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REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

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Kaapstad, 12 August 2013

No. 36743

## THE PRESIDENCY

No. 615

12 August 2013

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 10 of 2013: Superior Courts Act, 2013**

## DIE PRESIDENSIE

No. 615

12 Augustus 2013

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

**Wet No 10 van 2013: Wet op Hoëre Howe, 2013**

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## GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

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*(English text signed by the President)  
(Assented to 12 August 2013)*

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# ACT

**To rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the 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 thereto.**

## PREAMBLE

**NOTING THAT** section 1 of the Constitution of the Republic of South Africa, 1996, provides that the supremacy of the Constitution and the rule of law form part of the founding values of the Republic;

**AND** section 165 of the Constitution provides that—

- (a) the judicial authority of the Republic is vested in the courts;
- (b) the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice;
- (c) no person or organ of state may interfere with the functioning of the courts;
- (d) organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts;
- (e) an order or decision by a court binds all persons to whom and all organs of state to which it applies; and
- (f) the Chief Justice is the head of the judiciary and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts;

**AND** section 166 of the Constitution provides that the courts are—

- (a) the Constitutional Court;
- (b) the Supreme Court of Appeal;
- (c) the High Court of South Africa;
- (d) the Magistrates' Courts; and
- (e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Court or the Magistrates' Courts;

**AND** 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;

## ALGEMENE VERDUIDELIKENDE NOTA:

- [ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeninge aan.  
— Woerde met 'n volstreep daaronder dui invoegings in bestaande verordeninge aan.
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*(Engelse teks deur die President geteken)  
(Goedgekeur op 12 Augustus 2013)*

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# WET

Ten einde die wette betreffende die Konstitusionele Hof, die Hoogste Hof van Appèl en die Hooggereghof van Suid-Afrika te rasionaliseer, te konsolideer en te wysig; voorsiening te maak vir die administrasie van die regterlike werksaamhede van alle howe; voorsiening te maak vir administratiewe en begrotingsaangeleenthede betreffende die Hoër Howe; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

## AANHEF

**AANGESIEN** artikel 1 van die Grondwet van die Republiek van Suid-Afrika, 1996, bepaal dat die oppergesag van die Grondwet en die heerskappy van die reg deel uitmaak van die stigtingswaardes van die Republiek;

**EN** artikel 165 van die Grondwet bepaal dat—

- (a) die regsgesprekende gesag van die Republiek by die howe berus;
- (b) die howe onafhanklik en onderworpe slegs aan die Grondwet en die reg is, wat hulle onpartydig en sonder vrees, begunstiging of vooroordeel moet toepas;
- (c) geen persoon of staatsorgaan op die funksionering van die howe mag inbreuk maak nie;
- (d) staatsorgane, deur wetgewende en ander maatreëls, die howe moet bystaan en beskerm ten einde die onafhanklikheid, onpartydigheid, waardigheid, toeganklikheid en doeltreffendheid van die howe te verseker;
- (e) 'n bevel of 'n beslissing deur 'n hof uitgereik, alle persone en alle staatsorgane waarop dit van toepassing is, bind; en
- (f) die Hoofregter die hoof van die regbank is en verantwoordelikheid uitoefen oor die vestiging en monitering van norme en standarde vir die verrigting van die regterlike werksaamhede van alle howe;

**EN** artikel 166 van die Grondwet bepaal die howe is—

- (a) die Konstitusionele Hof;
- (b) die Hoogste Hof van Appèl;
- (c) die Hooggereghof van Suid-Afrika;
- (d) die landdroshewe; en
- (e) enige ander hof ingevolge 'n Parlements-wet ingestel of erken, met inbegrip van enige hof met 'n status soortgelyk aan dié van hetsy die Hooggereghof hetsy die landdroshewe;

**EN** artikel 171 van die Grondwet bepaal dat alle howe ingevolge nasionale wetgewing funksioneer en voorsiening ingevolge nasionale wetgewing vir hul reëls en prosedures gemaak moet word;

**AND** 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** 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;

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

**AND** 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 enacts, as follows:—

## CHAPTER 1

### *Introductory Provisions*

#### Definitions

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1. In this Act, unless the context otherwise indicates—

“**appeal**” in Chapter 5, does not include an appeal in a matter regulated in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or in terms of any other criminal procedural law;

“**business day**” means a day that is not a public holiday, Saturday or Sunday; 10

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the Department responsible for the administration of justice;

“**Director-General**” means the Director-General of the Department;

“**Division**” means any Division of the High Court; 15

“**full court**”, in relation to any Division, means a Court consisting of three judges;

“**head of court**”, in relation to—

(i) the Constitutional Court, means the Chief Justice;

(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; 20  
and

(iv) any court of a status similar to the High Court, the most senior judge of such court;

“**High Court**” means the High Court of South Africa referred to in section 6(1);

“**judicial officer**” means any person referred to in section 174(1) of the 25 Constitution;

**EN** artikel 180 van die Grondwet bepaal dat nasionale wetgewing vir enige aangeleentheid oor dieregspleging voorsiening kan maak wat nie in die Grondwet hanteer word nie;

**EN** item 16(6)(a) van Bylae 6 tot die Grondwet bepaal dat, so gou doenlik nadat die Grondwet in werking getree het, alle howe, met inbegrip van hul struktuur, samestelling, funksionering enregsbevoegdheid, en alle tersaaklike wetgewing, gerasionaliseer moet word met die oog op die daarstelling van 'n regstelsel wat aan die voorskrifte van die Grondwet voldoen;

**VERDER AANGESIEN**, by die aanbreek van die demokratiese grondwetlike bestel in 1994, die Republiek 'n gefragmenteerde hofstruktuur en -infrastruktuur geërf het wat grootliks aan ons koloniale geskiedenis ontleen is en wat daarna verder gestruktureer is om die segregasie-oogmerke van die apartheidsbedeling te dien;

**EN** voor die aanbreek van die demokratiese grondwetlike bedeling in 1994, die Landdroshewe nie grondwetlik erken is as deel van dieregsprekende gesag nie en grootliks as 'n toevoeging tot die staatsdiens hanteer is;

**EN** die Grondwet bepaal dat dieregsprekende gesag in al die howe berus, dit wenslik is om 'n eenvormige raamwerk te voorsien vir regterlike bestuur, deur die regbank, van die regterlike werksaamhede van alle howe;

**EN MET ERKENNING** dat die rasionalisering wat in item 16(6)(a) van Bylae 6 tot die Grondwet in die vooruitsig gestel word, 'n voortdurende proses is wat waarskynlik sal lei tot verdere wetgewende en ander maatreëls ten einde 'n regstelsel te vestig wat aan die voorskrifte van die Grondwet voldoen,

**B**EPAAL DIE PARLEMENT van die Republiek van Suid-Afrika derhalwe, soos volg:—

## HOOFSTUK 1

### *Inleidende Bepalings*

#### Woordomskrywing

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1. In hierdie Wet, tensy die konteks anders aandui, beteken—

“**Afdeling**” enige Afdeling van die Hooggereghof;

“**appèl**” in Hoofstuk 5, nie ook 'n appèl in 'n aangeleentheid ingevolge die Strafproseswet, 1977 (Wet No. 51 van 1977), of ingevolge enige ander strafproseswet, gereguleer nie;

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“**Departement**” die Departement verantwoordelik vir dieregspleging;

“**Direkteur-generaal**” die Direkteur-generaal van die Departement;

“**eiser**” ook enige aansoeker of ander party wat regshulp deur siviele prosesreg versoek;

“**griffier**” die griffier van die Konstitusionele Hof, die Hoogste Hof van Appèl of enige Afdeling van die Hooggereghof, na gelang van die geval, met inbegrip van 'n assistent-griffier;

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;

“**hierdie Wet**” ook enige regulasie;

“**Hoër Hof**” die Konstitusionele Hof, die Hoogste Hof van Appèl, die Hooggereghof en enige hof met 'n status soortgelyk aan die Hooggereghof;

“**hoof van Hof**”, met betrekking tot—

(i) die Konstitusionele Hof, die Hoofregter;

(ii) die Hoogste Hof van Appèl, die President van daardie Hof;

(iii) 'n Afdeling van die Hooggereghof, die Regter-president van daardie Afdeling; en

(iv) enige hof met 'n status soortgelyk aan die Hooggereghof, die mees senior regter van daardie hof;

**“Judicial Service Commission”** means the Judicial Service Commission referred to in section 178 of the Constitution;  
**“Magistrates’ Court”** means any court established in terms of section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);  
**“Minister”** means the Cabinet member responsible for the administration of justice; 5  
**“plaintiff”** includes any applicant or other party who seeks relief in civil proceedings;  
**“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 10 assistant registrar;  
**“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);  
**“Secretary-General”** means the head of the Office of the Chief Justice, referred to in 15 Column 2 of Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);  
**“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;  
**“this Act”** includes any regulation. 20

### 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;  
(b) to bring the structure of the Superior Courts in line with the provisions of 25 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.  
(2) This Act must be read in conjunction with Chapter 8 of the Constitution, which 30 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.  
(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 35 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

3. The Minister must be consulted prior to the introduction in Parliament, by a person other than the Minister, of any bill— 40  
(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;  
(c) that amends the structure or functions of any court of law or tribunal referred to in paragraph (a) or (b); or  
(d) that assigns functions to judicial officers, other than in terms of this Act. 45

## CHAPTER 2

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

#### Constitution and seat of Constitutional Court

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. 50  
(b) The seat of the Constitutional Court is in Johannesburg, but whenever it appears to the Chief Justice that it is expedient or in the interests of justice 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. 55

“**Hooggereghof**” die Hooggereghof van Suid-Afrika in artikel 6(1) bedoel;  
“**landdroshof**” enige hof ingevolge artikel 2 van die Wet op Landdroshewe, 1944  
(Wet No. 32 van 1944), ingestel;  
“**Minister**” die Kabinetslid verantwoordelik vir dieregspleging;  
“**President**” die President van die Republiek van Suid-Afrika; 5  
“**reëls**” die toepaslike hofreëls;  
“**Reëlsraad**” die Reëlsraad vir Geregshewe, ingestel deur die Wet op die  
Reëlsraad vir Geregshewe, 1985 (Wet No. 107 van 1985);  
“**regterlike beampete**” ’n persoon in artikel 174(1) van die Grondwet bedoel;  
“**Regterlike Dienskommissie**” die Regterlike Dienskommissie in artikel 178 van 10  
die Grondwet bedoel;  
“**sakedag**” ’n dag wat nie ’n openbare vakansiedag, Saterdag of Sondag is nie;  
“**Sekretaris-generaal**” die hoof van die Kantoor van die Hoofregter bedoel in  
Kolom 2 van Bylae 1 tot die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994);  
“**volle hof**”, met betrekking tot ’n Afdeling, ’n hof wat uit drie regters bestaan; en 15  
“**voorgeskryf**” voorgeskryf by regulasie ingevolge hierdie Wet uitgevaardig.

### Oogmerke en uitleg van Wet

2. (1) Die oogmerke van hierdie Wet is—

- (a) om die wetsbepalings ten aansien van Hoër Howe te konsolideer en te 20  
rasionaliseer soos in item 16(6) van Bylae 6 tot die Grondwet beoog;
- (b) om die struktuur van die Hoër Howe in ooreenstemming met die bepalings  
van Hoofstuk 8 en die Grondwet se opdragte vir transformasie te bring; en
- (c) om voorsiening te maak vir die administrasie van die regterlike  
werksaamhede van alle howe, ook bestuursaangeleenthede, waaroor die  
Hoofregter verantwoordelikheid uitoefen. 25

(2) Hierdie Wet moet saam met Hoofstuk 8 van die Grondwet gelees word, wat die  
grondvesbeginsels vir die struktuur en regsbevoegdheid van die Hoër Howe, die  
aanstelling van regters van die Hoër Howe en aangeleenthede wat met die Hoër Howe  
verband hou, uiteensit.

(3) Die bepalings van hierdie Wet van toepassing op die Hoër Howe buiten die 30  
Konstitusionele Hof, die Hoogste Hof van Appèl of die Hooggereghof van Suid-Afrika,  
is bykomend tot enige spesifieke wetgewing oor sodanige howe, maar in die geval van  
teenstrydigheid tussen hierdie Wet en sodanige wetgewing, moet sodanige wetgewing  
voorkeur geniet.

### Indiening van wetgewing wat oor hofstrukture handel

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3. Oorleg moet met die Minister gepleeg word voor die indiening by die Parlement,  
deur ’n persoon buiten die Minister, van enige wetsontwerp—

- (a) wat vir die instelling van ’n gereghof voorsiening maak;
- (b) wat vir die instelling van enige tribunaal in artikel 34 van die Grondwet 40  
beoog, voorsiening maak;
- (c) wat die struktuur of werksaamhede van enige gereghof of tribunaal in  
paragraaf (a) of (b) bedoel wysig; of
- (d) wat werksaamhede aan regterlike beampetes toeken, behalwe ingevolge  
hierdie Wet.

## HOOFTUK 2

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### Konstitusionele Hof, Hoogste Hof van Appèl en Hooggereghof van Suid-Afrika

#### Samestelling en setel van Konstitusionele Hof

4. (1) (a) Die Konstitusionele Hof bestaan uit die Hoofregter van Suid-Afrika, die  
Adjunkhoofregter van Suid-Afrika en nege ander regters van die Konstitusionele Hof.

(b) Die setel van die Konstitusionele Hof is Johannesburg, maar wanneer dit vir die 50  
Hoofregter blyk dat dit raadsaam of in die belang van die gereg is om sy sitting vir die  
verhoor van ’n aangeleentheid by ’n plek elders as die setel van die Hof te hou, kan die  
Hof by daardie plek sit.

- (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. 5

### **Constitution and seat of Supreme Court of Appeal**

- 5.** (1) (a) The Supreme Court of Appeal consists of—
- (i) the President of the Supreme Court of Appeal;
  - (ii) the Deputy President of the Supreme Court of Appeal; and 10
  - (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 or in the interests of justice 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. 15
- (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 20
  - (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. 25

### **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.
  - (c) Gauteng Division, with its main seat in Pretoria. 30
  - (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.
  - (h) North West Division, with its main seat in Mahikeng. 35
  - (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 40
  - (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. 45
- (b) The area under the jurisdiction of a Division may comprise any part of one or more provinces.
- (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. 50
- (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—
- (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 55

(2) Die Adjunkhoofregter moet—

- (a) die bevoegdhede uitoefen of die werksaamhede van die Hoofregter verrig ingevolge hierdie of enige ander wetsbepaling wat die Hoofregter aan hom of haar toewys; en  
(b) in die afwesigheid van die Hoofregter, of indien die amp van Hoofregter vakant is, as Waarnemende Hoofregter die bevoegdhede van die Hoofregter uitoefen of die werksaamhede van die Hoofregter verrig.

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### Samestelling en setel van Hoogste Hof van Appèl

5. (1) (a) Die Hoogste Hof van Appèl bestaan uit—

- (i) die President van die Hoogste Hof van Appèl;  
(ii) die Adjunkpresident van die Hoogste Hof van Appèl; en  
(iii) soveel ander regters soos ooreenkomsdig die voorgeskrewe maatstawwe bepaal word, en deur die President goedgekeur word.

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(b) Behoudens artikel 9(1) is die setel van die Hoogste Hof van Appèl in Bloemfontein, maar wanneer dit vir die President van die Hoogste Hof van Appèl blyk dat dit raadsaam of in die belang van die geregt is om sy sitting vir die verhoor van 'n aangeleentheid by 'n plek elders as die setel van die Hof te hou, kan die Hof by daardie plek sit.

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(2) Die Adjunkpresident van die Hoogste Hof van Appèl moet—

- (a) die bevoegdhede uitoefen of die werksaamhede verrig van die President van die Hoogste Hof van Appèl ingevolge hierdie of enige ander wet wat laasgenoemde aan hom of haar toewys; en  
(b) in die afwesigheid van die President van die Hoogste Hof van Appèl, of indien die amp van President van die Hoogste Hof van Appèl vakant is, as Waarnemende President van die Hoogste Hof van Appèl die werksaamhede van die President van die Hoogste Hof van Appèl verrig.

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### Samestelling van Hooggereghof van Suid-Afrika

6. (1) Die Hooggereghof van Suid-Afrika bestaan uit die volgende Afdelings:

- (a) Oos-Kaapse Afdeling, met sy hoofsetel in Grahamstad.  
(b) Vrystaatse Afdeling, met sy hoofsetel in Bloemfontein.  
(c) Gauteng Afdeling, met sy hoofsetel in Pretoria.  
(d) KwaZulu-Natal Afdeling, met sy hoofsetel in Pietermaritzburg.  
(e) Limpopo Afdeling, met sy hoofsetel in Polokwane.  
(f) Mpumalanga Afdeling, met sy hoofsetel in Nelspruit.  
(g) Noord-Kaapse Afdeling, met sy hoofsetel in Kimberley.  
(h) Noordwes Afdeling, met sy hoofsetel in Mahikeng.  
(i) Wes-Kaapse Afdeling, met sy hoofsetel in Kaapstad.

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(2) Elke Afdeling van die Hooggereghof bestaan uit—

- (a) 'n Regter-president en een of meer Adjunk-regters-president, soos bepaal deur die President, elk met bepaalde hoofkwartiere in die regsgebied van daardie Afdeling; en  
(b) soveel ander regters soos wat ooreenkomsdig die voorgeskrewe maatstawwe bepaal kan word, en deur die President goedgekeur word.

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(3) (a) Die Minister moet, na oorleg met die Regterlike Dienskommissie, by kennisgewing in die *Staatskoerant*, 'n Afdeling se regsgebied bepaal, en so 'n kennisgewing op dieselfde wyse wysig of intrek.

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(b) Die regsgebied van 'n Afdeling kan uit enige deel van een of meer provinsies saamgestel wees.

(c) Die Minister kan, na oorleg met die Regterlike Dienskommissie, een of meer plaaslike setels vir 'n Afdeling by kennisgewing in die *Staatskoerant* instel, bykomend tot die hoofsetels in subartikel (1) bedoel, en die regsgebied van bedoelde plaaslike setel bepaal, en kan so 'n kennisgewing op dieselfde wyse wysig of intrek.

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(d) Die publikasie van 'n kennisgewing in paragraaf (a) of (c) bedoel het nie 'n uitwerking op enige verrigtinge wat ten tyde van sodanige publikasie hangend is nie.

(4) Indien 'n Afdeling een of meer plaaslike setels het—

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- (a) het die hoofsetel van daardie Afdeling konkurrante appèlbevoegdheid oor die regsgebied van enige plaaslike setel van daardie Afdeling, en die Regter-president van die Afdeling kan gelas dat 'n appèl teen 'n besluit van 'n enkele

Magistrates' Court within that area of jurisdiction may be heard at the main seat of the Division;	
(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 assign all the judges of that Division within the Division as he or she deems fit.	5
(5) If a judge of one Division is to be temporarily assigned to another Division, such assignment 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—	10
(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.	15
(b) If more than one Deputy Judge President is appointed in respect of a Division, the most senior Deputy Judge President of that Division 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 or in the interests of justice 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.	20

### Circuit Courts

7. (1) The Judge President of a Division may by notice in the <i>Gazette</i> 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.	25
(2) 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.	30
(3) A court referred to in subsection (2) is called a circuit court of the Division in question.	

## CHAPTER 3

### *Governance and administration of all courts*

<b>Judicial management of judicial functions</b>	35
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.	
(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.	40
(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	45
(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 of the court in question.	
(b) The management of the judicial functions of each court is the responsibility of the head of that court.	50
(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 Magistrates' Courts falling within the jurisdiction of that Division.	55

regter of van 'n landdroshof in daardie regsgebied by die hoofsetel van die Afdeling angehoor kan word;	
(b) moet die Regter-president van daardie Afdeling 'n enkele hofrol vir daardie Afdeling saamstel; en	5
(c) kan die Regter-president van daardie Afdeling al die regters van daardie Afdeling na sy of haar goeddunke binne die Afdeling toewys.	
(5) Indien 'n regter van een Afdeling tydelik aan 'n ander Afdeling toegewys moet word, moet die toewysing by wyse van 'n waarnemende aanstelling ingevolge artikel 175(2) van die Grondwet geskied.	
(6) (a) Behoudens paragraaf (b) moet 'n adjunk-regter-president van 'n Afdeling—	10
(i) sodanige bevoegdhede uitoefen of sodanige werksaamhede van die Regter-president uitvoer ingevolge hierdie Wet of enige ander wetsbepaling wat die laasgenoemde aan hom of haar mag toewys; en	
(ii) in die afwesigheid van die Regter-president van daardie Afdeling, of indien die amp van die Regter-president vakant is, as die waarnemende Regter-president van daardie Afdeling die Regter-president se bevoegdhede uitoefen of werksaamhede verrig.	15
(b) Indien meer as een adjunk-regter-president vir 'n Afdeling aangestel is, moet die mees senior adjunk-regter-president van daardie Afdeling die werksaamhede van die Regter-president onder die omstandighede in paragraaf (a)(ii) bedoel, verrig.	20
(7) Wanneer dit vir die Regter-president van 'n Afdeling blyk dat dit raadsaam of in die belang van die geregt is om 'n sitting vir die verhoor van 'n aangeleenthed by 'n plek elders as die setel of 'n plaaslike setel van die Afdeling te hou, kan hy of sy, nadat oorleg met die Minister gepleeg is, bedoelde sitting by daardie plek hou.	
<b>Rondgaande howe</b>	25
<b>7. (1)</b> Die Regter-president van 'n Afdeling kan by kennisgewing in die <i>Staatskoerant</i> rondgangdistrikte instel vir die beregting van siviele of strafregtelike aangeleenthede, en kan per dergelyke kennisgewing die grense van enige sodanige distrik verander.	
(2) In elke rondgangdistrik van 'n Afdeling moet daar minstens twee maal per jaar en op die tye en plekke wat die betrokke Regter-president bepaal, 'n hof voor 'n regter van die Afdeling waarin daardie distrik geleë is, gehou word.	30
(3) 'n Hof bedoel in subartikel (2) word 'n rondgaande hof van die betrokke Afdeling genoem.	

## HOOFSTUK 3

### **Bestuur en administrasie van alle howe** 35

#### **Regterlike bestuur van regterlike werksaamhede**

<b>8. (1)</b> Vir die doeleindes van enige raadpleging oor enige aangeleenthed in hierdie artikel bedoel, kan die Hoofregter 'n forum van regterlike beampies saamroep wat hy of sy gepas ag.	
(2) Die Hoofregter, as die hoof van die regbank soos in artikel 165(6) van die Grondwet bedoog, oefen verantwoordelikheid uit oor die instelling en monitering van norme en standarde vir die verrigting van die regterlike werksaamhede van alle howe.	40
(3) Die Hoofregter kan, behoudens subartikel (5), geskrewe protokolle of riglyne uitrek, of leiding of raad aan regterlike beampies voorsien—	
(a) ten opsigte van norme en standarde vir die verrigting van regterlike werksaamhede beoog in subartikel (6); en	45
(b) betreffende enige aangeleenthed wat die waardigheid, toeganklikheid, doeltreffendheid, effektiwiteit of funksionering van die howe raak.	
(4) (a) Enige werksaamheid of enige bevoegdheid ingevolge hierdie artikel, wat by die Hoofregter of enige ander hoof van die hof berus, kan aan enige ander regterlike beampie gedelegeer word.	50
(b) Die bestuur van die regterlike werksaamhede van elke hof is die verantwoordelikheid van die hoof van daardie hof.	
(c) Behoudens subartikels (2) en (3) is die Regter-president van 'n Afdeling ook verantwoordelik vir die koördinering van die regterlike werksaamhede van alle landdroshowe wat in die regsgebied van daardie Afdeling geleë is.	55

- (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 the heads of those courts on which it would be applicable; and  
(b) must be published in the *Gazette*.
- (6) The judicial functions referred to in subsection (2) and subsection (4)(b) include 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;  
(d) determination of the sitting schedules and places of sittings for judicial officers;  
(e) management of procedures to be adhered to in respect of—  
(i) case flow management;  
(ii) the finalisation of any matter before a judicial officer, including any 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

- 9.** (1) All Superior Courts—  
(a) must be open to the public every business day; and  
(b) may perform the functions of the court 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 Justice in consultation with the heads of court and the Minister in order to enable judges to do research and to attend to outstanding or prospective judicial functions that may be assigned to them.
- (3) During each recess period, the head of each court must ensure that an adequate 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.
- (4) Subject to subsections (1) and (2), the head of each Superior Court is responsible to—  
(a) ensure that sufficient judges of that court are available to conduct the business 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 allocated to, or extraordinary absence approved for, a judge of that court.

#### Finances

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- 10.** Expenditure in connection with the administration and functioning of the Superior Courts must be defrayed from moneys appropriated by Parliament.

#### 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.  
(b) Any appointment by the Minister in terms of paragraph (a) must be made—  
(i) in consultation with the head of court; and  
(ii) in accordance with the laws governing the public service.  
(c) 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 Secretary-General and the Chief Justice.

- (5) Enige protokol of riglyn ingevolge subartikel (3)—
- (a) kan slegs deur die Hoofregter uitgereik word indien dit deur die meerderheid van die hoofde van daardie howe waarop dit van toepassing sal wees ondersteun word; en
  - (b) moet in die *Staatskoerant* gepubliseer word.
- (6) Die regterlike werksaamhede in subartikel (2) en subartikel (4)(b) bedoel sluit in die—
- (a) bepaling van sittings van die bepaalde howe;
  - (b) toewysing van regterlike beampies aan sittings;
  - (c) toewysing van sake en ander regterlike pligte aan regterlike beampies;
  - (d) bepaling van die sittingskledules en sittingsplekke vir regterlike beampies;
  - (e) bestuur van procedures waarby gehou moet word ten opsigte van—
    - (i) saakvloebestuur;
    - (ii) die afhandeling van enige aangeleenthed voor 'n regterlike beampie, met inbegrip van enige uistaande uitspraak, beslissing of bevel; en
    - (iii) resesse van Hoër Howe.
- (7) Die Hoofregter kan enige regter aanwys om hom of haar in sy of haar regterlike leierskapsfunksies by te staan.

### Toegang tot howe, resestydperke en bywoning by howe

- 9.** (1) Alle Hoër Howe—
- (a) moet elke sakedag oop wees vir die publiek; en
  - (b) kan op enige Saterdag, Sondag of openbare vakansiedag die werksaamhede van die hof verrig soos van tyd tot tyd vereis kan word.
- (2) Hoër Howe kan sodanige resestydperke hê wat die Hoofregter in oorleg met die hoofde van howe en die Minister kan bepaal om regters in staat te stel om navorsing te doen en om uitstaande of toekomstige regterlike werksaamhede te behartig wat aan hulle toegewys mag word.
- (3) Tydens elke resestydperk moet die hoof van elke hof toesien dat 'n voldoende getal regters in daardie hof beskikbaar is om enige regterlike werksaamhede te hanteer wat, in die belang van die geregt, tydens daardie resestydperk hanteer moet word.
- (4) Behoudens subartikels (1) en (2) het die hoof van elke Hoër Hof die verantwoordelikheid om—
- (a) toe te sien dat genoeg regters van daardie hof te alle tye wanneer die hof vir sake oop is beskikbaar is om die sake van die hof te verrig;
  - (b) riglyne aan die regters van daardie hof uit te reik oor hul bywoning by die hof en afwesigheid van die hof tydens resestydperke;
  - (c) enige buitengewone afwesigheid van die hof van 'n regter goed te keur; en
  - (d) 'n register by te hou, op die voorgeskrewe wyse en vorm, van vakansietydperke toegeken aan, of buitengewone afwesigheid goedgekeur vir, 'n regter van daardie hof.

### Finansies

- 10.** Uitgawes in verband met die administrasie en funksionering van die Hoër Howe moet vereffen word met geld wat die Parlement bewillig.

### Aanstelling van beampies en personeel

- 11.** (1) (a) Behoudens paragraaf (b) moet die Minister vir die Konstitusionele Hof, die Hoogste Hof van Appèl en elke Afdeling 'n hofbestuurder, een of meer assistent-hofbestuurders, 'n griffier, assistent-griffiers en ander beampies en personeel aanstel wanneer hulle vir die regspleging of die uitoefening van die bevoegdhede en magte van die bedoelde hof benodig word.
- (b) Enige aanstelling deur die Minister ingevolge paragraaf (a) moet gemaak word—
- (i) in oorleg met die hoof van die hof; en
  - (ii) ooreenkomsdig die wetsbepalings wat die staatsdiens beheer.
- (c) 'n Hofbestuurder is die senior- uitvoerende beampie van die hof waar hy of sy aangestel is, en oefen administratiewe beheer uit oor die ander personele in paragraaf (a) bedoel en, onder die bestuur en leiding van die hoof van die betrokke hof, verrig hy of sy sodanige ander werksaamhede wat die Sekretaris-generaal en die Hoofregter kan bepaal.

(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.

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(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 the Secretary-General.

## CHAPTER 4

10

### *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.

(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—

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

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(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.

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#### **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—

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- (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.

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(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.

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(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—

- (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
- (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.

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(2) Wanneer enige hofbestuurder, griffier of assistent-griffier weens afwesigheid of onvermoë nie die werksaamhede van sy of haar amp kan verrig nie, of as sy of haar amp vakant raak, kan die Minister na oorleg met die hoof van die betrokke hof, enige ander bevoegde beampete in die staatsdiens magtig om in die plek van die afwesige of geaffekteerde beampete waar te neem tydens sodanige afwesigheid of onvermoë of om in die vakante pos waar te neem totdat dit gevul word.

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(3) Enige persoon wat kragtens subartikel (1) aangestel is, kan meer as een van die ampte wat in daardie subartikel genoem word gelyktydig beklee.

(4) Die Minister kan enige van die bevoegdhede wat by hierdie artikel aan hom of haar verleen word, aan die Sekretaris-generaal delegee.

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## HOOFSTUK 4

### *Wyse waarop deur Hoër Howe tot beslissings geraak word*

#### **Wyse waarop in Konstitusionele Hof tot beslissings geraak word**

**12.** (1) Ooreenkomstig artikel 167(2) van die Grondwet moet enige aangeleenthed voor die Konstitusionele Hof deur ten minste agt regters aangehoor word.

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(2) Indien, op enige tydstip nadat 'n verhoor begin het, 'n regter van die Konstitusionele Hof afwesig is of nie sy of haar werksaamhede kan verrig nie of indien 'n vakante pos ontstaan onder die lede van die hof en—

- (a) die oorblywende lede van die hof nie minder as agt is nie—
  - (i) moet sodanige verhoor voor die oorblywende regters van die hof voortgaan; en
  - (ii) is die beslissing van die meerderheid van die oorblywende regters van die hof, indien daardie meerderheid ook 'n meerderheid is van die regters van die hof voor wie die verhoor begin het, die hof se beslissing; of
- (b) die oorblywende lede van die hof minder as agt is, moet die verrigtinge gestaak word en *de novo* begin word.

(3) Geen regter mag sit by die aanhoor van 'n appèl teen 'n uitspraak of bevel gegee in 'n saak wat voor hom of haar aangehoor is nie.

#### **Wyse waarop in Hoogste Hof van Appèl tot beslissings geraak word**

**13.** (1) Verrigtinge van die Hoogste Hof van Appèl moet in die gewone loop deur vyf regters aangehoor word, maar die President van die Hoogste Hof van Appèl kan—

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- (a) gelas dat 'n appèl in 'n strafregtelike of siviele aangeleenthed voor 'n hof bestaande uit drie regters aangehoor word; of
- (b) wanneer dit vir hom of haar voorkom dat enige aangeleenthed as gevolg van die belang daarvan voor 'n hof bestaande uit 'n groter getal regters aangehoor moet word, gelas dat die aangeleenthed aangehoor word voor 'n hof bestaande uit soveel regters as wat hy of sy bepaal.

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(2) (a) Die uitspraak van die meerderheid van die regters wat by verrigtinge voor die Hoogste Hof van Appèl sit, is die uitspraak van die hof.

(b) Waar daar geen uitspraak is waaroer die meerderheid van sodanige regters ooreenstem nie, moet die verhoor verdaag word en opnuut begin word voor 'n nuwe hof saamgestel volgens die bepaling van die President van die Hoogste Hof van Appèl.

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(3) Indien, op enige tydstip nadat 'n verhoor begin het, 'n regter van die Hoogste Hof van Appèl afwesig is of nie sy of haar werksaamhede kan verrig nie of indien 'n vakante pos ontstaan onder die lede van die hof—

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- (a) moet die verhoor, waar die oorblywende regters 'n meerderheid uitmaak van die regters voor wie die verhoor begin is, voor die oorblywende regters aangaan, en die beslissing van 'n meerderheid van die oorblywende regters wat met mekaar ooreenstem is, indien daardie meerderheid ook 'n meerderheid is van die regters voor wie die verhoor begin het, die beslissing van die hof; of
- (b) in enige ander geval, moet die appèl opnuut aangehoor word, tensy al die partye tot die verrigtinge onvoorwaardelik skriftelik ooreenkom om die beslissing van die meerderheid van die oorblywende regters te aanvaar of, indien slegs een regter oorbly, om die beslissing van daardie regter as die beslissing van die hof te aanvaar.

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(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. 5

#### 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. 10

(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). 15

(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. 20

(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. 25

(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. 30

(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— 35

- (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. 40

(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. 45

(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. 50

(4) Twee of meer regters van die Hoogste Hof van Appèl deur die President van die Hoogste Hof van Appèl aangewys, het regsheidsbevoegdheid om aansoeke om tussentydse regshulp in kamers aan te hoor en te beslis, met inbegrip van aansoeke om kondonasié en om verlof om *in forma pauperis*, 'n geding te voer.

(5) Geen regter mag sit by die aanhoor van 'n appèl teen 'n uitspraak of bevel gegee in 'n saak wat voor hom of haar aangehoor is nie. 5

### Wyse waarop in Afdelings tot beslissings geraak word

**14.** (1) (a) Buiten soos in hierdie Wet of enige ander wet bepaal, word 'n hof van 'n Afdeling voor 'n enkele regter saamgestel vir 'n sitting as hof van eerste instansie vir die aanhoor van enige siviele aangeleentheid, maar die Regter-president of, in die afwesigheid van beide die Regter-president en die adjunk-regter-president, die senior beskikbare regter, kan enige tyd gelas dat 'n aangeleentheid deur 'n hof bestaande uit nie meer nie as drie regters aangehoor word, soos deur hom of haar bepaal. 10

(b) 'n Enkele regter van 'n Afdeling kan, in oorleg met die Regter-president of die senior beskikbare regter in die afwesigheid van die Regter-president en die adjunk-Regter-president, enige tyd die verhoor van enige siviele aangeleentheid wat voor hom of haar aangehoor word staak en dit na die volle hof van daardie Afdeling soos in paragraaf (a) beoog, verwys vir verhoor. 15

(2) Vir die aanhoor van enige strafregtelike saak as 'n hof van eerste instansie, word 'n hof van 'n Afdeling saamgestel soos voorgeskryf in die toepaslike wet betreffende strafregtelike aangeleenthede. 20

(3) Buiten waar dit ingevolge hierdie of enige ander wet op 'n ander wyse saamgestel moet of mag word, word 'n hof van 'n Afdeling voor twee regters saamgestel vir die aanhoor van enige siviele of strafregtelike appèl: Met dien verstande dat die Regter-president, of in die afwesigheid van beide die Regter-president en die adjunk-regter-president, die senior beskikbare regter, ingeval die regters wat sodanige appèl aanhoor nie met mekaar ooreenstem nie, te eniger tyd voor 'n uitspraak in sodanige appèl gelewer word, kan gelas dat 'n derde regter bygevoeg word om daardie appèl aan te hoor. 25

(4) (a) Buiten soos anders bepaal in hierdie Wet of enige ander wet, is die beslissing van die meerderheid van die regters van 'n volle hof van 'n Afdeling die beslissing van die hof. 30

(b) Waar die meerderheid regters van enige sodanige hof nie met mekaar ooreenstem nie, moet die verhoor verdaag word en opnuut begin word voor 'n hof bestaande uit drie ander regters. 35

(5) Indien 'n regter van 'n volle hof te eniger tyd tydens die verhoor van 'n aangeleentheid deur sodanige hof afwesig is of nie sy of haar werkzaamhede kan verrig nie, of indien 'n vakante pos onder die lede van die hof ontstaan, moet die verhoor—

(a) indien die oorblywende regters 'n meerderheid van die regters voor wie dit begin is uitmaak, voor sodanige oorblywende regters voortgaan; of 40

(b) indien die oorblywende regters nie so 'n meerderheid uitmaak nie, of indien slegs een regter oorbly, opnuut begin word, tensy al die partye in die verrigtinge onvoorwaardelik skriftelik ooreenkom om die beslissing van die meerderheid van die oorblywende regters of die een oorblywende regter, as die besluit van die hof te aanvaar. 45

(6) Die bepalings van subartikel (4) is van toepassing, met die veranderinge deur die samehang vereis, wanneer 'n verhoor voor twee of meer regters onder die omstandighede in subartikel (5) uiteengesit, voortgaan.

(7) Tydens enige resestydperk moet een regter deur die Regter-president aangewys, ondanks enigiets in hierdie Wet of enige ander wetsbepaling vervat, maar behoudens subartikel (3), al die bevoegdhede, regsheidsbevoegdheid en gesag van 'n Afdeling uitoefen. 50

(8) Geen regter mag sit by die aanhoor van 'n appèl teen 'n uitspraak of bevel gegee in 'n saak wat voor hom of haar aangehoor is nie.

## 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. 5

(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. 10

(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). 15

#### 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 20

(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 25

(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. 30

(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. 35

(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. 40

(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. 45

(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 50

(ii) order that the appeal proceed in the ordinary course.

(3) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application— 55

(a) by one spouse against the other for maintenance *pendente lite*;

**HOOFSTUK 5*****Bevele van grondwetlike ongeldigheid, appelle en oplossing van teenstrydige beslissings*****Verwysing van bevel van grondwetlike ongeldigheid na Konstitusionele Hof**

**15.** (1) (a) Wanneer die Hoogste Hof van Appèl, 'n Afdeling van die Hooggereghof of enige bevoegde hof 'n Parlements-wet, 'n provinsiale Wet of optrede van die President ongeldig verklaar soos in artikel 172(2)(a) van die Grondwet beoog, moet daardie hof die bevel van grondwetlike ongeldigheid ooreenkoms-tig die reëls na die Konstitusionele Hof verwys vir bevestiging. 5

(b) Wanneer 'n persoon of staatsorgaan met voldoende belang direk by die Konstitusionele Hof appèl aanteken of aansoek doen om die bevestiging of verandering van 'n hof se bevel van grondwetlike ongeldigheid, soos in artikel 172(2)(d) van die Grondwet beoog, moet die hof die aangeleentheid volgens die reëls hanteer. 10

(2) Indien deur die Hoofregter daar toe versoek, moet die Minister 'n regsverteenwoordiger aanstel om die betoog ten opsigte van enige aangeleentheid wat na die hof verwys is, soos in subartikel (1) bedoel, aan die hof voor te lê. 15

**Appelle oor algemeen**

**16.** (1) Behoudens artikel 15(1), die Grondwet en enige ander wetsbepaling—

(a) berus 'n appèl teen enige beslissing van 'n Afdeling as 'n hof van eerste instansie, by die verleen van verlof— 20

(i) indien die hof uit 'n enkele regter bestaan het, óf by die Hoogste Hof van Appèl óf by 'n volle Hof van daardie Afdeling, afhangende van die direktief ingevolge artikel 17(6) uitgereik; of

(ii) indien die hof uit meer as een regter bestaan het, by die Hoogste Hof van Appèl; 25

(b) berus 'n appèl teen enige beslissing van 'n Afdeling van 'n appèl daarheen, by die Hoogste Hof van Appèl by die toestaan van spesiale verlof deur die Hoogste Hof van Appèl; en

(c) berus 'n appèl teen enige beslissing van 'n hof met 'n soortgelyke status aan die Hooggereghof, by die Hoogste Hof van Appèl by die toestaan van verlof deur daardie hof of die Hoogste Hof van Appèl, en die bepalings van artikel 17 is van toepassing met die veranderinge deur die samehang vereis. 30

(2) (a) (i) Wanneer 'n appèl aangehoor word waarvan die geskilpunte van so 'n aard is dat die beslissing wat verlang word geen praktiese uitwerking of gevolg sal hê nie, kan die appèl op hierdie gronde alleen van die hand gewys word. 35

(ii) Buitengewone omstandighede, word die vraag of die beslissing geen praktiese uitwerking of gevolg sal hê, al dan nie, bepaal sonder verwysing na enige oorweging van kostes.

(b) Indien die President van die Hoogste Hof van Appèl of die Regter-president of die voorsittende regter, na gelang van die geval, enige tyd voor die aanhoor van die appèl *prima facie* van oordeel is dat dit gepas sou wees om die appèl van die hand te wys op die gronde in paragraaf (a) uiteengesit, moet hy of sy geskrewe vertoe van die onderskeie partye aanvra oor hoekom die appèl nie aldus van die hand gewys moet word nie. 40

(c) By ontvangs van die vertoe of, indien geen vertoe ontvang is nie wanneer die tyd wat vir die indiening daarvan bepaal is verstryk, moet die President van die Hoogste Hof van Appèl of die Regter-president, na gelang van die geval, die aangeleentheid na drie regters verwys vir oorweging. 45

(d) Die regters wat die aangeleentheid oorweeg kan gelas dat die vraag of die appèl op die gronde in paragraaf (a) uiteengesit van die hand gewys moet word op 'n bepaalde tyd en plek voor hulle beredeneer word, en kan, hetsy hulle aldus gelas het al dan nie óf— 50

(i) beveel dat die appèl van die hand gewys word, met of sonder 'n bevel oor die koste opgeloop in enige van die howe hieronder of ten opsigte van die appèl, met inbegrip van die koste ten opsigte van die voorbereiding en indiening van die skriftelike vertoe; óf

(ii) beveel dat die appèl op die normale wyse voortgaan.

(3) Ondanks enige ander wetsbepaling is daar geen appèl teen enige uitspraak of bevel in verrigtinge betreffende 'n aansoek—

(a) deur een gade teen die ander om onderhoud hangende die geding nie;

- (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  
(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.

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### Leave to appeal

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

- (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, 10 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  
(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 15 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.

(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the 20 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.

(c) An application referred to in paragraph (b) must be considered by two judges of 25 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.

(d) The judges considering an application referred to in paragraph (b) may dispose of the application without the hearing of oral argument, but may, if they are of the opinion 30 that the circumstances so require, 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.

(e) Where an application has been referred to the court in terms of paragraph (d), the court may thereupon grant or refuse it. 35

(f) The decision of the majority of the judges considering an application referred to in paragraph (b), 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 40 and, if necessary, variation.

(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 (f) shall 45 apply with the changes required by the context.

(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  
(b) is subject to the provisions of any other law which specifically limits it or 50 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  
(b) that the appellant pay the costs of the appeal.

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(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—

- (b) om 'n bydrae tot die koste van 'n hangende huweliksgeding nie;  
 (c) om tussentydse toesig oor 'n kind wanneer 'n huweliksgeding tussen sy of haar ouers hangende is of op die punt is om ingestel te word nie; of  
 (d) deur een ouer teen die ander vir tussentydse toegang tot 'n kind wanneer 'n huweliksgeding tussen die ouers hangende is of ingestel staan te word nie.

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**Verlof tot appèl**

**17.** (1) Verlof tot appèl word slegs toegestaan waar die betrokke regter of regters van mening is dat—

- (a) (i) die appèl 'n redelike vooruitsig van sukses sal hê; of  
 (ii) daar 'n ander dwingende rede vir aanhoor van die appèl is, met inbegrip 10 van teenstrydige uitsprake oor die betrokke aangeleentheid;  
 (b) die beslissing wat in die appèl verlang word nie in die bestek van artikel 16(2)(a) val nie; en  
 (c) waar die beslissing waarteen appèl aangeteken staan te word nie al die geskilpunte in die saak dek nie, die appèl tot 'n billike en spoedige oplossing 15 van die werklike geskilpunte tussen die partye sal lei.

(2) (a) Verlof om te appelleer kan deur die regter of regters teen wie se beslissing 'n appèl aanhangig gemaak staan te word of, indien nie geredelik beskikbaar nie, deur enige ander regter of regters van dieselfde hof of Afdeling, toegestaan word.

(b) Indien verlof om te appelleer ingevolge paragraaf (a) van die hand gewys word, 20 kan dit deur die Hoogste Hof van Appèl toegestaan word by aansoek wat binne een maand na die weiering by die griffier van daardie Hof ingedien word, of sodanige langer tydperk wat op goeie gronde toegelaat kan word, en die Hoogste Hof van Appèl kan enige bevel oor kostes wat die betrokke regter of regters gemaak het toe verlof van die hand gewys is, wysig.

(c) 'n Aansoek in paragraaf (b) bedoel moet deur twee regters van die Hoogste Hof van Appèl wat deur die President van die Hoogste Hof van Appèl aangewys is, oorweeg word en in geval van 'n meningsverskil, ook deur die President van die Hoogste Hof van Appèl of enige ander regter van die Hoogste Hof van Appèl wat op dieselfde wyse aangewys is.

(d) Die regters wat 'n aansoek in paragraaf (b) bedoel, oorweeg kan oor die aansoek beskik sonder die aanhoor van mondelinge betoog, maar kan, indien hulle van mening is dat die omstandighede dit vereis, gelas dat dit op 'n aangewese tyd en plek voor hulle beredeneer word en kan, hetsy hulle dit beveel het al dan nie, die aansoek toestaan of awys of na die hof verwys vir oorweging.

(e) Waar 'n aansoek ingevolge paragraaf (d) na die hof verwys is, kan die hof dit daarop toestaan of van die hand wys.

(f) Die beslissing van die meerderheid van die regters wat 'n aansoek in paragraaf (d) bedoel oorweeg, of die beslissing van die hof, na gelang van die geval, om die aansoek toe te staan of van die hand te wys is final: Met dien verstande dat die President van die Hoogste Hof van Appèl onder buitengewone omstandighede, hetsy uit sy of haar eie of by aansoek ingedien binne een maand na die beslissing, die beslissing na die hof kan verwys vir heroorweging en, indien nodig, verandering.

(3) 'n Aansoek om spesiale verlof kragtens artikel 16(1)(b) kan deur die Hoogste Hof van Appèl toegestaan word by aansoek ingedien by die griffier van daardie hof binne een maand na die beslissing waarteen appèl aangeteken staan te word, of binne sodanige langer tydperk wat op goeie gronde toegelaat kan word, en die bepalings van subartikel (2)(c) tot (f) is van toepassing met die veranderinge deur die samehang vereis.

(4) Die bevoegdheid om verlof tot appèl toe te staan—

- (a) word nie beperk net omdat die betwiste aangeleentheid nie in geld waardeer 50 kan word nie; en  
 (b) is onderhewig aan die bepalings van enige ander wetsbepaling wat dit spesifiek beperk of spesifiek enige reg op appèl beperk.

(5) Enige verlof om te appelleer mag toegestaan word behoudens voorwaardes wat die betrokke hof bepaal, met inbegrip van 'n voorwaarde—

- (a) wat die geskilpunte in die appèl beperk; of  
 (b) dat die appellant die koste van die appèl dra.

(6) (a) Indien verlof kragtens subartikel (2)(a) of (b) toegestaan word om teen 'n beslissing van 'n Afdeling as 'n hof van eerste instansie bestaande uit 'n enkele regter te appelleer, moet die regter of regters wat die appèl toestaan gelas dat die appèl voor 'n 60 volle hof van daardie Afdeling aangehoor word, tensy hulle van mening is—

- (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) to (f) 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

- (i) dat die beslissing waarteen geappelleer staan te word 'n belangrike regsvraagstuk behels, hetsy vanweë die algemene toepassing daarvan of andersins, of ten opsigte waarvan 'n beslissing van die Hoogste Hof van Appèl benodig word om meningsverskille op te los; of
- (ii) dat die regspleging, hetsy in die algemeen of in die bepaalde saak, oorweging van die beslissing deur die Hoogste Hof van Appèl vereis,  
in welke geval hulle moet aanwys dat die appèl deur die Hoogste Hof van Appèl angehoor word.
- (b) Enige aanwysing deur die hof van 'n Afdeling ingevolge paragraaf (a) gedoen, kan uit eie beweging deur die Hoogste Hof van Appèl ter syde gestel word, of by aansoek ingedien by die griffier deur enige belanghebbende party een maand nadat die aanwysing uitgereik is, of sodanige langer tydperk wat op goeie gronde toegelaat kan word, en kan deur 'n ander aanwysing ingevolge paragraaf (a) vervang word.
- (7) Subartikel (2)(c) tot (f) is met die veranderings deur die samehang vereis van toepassing op enige aansoek by die Hoogste Hof van Appèl betreffende 'n saak wat in 'n appèl ter sprake is.

**Opskorting van beslissing hangende appèl**

**18.** (1) Behoudens subartikels (2) en (3), en tensy die hof onder buitengewone omstandighede anders gelas, word die werking en uitvoering van 'n beslissing wat die onderwerp van 'n aansoek om verlof om te appelleer of van 'n appèl is, opgeskort 20 hangende die beslissing van die aansoek of appèl.

(2) Behoudens subartikel (3), tensy die hof onder buitengewone omstandighede anders gelas, word die werking en uitvoering van 'n beslissing wat 'n tussentydse bevel is wat nie die uitwerking van 'n finale uitspraak het nie, wat die onderwerp van 'n aansoek om verlof om te appelleer of van 'n appèl is, nie opgeskort hangende die 25 beslissing van die aansoek of appèl nie.

(3) 'n Hof kan slegs anders gelas, soos in subartikel (1) of (2) beoog, indien die party wat by die hof aansoek gedoen het om anders te gelas, bykomend op 'n oorwig van waarskynlikhede bewys dat hy of sy onherstelbare skade sal ly indien die hof nie so gelas nie en dat die ander party nie onherstelbare skade sal ly indien die hof so gelas nie. 30

- (4) Indien 'n hof anders gelas, soos in subartikel (1) beoog—
- (i) moet die hof onmiddellik die redes daarvoor aanteken;
  - (ii) het die benadeelde party 'n outomatiese reg van appèl tot die volgende Hoëre Hof;
  - (iii) moet die hof wat sodanige appèl aanhoor, dit as uiters dringend hanteer; en
  - (iv) sal sodanige bevel outomaties opgeskort word, hangende die uitkoms van so 'n appèl.

(5) By die toepassing van subartikels (1) en (2), word 'n beslissing die onderwerp van 'n aansoek om verlof om te appelleer, sodra 'n aansoek om verlof om te appelleer of 'n kennisgewing van appèl ingevolge die reëls by die griffier ingedien is. 40

**Bevoegdhede van hof by aanhoor van appelle**

**19.** Die Hoogste Hof van Appèl of 'n Afdeling wat appèlbevoegdheid uitoefen kan, bykomend tot enige bevoegdheid waarvoor spesifiek in 'n ander wetsbepaling voorsiening gemaak word—

- (a) oor 'n appèl beskik sonder om 'n verbale betoog aan te hoor;
- (b) verdere getuienis ontvang;
- (c) die saak na die hof van eerste instansie terugverwys, of na die hof wat se beslissing die onderwerp van die appèl is, vir verdere verhoor, met sodanige instruksies betreffende die neem van verdere getuienis of andersins soos die Hoogste Hof van Appèl of die Afdeling nodig ag; of
- (d) die beslissing wat die onderwerp van die appèl is bevestig, wysig of ter syde stel en enige beslissing lewer wat die omstandighede mag vereis.

**Beslegting van teenstrydige beslissings in siviele sake**

**20.** Wanneer 'n beslissing oor 'n regsvraag gegee word deur 'n hof van 'n Afdeling wat strydig is met 'n beslissing oor dieselfde regsvraag wat deur 'n hof van enige ander Afdeling gegee is, kan die Minister sodanige strydige beslissings aan die Hoofregter voorlê, wat die aangeleentheid voor die Konstitusionele Hof of die Hoogste Hof van

of Appeal, as the case may be, in order to determine the said question of law for guidance.

## CHAPTER 6

### *Provisions applicable to High Court only*

#### **Persons over whom and matters in relation to which Divisions have jurisdiction**      5

**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 Magistrates' Courts within its area of jurisdiction;      10
- (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.      15

(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 issue an order for attachment of property to confirm jurisdiction.      20

#### **Grounds for review of proceedings of Magistrates' Court**

**22.** (1) The grounds upon which the proceedings of any Magistrates' Court may be brought under review before a court of a Division are—      25

- (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;
- (c) gross irregularity in the proceedings; and
- (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.      30

(2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates' Courts.

#### **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.      35

#### **Time allowed for appearance**

**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—      40

- (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.      45

Appèl, na gelang van die geval, laat beredeneer sodat sodanige regsvraag vir leiding beslis kan word.

## HOOFSTUK 6

### *Bepalings wat slegs op Hooggereghof van toepassing is*

**Persone oor wie en aangeleenthede ten opsigte waarvan Afdelings regsbevoegdheid het** 5

**21.** (1) 'n Afdeling hetregsbevoegdheid oor alle persone wat in sy regsgebied woon of is, en in verband met alle gedinge wat daar ontstaan en alle misdrywe wat daar bereg kan word en alle aangeleenthede wat regtens deur sodanige Afdeling beregbaar is, en is bevoeg—

- (a) om appelle van alle landdroshewe in sy regsgebied aan te hoor en daaroor te beslis;
- (b) om die verrigtinge van alle sodanige howe te hersien;
- (c) om na goeddunke, en indien deur 'n belanghebbende daartoe genader, enige bestaande, toekomstige of voorwaardelike reg of verpligting te ondersoek en te bepaal, al het so iemand nie regtens enige aanspraak op verligting uit hoofde van die bepaling nie.

(2) 'n Afdeling het ookregsbevoegdheid oor 'n persoon wat buite sy regsgebied woon of is en wat gevoeg word as 'n party by 'n geding met betrekking waartoe daardie Afdelingregsbevoegdheid het of wat ingevolge 'n derde-party-kennisgewing 'n party by so 'n geding word, indien bedoelde persoon binne die regsgebied van 'n ander Afdeling woon of is.

(3) Behoudens artikel 28 en die bevoegdhede verleen kragtens artikel 4 van die Wet op die Reëling van Admiraliteitsregsbevoegdheid, 1983 (Wet No. 105 van 1983), kan enige Afdeling 'n bevel uitrek vir beslaglegging op eiendom omregsbevoegdheid te bevestig.

### **Gronde vir hersiening van verrigtinge van landdroshof**

**22.** (1) Die gronde waarop die verrigtinge van enige landdroshof voor 'n hof van 'n Afdeling in hersiening gebring kan word, is—

- (a) gebrek aanregsbevoegdheid van die hof;
- (b) belang in die geding, vooroordeel, kwaadwilligheid of korupsie aan die kant van die voorsittende regterlike beampie;
- (c) growwe onreëlmataigheid in die verrigtinge; en
- (d) die toelating van ontoelaatbare of onbevoegde getuienis of die verwering van toelaatbare of bevoegde getuienis.

(2) Hierdie artikel raak nie die bepalings van enige ander wet betreffende die hersiening van verrigtinge van landdroshewe nie.

### **Vonnis by verstek**

**23.** 'n Vonnis by verstek kan deur die griffier van 'n Afdeling toegestaan en aangeteken word op die wyse en in die omstandighede wat voorgeskryf word in die reëls, en so 'n aangetekende vonnis word geag 'n vonnis van die hof van die Afdeling te wees.

### **Tyd vir verskyning toegelaat**

**24.** Die tydperk toegelaat om in verband met 'n siviele dagvaarding wat beteken is buite die regsgebied van die Afdeling waaruit dit uitgereik is, verskyning aan te teken, moet nie minder wees nie as—

- (a) een maand indien die dagvaarding beteken moet word op 'n plek meer as 150 kilometer vanaf die hof waaruit dit uitgereik is; en
- (b) twee weke in enige ander geval.

### **Omstandighede waarin sekerheidstelling vir koste nie vereis word** 50

**25.** Indien 'n eiser in 'n siviele geding voor van 'n Afdeling in die Republiek, maar

### 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. 5

(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.

### Removal of proceedings from one Division to another or from one seat to another in same Division 10

**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—

- (a) should have been instituted in another Division or at another seat of that Division; or 15
- (b) would be more conveniently or more appropriately heard or determined—
  - (i) at another seat of that Division; or
  - (ii) by another Division,

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 20 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.

### Prohibition on attachment to found jurisdiction within Republic 25

**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

### *Rules of court*

#### Rules of Constitutional Court 30

**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.

(2) The Minister must table every rule and every amendment or repeal thereof in Parliament at least 30 days before the publication thereof. 35

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

- (a) to bring a matter directly to the Court; or
- (b) to appeal directly to the Court from any other court. 40

#### Rules of Supreme Court of Appeal and High Court

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

(2) The provisions of section 29(2) and (3) also apply to rules referred to in subsection (1). 45

buite die reggebied van daardie Afdeling, woon, word sekerheid vir koste in daardie geding nie bloot uit hoofde daarvan van hom of haar geëis nie.

#### Beskikking oor stukke en tenuitvoerlegging van vonnis van rondgaande howe

**26.** (1) Binne een maand na die beëindiging van die sittings van 'n rondgaande hof moet die griffier daarvan, behoudens die voorskrifte van die voorsittende regter of regters, alle stukke in verband met die verrigtings in daardie hof aan die griffier van die Hoogste Hof van Appèl of betrokke Afdeling, na gelang van die geval, stuur om as stukke van daardie Hof of Afdeling gelassee te word. 5

(2) 'n Uitspraak, bevel of vonnis van 'n rondgaande hof kan, behoudens enige toepaslike reëls wat op daardie tydstip van krag is, deur middel van die proses van die Hoogste Hof van Appèl of van die betrokke Afdeling, na gelang van die geval, ten uitvoer gelê word. 10

#### Oorplasing van verrigtinge van een Afdeling na 'n ander of van een setel na 'n ander in dieselfde Afdeling

**27.** (1) Indien enige verrigtinge in 'n Afdeling of by 'n setel van 'n Afdeling ingestel is, en dit vir die hof blyk dat sodanige verrigtinge— 15

- (a) in 'n ander Afdeling of by 'n ander setel van daardie Afdeling ingestel moes wees; of
- (b) geriefliker en meer gepas aangehoor of beslis sou word—
  - (i) by 'n ander setel van daardie Afdeling; of
  - (ii) deur 'n ander Afdeling,

kan daardie hof, op aansoek deur enige party daarin en nadat alle ander partye daarin aangehoor is, gelas dat sodanige verrigtinge oorgeplaas word na daardie ander Afdeling of setel, na gelang van die geval. 20

(2) 'n Lasgewing vir oorplasing kragtens subartikel (1) moet oorgedra word aan die griffier van die hof waarheen die oorplasing gelas word, en by ontvangs van sodanige lasgewing kan daardie hof die betrokke verrigtinge aanhoor en beslis. 25

#### Verbod op beslaglegging om regsbevoegdheid binne Republiek te vestig

**28.** Geen beslaglegging op eiendom om regsbevoegdheid te vestig word teen 'n persoon wat in die Republiek woonagtig is deur 'n Afdeling beveel nie. 30

### HOOFSTUK 7

#### *Hofreëls*

##### Reëls van Konstitusionele Hof

**29.** (1) Die Hoofregter, na oorleg met die Minister, vaardig reëls uit betreffende die wyse waarop die Konstitusionele Hof in enige aangeleentheid betrek kan word, met inbegrip van die aangeleenthede in artikel 172 van die Grondwet bedoel, en alle aangeleenthede betreffende die verrigtinge van en voor die Hof. 35

(2) Die Minister moet elke reël en elke wysiging of herroeping daarvan in die Parlement ter tafel lê ten minste 30 dae voor dit gepubliseer word.

(3) Die reëls moet, wanneer dit in die belang van die geregt is en met toestemming van die Hof, 'n persoon toelaat— 40

- (a) om 'n aangeleentheid direk by die Hof aanhangig te maak; of
- (b) om direk vanaf enige ander hof na die Hof te appelleer.

##### Reëls van Hoogste Hof van Appèl en Hooggereghof

**30.** (1) Reëls vir die Hoogste Hof van Appèl, die Hooggereghof en die landdroshewe word ooreenkomsdig die Wet op die Reëlsraad vir Gereghof, 1985 (Wet No. 107 van 1985), uitgevaardig. 45

(2) Die bepalings van artikel 29(2) en (3) is ook van toepassing op reëls in subartikel (1) bedoel.

## CHAPTER 8

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

#### Part 1

##### Nature of courts

<b>Nature of courts and seals</b>	5
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- 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*.  
(3) The seal of a Superior Court must be kept in the custody of the Registrar.

<b>Proceedings to be carried on in open court</b>	10
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- 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.

##### 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. 15

#### Part 2

##### Adducing of evidence and procedural matters

<b>Certified copies of court records admissible as evidence</b>	20
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- 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. 25

##### 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. 30

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

- (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  
(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 45

## HOOFSTUK 8

### *Algemene bepalings van toepassing op alle Hoër Howe*

#### Deel 1

##### Aard van howe

<b>Aard van howe en seëls</b>	5
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**31.** (1) Elke Hoër Hof is 'n notulerende hof.

(2) Elke Hoër Hof moet 'n seël vir gebruik, na vereiste van omstandighede, hê waarvan die ontwerp deur die President by proklamasie in die *Staatskoerant* voorgeskryf word.

(3) Die seël van 'n Hoër Hof word in die bewaring van die griffier gehou. 10

##### Verrigtinge vind in ope hof plaas

**32.** Buiten soos anders bepaal in hierdie Wet of ander wetsbepalings, word alle verrigtinge in enige Hoër Hof, behalwe vir sover so 'n hof in spesiale gevalle anders gelas, in ope hof gevoer.

<b>Meer as een hof mag terselfdertyd sit</b>	15
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**33.** Die Hoogste Hof van Appèl en enige Afdeling kan enige tyd in soveel volgens voorskrif van hierdie Wet of ander toepaslike wetsbepaling saamgestelde howe sitting hou as wat die beskikbare regters mag toelaat.

#### Deel 2

##### Aanbieding van getuenis en procedurele aangeleenthede 20

##### Gesertifiseerde afdrukke van hofstukke toelaatbaar as getuenis

**34.** Wanneer 'n uitspraak, bevel of ander stuk van 'n Hoër Hof bewys of geïnspekteer moet word of op enige wyse daarna verwys moet word, is 'n afskrif van so 'n uitspraak, bevel of ander stuk wat behoorlik deur die griffier van daardie hof onder die seël daarvan as sodanig gesertifiseer is, *prima facie* bewys daarvan sonder bewys van die egtheid van 25 die handtekening van bedoelde griffier.

##### Wyse om verskyning van getuies of oorlegging van stuk of saak in verrigtinge te verseker en strawwe vir versuim

**35.** (1) 'n Party by verrigtinge voor enige Hooggereghof in verband waarmee die aanwesigheid van getuies of die oorlegging van 'n stuk of saak vereis word, kan die 30 aanwesigheid van 'n getuie of die oorlegging van 'n stuk of saak verkry op die wyse in die reëls van daardie hof bepaal.

(2) Wanneer iemand wat gedagvaar is om as 'n getuie by verrigtinge aanwesig te wees of om 'n stuk of saak oor te lê—

- (a) sonder redelike verskoning versuim om die dagvaarding te gehoorsaam en dit uit die relaas van die persoon wat die dagvaarding beteken het, of uit getuenis onder eed afgelê, blyk dat—
- (i) die dagvaarding beteken is aan die persoon aan wie dit gerig is en dat sy of haar redelike uitgawes, bereken volgens die tarief kragtens artikel 37(1) voorgeskryf aan hom of haar betaal of aangebied is; of
  - (ii) hy of sy betekening ontwyk; of

(b) sonder verlof versuim om aanwesig te bly,

kan die betrokke hof 'n lasbrief uitreik waarby gelas word dat hy of sy in hegtenis geneem en op 'n tyd en plek in die lasbrief vermeld of so spoedig moontlik daarna voor die hof gebring word. 45

(3) 'n Persoon wat kragtens so 'n lasbrief in hegtenis geneem word, kan daarkragtens aangehou word in 'n gevangenis of ander aanholdingsplek of in die bewaring van die

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

(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. 10

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

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**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. 25

(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. 30

(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. 35

(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. 45

**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 disability of such witness. 50

persoon wat hom of haar in bewaring het, ten einde sy of haar aanwesigheid as 'n getuie te verseker of om 'n stuk of saak by die betrokke verrigtinge oor te lê: Met dien verstande dat enige regter van die betrokke hof hom of haar onder borgakte met of sonder borge vir sy of haar verskyning om getuenis af te lê of om 'n stuk of saak oor te lê soos vereis, kan vrylaat.

(4) 'n Persoon wat gedagvaar is om verrigtinge as 'n getuie by te woon of om 'n stuk of saak oor te lê, en wat sonder redelike verskoning versuim om aan so 'n dagvaarding gehoor te gee, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevengenisstraf vir 'n tydperk van hoogstens drie maande.

(5) Indien 'n persoon wat ingevolge subartikel (3) 'n borgakte aangegaan het om te verskyn ten einde by sodanige verrigtinge getuenis af te lê of om 'n saak of stuk oor te lê, sonder redelike verskoning versuim om aldus te verskyn of om sodanige saak of stuk oor te lê, verbeur so 'n persoon sy of haar borgakte, en is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met gevengenisstraf vir 'n tydperk van hoogstens drie maande.

### **Wyse waarop met getuie gehandel kan word by weiering om getuenis af te lê of stukke oor te lê**

**36.** (1) Wanneer 'n persoon wat óf ter voldoening aan 'n dagvaarding óf uit hoofde van 'n lasbrief kragtens artikel 35 uitgereik, verskyn of aanwesig is en mondeling deur die betrokke hoër gelas word om by verrigtinge getuenis af te lê, en—

- (a) weier om 'n eed of plegtige verklaring af te lê;
- (b) nadat hy of sy 'n eed of plegtige verklaring afgelê het, weier om die vrae te beantwoord wat aan hom of haar gestel word; of
- (c) weier of versuim om 'n stuk of saak oor te lê waarvan die oorlegging van hom of haar vereis word,

sonder dat daar grondige rede vir die weiering of versuim bestaan, kan die hof die verrigtinge vir 'n tydperk van hoogstens agt dae verdaag en die persoon wat aldus weier of versuim intussen by lasbrief gevange neem tensy die persoon instem om te doen wat van hom of haar verlang word voordat hy of sy gevange geneem word.

(2) Indien 'n in subartikel (1) bedoelde persoon by die hervatting van die verhoor van die geding weer weier om te doen wat aldus van hom of haar verlang word, kan die hof weereens die verrigtinge verdaag en hom of haar vir 'n dergelike tydperk gevange neem en dit van tyd tot tyd herhaal totdat bedoelde persoon instem om te doen wat van hom of haar verlang word.

(3) Die bepalings van hierdie artikel belet nie die hof om in enige saak uitspraak te gee of die verrigtinge andersins af te handel op grond van ander voldoende getuenis wat afgeneem is nie.

(4) Niemand is verplig om 'n stuk of saak oor te lê wat nie in die dagvaarding vermeld of andersins genoegsaam beskryf is nie, tensy hy of sy dit werklik in die hof het.

(5) Wanneer 'n dagvaarding uitgereik word om die aanwesigheid van 'n persoon te verkry om by verrigtinge getuenis af te lê of 'n boek, stuk of dokument oor te lê, en dit blyk—

- (a) dat hy of sy nie in staat is om getuenis te lewer of 'n boek, stuk of dokument oor te lê wat by 'n geskilpunt in die geding ter sake sou wees nie; of
- (b) dat so 'n boek, stuk of dokument behoorlik deur iemand anders oorgelê sou kon word; of
- (c) dat om hom of haar te verplig om aanwesig te wees op misbruik van geregtelike proses sou neerkom,

kan 'n regter van die hof, ondanks enigets in hierdie artikel vervat, na redelike kennisgewing deur die griffler aan die party wat die dagvaarding uitgeneem het en nadat daardie party in kamers aangehoor is indien hy of sy verskyn, 'n bevel uitvaardig waarby die dagvaarding gekanselleer word.

### **Getuiegelde**

**37.** (1) Die Minister kan, in oorleg met die Minister van Finansies, van tyd tot tyd by kennisgewing in die *Staatskoerant* 'n tarief van toelaes voorskryf wat betaal moet word aan 'n getuie in 'n siviele geding of aan iemand wat so 'n getuie weens die jeug of 'n ouderdoms- of enige gestremdheid van daardie getuie moet begelei.

- (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.
- (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.

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### Reference of particular matters for investigation by referee

**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  
(b) any matter which relates wholly or in part to accounts; or  
(c) any other matter arising in such proceedings,

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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.

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(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.

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(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.

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(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;  
(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—

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- (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, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

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(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.

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(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.

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(2) So 'n kennisgewing kan onderskeid tref tussen persone volgens—

- (a) die afstande wat hulle moet reis om aanwesig te wees by die hof waarheen hulle opgeroep of gedagvaar is; of  
(b) hul professie, beroep of besigheid,

en kan aan daarin vermelde beampies in diens van die Staat die bevoegdheid verleen om, in gevalle waar betaling van toelaes teen die aldus voorgeskrewe tarief buitensporige ontbering kan meebring, die betaling van toelaes teen 'n hoër tarief as daardie tarief te gelas.

(3) Ondanks enige ander wet, kan 'n Hoër Hof beveel dat geen toelaes nie, of slegs 'n deel van die voorgeskrewe toelaes, aan 'n getuie betaal word.

### Verwysing van bepaalde aangeleenthede vir ondersoek deur skeidsregter

**38.** (1) Die Konstitusionele Hof en, in enige siviele geding, enige Afdeling kan, met die toestemming van die partye—

(a) enige aangeleenthed wat 'n uitgebreide ondersoek van dokumente of 'n wetenskaplike, tegniese of plaaslike ondersoek verg wat na die oordeel van die hof nie gerедelik deur die hof uitgevoer kan word nie; of

(b) enige aangeleenthed wat geheel en al of gedeeltelik op rekeninge betrekking het; of

(c) enige ander aangeleenthed wat uit bedoelde geding voortspruit, vir ondersoek en verslag na 'n skeidsregter verwys, en die hof kan die verslag van so 'n skeidsregter in sy geheel of gedeeltelik aanvaar, met of sonder wysigings, of kan so 'n verslag vir verdere ondersoek of verslag of oorweging deur bedoelde skeidsregter terugverwys, of 'n ander bevel ten opsigte daarvan uitvaardig wat nodig of wenslik is.

(2) So 'n verslag of enige deel daarvan wat deur die hof aanvaar word, het sy met of sonder wysigings, het die uitwerking van 'n bevinding van die hof in die betrokke geding.

(3) So 'n skeidsregter het vir die doeleindes van bedoelde ondersoek die bevoegdhede en behartig die ondersoek op die wyse wat by 'n spesiale hofbevel of deur die hofreëls voorgeskryf word.

(4) Vir die doeleindes van die verkryging van die aanwesigheid van 'n getuie (met inbegrip van 'n getuie wat kragtens 'n wetsbepaling in hegenis gehou word) en die oorlegging van 'n dokument of saak voor 'n skeidsregter, word 'n ondersoek kragtens hierdie artikel geag 'n siviele geding te wees.

(5) (a) 'n Persoon wat gedagvaar is om voor 'n skeidsregter te verskyn en getuenis af te lê of 'n dokument of saak oor te lê, en wat sonder voldoende rede—

(i) in gebreke bly om op die bepaalde tyd en plek aanwesig te wees;

(ii) in gebreke bly om aanwesig te bly totdat die ondersoek voltooi is of totdat die skeidsregter hom of haar verlof gee om nie meer aanwesig te wees nie;

(iii) weier om as getuie die eed of 'n plegtige verklaring af te lê; of

(iv) wat na eedadlegging of die aflê van 'n plegtige verklaring, in gebreke bly—

(aa) om 'n vraag aan hom of haar gestel volledig en op bevredigende wyse te beantwoord; of

(bb) wat in gebreke bly om 'n dokument of saak in sy of haar besit of bewaring of onder sy beheer, en tot oorlegging waarvan hy of sy gedagvaar is, oor te lê,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenistraf vir 'n tydperk van hoogstens drie maande.

(b) 'n Persoon wat na eedadlegging of die aflê van 'n plegtige verklaring, valse getuenis voor 'n skeidsregter by 'n ondersoek aflê, met die wete dat die getuenis vals is of sonder dat hy weet of glo dat dit waar is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met die regtens voorgeskrewe strawwe vir meineed.

(6) 'n Skeidsregter is geregtig op die besoldiging wat by die hofreëls voorgeskryf word of, indien geen sodanige besoldiging aldus voorgeskryf is nie, wat die hof bepaal, en op enige redelike uitgawes deur hom of haar vir die doeleindes van die ondersoek aangegaan, en sodanige besoldiging en uitgawes word deur die takseermeester van die hof getakseer en is koste in die geding.

**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—

- (a) in the case of the Constitutional Court, the court deems it in the interests 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.

(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;
- (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
- (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.

(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.

(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.

(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.

(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.

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### Ondervraging op vraagpunte

**39.** (1) Die Konstitutionele Hof en, in verband met 'n siviele geding wat voor hom aanhangig is, enige Afdeling, kan beveel dat die getuienis van 'n persoon by wyse van vraagpunte afgeneem word indien—

- (a) in die geval van die Konstitutionele Hof, die hof dit in die belang van geregtigheid ag; of
- (b) in die geval van 'n Afdeling, daardie persoon buite die regssgebied van die hof woon of homself tydelik daarbuite bevind.

(2) Wanneer 'n bevel kragtens subartikel (1) uitgevaardig word, moet die griffier van die hof daardie feit sertificeer en 'n afskrif van sy of haar sertifikaat aan 'n kommissaris van die hof stuur, tesame met behoorlik en wettiglik opgestelde vraagpunte waaroor ondervraging van die betrokke persoon verlang word, asook die gelde en die bedrag van die onkoste aan daardie persoon betaalbaar ten opsigte van sy verskyning soos hieronder bepaal.

(3) By ontvangs van die sertifikaat, die vraagpunte en bedrae in subartikel (2) beoog, moet die kommissaris, ten opsigte van die betrokke persoon—

- (a) daardie persoon dagvaar om voor hom of haar te verskyn;
- (b) by sy of haar verskyning daardie persoon se getuienis afneem asof hy of sy 'n getuie in 'n siviele geding voor die betrokke hof is;
- (c) voormalde vraagpunte stel asook ander vroeë wat bereken is om volledige en juiste antwoorde op bedoelde vraagpunte te verkry;
- (d) die aldus verkreeë getuienis afneem of laat afneem; en
- (e) die getuienis, as korrek gesertificeer, aan die griffier stuur van die hof waarin die betrokke geding aanhangig is.

(4) Die kommissaris moet verder aan bedoelde griffier 'n sertifikaat stuur wat die bedrag aantoon wat aan die betrokke persoon ten opsigte van die onkoste verbonde aan sy of haar verskyning betaal is, en die koste van uitreiking en bestelling van die prosesstukke waarby daardie persoon gedagvaar is om voor hom of haar te verskyn.

(5) Iemand wat gedagvaar word om ingevolge subartikel (3) te verskyn, en wat sonder redelike verskoning versuim om op die tyd en plek vermeld in die dagvaarding te verskyn, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.

(6) Getuienis op vraagpunte ingevolge hierdie artikel afgeneem en gesertificeer, word behoudens alle wetlike eksepsies as getuienis in voormalde siviele geding aangeneem.

### Wyse waarop met rogatore kommissies, versoekbriewe en stukke vir bestelling afkomstig uit vreemde lande gehandel moet word

**40.** (1) Wanneer 'n rogatore kommissie of versoekbrief in verband met enige siviele verrigtinge wat van 'n Staat of gebied of hof buite die Republiek ontvang is, deur die Direkteur-generaal van die Departement aan die griffier van 'n Afdeling gestuur word, tesame met 'n vertaling in Engels, indien die oorspronklike in 'n ander taal is, en 'n mededeling dat die Minister dit wenslik ag dat daaraan gevolg gegee word sonder om te vereis dat 'n aansoek deur die agente, as daar is, van die partye by die geding of saak by daardie Afdeling gedoen word, lê die griffier bedoelde rogatore kommissie of versoekbrief voor aan 'n regter in kamers om daaraan gevolg te gee.

(2) Wanneer 'n versoek om die betekening aan iemand in die Republiek van 'n siviele prosesstuk of sitasie wat van 'n Staat, gebied of hof buite die Republiek ontvang is, deur die Direkteur-generaal van die Departement aan die griffier van 'n Afdeling gestuur word, tesame met 'n vertaling in Engels, indien die oorspronklike in 'n ander taal is, en 'n mededeling dat die Minister dit wenslik ag dat daaraan gevolg gegee word, laat die griffier bedoelde prosesstuk of sitasie ooreenkomsdig die hofreëls bestel deur die balju of adjunk-balju of iemand wat 'n regter van die betrokke Afdeling spesiaal daartoe aangestel het.

(3) Die betrokke griffier moet, nadat aan so 'n rogatore kommissie, versoekbrief, prosesstuk of sitasie gevolg gegee is, alle ter sake dienende stukke, behoorlik ooreenkomsdig die hofreëls gewaarmerk, aan die Direkteur-generaal van die Departement vir versending deurstuur.

(4) Behalwe waar die Minister anders gelas, word geen ander gelde as uitgawes op 'n Staat, gebied of hof ten behoeve waarvan bestelling soos in hierdie artikel bedoel geskied het, verhaal nie.

#### **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;
  - (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 court adjourns.

(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**

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## **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 Magistrates' Court having jurisdiction in such area.

(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.

## **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.

(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.

## **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.

(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.

### Hof kan gelas dat bepaalde persone verwyder word

**41.** (1) Iemand wat, tydens die sitting van enige Hoër Hof—

- (a) 'n lid van die hof of 'n beampie van die hof teenwoordig by die sitting opsetlik beledig, of wat enige lid of beampie van 'n Hoër Hof opsetlik hinder of belemmer in die uitvoering van sy of haar bevoegdhede of die verrigting van sy of haar pligte;      5
- (b) opsetlik die verrigtinge van die hof onderbreek of hom- of haarsel opsetlik wangedra in die plek waar die sitting van die hof gehou word; of
- (c) iets onbehoorlik berekend doen om 'n hof te beïnvloed ten opsigte van enige aangeleentheid wat deur die hof oorweeg word of oorweeg sal word,      10  
kan, in opdrag van die hof, verwyder en in aanhouding gehou word totdat die hof verdaag.

(2) Verwydering en aanhouding ingevolge subartikel (1) voorkom nie die vervolging van die betrokke persoon in 'n gereghof op 'n aanklag van minagting van die hof nie.

### Deel 3      15

#### Proses van Hoër Howe

##### Strekking en tenuitvoerlegging van proses van hof

**42.** (1) Die proses van die Konstitusionele Hof en die Hoogste Hof van Appèl geld dwarsdeur die Republiek en hul vonnis en bevele moet, behoudens enige toepaslike hofreëls, in enige gebied ten uitvoer gelê word op dieselfde wyse asof dit vonnis of bevele van die Afdeling of die landdroshof is wat in so 'n gebied regsvoegdheid het.      20

(2) Die siviele proses van 'n Afdeling geld dwarsdeur die Republiek en kan binne die regsgebied van enige Afdeling bedien of ten uitvoer gelê word.

(3) Enige lasbrief of ander prosesstuk vir die tenuitvoerlegging van 'n vonnis gelewer of bevel uitgereik teen enige regspersoon, vennootskap of firma kan ten uitvoer gelê word deur beslaglegging op die eiendom of bates van sodanige regspersoon, vennootskap of firma.      25

##### Tenuitvoerlegging van prosesstukke deur balju

**43.** (1) Die balju moet, behoudens die toepaslike reëls, alle vonnis, uitsprake, bevelskrifte, dagvaardings, reëls, orders, lasbriewe, lasgewings en prosesstukke van enige Hoër Hof wat aan die balju gerig is, ten uitvoer lê, en 'n relaas van die wyse waarop dit ten uitvoer gelê is, verstrek aan die hof en aan die party wat dit uitgeneem het.      30

(2) Die relaas van die balju of 'n adjunk-balju van die stappe wat in verband met 'n prosesstuk van die hof gedoen is, is *prima facie* getuienis van die aangeleenthede daarin vermeld.      35

(3) Die balju moet alle persone wat op las van die hof in hegtenis geneem of deur 'n bevoegde gesag in sy of haar bewaring gestel is, ontvang en laat aanhou.

(4) 'n Weiering deur die balju of 'n adjunk-balju om 'n handeling te verrig wat hy of sy regtens vereis word om te verrig, is onderworpe aan hersiening deur die hof by aansoek *ex parte* of na kennisgewing, na gelang van die omstandighede.      40

##### Oorsending van dagvaardings, bevelskrifte en ander prosesstukke en van kennisgewing van uitreiking daarvan

**44.** (1) (a) In 'n siviele geding voor 'n Hoër Hof kan 'n dagvaarding, bevelskrif, lasbrief, reël, bevel, kennisgewing, dokument of ander prosesstuk van 'n Hoër Hof of enige ander mededeling wat volgens wet, reël of ooreenkoms van partye vereis word of gelas is om op iemand te beteken of teen hom of haar ten uitvoer gelê of by die huis of woon- of besigheidsplek van iemand gelaat moet word, sodat so iemand daardeur geraak kan word, per faks of by wyse van enige ander elektroniese medium soos deur die reëls bepaal versend.      45

(b) Die dokument wat as gevolg van die versending in paragraaf (a) beoog ontvang of gedruk is, het dieselfde krag en uitwerking asof die oorspronklike soos voormeld aan so iemand betoon of 'n afskrif daarvan op hom of haar beteken of teen hom of haar ten uitvoer gelê of by hom gelaat is, na gelang van die gevall.      50

- (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,

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is sufficient authority to any officer authorised by law to execute any such warrant or writ for the arrest and detention of such person.

(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.

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(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.

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(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.

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

**45.** The sheriff or a deputy-sheriff may not seize in execution of any process such belongings of the debtor as prescribed, but the Court concerned may in exceptional circumstances and on such conditions as it may determine, in its discretion allow a specific deviation from the prescribed provisions.

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### **Offences relating to execution**

**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;
- (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  
(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,

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

### **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.

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(2) 'n Kennisgewing wat per faks of enige ander deur die reëls gemagtigde elektroniese medium versend is—

- (a) deur enige regterlike of polisiebeampte, griffier, assistent-griffier, balju, adjunk-balju of klerk van die hof; en
- (b) waarin vermeld word dat 'n lasbrief of bevelskrif uitgereik is vir die inhegtenisneming van iemand wat in 'n siviele saak of geding of by siviele verrigtinge moet verskyn of hom moet verweer,

is voldoende magtig aan 'n beampete wat regtens bevoeg is om so 'n lasbrief of bevelskrif vir die inhegtenisneming en aanhouding van sodanige persoon ten uitvoer te lê.

(3) (a) 'n Persoon wat gearresteer is soos in subartikel (2) beoog, kan vir die kortste tydperk wat redelik nodig is aangehou word, maar hoogstens 48 uur, ten einde die persoon voor 'n regter van 'n Hoër Hof te bring.

(b) Die regter in paragraaf (a) bedoel moet 'n bevel uitreik betreffende die betrokke persoon se aanwesigheid by enige verdere hofverrigtinge en die persoon waarsku dat enige versium om die bevel na te kom 'n misdryf is en strafbaar is met 'n boete of gevangenisstraf van hoogstens een jaar.

(c) Enige persoon wat versuim om te voldoen aan 'n bevel in paragraaf (b) bedoel, is skuldig aan 'n misdryf en strafbaar by skuldigbevinding met 'n boete of gevangenisstraf van hoogstens een jaar.

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### Eiendom nie vir beslaglegging vatbaar

**45.** Die balju of 'n adjunk-balju mag nie by die tenuitvoerlegging van 'n prosesstuk beslag lê op sodanige besittings van die skuldenaar soos voorgeskryf nie, maar die betrokke hof kan in buitengewone omstandighede en op die voorwaardes wat hy bepaal, na goeddunke 'n bepaalde afwyking van die voorgeskrewe bepalings toelaat.

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### Oortredings in verband met eksekusie

#### 46. 'n Persoon wat—

- (a) 'n balju of adjunk-balju in die uitvoering van sy pligte dwarsboom;
- (b) met die wete dat 'n beslagleggingsbevel of interdik in verband met goed deur 'n Hoër Hof verleen is, daardie goed vernietig of daaroor beskik op 'n wyse wat nie volgens wet gemagtig is nie, of wetens toelaat dat daardie goed, indien in sy of haar besit of onder sy of haar beheer, op so 'n wyse vernietig of daaroor beskik word;
- (c) 'n vonnisskuldenaar is en deur 'n balju of adjunk-balju gelas is om eiendom ter voldoening aan 'n lasbrief tot eksekusie van 'n vonnis teen hom of haar uitgereik, uit te wys, en—
  - (i) valslik aan daardie balju of adjunk-balju verklaar dat hy of sy geen eiendom of nie voldoende eiendom besit om aan die lasbrief te voldoen nie; of
  - (ii) hoewel hy of sy van sodanige eiendom weet, versuim of weier om daardie eiendom uit te wys of dit aan die balju of adjunk-balju te lewer wanneer hy of sy daartoe versoek word; of
- (d) in die geval van 'n vonnisskuldenaar, weier of versuim om te voldoen aan 'n lasgewing van 'n balju of adjunk-balju in verband met die lewering van dokumente in sy besit of onder sy beheer met betrekking tot die eiendsomsreg op die onroerende goed onder eksekusie,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf van hoogstens een jaar.

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### Uitreiking van dagvaarding of getuiedagvaarding in siviele geding teen regter

**47.** (1) Ondanks andersluidende wetsbepalings, word geen dagvaarding of kennisgewing van mosie teen 'n regter van 'n Hoër Hof ingestel nie, en geen getuiedagvaarding ten opsigte van siviele gedinge op 'n regter van 'n Hoër Hof beteken nie, behalwe met die instemming van die hoof van daardie hof of, in die geval van die hoof van die hof of die Hoofregter, met die instemming van die Hoofregter of President van die Hoogste Hof van Appèl, na gelang van die geval.

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(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

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**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) property not liable to be seized in execution, as contemplated in section 45;
- (f) the manner in which representatives of the magistracy must be engaged in the application of section 8. 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

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**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 main seat of 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; 40
- (e) Free State High Court, Bloemfontein, becomes the main seat of the Free State Division;
- (f) KwaZulu-Natal High Court, Durban, becomes a local seat of the KwaZulu-Natal Division;
- (g) KwaZulu-Natal High Court, Pietermaritzburg, becomes the main seat of the KwaZulu-Natal Division; 45
- (h) Limpopo High Court, Thohoyandou, subject to subsection (2), becomes a local seat of the Limpopo Division;
- (i) Northern Cape High Court, Kimberley, becomes the main seat of the Northern Cape Division; 50
- (j) North Gauteng High Court, Pretoria, becomes the main seat of the Gauteng Division;

(2) Waar toestemming tot die uitreiking van 'n dagvaarding of getuiedagvaarding teen 'n regter in 'n siviele saak verleen is, moet die datum waarop so 'n regter die hof moet bywoon in oorleg met die betrokke hoof van die hof bepaal word.

### Waarnemende regters van Hoër Howe

**48.** 'n Persoon wat as 'n waarnemende regter van 'n Hoër Hof aangestel is, word geag aangestel te wees vir enige tydperk waartydens hy of sy noodwendig besig is met die beskikking oor enige verrigtinge waarin hy of sy as 'n regter deelgeneem het, met inbegrip van 'n aansoek om verlof tot appèl waaroor nog nie beskik is toe sy of haar aanstellingstydperk verstryk het nie. 5

### Regulasies 10

**49.** (1) Die Minister kan, op advies van die Hoofregter, regulasies uitvaardig betreffende—

- (a) enige aangeleentheid wat nodig of dienstig kan wees om voor te skryf oor die administratiewe werksaamhede van howe en die doeltreffende en effektiewe funksionering en administrasie van die howe, met inbegrip van die voorstiening van periodieke opgawes van statistieke oor enige aspek van die funksionering en administrasie van howe en die verrigting van regterlike werksaamhede; 15
- (b) die maatstawwe wat toegepas word om die getal regters wat vir die Hoogste Hof van Appèl en enige spesifieke Afdeling aangestel staan te word, te bepaal; 20
- (c) enige protokol wat gevolg moet word ten opsigte van enige konsultasieproses wat ingevolge hierdie Wet vereis word;
- (d) die bepaling van resestydperke van die Hoër Howe;
- (e) eiendom wat nie vir beslaglegging vatbaar is nie, soos in artikel 45 beoog;
- (f) die wyse waarop verteenwoordigers van die landdroste by die toepassing van artikel 8 betrek moet word. 25

(2) Enige regulasie kragtens subartikel (1) uitgevaardig, moet aan die Parlement voorgelê word voordat dit in die *Staatskoerant* gepubliseer word.

## HOOFSTUK 9

### Oorgangsbeplings, wysiging en herroeping van wette, en inwerkingtreding 30

#### Bestaande Hoër Howe

**50.** (1) Op die inwerkingtredingsdatum van hierdie Wet, maar behoudens die uitreiking van enige kennisgewing in artikel 6(3)(a) of (c) bedoel, word die—

- (a) Oos-Kaapse Hooggereghof, Bhisho, 'n plaaslike setel van die Oos-Kaapse Afdeling; 35
- (b) Oos-Kaapse Hooggereghof, Grahamstad, die hoofsetel van die Oos-Kaapse Afdeling;
- (c) Oos-Kaapse Hooggereghof, Mthatha, 'n plaaslike setel van die Oos-Kaapse Afdeling;
- (d) Oos-Kaapse Hooggereghof, Port Elizabeth, 'n plaaslike setel van die Oos-Kaapse Afdeling; 40
- (e) Vrystaatse Hooggereghof, Bloemfontein, die hoofsetel van die Vrystaatse Afdeling;
- (f) KwaZulu-Natalse Hooggereghof, Durban, 'n plaaslike setel van die KwaZulu-Natalse Afdeling; 45
- (g) KwaZulu-Natalse Hooggereghof, Pietermaritzburg, die hoofsetel van die KwaZulu-Natalse Afdeling;
- (h) Limpopo Hooggereghof, Thohoyandou, behoudens subartikel (2), 'n plaaslike setel van die Limpopo Afdeling;
- (i) Noord-Kaapse Hooggereghof, Kimberley, die hoofsetel van die Noord-Kaapse Afdeling; 50
- (j) Noord-Gautengse Hooggereghof, Pretoria, die hoofsetel van die Gautengse Afdeling;

- (k) North West High Court, Mahikeng, becomes the main seat of the North West Division;  
(l) South Gauteng High Court, Johannesburg, becomes a local seat of the Gauteng Division; and  
(m) Western Cape High Court, Cape Town, becomes the main seat of the Western Cape Division, 5

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.

(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. 10

(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. 15

(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. 16

(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 and the Minister, and with the consent of the judge concerned, transfer any judge of a Division to the Limpopo, Mpumalanga or North West Division. 20

#### **Rules in existence immediately before commencement of Act** 25

**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. 30

(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. 35

#### **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; 40  
(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. 45

#### **Financial accountability**

**54.** (1) The Minister must consider and 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. 50

- (k) Noordwes Hooggereghof, Mahikeng, die hoofsetel van die Noordwes Afdeling;  
 (l) Suid-Gautengse Hooggereghof, Johannesburg, 'n plaaslike setel van die Gautengse Afdeling; en  
 (m) Wes-Kaapse Hooggereghof, Kaapstad, die hoofsetel van die Wes-Kaapse Afdeling,

van die Hooggereghof van Suid-Afrika, en die regsgebied van elk van daardie howe word die regsgebied of deel van die regsgebied, na gelang van die geval, van die betrokke Afdeling.

(2) Ondanks artikel 6(1) funksioneer die Gautengse Afdeling ook as die Afdelings van Limpopo en Mpumalanga onderskeidelik, totdat 'n kennisgewing ingevolge artikel 6(3) ten opsigte van daardie Afdelings in werking tree.

(3) 'n Rondgaande hof ingestel kragtens enige wetsbepaling wat deur hierdie Wet herroep is en wat onmiddellik voor die inwerkingtreding van hierdie Wet bestaan, word geag ingevolge hierdie Wet ingestel te wees as 'n Rondgaande hof van die betrokke Afdeling.

(4) 'n Persoon wat die amp beklee van Regter-president, adjunk-regter-president of regter van 'n Hof in subartikel (1) bedoel, word die Regter-president, 'n adjunk-regter-president of 'n regter van die betrokke Afdeling, na gelang van die geval.

(5) Die President kan, met die oog op die fasilitering en bevordering van effektiewe en doeltreffende regsgespleging in die Afdelings wat ingevolge hierdie Wet ingestel is, na oorleg met die Hoofregter, die Minister, en met die instemming van die betrokke regter, enige regter van 'n Afdeling na die Limpopo, Mpumalanga of Noordwes Afdeling verplaas.

#### **Reëls wat onmiddellik voor inwerkingtreding van Wet bestaan**

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**51.** Die reëls wat onmiddellik voor die inwerkingtreding van hierdie artikel op die Konstitusionele Hof, Hoogste Hof van Appèl en die verskeie Hoë Howe van toepassing is, bly van toepassing in die mate wat dit nie onbestaanbaar met hierdie Wet is nie, totdat dit herroep of gewysig word.

#### **Hangende verrigtinge wanneer Wet in werking tree**

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**52.** (1) Behoudens artikel 27, moet verrigtinge wat hangende is wanneer hierdie Wet in werking tree, voortgesit en afgehandel word asof hierdie Wet nie deurgevoer is nie.

(2) Verrigting moet, by die toepassing van hierdie artikel, as hangend geag word indien 'n dagvaarding by die inwerkingtreding van hierdie Wet reeds uitgevaardig is, maar 'n uitspraak nog nie gelewer is nie.

(3) Subartikels (1) en (2) is ook van toepassing, met die veranderings deur die samehang vereis, ten opsigte van verrigtinge wat hangende is wanneer 'n kennisgewing in artikel 50(2) beoog in werking tree.

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#### **Verwysings in ander wetsbepalings**

##### **53. Enige verwysing in enige wetsbepaling—**

- (a) na die Wet op die Hooggereghof, 1959, of 'n bepaling van die genoemde Wet, moet uitgelê word as 'n verwysing na hierdie Wet of 'n ooreenstemmende bepaling van hierdie Wet;  
 (b) na 'n Hoër Hof, 'n Hooggereghof, of 'n provinsiale of plaaslike afdeling van 'n Hooggereghof, moet uitgelê word as 'n verwysing na die Hooggereghof van Suid-Afrika of 'n Afdeling in hierdie Wet bedoel, na gelang van die samehang; en  
 (c) na die Appèlafdeling van 'n Hooggereghof, moet uitgelê word as 'n verwysing na die Hoogste Hof van Appèl.

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#### **Finansiële rekenpligtigheid**

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**54.** (1) Die Minister moet versoek om fondse wat vir die administrasie en funksionering van die Hoër Howe benodig word oorweeg en hanteer, soos bepaal deur die Hoofregter na oorleg met die ander hoofde van howe, op die wyse vir die begrotingsprosesse van staatsdepartemente voorgeskryf.

(2) The Secretary-General, as accounting officer of the Office of the Chief Justice in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), 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, in terms of that Act.

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**Repeal and amendment of laws**

**55.** (1) The laws mentioned—

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

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(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.

**Short title and commencement**

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**56.** This Act is called the Superior Courts Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Die Sekretaris-generaal, as rekenpligtige beampte van die Kantoor van die Hoofregter ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), is belas met die verantwoordelikheid om rekenskap te gee van geld ontvang of uitbetaal vir of op rekening van die administrasie en funksionering van die Hoër Howe en moet die nodige rekeningkundige en ander rekords ingevolge daardie Wet laat hou. 5

**Herroeping en wysiging van wette**

**55.** (1) Die wette vermeld in—

- (a) Bylae 1 word hierby herroep tot die mate in die vierde kolom van daardie Bylae uiteengesit;
- (b) Bylae 2 word hierby gewysig tot die mate in die vierde kolom van daardie 10 Bylae uiteengesit.

(2) Enigets gedoen ooreenkomstig enige bepaling van 'n wet wat deur subartikel (1) herroep of gewysig is, word, in soverre dit nodig of gepas is, geag ooreenkomstig die ooreenstemmende bepaling van hierdie Wet gedoen te wees.

**Kort titel en inwerkingtreding**

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**56.** Hierdie Wet heet die Wet op Hoër Howe, 2013, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

## SCHEDULE 1

### *Laws repealed (Section 55(1)(a))*

Item No.	No. and year of law	Short title	Extent of repeal
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 59 up to and including 67
6	Act No. 9 of 1979 (Venda)	Republic of Venda Constitution Act, 1979	Sections 42 up to and including section 52
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

## BYLAE 1

### *Wette herroep (Artikel 55(I)(a))*

Item No.	No. en jaar van wet	Kort titel	Omvang van herroeping
1	Wet No. 59 van 1959	Wet op die Hooggereghof, 1959	Die geheel
2	Wet No. 59 van 1959 (Venda)	Wet op die Hooggereghof, 1959	Die geheel
3	Wet No. 15 van 1969	Wet op die Instelling van die Noord-Kaapse Afdeling van die Hooggereghof van Suid-Afrika, 1969	Die geheel
4	Wet No. 15 van 1976 (Transkei)	Republic of Transkei Constitution Act, 1976	Artikels 44 tot en met 53
5	Wet No. 18 van 1977 (Bophuthatswana)	Republic of Bophuthatswana Constitution Act, 1977	Artikels 59 tot en met 67
6	Wet No. 9 van 1979 (Venda)	Republic of Venda Constitution Act, 1979	Artikels 42 tot en met artikel 52
7	Wet No. 32 van 1982 (Bophuthatswana)	Supreme Court of Bophuthatswana Act, 1982	Die geheel
8	Wet No. 5 van 1983 (Transkei)	Supreme Court Act, 1983	Die geheel
9	Dekreet No. 43 van 1990 (Ciskei)	Supreme Court Decree, 1990	Die geheel
10	Dekreet No. 45 van 1990 (Ciskei)	Republic of Ciskei Constitution Decree, 1990	Artikels 27 en 28
11	Wet No. 13 van 1995	Aanvullende Wet op die Konstitusionele Hof, 1995	Die geheel
12	Wet No. 41 van 2001	Wet op Interim Rasionalisering van Regsbevoegdheid van Hoë Howe, 2001	Die geheel
13	Wet No. 30 van 2008	Wet op die Herbenaming van Hoë Howe, 2008	Die geheel

**SCHEDULE 2***Laws amended (Section 55(1)(b))*

<b>Item No.</b>	<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of amendment</b>
1	Act No. 107 of 1985	Rules Board for Courts of Law Act, 1985	<p>1. Amendment of section 3 by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p><b>“(a) [a judge of the Constitutional Court, the Supreme Court of Appeal or a High Court, whom the Minister designates] the Chief Justice as the chairperson;”.</b></p> <p>2. 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><b>“(e) the practice and procedure in connection with the reference of any matter to a referee under [section 19 of the Supreme Court Act, 1959 (Act No. 59 of 1959)] section 38 of the Superior Courts Act, 2013, and the remuneration payable to any such referee;”;</b></p> <p>(c) by the substitution for paragraph (p) of subsection (1) of the following paragraph:</p> <p><b>“(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>;”;</b></p>

**BYLAE 2***Wette gewysig (Artikel 55(I)(b))*

<b>Item No.</b>	<b>No. en jaar van wet</b>	<b>Kort titel</b>	<b>Omvang van wysiging</b>
1	Wet No. 107 van 1985	Wet op die Reëlsraad vir Geregshowe, 1985	<p>1. Wysiging van artikel 3 deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:</p> <p>“(a) [<b>’n regter van die Konstitusionele Hof, die Hoogste Hof van Appèl of ’n Hoë Hof, wat die Minister as die voorsitter aanwys]</b> <u>die Hoofregter, as voorsitter;</u>”.</p> <p>2. Artikel 6 word gewysig—</p> <p>(a) deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan deur die volgende woorde te vervang:</p> <p>“Die Raad kan, met die oog op doeltreffende, vlot en eenvormige regstelling in die Hoogste Hof van Appèl, die [<b>Hoë Howe</b>] <u>Hooggereghof van Suid-Afrika</u> en die laer howe van tyd tot tyd op ’n gereeld grondslag bestaande hofreëls hersien en, met die goedkeuring van die Minister, reëls vir die Hoogste Hof van Appèl, die [<b>Hoë Howe</b>] <u>Hooggereghof van Suid-Afrika</u> en die laer howe maak, wysig of herroep tot reëling van—”;</p> <p>(b) deur paragraaf (e) van subartikel (1) deur die volgende paragraaf te vervang:</p> <p>“(e) die praktyk en prosedure in verband met die verwysing van ’n aangeleentheid na ’n skeidsregter kragtens [<b>artikel 19 van die Wet op die Hooggereghof, 1959</b> (<b>Wet No. 59 van 1959</b>)] <u>artikel 38 van die Wet op Hoër Howe, 2013</u>, en die vergoeding aan so ’n skeidsregter betaalbaar;”;</p> <p>(c) deur paragraaf (p) van subartikel (1) deur die volgende paragraaf te vervang:</p> <p>“(p) die bewaring van en beskikking oor aanteekeninge of notule van getuenis en verrigtinge in die Hoogste Hof van Appèl en die [<b>Hoë Howe</b>] <u>Hooggereghof van Suid-Afrika</u>;”;</p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>(d) by the substitution for paragraph (t) of subsection (1) of the following paragraph:</p> <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 [High Courts and the lower courts] <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:</p> <p>“(a) Different rules may be made in respect of the Supreme Court of Appeal, the [High Courts and the lower courts] <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:</p> <p>“(ii) the different [High Courts] <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:</p> <p>“(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 [provincial division] <u>Division of the [Supreme Court] High Court of South Africa</u> has in relation to matters under its jurisdiction.”.</p>

Item No.	No. en jaar van wet	Kort titel	Omvang van wysiging
			<p>(d) deur paragraaf (t) van subartikel (1) deur die volgende paragraaf te vervang:            “(t) oor die algemeen enige aangeleentheid wat nodig of nuttig mag wees om voor te skryf ten einde die behoorlike afhandeling en reëling van die werksaamhede van die Hoogste Hof van Appèl, die <b>[Hoë Howe] Hoog-gereghof van Suid-Afrika en die laer howe in siviele sowel as in strafsake te verseker[; en].”;</b></p> <p>(e) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:            “(a) Verskillende reëls kan ten opsigte van die Hoogste Hof van Appèl, die <b>[Hoë Howe] Hoog-gereghof van Suid-Afrika en die laer howe</b> en ten opsigte van verskillende soorte verrigtinge gemaak word.”;</p> <p>(f) deur subparagraph (i) van subartikel (2)(b) te skrap; en</p> <p>(g) deur subparagraph (ii) van subartikel (2)(b) deur die volgende subparagraph te vervang:            “(ii) die verskillende <b>[Hoë Howe] Afdelings van die Hooggereghof van Suid-Afrika; of</b>”.</p>
2	Wet No. 66 van 1995	Wet op Arbeids-verhoudinge, 1995	<p>1. Artikel 151 word gewysig deur subartikel (2) deur die volgende subartikel te vervang:            “(2) Die Arbeidshof is ’n Hoër Hof wat, met betrekking tot die aangeleenthede onder syregsbevoegdheid, beskik oor gesag, inherente bevoegdhede en status wat gelykwaardig is aan dié waaroor ’n hof van ’n <b>[provinsiale] Afdeling van die Hooggereghof van Suid-Afrika</b> met betrekking tot die aangeleenthede onder syregsbevoegdheid, beskik.”.</p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>2. Amendment of section 154—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(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</u> office until discharged from active service in terms of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).”;</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A judge of the Labour Court <u>who is also a judge of the High Court</u> may resign <u>as a judge of the Labour Court</u> 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:</p> <p>“(4) Neither the tenure of office nor the <i>remuneration</i> 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:</p> <p>“(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>”]</p>

Item No.	No. en jaar van wet	Kort titel	Omvang van wysiging
			<p>2. Artikel 154 word gewysig—</p> <p>(a) deur subartikel (1) deur die volgende subartikel te vervang:            “(1) ’n Regter van die Arbeidshof [<b>word aangestel vir ’n tydperk wat deur die President ten tyde van aanstelling bepaal word</b>] beklee die amp tot ontslag uit aktiewe diens ingevolge die Wet op Besoldiging en Diensvoorraardes van Regters, 2001 (<u>Wet No. 47 van 2001</u>).”;</p> <p>(b) deur subartikel (2) deur die volgende subartikel te vervang:            “(2) ’n Regter van die Arbeids-hof <u>wat ook ’n regter van die Hooggeregshof is kan as ’n regter van die Arbeidshof</u> bedank deur skriftelik kennis aan die President te gee.”;</p> <p>(c) deur subartikel (3) te skrap;</p> <p>(d) deur subartikel (4) deur die volgende subartikel te vervang:            “(4) Die ampsbekleding en die <i>besoldiging</i> en aanstellingsbedinge en -voorraardes wat ten opsigte van ’n regter van die [<b>Hoë Hof</b>] <u>Hooggeregshof</u> van toepassing is ingevolge die Wet op Besoldiging en Diensvoorraardes van Regters, [1989 (<u>Wet No. 88 van 1989</u>)] 2001, word nie geraak deur daardie regter se aanstelling en gelyktydig ampsbekleding as ’n regter van die Arbeidshof nie.”;</p> <p>(e) deur subartikel (5) deur die volgende subartikel te vervang:            “(5) [(a) <b>Die besoldiging betaalbaar aan ’n regter van die Arbeidshof wat ’n persoon is soos bedoel in artikel 153(6)(a)(ii), is dieselfde as dié wat aan ’n regter van die Hoë Hof betaalbaar is.</b></p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>(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] <u>The Judges' Remuneration and Conditions of Employment Act, 2001</u>, 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.”;</p> <p>(f) by the deletion of subsection (7);</p> <p>(g) by the substitution for subsection (9) of the following subsection:</p> <p>“(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> <p>(h) by the addition of the following subsection:</p> <p>“(10)(a) Any judge of the Labour Court holding office immediately before the commencement of Schedule 2 of the Superior Courts Act, 2013, 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.</p> <p>(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—</p> <p>(i) shall continue to hold that office in accordance with this section as amended by Schedule 2 to the Superior Courts Act, 2013; and</p>

Item No.	No. en jaar van wet	Kort titel	Omvang van wysiging
			<p>(b) Die aanstellingsbedinge en voorwaardes van 'n regter van die Arbeidshof in paragraaf (a) bedoel, is dieselfde as dié van 'n regter van die Hoë Hof] Die Wet op Besoldiging en Dienstvoorraad van Regters, 2001, soos van toepassing op 'n regter van die Hooggereghof, is van toepassing, gelees met die veranderinge deur die samehang vereis, op 'n regter van die Arbeidshof wat nie 'n regter van die Hooggereghof is nie.”;</p> <p>(f) deur subartikel (7) te skrap;</p> <p>(g) deur subartikel (9) deur die volgende subartikel te vervang:</p> <p>“(9) Die bepalings van subartikels [(2) tot (8), saamgelees met die veranderings wat in die konteks nodig is] (4), (5), (6) en (8), gelees met die veranderinge deur die konteks vereis, is van toepassing op waarnemende regters ingevolge artikel 153(5) aangestell.”; en</p> <p>(h) deur die volgende subartikel by te voeg:</p> <p>“(10)(a) 'n Regter van die Arbeidshof wat die amp onmiddellik voor die inwerkingtreding van Bylae 2 tot die Wet op Hoë Howe, 2013, beklee, wat nie 'n regter van die Hooggereghof is nie, kan nie later nie as 30 dae na die inwerkingtreding, die Minister van Justisie inlig dat hy of sy verkies om in die amp voort te gaan ingevolge hierdie artikel soos dit bestaan het voor sodanige inwerkingtreding.</p> <p>(b) 'n Regter in paragraaf (a) bedoel wat nie verkies om in die amp voort te gaan ingevolge hierdie artikel soos dit voor sodanige inwerkingtreding bestaan het nie—</p> <p>(i) sal voortgaan om daardie amp ooreenkomsdig hierdie artikel soos gewysig deur Bylae 2 tot die Wet op Hoë Howe, 2013, te beklee; en</p>

Item No.	No. and year of law	Short title	Extent of amendment
			<p>(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.”.</p> <p>3. Amendment of section 170—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) A judge of the Labour Appeal Court may resign from that office by giving written notice to the President.”;</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Neither the tenure of office nor the <i>remuneration</i> 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</p> <p>(c) by the deletion of subsection (5).</p>

Item No.	No. en jaar van wet	Kort titel	Omvang van wysiging
			<p>(ii) sy of haar dienstydperk as 'n regter van die Arbeidshof voor sodanige inwerkingtreding sal, by die toepassing van die Wet op Besoldiging en Diensvoorraardes van Regters, 2001, geag word aktiewe diens in daardie Wet beoog te wees.”.</p> <p>3. Artikel 170 word gewysig—</p> <p>(a) deur subartikel (2) deur die volgende subartikel te vervang:</p> <p>“(2) 'n Regter van die Arbeidsappèlhof kan uit daardie amp bedank deur skriftelik kennis aan die President te gee.”;</p> <p>(b) deur subartikel (4) deur die volgende subartikel te vervang:</p> <p>“(4) Die ampsbekleding en die besoldiging en aanstellingsbedinge en -voorraardes wat ten opsigte van 'n regter van die [Hoë Hof] Hooggereghof van toepassing is ingevolge die Wet op Besoldiging en Diensvoorraardes van Regters, [1989 (Wet 88 van 1989)] 2001 (Wet No. 47 van 2001), word nie geraak deur daardie regter se aanstelling en gelyktydige ampsbekleding as 'n regter van die Arbeidsappèlhof nie.”; en</p> <p>(c) deur subartikel (5) te skrap.</p>

