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OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 916.

4 May 1983

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

No. 53 of 1983: Courts of Justice Amendment Act, 1983.

No. 916.

4 Mei 1983

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

No. 53 van 1983: Wysigingswet op Geregshoue, 1983.

Act No. 53, 1983

COURTS OF JUSTICE AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:

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

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Magistrates' Courts Act, 1944, so as to provide for the keeping of trust accounts and books of account by messengers of the court; and to further regulate the serving of emoluments attachment orders; to amend the Supreme Court Act, 1959, so as to provide for the keeping of trust accounts and books of account by deputy-sheriffs; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 27 April 1983.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Insertion of
section 18A in
Act 32 of 1944.

1. The following section is hereby inserted in the Magistrates' Courts Act, 1944, after section 18:

18A. (1) Every messenger who is not an officer in the public service shall open a separate trust account, which shall contain a reference to this section, with a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), and shall deposit therein all money received or held by him in his capacity as messenger on account of any other person.

(2) Notwithstanding anything to the contrary in any law or the common law contained, no amount standing to the credit of an account referred to in subsection (1) shall be regarded as being part of the assets of the messenger concerned, such amount shall not be attached on behalf of any creditor of such messenger and it shall not upon his decease or insolvency form part of his deceased or insolvent estate: Provided that any excess remaining in such account after payment of all claims of persons whose money has or should have been deposited in such account, shall be deemed to form part of the assets of the said messenger, or his deceased or insolvent estate, as the case may be.

(3) Every messenger shall keep proper books of account containing particulars and information regarding all moneys received, held or paid by him for or on account of any person in his capacity as messenger.

(4) Any messenger shall, when requested thereto by the Minister, a magistrate or an officer authorized thereto in writing by the Minister, without delay make the books of account referred to in subsection (3) available to the Minister or the said magistrate or officer for examination.

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(5) Any banking institution at which a messenger keeps a trust account shall, at the request of the Minister, a magistrate or an officer authorized thereto in writing by the Minister, furnish particulars of deposits into, withdrawals from and the balance of such account as at any particular time mentioned in the request, to the person so requesting the banking institution.

(6) (a) If a messenger—
 (i) dies;
 (ii) vacates his office; or
 (iii) is dismissed from his office,

all process and other documents which were in his possession, including accounting records which will be required to pay the claims contemplated in the proviso to subsection (2), shall be taken possession of by the magistrate and furnished to the messenger's successor, who shall pay all such claims from money in the said trust account.

(b) If a messenger is suspended from office and profit by the magistrate in terms of section 18 and the magistrate appoints someone referred to in that section to act as messenger, such appointed person shall be furnished by the magistrate with all the process and other documents referred to in paragraph (a), and shall take over the control and administration of the trust account until the suspension is set aside or the suspended messenger is dismissed from his office.

(7) A successor referred to in subsection (6) (a) and a person referred to in subsection (6) (b) shall be entitled to the moneys, costs and expenses provided for in the rules in respect of the payment of claims from, and the performance of any other act regarding the administration of, the trust account of the previous messenger concerned."

Amendment of section 65J of Act 32 of 1944, as inserted by section 2 of Act 63 of 1976.

2. Section 65J of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Any emoluments attachment order shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be served [by registered letter] on the garnishee by the messenger of the court in the manner prescribed by the rules for the service of process."

Insertion of section 34A of Act 59 of 1959.

3. The following section is hereby inserted in the Supreme Court Act, 1959, after section 34:

"Keeping of trust account and books of account by deputy-sheriff.

34A. (1) Every deputy-sheriff who is not an officer in the public service shall open a separate trust account, which shall contain a reference to this section, with a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), and shall deposit therein all money received or held by him in his capacity as deputy-sheriff on account of any other person.

(2) Notwithstanding anything to the contrary in any law or the common law contained, no amount standing to the credit of an account referred to in subsection (1) shall be regarded as being part of the assets of the deputy-sheriff concerned, such amount shall not be attached on behalf of any creditor of such deputy-sheriff and it shall not upon his decease or insolvency form part of his deceased or insolvent estate: Provided that any excess remaining in such account after payment of all claims of persons whose

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money has or should have been deposited in such account, shall be deemed to form part of the assets of the said deputy-sheriff, or his deceased or insolvent estate, as the case may be.

(3) Every deputy-sheriff shall keep proper books of account containing particulars and information regarding all moneys received, held or paid by him for or on account of any person in his capacity as deputy-sheriff.

(4) Any deputy-sheriff shall, when requested thereto by the Minister, the sheriff, a magistrate or an officer authorized thereto in writing by the Minister, without delay make the books of account referred to in subsection (3) available to the Minister or the said sheriff, magistrate or officer for examination.

(5) Any banking institution at which a deputy-sheriff keeps a trust account shall, at the request of the Minister, the sheriff, a magistrate or an officer authorized thereto in writing by the Minister, furnish particulars of deposits into, withdrawals from and the balance of such account as at any particular time mentioned in the request, to the person so requesting the banking institution.

(6) (a) If any deputy-sheriff—

(i) dies;

(ii) vacates his office; or

(iii) is dismissed from his office,

all process and other documents which were in his possession, including accounting records which will be required to pay the claims contemplated in the proviso to subsection (2), shall be taken possession of by the sheriff and furnished to the deputy-sheriff's successor, who shall pay all such claims from money in the said trust account.

(b) If a deputy-sheriff is suspended from office and profit by the sheriff in terms of section 35 and the sheriff appoints someone referred to in that section to act as deputy-sheriff, such appointed person shall be furnished by the sheriff with all the process and other documents referred to in paragraph (a), and shall take over the control and administration of the trust account until the suspension is set aside or the suspended deputy-sheriff is dismissed from his office.

(7) A successor referred to in subsection (6) (a) and any person referred to in subsection (6) (b) shall be entitled to the moneys, costs and expenses prescribed in the rules made under section 43 in respect of the payment of claims from, and the performance of any other act regarding the administration of, the trust account of the previous deputy-sheriff concerned."

Short title.

4. This Act shall be called the Courts of Justice Amendment Act, 1983.