

Theft, where the value of the property involved does not exceed E1000,00.

Any statutory offence where the maximum penalty determined by that statute is a fine of less than E300,00 or three months imprisonment.

Conspiracy, incitement or attempt to commit any offence referred to in this schedule.

Public violence.

Culpable homicide.

Arson.

House breaking, whether under common law or a statutory provision, with intent to commit an offence, if the amount involved in the offence does not exceed E20,000

Robbery, other than robbery with aggravating circumstances, if the amount involved in the offence does not exceed E20,000

Theft where the amount involved does not exceed E20,000

Any other offence under any law relating to the illicit possession of dependence producing drugs.

Forgery, uttering or fraud, where the amount concerned does not exceed E20,000

THE SMALL CLAIMS COURT ACT, 2011

(Act No. 1 of 2011)



I ASSENT

MSWATI III
King of Swaziland

..... 2011

AN ACT
ENTITLED

AN ACT to establish the Small Claims Court for the adjudication of small claims and provide for incidental matters.

ENACTED the King and the Parliament of Swaziland

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SCHEDULE

PART I
PRELIMINARY PROVISIONS*Short title and commencement*

1. (1) This Act may be cited as the Small Claims Courts Act, 2008 and shall come into operation on a date to be determined by the Minister and published in the Government Gazette.
- (2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

Interpretations

2. In this Act, unless the context otherwise requires-
 "commissioner" means a commissioner for Small Claims Court appointed under section 10;
 "court" means a court established under section 3;
 "Minister" means the Minister responsible for Justice;
 "prescribed" means prescribed under section 26;
 "record" means to take down in writing or in shorthand;
 "regulations" means the regulations made under section 26 and section 50;
 "the rules" means the rules made under section 26;
 "this Act" includes the rules and regulations.

PART II
ESTABLISHMENT AND NATURE OF SMALL CLAIMS COURTS*Establishment of court*

3. (1) The Minister, after consultation with the Chief Justice, may by notice published in the Gazette-
 - (a) establish for any area consisting of one or more Regions of the regions of the country or a part of a Region a court to be known as a Small Claims Court for the adjudication of claims in terms of this Act,
 - (b) determine the seat of such the court;
 - (c) determine one or more places in the area concerned for the holding of sessions of such a court;
 - (d) alter the area for which such a court has been established by including therein or exercising therefrom any Region or Regions or part thereof;
 - (e) abolish a court established in terms of this section; and
 - (f) amend or withdraw any notice issued in terms of this section.

- (2) Where the Minister deems it necessary and expedient, the Minister or a principal magistrate of a Region, if so authorized by the Minister and the Chief Justice, may, notwithstanding the provisions of subsection (1) -

- (a) establish for a Region or part of that Region a court for the adjudication of any particular claim or claims in terms of this Act; and
- (b) determine the place in the Region for the holding of sessions of such a court.

Nature of courts and force of process

4. (1) Subject to the provisions of subsection (2), the court shall not be required to electronically record its proceedings.
- (2) The presiding officer shall record or cause to be recorded a brief statement of the proceedings and the verdict, judgment or order of the court and shall sign it.
- (3) The process of the court shall be served or executed in the prescribed manner.
- (4) Every process of the court shall be of force throughout the country.

Courts open to public

5. (1) Subject to the provisions of subsection (2), the proceedings of the court shall take place in open court.
- (2) A court may, in the interest of the administration of justice or of good order or of public morals or at the request of the parties to the proceedings for reasons considered sufficient by the court, order that the proceedings be held behind closed doors or that specified persons shall not be present at those proceedings.
- (3) If any person present at the proceedings of a court disturbs the order of the court, the court may order that such person be removed and or detained in custody until the court adjourns, or the court may, if in its opinion order cannot be otherwise maintained, order that the court room be cleared and that the public shall not be present at the proceedings.

Language medium at proceedings

6. (1) Subject to subsection (2) either of the official languages of the country may be used at any stage of the proceedings of the court.
- (2) A commissioner shall record the proceedings of the Court in English unless it is provided otherwise by another applicable law.
- (3) If evidence is given in a language with which one of the parties is in the opinion of the court not sufficiently conversant, a competent interpreter may be called by the court to interpret that evidence into a language with which that party appears to be sufficiently conversant, irrespective of whether the language in which the evidence is given is one of the official languages.

Inspection of documents by public and custody of those documents

7. (1) Subject to the provisions of the rules, the documents of a court shall be available for inspection by the public under the supervision of the clerk of the court at the prescribed times and upon payment of the prescribed fees, and those documents shall be preserved at the seat of the magistracy of the Region in which the seat of that court is situated or some other place as the presiding officer may direct.

(2) The documents mentioned in subsection (1) shall be kept for such period as the Minister or Attorney General may, in writing or by notice published in the Gazette, determine.

(3) The Attorney General may order that after the expiry of the period contemplated in subsection (2) the documents so preserved shall be removed to a specified place of custody or be destroyed or otherwise disposed of.

Parties who may appear in court

8. (1) Only a natural person may institute an action in a court and, subject to the provisions of section 15 (2), a juristic person may become a party to an action in a court only as defendant.

(2) A party to an action shall appear in person before the court and, subject to the provisions of subsection (3), shall not be represented by any person during the proceedings.

(3) A juristic person shall be represented in a court by its duly nominated director or other officer.

**PART III
PRESIDING OFFICERS AND OFFICERS OF THE COURT**

Presiding officers

9. The officer presiding at a court shall be known as a Commissioner for Small Claims Court and shall be appointed under section 10.

Appointment of commissioners

10. (1) Subject to the provisions of subsection (2), the Minister in consultation with the Chief Justice, may appoint one or more commissioners for any court under this Act.

(2) An officer in the employ of the Government, with the exception of the Law Officer, shall not be appointed as a commissioner.

(3) A principal magistrate who establishes a court in terms of section 3 (2), may, subject to the provisions of this section, appoint a commissioner for such a court.

(4) A person shall not be appointed as a commissioner unless that person is qualified -

- (a) to be or is admitted as an attorney of the High Court in terms of the Legal Practitioners Act, 1964;
- (b) as an admitted advocate of the High Court in terms of the Legal Practitioners Act, 1964;
- (c) to be appointed, at least, as a senior magistrate; or
- (d) as a law lecturer.

and for an uninterrupted period of at least five years practised as an advocate or attorney or occupied the post of senior magistrate, or for that period was involved in the teaching of law at a higher level in a recognised university, and is a fit and proper person in the opinion of the Minister to be appointed as a commissioner.

(5) A commissioner shall hold office at the pleasure of the Minister.

(6) A commissioner may resign by notice in writing to the Minister.

(7) The Minister may at any time withdraw the appointment of a commissioner if in the opinion of the Minister there is sufficient reason for doing so.

(8) A person appointed under subsection (1) or subsection (3) shall, before commencing with the functions of a commissioner, take an oath or make an affirmation subscribed by that person in the form set out in the First Schedule.

(9) The oath or affirmation referred to in subsection (8) shall be taken or made in open court before a Commissioner of Oaths and the Commissioner of Oaths shall at the foot thereof make a note to the effect that it was taken or made, before that Commissioner of Oaths, and of the date on which it was so taken or made, and append a signature thereto.

Procedure in case of absence or incapacity of commissioners

11. Where by reason of absence or incapacity a commissioner is unable to complete the hearing of an action, that hearing shall be commenced afresh before another commissioner.

Officers of court

12. (1) The Civil Service Commission, or such other authority prescribed by law, shall appoint clerks and assistant clerks of the court, interpreters and legal assistants for any court as may be necessary for the performance of the prescribed functions.

(2) The messenger of the court appointed under section 10 of the Magistrates' Courts Act, 1938, for the magistrate's court exercising jurisdiction over the Small Claims Court, shall act as messenger of the Small Claims Court.

(3) The Government, a clerk of the court, an assistant clerk of the court or a legal assistant shall not be liable for any damage or loss resulting from assistance given in good faith by that clerk of the court, assistant clerk of the court or legal assistant to any party or prospective party to an action before a court or to the enforcement of a judgment or order in terms of section 42 in the form of legal advice or the compilation or preparation of a summons, statement or other document.

(4) The Commissioner shall not be liable for any civil claim, damage or loss arising from any matter he has presided over in good faith.

**PART IV
JURISDICTION**

Area of jurisdiction

13. The area of jurisdiction of a court under this Act shall be the area or region for which it is established.

Transfer of actions

14. An action may, with the consent of all the parties, or upon the application of one of the parties who satisfies the court that the hearing of the action in that court may result in undue expense or inconvenience to one or such party, be transferred by the court to any other court under this Act, and in such a case the latter court shall, notwithstanding anything to the contrary in this Act contained, have jurisdiction to hear that action.

Jurisdiction in respect of persons

15. (1) Subject to the provisions of subsection (2), a court shall have jurisdiction in respect of -
- (a) any person who resides, carries on business or is employed within the area of jurisdiction of the court;
 - (b) any partnership, as defendant, which has business premises situated or any member of the partnership who resides within the area of jurisdiction of the court;
 - (c) any person in respect of any proceedings incidental to any action instituted in that court by such person;
 - (d) any person, whether or not that person resides, carries on business or is employed within the area of jurisdiction of the court, if the cause of action arose wholly within that area;
 - (e) any defendant, whether in convention or reconvention, who appears and takes no objection to the jurisdiction of the court;
 - (f) any person who owns immovable property within the area of jurisdiction of the court in actions in respect of such property or a mortgage bond over that property.
- (2) An action shall not be instituted against the Government in the court.
- (3) A court shall not have jurisdiction in respect of any claim or counterclaim based in whole or in part upon a cession or assignment of rights.

Jurisdiction in respect of causes of action

16. (1) Subject to the provisions of this Act, a court shall have jurisdiction in respect of causes of action in -
- (a) actions for the delivery or transfer of any property, movable or immovable, not exceeding in value the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time by notice in the Gazette, after consultation with the Attorney General and the Chief Justice;
 - (b) subject to paragraph (c), actions for ejectment against the occupier of any premises or land within the area of jurisdiction of the court;
 - (c) actions for ejectment where the right of occupation of the premises or land is in dispute between the parties, that right does not exceed in clear value to the occupier the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time as provided in paragraph (a);
 - (d) actions based on or arising out of a liquid document or a mortgage bond, where the claim does not exceed the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time as provided in paragraph (a);
 - (e) actions based on or arising out of a credit agreement, sales, purchases, loans, recovery of monies paid over or delivered and such similar debts where the claim or the value of the property in dispute does not exceed the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time as provided in paragraph (a);

- (f) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time as provided in paragraph (a);
 - (g) actions for counterclaims not exceeding the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time as provided in paragraph (a) in respect of any cause of action mentioned in paragraph (a) to (e).
- (2) No person shall eject another person from land which is on Swazi National Land unless the cause of ejectment is a transaction involving a lease agreement on the land and that right does not exceed in clear value to the occupier the sum of ten thousand Emalangeni or such an amount as may be prescribed by the Minister from time to time as provided in paragraph (a).

Matters beyond jurisdiction

17. A court shall have no jurisdiction in matters -

- (a) in which the dissolution of any marriage is sought;
- (b) concerning the validity or interpretation of a will or other testamentary document;
- (c) concerning the status of a person in respect of the mental stability or capacity of the person;
- (d) in which is sought specific performance without an alternative claim for payment of damages, except in the case of -
 - (i) the rendering of an account in respect of which the claim does not exceed the sum of ten thousand Emalangeni or such an amount as may be determined by the Minister from time to time by notice in the Gazette under section 16 (a);
 - (ii) the delivery or transfer of any property, movable or immovable, not exceeding in value the sum of ten thousand Emalangeni or such an amount as may be determined by the Minister from time to time by notice in the Gazette for the purposes of this section;
- (e) in which is sought a decree of perpetual silence;
- (f) in which is sought damages in respect of -
 - (i) defamation;
 - (ii) malicious prosecution;
 - (iii) wrongful imprisonment;
 - (iv) wrongful arrest;
 - (v) seduction; or
 - (vi) breach of promise to marry;
- (g) in which an interdict is sought.

Incidental jurisdiction

18. (1) In an action in which the sum claimed does not exceed the jurisdiction of the court and is the balance of an account, the court may enquire into and hear evidence upon the whole account, even though that account relates to items and transactions exceeding the jurisdiction of the court.

(2) Where the amount claimed or other relief sought does not exceed the jurisdiction of the court, the court shall not be deprived of that jurisdiction merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond its jurisdiction.

(3) In determining whether a claim falls within the jurisdiction of a court, a claim for interest on a principal sum claimed or for costs or for general or alternative relief shall not be taken into account.

Abandonment of part of claim

19. (1) In order to bring a claim or counterclaim within the jurisdiction of a court, a party may in that party's summons or statement of defence, or at any time thereafter, explicitly abandon a part of that claim or counterclaim.

(2) Subject to subsection (3), that part of a claim or counterclaim so abandoned, shall thereby be extinguished.

(3) If the claim or counterclaim is granted in part only the abandonment shall be deemed first to apply to that part of the claim or counterclaim which was not granted.

Deduction of admitted debt

20. In order to bring a claim or counterclaim within the jurisdiction of a court a party may, in that party's summons or statement of defence or at any time thereafter, deduct from the claim or counterclaim, whether liquidated or unliquidated, any amount admitted by one party to be due by the party admitting to the other party concerned.

Splitting of claims disallowed

21. A claim exceeding the jurisdiction of a court and based on one and the same cause of action may not be split with the object of recovering it in more than one action, if the parties to those actions and the point in issue in those actions would be the same.

Cumulative jurisdiction

22. Where two or more claims, each based upon a different cause of action, are combined in one summons, a court shall have the same jurisdiction to adjudicate upon each claim as it would have had if each claim had formed the sole object of a separate action.

No jurisdiction by virtue of consent of parties

23. Subject to the provisions of this Act a court shall not, even by virtue of the consent of the parties, have jurisdiction to hear any action which otherwise exceeds its jurisdiction.

Cessation of action

24. (1) Where a court is of the opinion that a case contains difficult or complex questions of law or of fact which cannot adequately or fairly or should not be decided by it, it shall stop the proceedings.

(2) If the proceedings are stopped as contemplated in subsection (1), the plaintiff may institute a fresh action in another competent court of law.

Defendants subject to jurisdiction of courts

25. (1) A person shall not be bound to institute an action in terms of this Act in respect of a claim which may also be adjudicated upon in another court of law, but if an action is so instituted, the defendant shall be subject to the jurisdiction of the court in question.

(2) Any provision in an agreement to the effect that the jurisdiction of a court shall be excluded, or that a party thereto shall not institute an action in terms of this Act, other than a provision to the effect that a dispute arising from the agreement shall be resolved by arbitration, shall be void.

PART V RULES OF COURT

Power of Minister to make rules and regulations

26. (1) The Minister may make regulations or rules regulating the following matters in respect of small claims courts -

- (a) the practice and procedure, including the procedure when proceedings are reviewed;
- (b) fees and costs;
- (c) the duties and powers of officers of the court;
- (d) the establishment, duties and powers of one or more boards or committees to advise the Minister on the functioning of courts;
- (e) any other matter which the Minister may consider necessary or expedient to prescribe for carrying out the provisions of this Act or the attainment of its objects.

(2) Different regulations or rules may be made under subsection (1) with regard to different classes of cases.

(3) A regulation or rule relating to Government revenue or Government expenditure shall not be made under subsection (1), except with the concurrence of the Minister of Finance.

(4) A new regulation or rule and an amendment or repeal of a rule shall not come into operation unless it has been published in the *Gazette* at least thirty (30) days before the day upon which it is expected to come into operation.

PART VI PROCEDURE AND EVIDENCE

Procedure

27. (1) Subject to the provisions of this Part, the rules of the law of evidence shall not apply in respect of the proceedings in a court, and a court may ascertain any relevant fact in such manner as it may deem fit.

(2) Evidence to prove or disprove any fact in issue, may be submitted in writing or orally.

(3) A party shall not question or cross-examine any other party to the proceedings in question or a witness called by the latter party, but the presiding commissioner shall proceed inquisitorially to ascertain the relevant facts, and to that end, the presiding commissioner may question any party or witness at any stage of the proceedings or even recall a party or witness.

(4) Notwithstanding subsection (3) the commissioner may in the discretion of the commissioner permit any party to put a question to any other party or any witness.

Evidence

28. (1) Subject to the provisions of subsection (2), a party may call one or more witnesses to prove the claim, counterclaim or defence of the party.

(2) The provisions of subsection (1) shall not affect the power of the court to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that further evidence shall not be adduced.

Evidence to be given under oath

29. A person shall not testify or be questioned in a court unless the prescribed oath has been administered to that person or the prescribed affirmation has been accepted from that person by the presiding commissioner or by the clerk of the court, or any person acting as the clerk of court, in the presence of that commissioner, or, if the person concerned is to give evidence through an interpreter, by the commissioner through the interpreter.

Institution of actions

30. (1) The plaintiff:

(a) shall deliver a summons as prescribed personally or through the authorized representative of the plaintiff to the clerk of the court, together with a copy of a written demand which was on a prior occasion delivered to the defendant by the plaintiff by hand or by registered post and in which the defendant was, notwithstanding anything to the contrary in any law contained, allowed at least 14 days, calculated from the date of receipt of that demand by the defendant, to satisfy the plaintiffs claim; and

(b) may not, until judgment has been given in an action arising from a business or profession carried on or exercised by the plaintiff, deliver a summons referred to in paragraph (a) to the clerk of the court in respect of any other action arising from that business or profession.

(2) Upon production of the prescribed proof that the reminder contemplated in subsection (1) was delivered to the defendant, and if the clerk of the court is satisfied that the plaintiff is a natural person and that the summons complies with the prescribed requirements, the clerk of the court shall set a date and time for the hearing of the action and issue the summons and hand it to the plaintiff or the authorized representative of the plaintiff, who shall personally serve it on the defendant, or deliver it to the messenger of the court for service on the defendant.

(3) Apart from the summons pleadings shall not be required of the parties, but the defendant may at any time before the hearing lodge with the clerk of the court a written statement setting out the nature of that defendant's defence and particulars of the grounds on which it is based, and a copy of that statement shall be furnished to the plaintiff by the defendant.

Withdrawal of claims

31. (1) A plaintiff may at any time, whether before or during the hearing of the action, withdraw the claim with the consent of the court and on such conditions as the court may determine, whereupon the proceedings shall be ceased.

(2) Notwithstanding the provisions of subsection (1), if proceedings are ceased as provided for under subsection (1) the plaintiff may bring afresh the action with the consent of the court.

Joinder of plaintiffs

32. (1) Any number of persons, each of whom has a separate claim against the same defendant, may join as plaintiffs in one action if the right of each to relief depends upon the determination of some question of law or fact which, if separate actions were instituted, would arise in each action.

(2) Notwithstanding subsection (1) where a joint action is instituted the defendant may apply to the court that separate trials be held and the court may in its discretion make such order as it may deem just and expedient.

(3) In a joint action judgment may be granted for one or more or for all of the plaintiffs.

Joinder of defendants

33. (1) Two or more defendants may be sued in the alternative or both in the alternative and jointly in one action, where the plaintiff alleges that the plaintiff is uncertain which of the defendants is in law liable for the claim.

(2) The court may, in its discretion and on application by one or more of the defendants, order that separate trials be held or make such other order as it may deem just and expedient.

Amendment of documents

34. (1) A court may at any time before judgment amend any summons or other document in connection with a case subject to the fact that amendment shall not be made if any party other than the party applying for the amendment may be prejudiced by that amendment.

(2) The amendment may be made upon such conditions as the court may deem reasonable.

(3) In documents before the court the name of any person or place as commonly known may be employed and the court may, on application, at any time before or after judgment substitute the correct name for that name.

PART VII JUDGMENT AND COSTS

Judgment

35. A court may, after the hearing of an action, grant-

(a) judgment for the plaintiff in respect of the claim in so far as the plaintiff has proved it;

- (b) judgment for the defendant in respect of the defence or counterclaim in so far as the defendant has proved it;
- (c) absolution from the instance, if the court is of the opinion that the evidence does not enable it to give judgment for either party;
- (d) such judgment as to costs contemplated in section 38 as may be just;
- (e) an order, on such conditions as the court may deem fit, against the party for whom judgment has been granted, deferring wholly or in part further proceedings upon the judgment for a specified period pending arrangements by the other party for the satisfaction of the judgment.

Judgment by default or by consent

36. (1) If a defendant, upon a summons having been served on the defendant in terms of section 30 -

- (a) admits liability and consents to judgment in writing; or
- (b) fails to appear before the court on the trial date or on any date to which the proceedings have been postponed, the court may, on application by the plaintiff, grant judgment for the plaintiff in so far as the plaintiff has proved the defendant's liability and the amount of the claim, to the satisfaction of the court, and the court may dismiss any counterclaim by the defendant.
- (2) If a plaintiff fails to appear before the court on the trial date or on any other date to which the proceedings have been postponed, the court may, on application by the defendant -

- (a) dismiss the plaintiff's claim, though the plaintiff may again institute an action for that claim with the consent of the court; and
- (b) with regard to a counterclaim, grant judgment for the defendant in so far as the defendant has proved the plaintiff's liability and the amount of the counterclaim to the satisfaction of the court.

Rescission of certain judgments

37. The court may, upon application by any person affected by a judgment issued by a court under this Act or, in a case contemplated in paragraph (c) also the court may on its own -

- (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted, provided the application for set-down for hearing is made on a date within six weeks after the applicant first had knowledge of the judgment;
- (b) rescind or vary any judgment granted by it which was from beginning or was obtained by fraud or as a result of a mistake common to the parties, provided the application is made not later than one year after the applicant first had knowledge of the voidness, fraud or mistake;
- (c) correct obvious errors in any judgment, provided, in the case of an application, the application is made not later than one year after the applicant first had knowledge of any errors.

Costs

38. Costs awarded in terms of this Act may only include -
- (a) court fees;
- (b) the prescribed amount for the issue of the summons;
- (c) the fees and travelling expenses of the messenger of the court;
- (d) reasonable out of pocket expenses of the defendant at the discretion of the commissioner.

PART VIII
EXECUTION

Money to be paid direct to judgment creditor

39. Money payable in terms of a judgment or order of a court shall be paid by the judgment debtor direct to the judgment creditor.

Inquiry into financial position

40. (1) When a court grants judgment for the payment of a sum of money, the court shall enquire from the judgment debtor whether the judgment debtor is able to comply with the judgment without delay, and if the judgment debtor indicates that it is unable to do so, the court may, *in camera*, conduct an inquiry into the financial position of the judgment debtor and into the ability of the debtor to pay the judgment debt and costs.

(2) After the inquiry in terms of subsection (1) the court may -

- (a) order the judgment debtor to pay the judgment debt and costs in specified instalments or otherwise;
- (b) suspend the order under paragraph (a) either wholly or in part on such conditions as to security or otherwise as the court may determine.

Offer by judgment debtor after judgment

41. If an order has not been made in terms of section 40 (2), the judgment debtor may within ten (10) days after the court has granted judgment for the payment of a sum of money, make a written offer to the judgment creditor to pay the judgment debt and costs in specified instalments or otherwise, and if such an offer is accepted by the judgment creditor, the clerk of the court shall, at the written request of the judgment creditor, accompanied by the offer, order the judgment debtor to pay the judgment debt and costs in accordance with the offer, and such an order shall be deemed to be an order of the court in terms of section 40.

Manner of execution

42. (1) When a court has granted judgment for the payment of money or made an order for the payment of money in instalments, that judgment, in the case of failure to pay the money within ten (10) days, or that order, in the case of failure to pay an instalment at the time and in the manner determined by the court, shall be enforceable by execution in the magistrate's court having jurisdiction in accordance with the provisions of the Magistrates' Courts Act, 1938, and the judgment creditor may proceed as if the judgment was granted in the magistrate's court in favour of the judgment creditor for the amount mentioned in the affidavit referred to in subsection (2).

(2) The clerk of the court shall, upon the written application of the judgment creditor or order and how that amount is arrived at, transmit that affidavit, together with a certified copy of that judgment or order reflecting the nature of the cause of action to the clerk of the magistrate's court having jurisdiction over the court or the area in which the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is a juristic person, of the Region or area in which its registered office or main place of business is situated.

(3) Upon receipt of the documents referred to in subsection (2) the clerk of the magistrate's court concerned shall record the details of the judgment or order and the amount so owing and mentioned in the affidavit in the registers kept by the clerk for that purpose.

Property exempt from execution

43. The provisions of section 42 of the Magistrates Court Act, 1938 shall apply with necessary alterations in respect of a warrant of execution in terms of this Act.

Notice of change of address by judgment debtor

44. Any person against whom a court has granted judgment or made any order and who has not satisfied in full that judgment or order or has not paid all costs for which that person is liable in connection with that judgment or order, shall, if that person has changed the place of residence, business or employment, within fourteen (14) days from the date of every such change notify the judgment creditor fully and correctly in writing of the new place of residence, business or employment of that person.

Judgment or order final

45. A judgment or order of a court under this Act shall be final and an appeal shall not lie from it.

Grounds of review

46. (1) Any of the following shall be a ground upon which the proceedings of a court may be taken on review before the High Court.

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the commissioner; or
- (c) gross irregularity with regard to the proceedings.

(2) The Chief Justice shall from time to time appoint for a period and Region or area an attorney or advocate on such terms and conditions as the Chief Justice may determine with authority to hear and determine with finality reviews in terms of this section.

**PART IX
OFFENCES**

Offences relating to execution

47. Any person who -

- (a) obstructs a messenger or deputy messenger of the court in the execution of the duties of that messenger or deputy messenger's duties under this Act;

(b) fails to give notice of change of address in terms of section 44,

shall be guilty of an offence and liable upon conviction to a fine not exceeding two thousand Emalangeni (E2,000) or to imprisonment for a period not exceeding two months and, on subsequent conviction, to said imprisonment without the option of a fine.

Contempt of court

48. (1) Any person who wilfully insults a commissioner during the session of the court, or a clerk or messenger or other officer present at that session, or who wilfully interrupts the proceedings of a court or otherwise misbehaves in the place where the session of a court is held, shall, without prejudice to the provisions of section 5 (3), be liable to be sentenced summarily or upon summons to a fine not exceeding two thousand Emalangeni (E2,000) or to imprisonment for a period not exceeding two months and, on subsequent conviction, to said imprisonment without the option of a fine.

(2) When sentencing any person under this section, the commissioner shall without delay transmit to the registrar of the High Court for consideration and review by a judge in chambers, a statement, certified by the commissioner to be true and correct, of the grounds and reasons for the action taken by the commissioner, and shall also furnish to the person sentenced a copy of that statement.

**PART X
GENERAL PROVISIONS**

Pending proceedings

49. The provisions of this Act shall not affect any matter pending in any other court of law at the commencement of this Act, and such a matter shall be disposed of in the court in question as if this Act was not passed.

Minister to make regulations

50. The Minister may in addition to section 26, after consultation and agreement with the Attorney General and the Chief Justice, increase or decrease the jurisdiction under section 16 of one particular court or of all the courts under this Act.

SCHEDULE

(in terms of section 10 (6))

I,do hereby swear (or solemnly) and sincerely affirm and declare that whenever I may be called upon to perform the functions of a commissioner in any court I shall administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs of Swaziland.



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CORRIGENDUM

THE MAGISTRATES COURT (AMENDMENT) ACT, 2011
(Act No. 002 of 2011)

The Magistrates Court (Amendment) Act No. 2 of 2011 is corrected under section 1 by deleting the number "2008" and replacing it with the number "2011".

Z. MLAMBO
CROWN COUNSEL

In exercise of the powers conferred on the Minister
Minister

a resident of
TSABED

Mbabane
17th March

CORRIGENDUM

THE SMALL CLAIMS COURT ACT, 2011
(Act No. 001 of 2011)

The Small Claims Court Act No. 1 of 2011 is corrected under section 1 by deleting the number "2008" and replacing it with the number "2011".

Z. MLAMBO
CROWN COUNSEL

In exercise of the powers conferred on the Minister for
Minister for

a resident of
DLAMINI

Mbabane
17th March