

SUPREME COURT ACT

Act 59 of 1959.

RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE CAPE PROVINCIAL DIVISION OF THE SUPREME COURT OF SOUTH AFRICA

[Updated to 22 December 1989]

GoN 41, G. 2493 (c.i.o 13 January 1938),
GoN 1180, G. 1500 (c.i.o 29 July 1966),
GoN R2800, G. 12225 (c.i.o 22 December 1989).

His Excellency the Governor-General-in-Council has approved of the following rules of Court under and by virtue of the provisions of section 108 of the South Africa Act, section 46 of the Royal Charter for the better and more effectual administration of justice within the Province of the Cape of Good Hope bearing date the 4th May, 1932, and section 56 of Act 35 of 1896 (Cape).

The said Rules will have effect from the date of publication thereof in the *Government Gazette*.

3. **Sittings of the court and recesses**

- (1) For the dispatch of civil and criminal business of the court there shall be four terms in the year as follows—
- (a) from 1 February to 31 March, inclusive;
 - (b) from 9 April to 23 June, inclusive;
 - (c) from 1 August to 30 September, inclusive; and
 - (d) from 15 October to 15 December, inclusive;

The rest of the year shall be recess, save that the Judge President may constitute such court or courts as seem to him desirable to sit during recess: Provided that during the period 24 December to 2 January, both dates inclusive, no court shall sit.

[R 3(1) subs by GoN 1180 in G. 1500 wef 29 July 1966, GoN R2800 in G. 12225 wef 22 December 1989.]

- (2) If the day fixed for the commencement of a term is not a business day the term shall commence on the next succeeding business day, and if the day fixed for the end of a term is not a business day the term shall end on the business day preceding.

- (3) Mondays during term shall be reserved for appeals, reviews from inferior courts and arguments on exception.
- (4) During term one division shall be reserved for the hearing on every business day except Monday of provisional cases, summonses for civil imprisonment, applications and undefended actions.
- (5) Unless the court or the Judge President directs otherwise, defended actions, special cases and other cases not specially provided for may be set down for hearing on any business day during term approved of by the Registrar save Monday and any day during the last seven days of term.
- (6) In recess, subject to the proviso contained in subrule (1), the court shall sit on every Wednesday and, if such Wednesdays is not a business day, then on the next succeeding business day, to hear provisional cases, applications, summonses for civil imprisonment, applications for judgment under rules 31 and 32, and undefended actions *de lunatico inquirendo*, provided that the presiding Judge may in any recess postpone sitting to a later date in recess or to the following term any matter which in his opinion can be postponed without detriment to any party: Provided further that such criminal appeals as the Judge President considers urgent may be set down by the Registrar for hearing on such days in recess as the Judge President may from time to time appoint.

[R 3(6) am by GoN R2800 in G. 12225 wef 22 December 1989.]

- (7) Circuit courts shall be held on the dates and at the venues determined by the Judge President and published in a calendar issued by the Registrar before the commencement of each calendar year: Provided that the Judge President may from time to time direct that any circuit be held on a date and / or at a venue other than those so published, if in his opinion there is good reason for such change.

[R 3 renumbered by GoN R2800 in G. 12225 wef 22 December 1989; r 3(7) subs by GoN R2800 in G. 12225 wef 22 December 1989.]

7. Applications under the Derelict Lands Act

- (1) Any person who applies for an order of Court by virtue of the provisions of Act 28 of 1881 shall lodge with his application—
 - (a) a certificate from a conveyancer entitled to practise in the Deeds Registry for the area within the limits of which the land affected is situate to the effect that such land is registered in the name of the person alleged by the applicant to be the registered owner thereof and stating whether the land is or is not hypothecated, and, if it is hypothecated,

giving particulars regarding the name of the registered legal holder of the bond and the amount and date thereof;

- (b) a report on the application by the Registrar of Deeds concerned and also one from the Surveyor-General if, in the opinion of the Registrar of Deeds, the circumstances of the case are of such a nature as to render the production of such a report desirable;
 - (c) the original or a certified copy of the title-deed made in favour of the last registered owner.
- (2) Where it is alleged by the applicant that the right to the ownership of the land was acquired by a contract or other transaction which was reduced to writing the document containing such writing shall be lodged or an explanation of its non-production supplied upon affidavit.
 - (3) Where the contract or other transaction was not reduced in writing, or where, though so reduced, the document cannot be produced, proof of the conclusion of such contract or transaction upon which applicant relies shall be furnished, and by disinterested persons where possible.
 - (4) Where the applicant bases his claim upon prescription proof of the undisturbed possession of the land by applicant and by any person or persons through whom his rights are derived shall be furnished, and by disinterested persons where possible.
 - (5) In all cases proof of payment by applicant or by any person or persons through whom his rights may have been derived of any rates, taxes and quitrent payable in respect of the land shall be furnished or an explanation of non-payment.
 - (6) Where the land in respect of which the application is made has been granted subject to a condition giving the Government the right to resume the land on failure of the owner to comply with the terms of the grant the applicant must satisfy the Court that notice of the application has been served upon the Secretary for Lands.

34. Set down

- (1) Whenever—
 - (a) an exception has been filed to any pleadings; or
 - (b) the parties have stated a special case for the opinion of the court on a question of law;
or

(c) in cases not carried on by default, the pleadings have been closed,

the plaintiff or, if he fails to do so within 30 days, any party may set down the case on the roll for trial by entering the particulars required in the register kept by the Registrar in the form set out in Form 21 in the First Schedule and by forthwith giving notice in writing to the other party that he has done so.

- (2) The Registrar shall compile and publish a list of the cases to be tried which shall be called the weekly list.
- (3) The weekly list shall be the list of cases which will be tried during the week to which the list relates. A weekly list shall be compiled and published relating to the week commencing on the Monday of the week in which the first day of term occurs and thereafter for each week during term. The Registrar shall set down for trial and shall enter in the weekly list as many cases as will be tried during the week to which the list relates and shall set down the said cases for trial on specified dates in the said week. The weekly list shall be published on Friday, six weeks before the commencement of the week to which it relates or if the said Friday is a holiday on the next business day, save that the Registrar may set down cases on at least 14 days' notice if any withdrawals should occur on any of the said lists.
- (4) The weekly list will be published by being posted on the notice board at the Registrar's office. On the day upon which the weekly list is published the Registrar shall give notice of trial by registered post to the parties in each case in the list by posting a written notice to the attorneys for each party or, if the parties have no attorneys, to the parties at their addresses as stated in the register mentioned in subrule (1). The said notice shall inform the parties of the date upon which the case has been set down for trial and shall be in the form set out in Form 22 in the First Schedule. Cases will be entered on the weekly list in the chronological order in which they were set down on the roll and they will be tried in the said order: Provided that—
 - (a) the court may order that the cases be tried in a different order and may order that the case be promoted on the roll or on any list or that a case be postponed either *sine die* or to some particular date or dates;
 - (b) the court may set down a case for trial on a particular date or dates;
 - (c) a case which is not reached on the date on which it was set down for trial will be tried at the conclusion of the trial of the case next before it on the list or on a date to be fixed by the court or by the Registrar on the instructions of the court;
 - (d) defended matrimonial cases may be set down for trial at the end of third division rolls.

(5)

(a) With the consent of all parties a case may be withdrawn from the roll of cases for trial by notice in writing addressed to the Registrar. A case which has been so withdrawn, if replaced on the said roll, shall be placed next after the last matter already on the roll: Provided that the court may on the application of either party order that such case be placed on the roll in some other position.

(b) Save as aforesaid no case shall be withdrawn from the roll save, on cause shown, with the consent of the court and on such terms as to the court may seem just.

(6) This rule shall *mutatis mutandis* apply to the setting down for hearing of opposed motion proceedings or opposed provisional sentence proceedings.

(7) Nothing in this rule contained shall be construed as dispensing with the requirements of subrule (3) of rule 30 in regard to a special case when the interests of married women, minors, or persons of unsound mind may be affected.

FORM No. 22

Case No.
REGISTRAR, SUPREME COURT,
(PRIVATE BAG),
CAPE TOWN.

Date

In the matter of:

.....

Plaintiff, Applicant

versus

.....

Defendant, Respondent.

REGISTERED:

Messrs.

Gentlemen,

Kindly take notice that pursuant to the provisions of Rule 34 of the Rules of this Court the above-mentioned case has been set down for hearing in this Court, on the day of 19.....

Yours faithfully,

.....

Registrar