

**OFFICE OF THE CHIEF EXECUTIVE OFFICER**

26 August 2013

Via e-mail [rajdaya@justice.gov.za](mailto:rajdaya@justice.gov.za)

Secretary to the Board  
Rules Board for Courts of Law  
P O Box 13106  
The Tramshed  
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Dear Mr Daya

**AMENDMENTS TO THE MAGISTRATES' COURTS ACT**

The Magistrate's Court Committee of the Law Society of South Africa consider that certain amendments should be made to the provisions of the Magistrates' Courts Act and these are:

1. Section 51 of the Magistrates' Courts Act should be brought into line with the provisions of the rules regarding the production of documents by witnesses.

In terms of Section 51 of the Magistrates' Courts Act, a witness subpoenaed to produce documents need only do so at the day of the trial. These documents could be voluminous and it may then be necessary to postpone the trial to allow the parties to consider properly the documents so produced.

Section 30 of the Supreme Court Act provides the securing of attendance of a witness and the production of any document in the manner provided for in the Rules of Court.

Rule 38(1)(b) obliges a witness who has been subpoenaed to produce documents to hand the documents over to the Registrar as soon as possible whereafter the parties may inspect same and make copies.

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

The High Court procedure prevents the problem of postponement and concomitant wasted costs referred to above.

2. Another matter which is of concern to the committee is the decision in Oosthuizen vs Road Accident Fund (case number: 258/2010) ZASCA 118. In this matter the Plaintiff had issued summons out of the Magistrate's Court timeously. However, it later transpired and after the relevant prescription period had passed, that the claim should be amended and increased to an amount beyond the Magistrate's Courts jurisdiction. The Plaintiff then applied to the High Court to transfer the action to the High Court but the application was refused.

It is the opinion of the committee that it is unfair to Plaintiffs whose claims have been submitted timeously to be prejudiced in this way. It is not necessarily so that in all cases the estimation of the quantum of a claim can be done accurately and timeously. Accordingly it is proposed that the Magistrate's Court Act be amended to incorporate a provision for the transfer of an action from the District Court to a Regional Court or the High Court, also from the Regional Court to the High Court.

We submit these proposals to you for your Board's consideration.

Yours faithfully



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