred to in subsection (I) may only be issued if the court, upon inquiry in the manner set out in the rules of the court, having considered all the circumstances of the matter is satisfied that there exist no other less drastic measures to satisfy the judgement other than the sale in execution of the immovable property in question.

(4) 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

5. This Act is called the Magistrates' Courts Amendment Act, 2021, 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 (I) for different provisions of the Act.
