

## JURISDICTION OF REGIONAL COURTS AMENDMENT ACT 31 OF 2008

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[ASSENTED TO 1 NOVEMBER 2008] [DATE OF COMMENCEMENT: TO BE PROCLAIMED]

*(English text signed by the President)*

### ACT

**To amend the Magistrates' Courts Act, 1944, so as to confer on courts for regional divisions jurisdiction in respect of certain civil disputes, including matters currently regulated by section 10 of the Administration Amendment Act, 1929; to repeal the Administration Amendment Act, 1929; to effect consequential amendments to certain other laws; and to provide for matters connected therewith.**

#### Preamble

SINCE the Divorce Courts established under section 10 of the Administration Amendment Act, 1929, have their origins based on race;

AND SINCE these Courts, although now open to all races, are not geographically distributed throughout the national territory;

AND SINCE courts for regional divisions only deal with criminal matters, while courts for districts deal with criminal and civil matters;

IT IS CONSEQUENTLY THE PURPOSE of this Act, as an interim measure, pending the further rationalisation of the lower courts, to-

- enhance access to justice by conferring jurisdiction on courts for regional divisions which are distributed throughout the national territory to deal with certain civil matters, including matters currently dealt with in the Divorce Courts established under section 10 of the Administration Amendment Act, 1929; and
- promote the development of judicial expertise among the ranks of magistrates with the view to broadening the pool of fit and proper persons qualifying for appointment to the superior courts,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

- 1** Amends section 1 of the Magistrates' Courts Act 32 of 1944 by substituting the definition of 'court'.
- 2** Substitutes section 2 of the Magistrates' Courts Act 32 of 1944 .
- 3** Amends section 9 (1) of the Magistrates' Courts Act 32 of 1944 by deleting paragraph (c) .
- 4** Amends section 12 of the Magistrates' Courts Act 32 of 1944 , as follows: paragraph (a) substitutes subsection (1) (a) ; paragraph (a) substitutes subsection (2) (b) ; paragraph (c) repeals subsection (5); and paragraph (d) adds subsections (6), (7) and (8).

**5 Inserts section 13A in the Magistrates' Courts Act 32 of 1944 .****6** Substitutes section 28 of the Magistrates' Courts Act 32 of 1944 .**7** Substitutes section 29 of the Magistrates' Courts Act 32 of 1944 .**8 Amends section 46** of the Magistrates' Courts Act 32 of 1944 by repealing subsection (1).**9 Transitional provisions**

(1) Any proceedings instituted in a court established under section 10 of the Administration Amendment Act, 1929 ( Act 9 of 1929 ), before the commencement of this section and which are not concluded before the commencement of this section must be continued and concluded in all respects as if this Act had not been passed.

(2) On the date of the commencement of this section-

- (a) each court established under section 10 of the Administration Amendment Act, 1929 ( Act 9 of 1929 ), becomes a court of the regional division designated by the Minister in respect of that court;
- (b) any person holding office as a presiding officer of a court referred to in paragraph (a) shall, subject to any condition regarding his or her term of office and any condition of service applicable to his or her appointment to that office, hold office as a magistrate of the regional division contemplated in paragraph (a) ; and
- (c) any person who is an officer of a court referred to in paragraph (a) , continues to hold such office as an officer of the regional court in question.

(3) Notwithstanding subsection (2) (a) -

- (a) the area of jurisdiction of any court referred to in that subsection shall, subject to any subsequent amendment thereof, remain as it existed immediately before the commencement of this section;
- (b) in so far as such area of jurisdiction overlaps with the areas of jurisdiction of regional divisions other than the regional division of which such court has become a court of, those other regional divisions or the relevant portions thereof are deemed to have been annexed to the regional division of the court in question in terms of section 2 (1) (e A ) of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ); and
- (c) the place or places of sitting of such court must be deemed to have been designated in terms of a notice contemplated in section 2 (1) (i A ) (ii).

(4) The rules in force on the date of the commencement of this Act in respect of the courts established under section 10 of the Administration Amendment Act, 1929 ( Act 9 of 1929 ), remain in force until they are repealed or amended by a competent authority.

(5) Any reference in any law to a Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 ( Act 9 of 1929 ), is deemed to be a reference to a court of a regional division.

(6) (a) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 ( Act 107 of 1985 ), must, within six months after the commencement of this Act, review and amend the existing rules of the magistrates'

courts and the rules referred to in subsection (4), in order to ensure that courts of regional divisions can exercise the jurisdiction conferred on them under the Magistrates' Courts Act, 1944, as amended by this Act, effectively and efficiently.

(b) Any rules made or amended as a result of the amendments to the Magistrates' Courts Act, 1944, by this Act, must be aimed at enhancing access to the courts by, amongst others and as far as is reasonably possible-

- (i) providing for simplified and expeditious procedures;
- (ii) providing for clerks or registrars to assist litigants;
- (iii) limiting the costs associated with the litigation processes; and
- (iv) retaining or improving the measures introduced by the rules referred to in subsection (4) in order to facilitate and promote access to the courts referred to in subsection (1).

(c) The rules referred to in paragraph (a) must be submitted to Parliament.

**10 Repeal and amendment of laws, and saving**

(1) The Administration Amendment Act, 1929 ( Act 9 of 1929 ), is hereby repealed.

(2) The laws referred to in the first column of the Schedule are hereby amended to the extent mentioned in the third column thereof.

(3) Nothing in this Act affects any of the powers exercised by the Minister in terms of section 2 of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ), before the commencement of this Act.

**11 Short title and commencement**

(1) This Act is called the Jurisdiction of Regional Courts Amendment Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette* .

(2) Different dates may be so fixed in respect of different regional divisions for the purposes of section 2 (1) (g) (ii) of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ), as inserted by section 2 of this Act.

**Schedule**  
**LAWS AMENDED BY SECTION 10 (2)**

No and year of law	Short title	Extent of amendment
Act 53 of 1979	Attorneys Act, 1979	1 The amendment of section 8 by the substitution for subsection (1) of the following subsection:  '(1) Any candidate attorney who has satisfied all the requirements for the degree referred to in paragraph (a) of section 2 (1), or for the degrees referred to in paragraph (a A ) of that section, or for a degree or degrees referred to in paragraph (a B ) of that section in respect of which a certification in accordance with that paragraph has been done, shall be entitled to appear in any court, other than any High Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearance as if he or she himself or

		<p>herself had appeared: Provided that such a candidate attorney shall not be entitled to appear in a court of a regional division established under section 2 of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ), unless he or she-</p> <ul style="list-style-type: none"> <li>(i) has previously practised as an advocate for at least half a year; or</li> <li>(ii) has served for at least one year under his or her articles or contract of service; or</li> <li>(iii) has at least one year's experience as a state advocate, state prosecutor or magistrate.'</li> </ul>
Act 70 of 1979	Divorce Act, 1979	<p>1 The amendment of section 1 by the substitution for the definition of 'court' of the following definition:</p> <p>' <b>"court"</b> means any High Court as contemplated in section 166 of the Constitution of the Republic of South Africa, 1996, or a court for a regional division contemplated in section 29 (1B) of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ), which has jurisdiction with respect to a divorce action;'</p>
Act 90 of 1986	Sheriffs Act, 1986	<p>1 The amendment of section 1 by the substitution for the definition of 'lower court' of the following definition:</p> <p>' <b>"lower court"</b> means a court established under the Magistrates' Courts Act, 1944 ( Act 32 of 1944 );'</p>
Act 24 of 1987	Mediation in Certain Divorce Matters Act, 1987	<p>1 The amendment of section 1 by the insertion before the definition of 'Family Advocate' of the following definition:</p> <p>' <b>"court"</b> means the court having jurisdiction in any action or proceedings referred to in section 4;'</p>
Act 78 of 1997	Qualification of Legal Practitioners Amendment Act, 1997	<p>1 The amendment of section 11 by the substitution for subsection (2) of the following subsection:</p> <p>'(2) Any candidate attorney who at the commencement of this Act-</p> <ul style="list-style-type: none"> <li>(a) has satisfied the requirement for the degree of <i>baccalaureus procurationis</i> ; or</li> <li>(b) was registered as a student at any university in the Republic with a view to obtaining the degree of <i>baccalaureus procurationis</i> and provided that he or she has satisfied the requirements for the said degree on or before 31 December 2004,</li> </ul> <p>shall be entitled to appear in any court, other than any High Court, or a court of a</p>

		regional division established under section 2 of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ), and before any board, tribunal or similar institution in which his or her principal is entitled to appear, instead of or on behalf of such principal, who shall be entitled to charge the fees for such appearance as if he or she himself or herself had appeared.'.
Act 99 of 1998	Maintenance Act, 1998	1 The substitution for section 3 of the following section:  ' <b>3 Maintenance courts</b>  Every magistrate's court for a district, established in terms of section 2 (1) (e) of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ), is within its area of jurisdiction a maintenance court for the purposes of this Act.'.
Act 116 of 1998	Domestic Violence Act, 1998	1 The amendment of section 1 by the substitution for the definition of 'court' of the following definition:  ' " <b>court</b> " means any magistrate's court for a district contemplated in the Magistrates' Courts Act, 1944 ( Act 32 of 1944 ).'.
Act 120 of 1998	Recognition of Customary Marriages Act, 1998	1 The amendment of section 1 by the substitution for the definition of 'court' of the following definition:  ' " <b>court</b> " means a High Court or a court for a regional division contemplated in section 29 (1B) of the Magistrates' Courts Act, 1944 ( Act 32 of 1944 );'.
Act 12 of 2004	Prevention and Combating of Corrupt Activities Act, 2004	1 The amendment of section 1 by the deletion of paragraph (g) of the definition of 'judicial officer'.