



Republic of Namibia

MINISTERIAL MOTIVATION

ON THE

MAGISTRATE'S COURT AMENDMENT BILL

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

HON. YVONNE DAUSAB, MP

3 October 2023

– To be checked against delivery –

Honourable Speaker,
Honourable Members,
Members of the public,

1. This afternoon I rise to table the Magistrates' Courts Amendment Bill.
2. The purpose of the Magistrates' Courts Amendment Bill as captured in the long title is to amend the Magistrates' Courts Act, 1932 (Act No. 44 of 1932) in order to increase the jurisdiction of magistrates' courts, to impose restrictions on the sale of immovable property and to deal with incidental matters.
3. In 2018, the High Court delivered a landmark judgment in *Hiskia and Another v Body Corporate of Urban Space and Others*¹ where the Court remarked that:

“Courts must administer subject to and in accordance with the Constitution which is the Supreme Law of the Country and that litigants before both the Superior Courts and Lower Courts must enjoy the same Constitutional protection.

Held, further that the differences that crops up in the process of debt recovery in the High Court and in the Magistrates' Courts create a differentiation between litigants in the Magistrates' Court. And that such differentiation is not reasonable and rationally connected to the purpose for which the Magistrate's Court was created. Held furthermore that section 66(1)(a) of the Magistrates' Courts, 1944, Rules 36 and 43 of the Magistrates' Court Rules in so far as they permit the sale in execution of immovable property without judicial oversight offend article 10(1) of the Constitution.”

4. The Court, accordingly, afforded the Executive and Legislative branches until 31 August 2019 to pass and gazette legislation correcting the defects. Pursuant to the above decision, the bill addressing the issues raised by the Court was tabled in the National Assembly in 2021.

¹ (2018) NAHCMD 279.

5. However, further defects were pointed out by the members of the National Assembly during the debate although at the end of the 2021 sitting the bill lapsed. This allowed the Ministry an opportunity to interrogate the concerns and consider further amendments for inclusion, should this have been necessary.
6. The effect of the above ruling is that section 66² of the Magistrate's Court, 1994 (Act No. 32 of 1944) was declared unconstitutional as it encroaches upon article 10³ of the Constitution which expects that all persons shall be equal before the law and there is therefore a need to fill the gap that was created, by not having similar rules in the Magistrates' Court rules and provisions as the High Court Rules to deal with executions against immovable property.
7. It is against this background, that this bill is an attempt to ensure that all litigants are equal before the law no matter which court they seek relief from. This Magistrates' Courts Amendment Bill therefore introduces judicial oversight in matters that affect litigants in a significant way. This is particularly so when they stand to lose a home and the courts if not properly guided through law, may stand idly in this process.
8. The insertion of section 66A will now restrict the sale of immovable property in execution of a court judgement. The court must first be satisfied that a judgment debtor has insufficient movable property to satisfy the judgement debt upon return of service of process by the messenger of the court. This process makes it a bit cumbersome to lose a primary home, accordingly.

² Section 66 provides for the manner of execution that, 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 against the immovable property of the party against whom such judgment has been given or such order has been made.

³ Art. 10 provides that all persons shall be equal before the law, and no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

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9. As initially planned, and in line with the High Court Amendment Bill, the Magistrates' Court Amendment Bill inserts a definition of "primary home" as a dwelling which a person uses as his or her main place of residence. This is so, irrespective of whether that person occasionally resides at any other place of residence or is entitled to another place of residence, such as a family or parental home.
10. The other amendments are in respect of jurisdictional values. The Bill amends section 29(1) of the Magistrates Courts' Act, 1944 to increase the jurisdiction of magistrate courts from N\$25 000 to N\$1 000 000 in the following causes of action:
 - 10.1 first, in actions in which the delivery or transfer of any movable or immovable property is claimed;
 - 10.2 secondly, in actions of ejectment against the occupier of any premises⁴ or land, where the right of occupation of such premises or land is in dispute between the parties;
 - 10.3 third, in actions arising out of a liquid document⁵ or a mortgage bond⁶; and
 - 10.4 fourthly, in actions on or arising out of any credit agreement⁷ as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980).
11. For any other actions, the Magistrates' Courts Amendment Bill proposes the increase of the magistrates' court's jurisdiction from N\$25 000 to N\$500 000.00.

⁴ For example, court sanctioned eviction notices.

⁵ For example, written acknowledgement of debt or a lease agreement.

⁶ For example, a home loan account with a bank.

⁷ For example, defaulting on your furniture or clothing account.

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12. Access to justice means that litigants should be able to have access to the courts closest to them with the least cost implications. By increasing the monetary jurisdiction of the Magistrate's Courts, we will in part, contribute to broadening the scope of matters that can be considered at a magisterial court level.
13. It is potentially less costly, more accessible, because there are 121 magisterial districts in the country, and these are reasonably accessible to the majority of the people.
14. In order to respond to the monetary value increase and potential increase in cases at these courts, there are plans afoot to employ more magistrates, legal aid lawyers and improve court infrastructure.
15. The draft Small Claims Court Bill, the discussions on an increased pool of *pro bono* activity from the independent legal profession and strengthening of community courts are also considered concomitantly to ensure there is not an over congestion of Magistrates' Courts in the country.
16. We believe the delivery of justice will be enhanced and the rights of litigants, creditors and debtors will be protected. I therefore respectfully encourage this August House to support the Magistrate's Court Amendment Bill to demonstrate our resolve to enhance access to justice and legal services for our people.

I thank you and so submit.