

REPUBLIC OF SOUTH AFRICA

SUPERIOR COURTS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
the Bill and prior notice of its introduction published in Government Gazette No 55257 of
28 August 2026)*
(The English text is the official text of the Bill)

(MR M MANYI, MP)

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

To amend the Superior Courts Act, 2013, so as to limit the application of the provision that regulates the institution of civil proceedings by way of a summons or a notice of motion, and the serving of a subpoena in civil proceedings, against a judge; and to provide for matters connected therewith.

Amendment of section 47 of Act 10 of 2013, as amended by section 20 of Act 116 of 1998

“(1)(a) In this section, **‘judicial activity’** means an activity directly associated with the exercise of judicial authority contemplated in section 165 of the Constitution, and includes judicial functions related to the interpretation of the law, settling a dispute, and administering justice, but does not include participation in—

- | | | |
|-------|---|----|
| (i) | a commission of inquiry; | |
| (ii) | an independent panel, the purpose of which is not the performance of a judicial function related to a decision that requires the interpretation of the law, settling a dispute, or otherwise administering justice; | 15 |
| (iii) | a parliamentary process; | |
| (iv) | a disciplinary tribunal, internal workplace labour process as contemplated in the Labour Relations Act, 1995 (Act No. 66 of 1995), or a process considering compliance with a code of ethics, or other norms or standards associated with a profession; | 20 |
| (v) | an arbitration or a mediation process; | |
| (vi) | an administrative investigation; or | |
| (vii) | any other institution or process, the purpose of which is not the execution of judicial authority. | 25 |

(b) [Except for an application made in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), no] No civil proceedings, by way of summons or notice of motion, that relates to a judicial activity may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings that relates to a judicial activity may be served on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice,

with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.

- (c) Paragraph (b) applies to a judicial activity performed by a judge on active service and a judicial activity performed by a judge no longer on active service, regardless of when such judicial activity was performed.
- (d) Paragraph (b) does not apply to an extra judicial activity of a judge on active service, or to an extra judicial activity of a judge no longer on active service.”.

5

Transitional provisions

2. (1) Any application to— 10

(a) institute civil proceedings by way of a summons or notice of motion against;
or

(b) serve a subpoena in respect of civil proceedings on,
any judge of a Superior Court, whether on active service or not, made before the commencement of the Superior Courts Amendment Act, 2026, but not yet finalised, 15
must proceed in terms of section 47 as it stood before the commencement of the Superior Courts Amendment Act, 2026.

(2) Nothing contained in subsection (1) affects the exception in section 47 related to an application made in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), as it stood before the commencement of the Superior Courts Amendment Act, 2026. 20

Short title and commencement

3. This Act is called the Superior Courts Amendment Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SUPERIOR COURTS AMENDMENT BILL, 2026

1. INTRODUCTION

Section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that “[e]veryone is equal before the law and has the right to equal protection and benefit of the law”. Section 47 of the Superior Courts Act, 2013 (Act No. 10 of 2013) (the “Act”), imposes a unique procedural barrier that applies only to judges of the Superior Courts, requiring prior consent before civil proceedings may be instituted against them, or before a subpoena in civil proceedings may be served on them, thereby differentiating between judges and all other citizens on the basis of occupational status alone.

Although there may be a rationale for such differentiation, section 47 is too broad. Our courts have indicated the need for section 47 as follows:

“Broadly, the purpose thereof [section 47] is to ensure the independence of the Judiciary. The oath which judges take upon assumption of office requires of them to adjudicate matters fearlessly. This they can only do if protected against non-meritorious actions. Judges should not, in the execution of their judicial functions, be inhibited by fear of being dragged to court unnecessarily over their judgements. Such a threat could have a chilling effect on the execution of their duties The very nature of the duty of a judge is such that it would open them to such litigation: a judge’s task is to resolve disputes, inevitably leaving one person or the other dissatisfied; moreover, they are, in the process, required to make findings on the credibility, honesty and integrity of witnesses and litigants and to justify those findings.” (*Soller v President of the Republic of South Africa* 2005 (3) SA 567)

However, in *Freedom Under Law v Judge Nkola Motata* ([2021] ZAGPPHC 14 (in which the case above was supported), the Court also, at paragraph 15, referred to an academic treatise on the matter (McCreath H and Koen R. “Defending the absurd: the iconoclasts guide to section 47(1) of the Superior Courts Act 10 of 2013” 2014 PER 1789–1827), in which the authors state:

“Needless to say—and no judge will demur—the rule of law demands that judges whose non-judicial behaviour causes damage not be shielded by the majesty of the judicial office. The judge who has gone off the rails of his or her office has to join the ranks of regular people, temporarily at least. However, meritless allegations ought not to trigger litigation which probably will cause damage to the judicial office itself.”

It is exactly this distinction that the Bill seeks to address—section 47 of the Act currently allows protection for judges on active service and those who are no longer on active service, to have the institution of civil proceedings by way of summons or notice of motion, and the serving of subpoenas in all civil proceedings—save for an application under the Domestic Violence Act, 1998 (Act No. 116 of 1998)—gatekept by requiring consent from the head of the relevant court, or in the case of a head of court or the Chief Justice, from the Chief Justice or the President of the Supreme Court of Appeal. The rationale for section 47 is only in relation to judicial activities of a judge, whether on active service or not, namely to “adjudicate matters fearlessly”, i.e. to not “in the execution of their judicial functions be inhibited by fear of being dragged to court unnecessarily over their judgements”. The Bill accordingly seeks to clarify that such judicial activities are the only activities that are to be gatekept by way of section 47. The Bill does not diminish the independence of the judiciary. It merely clarifies that the procedural protections afforded by section 47 are confined to the exercise of judicial authority and do not extend to extra judicial functions performed by judges in another capacity.

2. OBJECTS OF BILL

The purpose of the Bill is to limit the application of section 47 of the Act that regulates the institution of civil proceedings by way of a summons or a notice of motion, and the serving of a subpoena in civil proceedings, against a judge. The Bill proposes that section 47 only applies to civil proceedings related to judicial activities, which term is defined in the amendment. To ensure that the meaning of judicial activity is clear for the purpose of interpretation, the definition of ‘judicial activity’ is not only limited to the exercise of judicial authority by a court, but expressly excludes participation in a commission of inquiry, independent panel, parliamentary process, disciplinary tribunal, internal workplace labour process or a process considering compliance with a code of ethics or other norms or standards associated with a profession, arbitration, mediation, administrative investigation or any other institution or process, the purpose of which is not the execution of judicial authority. Save for a few, such activities are extra judicial in nature and do not attract the procedural protections contemplated in section 47. Participation in a labour tribunal, workplace labour process, compliance process or arbitration may perhaps be viewed as a judicial function in that these activities result in decisions that require the exercise of judicial authority. However, these activities are expressly excluded from the application of section 47 as they are not exclusively headed by judges, whether on active service or not. As no provision similar to section 47 exists for the other professionals who may head these activities, it would constitute unfair treatment to such other professionals to extend the section 47 protection for judges to these activities.

3. CONTENTS OF BILL

- 3.1 Clause 1 provides a definition for “judicial activity” and limits the application of section 47 to civil proceedings dealing with judicial activities only.
- 3.2 Clause 2 provides for transitional provisions related to applications made under section 47 before the commencement of the Superior Courts Amendment Act, 2026, to proceed on section 47 as it stood before such commencement.
- 3.3 Clause 3 provides for the short title of the Act, and its commencement.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None. The amendment will rather lighten the burden on a head of court, the Chief Justice and the President of the Supreme Court of Appeal to consider consent applications or civil proceedings that clearly do not relate to a judicial activity.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. DEPARTMENTS, BODIES OR PERSONS CONSULTED

A call for comments on the draft Bill was made to the public, together with the publication of the intention to introduce.

7. PARLIAMENTARY PROCEDURE

- 7.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.
- 7.2 The Member is of the opinion that the Bill does not directly affect traditional or Khoi-San communities or contain any provisions pertaining to customary law or customs of traditional or Khoi-San communities. Furthermore, that the

Bill does not contain any provisions pertaining to any matter referred to in section 154(2) of the Constitution and therefore does not have to be referred to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019).

Printed by Creda Communications

ISBN 978-1-4850-1106-4