SUPREME COURT ACT 59 OF 1959

UNIFORM RULES OF COURT

[Updated to 12 April 2024]

Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa

GoN R48, G. 999 (came into effect on 15 January 1965),
GoN R235, G. 1375 (came into effect on 18 February 1966),
GoN R2004, G. 1915 (came into effect on 15 December 1967),
GoN R3553, G. 2543 (came into effect on 1 November 1969),
GoN R2021, G. 3304 (came into effect on 15 November 1971),
GoN R1985, G. 3695 (came into effect on 1 December 1972),
GoN R480, G. 3826 (came into effect on 1 April 1973),
GoN R639, G. 4646 (came into effect on 4 April 1975),
GoN R1816, G. 5309 (came into effect on 8 October 1976),
GoN R1975, G. 5324 (came into effect on 29 October 1976),
GoN R2477, G. 5361 (came into effect on 17 December 1976),
GoN R2365, G. 5804 (came into effect on 18 November 1977),
GoN R1546, G. 6120 (came into effect on 28 July 1978),
GoN R1577, G. 6594 (came into effect on 20 July 1979),
GoN R1535, G. 7140 (came into effect on 25 July 1980),
GoN R2527, G. 7318 (came into effect on 5 December 1980),
GoN R500, G. 8088 (came into effect on 12 March 1982),
GoN R773, G. 8169 (came into effect on 23 April 1982),
GoN R775, G. 8169 (came into effect on 23 April 1982),
GoN R1873, G. 8367 (came into effect on 3 September 1982),
GoN R2170, G. 8405 (came into effect on 6 October 1982),
GoN R645, G. 8617 (came into effect on 25 March 1983),
GoN R645, G. 8617 (corrected by GoN R841, G. 8667 (came into effect on 22 April 1983)),
GoN R1077, G. 8719 (came into effect on 20 May 1983),
GoN R1996, G. 9413 (came into effect on 7 September 1984),
GoN R2094, G. 9928 (came into effect on 13 September 1985),
GoN R810, G. 10212 (came into effect on 2 May 1986),
GoN R2164, G. 10958 (came into effect on 2 October 1987),
GoN R2642, G. 11045 (came into effect on 31 December 1987),
GoN R1421, G. 11422 (came into effect on 15 August 1988),
GoN R210, G. 11694 (came into effect on 10 March 1989),
GoN R608, G. 11792 (came into effect on 1 July 1989),

GoN R2628, G. 12205 (came into effect on 2 January 1990),
GoN R185, G. 12276 (came into effect on 2 March 1990),
GoN R1929, G. 12614 (came into effect on 10 September 1990),
GoN R1262, G. 13283 (came into effect on 1 July 1991),
GoN R2410, G. 13558 (came into effect on 1 November 1991),
GoN R2845, G. 13653 (came into effect on 1 January 1992),
GoN R406, G. 13759 (came into effect on 9 March 1992),
GoN R1883, G. 14110 (came into effect on 3 August 1992),
GoN R109, G. 14541 (came into effect on 22 February 1993),
GoN R960, G. 14844 (came into effect on 28 June 1994 and 1 July 1994),
GoN R974, G. 14851 (came into effect on 1 July 1993),
GoN R1356, G. 15021 (came into effect on 1 September 1993),
GoN R1843, G. 15147 (came into effect on 1 November 1993: Provided that the provisions of rule 4 shall apply only to the Cape of Good Hope Provincial Division of the Supreme Court of South Africa from 1 December 1993 until 30 November 1995),
GoN R2365, G. 15322 (came into effect on 10 January 1994),
GoN R2529, G. 15393 (came into effect on 31 January 1994),
GoN R181, G. 15464 (came into effect on 1 March 1994),
GoN R411, G. 15538 (came into effect on 11 April 1994),
GoN R873, G. 17209 (came into effect on 1 July 1996),
GoN R1063, G. 17279 (came into effect on 29 July 1996),
GoN R1557, G. 17444 (came into effect on 21 October 1996),
GoN R1746, G. 17527 (came into effect on 25 November 1996),
GoN R2047, G. 17663 (came into effect on 13 January 1997),
GoN R417, G. 17853 (came into effect on 14 April 1997),
GoN R491, G. 17882 (came into effect on 29 April 1997),
GoN R700, G. 18001 (came into effect on 17 June 1997),
GoN R798, G. 18055 (came into effect on 14 July 1997),
GoN R1352, G. 18365 (came into effect on 1 December 1997),
GoN R785, G. 18956 (came into effect on 6 July 1998),
GoN R881, G. 19009 (came into effect on 27 July 1998),
GoN R1024, G. 19136 (came into effect on 7 September 1998),
GoN R1723, G. 19662 (came into effect on 1 February 1999),
GoN R568, G. 20036 (came into effect on 31 May 1999),
GoN R1084, G. 20443 (came into effect on 11 October 1999),
GoN R1299, G. 20594 (came into effect on 30 November 1999),
GoN R502, G. 21204 (came into effect on 19 June 2000),
GoN R849, G. 21499 (came into effect on 25 September 2000),
GoN R373, G. 22265 (came into effect on 1 June 2001),
GoN R1088, G. 22796 (came into effect on 26 November 2001),

GoN R1755, G. 25795 (came into effect on 5 January 2004),
GoN R229, G. 26070 (came into effect on 22 March 2004),
GoN R1343, G. 31690 (came into effect on 12 January 2009),
GoN R1345, G. 31690 (came into effect on 12 January 2009),
GoN R516, G. 32208 (came into effect on 15 June 2009),
GoN R518, G. 32208 (came into effect on 15 June 2009),
GoN R86, G. 32941 (came into effect on 12 March 2010),
GoN R87, G. 32941 (came into effect on 12 March 2010),
GoN R88, G. 32941 (came into effect on 12 March 2010),
GoN R89, G. 32941 (came into effect on 12 March 2010),
GoN R90, G. 32941 (came into effect on 12 March 2010),
GoN R500, G. 33273 (came into effect on 16 July 2010),
GoN R591, G. 33355 (came into effect on 13 August 2010),
GoN R980, G. 33689 (came into effect on 24 December 2010),
GoN R981, G. 33689 (came into effect on 24 December 2010),
GoN R464, G. 35450 (came into effect on 27 July 2012),
GoN 992, G. 35932 (came into effect on 11 January 2013),
GoN R114, G. 36157 (came into effect on 22 March 2013),
GoN R262, G. 36338 (came into effect on 17 May 2013),
GoN R471, G. 36638 (came into effect on 16 August 2013),
GoN R472, G. 36638 (came into effect on 16 August 2013),
GoN R759, G. 36913 (came into effect on 15 November 2013),
GoN R212, G. 37475 (came into effect on 2 May 2014),
GoN R213, G. 37475 (came into effect on 2 May 2014),
GoN R214, G. 37475 (came into effect on 2 May 2014),
GoN R30, G. 38399 (came into effect on 24 February 2015),
GoN R31, G. 38399 (came into effect on 24 February 2015),
GoN R317, G. 38694 (came into effect on 22 May 2015),
GoN R781, G. 39148 (came into effect on 2 October 2015),
GoN R3, G. 39715 (came into effect on 22 March 2016),
GoN R678, G. 40045 (came into effect on 4 July 2016),
GoN R1055, G. 41142 (came into effect on 1 November 2017),
GoN R1272, G. 41257 (came into effect on 22 December 2017),
GoN R1318, G. 42064 (came into effect on 10 January 2019),
GoN R61, G. 42186 (came into effect on 11 March 2019),
GoN R842, G. 42497 (came into effect on 1 July 2019),
GoN R1343, G. 42773 (came into effect on 22 November 2019),
GoN R107, G. 43000 (came into effect on 9 March 2020),
GoN R858, G. 43592 (came into effect on 11 September 2020),
GoN R1157, G. 43856 (came into effect on 1 December 2020),

GoN R1603, G. 45645 (came into effect on 1 February 2022),
GoN R2133, G. 46475 (came into effect on 8 July 2022),
GoN R2413, G. 46789 (came into effect on 1 October 2022),
GoN R4477, G. 50272 (came into effect on 12 April 2024).

The Chief Justice after consultation with the judges president of the several divisions of the Supreme Court of South Africa has, in terms of paragraph (a) of subsection (2) of section 432 of the Supreme Court Act, 1959 (Act 59 of 1959), with the approval of the State President made, with effect from the 15th January, 1965, the rules contained in the Annexure regulating the conduct of the proceedings of the provincial and local divisions of the Supreme Court of South Africa.

ANNEXURE

ARRANGEMENT OF RULES

Rule

[Arrangement of Rules amended by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R1262 in G. 13283 with effect from 1 July 1991, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R181 in G. 15464 with effect from 1 March 1994, GoN R881 in G. 19009 with effect from 27 July 1998, GoN R849 in G. 21499 with effect from 25 September 2000.]

1. Definitions

In these Rules and attached forms, unless the context otherwise indicates—

"Act" means the Superior Courts Act, 2013 (Act 10 of 2013);

"action" means a proceeding commenced by summons;

"advocate" means a legal practitioner as defined, admitted and enrolled as such, under the Legal Practice Act, 2014 (Act 28 of 2014);

"application" means a proceeding commenced by notice of motion or other forms of applications provided for by rule 6;

"attorney" means a legal practitioner as defined, admitted and enrolled as such, under the Legal Practice Act, 2014 (Act 28 of 2014);

"combined summons" means a summons with particulars of plaintiff's claim annexed thereto in terms of subrule (2) of rule 17;

"court" in relation to civil matters means the High Court as referred to in section 6 of the Act;

"court day" means a day that is not a public holiday, Saturday or Sunday and only court days shall be included in the computation of any time expressed in days prescribed by these Rules or fixed by any order of court;

"deliver" means to serve copies on all parties and file the original with the registrar;

"judge" means a judge sitting otherwise than in open court;

"Master" means the Master of the High Court as defined in the Administration of Estates Act, 1965 (Act 66 of 1965);

"mutatis mutandis" means "subject to the necessary changes";

"party" or any reference to a plaintiff or other litigant in terms, includes such party's attorney with or without an advocate, as the context may require;

"registrar" includes an assistant registrar;

"sheriff" means a person appointed in terms of section 2 of the Sheriffs' Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, and a person designated to serve process in terms of section 6A of the said Act.

[Rule 1 amended by GoN R480 in G. 3826 with effect from 1 April 1973, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN 992 in G. 35932 with effect from 1 January 2013; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

2. Sittings of the Court and recess periods

(1) Notice of the terms and sessions of every Division of the High Court, as determined by the Chief Justice under the provisions of section 9(2) of the Act, shall be published in the *Gazette* and a copy thereof shall be affixed to the public notice-board at the office of the registrar.

(2) If the day prescribed for the commencement of a civil term or a criminal session is not a court day, the term or session shall commence on the next succeeding court day and, if the day prescribed for the end of a term or session is not a court day, the term or session shall end on the court day preceding.

(3) The periods between the said terms shall be recess, during which, subject to the provisions of subrule (4), the ordinary business of the court shall be suspended, but at least one judge shall be available on such days to perform such duties as the Judge President shall direct.

(4) During and out of term such judges shall sit on such days for the discharge of such business as the Judge President may direct.

(5)

(a) If it appears to the Judge President of a Division that it is expedient or in the interests of justice for the court to sit at a time other than any prescribed time, the Judge President may direct that the court sits at such other time, including during recess periods.

(b) If it appears to the Judge President of a Division that it is expedient or in the interests of justice to hold a sitting of the court for the hearing of any matter at a place elsewhere than at the seat or a local seat of the Division, the Judge President may, in accordance with the provisions of section 6(7) of the Act, hold a sitting of the court at such other place.

[Rule 2 amended by GoN R235 in G. 1375 with effect from 18 February 1966; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

3. Registrar's office hours

Except on Saturdays, Sundays and Public Holidays, the offices of the registrar shall be open from 9:00 to 13:00 and from 14:00 to 16:00, save that, for the purpose of issuing any process or filing any document, other than a notice of intention to defend, the offices shall be open from 9:00 to 13:00, and from 14:00 to 15:00. The registrar may in exceptional circumstances issue process and accept documents at any time, and shall do so when directed by a judge.

[Rule 3 amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

3A. Admission of advocates

(1) Subject to the provisions of rule 6 in so far as they are not inconsistent with the provisions of this rule, a person applying for admission to practise and for authority to be enrolled as an advocate shall, at least six weeks before the day on which his application is to be heard by the court—

(a) give written notice to the registrar of the date on which the application is to be made;

(b)

(i) deliver to the registrar the original and a copy of the documents in support of the application and an affidavit stating his identity number and whether or not he has at any time been struck off the roll of advocates or suspended from his practice by the court;

(ii) deliver to the registrar an affidavit from his attorney or a commissioner of oaths stating that the attorney or commissioner of oaths has examined his identity document and that the attorney or commissioner is satisfied that the applicant is the person referred to in the identity document;

[Rule 3A(1)(b) substituted by GoN R608 in G. 11792 with effect from 1 July 1989.]

(bA) if he previously was admitted or practised as an attorney, submit to the registrar a certificate from the law society of the province in which he was so admitted or practised to the effect that, in the opinion of the law society concerned, he is a fit and proper person;

[Rule 3A(1)(bA) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, inserted by GoN R2642 in G. 11045 with effect from 31 December 1987.]

(c) serve a copy of the documents and affidavit referred to in paragraphs (a), (b) and (bA) on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

[Rule 3A(1)(c) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(2) …

[Rule 3A(2) repealed by GoN R2164 in G. 10958 with effect from 2 October 1987, repealed by GoN R2642 in G. 11045 with effect from 31 December 1987.]

(3) If the applicant at any time prior to the hearing of the application delivers any documents or declarations, other than the documents or affidavit referred to in paragraphs (b) and (bA) of subrule (1), to the registrar, he shall forthwith serve a copy thereof on the Secretary of the Bar Council or the Society of Advocates of the division concerned.

[Rule 3A(3) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987; substituted by GoN R2642 in G. 11045 with effect from 31 December 1987.]

(4) …

[Rule 3A(4) repealed by GoN R2164 in G. 10958 with effect from 2 October 1987.]

(5) Any person who is admitted to practice and authorised to be enrolled as an advocate shall upon being so admitted and authorised take an oath or make an affirmation before the registrar in court, which shall be subscribed by him, in the form set out hereunder, namely—

"I, ... do hereby swear/solemnly and sincerely affirm and declare/that I will truly and honestly demean myself in the practice of advocate according to the best of my knowledge and ability, and further, that I will be faithful to the Republic of South Africa."

[Rule 3A(5) inserted by GoN R235 in G. 1375 with effect from 18 February 1966; r 3bis inserted by GoN R235 in G. 1375 with effect from 18 February 1966, renumbered by GoN R2410 in G. 13558 with effect from 1 November 1991.]

4. Service

(1)

(a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners—

(i) by delivering a copy thereof to the said person personally: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(ii) by delivering a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like to the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building, other than an hotel, boarding-house, hostel or similar residential building, is occupied by more than one person or family, 'residence' or 'place of business' means that portion of the building occupied by the person upon whom service is to be effected;

[Rule 4(1)(ii) substituted by GoN R4477 in G. 50272 with effect from 12 April 2024.]

(iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over such person;

(iv) if the person so to be served has chosen a *domicilium citand*i, by delivering a copy thereof to a person apparently not less than sixteen years of age at the *domicilium* so chosen;

[Rule 4(1)(iv) substituted by GoN R4477 in G. 50272 with effect from 12 April 2024.]

(v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

(vi) by delivering a copy thereof to any agent who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected;

(vii) where any partnership, firm or voluntary association is to be served, service shall be effected in the manner referred to in paragraph (ii) at the place of business of such partnership, firm or voluntary association and if such partnership, firm or voluntary association has no place of business, service shall be effected on a partner, the proprietor or the chairperson or secretary of the committee or other managing body of such association, as the case may be, in one of the manners set forth in this rule;

(viii) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the municipal manager or a person in attendance at the municipal manager's office of such local authority or to the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or

(ix) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule:

Provided that where service has been effected in accordance with subparagraphs (ii); (iii); (iv); (v) and (vii) of subparagraph (a), the sheriff shall in the return of service set out the details of the manner and circumstances under which such service was effected.

(aA) Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

(b) Service shall be effected as near as possible between the hours of 7:00 and 19:00.

(c) No service of any civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, shall be validly effected on a Sunday unless the court or a judge otherwise directs.

(d) It shall be the duty of the sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in a return or affidavit or on the signed receipt that the person serving the process or document has done so.

[Rule 4(1) substituted by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2004 in G. 1915 with effect from 15 December 1967; amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(2) If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto. Where such directions are sought in regard to service upon a person known or believed to be within the Republic, but whose whereabouts therein cannot be ascertained, the provisions of subrule (2) of rule 5 shall, mutatis mutandis, apply.

(3) Service of any process of the court or of any document in a foreign country shall be effected—

(a) by any person who is, according to a certificate of—

(i) the head of any South African diplomatic or consular mission, any person in the administrative or professional division of the public service serving at a South African diplomatic or consular mission or trade office abroad;

[Rule 4(3)(a)(i) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2047 in G. 17663 with effect from 13 January 1997.]

(ii) any foreign diplomatic or consular officer attending to the service of process or documents on behalf of the Republic in such country;

(iii) any diplomatic or consular officer of such country serving in the Republic; or

[Rule 4(3)(a)(iii) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(iv) any official signing as or on behalf of the head of the department dealing with the administration of justice in that country,

authorised under the law of such country to serve such process or document; or

(b) by any person referred to in subparagraph (i) or (ii) of paragraph (a), if the law of such country permits such person to serve such process or document or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

[Rule 4(3)(b) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(4) Service of any process of the court or of any document in Australia, Botswana, Finland, France, Hong Kong, Lesotho, Malawi, New Zealand, Spain, Swaziland, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe may, notwithstanding the provisions of subrule (3), also be effected by an attorney, solicitor, notary public or other legal practitioner in the country concerned who is under the law of that country authorised to serve process of court or documents and in a state to which independence has been granted by law by a person in the state concerned who is under the law of that state authorised to serve process of court or documents.

[Rule 4(4) substituted by GoN R1975 in G. 5324 with effect from 29 October 1976, GoN R1535 in G. 7140 with effect from 25 July 1980.]

(5)

(a) Any process of court or document to be served in a foreign country shall be accompanied by a sworn translation thereof into an official language of that country or part of that country in which the process or document is to be served, together with a certified copy of the process or document and such translation.

(b) Any process of court or document to be served as provided in subrule (3), shall be delivered to the registrar.

[Rule 4(5)(b) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971; amended by GoN R185 in G. 12276 with effect from 2 March 1990, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R491 in G. 17882 with effect from 29 April 1997; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(c) Any process of court or document delivered to the registrar in terms of paragraph (b) shall be transmitted by the registrar together with the translation referred to in paragraph (a), to the Director-General: International Relations and Cooperation to a destination indicated by the Director-General: International Relations and Cooperation for service in the foreign country concerned. The registrar must be satisfied that the process of court or document allows a sufficient period for service to be effected in good time.

[Rule 4(5)(c) amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(6) Service shall be proved in one of the following manners—

(a) Where service has been effected by the sheriff; by the return of service of such sheriff;

(b) Where service has not been effected by the sheriff, nor in terms of subrule (3) or (4), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of such attorney's staff, the Government of the Republic, or on any Minister, Premier or a Member of an Executive Council, or any other officer of such Government or Province, in such person's official capacity by the production of a signed receipt therefor.

[Rule 4(6)(b) substituted by GoN R235 in G. 1375 with effect from 18 February 1966; amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(6A)

(a) The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

(b) The said person shall file each such document on behalf of the person who effected service with the registrar when—

(i) such person sets the matter in question down for any purpose;

(ii) it comes to such person's knowledge in any manner that the matter is being defended;

(iii) the registrar requests filing;

(iv) the mandate to act on behalf of a party, if such person is a legal practitioner, is terminated in any manner.

[Rule 4(6A) inserted by GoN R1356 in G. 15021 with effect from 1 September 1993; r 4(6A)(b) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(7) Service of any process of court or document in a foreign country shall be proved—

(a) by a certificate of the person effecting service in terms of paragraph (a) of subrule (3) or subrule (4) in which the person identifies himself or herself, states that he or she is authorised under the law of that country to serve process of court or documents therein and that the process of court or document in question has been served as required by the law of that country and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in subrule (4) shall be duly authenticated; or

[Rule 4(7)(a) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(b) by a certificate of the person effecting service in terms of paragraph (b) of subrule (3) in which such person states that the process of court or document in question has been served, setting forth the manner and date of such service and affirming that the law of the country concerned permits such person to serve process of court or documents or that there is no law in such country prohibiting such service and that the authorities of that country have not interposed any objection thereto.

[Rule 4(7)(b) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(8) Whenever any process has been served within the Republic by a sheriff outside the jurisdiction of the court from which it was issued, the signature of such sheriff upon the return of service shall not require authentication by the sheriff.

[Rule 4(8) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(9) In proceedings in which the State or an organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council in such person's official capacity is the defendant or respondent, the summons or notice instituting such proceedings shall be served in accordance with the provisions of any law regulating proceedings against and service of documents upon the State or organ of state, a Minister, a Deputy Minister, a Premier or a Member of an Executive Council.

[Rule 4(9) substituted by GoN R1873 in G. 8367 with effect from 3 September 1982, GoN R608 in G. 11792 with effect from 1 July 1989; amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1055 in G. 41142 with effect from 1 November 2017.]

(10) Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit.

[Rule 4(10) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(11) Whenever a request for the service on a person in the Republic of any civil process or citation is received from a State, territory or court outside the Republic and is transmitted to the registrar of a provincial or local division under the provisions of subsection (2) of section 40 of the Act, the registrar shall transmit to the sheriff or a sheriff or any person appointed by a judge of the division concerned for service of such process or citation—

(a) two copies of the process or citation to be served; and

(b) two copies of a translation in English of such process or citation if the original is in any other language.

[Rule 4(11) amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(12) Service shall be effected by delivering to the person to be served one copy of the process or citation to be served and one copy of the translation (if any) thereof in accordance with the provisions of this rule.

(13) After service has been effected the sheriff or the person appointed for the service of such process or citation shall return to the registrar of the division concerned one copy of the process or citation together with—

(a) proof of service, which shall be by affidavit made before a magistrate, justice of the peace or commissioner of oaths by the person by whom service has been effected and verified, in the case of service by the sheriff or a sheriff, by the certificate and seal of office of such sheriff or, in the case of service by a person appointed by a judge of the division concerned, by the certificate and seal of office of the registrar of the division concerned; and

(b) particulars of charges for the cost of effecting such service.

[Rule 4(13) amended by GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R1343 in G. 42773 with effect from 22 November 2019.]

(14) The particulars of charges for the cost of effecting service under subrule (11) shall be submitted to the taxing master of the division concerned, who shall certify the correctness of such charges or other amount payable for the cost of effecting service.

[Rule 4(14) substituted by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R1343 in G. 42773 with effect from 22 November 2019.]

(15) The registrar concerned shall, after effect has been given to any request for service of civil process or citation, return to the Director-General of the Department responsible for the administration of justice—

(a) the request for service referred to in subrule (11);

(b) the proof of service together with a certificate in accordance with Form "J" of the Second Schedule duly sealed with the seal of the division concerned for use out of the jurisdiction; and

(c) the particulars of charges for the cost of effecting service and the certificate, or copy thereof, certifying the correctness of such charges.

[Rule 4(15) amended by GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R1343 in G. 42773 with effect from 22 November 2019.]

4A. Delivery of documents and notices

(1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5)(b), 6(5)(d)(i), 17(3), 19(3) or 34(8), by—

(a) hand at the physical address for service provided, or

(b) registered post to the postal address provided, or

(c) facsimile or electronic mail to the respective addresses provided.

(2) An address for service, postal address, facsimile address or electronic address mentioned in subrule (1) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that subrule at such new address.

(3) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by facsimile or electronic mail.

(4) Service under this rule need not be effected through the Sheriff.

(5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail.

[Rule 4A inserted by GoN R464 in G. 35450 with effect from 27 July 2012.]

5. Edictal citation

(1) Save by leave of the court no process or document whereby proceedings are instituted shall be served outside the Republic.

(2) Any person desiring to obtain such leave shall make application to the court setting forth concisely the nature and extent of his claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorise. If such manner be other than personal service, the application shall further set forth the last-known whereabouts of the person to be served and the inquiries made to ascertain his present whereabouts. Upon such application the court may make such order as to the manner of service as to it seems meet and shall further order the time within which notice of intention to defend is to be given or any other step that is to be taken by the person to be served. Where service by publication is ordered, it may be in a form as near as may be in accordance with Form 1 of the First Schedule, approved and signed by the registrar.

(3) Any person desiring to obtain leave to effect service outside the Republic of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of subrule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may require, and may make such order as to it seems meet.

6. Applications

(1) Every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

[Rule 6(1) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion must be addressed to both the registrar and such person, otherwise it must be addressed to the registrar only.

(3) …

[Rule 6(3) repealed by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(4)

(a) Every application brought *ex parte* upon notice to the registrar supported by an affidavit as aforesaid must be filed with the registrar and set down, before noon on the court day but one preceding the day upon which it is to be heard. If brought upon notice to the registrar, such notice must set forth the form of order sought, specify the affidavit filed in support thereof, request the registrar to place the matter on the roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule.

[Rule 6(4)(a) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(b) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which such person desires to be heard, whereupon the registrar must set such application down for hearing at the same time as the initial application.

(c) At the hearing the court may grant or dismiss either of or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.

(5)

(a) Every application other than one brought *ex parte* must be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule and true copies of the notice, and all annexures thereto must be served upon every party to whom notice thereof is to be given.

(b) In a notice of motion the applicant must—

(i) appoint an address within 15 kilometres of the office of the registrar, at which applicant will accept notice and service of all documents in such proceedings;

(ii) state the applicant's postal, facsimile or electronic mail addresses where available; and

(iii) set forth a day, not less than 10 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application, and must further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice:

Provided that—

(aa) for the purposes of this subrule, the days between 21 December and 7 January, both inclusive, shall not be counted in the time allowed for delivery of the notice of intention to oppose or delivery of any affidavit;

(bb) the provisions of subparagraph (aa) shall not apply to applications brought under subrule 6(12) of this rule and applications brought under rule 43.

[Rule 6(5)(b)(iii) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

[Rule 6(5)(b) substituted by GoN R1055 in G. 41142 with effect from 1 November 2017.]

(c) If the respondent does not, on or before the day mentioned for that purpose in such notice, notify the applicant of an intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the same is to be heard.

(d) Any person opposing the grant of an order sought in the notice of motion must—

(i) within the time stated in the said notice, give applicant notice, in writing that such person intends to oppose the application, and in such notice appoint an address within 15 kilometres of the office of the registrar, at which such person will accept notice and service of all documents, as well as such person's postal, facsimile or electronic mail addresses where available;

(ii) within fifteen days of notifying the applicant of intention to oppose the application, deliver such person's answering affidavit, if any, together with any relevant documents; and

(iii) if such person intends to raise any question of law only, such person must deliver notice of intention to do so, within the time stated in the preceding subparagraph, setting forth such question.

[Rule 6(5)(d) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(e) Within 10 days of the service upon the respondent of the affidavit and documents referred to in subparagraph (ii) of paragraph (d) of subrule (5) the applicant may deliver a replying affidavit. The court may in its discretion permit the filing of further affidavits.

(f)

(i) Where no answering affidavit, or notice in terms of subparagraph (iii) of paragraph (d), is delivered within the period referred to in subparagraph (ii) of paragraph (d) the applicant may within five days of the expiry thereof apply to the registrar to allocate a date for the hearing of the application.

(ii) Where an answering affidavit is delivered the applicant may apply for such allocation within five days of the delivery of a replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in paragraph (e) and where such notice is delivered the applicant may apply for such allocation within five days after delivery of such notice.

(iii) If the applicant fails so to apply within the appropriate period aforesaid, the respondent may do so immediately upon the expiry thereof. Notice in writing of the date allocated by the registrar must be given by the applicant or respondent, as the case may be, to the opposite party within five days of notification from the registrar.

(g) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the aforegoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(h) …

[Rule 6(5)(h) repealed by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(6) The court, after hearing an application whether brought *ex parte* or otherwise, may make no order thereon (save as to costs if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

(7)

(a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event the provisions of rule 10 will apply.

(b) The periods prescribed with regard to applications apply to counter-applications: Provided that the court may on good cause shown postpone the hearing of the application.

(8) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice.

(9) A copy of every application to court in connection with the estate of any person deceased, or alleged to be a prodigal, or under any legal disability, mental or otherwise, must, before such application is filed with the registrar, be submitted to the Master for consideration and report; and if any person is to be suggested to the court for appointment as curator to property, such

suggestion must likewise be submitted to the Master for report. Provided that the provisions of this subrule do not apply to any application under rule 57 except where that rule otherwise provides.

(10) The provisions of subrule (9) further apply to all applications for the appointment of administrators and trustees under deeds or contracts relating to trust funds or to the administration of trusts set up by testamentary disposition.

(11) Notwithstanding the aforegoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge.

(12)

(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.

[Rule 6(12)(b) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(c) A person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order.

(13) In any application against any Minister, Deputy Minister, Member of an Executive Council, officer or servant of the State, in such capacity, the State or the administration of any province, the respective periods referred to in paragraph (b) of subrule (5), or for the return of a *rule nisi*, must be not less than 15 days after the service of the notice of motion, or the *rule nisi*, as the case may be, unless the court has specially authorised a shorter period.

(14) The provisions of rules 10, 11, 12, 13 and 14 apply to all applications.

(15) The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The court may not grant the application unless it is satisfied that the applicant will be prejudiced if the application is not granted.

[Rule 6 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2642 in G.11045 with effect from 31 December 1987, GoN R1929 in G. 12614 with effect from 10 September 1990, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R2845 in G. 13653 with effect from 1 January 1992, GoN R960 in G. 14844 with effect from 28 June 1993, GoN R464 in G. 35450 with effect from 27 July 2012; substituted by GoN R3 in G. 39715 with effect from 22 March 2016.]

7. Power of attorney

(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

[Rule 7(1) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(2) The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.

[Rule 7(2) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(3) An attorney instructing an advocate to appear in an appeal on behalf of any party other than a party who has caused the appeal to be set down shall, before the hearing thereof, file with the registrar a power of attorney authorising him so to act.

[Rule 7(3) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the registrar who shall note that fact on the said power.

(5)

(a) No power of attorney shall be required to be filed by the State Attorney, any deputy state attorney or any professional assistant to the State Attorney or a deputy state attorney or any attorney instructed, in writing, or by telegramended by or on behalf of

the State Attorney or a deputy state attorney in any matter in which the State Attorney or a deputy state attorney is acting in his capacity as such by virtue of any provision of the State Attorney Act, 1957 (Act 56 of 1957).

[Rule 7(5)(a) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971.]

(b) …

[Rule 7(5)(b) repealed by GoN R2021 in G. 3304 with effect from 15 November 1971.]

8. Provisional sentence

(1) Where by law any person may be summoned to answer a claim made for provisional sentence, proceedings shall be instituted by way of a summons as near as may be in accordance with Form 3 of the First Schedule calling upon such person to pay the amount claimed or, failing such payment, to appear personally or by counsel or by an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court upon a day named in such summons, not being less than 10 days after the service upon him or her of such summons, to admit or deny his or her liability.

[Rule 8(1) amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1746 in G. 17527 with effect from 25 November 1996.]

(2) Such summons shall be issued by the registrar and the provisions of subrules (3) and (4) of rule 17 shall mutatis mutandis apply.

(3) Copies of all documents upon which the claim is founded shall be annexed to the summons and served with it.

(4) The plaintiff shall set down the case for hearing before noon on the court day but one preceding the day upon which it is to be heard.

(5) Upon the day named in the summons the defendant may appear personally or by an advocate or by an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court to admit or deny his liability and may, not later than noon of the court day but one preceding the day upon which he or she is called upon to appear in court, deliver an affidavit setting forth the grounds upon which he or she disputes liability in which event the plaintiff shall be afforded a reasonable opportunity of replying thereto.

[Rule 8(5) substituted by GoN R1746 in G. 17527 with effect from 25 November 1996.]

(6) If at the hearing the defendant admits his liability or if he has previously filed with the registrar an admission of liability signed by himself and witnessed by an attorney acting for him and not acting for the opposite party, or, if not so witnessed, verified by affidavit, the court may give final judgment against him.

(7) The court may hear oral evidence as to the authenticity of the defendant's signature, or that of his agent, to the document upon which claim for provisional sentence is founded or as to the authority of the defendant's agent.

[Rule 8(7) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(8) Should the court refuse provisional sentence it may order the defendant to file a plea within a stated time and may make such order as to the costs of the proceedings as to it may seem just. Thereafter the provisions of these Rules as to pleading and the further conduct of trial actions shall mutatis mutandis apply.

(9) The plaintiff shall on demand furnish the defendant with security *de restituendo* to the satisfaction of the registrar, against payment of the amount due under the judgment.

(10) Any person against whom provisional sentence has been granted may enter into the principal case only if he shall have satisfied the amount of the judgment of provisional sentence and taxed costs, or if the plaintiff on demand fails to furnish due security in terms of subrule (9).

(11) A defendant entitled and wishing to enter into the principal case shall, within two months of the grant of provisional sentence, deliver notice of his intention to do so, in which event the summons shall be deemed to be a combined summons and he shall deliver a plea within 10 days thereafter. Failing such notice or such plea the provisional sentence shall ipso facto become a final judgment and the security given by the plaintiff shall lapse.

[Rule 8(11) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

9. …

[Rule 9 amended by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R2410 in G. 13558 with effect from 1 November 1991; repealed by GoN 992 in G. 35932 with effect from 1 January 2013.]

10. Joinder of parties and causes of action

(1) Any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs

would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiffs depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise on each action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

(2) A plaintiff may join several causes of action in the same action.

(3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) In any action in which any causes of action or parties have been joined in accordance with this rule, the court at the conclusion of the trial shall give such judgment in favour of such of the parties as shall be entitled to relief or grant absolution from the instance, and shall make such order as to costs as shall to it seem to be just, provided that without limiting the discretion of the court in any way—

(a) the court may order that any plaintiff who is unsuccessful shall be liable to any other party, whether plaintiff or defendant, for any costs occasioned by his joining in the action as plaintiff;

(b) if judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may order—

(i) the plaintiff to pay such defendant's costs, or

(ii) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that, if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the unsuccessful defendants;

(c) if judgment is given in favour of the plaintiff against more than one of the defendants, the court may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

(5) Where there has been a joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties; and the court may on such application make such order as to it seems meet.

10A. Joinder of provincial or national executive authorities and service on Rules Board for Courts of Law

(1) If in any proceedings before the court, the validity of a law is challenged, whether in whole or in part and whether on constitutional grounds or otherwise, the party challenging the validity of the law must join the provincial or national executive authorities responsible for the administration of the law in the proceedings.

(2) Where a challenge referred to in subrule (1) is made against a rule made by the Rules Board for Courts of Law, the party challenging the rule must, at the time when the challenge is made, serve on the Rules Board for Courts of Law, a notice setting out the basis of the challenge, together with copies of all documents in which the challenge is referred to.

[Rule 10A inserted by GoN R849 in G. 21499 with effect from 25 September 2000; substituted by GoN R86 in G. 32941 with effect from 12 March 2010, GoN R317 in G. 38694 with effect from 22 May 2015.]

11. Consolidation of actions

Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon—

(a) the said actions shall proceed as one action;

(b) the provision of rule 10 shall mutatis mutandis apply with regard to the action so consolidated; and

(c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.

12. Intervention of persons as plaintiffs or defendants

Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.

13. Third party procedure

(1) Where a party in any action claims—

(a) as against any other person not a party to the action (in this rule called a "third party") that such party is entitled, in respect of any relief claimed against him, to a contribution or indemnification from such third party, or

(b) any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between such party and the third party, and should properly be determined not only as between any parties to the action but also as between such parties and the third party or between any of them,

such party may issue a notice, hereinafter referred to as a third party notice, as near as may be in accordance with Form 7 of the First Schedule, which notice shall be served by the sheriff.

(2) Such notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed. In so far as the statement of the claim and the question or issue are concerned, the rules with regard to pleadings and to summonses shall mutatis mutandis apply.

(3)

(a) The third party notice, accompanied by a copy of all pleadings filed in the action up to the date of service of the notice, shall be served on the third party and a copy of the third party notice, without a copy of the pleadings filed in the action up to the date of service of the notice, shall be filed with the registrar and served on all other parties before the close of pleadings in the action in connection with which it was issued.

(b) After the close of pleadings, such notice may be served only with the leave of the court.

[Rule 13(3) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2047 in G. 17663 with effect from 13 January 1997.]

(4) If the third party intends to contest the claim set out in the third party notice he shall deliver notice of intention to defend, as if to a summons. Immediately upon receipt of such notice, the party who issued the third party notice shall inform all other parties accordingly.

(5) The third party shall, after service upon him of a third party notice, be a party to the action and, if he delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.

(6) The third party may plead or except to the third party notice as if he were a defendant to the action. He may also, by filing a plea or other proper pleading contest the liability of the party issuing the notice on any ground notwithstanding that such ground has not been raised in the action by such latter party: Provided however that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice save to the extent that he would be entitled to do so in terms of rule 24.

(7) The rules with regard to the filing of further pleadings shall apply to third parties as follows—

(a) In so far as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant.

(b) In so far as the third party's plea relates to the plaintiff's claim, the third party shall be regarded as a defendant and the plaintiff shall file pleadings as provided by the said rules.

(8) Where a party to an action has against any other party (whether either such party became a party by virtue of any counter-claim by any person or by virtue of a third party notice or by any other means) a claim referred to in subrule (1), he may issue and serve on such other party a third party notice in accordance with the provisions of this rule. Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to such notice and they shall be subject to the same rights and duties as if such other party had been served with a third party notice in terms of subrule (1).

(9) Any party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice and the court may upon such application make such order as to it seems meet, including an order for the separate hearing and determination of any issue on

condition that its decision on any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, shall be binding upon the applicant.

14. Proceedings by and against partnerships, firms and associations

(1) In this rule—

"Association" means any unincorporated body of persons, not being a partnership.

"Firm" means a business, including a business carried on by a body corporate, carried on by the sole proprietor thereof under a name other than his own.

["firm" substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

"Plaintiff" and "Defendant" include applicant and respondent.

"Relevant date" means the date of accrual of the cause of action.

"Sue" and "sued" are used in relation to actions and applications.

(2) A partnership, a firm or an association may sue or be sued in its name.

(3) A plaintiff suing a partnership need not allege the names of the partners. If he does, any error of omission or inclusion shall not afford a defence to the partnership.

(4) The previous subrule shall apply mutatis mutandis to a plaintiff suing a firm.

(5)

(a) A plaintiff suing a firm or a partnership may at any time before or after judgment deliver to the defendant a notice calling for particulars as to the full name and residential address of the proprietor or of each partner, as the case may be, as at the relevant date.

[Rule 14(5)(a) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(b) The defendant shall within 10 days deliver a notice containing such information.

[Rule 14(5)(b) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(c) Concurrently with the said statement the defendant shall serve upon the persons referred to in paragraph (a) a notice as near as may be mutatis mutandis, in accordance with Form 8 of the First Schedule and deliver proof by affidavit of such service.

(d) A plaintiff suing a firm or a partnership and alleging in the summons or notice of motion that any person was at the relevant date the proprietor or a partner, shall notify such person accordingly by delivering a notice as near as may be, mutatis mutandis, in accordance with Form 8 of the First Schedule.

(e) Any person served with a notice in terms of paragraph (c) or (d) shall be deemed to be a party to the proceedings, with the rights and duties of a defendant.

(f) Any party to such proceedings may aver in the pleadings or affidavits that such person was at the relevant date the proprietor or a partner, or that he is estopped from denying such status.

(g) If any party to such proceedings disputes such status, the court may at the hearing decide that issue *in limine*.

(h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof, and, after such excursion, against the private assets of any person held to be, or held to be estopped from denying his status as, a partner, as if judgment had been entered against him.

(6) The preceding subrule shall apply mutatis mutandis to a defendant sued by a firm or a partnership.

(7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.

(8) The preceding subrule shall apply mutatis mutandis where it appears that a firm has been discontinued.

(9)

(a) A plaintiff suing an association may at any time before or after judgment deliver a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the office bearers and their respective offices as at the relevant date.

[Rule 14(9)(a) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(b) Such notice shall be complied with within 10 days.

[Rule 14(9)(b) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(c) Paragraphs (a) and (b) shall apply mutatis mutandis to a defendant sued by an association.

(10) Paragraphs (d) to (h) of subrule (5) shall apply mutatis mutandis when—

(a) a plaintiff alleges that any member, servant or agent of the defendant association is liable in law for its alleged debt;

(b) a defendant alleges that any member, servant or agent of the plaintiff association will be responsible in law for the payment of any costs which may be awarded against the association.

(11) Subrule (7) shall apply mutatis mutandis in regard to the continuance of the proceedings against any member, servant or agent referred to in paragraph (a) of subrule (10).

(12) Subrule (4) of rule 21 shall apply mutatis mutandis in the circumstances set out in paragraphs (a) and (b) of subrule (5) and in subrule (9) hereof.

[Rule 14(12) amended by GoN R1262 in G. 13283 with effect from 1 July 1991.]

15. Change of parties

(1) No proceedings shall terminate solely by reason of the death, marriage or other change of status of any party thereto unless the cause of such proceedings is thereby extinguished.

(2) Whenever by reason of an event referred to in subrule (1) it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party and to the registrar, add or substitute such further person as a party thereto, and subject to any order made under subrule (4) hereof, such proceedings shall thereupon continue in respect of the person thus added or substituted as if he had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect: Provided that save with the leave of the court granted on such terms (as to adjournment or otherwise) as to it may seem meet, no such notice shall be given after the commencement of the hearing of any opposed matter; and provided further that the copy of the notice served on any person joined thereby as a party to the proceedings shall (unless such party is represented by an attorney who is already in

possession thereof), be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered, and in trial matters by copies of all pleadings and like documents already filed of record, such notice, other than a notice to the registrar, shall be served by the sheriff.

[Rule 15(2) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(3) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator, trustee or similar legal representative, may by notice to all other parties and to the registrar intimate that he desires in his capacity as such thereby to be substituted for such party, and unless the court otherwise orders, he shall thereafter for all purposes be deemed to have been so substituted.

(4) The court may upon a notice of application delivered by any party within 20 days of service of notice in terms of subrules (2) and (3), set aside or vary any addition or substitution of a party thus affected or may dismiss such application or confirm such addition or substitution, on such terms, if any, as to the delivery of any affidavits or pleadings, or as to postponement or adjournment, or as to costs or otherwise, as to it may seem meet.

[Rule 15(4) amended by GoN R1262 in G. 13283 with effect from 1 July 1991.]

16. Representation of parties

(1) If an attorney acts on behalf of any party in any proceedings, such attorney shall notify all other parties of this fact and shall supply an address where documents in the proceedings may be served.

(2)

(a) Any party represented by an attorney in any proceedings may at any time, subject to the provisions of rule 40, terminate such attorney's authority to act and may thereafter act in person or appoint another attorney to act in the proceedings, whereupon such party or the newly appointed attorney on behalf of such party shall forthwith give notice to the registrar and to all other parties of the termination of the former attorney's authority, and if such party has appointed a further attorney to act in the proceedings, such party or the newly appointed attorney on behalf of such party shall give the name and address of the attorney so appointed.

(b) If such party does not appoint a further attorney, such party shall in the notice of termination appoint an address within 15 kilometres of the office of the registrar for the service on such party of all documents in such proceedings.

(3) Upon receipt of a notice in terms of subrule (1) or (2), the address of the attorney or of the party, as the case may be, shall become the address of such party for the service upon such party of all documents in such proceedings, but any service duly effected elsewhere before receipt of such notice shall, notwithstanding such change, for all purposes be valid, unless the court orders otherwise.

(4)

(a) Where an attorney acting in any proceedings for a party ceases so to act, such attorney shall forthwith deliver notice thereof to such party, the registrar and all other parties: Provided that notice to the party for whom such attorney acted may be given by facsimile or electronic mail in accordance with the provisions of rule 4A.

(b) The party formerly represented must within 10 days after the notice of withdrawal notify the registrar and all other parties of a new address for service as contemplated in subrule (2) whereafter all subsequent documents in the proceedings for service on such party shall be served on such party in accordance with the rules relating to service: Provided that the party whose attorney has withdrawn and who has failed to provide an address within the said period of 10 days shall be liable for the payment of the costs occasioned by subsequent service on such party in terms of the rules relating to service, unless the court orders otherwise.

(c) The notice to the registrar shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(d) The notice to the party formerly represented shall inform the said party of the provisions of paragraph (b).

[Rule 16 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R960 in G. 14844 with effect from 1 July 1994; substituted by GoN R1318 in G. 42064 with effect from 10 January 2019.]

16A. Submissions by an *amicus curiae*

(1)

(a) Any person raising a constitutional issue in an application or action shall give notice thereof to the registrar at the time of filing the relevant affidavit or pleading.

(b) Such notice shall contain a clear and succinct description of the constitutional issue concerned.

(c) The registrar shall, upon receipt of such notice, forthwith place it on a notice board designated for that purpose.

(d) The notice shall be stamped by the registrar to indicate the date upon which it was placed on the notice board and shall remain on the notice board for a period of 20 days.

(2) Subject to the provisions of national legislation enacted in accordance with section 171 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), and these Rules, any interested party in a constitutional issue raised in proceedings before a court may, with the written consent of all the parties to the proceedings, given not later than 20 days after the filing of the affidavit or pleading in which the constitutional issue was first raised, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

(3) The written consent contemplated in subrule (2) shall, within five days of its having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

(4) The terms and conditions agreed upon in terms of subrule (2) may be amended by the court.

(5) If the interested party contemplated in subrule (2) is unable to obtain the written consent as contemplated therein, he or she may, within 5 days of the expiry of the 20-day period prescribed in that subrule, apply to the court to be admitted as an *amicus curiae* in the proceedings.

(6) An application contemplated in subrule (5) shall—

(a) briefly describe the interest of the *amicus curiae* in the proceedings;

(b) clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and

(c) be served upon all parties to the proceedings.

(7)

(a) Any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae*, shall file an answering affidavit within five days of the service of such application upon such party.

(b) The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

(8) The court hearing an application to be admitted as an *amicus curiae* may refuse or grant the application upon such terms and conditions as it may determine.

(9) The court may dispense with any of the requirements of this rule if it is in the interests of justice to do so.

[Rule 16A inserted by GoN R849 in G. 21499 with effect from 25 September 2000.]

17. Summons

(1) Every person making a claim against any other person may, through the office of the registrar, sue out a summons or a combined summons addressed to the sheriff directing him to inform the defendant *inter alia* that, if he disputes the claim, and wishes to defend he shall—

(a) within the time stated therein, give notice of his intention to defend;

(b) thereafter, if the summons is a combined summons, within 20 days after giving such notice, deliver a plea (with or without a claim in reconvention), an exception or an application to strike out.

[Rule 17(1)(b) substituted by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; amended by GoN R1843 in G. 15147 with effect from 1 November 1993.]

(2)

(a) In every case where the claim is not for a debt or liquidated demand the summons shall be in accordance with Form 10 of the First Schedule, to which summons shall be annexed particulars of the material facts relied upon by the plaintiff in support of the claim, which particulars shall inter alia comply with rule 18.

(b) In every case where the claim is for a debt or liquidated demand the summons shall be in accordance with Form 9 of the First Schedule.

[Rule 17(2) substituted by GoN R1843 in G. 15147 with effect from 1 November 1993, by GoN R1603 in G. 45645 with effect from 1 February 2022.]

(3)

(a) Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's physical address, within 15 kilometres of the office of the registrar, the attorney's postal address and, where available, the attorney's facsimile address and electronic mail address.

(b) If no attorney is acting, the summons shall be signed by the plaintiff, who shall in addition append an address within 15 kilometres of the office of the registrar at which plaintiff will accept service of all subsequent documents in the suit, the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.

(c) After paragraph (a) or (b) has been complied with, the summons shall be signed and issued by the registrar and made returnable by the Sheriff to the court through the registrar.

[Rule 17(3)(c) substituted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

(d) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(e) If an action is defended the defendant may, at the written request of the plaintiff, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(f) If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (e), the court may, on application by the plaintiff, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

[Rule 17(3)(f) substituted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

[Rule 17(3) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971; amended by GoN R960 in G. 14844 with effect from 1 July 1994; substituted by GoN R464 in G. 35450 with effect from 27 July 2012.]

(4) Every summons shall set forth—

(a) the surname and first names or initials of the defendant by which the defendant is known to the plaintiff, the defendant's residence or place of business and, where known, the defendant's occupation and employment address and, if the defendant is sued in any representative capacity, such capacity; and

(b) the full names, gender (if the plaintiff is a natural person) and occupation and the residence or place of business of the plaintiff, and if the plaintiff sues in a representative capacity, such capacity.

[Rule 17(4) substituted by GoN R212 in G. 37475 with effect from 2 May 2014.]

18. Rules relating to pleading generally

(1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney or, if a party sues or defends personally, by that party.

[Rule 18(1) substituted by GoN R873 in G. 17209 with effect from 1 July 1996.]

(2) The title of the action describing the parties thereto and the number assigned thereto by the registrar, shall appear at the head of each pleading, provided that where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it shall be so abbreviated.

(3) Every pleading shall be divided into paragraphs (including subparagraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.

(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

(5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the point of substance.

(6) A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

[Rule 18(6) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(7) It shall not be necessary in any pleading to state the circumstances from which an alleged implied term can be inferred.

(8) A party suing or bringing a claim in reconvention for divorce shall, where time, date and place or any other person or persons are relevant or involved, give details thereof in the relevant pleading.

[Rule 18(8) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(9) A party claiming division, transfer or forfeiture of assets in divorce proceedings in respect of a marriage out of community of property, shall give details of the grounds on which he claims that he is entitled to such division, transfer or forfeiture.

[Rule 18(9) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(10) A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof: Provided that a plaintiff suing for damages for personal injury shall specify his date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for—

(a) medical costs and hospital and other similar expenses and how these costs and expenses are made up;

(b) pain and suffering, stating whether temporary or permanent and which injuries caused it;

(c) disability in respect of—

(i) the earning of income (stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the plaintiff will in future be able to do);

(ii) the enjoyment of amenities of life (giving particulars);

and stating whether the disability concerned is temporary or permanent; and

(d) disfigurement, with a full description thereof and stating whether it is temporary or permanent.

[Rule 18(10) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(11) A plaintiff suing for damages resulting from the death of another shall state the date of birth of the deceased as well as that of any person claiming damages as a result of the death.

[Rule 18(11) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987.]

(12) If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.

[Rule 18(12) inserted by GoN R2642 in G. 11045 with effect from 31 December 1987.]

19. Notice of intention to defend

(1) Subject to the provisions of section 24 of the Act, the defendant in every civil action shall be allowed 10 days, after service of summons on such defendant, within which to deliver a notice of intention to defend, either personally or through an attorney: Provided that the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed within which to deliver a notice of intention to defend.

[Rule 19(1) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R1343 in G. 42773 with effect from 22 November 2019.]

(2) In an action against any Minister, Deputy Minister, Premier or a Member of an Executive Council, officer or servant of the State, in an official capacity, or the State, the time allowed for delivery of notice of intention to defend shall not be less than 20 days after service of summons, unless the court has specially authorised a shorter period.

[Rule 19(2) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R608 in G. 11792 with effect from 1 July 1989, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R1343 in G. 42773 with effect from 22 November 2019.]

(3)

(a) When a defendant delivers notice of intention to defend, defendant shall therein give defendant's full residential or business address, postal address and where available, facsimile address and electronic mail address and shall also appoint an address, not being a post office box or *poste restante*, within 15 kilometres of the office of the registrar, for the service on defendant thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required.

(b) The defendant may indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

[Rule 19(3) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; amended by GoN R960 in G. 14844 with effect from 1 July 1994; substituted by GoN R464 in G. 35450 with effect from 27 July 2012.]

(4) A party shall not by reason of delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity or impropriety in the proceedings.

[Rule 19(4) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(5) Notwithstanding the provisions of subrules (1) and (2) a notice of intention to defend may be delivered even after expiration of the period specified in the summons or the period specified in subrule (2), before default judgment has been granted: Provided that the plaintiff shall be entitled to costs if the notice of intention to defend was delivered after the plaintiff had lodged the application for judgment by default.

[Rule 19(5) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

20. Declaration

(1) In all actions in which the plaintiff's claim is for a debt or liquidated demand and the defendant has delivered notice of intention to defend, the plaintiff shall, except in the case of a combined summons, within 15 days after his receipt thereof, deliver a declaration.

[Rule 20(1) substituted by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(2) The declaration shall set forth the nature of the claim, the conclusions of law which the plaintiff shall be entitled to deduce from the facts stated therein, and a prayer for the relief claimed.

(3) Where the plaintiff seeks relief in respect of several distinct claims founded upon separate and distinct facts, such claims and facts shall be separately and distinctly stated.

21. Further particulars

(1) Subject to the provisions of subrules (2) to (4) further particulars shall not be requested.

(2) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within 10 days after receipt thereof.

(3) The request for further particulars for trial and the reply thereto shall, save where the party is litigating in person, be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995), has the right of appearance in the Supreme Court, only by such attorney.

[Rule 21(3) substituted by GoN R873 in G. 17209 with effect from 1 July 1996.]

(4) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.

(5) The court shall at the conclusion of the trial *mero motu* consider whether the further particulars were strictly necessary, and shall disallow all costs of and flowing from any unnecessary request or reply, or both, and may order either party to pay the costs thereby wasted, on an attorney and client basis or otherwise.

[Rule 21 substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

22. Plea

(1) Where a defendant has delivered notice of intention to defend, he shall within 20 days after the service upon him of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

[Rule 22(1) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(2) The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.

(3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.

(4) If by reason of any claim in reconvention, the defendant claims that on the giving of judgment on such claim, the plaintiff's claim will be extinguished either in whole or in part, the defendant may in his plea refer to the fact of such claim in reconvention and request that judgment in respect of the claim or any portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention. Judgment on the claim shall, either in whole or in part, thereupon be so postponed unless the court, upon the application of any person interested, otherwise orders, but the court, if no other defence has been raised, may give judgment for such part of the claim as would not be extinguished, as if the defendant were in default of filing a plea in respect thereof, or may, on the application of either party, make such order as to it seems meet.

(5) If the defendant fails to comply with any of the provisions of subrules (2) and (3), such plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

[Rule 22(5) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

23. Exceptions and applications to strike out

(1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that—

(a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and

(b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception.

[Rule 23(1) amended by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R1262 in G. 13283 with effect from 1 July 1991; substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(2) Where any pleading contains averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of the aforesaid matter, and may set such application down for hearing within five days of expiry of the time limit for the delivery of an answering affidavit or, if an answering affidavit is delivered, within five days after the delivery of a replying affidavit or expiry of the time limit for delivery of a replying affidavit, referred to in rule 6(5)(f): Provided that—

(a) the party intending to make an application to strike out shall, by notice delivered within 10 days of receipt of the pleading, afford the party delivering the pleading an opportunity to remove the cause of complaint within 15 days of delivery of the notice of intention to strike out; and

(b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.

[Rule 23(2) substituted by GoN R1343 in G. 42773 with effect from 22 November 2019.]

(3) Wherever an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Wherever any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.

24. Claim in reconvention

(1) A defendant who counterclaims shall, together with his plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 18 and 20 unless the plaintiff agrees, or if he refuses, the court allows it to be delivered at a later stage. The claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed “Claim in Reconvention”. It shall be unnecessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

[Rule 24(1) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(2) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly, jointly and severally, separately or in the alternative, he may with the leave of the court proceed in such action by way of a claim in reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.

(3) A defendant who has been given leave to counterclaim as aforesaid, shall add to the title of his plea a further title corresponding with what would be the title of any action instituted against the parties against whom he makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to subrule (2) of rule 18.

(4) A defendant may counterclaim conditionally upon the claim or defence in convention failing.

(5) If the defendant fails to comply with any of the provisions of this rule, the claim in reconvention shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

[Rule 24(5) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

25. Replication and plea in reconvention

(1) Within 15 days after the service upon him of a plea and subject to subrule (2) hereof, the plaintiff shall where necessary deliver a replication to the plea and a plea to any claim in reconvention, which plea shall comply with rule 22.

[Rule 25(1) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(2) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary, and issue shall be deemed to be joined and pleadings closed in terms of paragraph (b) of rule 29.

(3) Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading. To such extent as he has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined.

(4) A plaintiff in reconvention may, subject to the provisions mutatis mutandis of subrule (2) hereof, within 10 days after the delivery of the plea in reconvention deliver a replication in reconvention.

[Rule 25(4) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(5) Further pleadings may, subject to the provisions mutatis mutandis of subrule (2), be delivered by the respective parties within 10 days after the previous pleading delivered by the opposite party. Such pleadings shall be designated by the names by which they are customarily known.

[Rule 25(5) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

26. Failure to deliver pleadings – Barring

Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be ipso facto barred. If any party fails to deliver any other pleading within the time laid down in these Rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within five days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and ipso facto barred: Provided that for the purposes of this rule the days between 16 December and 15 January, both inclusive shall not be counted in the time allowed for the delivery of any pleading.

[Rule 26 substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

27. Extension of time and removal of bar and condonation

(1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these Rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems meet.

(2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems meet as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these Rules.

(3) The court may, on good cause shown, condone any non-compliance with these Rules.

[Rule 27(3) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(4) After a *rule nisi* has been discharged by default of appearance by the applicant, the court or a judge may revive the rule and direct that the rule so revived need not be served again.

[Rule 27(4) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

28. Amendment of pleadings and documents

(1) Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.

(2) The notice referred to in subrule (1) shall state that unless written objection to the proposed amendment is delivered within 10 days of delivery of the notice, the amendment will be effected.

(3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.

(4) If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.

(5) If no objection is delivered as contemplated in subrule (4), every party who received notice of the proposed amendment shall be deemed to have consented to the amendment and the party who gave notice of the proposed amendment may, within 10 days after the expiration of the period mentioned in subrule (2), effect the amendment as contemplated in subrule (7).

(6) Unless the court otherwise directs, an amendment authorised by an order of the court may not be effected later than 10 days after such authorisation.

(7) Unless the court otherwise directs, a party who is entitled to amend shall effect the amendment by delivering each relevant page in its amended form.

(8) Any party affected by an amendment may, within 15 days after the amendment has been effected or within such other period as the court may determine, make any consequential adjustment to the documents filed by him, and may also take the steps contemplated in rules 23 and 30.

(9) A party giving notice of amendment in terms of subrule (1) shall, unless the court otherwise directs, be liable for the costs thereby occasioned to any other party.

(10) The court may, notwithstanding anything to the contrary in this rule, at any stage before judgment grant leave to amend any pleading or document on such other terms as to costs or other matters as it deems fit.

[Rule 28 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R181 in G. 15464 with effect from 1 March 1994.]

29. Close of pleadings and notice of set down of trials

(1) Pleadings are considered closed if—

(a) either party has joined issue without alleging any new matter, and without adding any further pleading;

(b) the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;

(c) the parties agree in writing that the pleadings are closed and such agreement is filed with the registrar; or

(d) the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed.

(2)

(a) Upon allocation of a date or dates for trial, the registrar must inform all parties of the allocated dates.

(b) The party which applied for the trial date must, within 10 days of notification from the registrar, deliver a notice informing all other parties of the date or dates on which the matter is set down for trial.

[Rule 29 substituted by GoN R678 in G. 40045 with effect from 4 July 2016.]

30. Irregular proceedings

(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside.

[Rule 30(1) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R1883 in G. 14110 with effect from 3 August 1992.]

(2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if—

(a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;

(b) the applicant has, within 10 days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within 10 days;

(c) the application is delivered within 15 days after the expiry of the second period mentioned in paragraph (b) of subrule (2).

[Rule 30(2) substituted by GoN R1883 in G. 14110 with effect from 3 August 1992; r 30(2)(c) amended by GoN R2047 in G. 17663 with effect from 13 January 1997.]

(3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

(4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

[Rule 30(4) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(5) …

[Rule 30(5) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; repealed by GoN R2047 in G. 17663 with effect from 13 January 1997.]

30A. Non-compliance with Rules and Court Orders

[Heading of R 30A substituted by GoN R2133 in G. 46457 with effect from 8 July 2022.]

(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order—

(a) that such rule, notice, request, order or direction be complied with; or

(b) that the claim or defence be struck out.

[Rule 30A(1) substituted by GoN R2133 in G. 46457 with effect from 8 July 2022.]

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit.

[Rule 30A inserted by GoN R881 in G. 19009 with effect from 27 July 1998; substituted by GoN R842 in G. 42497 with effect from 1 July 2019.]

31. Judgment on confession and by default and rescission of judgments

(1)

(a) Save in actions for relief in terms of the Divorce Act, 1979 (Act 70 of 1979), or nullity of marriage, a defendant may at any time confess in whole or in part the claim contained in the summons.

(b) The confession referred to in paragraph (a) shall be signed by the defendant personally and the defendant's signature shall either be witnessed by an attorney acting for the defendant, not being the attorney acting for the plaintiff, or shall be verified by affidavit.

(c) Such confession shall then be furnished to the plaintiff, whereupon the plaintiff may apply in writing through the registrar to a judge for judgment according to such confession.

[Rule 31(1) substituted by GoN R1843 in G. 15147 with effect from 1 November 1993.]

(2)

(a) Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.

(b) A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.

(3) Where a plaintiff has been barred from delivering a declaration the defendant may set the action down as provided in subrule (4) and apply for absolution from the instance or, after adducing evidence, for judgment, and the court may make such order thereon as it deems fit.

(4) The proceedings referred to in subrules (2) and (3) shall be set down for hearing upon not less than five days' notice to the party in default: Provided that no notice of set down shall be given to any party in default of delivery of notice of intention to defend.

(5)

(a) Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff, who wishes to obtain judgment by default, shall where each of the claims is for a debt or liquidated demand, file with the registrar a written application for judgment against such defendant: Provided that when a defendant is in default of delivery of a plea, the plaintiff shall give such defendant not less than five days' notice of the intention to apply for default judgment.

(b) The registrar may—

(i) grant judgment as requested;

(ii) grant judgment for part of the claim only or on amended terms;

(iii) refuse judgment wholly or in part;

(iv) postpone the application for judgment on such terms as may be considered just;

(v) request or receive oral or written submissions;

(vi) require that the matter be set down for hearing in open court:

Provided that if the application is for an order declaring residential property specially executable, the registrar must refer such application to the court.

(c) The registrar shall record any judgment granted or direction given.

(d) Any party dissatisfied with a judgment granted or direction given by the registrar may, within 20 days after such party has acquired knowledge of such judgment or direction, set the matter down for reconsideration by the court.

(e) The registrar shall grant judgment for costs—

(i) in accordance with Part II of Table A of Annexure 2 to the Rules for the Magistrates' Courts plus the sheriff's fees if the value of the claim as stated in the summons, apart from any consent to jurisdiction, is within the jurisdiction of the magistrate's court; and

(ii) in other cases, unless the application for default judgment requires costs to be taxed or the registrar requires a decision on costs from the Court, in accordance with items 1 and 2 of section B of rule 70 plus the sheriff's fees.

(6)

(a) Any person affected by a default judgment which has been granted, may, if the plaintiff has consented in writing to the judgment being rescinded, apply to court in accordance with Form 2B of the First Schedule to rescind the judgment, and the court may upon such application rescind the judgment.

(b) A judgment debtor against whom a default judgment has been granted, or any person affected by such judgment, may, if the judgment debt, the interest at the rate granted in the judgment and the costs have been paid, apply to court to rescind the judgment, and the court may on such application by the judgment debtor or other person affected by the judgment, rescind the judgment.

(c) An application in terms of paragraph (b) shall—

(i) be made on Form 2C of the First Schedule;

(ii) be accompanied by reasonable proof that the judgment debt, interest and costs, as referred to in paragraph (b) have been paid; and

(iii) be served on the judgment creditor not less than 10 days (which exclude a public holiday, Saturday or Sunday) before the hearing of the application and proof of such service shall accompany the application.

(d) The application referred to in paragraph (c)—

(i) may be set down for hearing not less than 10 days (which exclude a public holiday, Saturday or Sunday) after service of the application upon the judgment creditor; and

(ii) may be heard by a judge in chambers.

[Rule 31 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R2365 in G. 15322 with effect from 10 January 1994, GoN R417 in G. 17853 with effect from 14 April 1997, GoN R785 in G. 18956 with effect from 6 July 1998, GoN R471 in G. 36638 with effect from 16 August 2013; substituted by GoN R61 in G. 42186 with effect from 11 March 2019.]

32. Summary judgment

(1) The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only—

(a) on a liquid document;

(b) for a liquidated amount in money;

(c) for delivery of specified movable property; or

(d) for ejectment,

together with any claim for interest and costs.

[Rule 32(1) substituted by GoN R842 in G. 42497 with effect from 1 July 2019.]

(2)

(a) Within 15 days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.

(b) The plaintiff shall, in the affidavit referred to in subrule (2)(a) verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded does not raise any issue for trial.

(c) If the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 15 days from the date of the delivery thereof.

[Rule 32(2) substituted by GoN R1262 in G. 13283 with effect from 1 July 1991, GoN R842 in G. 42497 with effect from 1 July 2019.]

(3) The defendant may—

(a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or

(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

[Rule 32(3) substituted by GoN R842 in G. 42497 with effect from 1 July 2019.]

(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.

[Rule 32(4) substituted by GoN R842 in G. 42497 with effect from 1 July 2019.]

(5) If the defendant does not find security or satisfy the court as provided in paragraph (b) of subrule (3), the court may enter summary judgment for the plaintiff.

(6) If on the hearing of an application made under this rule it appears—

(a) that any defendant is entitled to defend and any other defendant is not so entitled; or

(b) that the defendant is entitled to defend as to part of the claim,

the court shall—

(i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled; or

(ii) give leave to defend to the defendant as to part of the claim and enter judgment against such defendant as to the balance of the claim, unless such balance has been paid to the plaintiff; or

[Rule 32(6)(b)(ii) substituted by GoN R1883 in G. 14110 with effect from 3 August 1992, GoN R842 in G. 42497 with effect from 1 July 2019.]

(iii) make both orders mentioned in subparagraphs (i) and (ii).

(7) If the defendant finds security or satisfies the court as provided in subrule (3), the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made.

(8) Leave to defend may be given unconditionally or subject to such terms as to security, time for delivery of pleadings, or otherwise, as the court deems fit.

(8A) …

[Rule 32(8A) inserted by GoN R2004 in G. 1915 with effect from 15 December 1967; amended by GoN R1262 in G. 13283 with effect from 1 July 1991; renumbered by GoN R2410 in G. 13558 with effect from 1 November 1991; repealed by GoN R842 in G. 42497 with effect from 1 July 2019.]

(9) The court may at the hearing of such application make such order as to costs as to it may seem just: Provided that if—

(a) the plaintiff makes an application under this rule, where the case is not within the terms of subrule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle such defendant to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs; and may further order that such costs be taxed as between attorney and client; and

[Rule 32(9)(a) substituted by GoN R842 in G. 42497 with effect from 1 July 2019.]

(b) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed as between attorney and client.

33. Special cases and adjudication upon points of law

(1) The parties to any dispute may, after institution of proceedings, agree upon a written statement of facts in the form of a special case for the adjudication of the court.

(2)

(a) Such statement shall set forth the facts agreed upon, the questions of law in dispute between the parties and their contentions thereon. Such statement shall be divided into consecutively numbered paragraphs and there shall be annexed thereto copies of documents necessary to enable the court to decide upon such questions. It shall be signed by an advocate and an attorney on behalf of each party or, where a party sues or defends personally, by such party.

(b) Such special case shall be set down for hearing in the manner provided for trials or opposed applications, whichever may be more convenient.

[Rule 33(2)(b) inserted by GoN R2021 in G. 3304 with effect from 15 November 1971.]

(c) If a minor or person of unsound mind is a party to such proceedings the court may, before determining the questions of law in dispute, require proof that the statements in such special case so far as concerns the minor or person of unsound mind are true.

(3) At the hearing thereof the court and the parties may refer to the whole of the contents of such documents and the court may draw any inference of fact or of law from the facts and documents as if proved at a trial.

(4) If, in any pending action, it appears to the court *mero motu* that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the questions cannot conveniently be decided separately.

[Rule 33(4) substituted by of GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R1883 in G. 14110 with effect from 3 August 1992.]

(5) When giving its decision upon any question in terms of this rule the court may give such judgment as may upon such decision be appropriate and may give any direction with regard to the hearing of any other issues in the proceeding which may be necessary for the final disposal thereof.

(6) If the question in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted and recorded at the trial and the court may give judgment without hearing any evidence.

34. Offer to settle

(1) In any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim. Such offer shall be signed either by the defendant himself or by his attorney if the latter has been authorised thereto in writing.

(2) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender, either unconditionally or without prejudice, to perform such act. Unless such act must be performed by the defendant personally, he shall execute an irrevocable power of attorney authorising the performance of such act which he shall deliver to the registrar together with the tender.

(3) Any party to an action who may be ordered to contribute towards an amount for which any party to the action may be held liable, or any third party from whom relief is being claimed in terms of rule 13, may, either unconditionally or without prejudice, by way of an offer of settlement—

(a) make a written offer to that other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or

(b) give a written indemnity to such other party, the conditions of which shall be set out fully in the offer of settlement.

(4) One of several defendants, as well as any third party from whom relief is claimed, may, either unconditionally or without prejudice, by way of an offer of settlement make a written offer to settle the plaintiff's or defendant's claim or tender to perform any act claimed by the plaintiff or defendant.

(5) Notice of any offer or tender in terms of this rule shall be given to all parties to the action and shall state—

(a) whether the same is unconditional or without prejudice as an offer of settlement;

(b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made, and further that it shall be subject to such conditions as may be stated therein;

(c) whether the offer or tender is made by way of settlement of both claim and costs or of the claim only;

(d) whether the defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer shall be given, and the action may then be set down on the question of costs alone.

(6) A plaintiff or party referred to in subrule (3) may within 15 days after the receipt of the notice referred to in subrule (5), or thereafter with the written consent of the defendant or third party or order of court, on such conditions as may be considered to be fair, accept any offer or tender, whereupon the registrar, having satisfied himself that the requirements of this subrule have been complied with, shall hand over the power of attorney referred to in subrule (2) to the plaintiff or his attorney.

(7) In the event of a failure to pay or to perform within 10 days after delivery of the notice of acceptance of the offer or tender, the party entitled to payment or performance may, on 5 days' written notice to the party who has failed to pay or perform apply through the registrar to a judge for judgment in accordance with the offer or tender as well as for the costs of the application.

(8) If notice of the acceptance of the offer or tender in terms of subrule (6) or notice in terms of subrule (7) is required to be given at an address other than that provided in rule 19(3), then it shall be given at an address, which is not a post office box or *poste restante*, within 15 kilometres of the office of the registrar at which such notice must be delivered.

[Rule 34(8) substituted by GoN R464 in G. 35450 with effect from 27 July 2012.]

(9) If an offer or tender accepted in terms of this rule is not stated to be in satisfaction of a plaintiff's claim and costs, the party to whom the offer or tender is made may apply to the court, after notice of not less than five days, for an order for costs.

(10) No offer or tender in terms of this rule made without prejudice shall be disclosed to the court at any time before judgment has been given. No reference to such offer or tender shall appear on any file in the office of the registrar containing the papers in the said case.

(11) The fact that an offer or tender referred to in this rule has been made may be brought to the notice of the court after judgment has been given as being relevant to the question of costs.

(12) If the court has given judgment on the question of costs in ignorance of the offer or tender and it is brought to the notice of the registrar, in writing, within five days after the date of judgment, the question of costs shall be considered afresh in the light of the offer or tender: Provided that nothing in this subrule contained shall affect the court's discretion as to an award of costs.

(13) Any party who, contrary to this rule, personally or through any person representing him, discloses such an offer or tender to the judge or the court shall be liable to have costs given against him even if he is successful in the action.

(14) This rule shall apply mutatis mutandis where relief is claimed on motion or claim in reconvention or in terms of rule 13.

[Rule 34 amended by GoN R3553 in G. 2543 with effect from 1 November 1969; substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

34A. Interim payments

(1) In an action for damages for personal injuries or the death of a person, the plaintiff may, at any time after the expiry of the period for the delivery of the notice of intention to defend, apply to the court for an order requiring the defendant to make an interim payment in respect of his claim for medical costs and loss of income arising from his physical disability or the death of a person.

(2) Subject to the provisions of rule 6 the affidavit in support of the application shall contain the amount of damages claimed and the grounds for the application, and all documentary proof or certified copies thereof on which the applicant relies shall accompany the affidavit.

(3) Notwithstanding the grant or refusal of an application for an interim payment, further such applications may be brought on good cause shown.

(4) If at the hearing of such an application, the court is satisfied that—

(a) the defendant against whom the order is sought has in writing admitted liability for the plaintiff's damages; or

(b) the plaintiff has obtained judgment against the respondent for damages to be determined,

the court may, if it thinks fit but subject to the provisions of subrule (5), order the respondent to make an interim payment of such amount as it thinks just, which amount shall not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff taking into account any contributory negligence, set off or counterclaim.

(5) No order shall be made under subrule (4) unless it appears to the court that the defendant is insured in respect of the plaintiff's claim or that he has the means at his disposal to enable him to make such a payment.

(6) The amount of any interim payment ordered shall be paid in full to the plaintiff unless the court otherwise orders.

(7) Where an application has been made under subrule (1), the court may prescribe the procedure for the further conduct of the action and in particular may order the early trial thereof.

(8) The fact that an order has been made under subrule (4) shall not be pleaded and no disclosure of that fact shall be made to the court at the trial or at the hearing of questions or issues as to the quantum of damages until such questions or issues have been determined.

(9) In an action where an interim payment or an order for an interim payment has been made, the action shall not be discontinued or the claim withdrawn without the consent of the court.

(10) If an order for an interim payment has been made or such payment has been made, the court may, in making a final order, or when granting the plaintiff leave to discontinue his action or withdraw the claim under subrule (9) or at any stage of the proceedings on the application of any party, make an order with respect to the interim payment which the court may consider just and the court may in particular order that—

(a) the plaintiff repay all or part of the interim payment;

(b) the payment be varied or discharged; or

(c) a payment be made by any other defendant in respect of any part of the interim payment which the defendant, who made it, is entitled to recover by way of contribution or indemnity or in respect of any remedy or relief relating to the plaintiff's claim.

(11) The provisions of this rule shall apply mutatis mutandis to any claim in reconvention.

[Rule 34A inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

35. Discovery, inspection and production of documents

(1) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within 20 days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such other party. Such notice shall not, save with the leave of a judge, be given before the close of pleadings.

(2) The party required to make discovery shall within 20 days or within the time stated in any order of a judge make discovery of such documents on affidavit in accordance with Form 11 of the First Schedule, specifying separately—

(a) such documents and tape recordings in the possession of a party or such party's agent other than the documents and tape recordings mentioned in paragraph (b);

(b) such documents and tape recordings in respect of which such party has a valid objection to produce;

(c) such documents and tape recordings which a party or such party's agent had, but no longer has possession of at the date of the affidavit.

A document shall be deemed to be sufficiently specified if it is described as being one of a bundle of documents of a specified nature, which have been initialled and consecutively numbered by the deponent. Statements of witnesses taken for purposes of the proceedings, communications between attorney and client and between attorney and advocate, pleadings, affidavits and notices in the action shall be omitted from the schedules.

(3) If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring such party to make the same available for inspection in accordance with subrule (6), or to state on oath within 10 days that such documents or tape recordings are not in such party's possession, in which event the party making the disclosure shall state their whereabouts, if known.

(4) A document or tape recording not disclosed as aforesaid may not, save with the leave of the court granted on such terms as it may deem appropriate, be used for any purpose at the trial by the party who was obliged but failed to disclose it, provided that any other party may use such document or tape recording.

(5)

(a) Where the Fund, as defined in the Road Accident Fund Act; 1996 (Act 56 of 1996), as amended, is a party to any action by virtue of the provisions of the said Act, any party to the action may obtain discovery in the manner provided in paragraph (d) of this subrule against the driver or owner or short term insurer of the vehicle or employer of the driver of the vehicle, referred to in the said Act.

(b) The provisions of paragraph (a) shall apply mutatis mutandis to the driver or owner or short-term insurer of the vehicle or employer of the driver of a vehicle referred to in section 21 of the said Act.

(c) Where the plaintiff sues as a cessionary, the defendant shall mutatis mutandis have the same rights under this rule against the cedent.

(d) The party requiring discovery in terms of paragraph (a), (b) or (c) shall do so by notice in accordance with Form 12 of the First Schedule.

(6) Any party may at any time by notice in accordance with Form 13 of the First Schedule require any party who has made discovery to make available for inspection any documents or tape recordings disclosed in terms of subrules (2) and (3). Such notice shall require the party to whom notice is given to deliver within five days, to the party requesting discovery, a notice in accordance with Form 14 of the First Schedule, stating a time within five days from the delivery of such latter notice when documents or tape recordings may be inspected at the office of such party's attorney or, if such party is not represented by an attorney, at some convenient place mentioned in the notice, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, at their usual place of custody. The party receiving such last-named notice shall be entitled at the time therein stated, and for a period of five days thereafter, during normal business hours and on any one or more of such days, to inspect such documents or tape recordings and to take copies or transcriptions thereof. A party's failure to produce any such document or tape recording for inspection shall preclude such party from using it at the trial, save where the court on good cause shown allows otherwise.

(7) If any party fails to give discovery as aforesaid or, having been served with a notice under subrule (6), omits to give notice of a time for inspection as aforesaid or fails to give inspection as required by that subrule, the party desiring discovery or inspection may apply to a court, which may order compliance with this rule and, failing such compliance, may dismiss the claim or strike out the defence.

(8) Any party to an action may after the close of pleadings give notice to any other party to specify in writing particulars of dates and parties of or to any document or tape recording intended to be used at the trial of the action on behalf of the party to whom notice is given. The party receiving such notice shall not less than 15 days before the date of trial deliver a notice—

(a) specifying the dates of and parties to and the general nature of any such document or tape recording which is in such party's possession; or

(b) specifying such particulars as the party may have, to identify any such document or tape recording not in such party's possession, at the same time furnishing the name and address of the person in whose possession such document or tape recording is.

(9) Any party proposing to prove documents or tape recordings at a trial may give notice to any other party requiring him within 10 days after the receipt of such notice to admit that those documents or tape recordings were properly executed and are what they purported to be. If the party receiving the said notice does not within the said period so admit, then as against such party the party giving the notice shall be entitled to produce the documents or tape recordings specified at the trial without proof other than proof (if it is disputed) that the documents or tape recordings are the documents or tape recordings referred to in the notice and that the notice was duly given. If the party receiving the notice states that the documents or tape recordings are not admitted as aforesaid, they shall be proved by the party giving the notice before being entitled to use them at the trial, but the party not admitting them may be ordered to pay the costs of their proof.

(10) Any party may give to any other party who has made discovery of a document or tape recording notice to produce at the hearing the original of such document or tape recording, not being a privileged document or tape recording, in such party's possession. Such notice shall be given not less than five days before the hearing, but may, if the court so allows, be given during the course of the hearing. If any such notice is so given, the party giving the same may require the party to whom notice is given to produce the said document or tape recording in court and shall be entitled, without calling any witness, to hand in the said document, which shall be receivable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.

(11) The court may, during the course of any proceeding, order the production by any party thereto under oath of such documents or tape recordings in such party's power or control relating to any matter in question in such proceeding as the court may deem appropriate, and the court may deal with such documents or tape recordings, when produced, as it deems appropriate.

(12)

(a) Any party to any proceeding may at any time before the hearing thereof deliver a notice in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to—

(i) produce such document or tape recording for inspection and to permit the party requesting production to make a copy or transcription thereof; or

(ii) state in writing within 10 days whether the party receiving the notice objects to the production of the document or tape recording and the grounds therefor; or

(iii) state on oath, within 10 days, that such document or tape recording is not in such party's possession and in such event to state its whereabouts, if known.

(b) Any party failing to comply with the notice referred to in paragraph (a) shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.

(13) The provisions of this rule relating to discovery shall mutatis mutandis apply, in so far as the court may direct, to applications.

(14) After appearance to defend has been entered, any party to any action may, for purposes of pleading, require any other party to—

(a) make available for inspection within five days a clearly specified document or tape recording in such party's possession which is relevant to a reasonably anticipated issue in the action and to allow a copy or transcription to be made thereof; or

(b) state in writing within 10 days whether the party receiving the notice objects to the production of the document or tape recording and the grounds therefor; or

(c) state on oath, within 10 days, that such document or tape recording is not in such party's possession and in such event to state its whereabouts, if known.

(15) For purposes of rules 35 and 38—

(a) a document includes any written, printed or electronic matter, and data and data messages as defined in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002); and

(b) a tape recording includes a sound track, film, magnetic tape, record or other material on which visual images, sound or other information can be recorded or any other form of recording.

[Rule 35 amended by GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; substituted by GoN R1157 in G. 43856 with effect from 1 December 2020.]

36. Inspections, examinations and expert testimony

(1) A party to proceedings, in which damages or compensation in respect of alleged bodily injury is claimed, shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof, to submit to a medical examination.

(2)

(a) A party requiring another party to submit to a medical examination shall deliver a notice to such other party that—

(i) specifies the nature of the examination required;

(ii) specifies the person or persons who shall conduct the examination;

(iii) specifies the place where and the date (being not less than 15 days from the date of such notice) and time when it is desired that the examination shall take place; and

(iv) requires the other party to submit himself or herself for the medical examination at the specified place, date and time.

(b) The notice contemplated in paragraph (a) shall—

(i) state that the party being examined may have his or her own medical adviser present at the examination; and

(ii) be accompanied by a remittance in respect of the reasonable expenses to be incurred by the other party in attending the examination.

(c) The expenses referred to in paragraph (b)(ii) shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided that—

(i) if the party being examined is immobile, the amount to be paid shall include the cost of such person’s travelling by motor vehicle and, where required, the reasonable cost of a person attending upon the person to be examined;

(ii) where the party being examined will actually lose salary, wage or other remuneration during the period of absence from work, such party shall, in addition to the aforementioned expenses, be entitled to receive an amount not exceeding the amount determined by the Minister, in terms of the relevant legislation, for witnesses in civil proceedings, per day in respect of the salary, wage or other remuneration which such person will actually lose;

(iii) any amounts paid by a party as aforesaid shall be costs in the cause unless the court otherwise directs.

(3) The person receiving the notice referred to in subrule (2) shall, within five days after the service of the notice, notify the person delivering it, in writing, of the nature and grounds of any objection which such person may have in relation to—

(a) the nature of the proposed examination;

(b) the person or persons who shall conduct the examination;

(c) the place, date or time of the examination;

(d) the amount of the expenses tendered;

and shall further—

(i) in the case of the objection being to the place, date or time of the examination, furnish an alternative date, time or place, as the case may be; and

(ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required.

Should the person receiving the notice not deliver an objection within the said period of five days, such person shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice. Should the person giving the notice regard the objection raised by the person receiving it as unfounded in whole or in part the person giving the notice may on notice make application to a judge to determine the conditions upon which the examination, if any, is to be conducted.

(4) Any party to such an action may at any time by notice in writing require any person claiming such damages to make available in so far as such person is able to do so to the other party within 10 days, any medical reports, hospital records, x-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof upon request.

(5) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

(5A) If any party claims damages resulting from the death of another person, such party shall undergo a medical examination as prescribed in this rule if this is requested and it is alleged that such party's own state of health is relevant in determining the damages.

(6) If it appears that the state or condition of any property of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision of any matter at issue in any action, any party may at any stage give notice requiring the party relying upon the existence of such state or condition of such property or having such property in that party's possession or under that party's control to make it available for inspection or examination in terms of this subrule, and may in such notice require that such property or a fair sample thereof remain available for inspection or examination for a period of not more than 10 days from the date of receipt of the notice.

(7) The party called upon to submit such property for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such property thereto if this will materially prejudice such party by reason of the effect thereof upon such property. In the event of any dispute whether the property should be submitted for examination, such dispute shall be referred to a judge on notice delivered by either party stating that the examination is required and that objection is taken in terms of this subrule. In considering any such dispute the judge may make such order as deemed fit.

(8) Any party causing an examination to be made in terms of subrules (1) and (6) shall—

(a) cause the person making the examination to give a full report in writing, within two months of the date of the examination or within such other period as may be directed by a judge in terms of rule 37(8) or in terms of rule 37A, of the results of the examination and the opinions that such person formed as a result thereof on any relevant matter;

(b) within five days after receipt of such report, inform all other parties in writing of the existence of the report, and upon request immediately furnish any other party with a complete copy thereof; and

(c) bear the expense of the carrying out of any such examination: Provided that such expense shall form part of such party's costs.

(9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless—

(a) where the plaintiff intends to call an expert, the plaintiff shall not more than 30 days after the close of pleadings, or where the defendant intends to call the expert, the defendant shall not more than 60 days after the close of pleadings, have delivered notice of intention to call such expert; and

(b) in the case of the plaintiff not more than 90 days after the close of pleadings and in the case of the defendant not more than 120 days after the close of pleadings, such plaintiff or defendant shall have delivered a summary of the expert's opinion and the reasons therefor:

Provided that the notice and summary shall in any event be delivered before a first case management conference held in terms of rules 37A(6) and (7) or as directed by a case management judge.

(9A) The parties shall—

(a) endeavour, as far as possible, to appoint a single joint expert on any one or more or all issues in the case; and

(b) file a joint minute of experts relating to the same area of expertise within 20 days of the date of the last filing of such expert reports.

(10)

(a) No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless such person shall not more than 60 days after the close of pleadings have delivered a notice stating an intention to do so, offering inspection of such plan, diagram, model or photograph and requiring the party receiving notice to admit the same within 10 days after receipt of the notice.

(b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof. If such party does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of their proof.

[Rule 36 amended by GoN R417 in G. 17853 with effect from 14 April 1997, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; substituted by GoN R842 in G. 42497 with effect from 1 July 2019.]

37. Pre-trial conference

(1) A party who receives notice of the trial date of an action shall, if such party has not yet made discovery in terms of rule 35, within 15 days deliver a sworn statement which complies with rule 35(2).

(2)

(a) In cases not subject to judicial case management as contemplated in rule 37A, a plaintiff who receives the notice contemplated in subrule (1) shall within 10 days deliver a notice in which such plaintiff appoints a date, time and place for a pre-trial conference.

(b) If the plaintiff has failed to comply with paragraph (a), the defendant may, within 30 days after the expiration of the period mentioned in that paragraph, deliver such notice.

(3)

(a) The date, time and place for the pre-trial conference may be amended by agreement: Provided that the conference shall be held not later than 30 days prior to the date of hearing.

(b) If the parties do not agree on the date, time or place for the pre-trial conference, the matter shall be submitted to the registrar for decision.

(4) Each party shall, not later than 10 days prior to the pre-trial conference, furnish every other party with a list of—

(a) the admissions which such party requires;

(b) the enquiries which such party will direct and which are not included in a request for particulars for trial; and

(c) other matters regarding preparation for trial which such party will raise for discussion.

(5) At the pre-trial conference the matters mentioned in subrules (4) and (6) shall be dealt with.

(6) The minutes of the pre-trial conference shall be prepared and signed by or on behalf of every party and the following shall appear therefrom—

(a) the date, place and duration of the conference and the names of the persons present;

(b) if a party feels that such party is prejudiced because another party has not complied with the rules of court, the nature of such non-compliance and prejudice;

(c) that every party claiming relief has requested such party's opponent to make a settlement proposal and that such opponent has reacted thereto;

(d) whether any issue has been referred by the parties for mediation, arbitration or decision by a third party and the basis on which it has been so referred;

(e) whether the case should be transferred to another court;

(f) which issues should be decided separately in terms of rule 33(4);

(g) the admissions made by each party;

(h) any dispute regarding the duty to begin or the onus of proof;

(i) any agreement regarding the production of proof by way of an affidavit in terms of rule 38(2);

[Rule 37(6)(i) substituted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

(j) which party will be responsible for the copying and other preparation of documents;

(k) which documents or copies of documents will, without further proof, serve as evidence of what they purport to be, which extracts may be proved without proving the whole document or any other agreement regarding the proof of documents.

(l) any agreement regarding whether any issue or issues are to be referred to a referee for investigation in terms of rule 38A, or where an investigation has been conducted by a referee, any issue upon which the parties disagree and the referral of such issue for consideration by the court.

[Rule 37(6)(l) inserted by GoN R2133 in G. 46457 with effect from 8 July 2022.]

(7) The minutes shall be filed with the registrar not later than 25 days prior to the trial date.

(8)

(a) A judge, who need not be the judge presiding at the trial, may, if such judge deems it advisable, at any time at the request of a party or of own accord, call upon the attorneys or advocates for the parties to hold or to continue with a conference before a judge in chambers and may direct a party to be available personally at such conference.

(b) No provision of this rule shall be interpreted as requiring a judge before whom a conference is held to be involved in settlement negotiations, and the contents of a reaction to a request for a settlement proposal shall not be made known to a judge except with the consent of the judge and all parties.

(c) The judge may, with the consent of the parties and without any formal application, at such conference or thereafter give any direction which might promote the effective conclusion of the matter, including the granting of condonation in respect of this or any other rule.

(d) Unless the judge determines otherwise, the plaintiff shall prepare the minutes of the conference held before the judge and file them, duly signed, with the registrar within five days or within such longer period as the judge may determine.

(9)

(a) At the hearing of the matter, the court shall consider whether or not it is appropriate to make a special order as to costs against a party or such party's attorney, because such party or the party's attorney—

(i) did not attend a pre-trial conference; or

(ii) failed to a material degree to promote the effective disposal of the litigation.

(b) Except in respect of an attendance in terms of subrule (8)(a) no advocate's fees shall be allowed on a party-and-party basis in respect of a pre-trial conference held more than 10 days prior to the hearing.

(10) A judge in chambers may, without hearing the parties, order deviation from the time limits in this rule.

(11) A direction made in terms of this rule before the commencement of the trial may be amended.

[Rule 37 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R960 in G. 14844 with effect from 28 June 1993; substituted by GoN R181 in G. 15464 with effect from 1 March 1994, GoN R842 in G. 42497 with effect from 1 July 2019.]

37A. Judicial case management

(1) A judicial case management system shall apply, at any stage after a notice of intention to defend is filed—

(a) to such categories of defended actions as the Judge President of any Division may determine in a Practice Note or Directive; and

(b) to any other proceedings in which judicial case management is determined by the Judge President, of own accord, or upon the request of a party, to be appropriate.

(2) Case management through judicial intervention—

(a) shall be used in the interests of justice to alleviate congested trial rolls and to address the problems which cause delays in the finalisation of cases;

(b) the nature and extent of which shall be complemented by the relevant directives or practices of the Division in which the proceedings are pending; and

(c) shall be construed and applied in accordance with the principle that, notwithstanding the provisions herein providing for judicial case management, the primary responsibility remains with the parties and their legal representatives to prepare properly, comply with all rules of court, and act professionally in expediting the matter towards trial and adjudication.

(3) The provisions of rule 37 shall not apply, save to the extent expressly provided in this rule, in matters which are referred for judicial case management.

(4) In all matters designated to be subject to judicial case management in terms of subrule (1)(a) at any stage before the close of pleadings, the registrar may—

(a) direct compliance letters to any party which fails to comply with the time limits for the filing of pleadings or any other proceeding in terms of the rules; and

(b) in the event of non-adherence to the directions stipulated in a letter of compliance, refer a matter to a case management judge designated by the Judge President who shall have the power to deal with the matter in terms of the practice directives of the particular Division concerned.

(5)

(a) Notwithstanding the allocation of a trial date, a case that is subject to judicial case management shall not proceed to trial unless the case has been certified trial-ready by a case management judge after a case management conference has been held, as provided for in subrule (7).

(b) A case management judge shall not certify a case as trial-ready unless the judge is satisfied—

(i) that the case is ready for trial, and in particular, that all issues that are amenable to being resolved without a trial have been dealt with;

(ii) that the remaining issues that are to go to trial have been adequately defined;

(iii) that the requirements of rules 35 and 36(9) have been complied with if they are applicable; and

(iv) that any potential causes of delay in the commencement or conduct of the trial have been pre-empted to the extent practically possible.

(c) A case management judge may order directions on the making of discovery where the judge considers that such directions may expedite the case becoming trial-ready.

(6) In every defended action in a category of case which has been identified in terms of subrule (1)(a) as being subject to judicial case management in which any party makes application for a trial date following the close of pleadings, the registrar shall issue a notice electronically to the parties, at the addresses furnished in terms of rules 17(3)(b) or 19(3)(a), in respect of the holding of a case management conference.

(7) The notice by the registrar in terms of subrule (6) shall inform the parties—

(a) of the date, time and place of a case management conference in the matter to be presided over by a case management judge;

(b) of the name of the case management judge, if available;

(c) that they are required to have held a pre-trial meeting before the case management conference at which the issues identified in subrule (10) in relation to the conduct and trial of the action must have been considered; and

(d) that the plaintiff is required, not less than two days before the time appointed for the case management conference, to—

(i) ensure that the court file has been suitably ordered, secured, paginated and indexed; and

(ii) deliver an agreed minute of the proceedings at the meeting held in terms of paragraph (c), alternatively, in the event that the parties have not reached agreement on the content of the minute, a minute signed by the party filing the document together with an explanation why agreement on its content has not been obtained.

(8) The minute referred to in subrule (7)(d)(ii) shall particularise the parties' agreement or respective positions on each of the issues identified in subrule (10) and, to the extent that further steps remain to be taken to render the matter ready for trial, explicitly identify them and set out a timetable according to which the parties propose, upon a mutually binding basis, that such further steps will be taken.

(9)

(a) In addition to the minute referred to in subrule (7)(d)(ii), the parties shall deliver a detailed statement of issues, which shall indicate—

(i) the issues in the case that are not in dispute; and

(ii) the issues in the case that are in dispute, describing the nature of the dispute and setting forth the parties' respective contentions in respect of each such issue.

(b) A case management judge may, upon considering the statement by the parties referred to in paragraph (a), direct that appearance by one or all of the parties is dispensed with.

(10) The matters that the parties must address at the pre-trial meeting to be held in terms of subrule (7) are as follows—

(a) the matters set forth in rules 35, 36 and 37(6);

(b) the soliciting of admissions and the making of enquiries from and by the parties with a view to narrowing the issues or curtailing the need for oral evidence;

(c) the time periods within which the parties propose that any matters outstanding in order to bring the case to trial readiness will be undertaken;

(d) subject to rule 36(9), the instruction of witnesses to give expert evidence and the feasibility and reasonableness in the circumstances of the case that a single joint expert be appointed by the parties in respect of any issue;

(e) the identity of the witnesses they intend to call and, in broad terms, the nature of the evidence to be given by each such witness;

(f) the possibility of referring the matter to a referee in terms of section 38 of the Act;

(g) the discovery of electronic documents in the possession of a server or other storage device;

(h) the taking of evidence by video conference;

(i) suitable trial dates and the estimated duration of the trial; and

(j) any other matter germane to expediting the trial-readiness of the case.

(11) Without limiting the scope of judicial engagement at a case management conference, the case management judge shall—

(a) explore settlement, on all or some of the issues, including, if appropriate, enquiring whether the parties have considered voluntary mediation;

(b) endeavour to promote agreement on limiting the number of witnesses that will be called at the trial, eliminating pointless repetition or evidence covering facts already admitted; and

(c) identify and record the issues to be tried in the action.

(12) The case management judge may at a case management conference—

(a) certify the case as trial-ready;

(b) refuse certification;

(c) put the parties on such terms as are appropriate to achieve trial-readiness, and direct them to report to the case management judge at a further case management conference on a fixed date;

(d) strike the matter from the case management roll and direct that it be re-enrolled only after any non-compliance with the rules or case management directions have been purged;

(e) give directions for the hearing of opposed interlocutory applications by a motion court on an expedited basis;

(f) order a separation of issues in appropriate cases notwithstanding the absence of agreement by the parties thereto;

(g) at the conclusion of a case management conference, record the decisions made and, if deemed convenient, direct the plaintiff to file a minute thereof;

(h) make any order as to costs, including an order *de bonis propriis* against the parties' legal representatives or any other person whose conduct has conduced unreasonably to frustrate the objectives of the judicial case management process.

(13) The record of the case management conference, including the minutes submitted by the parties to the case management judge, any directions issued by the judge and the judge's record of the issues to be tried in the action, but excluding any settlement discussions and offers, shall be included in the court file to be placed before the trial judge.

(14) The trial judge shall be entitled to have regard to the documents referred to in subrule (13) in regard to the conduct of the trial, including the determination of any applications for postponement and issues of costs.

(15) Unless the parties agree thereto in writing, the case management judge and the trial judge shall not be the same person.

(16) Any failure by a party to adhere to the principles and requirements of this rule may be penalised by way of an adverse costs order.

[Rule 37A inserted by GoN R1843 in G. 15147 with effect from 1 November 1993: Provided that the provisions of rule 4 shall apply only to the Cape of Good Hope Provincial Division of the Supreme Court of South Africa from 1 December 1993 until 30 November 1995; substituted by GoN R1352 in G. 18365 with effect from 1 December 1997; repealed by GoN R373 in G. 22265 with effect from 1 June 2001; inserted by GoN R842 in G. 42497 with effect from 1 July 2019.]

37B. Administrative archiving

(1) Subject to the further provisions of this rule—

(a) if an application in writing has not been made to the registrar by any party to a case within 24 months of the date of issue of the summons for the setdown of the matter for trial; or

(b) if after the expiry of the period of 24 months referred to in paragraph (a) the matter is not ready for referral by the registrar to judicial case management in terms of rule 37A—

the registrar shall, after giving the parties (thirty) 30 days' written notice, and subject to subrule (2), remove the file from the administrative record of pending matters and archive the court file.

(2) Any party in a case to whom notice has been given by the registrar in terms of subrule (1) and who has not taken any steps referred to in subrule (1) may apply to a judge in chambers for an extension of time within which to render the matter ready for an application to be made for the set down of the matter for trial.

(3) A judge to whom an application is made in terms of subrule (2) may grant the extension of time subject to such terms and conditions for the further conduct of the matter as he or she deems fit, including any order as to costs.

(4) An order made in terms of subrule (3) which grants an application for an extension of time referred to in subrule (2) shall—

(a) incorporate a timetable for the further conduct of the matter; and

(b) include provision for a date by which an application shall be made, in writing to the registrar, for the setdown of the matter for trial.

(5) Any matter in which an application in terms of subrule (2) has been granted shall be referred by the registrar to a case management judge, in which event the provisions of rule 37A shall apply *mutatis mutandis.*

[Rule 37B inserted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

38. Procuring evidence for trial

(1)

(a)

(i) Any party, desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than four persons, and service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 4.

(ii) The process for subpoenaing a witness referred to in subparagraph (i) shall be by means of a subpoena in a form substantially similar to Form 16 in the First Schedule.

(iii) If any witness is in possession or control of any deed, document, book, writing, tape recording or electronic recording (hereinafter referred to as a 'document') or thing which the party requiring the attendance of such witness desires to be produced in evidence, the subpoena shall specify such document or thing and require such witness to produce it to the court at the trial.

(b)

(i) The process for requiring the production of a document referred to in subrule (1)(a)(iii) shall be by means of a subpoena in a form substantially similar to Form 16A in the First Schedule.

(ii) Within 10 days of receipt of a subpoena requiring the production of any document, any person who has been required to produce a document at the trial shall lodge it with the registrar, unless such a person claims privilege.

(iii) The registrar shall set the conditions upon which the said document may be inspected and copied so as to ensure its protection.

(iv) Within five days of lodgement with the registrar, the party causing the subpoena to be issued for the production of the document shall inform all other parties that the said document is available for inspection and copying and of any conditions set by the registrar for inspection and copying.

(v) After inspection and copying, the person who produced the document is entitled to its return.

(c)

(i) The process for requiring the production of a thing referred to in subrule (1)(a)(iii) shall be by means of a subpoena in a form substantially similar to Form 16A in the First Schedule.

(ii) Within 10 days of receipt of a subpoena requiring the production of any thing, any person who has been required to produce a thing at the trial shall inform the registrar of the whereabouts of the thing and make the thing available for inspection, unless such person claims privilege.

(iii) The registrar shall set the conditions upon which the said thing may be inspected and copied or photographed so as to ensure its protection.

(iv) Within five days of notification from the registrar of the whereabouts of the said thing, the party causing the subpoena to be issued for the production of the thing shall inform all other parties where and when the thing may be inspected and copied or photographed and of any conditions set by the registrar for inspection, copying and photographing.

(v) After inspection and copying or photographing, the person who produced the thing is entitled to its return.

(2) The witnesses at the trial of any action shall be orally examined, but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.

(3) A court may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner of the court, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

(4) Where the evidence of any person is to be taken on commission before any commissioner within the Republic, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

(5) Unless the Court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under subrule (3) shall be adduced upon oral examination in the presence of the parties, their advocates or attorneys, and the witness concerned may be subject to cross-examination and re-examination.

(6) A commissioner shall not decide upon the admissibility of evidence tendered, but shall note any objections made and such objections shall be decided by the court hearing the matter.

(7) Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court and the transcript of any shorthand record or record taken by mechanical means duly certified by the person transcribing the same and by the commissioner shall constitute the record of the examination: Provided that the evidence before the commissioner may be taken down in narrative form.

(8) The record of the evidence shall be returned by the commissioner to the registrar with a certificate to the effect that it is the record of the evidence given before the commissioner, and shall thereupon become part of the record in the case.

(9)

(a) A court may, on application on notice by any party and where it appears convenient or in the interests of justice, make an order for evidence to be taken through audiovisual link.

(b) A court making an order in terms of paragraph (a) must give such directions which it considers appropriate for the taking and recording of such evidence.

(c) An application in terms of this rule must be accompanied by a draft order setting out the terms of the order sought, including particulars of—

(i) the witness who is required to adduce evidence through audiovisual link;

(ii) the address of the premises from where such evidence will be given; and

(iii) the address of the premises to where the evidence will be transmitted by audiovisual link.

(d) For purposes of this rule 'audiovisual link' means facilities that enable both audio and visual communications between a witness and persons in a courtroom, to be transmitted in real-time as they take place.

[Rule 38(9) inserted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

[Rule 38 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1318 in G. 42064 with effect from 10 January 2019.]

38A. Referral of particular matters for investigation by referee

(1) A court in any civil proceedings may, with the consent of the parties, refer a matter to a referee to investigate and report thereon to the court, as envisaged in section 38(1) of the Act.

(2) The consent to appoint a referee shall be in writing and signed by the parties and shall contain at least the following particulars—

(a) the identity of the referee by inter alia referring to the referee's full names, work address and work expertise;

(b) the referee's hourly or daily rates, as applicable, and any other agreement which has been reached with regard to the remuneration of the referee;

(c) the factual issue or issues to be considered by the referee, succinctly identified;

(d) the documents or other material which must be considered by the referee for purposes of the enquiry and report;

(e) the powers of the referee to be approved by the court for inclusion in the order; and

(f) where appropriate, the time frame within which a report shall be produced.

(3) The powers to be ascribed to a referee shall be determined by the circumstances of each case and shall be confirmed by the court.

(4) When seeking a referral order under subrule (1), the parties shall—

(a) provide the court with the original written consent;

(b) provide written reasons why the matter is one which is appropriate to be referred to a referee under section 38(1) of the Act;

(c) make submissions why the nominated referee appears most suitable to decide the issues to be decided; and

(d) provide the court with the written consent of the referee to be appointed confirming his or her availability and the necessary expertise to consider the factual question or questions posed by the parties.

(5) Referees shall be entitled to be remunerated on the basis of the rates or amounts agreed upon by the parties, prior to the appointment: Provided that where there is no agreement the court may be requested to order the rates or amounts of remuneration.

[Rule 38A inserted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

39. Trial

(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, in so far as he has discharged such burden. Provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.

(2) When a defendant has by his default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interests of justice may otherwise order, be permitted, either personally or by an advocate, to appear at the hearing.

(3) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant shall be entitled to an order granting absolution from the instance with costs, but may lead evidence with a view to satisfying the court that final judgment should be granted in his favour and the court, if so satisfied, may grant such judgment.

(4) The provisions of subrules (1) and (2) shall apply to any person making any claim (whether by way of claim in reconvention or third party notice or by any other means) as if he were a plaintiff,

and the provisions of subrule (3) shall apply to any person against whom such a claim is made as if he were a defendant.

(5) Where the burden of proof is on the plaintiff, he or one advocate for the plaintiff may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.

(6) At the close of the case for the plaintiff, the defendant may apply for absolution from the instance, in which event the defendant or one advocate on his behalf may address the court and the plaintiff or one advocate on his behalf may reply. The defendant or his advocate may thereupon reply on any matter arising out of the address of the plaintiff or his advocate.

(7) If absolution from the instance is not applied for or has been refused and the defendant has not closed his case, the defendant or one advocate on his behalf may briefly outline the facts intended to be proved and the defendant may then proceed to the proof thereof.

(8) Each witness shall, where a party is represented, be examined, cross-examined or re-examined as the case may be by only one (though not necessarily the same) advocate for such party.

(9) If the burden of proof is on the defendant, he or his advocate shall have the same rights as those accorded to the plaintiff or his advocate by subrule (5).

(10) Upon the cases on both sides being closed, the plaintiff or one or more of the advocates on his behalf may address the court and the defendant or one or more advocates on his behalf may do so, after which the plaintiff or one advocate only on his behalf may reply on any matter arising out of the address of the defendant or his advocate.

(11) Either party may apply at the opening of the trial for a ruling by the court upon the onus of adducing evidence, and the court after hearing argument may give a ruling as to the party upon whom such onus lies: Provided that such ruling may thereafter be altered to prevent injustice.

(12) If there be one or more third parties or if there be defendants to a claim in reconvention who are not plaintiffs in the action, any such party shall be entitled to address the court in opening his case and shall lead his evidence after the evidence of the plaintiff and of the defendant has been concluded and before any address at the conclusion of such evidence. Save in so far as the court shall otherwise direct, the defendants to any counterclaim who are not plaintiffs shall first lead their evidence and thereafter any third parties shall lead their evidence in the order in which they became third parties. If the onus of adducing evidence is on the claimant against the third party or on the defendant to any claim in reconvention, the court shall make such order as may seem convenient with regard to the order in which the parties shall conduct their cases and address the court, and in regard to their respective rights of reply. The provisions of subrule

(11) shall mutatis mutandis apply with regard to any dispute as to the onus of adducing evidence.

(13) Where the onus of adducing evidence on one or more of the issues is on the plaintiff and that of adducing evidence on any other issue is on the defendant, the plaintiff shall first call his evidence on any issues in respect of which the onus is upon him, and may then close his case. The defendant, if absolution from the instance is not granted, shall, if he does not close his case, thereupon call his evidence on all issues in respect of which such onus is upon him.

(14) After the defendant has called his evidence, the plaintiff shall have the right to call rebutting evidence on any issues in respect of which the onus was on the defendant: Provided that if the plaintiff shall have called evidence on any such issues before closing his case he shall not have the right to call any further evidence thereon.

(15) Nothing in subrules (13) and (14) contained shall prevent the defendant from cross-examining any witness called at any stage by the plaintiff on any issue in dispute, and the plaintiff shall be entitled to re-examine such witness consequent upon such cross-examination without affecting the right given to him by subrule (14) to call evidence at a later stage on the issue on which such witness has been cross-examined. The plaintiff may further call the witness so re-examined to give evidence on any such issue at a later stage.

(16) A record shall be made of—

(a) any judgment or ruling given by the court,

(b) any evidence given in court,

(c) any objection made to any evidence received or tendered,

(d) the proceedings of the court generally (including any inspection in loco and any matter demonstrated by any witness in court), and

(e) any other portion of the proceedings which the court may specifically order to be recorded.

(17) Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.

(18) The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with the registrar. It shall not be necessary to transcribe them unless the court or a judge so directs or a party appealing so requires. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the registrar. The transcript of the shorthand notes or mechanical record certified as correct shall be deemed to be correct unless the court otherwise orders.

(19) Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the registrar to a judge to have the record transcribed if an order to that effect has not already been made. Such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.

(20) If it appears convenient to do so, the court may at any time make any order with regard to the conduct of the trial as to it seems meet, and thereby vary any procedure laid down by this rule.

(21) Every stenographer employed to take down a record and every person employed to make a mechanical record of any proceedings shall be deemed to be an officer of the court and shall, before entering on his duties, take the following oath—

I, A.B., do swear that I shall faithfully, and to the best of my ability, record in shorthand, or cause to be recorded by mechanical means, as directed by the judge, the proceedings in any case in which I may be employed as an officer of the court, and that I shall similarly, when required to do so, transcribe the same or, as far as I am able, any shorthand notes, or mechanical record, made by another stenographer or person employed to make such mechanical record.

[Rule 39(21) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(22) By consent the parties to a trial shall be entitled, at any time, before trial, on written application to a judge through the registrar, to have the cause transferred to the magistrate's court: Provided that the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise.

(23) The judge may, at the conclusion of the evidence in trial actions, confer with the advocates in his chambers as to the form and duration of the addresses to be submitted in court.

(24) Where the court considers that the proceedings have been unduly prolonged by the successful party by the calling of unnecessary witnesses or by excessive examination or cross-examination, or by over-elaboration in argument, it may penalise such party in the matter of costs.

40. Legal assistance to indigent persons

[Heading of R 40 substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(1)

(a) A natural person who desires to bring or defend proceedings, as an indigent litigant and who does not qualify for legal aid, or who requires to continue as an indigent litigant in an action or defended action already instituted, may apply to the registrar who, if it appears to him or her that such person is as contemplated by paragraph (a) of subrule (2), shall refer such person to an attorney and an advocate.

(aA) Where a person applies to continue as an indigent litigant in an action or defence already instituted, such person may do so by proceeding in terms of the provisions of this rule but in addition, shall—

(i) set out the alteration in his or her circumstances which renders it necessary to continue the action or defence as an indigent litigant; and

(ii) give notice of the application to the opposite party.

(aB) In the event of the opposite party objecting to the granting of the application, the applicant must apply formally to the court after giving proper notice to the opposite party.

(b) The attorney referred to in paragraph (a) of subrule (1) shall inquire into such person's means and the merits of his or her cause and upon being satisfied that the matter is one in which such attorney may properly act in assisting the indigent litigant, such attorney shall request the registrar to nominate an advocate who is willing and able to act, and upon being so nominated such advocate shall act therein.

(c) Should such attorney or advocate thereafter become unable so to act, the registrar may, upon request, nominate another practitioner to act in such attorney's or advocate's stead.

[Rule 40(1) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(2) If such proceedings are instituted the following must be lodged with the registrar on behalf of such person—

(a) an affidavit setting forth fully his or her financial position and stating that except for household goods, wearing apparel and tools of trade, such person is not possessed of property to the amount of R640 000 and will not be able within a reasonable time to provide such sum from such person's earnings;

[Rule 40(2)(a) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, by GoN R2642 in G. 11045 with effect from 31 December 1987, amended by GoN R109 in G. 14541 with effect from 22 February 1993.]

(b) a statement signed by the advocate and attorney aforementioned that being satisfied that the person concerned is unable to pay fees they are acting for the said person in their respective professional capacities gratuitously in the proceedings to be instituted or defended by such person; and

(c) a certificate of *probabilis causa* by the said advocate,

the registrar shall issue all process and accept all documents in the said proceedings for the aforesaid person without fee of office.

[Rule 40(2) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(3) All pleadings, process and documents filed of record by a party proceeding as an indigent litigant shall be headed accordingly.

[Rule 40(3) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(4) The registrar shall maintain in his or her office a roster of attorneys and advocates, and in referring persons desirous of bringing or defending proceedings as indigent litigants to practitioners in terms of subrule (1), the registrar shall do so as far as possible in rotation.

[Rule 40(4) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(5) The said advocate and attorney shall thereafter act gratuitously for the said person in their respective capacities in the said proceedings, and shall not be at liberty to withdraw, settle or compromise such proceedings, or to discontinue their assistance, without the leave of a judge, who may in the latter event give directions as to the appointment of substitutes.

(6) When a person sues or defends as an indigent litigant under process issued in terms of this rule, such person's opponent shall, in addition to any other right such person's opponent might have, have the right at any time to apply to the court on notice for an order dismissing the claim or defence or for an order debarring such person from continuing as an indigent litigant; and upon the hearing of such application the court may make such order thereon, including any order as to costs, as it deems fit.

[Rule 40(6) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(7) If upon the conclusion of the proceedings an indigent litigant is awarded costs, such litigant's attorney may include in the bill of costs such fees and disbursements which such attorney would ordinarily have been entitled, and upon receipt thereof, in whole or in part, such attorney shall pay out in the following order of preference: first, to the sheriff, charges for the service and execution of process; second, to such attorney and the advocate, their fees as allowed on taxation, *pro rata* if necessary.

[Rule 40(7) amended by GoN R2410 in G. 13558 with effect from 1 November 1991, substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

41. Withdrawal, settlement, discontinuance, postponement and abandonment

(1)

(a) A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party.

(b) A consent to pay costs referred to in paragraph (a), shall have the effect of an order of court for such costs.

(c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs.

[Rule 41(1) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971.]

(2) Any party in whose favour any decision or judgment has been given, may abandon such decision or judgment either in whole or in part by delivering notice thereof and such judgment or decision abandoned in part shall have effect subject to such abandonment. The provisions of subrule (1) relating to costs shall mutatis mutandis apply in the case of a notice delivered in terms of this subrule.

[Rule 41(2) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967.]

(3) If in any proceedings a settlement or an agreement to postpone or withdraw is reached, it shall be the duty of the attorney for the plaintiff or applicant immediately to inform the registrar accordingly.

(4) Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their legal representatives but which has not been carried out, may apply for judgment in terms thereof on at least five days' notice to all interested parties.

[Rule 41(4) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

41A. Mediation as a dispute resolution mechanism

(1) In this rule—

"dispute" means the subject matter of litigation between parties, or an aspect thereof.

"mediation" means a voluntary process entered into by agreement between the parties to a dispute, in which an impartial and independent person, the mediator, assists the parties to either resolve the dispute between them, or identify issues upon which agreement can be reached, or explore areas of compromise, or generate options to resolve the dispute, or clarify priorities, by facilitating discussions between the parties and assisting them in their negotiations to resolve the dispute.

(2)

(a) In every new action or application proceeding, the plaintiff or applicant shall, together with the summons or combined summons or notice of motion, serve on each defendant or respondent a notice indicating whether such plaintiff or applicant agrees to or opposes referral of the dispute to mediation.

(b) A defendant or respondent shall, when delivering a notice of intention to defend or a notice of intention to oppose, or at any time thereafter, but not later than the delivery of a plea or answering affidavit, serve on each plaintiff or applicant or the plaintiff's or applicant's attorneys, a notice indicating whether such defendant or respondent agrees to or opposes referral of the dispute to mediation.

(c) The notices referred to in paragraphs (a) and (b) shall be substantially in accordance with Form 27 of the First Schedule and shall clearly and concisely indicate the reasons for such party's belief that the dispute is or is not capable of being mediated.

(d) Subject to the provisions of subrule 9(b) the notices referred to in this subrule shall be without prejudice and shall not be filed with the registrar.

[Rule 41A(2)(d) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(3)

(a) Notwithstanding the provisions of subrule (2), the parties may at any stage before judgment, agree to refer the dispute between them to mediation: Provided that where the trial or opposed application has commenced the parties shall obtain the leave of the court.

(b) A Judge, or a Case Management Judge referred to in rule 37A or the court may at any stage before judgment direct the parties to consider referral of a dispute to mediation, whereupon the parties may agree to refer the dispute to mediation.

(4) Where a dispute is referred to mediation—

(a) the parties shall deliver a joint signed minute recording their election to refer the dispute to mediation;

(b) the parties shall prior to the commencement of mediation proceedings enter into an agreement to mediate;

(c) the time limits prescribed by the Rules for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party to the dispute from the date of signature of the minute referred to in paragraph (a) to the time of conclusion of mediation: Provided that any party to the proceedings who considers that the suspension of the prescribed time limits is being abused, may apply to the court for the upliftment of the suspension of the prescribed time limits; and

(d) the process of mediation shall be concluded within 30 days from the date of signature of the minute referred to in paragraph (a): Provided that a Judge or the court may on good cause shown by the parties extend such time period for completion of the mediation session.

(5)

(a) In proceedings where there are multiple parties some of whom are agreeable to mediation and some of whom are not, parties who are agreeable to mediation may proceed to mediation notwithstanding any other party’s refusal to mediate.

(b) The time limits prescribed for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party from the date of signature of the minute referred to in subrule (4)(a) to the time of conclusion of mediation by the parties who have elected to mediate: Provided that any party to the proceedings who considers that such suspension of time limits is being abused, may apply to the court for the upliftment of such suspension.

(c) In any matter where there are multiple issues, the parties may agree that some issues be referred to mediation and that the issues remaining in dispute may proceed to litigation.

(d) If any issue remains in dispute after mediation, the parties may proceed to litigation on such issue in dispute.

(6) Except as provided by law, or discoverable in terms of the Rules or agreed between the parties, all communications and disclosures, whether oral or written, made at mediation proceedings shall be confidential and inadmissible in evidence.

(7)

(a) Upon conclusion of mediation the parties who engaged in mediation shall inform the registrar and all other parties by notice that mediation has been completed.

(b) Notwithstanding the failure of parties who have engaged in mediation to deliver the notice referred to in paragraph (a), the suspension of the time limits referred to in subrule (4)(c) shall lapse unless a Judge or a court has extended the time limit and notice thereof has been given to all parties to the proceedings within five days of such order.

(8)

(a) Mediation shall be deemed to be completed within 30 days from the date of signature of the joint minute referred to in subrule (4)(a), from which date the suspension of the time limits prescribed for the delivery of pleadings and notices and the filing of affidavits or the taking of any step referred to in subrule (4)(c) shall lapse: Provided that where mediation is completed before the aforesaid period of 30 days, the parties who engaged in mediation shall deliver a notice contemplated in subrule (7) indicating that mediation has been completed.

(b) The parties who engaged in mediation and the mediator who conducted the mediation shall within five days of the conclusion of mediation, issue a joint minute indicating—

(i) whether full or partial settlement was reached or whether mediation was not successful; and

(ii) the issues upon which agreement was reached and which do not require hearing by the court.

(c) It shall be the joint responsibility of the parties who engaged in mediation to file with the registrar, the minute referred to in paragraph (b).

(d) No offer or tender made without prejudice in terms of this subrule shall be disclosed to the court at any time before judgment has been given.

(e) Where the parties have reached settlement at mediation proceedings the provisions of rule 41 shall apply mutatis mutandis.

(9)

(a) Unless the parties agree otherwise, liability for the fees of a mediator shall be borne equally by the parties participating in mediation.

(b) When an order for costs of the action or application is considered, the court may have regard to the notices referred to in subrule (2) or any offer or tender referred to in subrule (8)(d) and any party shall be entitled to bring such notices or offer or tender to the attention of the court.

[Rule 41A inserted by GoN R107 in G. 43000 with effect from 9 March 2020.]

42. Variation and rescission of orders

(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary—

(a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

[Rule 42(1)(a) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.

43. Interim relief in matrimonial matters

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters—

(a) Maintenance *pendente lite*;

(b) A contribution towards the costs of a matrimonial action, pending or about to be instituted;

(c) Interim care of any child;

(d) Interim contact with any child.

(2)

(a) An applicant applying for any relief referred to in subrule (1) shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a notice to the respondent corresponding with Form 17 of the First Schedule.

(b) The statement and notice shall be signed by the applicant or the applicant's attorney and shall give an address for service within 15 kilometres of the office of the registrar, as referred to in rule 6(5)(b).

(c) The application shall be served by the sheriff: Provided that where the respondent is represented by an attorney, the application may be served on the respondent's attorney of record, other than by the sheriff.

(3)

(a) The respondent shall within 10 days after receiving the application deliver a sworn reply in the nature of a plea.

(b) The reply shall be signed by the respondent or the respondent's attorney and shall give an address for service within 15 kilometres of the office of the registrar, as referred to in rule 6(5)(b).

(c) In default of delivery of a reply referred to in paragraph (a), the respondent shall be automatically barred.

(4) As soon as possible after the expiry of the period referred to in paragraph (a) of subrule (3), the registrar shall bring the matter before the court for summary hearing, on 10 days' notice to the parties: Provided that no notice need be given to the respondent if the respondent is in default.

(5) The court may hear such evidence as it considers necessary and may dismiss the application or make such order as it deems fit to ensure a just and expeditious decision.

(6) The court may, on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

[Rule 43 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2021 in G. 3304 with effect from 15 November 1971, GoN 2170 in G. 8405 with effect from 6 October 1982, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R2845 in G. 13653 with effect from 1 January 1992, GoN R960 in G. 14844 with effect from 1 July 1994, GoN R262 in G. 36338 with effect from 17 May 2013, GoN R1055 in G. 41142 with effect from 1 November 2017; substituted by GoN R1318 in G. 42064 with effect from 10 January 2019.]

44. Divorce actions and annulment of marriages

(1) A process in which is claimed a decree of divorce or nullity of a marriage must be served personally on the person against whom the relief is sought, unless service other than personal service is authorised by the court.

(2) When an undefended divorce action or an undefended claim for declaration of nullity of a marriage is postponed, the proceedings may be continued before another court notwithstanding that evidence has been given.

[Rule 44 substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R781 in G. 39148 with effect from 2 October 2015.]

45. Execution – General and movables

(1) A judgment creditor may, at his or her own risk, sue out of the office of the registrar one or more writs for execution thereof corresponding substantially with Form 18 of the First Schedule.

[Rule 45(1) substituted by GoN R181 in G. 15464 with effect from 1 March 1994, GoN R981 in G. 33689 with effect from 24 December 2010.]

(2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution.

[Rule 45(2) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(3) Whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there—

(a) demand satisfaction of the writ and, failing satisfaction,

(b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,

(c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of subrule (5), shall be taken into the custody of the sheriff: Provided—

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.

[Rule 45(3) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(4) The sheriff shall file with the registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

[Rule 45(4) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(5) Where any movable property has been attached by the sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner have been legally removed, whereupon the sheriff shall leave the said property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with Form 19 of the First Schedule.

[Rule 45(5) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

[Rule 45(6) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(7)

(a) Where any movable property is attached as aforesaid the sheriff shall where practicable and subject to rule 58 sell it by public auction to the highest bidder after due advertisement by the execution creditor in a newspaper circulating in the district in which the property has been attached and after expiration of not less than 15 days from the time of seizure thereof.

[Rule 45(7)(a) amended by GoN R1343 in G. 31690 with effect from 12 January 2009.]

(b) Where perishables are attached as aforesaid, they may with the consent of the execution debtor or upon the execution creditor indemnifying the sheriff against any claim for damages which may arise from such sale, be sold immediately by the sheriff concerned in such manner as seems expedient.

[Rule 45(7)(b) amended by GoN R1343 in G. 31690 with effect from 12 January 2009.]

(c) The sheriff shall not later than 15 days before the date of sale either in terms of paragraph (a) or paragraph (b), forward a notice of sale to all other sheriffs appointed in that area.

[Rule 45(7) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967; amended by GoN R608 in G. 11792 with effect from 1 July 1989, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R1343 in G. 31690 with effect from 12 January 2009; r 45(7)(c) inserted by GoN R1343 in G. 31690 with effect from 12 January 2009.]

(8) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided—

(a) Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when—

(i) notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be, and

(ii) the sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond or other security as the case may be, and

(iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution. The sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.

(c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid—

(i) the attachment shall only be complete when—

(a) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and

(b) the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document;

(ii) the sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

[Rule 45(8) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(9) Attachment of property subject to a lien shall be effected mutatis mutandis in accordance with the provisions of subparagraph (b) of subrule (8).

(10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he otherwise agrees.

(11)

(a)

(i) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with any sheriff appointed for a particular area or any other sheriff before or on the day of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold, in the order of preference referred to in paragraph (c) of subrule (14) of rule 46.

[Rule 45(11)(a)(i) amended by GoN R1343 in G. 31690 with effect from 12 January 2009.]

(ii) The sheriff conducting the sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed in the district in which he or she has been instructed to conduct a sale in respect of the attached goods.

[Rule 45(11)(a)(ii) inserted by GoN R1343 in G. 31690 with effect from 12 January 2009.]

(iii) The sheriff conducting the sale shall accept from all other sheriffs appointed in that district or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.

[Rule 45(11)(a)(iii) inserted by GoN R1343 in G. 31690 with effect from 12 January 2009.]

(b) If there should remain any surplus, the sheriff shall pay it over to the judgment debtor; and the sheriff shall make out and deliver to him an exact account, in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the sheriff shall refund such sum to the judgment debtor.

[Rule 45(11) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(12)

(a) Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by him to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached.

(b) In the event of the garnishee refusing or neglecting to comply with any such notice, the sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why he should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due, or claimed to be due by him to the party against whom execution is issued, or he does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

(c) If the garnishee disputes his liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner mutatis mutandis in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.

(d) Nothing in these Rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference, or retention claimed by any third person in respect of such debts.

(e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.

(f) Where the sheriff is of opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with his consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(h) to (k) …

[Rule 45(12) inserted by GoN R235 in G. 1375 with effect from 18 February 1966; r 45(12)(h) to (k) repealed by GoN R608 in G. 11792 with effect from 1 July 1989.]

(13) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any of the property offered for sale either for himself or for any other person.

[Rule 45(13) inserted by GoN R1843 in G. 15147 with effect from 1 November 1993.]

45A. Suspension of orders by the court

The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.

[Rule 45A inserted by GoN R1262 in G. 13283 with effect from 1 July 1991; substituted by GoN R1157 in G. 43856 with effect from 1 December 2020.]

46. Execution – Immovable property

(1)

(a) Subject to the provisions of rule 46A, no writ of execution against the immovable property of any judgment debtor shall be issued unless—

(i) a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the writ; or

(ii) such immovable property has been declared to be specially executable by the court or where judgment is granted by the registrar under rule 31(5).

(b) A writ of execution against immovable property shall contain—

(i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and

(ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof.

(2) The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated, upon a writ corresponding substantially with Form 20 of the First Schedule.

(3)

(a) Notice of the attachment, corresponding substantially with Form 20A of the First Schedule, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.

(b) Any notice referred to in paragraph (a) shall—

(i) draw attention to the provisions of subrule (8)(a)(iii); and

(ii) be served according to the provisions of rule 4, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.

(4)

(a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property, as well as the condition of such improvements: Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.

(b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.

(c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) Subject to rule 46A and any order made by the court, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless—

(a) the execution creditor has caused notice of the intended sale to be served upon—

(i) preferent creditors;

(ii) the local authority, if the property is rated; and

(iii) the body corporate, if the property is a sectional title unit,

calling upon the aforesaid entities to stipulate within 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that such entities have so stipulated or agreed, or

(b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.

(6) The sheriff may by notice served upon any person require such person to deliver up to the sheriff forthwith, all documents in such person's possession or control relating to the debtor's title to the said property.

(7)

(a) The sheriff conducting the sale shall appoint a day and place for the sale of the attached immovable property, such day being, except by special leave of a magistrate, not less than 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.

(b)

(i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and physical address, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale.

(ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.

(c) The execution creditor shall—

(i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the *Gazette* not less than 5 days and not more than 15 days before the date of the sale; and

(ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the *Gazette*, respectively.

(d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward a copy of the notice of sale referred to in paragraph (b) to every execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.

(e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix—

(i) one copy of the notice on the notice-board of the magistrate's court of the district in which the attached immovable property is situated, or if the said property is situated in the district where the court out of which the writ was issued is situated, then on the notice-board of such court; and

(ii) one copy at or as near as may be to the place where the said sale is actually to take place.

(8)

(a)

(i) Not less than 35 days prior to the date of the sale, the execution creditor shall prepare the conditions of sale, corresponding substantially with Form 21 of the First Schedule, upon which the attached property is to be sold and shall submit such conditions to the sheriff conducting the sale, for the purposes of settling them.

(ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the court.

(iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.

(iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.

(v) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 (Act 68 of 2008), and the regulations promulgated thereunder.

(b)

(i) The execution creditor shall thereafter supply the said sheriff with three copies of the conditions of sale, one of which shall lie for inspection by interested parties at the office of the sheriff for 15 days prior to the date of the sale.

(ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.

(c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.

(d) Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 46A and any order made by the court under the provisions thereof, and upon 24 hours' notice to all known affected parties, apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs.

(9) The execution creditor shall appoint a conveyancer to attend to the transfer of the attached immovable property sold in execution: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.

(10) Immovable property attached in execution shall be sold by the sheriff by public auction.

(11)

(a)

(i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached and immovable property may be put up for sale again.

(ii) The report shall be accompanied by a notice corresponding substantially with Form 21A of the First Schedule.

(iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.

(b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a judge given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a judge for the aforesaid purpose.

(c) If the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a judge for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.

(12) Subject to the provisions of rule 46A and subrule (5) hereof—

(a) the sale shall be conducted upon the conditions stipulated under subrule (8); and

(b) the immovable property shall be sold to the highest bidder.

(13)

(a) All moneys in respect of the purchase price of the immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such moneys in his or her trust account until transfer has been given to the purchaser.

(b) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

(c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.

(14)

(a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the writ of execution.

(b)

(i) Within 10 days after the date of registration of the transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar and to all other sheriffs appointed in that district.

(ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection at his or her office and the office of the registrar for 15 days from a date mentioned, and unless such parties signify in writing their agreement to the plan, such plan will so lie for inspection.

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference—

(i) Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter

(ii) Claims of other creditors whose writs have been lodged with the sheriff in the order of preference appearing from sections 96, and 98A to 103 (inclusive) of the Insolvency Act, 1936 (Act 24 of 1936).

(d) Any interested person objecting to the plan must—

(i) before the expiry of the period referred to in paragraph (b)(ii), give notice in writing to the sheriff and all other interested persons of the particulars of the objection; and

(ii) within 10 days after the expiry of the period referred to in paragraph (b)(ii), bring such objection before a judge for review upon 10 days' notice to the sheriff and the said persons.

(e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as he or she deems appropriate.

(f) If—

(i) no objection is lodged to such plan; or

(ii) the interested parties signify their concurrence therein; or

(iii) the plan is confirmed or amended on review,

the sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.

(15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any immovable property offered for sale either for himself or herself or for any other person.

(16) In this rule, the word “days” shall have the same meaning as “court days” as defined in rule 1 of these Rules.

[Rule 46 amended by GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R1843 in G. 15147 with effect from 1 November 1993, GoN R1746 in G. 17527 with effect from 25 November 1996, GoN R785 in G. 18956 with effect from 6 July 1998, GoN R1024 in G. 19136 with effect from 7 September 1998, GoN R1343 in G. 31690 with effect from 12 January 2009, GoN R980 in G. 33689 with effect from 24 December 2010, GoN R981 in G. 33689 with effect from 24 December 2010, GoN R213 in G. 37475 with effect from 2 May 2014; substituted by GoN R1272 in G. 41257 with effect from 22 December 2017.]

46A. Execution against residential immovable property

(1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.

(2)

(a) A court considering an application under this rule must—

(i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and

(ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor’s primary residence.

(b) A court shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the court, having considered all relevant factors, considers that execution against such property is warranted.

(c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless a court has ordered execution against such property.

(3) Every notice of application to declare residential immovable property executable shall be—

(a) substantially in accordance with Form 2A of Schedule 1;

(b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution, including the entities referred to in rule 46(5)(a): Provided that the court may order service on any other party it considers necessary;

(c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and

(d) served by the sheriff on the judgment debtor personally: Provided that the court may order service in any other manner.

(4)

(a) The applicant shall in the notice of application—

(i) state the date on which the application is to be heard;

(ii) inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the court, the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;

(iii) appoint a physical address within 15 kilometres of the office of the registrar at which the applicant will accept service of all documents in these proceedings; and

(iv) state the applicant's postal, facsimile or electronic mail address where available.

(b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a)(ii).

(5) Every application shall be supported by the following documents, where applicable, evidencing—

(a) the market value of the immovable property;

(b) the local authority valuation of the immovable property;

(c) the amounts owing on mortgage bonds registered over the immovable property;

(d) the amount owing to the local authority as rates and other dues;

(e) the amounts owing to a body corporate as levies; and

(f) any other factor which may be necessary to enable the court to give effect to subrule (8):

Provided that the court may call for any other document which it considers necessary.

(6)

(a) A respondent, upon service of an application referred to in subrule (3), may—

(i) oppose the application; or

(ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the court; or

(iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the court.

(b) A respondent referred to in paragraph (a)(i) and (ii) shall—

(i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and

(ii) set out the reasons for opposing the application and the grounds on which the application is opposed.

(c) Every opposition or submission referred to in paragraphs (a) and (b) shall be set out in an affidavit.

(d) A respondent opposing an application or making submissions shall, within 10 days of service of the application—

(i) deliver the affidavit referred to in paragraph (c);

(ii) appoint a physical address within 15 kilometres of the office of the registrar at which documents may be served upon such respondent; and

(iii) state the respondent's postal, facsimile or electronic mail address where available.

(7) The registrar shall place the matter on the roll for hearing by the court on the date stated in the Notice of Application.

(8) A court considering an application under this rule may—

(a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;

(b) order the furnishing by—

(i) a municipality of rates due to it by the judgment debtor; or

(ii) a body corporate of levies due to it by the judgment debtor;

(c) on good cause shown, condone—

(i) failure to provide any document referred to in subrule (5); or

(ii) delivery of an affidavit outside the period prescribed in subrule (6)(d);

(d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;

(e) set a reserve price;

(f) postpone the application on such terms as it may consider appropriate;

(g) refuse the application if it has no merit;

(h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or

(i) make any other appropriate order.

(9)

(a) In an application under this rule, or upon submissions made by a respondent, the court must consider whether a reserve price is to be set.

(b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the court shall take into account—

(i) the market value of the immovable property;

(ii) the amounts owing as rates or levies;

(iii) the amounts owing on registered mortgage bonds;

(iv) any equity which may be realised between the reserve price and the market value of the property;

(v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);

(vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

(vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;

(viii) any prejudice which any party may suffer if the reserve price is not achieved; and

(ix) any other factor which in the opinion of the court is necessary for the protection of the interests of the execution creditor and the judgment debtor.

(c) If the reserve price is not achieved at a sale in execution, the court must, on a reconsideration of the factors in paragraph (b) and its powers under this rule, order how execution is to proceed.

(d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the court, within five days of the date of the auction, which report shall contain—

(i) the date, time and place at which the auction sale was conducted;

(ii) the names, identity numbers and contact details of the persons who participated in the auction;

(iii) the highest bid or offer made; and

(iv) any other relevant factor which may assist the court in performing its function in paragraph (c).

(e) The court may, after considering the factors in paragraph (d) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.

[Rule 46A inserted by GoN R1272 in G. 41257 with effect from 22 December 2017.]

47. Security for costs

(1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

(2) If the amount of security only is contested the registrar shall determine the amount to be given and his decision shall be final.

(3) If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded or the amount fixed by the registrar within 10 days of the demand or the registrar's decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

(4) The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet.

(5) Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the registrar.

(6) The registrar may, upon the application of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he is satisfied that the amount originally furnished is no longer sufficient; and his decision shall be final.

47A.

Notwithstanding anything contained in these Rules a person to whom legal aid is rendered by a statutorily established legal aid board is not compelled to give security for the costs of the opposing party, unless the court directs otherwise.

[Rule 47A inserted by GoN R2477 in G. 5361 with effect from 17 December 1976.]

48. Review of taxation

(1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 15 days after the allocatur by notice require the taxing master to state a case for the decision of a judge.

(2) The notice referred to in subrule (1) must—

(a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;

(b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed *mero motu* by the taxing master;

(c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and

(d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.

(3) The taxing master must—

(a) supply his or her stated case to each of the parties within 20 days after he or she has received a notice referred to in subrule (1); and

(b) set out any finding of fact in the stated case.

(4) Save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than R100.

(5)

(a) The parties to whom a copy of the stated case has been supplied, may within 15 days after receipt thereof make submissions in writing thereon, including grounds of objection not raised at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.

(b) The taxing master must within 20 days after receipt of the submissions referred to in paragraph (a), supply his or her report to each of the parties.

(c) The parties may within 10 days after receipt of the report by the taxing master, make further written submissions thereon to the taxing master, who shall forthwith lay the case together with the submissions before a judge.

(6)

(a) The judge may—

(i) decide the matter upon the merits of the case and submissions so submitted;

(ii) require any further information from the taxing master;

(iii) if he or she deems it fit, hear the parties or their advocates or attorneys in his or her chambers; or

(iv) refer the case for decision to the court.

(b) Any further information to be supplied by the taxing master to the judge must also be supplied to the parties who may within 10 days after receipt thereof, make written submissions thereon to the taxing master, who shall forthwith lay such information together with any submissions of the parties thereon before the judge.

(7) The judge or court deciding the matter may make such order as to costs of the case as he or she or it may deem fit, including an order that the unsuccessful party pay to the successful party the costs of review in a sum fixed by the judge or court.

[Rule 48 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; substituted by GoN R849 in G. 21499 with effect from 25 September 2000.]

49. Civil appeals from the High Court

[Section heading substituted by GoN R518 in G. 32208 with effect from 15 June 2009.]

(1)

(a) When leave to appeal is required, it may on a statement of the grounds therefor be requested at the time of the judgment or order.

(b) When leave to appeal is required and it has not been requested at the time of the judgment or order, application for such leave shall be made and the grounds therefor shall be furnished within 15 days after the date of the order appealed against:

Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days after such later date: Provided further that the court may, upon good cause shown, extend the aforementioned periods of 15 days.

[Rule 49(1)(b) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(c) When in giving an order the court declares that the reasons for the order will be furnished to any of the parties on application, such application shall be delivered within 10 days after the date of the order.

[Rule 49(1)(c) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(d) The application mentioned in paragraph (b) above shall be set down on a date arranged by the registrar who shall give written notice thereof to the parties.

(e) Such application shall be heard by the judge who presided at the trial or, if he is not available, by another judge of the division of which the said judge, when he so presided, was a member.

(2) If leave to appeal to the full court is granted the notice of appeal shall be delivered to all the parties within 20 days after the date upon which leave was granted or within such longer period as may upon good cause shown be permitted.

[Rule 49(2) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(3) A notice of cross-appeal shall be delivered within 10 days after delivery of the notice of appeal or within such longer period as may upon good cause shown be permitted and the provisions of these Rules with regard to appeals shall mutatis mutandis apply to cross-appeals.

[Rule 49(3) substituted by GoN R472 in G. 36638 with effect from 16 August 2013.]

(4) Every notice of appeal and cross-appeal shall state—

(a) what part of the judgment or order is appealed against; and

(b) the particular respect in which the variation of the judgment or order is sought.

[Rule 49(4) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R472 in G. 36638 with effect from 16 August 2013.]

(5) In the case of an appeal against the judgment or order of the court of the Witwatersrand Local Division, the judge president of the Transvaal Provincial Division shall determine whether the appeal should be heard by the full court of the said local division. As soon as possible after receipt of the notice of appeal or cross-appeal, if any, the registrar of the local division shall ascertain from the judge president his direction in the particular case. If the judge president has directed that the appeal be heard by the full court of the Witwatersrand Local Division, the said registrar shall immediately inform the parties of the direction. If not so directed by the judge president, the said registrar shall inform the registrar of the provincial division as well as the parties accordingly.

(6)

(a) Within 60 days after delivery of a notice of appeal, an appellant shall make written application to the registrar of the division where the appeal is to be heard for a date for the hearing of such appeal and shall at the same time furnish him with his full residential address and the name and address of every other party to the appeal and if the appellant fails to do so a respondent may within 10 days after the expiry of the said period of 60 days, as in the case of the appellant, apply for the set down of the appeal or cross-appeal which he may have noted. If no such application is made by either party the appeal and cross-appeal shall be deemed to have lapsed: Provided that a respondent shall have the right to apply for an order for his wasted costs.

[Rule 49(6)(a) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(b) The court to which the appeal is made may, on application of the appellant or cross-appellant, and upon good cause shown, reinstate an appeal or cross-appeal which has lapsed.

(7)

(a) At the same time as the application for a date for the hearing of an appeal in terms of subrule (6)(a) of this rule the appellant shall file with the registrar three copies of the record on appeal and shall furnish two copies to the respondent. The registrar shall further be provided with a complete index and copies of all papers, documents and exhibits in the case, except formal and immaterial documents: Provided that such omissions shall be referred to in the said index. If the necessary copies of the record

are not ready at that stage, the registrar may accept an application for a date of hearing without the necessary copies if—

(i) the application is accompanied by a written agreement between the parties that the copies of the record may be handed in late; or

(ii) failing such agreement, the appellant delivers an application together with an affidavit in which the reasons for his omission to hand in the copies of the record in time are set out and in which is indicated that an application for condonation of the omission will be made at the hearing of the appeal.

(b) The two copies of the record to be served on the respondent shall be served at the same time as the filing of the aforementioned three copies with the registrar.

(c) After delivery of the copies of the record, the registrar of the court that is to hear the appeal or cross-appeal shall assign a date for the hearing of the appeal or for the application for condonation and appeal, as the case may be, and shall set the appeal down for hearing on the said date and shall give the parties at least 20 days' notice in writing of the date so assigned.

[Rule 49(7)(c) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(d) If the party who applied for a date for the hearing of the appeal neglects or fails to file or deliver the said copies of the record within 40 days after the acceptance by the registrar of the application for a date of hearing in terms of subrule (7)(a) the other party may approach the court for an order that the application has lapsed.

(8)

(a) Copies referred to in subrule (7) shall be clearly typed on A.4 standard paper in double spacing, paginated and bound and in addition every tenth line on every page shall be numbered.

(b) The left side of each page shall be provided with a margin of at least 35 mm that shall be left clear, except in the case of exhibits that are duplicated by photoprinting, where it is impossible to obtain a margin with the said dimensions. Where the margin of the said exhibits is so small that parts of the documents will be obscured by binding, such documents shall be mounted on sheets of A4 paper and folded back to ensure that the prescribed margin is provided.

(9) By consent of the parties, exhibits and annexures having no bearing on the point at issue in the appeal and immaterial portions of lengthy documents may be omitted. Such consent, setting out what documents or parts thereof have been omitted, shall be signed by the parties and shall be included in the record on appeal. The court hearing the appeal may order that the whole of the record be placed before it.

(10) When the decision of an appeal turns exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, in which event copies shall be submitted of only such portions of the record as may be necessary for a proper decision of the appeal: Provided that the court hearing the appeal may require that the whole of the record of the case be placed before it.

(11) …

[Rule 49(11) repealed by GoN R317 in G. 38694 with effect from 22 May 2015.]

(12) If the order referred to in subrule (11) is carried into execution by order of the court the party requesting such execution shall, unless the court otherwise orders, before such execution enter into such security as the parties may agree or the registrar may decide for the restitution of any sum obtained upon such execution. The registrar's decision shall be final.

(13)

(a) Unless the respondent waives his or her right to security or the court in granting leave to appeal or subsequently on application to it, has released the appellant wholly or partially from that obligation, the appellant shall, before lodging copies of the record on appeal with the registrar, enter into good and sufficient security for the respondent's costs of appeal.

(b) In the event of failure by the parties to agree on the amount of security, the registrar shall fix the amount and the appellant shall enter into security in the amount so fixed or such percentage thereof as the court has determined, as the case may be.

[Rule 49(13) substituted by GoN R1299 in G. 20594 with effect from 30 November 1999.]

(14) The provisions of subrules (12) and (13) shall not be applicable to the Government of the Republic of South Africa or any provincial administration.

(15) Not later than 15 days before the appeal is heard the appellant shall deliver a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not later than 10 days before the appeal is heard the respondent shall deliver a similar statement. Three additional copies shall in each case be filed with the registrar.

[Rule 49(15) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(16) A notice of appeal in terms of section 76 of the Patents Act, 1978 (Act 57 of 1978), or section 63 of the Trade Marks Act, 1963 (Act 62 of 1963), may be served on the patent agent referred to in the Patents Act, 1978, or the agent referred to in section 8 of the Trade Marks Act, 1963, who represented the respondent in the proceedings in respect of which an appeal is noted.

(17) In the case of appeals to the full court in terms of the provisions of a statute in which the procedure to be followed is laid down, this rule is applicable as far as provision is made for matters not regulated by the statute.

(18) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

[Rule 49 amended by GoN R1816 in G. 5309 with effect from 8 October 1976, substituted by GoN R645 in G. 8617 with effect from 25 March 1983, GoN R645 in G. 8617 corrected by GoN R841 in G. 8667 with effect from 22 April 1983; r 49(18) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

49A. Criminal appeals to the full court

(1)

(a) Within 10 days of leave to appeal being granted in terms of sections 316 up to and including 319 of the Criminal Procedure Act 51 of 1977, the appellant shall deliver to the registrar and the director of public prosecutions concerned, a notice containing the full residential and postal address of the appellant and the address of his or her legal representative.

(b) In the case of an appeal in terms of section 315(3) of the Criminal Procedure Act 51 of 1977 to the full court, the registrar shall, subject to the provisions of section 316(5)(b) of the said Act, prepare three additional copies of the case record or parts thereof, as the case may be, and shall furnish the State with the number it requires and, on

payment of the prescribed fee, shall furnish the appellant with the number he or she requires: Provided that if the registrar is of the opinion that the appellant is too poor to pay the prescribed fee, such copies may be furnished without payment of any fee, in which case the registrar's decision shall be final.

(c)

(i) In the case of an appeal against the judgment or order of the court of the Witwatersrand Local Division, the judge president of the Transvaal Provincial Division shall determine whether the appeal should be heard by the full court of the said local division.

(ii) If the judge president has directed that the appeal should be heard by the full court of the Witwatersrand Local Division the registrar of the said local division shall immediately inform the director of public prosecutions and the appellant or his or her legal representative.

(iii) If the judge president has not so directed, the registrar shall inform the registrar of the provincial division as well as the director of public prosecutions and the appellant or his or her legal representative accordingly.

(2)

(a) Written argument shall be delivered on behalf of the appellant and the director of public prosecutions within the time periods prescribed by the registrar.

(b) The written argument contemplated in paragraph (a) shall contain references to the record and to the authorities relied upon in support of each point, together with a list of such authorities.

(c) In each case, four copies of the written argument shall simultaneously be filed with the registrar.

(3) The appeal shall be set down by the registrar of the court where the appeal is to be heard on a date assigned by him or her with written notice to the director of public prosecutions and the appellant or his or her legal representative

(4) The ultimate responsibility for ensuring that all copies of the record on appeal and all the necessary exhibits are in all respects properly before the court shall rest on the appellant or his or her attorney: Provided that where the appellant is not represented by an attorney, such responsibility shall rest on the director of public prosecutions.

[Rule 49A ins GoN R645 in G. 8617 with effect from 25 March 1983; amended by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987,

GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R518 in G. 32208 with effect from 15 June 2009.]

50. Civil appeals from magistrates' courts

(1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.

[Rule 50(1) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; amended by GoN R185 in G. 12276 with effect from 2 March 1990.]

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.

(3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the registrar within 20 days after the date of the lapse of such appeal.

[Rule 50(3) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(4)

(a) The appellant shall, within 40 days of noting the appeal, apply to the registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the registrar in writing his full residential and postal addresses and the address of his attorney if he is represented.

(b) In the absence of such an application by the appellant, the respondent may at any time before the expiry of the period of 60 days referred to in subrule (1) apply for a date of hearing in like manner.

(c) Upon receipt of such an application from appellant or respondent, the appeal shall be deemed to have been duly prosecuted.

[Rule 50(4) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R185 in G. 12276 with effect from 2 March 1990.]

(5)

(a) Upon receipt of such application, the registrar shall forthwith assign a date of hearing, which date shall be at least 40 days after the receipt of the said application, unless all parties consent in writing to an earlier date: Provided that the registrar shall not assign a date of hearing until the provisions of subrule (7)(a), (b), and (c) have been duly complied with.

(b) The registrar shall give the parties and the clerk of the court from which the appeal emanated, at least 20 days' written notice of the date of set down.

[Rule 50(5) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, by GoN R2642 in G. 11045 with effect from 31 December 1987, by GoN R185 in G. 12276 with effect from 2 March 1990; r 50(5)(b) substituted by GoN R87 in G. 32941 with effect from 12 March 2010.]

(6) A notice of set down of a pending appeal shall ipso facto operate as a set down of any cross-appeal and vice versa.

(7)

(a) The applicant shall simultaneously with the lodging of the application for a date for the hearing of the appeal referred to in subrule (4) lodge with the registrar two copies of the record: Provided that where such an appeal is to be heard by more than two judges, the applicant shall, upon the request of the registrar, lodge a further copy of the record for each additional judge.

[Rule 50(7)(a) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R185 in G. 12276 with effect from 2 March 1990.]

(b) Such copies shall be clearly typed on foolscap paper in double spacing, and the pages thereof shall be consecutively numbered and as from second January 1968, such copies shall be so typed on A4 standard paper referred to in rule 62(2) or on foolscap paper and after expiration of a period of 12 months from the aforesaid date on such A4 standard paper only. In addition every tenth line on each page shall be numbered.

(c) The record shall contain a correct and complete copy of the pleadings, evidence and all documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the registrar shall be certified as correct by the attorney or party lodging the same or the person who prepared the record.

[Rule 50(7)(c) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(d) The party lodging the copies of the record shall not less than 15 days prior to the date of the hearing of the appeal also furnish each of the other parties with two copies thereof, certified as aforesaid.

[Rule 50(7) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2021 in G. 3304 with effect from 15 November 1971; r 50(7)(d) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987.]

(8)

(a) Save in so far as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the copies of the record prepared in terms of the aforegoing subrule. A list thereof shall be included in the record.

(b)

(i) With the written consent of the parties any exhibit or other portion of the record which has no bearing on the point in issue on appeal may be omitted from the record.

(ii) If a portion has been so omitted from the record, the written consent signed by or on behalf of the parties and noting the omission shall be filed, together with the incomplete record, with the Registrar.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii) the court hearing the appeal may at any time request the complete original record and take cognisance of everything appearing therein.

[Rule 50(8)(b) substituted by GoN R608 in G. 11792 with effect from 1 July 1989.]

(c) When an appeal is to be decided exclusively on a point of law, the parties may agree to submit such appeal to the court in the form of a special case, as referred to in rule 33 of the Rules, in which event copies may be submitted to the court of such portions only of the record which in the opinion of the parties may be necessary for a proper decision of the appeal: Provided that the court hearing the appeal may request that the entire original record of the case be placed before the court.

[Rule 50(8)(c) inserted by GoN R608 in G. 11792 with effect from 1 July 1989.]

(9) Not less than 15 days before the appeal is heard the appellant shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not less than 10 days before the appeal is heard the respondent shall deliver a similar statement. Three additional copies shall be lodged with the registrar in each case.

[Rule 50(9) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987; substituted by GoN R2642 in G. 11045 with effect from 31 December 1987.]

(10) Notwithstanding the provisions of this rule the judge president may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems meet.

[Rule 50(10) inserted by GoN R2164 in G. 10958 with effect from 2 October 1987; substituted by GoN R2642 in G. 11045 with effect from 31 December 1987.]

51. Criminal appeals from magistrates' courts

(1) An appeal by a convicted person against a conviction, sentence or order made by a magistrate's court in a criminal matter, or an appeal by the director of public prosecutions or other prosecutor against a dismissal of a summons or charge or other decision of a magistrate's court in such a matter, shall be set down by the director of public prosecutions or registrar on notice to the appellant or his or her legal representative for hearing on such day as the judge president may appoint for such matters.

(2) Notwithstanding anything to the contrary in any rule contained, a notice may be served on an appellant or his or her legal representative by sending it by registered post, addressed to the appellant or his or her legal representative at an address appearing on the notice of appeal or at an address which the appellant or his or her legal representative has subsequently furnished to the registrar in writing.

(3) The ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court shall rest on the appellant or his or her legal representative: Provided that where the appellant is not represented by a legal representative, such responsibility shall rest on the director of public prosecutions.

(4)

(a) Written argument shall be delivered on behalf of the appellant and the director of public prosecutions within the time periods prescribed by the registrar.

(b) The provisions of rule 49A(2)(b) and (c) shall apply mutatis mutandis to the written argument.

(5)

(a) Notice in terms of section 309C(9) of the Criminal Procedure Act 51 of 1977 shall be given by the registrar at least 10 days before the date fixed for the hearing of any of the applications referred to in section 309C, unless the appellant or his or her legal representative and the director of public prosecutions concerned or a person designated by him or her have agreed to a shorter period, and shall correspond substantially to Form 25.

(b) The notice referred to in paragraph (a) shall—

(i) be handed to the appellant or his or her legal representative and the director of public prosecutions concerned or a person designated by him or her and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the registrar; or

(ii) be sent by registered post.

[Rule 51 amended by GoN R185 in G. 12276 with effect from 2 March 1990, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R568 in G. 20036 with effect from 31 May 1999, GoN R1084 in G. 20443 with effect from 11 October 1999; substituted by GoN R518 in G. 32208 with effect from 15 June 2009.]

52. Criminal appeals to the Supreme Court of Appeal

(1) Whenever—

(a) an appellant has been granted leave to appeal in terms of section 316 of the Criminal Procedure Act 51 of 1977;

(b) an appellant has noted an appeal in terms of section 318 of the said Act; or

(c) a court has reserved a question of law arising on the trial of an appellant in terms of section 319 of the said Act—

(i) the registrar of the court which tried the appellant shall lodge with the registrar of the Supreme Court of Appeal six copies of the record (one of which shall be certified by the first-named registrar) of the proceedings in the trial court and deliver such number of copies to the State as may be considered necessary:

Provided that instead of the whole record, with the consent of the appellant and the State, copies (one of which shall be certified by the first-named registrar) may be transmitted of such parts of the record as may be agreed upon by the appellant and the State to be sufficient, in which event the Supreme Court of Appeal may nevertheless call for copies of the whole record;

(ii) the appellant may, on payment of the prescribed fees, obtain from the registrar of the court which tried the appellant such number of copies of the record or parts of the record (as the case may be) as may be necessary for his or her purpose: Provided that if the appellant is unable by reason of poverty to pay the prescribed fees the appellant shall be entitled to obtain the same without payment of any fees.

(2) Any question arising as to the appellant's inability to pay the prescribed fees shall be decided by the registrar of the court which tried the appellant, in which case the registrar's decision shall be final.

(3) The words "the registrar of the court which tried the appellant" shall mean, where the trial court was a Circuit Local Division, the registrar of the division of the High Court in whose custody the records of the Circuit Court Division concerned are lodged.

[Rule 52 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2628 in G. 12205 with effect from 2 January 1990; substituted by GoN R518 in G. 32208 with effect from 15 June 2009.]

53. Reviews

(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairperson of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected—

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and

(b) calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to despatch, within 15 days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he or she has done so.

[Rule 53(1) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967; amended by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987; substituted by GoN R317 in G. 38694 with effect from 22 May 2015.]

(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.

(3) The registrar shall make available to the applicant the record despatched to him or her as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

[Rule 53(3) substituted by GoN R317 in G. 38694 with effect from 22 May 2015.]

(4) The applicant may within 10 days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her notice of motion and supplement the supporting affidavit.

[Rule 53(4) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R2642 in G. 11045 with effect from 31 December 1987, GoN R317 in G. 38694 with effect from 22 May 2015.]

(5) Should the presiding officer, chairperson or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he or she shall—

(a) within 15 days after receipt by him or her of the notice of motion or any amendment thereof deliver notice to the applicant that he or she intends so to oppose and shall in such notice appoint an address within 15 kilometres of the office of the registrar at which he or she will accept notice and service of all process in such proceedings; and

(b) within 30 days after the expiry of the time referred to in subrule (4) hereof, deliver any affidavits he or she may desire in answer to the allegations made by the applicant.

[Rule 53(5) substituted by GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R317 in G. 38694 with effect from 22 May 2015.]

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications shall mutatis mutandis apply to the set down of review proceedings.

54. Criminal proceedings – Provincial and local divisions

(1) The process for summoning an accused to answer any indictment shall be by writ sued out by the chief clerk to the Attorney-General who presents the indictment, or in the case of a private prosecution by the prosecutor or his attorney, and shall be directed to the sheriff: Provided that in the case of the Witwatersrand Local Division the writ may be sued out of the office of the registrar of that division by the Deputy Attorney-General, Johannesburg.

[Rule 54(1) substituted by GoN R480 in G. 3826 with effect from 1 April 1973; amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(2) When any person committed for sentence under the provisions of section 121 of the Criminal Procedure Act, 1977 (Act 51 of 1977), is indicted before a superior court he may be brought up for sentence at any sitting for criminal business of the court before which he is indicted.

[Rule 54(2) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(3) The Attorney-General or other prosecutor or his attorney shall endorse on, or annex to, every indictment and every copy of any indictment delivered to the sheriff for service thereof, a notice of trial, which notice shall specify the court before which, and the particular session and time when, he will bring the accused to trial on the said indictment.

[Rule 54(3) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(4) The Attorney-General or other prosecutor or his attorney shall deliver to the sheriff for service the writ, a copy of the indictment and notice of trial or, if there are more than one accused, as many writs and copies of the indictment and notice of trial as there are accused. In the case of a private prosecution the prosecutor or his attorney shall at the same time hand to the sheriff his lawful costs and charges for serving the same.

[Rule 54(4) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(5) The subpoena or process for procuring the attendance of any person before a superior court (other than a Circuit Court) to give evidence in any criminal case or to produce any books, documents or things, shall be sued out of the office of the registrar of that court, by the chief clerk to the Attorney-General (or where the prosecution is at the instance of a private party, by himself or his attorney); and the same shall be delivered to the sheriff, at his office, for service thereof, together with so many copies of the subpoena or process as there are persons to be served. In the case of the Witwatersrand Local Division, the process may also be sued out by the Deputy Attorney-General, Johannesburg, and delivered to the sheriff concerned.

[Rule 54(5) substituted by GoN R480 in G. 3826 with effect from 1 April 1973; amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(6) The subpoena shall be served upon the witness (a) personally, or (b) at his residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat.

(7) The person serving the subpoena shall, if required by the person upon whom it was served, exhibit to him the original.

(8) If the person to be served with a subpoena keeps his residence or place of business closed so as to prevent the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(9) When a court imposes upon any person whatsoever a fine for contempt of court for default in appearance or otherwise, and such fine is not duly paid, the registrar of the court shall furnish the sheriff with particulars of such fine and deliver to him a completed warrant. The sheriff, immediately on such warrant being delivered to him, shall execute it.
[Rule 54(9) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(10) An application under section 149 of the Criminal Procedure Act, 1977 (Act 51 of 1977), to change the place of trial in criminal proceedings may be made to the court, upon notice, by or on behalf of the Attorney-General or the accused. The court may thereupon make such order thereon as to it seems meet.
[Rule 54(10) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

55. Criminal proceedings – Circuit court

(1) The process of a Circuit Court for any district for summoning any person, either as an accused or as a witness in any criminal case before such court, may be sued out at any time, whether the date for holding such court shall have been appointed or not. It may be issued by the registrar of the Provincial Division or of the Circuit Court or when the latter is not in the place where the court is to be held then by the clerk of the magistrate's court of the district or by the clerk to any judge in that court: Provided that the process for summoning any person required by the Attorney-General or his deputy as a witness in a criminal case in such court need not be endorsed or formally sued out by or on behalf of the Attorney-General.

(2) The process of the Circuit Court for any district for arresting and holding to bail any person in order to compel his appearance before such court shall be issued by the magistrate for such district, or by any judge.

(3) All process of the Circuit Court shall be dated on the day on which it is issued, shall be signed by the officer issuing it, shall be endorsed by the person suing out the same and shall be directed to the sheriff.

[Rule 55(3) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967; amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(4) The registrar of every Circuit Court shall, on the closing of the same, cause to be transmitted to the sheriff a list of all warrants of execution in criminal cases which have been issued by him.

(5) In all cases wherein process is required for the execution of any sentence, judgment, or order of any Circuit Court in a criminal case, after the records thereof have been deposited in the office of the registrar of the Provincial Division, the process of that division for the execution of any such sentence, judgment or order may be issued to the party requiring the execution of the same.

(6) When a Circuit Court imposes upon any party whatsoever a fine for contempt of court, for default of appearance or otherwise, and such fine is not duly paid, the registrar of the Circuit Court shall furnish to the sheriff the particulars of such fine, and deliver to him a warrant in respect thereof.

[Rule 55(6) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(7) The registrar of every Circuit Court shall, immediately upon the closing of the court in each circuit town, make out and transmit to the registrar of the Provincial Division a return showing all the fines which have, during the sitting of the court in that town, been imposed by the said court, specifying therein the names of the parties, the amount of the fine, the date when imposed, and the date when a warrant was delivered to the sheriff for its levy, the extent, if any, to which the fine was remitted, and whether it was paid without issue of a warrant.

[Rule 55(7) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(8) Whenever a Circuit Court district comprises more than one magisterial district, the clerk of the magistrate's court of each such magisterial district shall, within the limits of his district, perform the duties devolving on clerks of magistrates under these Rules.

56. Criminal proceedings – General

(1) Any process or document referred to in rules 54 and 55 may be served by a police officer referred to in section 329 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

[Rule 56(1) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(2) The provisions of subrules (16) to (19) and (21) of rule 39 shall apply mutatis mutandis to all proceedings in criminal cases.

57. Appointment of Curators in Respect of Persons under Disability and Release from Curatorship

(1) Any person desirous of making an application to the court for an order declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and consequently incapable of managing his or her own affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

(2) An application referred to in subrule (1) shall be brought ex parte and shall set forth fully—

(a) the grounds upon which the applicant claims locus standi to make such application;

(b) the grounds upon which the court is alleged to have jurisdiction;

(c) the patient's age and sex, full particulars of the patient's means, and information as to the patient's general state of physical health;

(d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);

(e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his or her affairs;

(f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem*, and subsequently as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.

(3) The application shall, as far as possible, be supported by—

(a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in the affidavit; and

(b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be a psychiatrist or other medical practitioner with appropriate expertise, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon the patient's mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his or her affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without a personal interest in the terms of the order sought.

(4) Upon the hearing of the application referred to in subrule (1), the court may appoint the person suggested or any other suitable person as curator *ad litem*, or may dismiss the application or make such further or other order thereon as it deems fit and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

(5) Upon appointment of the curator *ad litem* (who shall if practicable be an advocate, or failing such, an attorney), the curator shall without delay interview the patient, and shall also inform the patient of the purpose and nature of the application unless after consulting a medical practitioner referred to in paragraph (b) of subrule (3) the curator is satisfied that this would be detrimental to the patient's health. The curator shall further make such inquiries as the case appears to require and shall thereafter prepare and file with the registrar, a report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In the report, the curator shall set forth such further facts (if any) as the curator has ascertained in regard to the patient's mental condition, means and circumstances and shall draw attention to any consideration which in the curator's view might influence the court in regard to the terms of any order sought.

(6) Upon receipt of the said report the applicant shall submit the report, together with copies of the documents referred to in subrules (2) and (3), to the Master of the High Court having jurisdiction, for consideration and report to the court.

(7) In such report the Master shall, as far as possible, comment upon the patient's means and general circumstances, and the suitability or otherwise of the person suggested for appointment as curator to the person or property of the patient, and the Master shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator as the facts of the case appear to require. The curator ad litem shall be furnished with a copy of the said report.

(8) After receipt of the report of the Master, the applicant may, on notice to the curator ad litem (who shall if considered advisable inform the patient thereof), place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his or her affairs and for the appointment of the person suggested as curator to the person or property of the patient or to both.

(9) At the hearing, the court may require the attendance of the applicant, the patient, and such other persons as it may think fit, to give evidence orally or to furnish information which the court may require.

(10) Upon consideration of the application, the reports of the curator ad litem and the Master and such further information or evidence (if any) as has been orally adduced, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his or her own affairs and may appoint a suitable person as curator to the patient's person or property or both, on such terms as it deems fit, or it may dismiss the application or generally make such order (including an order that the costs of the proceedings be defrayed from the assets of the patient) as it deems fit.

(11) Different persons may, subject to due compliance with the requirements of this rule in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his or her own affairs.

(12) …

[Rule 57(12) amended by GoN R2410 in G. 13558 with effect from 1 November 1991, repealed by GoN R1603 in G. 45645 with effect from 1 February 2022.]

(13) Save to the extent that the court may on application otherwise direct, the provisions of subrules (1) to (11) shall, with the necessary changes required by the context, apply to every application for the appointment of a curator *bonis* to any person on the ground that such person is by reason of some disability, mental or physical, incapable of managing his or her own affairs.

(14) Every person who has been declared by a court to be of unsound mind and incapable of managing his or her affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that such person is no longer of unsound mind and incapable of managing his or her affairs or for release from curatorship, as the case may be, shall give 15 days' notice of such application to such curator and to the Master.

[Rule 57(14) amended by GoN R1262 in G. 13283 with effect from 1 July 1991.]

(15) Upon receipt of the notice referred to in subrule (14) and after due consideration of the application and the information available, the Master shall, without delay, report thereon to the court, and shall at the same time comment upon any aspect of the matter to which, in the Master's view, the attention of the court should be drawn.

(16) …

[Rule 57(16) amended by GoN R2410 in G. 13558 with effect from 1 November 1991, repealed by GoN R1603 in G. 45645 with effect from 1 February 2022.]

(17) Upon the hearing of any application referred to in subrule (14) the court may declare the applicant as not being of unsound mind and as being capable of managing his or her affairs, order the applicant's release from curatorship, or dismiss the application, or of its own accord appoint a curator ad litem to make any inquiries as it considers desirable and to report to it, or call for further evidence as it considers desirable and postpone the further hearing of the matter to permit the production of such report, affidavit or evidence, as the case may be, or postpone the matter indefinitely and make such order as to costs or otherwise as it deems fit.

[Rule 57 substituted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

58. Interpleader

(1) Where any person, in this rule called ‘the applicant‘, alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, in this rule referred to as ‘the claimants’, in respect thereto, the applicant may deliver a notice, in terms of this rule called an ‘interpleader notice’, to the claimants. In regard to conflicting claims with respect to property attached in execution, the sheriff shall have the rights of an applicant and an execution creditor shall have the rights of a claimant.

[Rule 58(1) amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(2)

(a) Where the claims relate to money the applicant shall be required, on delivering the notice mentioned in subrule (1) hereof, to pay the money to the registrar who shall hold it until the conflicting claims have been decided.

(b) Where the claims relate to a thing capable of delivery the applicant shall tender the subject-matter to the registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the registrar may direct.

(c) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him, in the possession of the registrar when delivering the interpleader notice and shall at the same time hand to the registrar an undertaking to sign all documents necessary to effect transfer of such immovable property in accordance with any order which the court may make or any agreement of the claimants.

(3) The interpleader notice shall—

(a) state the nature of the liability, property or claim which is the subject-matter of the dispute;

(b) call upon the claimants within the time stated in the notice, not being less than 15 days from the date of service thereof, to deliver particulars of their claims; and

[Rule 58(3)(b) amended by GoN R1262 in G. 13283 with effect from 1 July 1991.]

(c) state that upon a further date, not being less than 15 days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his liability or the validity of the respective claims.

[Rule 58(3)(c) amended by GoN R1262 in G. 13283 with effect from 1 July 1991.]

(4) There shall be delivered together with the interpleader notice an affidavit by the applicant stating that—

(a) he claims no interest in the subject-matter in dispute other than for charges and costs;

(b) he does not collude with any of the claimants;

(c) he is willing to deal with or act in regard to the subject-matter of the dispute as the court may direct.

(5) If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject-matter of the dispute.

(5A) Simultaneously with the delivery by a claimant of particulars of claim, such claimant shall specify an address for service within 15 kilometres of the office of the registrar as referred to in rule 6(5)(b).

[Rule 58(5A) inserted by GoN R88 in G. 32941 with effect from 12 March 2010; substituted by GoN R1318 in G. 42064 with effect from 10 January 2019.]

(6) If a claimant delivers particulars of his claim and appears before it, the court may—

(a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;

(b) order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute *in lieu* of or in addition to the applicant;

(c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;

(d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;

(e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph (b) of subrule (2), as to it may seem meet.

(7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.

59. Sworn translators

(1) Any person may be admitted and enrolled by any division of the Supreme Court as a sworn translator between any two or more specified official languages of the Republic of South Africa or between any specified official language of the Republic of South Africa and any specified foreign language, upon satisfying the court of his or her competency.

[Rule 59(1) substituted by GoN R700 in G. 18001 with effect from 17 June 1997.]

(2) No person shall be admitted and enrolled as a sworn translator unless his or her competency in the languages from and into which he or she intends to translate has been duly certified in writing, after examination, held not more than six months before the date of the application by an appropriately qualified sworn translator, or unless his or her competency is otherwise proved to the satisfaction of the court.

[Rule 59(2) substituted by GoN R700 in G. 18001 with effect from 17 June 1997.]

(3) Every sworn translator duly admitted and enrolled shall, to the extent of such admission and enrolment, be deemed to be a sworn translator for all divisions of the Supreme Court, and the registrar of the division in which he is admitted shall notify the registrars of all other divisions of such admission and enrolment, and furnish his address.

(4)

(a) Any person admitted and enrolled under subrule (1) shall before commencing to exercise the functions of his office take an oath or make an affirmation which shall be subscribed by him, in the form set out below, namely—

"I .....(full name) do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a translator of the Supreme Court of South Africa faithfully and correctly translate, to the best of my knowledge and ability, any document into an official language of the Republic of South Africa from any other language in respect of which I have been admitted and enrolled as a translator".

(b) Any such oath or affirmation shall be taken or made before a judge of the division of the Supreme Court of South Africa admitting and enrolling the translator and the judge concerned shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

60. Translation of documents

(1) If any document in a language other than an official language of the Republic is produced in any proceedings, it shall be accompanied by a translation certified to be correct by a sworn translator.

[Rule 60(1) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(2) A translation so certified by a sworn translator shall be deemed prima facie to be a correct translation and admissible as such upon its production.

(3) If no sworn translator is available or if, in the opinion of the court, it would not be in the interests of justice to require a sworn translation, whether by reason of the expense, inconvenience or delay involved, the court may, notwithstanding the provisions of subrule (1), admit in evidence a translation certified to be correct by any person who it is satisfied is competent to make such translation.

61. Interpretation of evidence

(1) Where evidence in any proceedings is given in any language with which the court or a party or his representative is not sufficiently conversant, such evidence shall be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his ability in the languages concerned.

(2) Before any person is employed as an interpreter the court may, if in its opinion it is expedient to do so, or if any party on reasonable grounds so desires, satisfy itself as to the competence and integrity of such person after hearing evidence or otherwise.

(3) Where the services of an interpreter are employed in any proceedings, the costs (if any) of interpretation shall, unless the court otherwise orders, be costs in the cause: Provided that where the interpretation of evidence given in one of the official languages of the Republic is required by the representative of a party, such costs shall be at such party's expense.

62. Filing, preparation and inspection of documents

(1) Where a matter has to be heard by more than one judge, a copy of all pleadings, important notices, annexures, affidavits and the like shall be filed for the use of each additional judge.

(2) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blueblack ink on one side only of paper of good quality and of A 4 standard size. A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

[Rule 62(2) substituted by GoN R2021 in G. 3304 with effect from 15 November 1971.]

(3) Stated cases, affidavits, grounds of appeal and similar documents shall be divided into concise paragraphs which shall be consecutively numbered.

[Rule 62(3) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(4) An applicant or plaintiff shall not later than five days prior to the hearing of the matter collate, and number consecutively, and suitably secure, all pages of the documents delivered and shall prepare and deliver a complete index thereof.

[Rule 62(4) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967; amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

(5) Every affidavit filed with the registrar by or on behalf of a respondent shall, if such respondent is represented, on the first page thereof bear the name and address of the attorney filing it.

[Rule 62(5) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

(6) The registrar may reject any document which does not comply with the requirements of this rule.

(7) Any party to a cause, and any person having a personal interest therein, with leave of the registrar on good cause shown, may at the registrar's office, examine and make copies of all documents in such cause.

[Rule 62(7) substituted by GoN R2133 in G. 46475 with effect from 8 July 2022.]

63. Authentication of documents executed outside the Republic for use within the Republic

(1) In this rule, unless inconsistent with the context—

"document" means any deed, contract, power of attorney, affidavit or other writing, but does not include an affidavit or solemn or attested declaration purporting to have been made before an officer prescribed by section eight of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963);

"authentication" means, when applied to a document, the verification of any signature thereon.

(2) Any document executed in any place outside the Republic shall be deemed to be sufficiently authenticated for the purpose of use in the Republic if it be duly authenticated at such foreign place by the signature and seal of office—

(a) of the head of a South African diplomatic or consular mission or a person in the administrative or professional division of the public service serving at a South African diplomatic, consular or trade office abroad; or

[Rule 63(2)(a) substituted by GoN R775 in G. 8169 with effect from 23 April 1982, GoN R2047 in G. 17663 with effect from 13 January 1997.]

(b) of a consul-general, consul, vice-consul or consular agent of the United Kingdom or any other person acting in any of the aforementioned capacities or a pro-consul of the United Kingdom; or

[Rule 63(2)(b) substituted by GoN R2004 in G. 1915 with effect from 15 December 1967.]

(c) of any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country; or

(d) of any person in such foreign place who shall be shown by a certificate of any person referred to in paragraph (a), (b) or (c) or of any diplomatic or consular officer of such foreign country in the Republic to be duly authorised to authenticate such document under the law of that foreign country; or

[Rule 63(2)(d) substituted by GoN R2047 in G. 17663 with effect from 13 January 1997.]

(e) of a notary public in the United Kingdom of Great Britain and Northern Ireland or in Zimbabwe, Lesotho, Botswana or Swaziland; or

[Rule 63(2)(e) amended by GoN R960 in G. 14844 with effect from 28 June 1993.]

(f) of a commissioned officer of the South African Defence Force as defined in section one of the Defence Act, 1957 (Act 44 of 1957), in the case of a document executed by any person on active service.

(2A) Notwithstanding anything in this rule contained, any document authenticated in accordance with the provisions of the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents shall be deemed to be sufficiently authenticated for the purpose of use in the Republic where such document emanates from a country that is a party to the Convention.

[Rule 63(2A) inserted by GoN R89 in G. 32941 with effect from 12 March 2010.]

(3) If any person authenticating a document in terms of subrule (2) has no seal of office, he shall certify thereon under his signature to that effect.

(4) Notwithstanding anything in this rule contained, any court of law or public office may accept as sufficiently authenticated any document which is shown to the satisfaction of such court or the officer in charge of such public office, to have been actually signed by the person purporting to have signed such document.

[Rule 63(4) substituted by GoN R235 in G. 1375 with effect from 18 February 1966.]

(5) No power of attorney, executed in Lesotho, Botswana or Swaziland, and intended as an authority to any person to take, defend or intervene in any legal proceedings in a magistrate's court within the Republic, shall require authentication: Provided that any such power of attorney shall appear to have been duly signed and the signature to have been attested by two competent witnesses.

[Rule 63 amended by GoN R2410 in G. 13558 with effect from 1 November 1991; r 63(5) amended by GoN R960 in G. 14844 with effect from 28 June 1993.]

64. Destruction of documents

In any matter which has not been adjudicated upon by the court or a judge, and has not been withdrawn, the registrar may, subject to the provisions of the Archives Act, 1962 (Act 6 of 1962), after the lapse of three years from the date of the filing of the last document therein, authorise the destruction of the documents filed in his office relating to such matter.

64A.

Records of minutes of evidence and proceedings in criminal cases shall be transferred to an archives depot as contemplated in section 5 of the Archives Act, 1962 (Act 6 of 1962), 30 years after disposal of such cases.

[Rule 64A inserted by GoN R773 in G. 8169 with effect from 23 April 1982.]

65. Commissioners of the Court

Every person duly appointed as a commissioner of any Division of the High Court of South Africa for taking affidavits in any place outside the Republic shall, by virtue of such appointment, become a commissioner of the said High Court, and shall, as such, be entitled to be enrolled by the registrar of every other Division as a commissioner thereof. For the purpose of facilitating such enrolment the registrar of each Division shall transmit the names of those who are appointed as commissioners of such Division, as well as their respective addresses, to the registrars of all the other Divisions: Provided that no person residing within the Republic shall hereafter be appointed as such commissioner.

[Rule 65 substituted by GoN R1157 in G. 43856 with effect from 1 December 2020.]

66. Duration of writs of execution

Writs of execution of a judgment once issued remain in force, and may, subject to the provisions of subparagraph (ii) of paragraph (a) of section 11 of the Prescription Act, 1969 (Act 68 of 1969), at any time be executed without being renewed until judgment has been satisfied in full.

[Rule 66 amended by GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R214 in G. 37475 with effect from 2 May 2014.]

67. Tariff of court fees

The court fees payable in respect of the High Court are as follows—

(a) …

[Rule 67(a) repealed by GoN R1157 in G. 43856 with effect from 1 December 2020.]

(b) For the registrar's certificate on certified copies of documents (each) - R2,00

(c) For each copy of an order of court made by the registrar—

(i) for every 100 typed words or part thereof - R2,00

(ii) for every photocopy of an A4-size page or part thereof - R1,00

[Rule 67 amended by GoN R2021 in G. 3304 with effect from 15 November 1971; substituted by GoN R1929 in G. 12614 with effect from 10 September 1990; amended by GoN R411 in G. 15538 with effect from 11 April 1994; substituted by GoN R491 in G. 17882 with effect from 29 April 1997, GoN R1157 in G. 43856 with effect from 1 December 2020.]

67A. Costs

(1) Subject to any order of the court awarding costs, the fees and disbursements as between party and party, which may be included in a bill of costs submitted for taxation, shall be—

(a) for attorneys, in accordance with the tariff in rule 70;

(b) for attorneys, which a right to appear in the Superior Courts and who appear in a matter, in accordance with rules 69 and 70, where applicable; and

(c) for advocates, in accordance with the tariff in rule 69: Provided that for services rendered by an advocate referred to in section 34(2)(a)(ii) of the Legal Practice Act, 2014 (Act No. 28 of 2014), for work which is ordinarily performed by an attorney, the fee for such work shall be in terms of rule 70.

(2) In considering all relevant factors when awarding costs, the court may have regard to—

(a) the provisions of rule 41A;

(b) failure by any party or such party's legal representative to comply with the provisions of rules 30A; 37 and 37A;

(c) unnecessary or prolix drafting, unnecessary annexures and unnecessary procedures followed;

(d) unnecessary time spent in leading evidence, cross examining witnesses and argument;

(e) the conduct of the litigation by any party's legal representative and whether such representative should be ordered to pay such costs in his or her personal capacity; and

(f) whether the litigation could have been conducted out of the magistrate's court.

(3)

(a) A cost order shall indicate the scale in terms of rule 69, under which costs have been granted.

(b) In considering the factors to award an appropriate scale of costs, the court may have regard to:

(i) the complexity of the matter; and

(ii) the value of the claim or importance of the relief sought.

(c) If the scale in terms of paragraph (a) is not indicated in the order, scale A of rule 69(7) shall apply to the costs that the court has awarded.

(4) A cost order may upon application by any party indicate—

(a) which portions of the proceedings are deemed urgent; and

(b) whether the fees consequent upon the employment of more than one advocate or attorney having right of appearance in the Superior Courts and who appears, are allowed and the scale in terms of rule 69, under which such fees are allowed.

(5) The taxation of fees as between party and party shall be effected by the taxing master in accordance with rules 69 and 70 and the applicable tariffs therein.

(6) Where an item in the tariffs set out in rules 69 or 70 requires the taxing master to exercise a discretion in determining the amount of a fee or disbursement to be allowed for such item, the taxing master may have regard to any guidelines recommended by the Legal Practice Council.

[Rule 67A inserted by GoN R4477 in G. 50272 with effect from 12 April 2024.]

68. Tariff for sheriffs

(1) The fees and charges contained in the appended tariff shall be chargeable and allowed to sheriffs: Provided that no fees shall be charged for the service of process in *in forma pauperis* proceedings (but the necessary disbursements for the purpose of such service may be recovered).

(2) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.

(3)

(a) Where any dispute arises as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.

(b) A request to tax an account of a sheriff shall be done within 90 days after the date on which the account of which the fees are disputed has been rendered.

Tariffs

Item		R c
1.	For registration of any document for service or execution, upon receipt thereof.	13.00
2.		84.50
	(a) For service of summonses, notices of motion, other notices, orders or any other documents, each:	
	Provided that—	
	(i) Whenever any document to be served with any such process is mentioned in the process or forms an annexure thereto, no additional fee shall be charged for the service of such document, but otherwise a fee of R13,00 may be charged in respect of each separate document served;	
	(ii) No fee for the service of a separate document shall be charged in respect of the service of process in criminal cases.	
	(b) Attempted service of summonses, notices of motion, other notices, orders and any other documents: Provided that an attempted service of more than one document on the same person shall be treated as an attempted service of one document only.	63.50

3.	Travelling allowance—		
	(a)	For the distance actually and necessarily travelled by the sheriff or his or her officer, reckoned, subject to item 3(c) and (d), from the office of the sheriff, both on the forward and the return journey, per kilometre or part thereof.	6.00
	(b)	When two or more summonses or other process, whether at the instance of the same party or of different parties, are capable of being served on one and the same journey, the travelling allowance for performing the round of service shall be fairly and equitably apportioned among the several cases, regard being had to the distance at which the parties against whom such process is directed respectively reside from the office of the sheriff, but the fee for service shall be payable for each service made or attempted to be made.	
	(c)	The travelling allowance mentioned in item 3(a) and (b) shall be calculated on the distance reckoned from the office of the sheriff if—	
		(i) the sheriff's office is situated within the area of jurisdiction allocated to the sheriff by the Minister; and	
		(ii) the distance from the sheriff's office is less than the distance reckoned from the court-house closest to the address for service,	
	(d)	If the requirement in item 3(c) is not met, then the travelling allowance mentioned in item 3(a) and (b) shall be calculated on the distance reckoned from the court-house closest to the address for service.	
4.			
	(a)	Postage in civil matters, as per postal tariff.	
	(b)	Postage in criminal matters, free.	
NOTE: The sheriff may take any postal matter to the registrar of the High Court, or if there is no registrar in his or her town or city, to the magistrate, who shall frank the envelope with his or her official franking stamp.			
5.	For the execution of any writ—		
	(a)	(i) of personal arrest, including the conveyance of the person concerned to court, to an attorney's office or to a prison, per person	106.00
		(ii) for conveying the person concerned to court from a place of custody on a day subsequent to the day of arrest and attending at court, per hour or part thereof	126.00
		(iii) for attachment of property *ad fundandam jurisdictionem* or *ad confirmandam jurisdictionem*	106.00

	(iv)	where an attachment in terms of item 5(a)(iii) is withdrawn or suspended	30.00
(b)	of ejectment: R126,00 per hour or part thereof, subject to a minimum of which shall include the first hour (in addition to reasonable expenses necessarily incurred);		188.00
(c)	against immovable property—		
	(i)	for execution, including service of notice of attachment upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is in occupation of some person other than the owner, also upon such occupier	251.00
	(ii)	for notice of attachment to a single lessee or occupier (identical notices where there are several lessees, occupiers or owners, for each after the first)	23.00 8,50
	(iii)	for making valuation report for purposes of sale, per half hour or part thereof.	63.50
	(iv)	when— (aa) a sheriff has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed, all the necessary notice for the withdrawal or stay of the attachment (bb) upliftment of judicial attachment on immovable property occurs	 251.00 251.00
	(v)	for ascertaining and recording what bonds or other encumbrances are registered against the property, together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered, including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred)	126.00
	(vi)	for notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered	23.00
	(vii)	for consideration of proof that a preferent creditor has complied with the requirements of rule 46(5)(a)	13,00
	(viii)	for the notice referred to in rule 46(6)	23,00

(ix)	for consideration of notice of sale prepared by the execution creditor in consultation with the sheriff; and	
(x)	for verifying that notice of sale has been published in the newspapers indicated and in the *Gazette* inclusive fee for (ix) and (x)	126,00
(xi)	for forwarding a copy of the notice of sale to every judgment creditor who had caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy,	23,00
(xii)	for affixing a copy of the notice of sale to the notice board of the magistrate's court referred to in rule 46(7)(e) and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of R53,00 and travelling costs referred to in item 3	
(xiii)	for—	
	(aa) considering the conditions of sale prepared by the execution creditor	126.00
	(bb) considering further or amended conditions of sale submitted by an interested party	126.00
	(cc) settling of conditions of sale	126.00
	(dd) all necessary attendances prescribed by any law related to auctions, in particular the Consumer Protection Act, 2008 (Act 68 of 2008)	380.00
	(ee) the conducting of an auction, save that this fee may not be charged if commission is claimed in terms of item (xiv)	251,00
(xiv)	On the sale of immovable property by the sheriff as auctioneer, 6 per cent on the first R100 000,00, 3,5 per cent on R100 001,00 to R400 000,00 and 1,5 per cent on the balance of the proceeds of the sale, subject to a maximum commission of R40 000,00 in total and a minimum of R3 000,00 (inclusive in all instances of the sheriff's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser;	
(xv)	for—	

		(aa) written notice to the purchaser who has failed to comply with the conditions of sale	63,50
		(bb) any report referred to in rule 46(11)	63,50
		(cc) informing judgment debtor of the cancellation referred to in rule 46(11)(a)(iii)	23,00
		(dd) giving notice referred to in rule 46(11)(c)	23,00
	(xvi)	for giving transfer to the purchaser	30,00
	(xvii)	for—	
		(aa) receipt of certificate referred to in rule 46(14)(a)	23,00
		(bb) preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the registrar	126,00
	(xviii)	for giving notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection, for every notice	23,00
	(xix)	for the report referred to in rule 46A(9)(d)	63,50
(d)	against movable property—		
	(i)	when a writ is paid on presentation, 9 per cent on the amount so paid, with a minimum fee of R85,00 and a maximum of	832.50
	(ii)	for any abortive attempt at attachment, including one hour's search and enquiry	85,00
	(iii)	when a writ is withdrawn or stayed before any property is attached	30,00
	(iv)	for making an attachment, including one hour's search and enquiry	208,00
	(v)	notice of attachment, if necessary, to a single person (identical notices, when there is more than one person to be given notice, for each after the first)	22,00 13,00
	(vi)	when an attachment is withdrawn by a judgment creditor or stayed before sale, 3 per cent on the value of the property attached or the amount of the writ, whichever is the lesser, but subject to a maximum of	574,00

	(vii)	when a writ is paid by the debtor to the sheriff after attachment but before sale, 9 per cent on the amount so paid, with a minimum fee of R85,00 and a maximum of	832,50
	(viii)	when moneys are taken in execution, 9 per cent of the amount so taken, but subject to a maximum of	832,50
	(ix)	for drawing up advertisements of sale of goods attached	85,00
	(x)	for selling in execution, including distribution of the proceeds, on the first R15 000,00 or part thereof, 9 per cent, and thereafter, 6 per cent, with a maximum of	11 653,50
	(xi)	...	
	(xii)	commission shall not be chargeable against a judgment debtor on the value of movable property attached and subsequently claimed by a person other than the judgment debtor and released in consequence of such claim, unless such property has been attached at the express direction of the judgment creditor, in writing, in which event the judgment creditor shall be liable to the sheriff for the commission;	
	(xiii)	for insuring movable property attached when it is considered necessary and when the sheriff is directed thereto in writing by the judgment creditor, in addition to the amount of premium paid, an inclusive fee of	45,00
(e)	for keeping possession of property (money excluded)—		
	(i)	for each officer necessarily left in possession, a reasonable inclusive fee per officer per day not exceeding	158,00
NOTE: “Possession” means the continuous and necessary presence on the premises for the period in respect of which possession is reckoned, of a person employed and paid by the sheriff for the sole purpose of retaining possession			
	(ii)	for removal and storage, the reasonable and necessary expenses for such removal and storage, and if an animal is to be stabled or fed, the reasonable charges for such stabling and feeding;	
	(iii)	for tending livestock, the necessary expenses for tending such stock;	
	(iv)	when no officer is left in possession and no security bond is taken, but movable property attached remains under the supervision of the sheriff, per day	6,00
6.			158,00
(a)	For making an inventory, including all necessary copies and time		

		spent in stocktaking, per hour or part thereof	
	(b)	For assistance, where necessary, in taking inventory, a reasonable and inclusive fee per day, not exceeding	158,00
7.			
	(a)	For making return of service or execution, including drawing up and typing of original for court, limited to one person upon each original process; and	
	(b)	copy thereof for party desiring service or execution.	52,00
8.	Drawing and completing of bail bond, deed of suretyship or indemnity bond		31,00
9.	For the making of all necessary copies of documents per A4 size page		6,50
10.	…		
11.	Attending any criminal session of a superior court or any circuit court, R126,00 per hour or part thereof, with a maximum per day of		574,00
12.	For the writing of each necessary letter, facsimile or electronic mail excluding formal letters accompanying process or returns		23,00
13.	Each necessary attendance by telephone		20,00
14.	Sending and receiving of each necessary facsimile or electronic mail per page (in addition to telephone charges)		8,50
15.	Bank charges: Actual costs incurred regarding bank charges and cheque forms.		
16.	For interpleaders referred to in rule 58		800,00

17.				283,00
	(a)	Where the mandator instructs the sheriff, in writing, to serve or execute a document referred to in item 2 or 5 on an urgent basis or after hours, the sheriff shall charge an additional fee, irrespective of whether the service or execution was successful, and such additional fee shall be paid by the mandator, save where the court orders otherwise.		
	(b)	For the purpose of paragraph (a)—		
		(i)	“urgent” means on the same day or within 24 hours of the written instruction; and	
		(ii)	“after hours” means any time—	
			(aa) before 7h00 or after 19h00 on Mondays to Fridays; or	
			(bb) on a Saturday, Sunday or public holiday.	

[Rule 68 amended by GoN R1985 in G. 3695 with effect from 1 December 1972, GoN R2164 in G. 10958 with effect from 2 October 1987; repealed by GoN R2642 in G. 11045 with effect from 31 December 1987, by GoN R1421 in G. 11422 with effect from 15 August 1988, by GoN R2628 in G. 12205 with effect from 2 January 1990; substituted by GoN R2410 in G. 13558 with effect from 1

November 1991; amended by GoN R1356 in G. 15021 with effect from 1 September 1993, GoN R2529 in G. 15393 with effect from 31 January 1994, GoN R1063 in G. 17279 with effect from 29 July 1996, GoN R502 in G. 21204 with effect from 19 June 2000, GoN R1088 in G. 22796 with effect from 26 November 2001, GoN R229 in G. 26070 with effect from 22 March 2004, GoN R1345 in G. 31690 with effect from 12 January 2009, GoN R591 in G. 33355 with effect from 13 August 2010; substituted by GoN R114 in G. 36157 with effect from 22 March 2013; amended by GoN R30 in G. 38399 with effect from 24 February 2015, GoN R1055 in G. 41142 with effect from 1 November 2017, GoN R1318 in G. 42064 with effect from 10 January 2019, GoN R842 in G. 42497 with effect from 1 July 2019, GoN R1343 in G. 31690 with effect from 12 January 2009, GoN R858 in G. 43592 with effect from 11 September 2020, GoN R1157 in G. 43856 with effect from 1 December 2020, GoN R2133 in G. 46475 with effect from 8 July 2022.]

68A. Tariff of fees and allowances for intermediaries in proceedings other than criminal proceedings

The tariff of fees and allowances for intermediaries appointed in terms of section 37A(1) of the Act appearing at proceedings other than criminal proceedings, and who are not in the full-time employment of the State shall be as follows:

(1) Fee for appearing in court:

(a) An intermediary appointed to render assistance to a witness in proceedings other than criminal proceedings, shall be entitled, for appearing in court, including time spent in court: R180.00 per hour or part thereof, subject to a maximum of R1 440.00 per day.

(b) The fee contemplated in paragraph (a) shall be calculated from the beginning of the hour at which the intermediary is required to appear in court to the end of the hour at which the intermediary is excused from court.

(2) Transport, travelling and parking or toll allowances:

An intermediary, appointed to render assistance to a witness in proceedings other than criminal proceedings, shall be entitled—

(a) to the following transport and travelling expenses for each journey actually and necessarily taken between the court house and his or her residence or place of business:

(i) For use of public transport, an amount equal to the fare for the least expensive transport along the shortest route; or

(ii) for use of private transport, an allowance as prescribed from time to time for the Public Service: Provided that the maximum amount allowed shall not exceed that permitted for a 1551-1750 cc petrol or diesel engine capacity; and

(b) upon satisfactory proof having been produced to the Registrar of the Court or Taxing Master, to the reimbursement for his or her reasonable actual expenses incurred in respect of parking and toll fees:

Provided that, for an intermediary who resides and carries on business at different physical locations, the transport or travelling allowance shall be calculated from the place of residence or place of business, whichever is closer to the court house, or such other place to which the intermediary is summoned, as the court may direct in terms of section 37A(3).

(3) Subsistence allowance:

(a) Subject to paragraphs (b), (c) and (d), an intermediary who is, for the purpose of rendering intermediary services to a witness, absent from his or her residence and—

(i) is obliged to be absent from his or her residence for 24 hours or longer, shall be entitled to the allowances as prescribed from time to time for the Public Service; or

(ii) is obliged to be absent from his or her residence for less than 24 hours, shall be entitled to the reasonable actual expenses incurred:

Provided that the claim is accompanied by the necessary corroborative documents to support the expenses, as prescribed from time to time for the Public Service, or to the satisfaction of the Registrar of the Court or Taxing Master.

(b) The allowances provided for in paragraph (a) are payable for the full period for which the intermediary is absent from his or her residence for purposes of appearing in court.

(c) In calculating the period of absence for purposes of paragraph (a), an intermediary is allowed 24 hours for each distance of 600 kilometres or part thereof travelled.

(d) The allowance provided for in paragraph (a) is not payable if the fare of an intermediary includes the cost of meals and accommodation.

[Rule 68A inserted by GN R2413 in G. 46789 with effect from 1 October 2022.]

69. Tariff of fees for legal practitioners who appear in the Superior Courts

(1) Save where the court authorizes fees consequent upon the employment of more than one advocate or attorney having right of appearance in the Superior Courts and who appears to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate or attorney having right of appearance in the Superior Courts and who appears, shall be allowed as between party and party.

(2) Where fees in respect of more than one advocate or attorney having appearance in the Superior Courts and who appears are allowed in a party and party bill of costs, the fees to be permitted in respect of any additional advocate or attorney having right of appearance in the Superior Courts and who appears, shall be on a scale in terms of subrule (7), as directed by the court.

(3) ...

(4) ...

(5) ...

(6) ...

(7) The scales of fees contemplated by subrule (3) of rule 67A shall be:

SCALE A	SCALE B	SCALE C
R375,00 per quarter of an hour or part thereof (maximum allowed)	R750,00 per quarter of an hour or part thereof (maximum allowed)	R1125,00 per quarter of an hour or part thereof (maximum allowed)

(8) The tariff of fees to be allowed for work performed by legal practitioners in terms of this rule shall be:

TARIFF OF FEES

1.

(a) Appearances in court for trial: a day fee inclusive of preparation, consultation and appearance on the same day.

(b) Appearances in court for opposed applications;

(i) for the first day, a day fee inclusive of preparation, consultation and appearance on the same day; and

(ii) for subsequent days, per quarter of an hour or part thereof.

2. Appearances in court: unopposed applications: per quarter of an hour or part thereof subject to a minimum fee of one hour being allowed.

3. A per quarter of an hour or part thereof for—

(a) Preparation prior to the day of hearing;

(b) Conferences: pre-trial and case-management;

(c) Drafting or setting affidavits, pleadings, heads of argument and other necessary documents;

(d) Necessary consultations'

(e) Necessary perusal; and

(f) Any inspection *in loco*, *in situ*, or otherwise.

4. In the event that a trial or opposed application is postponed, settled or withdrawn at the instance of any party on the day of hearing or before the first day's hearing and a change for the cancellation of the reservation for any day is levied, a reservation fee may be allowed as follows:

(a) if settled, withdrawn or postponed on the day of set down or two days before that, a full first day fee; or

(b) If settled, withdrawn or postponed three to seven days before the day of set down, two thirds of a day fee:

Provided that no reservation fee shall be allowed if a trial or opposed application is settled, postponed or withdrawn more than seven days before the day of set down.

[Rule 69 amended by GoN R185 in G. 12276 with effect from 2 March 1990, GoN R1157 in G. 43856 with effect from 1 December 2020, substituted by GoN R4477 in G. 50272 with effect from 12 April 2024.]

TARIFF OF MAXIMUM FEES FOR ADVOCATES ON PARTY AND PARTY BASIS IN CERTAIN CIVIL MATTERS

[Tariff amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R480 in G. 3826 with effect from 1 April 1973; repealed by GoN R185 in G. 12276 with effect from 2 March 1990.]

70. Taxation and tariff of fees of attorneys

(1)

(a) The taxing master shall be competent to tax any bill of costs for services actually rendered by an attorney in his capacity as such in connection with litigious work and

such bill shall be taxed subject to the provisions of subrule (5), in accordance with the provisions of the appended tariff: Provided that the taxing master shall not tax costs in instances where some other officer is empowered so to do.

(b) The provisions relating to taxation existing prior to the promulgation of this subrule shall continue to apply to any work done or to be done pursuant to a mandate accepted by a practitioner prior to such date.

(2) At the taxation of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his opinion are necessary to enable him properly to determine any matter arising from such taxation.

(3) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.

(3A) Value added tax may be added to all costs, fees, disbursements and tariffs in respect of which value added tax is chargeable.

[Rule 70(3A) inserted by GoN R406 in G. 13759 with effect from 9 March 1992; substituted by GoN R798 in G. 18055 with effect from 14 July 1997.]

(3B)

(a) Prior to enrolling a matter for taxation, the party who has been awarded an order for costs shall, by notice as near as may be in accordance with Form 26 of the First Schedule—

(i) afford the party liable to pay costs at the time therein stated, and for a period of 10 days thereafter, by prior arrangement, during normal business hours and on any one or more such days, the opportunity to inspect such documents or notes pertaining to any item on the bill of costs; and

(ii) require the party to whom notice is given, to deliver to the party giving the notice within 10 days after the expiry of the period in subparagraph (i), a written notice of opposition, specifying the items on the bill of costs objected to, and a brief summary of the reason for such objection.

(b) For the purposes of this subrule, the days from 16 December to 15 January, both inclusive, must not be counted in the time allowed for inspecting documents or notes pertaining to any item on a bill of costs or the giving of a written notice to oppose.

[Rule 70(3B) inserted by GoN R90 in G. 32941 with effect from 12 March 2010; substituted by GoN R107 in G. 43000 with effect from 9 March 2020.]

(3C) No taxation shall be set down in the days from 16 December to 15 January, both inclusive, except—

(a) where the period for delivery of the notice to oppose has expired, before the commencement of the period 16 December and 15 January, both dates inclusive, and no notice of intention to oppose has been delivered;

(b) where the party liable to pay the costs, has consented in writing to the taxation in his or her absence; or

(c) for the taxation of writ and post-writ bills.

[Rule 70(3C) inserted by GoN R107 in G. 43000 with effect from 9 March 2020.]

(4) The taxing master shall not proceed with the taxation of any bill of costs unless he or she is satisfied that the party liable to pay the costs has received—

(a) due notice in terms of subrule (3B); and

(b) not less than 10 days' notice of the date, time and place of such taxation and that he or she is entitled to be present thereat: Provided that such notice shall not be necessary—

(i) if the party liable to pay the costs has consented in writing to taxation in his or her absence;

(ii) if the party liable to pay the costs failed to give notice of intention to oppose in terms of subrule (3B); or

(iii) for the taxation of writ and post-writ bills:

Provided further that, if any party fails to appear after having given the notice to oppose in terms of subrule (3B)(a)(ii), the taxation may proceed in their absence.

[Rule 70(4) substituted by GoN R90 in G. 32941 with effect from 12 March 2010, GoN R1055 in G. 41142 with effect from 1 November 2017, GoN R107 in G. 43000 with effect from 9 March 2020.]

(5)

(a) The taxing master shall be entitled, in his discretion, at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

(b) In computing the fee allowed in respect of items 1, 2, 3, 6, 7 and 8 of Section A; 1 and 2 of Section B and 2 of Section C, the taxing master shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute and any other factors which he or she considers relevant.

[Rule 70(5)(b) substituted by GoN R31 in G. 38399 with effect from 24 February 2015.]

(5A)

(a) The taxing master may grant a party wasted costs occasioned by the failure of the taxing party or his or her attorney or both to appear at a taxation or by the withdrawal by the taxing party of his or her bill of costs.

(b) The taxing master may order in appropriate circumstances that the wasted costs be paid *de bonis propriis* by the attorney.

(c) In the making of an order in terms of paragraphs (a) or (b), the taxing master shall have regard to all the appropriate facts and circumstances.

(d) Where a party or his or her attorney or both misbehave at a taxation, the taxing master may—

(i) expel the party or attorney or both from the taxation and proceed with and complete the taxation in the absence of such party or attorney or both; or

(ii) adjourn the taxation and refer it to a judge in chambers for directions with regard to the finalisation of the taxation; or

(iii) adjourn the taxation and submit a written report to a judge in chambers on the misbehaviour of the party or attorney or both with the view to obtaining directions from the judge as to whether contempt of court proceedings would be appropriate.

(e) Contempt of court proceedings as contemplated in paragraph (d)(iii) shall be held by a judge in chambers at his or her direction.

[Rule 70(5A) inserted by GoN R1723 in G. 19662 with effect from 1 February 1999.]

(6)

(a) In order to diminish as far as possible the costs arising from the copying of documents to accompany the briefs of advocates, the taxing master shall not allow the costs of any unnecessary duplication in briefs.

(b) Fees may be allowed by the taxing master in his discretion as between party and party for the copying of any document which, in his view, was reasonably required for any proceedings.

(7) Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, credit agreements or other documents.

(8) Where, in the opinion of the taxing master, more than one attorney has necessarily been engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.

(9) Save for the forms set out in the First Schedule to these Rules, a page shall contain at least 250 words and 4 figures shall be counted as a word.

[Rule 70(9) substituted by GoN R1557 in G. 17444 with effect from 21 October 1996.]

(10) The costs taxed and allowed in terms of the tariff for acts performed after the date of commencement of the rules published by Government Notice R210 of 10 February 1989 shall be increased by an amount equal to 70 per cent of the total amount of such costs, for acts performed after the date of commencement of the rules published by Government Notice R2410 of 30 September 1991 shall be increased by an amount equal to 100 per cent of the total amount of such costs and for acts performed after 1 July 1993 only the Tariff of Fees of Attorneys in rule 70, published by Government Notice R974 of 1 June 1993, shall apply.

[R70(10) inserted by GoN R1996 in G. 9413 with effect from 7 September 1984; amended by GoN R2094 in G. 9928 with effect from 13 September 1985, GoN R2164 in G. 10958 with effect from 2 October 1987, GoN R210 in G. 11694 with effect from 10 March 1989; substituted by GoN R2410 in

G. 13558 with effect from 1 November 1991, GoN R974 in G. 14851 with effect from 1 July 1993; amended by GoN R1557 in G. 17444 with effect from 21 October 1996.]

TARIFF OF FEES OF ATTORNEYS

A - CONSULTATIONS, APPEARANCES, CONFERENCES AND INSPECTIONS		
1.	Consultation with a client and witnesses to institute or to defend an action, for advice on evidence or advice on commission, for obtaining an opinion or an advocate's guidance in preparing pleadings, including exceptions, and to draft a petition or affidavit, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00
2.	Consultation to note, prosecute or defend an appeal, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00
3.	Attendance by an attorney in court at proceedings in terms of rule 37 of these Rules, per quarter of an hour or part thereof	R357,00
4.	Attendance by a candidate attorney, where necessary, to assist at a contested proceeding, per quarter of an hour or part thereof	R111,00
5.	Any conference with an advocate, with or without witnesses, on pleadings, including exceptions and particulars to pleadings, applications, petitions, affidavits and testimony, and on any other matter which the taxing officer may consider necessary, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00

6.	Any other conference which the taxing officer may consider necessary, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00
7.	Any inspection *in loco, in situ*, or otherwise, per quarter of an hour or part thereof—	
	(a) by an attorney	R388,00
	(b) by a candidate attorney	R120,50
[Rule 70, Tariff of Fees of Attorneys, Section A, item 7 substituted by GoN R4477 in G. 50272 with effect from 12 April 2024.]		
8.	Attending to give or take disclosure, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00
9.	Inclusive fee for necessary consultations and discussions with a client, witness, other party or advocate not otherwise provided for, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00
10.	Appearance by an attorney in court or the performance by an attorney of any of the other functions of an advocate, in terms of the Legal Practice Act, 2014 (Act 28 of 2014)	The tariff under rule 69 shall apply.
11.	The rates of remuneration in items 1 to 9 do not include time spent travelling or waiting and the taxing officer may, in respect of time necessarily so spent, allow such additional remuneration as he or she in his or her discretion considers fair and reasonable, but not exceeding R328,00 per quarter of an hour or part thereof in the case of an attorney and R102,00 per quarter of an hour or part thereof in the case of a candidate attorney plus a reasonable amount for necessary conveyance.	

B - DRAFTING AND DRAWING		
1.	The drawing up of a formal statement in a matrimonial matter, verifying affidavits, affidavits of service or other formal affidavits, index to brief, short brief, statements of witnesses, powers of attorney to sue or defend, as well as other formal documents and summonses, including all documents such as the prescribed forms in the First Schedule to these Rules, but not the particulars of claim in an annexure to the summons: an inclusive tariff - drawing up, checking, typing, printing, delivery and filing thereof, per page of the original only	R144,00
2.	The drawing up of other necessary documents, including—	
	(a) instructions for an opinion, for an advocate's guidance in preparing pleadings, including further particulars and requests for same, including exceptions;	
	(b) instructions to advocate in respect of all classes of pleadings;	
	(c) a petition, exception or affidavit, any notice (except a formal notice), particulars of claim or an annexure to the summons, opinion by an attorney or any other important document not otherwise provided for,	
	an inclusive tariff - drawing up, checking, typing, printing, delivery and filing thereof, per page of the original only	R357,00
3.	Letters, facsimiles and electronic mail: Inclusive tariff for drawing up, checking, typing, printing, scanning, delivery, postage, posting and transmission thereof, per page	R144,00
NOTE 1: Particulars of dispatched letters, telegrams and facsimiles need not be specified in a bill of costs.		

The number of letters written must be specified, as well as the total amount charged. The opposing party, as well as the taxing officer, is entitled to inspect the papers should the correctness of the item be disputed.	
NOTE 2: Whenever an attorney performs any of the work listed in this section, the fees set out herein in respect of such work shall apply and not any fees which would be applicable in terms of the tariff under rule 69 if an advocate had performed the work in question.	
C - ATTENDANCE AND PERUSAL	
1. Attending the receipt, entry, perusing, considering and filing of—	
(a) any summons, petition, affidavit, pleading, advocate's advice and drafts, report, important letter, notice or document;	
(b) any formal letter, record stock sheets in voluntary surrenders, judgments or any other material document not elsewhere specified;	
(c) any plan or exhibit or other material document which was necessary for the conduct of the action, per page.	R72,00
2. Sorting, arranging and paginating papers for pleadings, advice on evidence or brief on trial or appeal, per quarter of an hour or part thereof—	
(a) by an attorney	R357,00
(b) by a candidate attorney	R111,00
NOTE: Particulars of received papers need not be specified in bills of costs. The number of papers and pages received, as well as the total amount charged therefor, must be specified. The opposing party as well as the taxing officer is entitled to inspect the papers received if the correctness of the item is disputed.	

D - MISCELLANEOUS		
1.	For necessary copies, including photocopies, of any document or papers not already provided for in this tariff, per A4 size page	R5,00
2.	Attending to arrange translation and thereafter to procure same, per quarter of an hour or part thereof—	
	(a) by an attorney	R357,00
	(b) by a candidate attorney	R111,00
3.	Necessary telephone calls: The actual cost thereof, plus for every five minutes or part thereof—	
	(a) by an attorney	R119,00
	(b) by a candidate attorney	R37,00
4.	…	
5.	Testimony: Fair and reasonable charges and expenses which in the opinion of the taxing officer were duly incurred in the procurement of the evidence and the attendance of witnesses whose witness fees have been allowed on taxation: Provided that the preparation fees of a witness shall not be allowed without an order of the court or the consent of all interested parties.	
6.	The fees in sections A, B, C and D shall be increased by 15% in accordance with any costs order made in terms of rule 67A(4)(a) and as allowed at taxation.	
[Rule 70, Tariff of Fees of Attorneys, Section D, item 6 inserted by GoN R4477 in G. 50272 with effect from 12 April 2024.]		
E - BILL OF COSTS		
In connection with a bill of costs for services rendered by an attorney, the attorney shall be entitled to charge—		
1.	For drawing the bill of costs, making the necessary copies and attending settlement, 11 per cent of the attorney's fees, either as charged in the bill, if not taxed, or as allowed on taxation.	

2.	In addition to the fees charged under item 1, if recourse is had to taxation for arranging and attending taxation and obtaining consent to taxation, 11 per cent on the first R10 000,00 or portion thereof, 6 per cent on the next R10 000,00 or portion thereof and 3 per cent on the balance of the total amount of the bill.			
3.	(a)	Whenever an attorney employs the services of another person to draft his or her bill of costs, a certificate shall accompany that bill of costs in which that attorney certifies that—		
		(i)	the bill of costs thus drafted was properly perused by him or her and found to be correct; and	
		(ii)	every description in such bill with reference to work, time and figures is consistent with what was necessarily done by him or her.	
	(b)	The taxing officer may—		
		(i)	if he or she is satisfied that one or more of the requirements referred to in item 3(a) has not been complied with, refuse to tax such bill;	
		(ii)	if he or she is satisfied that fees are being charged in a party-and-party bill of costs—	
			(aa) for work not done;	
			(bb) for work for which fees are to be charged in an attorney-and-client bill of costs; or	
			(cc) which are excessively high,	
	deny the attorney the remuneration referred to in items 1 and 2 of this section, if more than 20 per cent of the number of items in the bill of costs, including expenses, or of the total amount of the bill of costs, including expenses, is taxed off.			
NOTE: The minimum fees under items 1 and 2 shall be R284,00 for each item.				
F - EXECUTION				
1.	Drafting, issue and execution of a warrant of execution and attendances in connection therewith, excluding sheriffs fees (if not taxed)			R710.00
2.	Reissue			R179.00

[Rule 70 amended by GoN R3553 in G. 2543 with effect from 1 November 1969, GoN R2365 in G. 5804 with effect from 18 November 1977; substituted by GoN 2170 in G. 8405 with effect from 6 October 1982, GoN R1262 in G. 13283 with effect from 1 July 1991; amended by GoN R974 in G. 14851 with effect from 1 July 1993, GoN R2365 in G. 15322 with effect from 10 January 1994, GoN R1557 in G. 17444 with effect from 21 October 1996, GoN R1755 in G. 25795 with effect from 5 January 2004, GoN R516 in G. 32208 with effect from 15 June 2009, GoN R500 in G. 33273 with effect from 16 July 2010, GoN R759 in G. 36913 with effect from 15 November 2013, GoN R31 in G. 38399 with effect from 24 February 2015, GoN R781 in G. 39148 with effect from 2 October 2015, GoN R1055 in G. 41142 with effect from 1 November 2017, GoN R1318 in G. 42064 with effect from

10 January 2019, GoN R858 in G. 43592 with effect from 11 September 2020, GoN R1157 in G. 43856 with effect from 1 December 2020, GoN R2133 in G. 46475 with effect from 8 July 2022, GoN R4477 in G. 50272 with effect from 12 April 2024.]

71. Repeal of Rules

All rules made under any provision of a law repealed by section 46 of the Act or under paragraph (a) of subsection (2) of section 43 of the Act, as substituted by section 11 of the Supreme Court Amendment Act, 1963 (Act 85 of 1963) regulating the conduct of the proceedings of the various provincial and local divisions are hereby repealed in terms of subsection (5) of section 43 of the Act, save to the extent indicated in the appended Schedule.

Schedule

[Schedule amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2410 in G. 13558 with effect from 1 November 1991.]

TRANSVAAL RULES			
Rule No.	**Subject-matter**	**Government Notice**	**Date**
1	Terms	153 as amended from time to time	1.5.1902
2	Vacations	do.	1.5.1902
47	Set Down	do.	1.5.1902
48	do.	do.	1.5.1902
49	do.	do.	1.5.1902
108	Criminal Sessions	1425	23.9.1960
109	Sittings of Witwatersrand Local Division	1130	3.6.1955
	Cases in Last Week of Term	1093	30.9.1903
1-26	Circuit Court Rules	678	August 1905
163	Admission of Advocates	1266	14.12.1906

ORANGE FREE STATE			
1	Terms	221 as amended from time to time	23.7.1902
2	Vacation	do.	23.7.1902
47	Set down	do.	23.7.1902
48	do.	do.	23.7.1902
49	do.	do.	23.7.1902
103	Admission of Advocates	do.	23.7.1902
107-124	Circuit Courts Rules	do.	23.7.1902
CAPE PROVINCE DIVISION			
3	Sittings of the Court and vacations	41 as amended from time to time	13.1.1938
5(1)	Admission of advocates	do.	13.1.1938
7	Derelict Lands Act	do.	13.1.1938
34	Set Down	do.	13.1.1938
39(22)-(32)	Execution	do.	13.1.1938
50	Jurors	do.	13.1.1938
52, 54-63	Circuit Courts Rules	do.	13.1.1938
NATAL PROVINCIAL DIVISION			
Order III 1-12, 14	Sittings of the Court	79 and Set Down from time to time	2.1907 as amended

Order XI 61	Set Down	do.	2.1907
Order XI 62	Withdrawal of Set Down	do.	2.1907
Order XI 67	Set Down	79 as amended from time to time	2.1907
Order XXVIII The Whole	Executive Dative and others	do.	2.1907
Order XXXII Where not already repealed	Admission of Advocates and Attorneys	do.	2.1907
Order XXXIV The Whole	Circuit Court Rules	do.	2.1907
EASTERN CAPE COURTS			
2*(b)* and (c)	Sittings and Vacations		
2*(d)*	Admission of Advocates	1639	25.10.1957
2*(n)*	Circuit Court Rules		
34	Setting down of defended cases and exceptions	43 as amended from time to time	13.1.1938
39(22)-(32)	Execution	do.	13.1.1938
GRIQUALAND WEST LOCAL DIVISION			
2*(b)* being rule 3(1) and (4)	Sittings and Vacations	280	6.2.1953
2*(c)*	Admission of Advocates	42 as amended from time to time	13.1.1938
34	Setting down of defended cases and exceptions	do.	13.1.1938
39(22)-(32)	Execution	do.	13.1.1938

FOR FORMS PLEASE SEE PDF

FORMS

FIRST SCHEDULE

FORM 1

EDICTAL CITATION: SHORT FORM OF PROCESS

FORM 2

NOTICE OF MOTION (TO REGISTRAR)

[Form 2 amended by GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R3 in G. 39715 with effect from 22 March 2016.]

FORM 2(A)

NOTICE OF MOTION (TO REGISTRAR AND RESPONDENT)

[Form 2(a) amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R1929 in G. 12614 with effect from 10 September 1990, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R3 in G. 39715 with effect from 22 March 2016.]

FORM 2A

NOTICE OF APPLICATION TO DECLARE IMMOVABLE PROPERTY EXECUTABLE IN TERMS OF RULE 46A

[Form 2A inserted by GoN R1272 in G. 41257 with effect from 22 December 2017.]

FORM 2B

APPLICATION FOR RESCISSION OF JUDGMENT IN TERMS OF RULE 31(6)(a)

[Form 2B inserted by GoN R61 in G. 42186 with effect from 11 March 2019.]

FORM 2C

APPLICATION FOR RESCISSION OF JUDGMENT IN TERMS OF RULE 31(6)(b);

[Form 2C inserted by GoN R61 in G. 42186 with effect from 11 March 2019.]

FORM 3

SUMMONS: PROVISIONAL SENTENCE

[Form 3 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R1746 in G. 17527 with effect from 25 November 1996.]

FORM 4

WRIT OF ARREST

[Form 4 amended by GoN R2410 in G. 13558 with effect from 1 November 1991; repealed by GoN R842 in G. 42497 with effect from 1 July 2019.]

FORM 5

ARREST - BAIL BOND

[Form 5 amended by GoN R2410 in G. 13558 with effect from 1 November 1991; repealed by GoN R842 in G. 42497 with effect from 1 July 2019.]

FORM 6

ASSIGNMENT OF BAIL BOND

[Form 6 repealed by GoN R842 in G. 42497 with effect from 1 July 2019.]

FORM 7

NOTICE TO THIRD PARTY

[Form 7 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2410 in G. 13558 with effect from 1 November 1991]

FORM 8

NOTICE TO ALLEGED PARTNER

[Form 8 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R1262 in G. 13283 with effect from 1 July 1991.]

FORM 9

SUMMONS

[Form 9 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R960 in G. 14844 with effect from 28 June 1993, substituted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

FORM 10

COMBINED SUMMONS

[Form 10 amended by GoN R235 in G. 1375 with effect from 18 February 1966, GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R2410 in G. 13558 with effect from 1 November 1991, GoN R960 in G. 14844 with effect from 28 June 1993, substituted by GoN R1603 in G. 45645 with effect from 1 February 2022.]

FORM 11

DISCOVERY - FORM OF AFFIDAVIT

FORM 12

NOTICE IN TERMS OF RULE 35 (5)

[Form 12 amended by GoN R1262 in G. 13283 with effect from 1 July 1991.]

FORM 13

DISCOVERY - NOTICE TO PRODUCE

[Form 13 amended by GoN R2410 in G. 13558 with effect from 1 November 1991.]

FORM 14

DISCOVERY - NOTICE TO INSPECT DOCUMENTS

FORM 15

DISCOVERY - NOTICE TO PRODUCE DOCUMENTS IN PLEADINGS, ETC.

FORM 16

SUBPOENA

[Form 16 amended by GoN R2628 in G. 12205 with effect from 2 January 1990, GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1318 in G. 42064 with effect from 10 January 2019.]

FORM 16A

SUPOENA *DUCES TECUM*

[Form 16A inserted by GoN R1318 in G. 42064 with effect from 10 January 2019, substituted by GoN R4477 in G. 50272 with effect from 12 April 2024.]

FORM 17

NOTICE IN TERMS OF RULE 43

[Form 17 amended by GoN R2021 in G. 3304 with effect from 15 November 1971, GoN R1262 in G. 13283 with effect from 1 July 1991, GoN R2410 in G. 13558 with effect from 1 November 1991; substituted by GoN R1318 in G. 42064 with effect from 10 January 2019.]

FORM 17A

RESTITUTION OF CONJUGAL RIGHTS

[Form 17A amended by GoN R2410 in G. 13558 with effect from 1 November 1991; repealed by GoN R1318 in G. 42064 with effect from 10 January 2019.]

FORM 18

WRIT OF EXECUTION

FORM 19

FORM OF SECURITY UNDER RULE 45 (5)

FORM 20

WRIT OF ATTACHMENT - IMMOVABLE PROPERTY

[Form 20 amended by GoN R2004 in G. 1915 with effect from 15 December 1967, GoN R2410 in G. 13558 with effect from 1 November 1991.]

FORM 20A

NOTICE OF ATTACHMENT IN EXECUTION

[Form 20A inserted by GoN R1272 in G. 41257 with effect from 22 December 2017.]

FORM 21

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

[Form 21 substituted by GoN R1272 in G. 41257 with effect from 22 December 2017.]

FORM 21A

NOTICE TO CANCEL SALE OF IMMOVABLE PROPERTY IN TERMS OF RULE 46(11)(a)

[Form 21A inserted by GoN R1272 in G. 41257 with effect from 22 December 2017.]

FORM 22

MINUTE OF PROGRESS CONFERENCE

[Form 22 inserted by GoN R1352 in G. 18365 with effect from 1 December 1997; repealed by GoN R373 in G. 22265 with effect from 1 June 2001.]

FORM 23

NOTICE OF DEFAULT

[Form 23 inserted by GoN R1352 in G. 18365 with effect from 1 December 1997; repealed by GoN R373 in G. 22265 with effect from 1 June 2001.]

FORM 24

COMPLIANCE CERTIFICATE

[Form 24 inserted by GoN R1352 in G. 18365 with effect from 1 December 1997; repealed by GoN R373 in G. 22265 with effect from 1 June 2001.]

FORM 25

NOTICE IN TERMS OF SECTION 309C(6) OF THE CRIMINAL PROCEDURE ACT, 1977 (ACT 51 of 1977)

[Form 25 ins as Form 22 by GoN R568 in G. 20036 with effect from 31 May 1999; substituted by GoN R1084 in G. 20443 with effect from 11 October 1999.]

FORM 26

NOTICE OF INTENTION TO TAX BILL OF COSTS

[Form 26 inserted by GoN R90 in G. 32941 with effect from 12 March 2010; substituted by GoN R107 in G. 43000 with effect from 9 March 2020.]

FORM 27

NOTICE OF AGREEMENT OR OPPOSITION TO MEDIATION

[Form 27 inserted by GoN R107 in G. 43000 with effect from 9 March 2020.]

FORMS

SECOND SCHEDULE

FORM A

WRIT OF EXECUTION - MOVABLE PROPERTY, PROVISIONAL SENTENCE

FORM B

WRIT OF ATTACHMENT - PROVISIONAL SENTENCE - IMMOVABLE PROPERTY DECLARED EXECUTABLE

FORM C

DE RESTITUENDO BOND AFTER LEVY OF A PROVISIONAL SENTENCE, WHEN THE DEFENDANT INTENDS TO GO INTO THE PRINCIPAL CASE

FORM D

CERTIFICATE OF OWNERSHIP AND ENCUMBRANCES - SALE IN EXECUTION OF IMMOVABLE PROPERTY

FORM E

WRIT OF EJECTMENT

FORM F

WRIT OF COMMITMENT FOR CONTEMPT OF COURT

FORM G

WRIT OF CIVIL IMPRISONMENT

[Form “G” repealed by GoN R2410 in G. 13558 with effect from 1 November 1991.]

FORM H

WRIT OF ATTACHMENT AD FUNDANDAM JURISDICTIONEM

FORM I

AUTHENTICATION OF SIGNATURE

FORM J

CERTIFICATE OF SERVICE OF FOREIGN PROCESS