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**Government Notice**

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DEPARTMENT OF GOVERNMENTAL AFFAIRS

DEPARTEMENT VAN OWERHEIDSAKE

No. 83      1985

No. 83      1985

PROMULGATION OF ACT OF NATIONAL ASSEMBLY

AFKONDIGING VAN WET VAN NASIONALE VERGADERING

The following Act, which has been adopted by the National Assembly and signed by the Administrator-General in terms of the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985), is hereby published in terms of section 18 of that Proclamation:—

Die volgende Wet, wat ingevolge die Proklamasie op die Instelling van Wetgewende en Uitvoerende Gesag vir Suidwes-Afrika, 1985 (Proklamasie R.101 van 1985), deur die Nasionale Vergadering aangeneem en deur die Administrateur-generaal onderteken is, word hierby afgekondig ingevolge artikel 18 van daardie Proklamasie:—

No. 11 of 1985: Magistrates' Courts Amendment Act, 1985.

No. 11 van 1985: Wysigingswet op Landdroshowe, 1985

**Act No. 11, 1985    MAGISTRATES' COURTS AMENDMENT ACT, 1985**

*(Afrikaans text signed by the Administrator-General on 20 September 1985)*

**ACT**

To amend the Magistrates' Courts Act, 1944, so as to provide for the establishment of district divisions and of courts for such divisions; to establish a Rules Board for South West Africa; to increase the civil jurisdiction of magistrates courts; and to further regulate the service of emoluments attachment orders; and to provide for incidental matters.

BE IT ENACTED by the National Assembly, as follows:-

Amendment of section 2 of Act 32 of 1944, as substituted by section 2 of Act 53 of 1970 and amended by section 7 of Act 102 of 1972.

1. Section 2 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) create district divisions consisting of a number of districts or portions of districts, and declare the name by which any district division shall be known;”;

(b) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

“(cA) increase or decrease the limits of any district division;”;

(c) by the insertion in subsection (1) after paragraph (f) of the following paragraph:

“(fA) establish a court for a district division;”;

(d) by the insertion in subsection (1) after paragraph (h) of the following paragraph:

“(hA) appoint one or more places within each district division for the holding of a court for such district division;” and

(e) by the substitution for paragraph (l) of subsection (1) of the following paragraph:

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*(Afrikaanse teks deur die Administrateur-generaal  
onderteken op 20 September 1985)*

**WET**

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde voorsiening te maak vir die instelling van distriksafdelings en van houe vir daardie afdelings; 'n Reglementsraad vir Suidwes-Afrika in te stel; die siviele jurisdiksie van landdroshowe te verhoog; en die betekening van besoldigingsbeslagbevele verder te reël; en om voorsiening te maak vir bykomstige aangeleenthede.

DAAR WORD BEPAAL deur die Nasionale Vergadering, soos volg:-

1. Artikel 2 van die Wet op Landdroshowe, 1944 (hieronder die Hoofwet genoem), word hierby gewysig -

(a) deur in subartikel (1) na paragraaf (a) die volgende paragraaf in te voeg:

“(aA) distriksafdelings instel bestaande uit 'n aantal distrikte of gedeeltes van distrikte, en die naam bepaal waaronder 'n distriksafdeling bekend sal staan;”;

(b) deur in subartikel (1) na paragraaf (c) die volgende paragraaf in te voeg:

“(cA) die grens van 'n distriksafdeling uitbrei of inperk;”;

(c) deur in subartikel (1) na paragraaf (f) die volgende paragraaf in te voeg:

“(fA) 'n hof vir 'n distriksafdeling instel;”;

(d) deur in subartikel (1) na paragraaf (h) die volgende paragraaf in te voeg:

“(hA) een of meer plekke in elke distriksafdeling bepaal vir die hou van hofsittings vir so 'n distriksafdeling;” en

(e) deur paragraaf (l) van subartikel (1) deur die volgende paragraaf te vervang:

Wysiging van artikel 2 van Wet 32 van 1944, soos vervang deur artikel 2 van Wet 53 van 1970 en gewysig deur artikel 7 van Wet 102 van 1972.

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“(f) withdraw or vary any notice under this section and abolish any regional division, district division, district, subdistrict or other area of jurisdiction and the court thereof?”

Amendment of section 3 of Act 32 of 1944, as amended by section 4 of Act 40 of 1952.

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) No new district, subdistrict, district division or regional division shall be created until a report upon the proposal to create such district, subdistrict or division has been obtained from the Government Service Commission?”

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 4 of Act 102 of 1972, section 11 of Act 29 of 1974 and section 24 of Act 94 of 1974.

3. Section 9 of the principal Act is hereby amended -

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) Subject to the provisions of the law governing the government service and the provisions of paragraph (b) of this subsection and of section 10, the Cabinet may appoint for any district division, district or subdistrict a magistrate or one or more additional magistrates and for every regional division a magistrate of magistrates.”; and

(b) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

“(cA) A magistrate or additional magistrate of a district division may also be a magistrate or additional magistrate of a district and shall for the purpose of section 12(5) be deemed to have been duly appointed as the magistrate or additional magistrate for each district, falling wholly or partly within the district division of which he is the magistrate or additional magistrate.”

Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952 and section 25 of Act 94 of 1974.

4. Section 12 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) A magistrate of a regional division or a magistrate or additional magistrate of a district division may, in his capacity as-

(a) in the case of a magistrate of a regional division, additional magistrate of a district in terms of section 9(1) (c); or

(b) in the case of a magistrate or additional magistrate of a district division, magistrate or additional magistrate of a district in terms of section 9(1)(cA),

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“(l) enige kennisgewing kragtens hierdie artikel intrek of wysig en enige streekafdeling, distriksafdeling, distrik, subdistrik of ander regsgebied asmede die hof daarvan afskaf.”

2. Artikel 3 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

Wysiging van artikel 3 van Wet 32 van 1944, soos gewysig deur artikel 4 van Wet 40 van 1952.

“(3) Geen nuwe distrik, subdistrik, distriksafdeling of streekafdeling mag ingestel word nie voordat ’n verslag omtrent die voorstel om so ’n distrik, subdistrik of afdeling in te stel, van die Regeringsdienskommissie verkry is.”

3. Artikel 9 van die Hoofwet word hierby gewysig -

Wysiging van artikel 9 van Wet 32 van 1944, soos vervang deur artikel 2 van Wet 8 van 1967 en gewysig deur artikel 4 van Wet 53 van 1970, artikel 4 van Wet 102 van 1972, artikel 11 van Wet 29 van 1974 en artikel 24 van Wet 94 van 1974.

(a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

“(a) Behoudens die wetbepalings met betrekking tot die regeringsdiens en die bepalinge van paragraaf (b) van hierdie subartikel en van artikel 10, kan die Kabinet vir enige distriksafdeling, distrik of subdistrik ’n magistraat of een of meer addisionele magistrade, en vir elke streekafdeling, ’n magistraat of magistrade aanstel.”; en

(b) deur in subartikel (1) na paragraaf (c) die volgende paragraaf in te voeg:

“(cA) ’n Magistraat of addisionele magistraat van ’n distriksafdeling kan ook die magistraat of addisionele magistraat van ’n distrik wees en word vir die doeleindes van artikel 12(5) geag behoorlik aangestel te wees as die magistraat of addisionele magistraat vir elke distrik, wat geheel of gedeeltelik binne die distriksafdeling val waarvan hy die magistraat of addisionele magistraat is.”

4. Artikel 12 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang:

Wysiging van artikel 12 van Wet 32 van 1944, soos gewysig deur artikel 9 van Wet 40 van 1952 en artikel 25 van Wet 94 van 1974.

“(5) ’n Magistraat van ’n streekafdeling of ’n magistraat of addisionele magistraat van ’n distriksafdeling kan, in sy hoedanigheid van -

(a) in die geval van ’n magistraat van ’n streekafdeling, addisionele magistraat van ’n distrik ingevolge artikel 9(1)(c); of

(b) in die geval van magistraat of addisionele magistraat van ’n distriksafdeling, magistraat of addisionele magistraat van ’n distrik ingevolge artikel 9(1)(cA),

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hold a court of that district for the hearing of any civil matter within the jurisdiction of such court.”.

Amendment of section 25 of Act 32 of 1944, as amended by section 19 of Act 50 of 1956, section 2 of Act 93 of 1963, section 2 of Act 101 of 1969 and section 8 of Act 53 of 1970.

## 5. Section 25 of the principal Act is hereby amended -

## (a) by the substitution for subsection (1) of the following subsection:

“ (1) There shall be a Rules Board consisting of -

(a) one officer of the Department of Justice appointed by the Cabinet to hold office during its pleasure, who shall be chairman and shall have a casting as well as a deliberative vote;

(b) one advocate appointed by the Cabinet for a period of two years; and

(c) one attorney nominated by the Law Society of South West Africa for a period of two years.”;

## (b) by the substitution for subsection (2) of the following subsection:

“ (2) Two members of the Board shall constitute a quorum.”; and

## (c) by the substitution for subsection (5) of the following subsection:

“ (5) No new rule or any alteration or rescission of a rule shall take effect unless it has been confirmed by the Cabinet and published in the *Official Gazette* at least one month before the day upon which it is expressed to take effect.”.

Amendment of section 29 of Act 32 of 1944, as substituted by section 27 of Act 94 of 1974.

## 6. Section 29 of the principal Act is hereby amended -

## (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding R5 000 in value;”;

## (b) by the substitution for the proviso to paragraph (b) of subsection (1) of the following proviso:

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'n hofsitting van daardie distrik hou vir die verhoor van 'n siviele aangeleentheid binne die jurisdiksie van bedoelde hof.”.

5. Artikel 25 van die Hoofwet word hierby gewysig -

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“ (1) Daar word 'n Reglementsraad ingestel bestaande uit-

(a) een beamppte van die Departement van Justisie deur die Kabinet aangestel om sy amp vir solank dit hom behaag te beklee, wat die voorsitter is en benewens sy beraadslagende stem ook 'n beslissende stem het;

(b) een advokaat deur die Kabinet aangestel vir 'n tydperk van twee jaar; en

(c) een prokureur benoem deur die Prokureursorde van Suidwes-Afrika vir 'n tydperk van twee jaar.”;

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Twee lede van die Raad maak 'n kworum uit.”; en

(c) deur subartikel (5) deur die volgende subartikel te vervang:

“ (5) Geen nuwe reël of geen wysiging of herroeping van 'n reël tree in werking nie tensy dit deur die Kabinet bekragtig en in die *Offisiële Koerant* gepubliseer is minstens 'n maand voor die dag waarop die reël, wysiging of herroeping verklaar word in werking te tree.”.

6. Artikel 29 van die Hoofwet word hierby gewysig -

(a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

“(a) aksies tot lewering of oordrag van roerende of onroerende goed waarvan die waarde hoogstens R5 000 is;”;

(b) deur die voorbehoudsbepaling by paragraaf (b) van subartikel (1) deur die volgende voorbehoudsbepaling te vervang:

Wysiging van artikel 25 van Wet 32 van 1944, soos gewysig deur artikel 19 van Wet 50 van 1956, artikel 2 van Wet 93 van 1963, artikel 2 van Wet 101 van 1969 en artikel 8 van Wet 53 van 1970.

Wysiging van artikel 29 van Wet 32 van 1944, soos vervang deur artikel 27 van Wet 94 van 1974.

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“Provided that, where the right of occupation of any such premises or land is in dispute between the parties, such right does not exceed R5 000 in clear value to the occupier;”;

(c) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) actions on or arising out of a liquid document or a mortgage bond, where the claim does not exceed R10 000;”;

(d) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) actions on or arising out of any credit agreement as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980), where the claim or the value of the property in dispute does not exceed R10 000;”;

(e) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) actions other than those already mentioned in this subsection, where the claim or the value of the matter in dispute does not exceed R5 000.”

Amendment of section 46 of Act 32 of 1944, as amended by section 5 of Act 19 of 1963 and section 28 of Act 94 of 1974.

7. Section 46 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) in which is sought specific performance without an alternative of payment of damages, except in -

(i) the rendering of an account in respect of which the claim does not exceed R5 000;

(ii) the delivery or transfer of property, movable or immovable, not exceeding R5 000 in value; and

(iii) the delivery or transfer of property, movable or immovable, exceeding R5 000 in value, where the consent of the parties has been obtained in terms of section 45;”.

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

8. Section 65J of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:



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“Met dien verstande dat, waar die reg tot okkupasie van die perseel of grond tussen die partye in geskil is, die suiwer waarde van daardie reg vir die okkuperder hoogstens R5 000 is;”;

(c) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:

“(d) aksies gebaseer op of wat ontstaan uit ’n likwiede dokument of ’n verband waar die vordering hoogstens R10 000 is;”;

(d) deur paragraaf (e) van subartikel (1) deur die volgende paragraaf te vervang:

“(e) aksies gebaseer op of wat ontstaan uit ’n krediet-ooreenkoms soos omskryf in artikel 1 van die Wet op Kredietooreenkoms, 1980 (Wet No. 75 van 1980), waar die vordering of waarde van die goed in geskil hoogstens R10 000 is;” en

(e) deur paragraaf (f) van subartikel (1) deur die volgende paragraaf te vervang:

“(f) ander aksies as die wat reeds in hierdie subartikel vermeld is, waar die vordering of die waarde van die onderwerp in geskil hoogstens R5 000 is.”.

7. Artikel 46 van die Hoofwet word hierby gewysig deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:

Wysiging van artikel 46 van Wet 32 van 1944, soos gewysig deur artikel 5 van Wet 19 van 1963 en artikel 28 van Wet 94 van 1974.

“(c) waarin daadwerklike vervulling sonder ’n alternatiewe eis om betaling van skadevergoeding gevorder word, behalwe in -

(i) die verstrekking van ’n rekening ten opsigte waarvan die vordering nie R5 000 te bowe gaan nie;

(ii) die lewering of oordrag van roerende of onroerende goed ter waarde van hoogstens R5 000; en

(iii) die lewering of oordrag van roerende of onroerende goed ter waarde van meer as R5 000, in gevalle waar die toestemming van die partye ooreenkomstig artikel 45 verkry is;”.

8. Artikel 65J van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

Wysiging van artikel 65J van Wet 32 van 1944, soos ingevoeg deur artikel 2 van Wet 63 van 1976.

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"(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 on the garnishee by the messenger of the court in the manner prescribed by the rules of the service of process."

Substitution of section 90 of Act 32 of 1944, as substituted by section 20 of Act 40 of 1952 and amended by section 2 of Act 75 of 1959, section 3 of Act 17 of 1969 and section 8 of Act 91 of 1977.

9. The following section is hereby substituted for section 90 of the principal Act:

"Local limits of jurisdiction.

90. (1) Subject to the provision of section 89, any person charged with any offence committed within any district, district division or regional division may be tried by the court or that district, district division or regional division, as the case may be.

(2) When any person is charged with any offence -

- (a) committed within the distance of four kilometres beyond the boundary of the district, district division or regional division; or
- (b) committed in or upon any vehicle on a journey which or part whereof was performed in, or within the distance of four kilometres of, the district, district division or regional division; or
- (c) committed on board any vessel on journey upon any river within the Republic or forming the boundary of any portion thereof, and such journey or part thereof was performed in, or within the distance of four kilometres of, the district, district division or regional division; or
- (d) committed on board any vessel on a voyage within the territorial waters of the Republic (including the territory of South West Africa), and the said territorial waters adjoin the district, district division or regional division; or
- (e) begun or completed within the district, district division or regional division,

such person may be tried by the court of the district, district division or regional divisions, as the case may be, as if he had been charged with an offence committed within the district, district division or regional division, respectively.

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“(3) ’n Besoldigingsbeslagbevel word opgestel deur die vonnis-skuldeiser of sy prokureur, word deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken, en word aan die beslagskuldenaar beteken deur die geregsbode op die wyse deur die reëls vir die betekening van prosesstukke voorgeskryf.”.

9. Artikel 90 van die Hoofwet word hierby deur die volgende artikel vervang:

“Plaaslike grense van regsgebied.

90. (1) Behoudens die bepalings van artikel 89 kan iedereen wat beskuldig word van ’n misdryf binne ’n distrik, distriksafdeling of ’n streekafdeling gepleeg, deur die hof van daardie distrik, distriksafdeling of streekafdeling, na gelang van die geval, verhoor word.

(2) Wanneer iemand beskuldig word van ’n misdryf -

- (a) gepleeg binne die afstand van vier kilometer oor die grens van die distrik, distriksafdeling of streekafdeling; of
- (b) gepleeg in of op ’n voertuig op ’n reis wat, of waarvan enige gedeelte in, of binne die afstand van vier kilometer van, die distrik, distriksafdeling of streekafdeling afgelê is; of
- (c) gepleeg aan boord van ’n vaartuig op ’n reis op ’n rivier binne die Republiek of wat die grens van ’n deel daarvan uitmaak, en daardie reis of ’n gedeelte daarvan in, of binne die afstand van vier kilometer van, die distrik, distriksafdeling of streekafdeling afgelê is; of
- (d) gepleeg aan boord van ’n vaartuig op ’n vaart binne die territoriale waters van die Republiek (met inbegrip van die gebied Suidwes-Afrika), en bedoelde territoriale waters aan die distrik, distriksafdeling of streekafdeling grens; of
- (e) wat binne die distrik, distriksafdeling of streekafdeling begin of voltooi is,

kan so iemand deur die hof van die distrik, distriksafdeling of streekafdeling, na gelang van die geval, verhoor word, asof hy van ’n misdryf wat onderskeidelik binne die distrik, distriksafdeling of streekafdeling gepleeg is, beskuldig gestaan het.

Vervanging van artikel 90 van Wet 32 van 1944, soos vervang deur artikel 20 van Wet 40 van 1952 en gewysig deur artikel 2 van Wet 75 van 1959, artikel 3 van Wet 17 van 1969 en artikel 8 van Wet 91 van 1977.

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(3) Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.

(4) A person charged with an offence may be tried by the court of any district, district division or regional division, as the case may be, where in any act or omission or event which is an element of the offence took place.

(5) A person charged with theft of property or with obtaining property by an offence, or with an offence involves the receiving of any property by him, may also be tried by the court of any district, district division or regional division, as the case may be, wherein he has or had part of the property in his possession.

(6) A person charged with kidnapping, child-stealing or abduction may also be tried by the court of any district, district division or regional division, as the case may be, through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.

(7) Where by any special provision of law a magistrate's court has jurisdiction in respect of an offence committed beyond the local limits of the district, district division or regional division, as the case may be, such court shall not be deprived of such jurisdiction by any of the provisions of this section.

(8) Where an accused is alleged to have committed various offences within different districts in the territory, the attorney-general may in writing direct that criminal proceedings in respect of such various offences be commenced in the court of any particular district in the territory, whereupon such court shall have jurisdiction to act with regard to any such offence as if such offence had been committed within the area of jurisdiction of that court, and the court of the district division or regional division within whose area of jurisdiction the court of such district is situated, shall likewise have jurisdiction in respect of any such offence if such offence is an offence which may be tried by the court of a district division or regional division.

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(3) Wanneer dit onseker is in welke van verskeie regsgebiede 'n misdryf gepleeg is, kan so 'n misdryf in enigeen van daardie regsgebiede verhoor word.

(4) Iemand wat van 'n misdryf beskuldig word, kan verhoor word deur die hof van enige distrik, distriksafdeling of streekafdeling, na gelang van die geval, waarin 'n handeling of versuim of gebeurtenis wat 'n bestanddeel van die misdryf uitmaak, plaasgevind het.

(5) Iemand wat beskuldig word van diefstal van goed of van die verkryging van goed deur middel van 'n misdryf, of van heling, kan ook verhoor word deur die hof van enige distrik, distriksafdeling of streekafdeling, na gelang van die geval, waarin hy enige gedeelte van die goed in sy besit het of gehad het.

(6) Iemand wat beskuldig word van ontvoering, kinderdiefstal of skaking kan ook verhoor word deur die hof van enige distrik, distriksafdeling of streekafdeling, na gelang van die geval, waardeur of waarin hy die ontvoerde, gestole of geskaakte persoon vervoer, verberg of aangehou het.

(7) Wanneer 'n magistratshof uit hoofde van 'n besondere wetsbepaling regsbevoegdheid het ten aansien van 'n misdryf wat buite die plaaslike grense van die distrik, distriksafdeling of streekafdeling, na gelang van die geval, gepleeg is, dan word sodanige regsbevoegdheid nie deur die bepaling van hierdie artikel aan die hof ontnem nie.

(8) Waar 'n beskuldigde na bewering verskeie misdrywe in verskillende distrikte in die gebied gepleeg het, kan die prokureur-generaal skriftelik gelas dat strafregtelike verrigtinge ten opsigte van sodanige verskeie misdrywe in die hof van 'n bepaalde distrik in die gebied 'n aanvang neem, waarop so 'n hof regsbevoegdheid het om met betrekking tot enige sodanige misdryf op te tree asof daardie misdryf binne die regsgebied van daardie hof gepleeg is, en die hof van die distriksafdeling of streekafdeling binne wie se regsgebied die hof van daardie distrik geleë is, het insgelyk regsbevoegdheid met betrekking tot so 'n misdryf indien daardie misdryf 'n misdryf is wat deur die hof van 'n distriksafdeling of streekafdeling verhoor kan word.

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(9) Notwithstanding anything contained in this section, the provisions of section 125 of the Criminal Procedure Act, 1977, shall *mutatis mutandis* apply in respect of the trial of any person by any court."

Short title.

10. This Act shall be called the Magistrates' Courts Amendment Act, 1985.

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(9) Ondanks die bepalings van hierdie artikel is die bepalings van artikel 125 van die Strafproseswet, 1977, *mutatis mutandis* ten aansien van die verhoor van enigiemand deur enige hof van toepassing.”.

10. Hierdie Wet heet die Wysigingswet op Landdroshowe, 1985.

Kort titel.