



Republic of Namibia

MINISTERIAL MOTIVATION

ON THE

MAGISTRATE'S COURT AMENDMENT BILL

IN THE NATIONAL ASSEMBLY

BY

THE MINISTER OF JUSTICE

MS. YVONNE DAUSAB, MP

18 February 2021

– To be checked against delivery –

**Honourable Speaker,
Honourable Members,
Members of the public,**

1. This afternoon I rise to table the Magistrates' Courts Amendment Bill.
2. The purpose of the Magistrates' Courts Amendment Bill as captured in the long title is to amend the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) in order to increase the jurisdiction of magistrates' courts and also to impose restrictions on the sale of immovable property and to deal with incidental matters.
3. Firstly, the Magistrates' Courts Amendment Bill amends section 29(1) of the Magistrates Courts' Act, 1944 to increase the jurisdiction of magistrate courts from N\$25 000 to N\$1 000 000 in the following causes of action:
 - 3.1 first, in actions in which the delivery or transfer of any movable or immovable property is claimed;
 - 3.2 secondly, in actions of ejectment against the occupier of any premises or land, where the right of occupation is an issue;
 - 3.3 third, in actions arising out of a liquid document or a mortgage bond; and
 - 3.4 fourthly, in actions arising out of any credit agreement as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980).
4. For any other actions, the Magistrates' Courts Amendment Bill proposes the increase of the magistrates' court's jurisdiction from N\$25 000 to N\$500 000.00.

**Honourable Speaker,
Honourable Members,
Members of the public,**

5. It is significant to mention here that the increase in the monetary jurisdiction of the Magistrate's Courts is necessitated by the need to enhance access to the courts for many more of our Namibian citizens in civil cases. This has the potential of decongesting the case load in the higher courts and to alleviate the cost impact on litigants as it is less costly to litigate in the lower courts. The increase in monetary value of goods and services as well as the decreased value of financial currencies has also contributed to this long overdue increase. Access to justice means that litigants should be able to have access to the courts closest to them with the least cost implications. By increasing the monetary jurisdiction of the Magistrate's Courts, we will contribute to enhancing access to justice in its' broad sense.
6. Should a need arise for a change in the amounts determined by the Magistrate's Courts Amendment Bill and good cause exist for such changes, the Minister of Justice will have the mandate to adjust these amounts with the necessary prudence applied. This will avoid lengthy delays in amending the laws in order to keep up with changes in the financial sphere and afford flexibility to adjust to ever changing times and be responsive to the needs of the needs of the Namibia public.
7. On the other hand, the Magistrates' Courts Amendment Bill provides for judicial oversight in matters that affect parties who expect the courts to be the protector of their rights. In this regard the insertion of section 66A will restrict the sale of immovable property in execution of a court judgement unless the court is satisfied that a judgment debtor has insufficient movable property to satisfy the judgement debt upon return of service of process by the messenger of the court or unless it has declared the immovable property to be executable upon the application of the judgment creditor. This process allows for time to investigate whether the parties can find other solutions and that the sale of primary immovable property is the last resort.
8. This amendment will not apply if the immovable property to be sold in execution is subject to a mortgage bond registered in favour of the judgment creditor and in

cases where the judgment debtor has failed to satisfy this mortgage bond in full or in part.

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Honourable Members,
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9. The delivery of justice will be enhanced and the rights of the parties and debtors will be protected. I therefore respectfully implore this August House to support the Magistrate's Court Amendment Bill to demonstrate the Government's resolve to enhance access to justice for our people, particularly where it affects their livelihood, most enhanced through the ownership of immovable property.

I thank you and so submit.