RESTITUTION OF LAND RIGHTS ACT

Act 22 of 1994.

LAND CLAIMS COURT RULES

[Updated to 5 October 2001]

GoN 300, G. 17804 (c.i.o 21 February 1997),
Act 22 of 1994 (GoN 345, G. 18728, c.i.o 13 March 1998),
Act 22 of 1994 (GoN 594, G. 20049, c.i.o 7 May 1999),
Act 22 of 1994 (GoN 758, G. 21411, c.i.o 4 August 2000),
Act 22 of 1994 (GoN 848, G. 22711, c.i.o 5 October 2001).

The President of the Land Claims Court has, under section 32(1) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), prescribed the rules contained in the Annexure hereto, regulating matters relating to the proceedings of and before the Land Claims Court with effect from 21 February 1997.

ANNEXURE
LAND CLAIMS COURT RULES

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LAND CLAIMS COURT RULES

A. INTERPRETATION

1. NAME AND APPLICATION

[Rule heading am by r 1(a) of GoN 594 in G. 20049.]

These Rules are called the Land Claims Court rules. They have been made by the President of the Land Claims Court under section 32(1) of the Restitution of Land Rights Act and section 20(4) of the Extension of Security of Tenure Act. They apply to all proceedings instituted in the Court under the Restitution of Land Rights Act, the Land Reform (Labour Tenants) Act and the Extension of Security of Tenure Act.

[R 1 am by r 1(b) of GoN 594 in G. 20049.]

2. DEFINITIONS

(1) In these Rules, unless inconsistent with the context—

"conference" means a conference as envisaged in rule 30;

"day", in the computation of any period of time expressed in days, means any day which is not a Saturday, Sunday or public holiday and which does not fall within the period 24 December to 2 January;

["day" ins by r 2(a) of GoN 594 in G. 20049.]

"Deeds Registries Act" means the Deeds Registries Act, 1937 (Act 47 of 1937);

"deliver" in relation to any document means—

(a) to furnish a copy of that document to each party at the service address given by that party for the delivery of documents—

(i) by hand delivery, for which an acknowledgement of receipt must be filed;

(ii) by facsimile transmission, in respect of which the machine transmission slip must be filed, and to send a confirmation copy of the document within one day by ordinary mail or by any other suitable method; or

(iii) by registered mail, for which a certificate of posting must be filed:

Provided that—

(aa) a document sent by facsimile transmission is deemed to have been received on the date of transmission, unless the contrary is proved; and

(bb) a document sent by registered mail is deemed to have been received within 10 days after the document has been posted in a properly addressed envelope by prepaid registered mail, unless the contrary is proved; and

(b) to file the original document with the Registrar together with proof that copies were furnished in terms of paragraph (a);

"determination", means a determination made by an arbitrator in terms of the Land Reform (Labour Tenants) Act, and includes the report and any annexures which accompany that determination;

"Director-General" means the Director-General of Land Affairs;

"Extension of Security of Tenure Act" means the Extension of Security of Tenure Act, 1997 (Act 62 of 1997), as amended;

["Extension of Security of Tenure Act" ins by r 2(d) of GoN 594 in G. 20049.]

"file" means file with the Registrar;

"firm" means a business carried on by its sole proprietor under a name other than his or her own;

"judge" means a judge of the Court;

"Labour Tenancy Arbitration Rules" means the rules made by the President of the Land Claims Court under section 20(1) of the Land Reform (Labour Tenants) Act;

"Land Reform (Labour Tenants) Act" means the Land Reform (Labour Tenants) Act, 1996 (Act 3 of 1996), as amended;

"legal representative" means—

(a) an advocate admitted in terms of section 3 of the Admission of Advocates Act, 1964 (Act 74 of 1964), or similar legislation in force within the Republic or any part thereof; or

(b) an attorney admitted in terms of section 15 of the Attorneys Act, 1979 (Act 53 of 1979), or similar legislation in force within the Republic or any part thereof;

“order” of the Court includes a judgment or sentence of the Court;

“party” in any case before the Court includes, subject to rule 26(3)—

(a) the person who initiates the case in the Court;

(b) every person named, in the process by which the case is initiated, as a party—

(i) against whom relief is claimed;

(ii) whose rights may be affected by the relief claimed; or

(iii) who may have an interest in the claim;

(c) any person who becomes a party under any provision of these Rules or by order of the Court;

(d) any person granted leave by the Court to intervene in the case;

(e) the Commission, in a matter referred to the Court by the Commission under section 6 or 14 of the Restitution of Land Rights Act;

(f) the State, when it has exercised a right to be heard;

(g) every person who participates in arbitration proceedings under the Land Reform (Labour Tenants) Act, in respect of a case emanating from those proceedings,

and also the legal representative of any of the aforesaid persons, in his or her capacity as such;

“President” means the President of the Court appointed in terms of section 22(3) or 22(7) of the Restitution of Land Rights Act;

“process” means any notice of motion, notice of referral, notice of action or other notice by which proceedings in the Court are initiated or a party is joined in the proceedings, or any order, subpoena, warrant or writ;

“Registrar” means the Registrar of the Court, and includes an assistant registrar and an acting registrar;

“Republic” means the Republic of South Africa;

“Restitution of Land Rights Act” means the Restitution of Land Rights Act, 1994 (Act 22 of 1994), as amended;

“service” means service effected—

(a) by the sheriff;

(b) in a manner prescribed by an order of the Court; or

(c) by hand delivery in the case of—

(i) service on a party listed under rule 17(3)(c); or

(ii) service by a person contemplated in rule 24(2)(ii),

provided a signed receipt is obtained, as prescribed under these Rules;

[“service” para (c) am by r 1 of GoN 758 in G. 21411.]

“service address” of any party means an address at which documents in a case may be furnished to that party, which—

(a) must be an address where any attorney representing the party practices; or

(b) in the case of a party not represented by an attorney, must be an address within eight kilometres of—

(i) the permanent seat of the Court; or

(ii) the magistrate’s court for the magisterial district where the land concerned is situated; and

(c) must be a physical address and must include, where available, a postal address and a facsimile number for sending documents by facsimile transmission; and

(d) must contain sufficient detail for the exact address to be found;

“sheriff” means a sheriff or deputy sheriff of the Supreme Court, as envisaged in section 28K of the Restitution of Land Rights Act;

“sworn translator” means a sworn translator admitted and enrolled in terms of rule 59 of the Uniform Rules;

"Uniform Rules" means the rules regulating the proceedings of the several provincial and local divisions of the Supreme Court, published under Government Notice R.48 of 12 January 1965, as amended.

(2) Words defined in the Restitution of Land Rights Act and in the Land Reform (Labour Tenants) Act have the same meaning where used in these Rules, unless the context indicates otherwise.

(3) Latin expressions used in these Rules have the following meanings—

"*amicus curiae*" means friend of the Court;

"*de bonis propriis*" means out of his or her own pocket;

"*ex parte*" means by one party only;

"*mutatis mutandis*" means with the necessary changes in points of detail; and

"*pro bono*" means for the public weal.

B. ORGANISATION

3. COURT TERMS

(1) There are four terms in each year.

(2) The terms for 1997 and 1998 are as follows—

(a) For 1997—

(i) the first term will be from 20 January 1997 to 27 March 1997, inclusive;

(ii) the second term will be from 7 April 1997 to 20 June 1997, inclusive;

(iii) the third term will be from 14 July 1997 to 19 September 1997, inclusive; and

(iv) the fourth term will be from 29 September 1997 to 5 December 1997, inclusive.

(b) For 1998—

(i) the first term will be from 19 January 1998 to 9 April 1998, inclusive;

(ii) the second term will be from 20 April 1998 to 26 June 1998, inclusive;

(iii) the third term will be from 20 July 1998 to 18 September 1998, inclusive; and

(iv) the fourth term will be from 28 September 1998 to 4 December 1998, inclusive.

(c) For 1999—

(i) the first term will be from 19 January 1999 to 26 March 1999, inclusive;

(ii) the second term will be from 7 April 1999 to 25 June 1999, inclusive;

(iii) the third term will be from 19 July 1999 to 23 September 1999, inclusive; and

(iv) the fourth term will be from 4 October 1999 to 3 December 1999, inclusive.

[R 3(2)(c) ins by r 3 of GoN 594 in G. 20049.]

(d) For 2000—

(i) the first term will be from 17 January 2000 to 14 April 2000, inclusive;

(ii) the second term will be from 25 April 2000 to 23 June 2000, inclusive;

(iii) the third term will be from 17 July 2000 to 22 September 2000, inclusive; and

(iv) the fourth term will be from 2 October 2000 to 8 December 2000, inclusive.

[R 3(2)(d) ins by r 3 of GoN 594 in G. 20049.]

(e) For 2001—

(i) the first term will be from 16 January 2001 to 6 April 2001, inclusive;

(ii) the second term will be from 18 April 2001 to 29 June 2001, inclusive;

(iii) the third term will be from 23 July 2001 to 28 September 2001, inclusive; and

(iv) the fourth term will be from 8 October 2001 to 7 December 2001, inclusive.

[R 3(2)(e) ins by r 2 of GoN 758 in G. 21411.]

(f) For 2002—

(i) the first term will be from 21 January 2002 to 27 March 2002, inclusive;

(ii) the second term will be from 8 April 2002 to 28 June 2002, inclusive;

(iii) the third term will be from 22 July 2002 to 27 September 2002, inclusive; and

(iv) the fourth term will be from 7 October 2002 to 6 December 2002, inclusive.

[R 3(2)(f) ins by r 1 of GoN 848 in G. 22711.]

(g) For 2003—

(i) the first term will be from 20 January 2003 to 11 April 2003, inclusive;

(ii) the second term will be from 23 April 2003 to 4 July 2003, inclusive;

(iii) the third term will be from 28 July 2003 to 26 September 2003, inclusive; and

(iv) the fourth term will be from 6 October 2003 to 5 December 2003, inclusive.

[R 3(2)(g) ins by r 1 of GoN 848 in G. 22711.]

(h) For 2004—

(i) the first term will be from 19 January 2004 to 2 April 2004, inclusive;

(ii) the second term will be from 14 April 2004 to 2 July 2004, inclusive;

(iii) the third term will be from 26 July 2004 to 24 September 2004, inclusive; and

(iv) the fourth term will be from 4 October 2004 to 3 December 2004, inclusive.

[R 3(2)(h) ins by r 1 of GoN 848 in G. 22711.]

(3) The periods during each year which do not fall within a term will be administrative recesses.

(4) A case may be heard out of term if—

(a) the President or the presiding judge so directs; or

(b) it is urgent.

4. REGISTRAR'S OFFICE

(1) The office of the Registrar is open to the public from 08:00 to 13:00 and from 14:00 to 16:00 on every day which is not a Saturday, Sunday or public holiday and which does not fall within the period 24 December to 2 January (both days included).

(2) The Registrar may in exceptional circumstances accept documents for filing at any time, and must do so when directed by a judge.

(3) The Registrar must maintain the records of the Court and may not permit any document to be withdrawn permanently from those records or to be removed from the Court premises, except as authorised by him or her or by a judge.

(4) All documents forming part of the records in a case may be perused by any person in the presence of the Registrar or any person designated by him or her.

(5) The presiding judge's secretary may perform the Registrar's functions in a case.

5. COURT FEES

(1) The initiation of a case in the Court is subject to the payment of Court fees in the form of revenue stamps in accordance with the tariff contained in Schedule 2 to these Rules. The revenue stamps must be affixed to the process by which the case is initiated before the process is filed.

(2) The Registrar must, at the request of any person, provide a copy of a recorded order, direction, settlement or other document forming part of the records of the Court on payment of the fee prescribed in Schedule 2 to these Rules.

(3) Notwithstanding subrule (1) and subrule (2)—

(a) no Court fees are payable in respect of proceedings initiated by the Commission or by the Director-General; and

(b) if a party is assisted or represented by a statutorily established legal aid board, or satisfies the Registrar in terms of subrule (4) that he or she is indigent, Court fees are not payable.

(4) A party is indigent, for purposes of this rule, if he or she satisfies the Registrar that—

(a) except for household goods, wearing apparel and tools of trade, he or she does not own property to the value of R30 000,00 or more; and

(b) he or she will not be able to provide that amount from his or her income within a reasonable time.

6. DESTRUCTION OF DOCUMENTS

(1) All diagrams, plans, photographs or models filed as exhibits must be removed by the parties concerned within 40 days after the case is finally decided. If this is not done, the Registrar may post a suitable notice to the parties concerned to their service addresses, calling upon them to remove the articles immediately. If they are not then removed within 30 days, the Registrar may destroy them or otherwise dispose of them.

(2) In any case which has not been adjudicated upon by the Court and has not been withdrawn. The Registrar may, subject to the provisions of the National Archives of South Africa Act, 1996 (Act 43 of 1996), after the lapse of three years from the date of the filing of the last document therein and after not less than 30 days from the date of the posting of a suitable notice to all parties to their service addresses, cause the documents filed in the case to be destroyed, after which the case will cease to be pending in the Court.

C. PARTIES

7. REPRESENTATION OF PARTIES

(1) Subject to subrule (2), a legal representative need not file a power of attorney to act on behalf of a party.

(2) Any party that disputes the authority of a person acting on behalf of any party may deliver a notice—

(a) within 10 days after it has come to his or her notice that such person is so acting; or

(b) with the leave of the Court on good cause shown at any other time,

calling on that person to prove his or her authority.

(3) That person must, within 20 days of receipt of that notice, deliver—

(a) a power of attorney signed by or on behalf of the party giving it and otherwise duly executed according to law; and

(b) when a power of attorney is signed on behalf of a party giving it, documentary or other proof that the signatory is authorised to sign on behalf of that party,

failing which he or she may no longer act until the documents referred to in paragraphs (a) and (b) are delivered.

(4) The Court may, on application, declare that a person purporting to act on behalf of a party has not established his or her authority so to act, in which event that person may no longer act until he or she has established his or her authority to the satisfaction of the Court.

(5) No power of attorney or authority need be filed by the state attorney (including any deputy state attorney or any professional assistant to the state attorney) or any attorney instructed in writing by him or her in any matter in which he or she acts in terms of the State Attorney Act, 1957 (Act 56 of 1957), or in terms of any similar law in force in the Republic or any part thereof.

8. TERMINATION OF AUTHORITY TO ACT

(1) Any party represented by a legal representative may at any time terminate that legal representative's authority to act for him or her.

(2) When an attorney has withdrawn from a case or when his or her authority has been terminated, he or she must deliver a notice of withdrawal, and furnish a copy thereof by hand or by registered mail or by facsimile transmission to the party which he or she formerly represented.

(3) The party whose attorney has ceased to act must, by not later than 10 days after receipt of the notice of withdrawal, deliver a notice giving a new service address. Until that party does so, it shall not be necessary to deliver any further documents to him or her unless the Court orders otherwise.

9. ASSISTANCE TO UNREPRESENTED PARTIES

(1) If it appears to the Registrar that any party requires legal representation, he or she must refer that party to the nearest office of the Commission or to any statutorily established legal aid board or to any law clinic that may be willing to assist that party.

(2) If no legal representation has been secured as envisaged in subrule (1), the Registrar must assist that unrepresented party in preparing any documents required by these Rules or, if directed to do so by a judge, request a legal representative to assist that party on a *pro bono* basis.

(3) The state, the Registrar and the administrative staff of the Court are not liable for any damage or loss resulting from assistance given in good faith to any party in the form of advice or in the preparation of any document.

10. CASES BY AND AGAINST PARTNERSHIPS, TRUSTS, ORGANISATIONS, ASSOCIATIONS AND COMMUNITIES

(1) Any entity which is—

(a) a partnership;

(b) a firm;

(c) a trust;

(d) an organisation;

(e) a communal or provisional communal property association contemplated in the Communal Property Associations Act, 1996 (Act 28 of 1996); or

(f) a community,

may, under these Rules, be cited as a party in its own name without reference to the names of its members or office bearers.

(2) An error of omission or inclusion in naming the members or office bearers of any entity will not, for that reason alone, afford a defence to that entity.

(3) Any process by which a case is initiated against an entity referred to in subrule (1)—

(a) may be served on that entity—

(i) through service on any partner (if the entity is a partnership), trustee (if the entity is a trust) or office bearer thereof; or

(ii) in any other manner provided by law for such service; and

(b) must, within 10 days of such service, be brought to the attention of—

(i) all partners, if the entity is a partnership;

(ii) all trustees, if the entity is a trust; or

(iii) all office bearers, in any other case,

by the person on whom the process was served.

(4) Should an entity referred to in subrule (1) be a party in proceedings before the Court, any other party may, by delivering a notice to that effect, call for a copy of—

(a) its current constitution or other document in terms of which it is established;

(b) its registration certificate (if any); and

(c) a list of names and addresses of its members and office bearers and their respective offices at any time or during any period as may be specified in the notice.

(5) Any notice under subrule (4) must be responded to within 10 days of receipt. If any document or information called for does not exist or is not available, an affidavit to that effect must be delivered, with full reasons.

(6) If an entity referred to in subrule (1) was a party in a case and if such entity has since been dissolved, the case will continue against any persons who become parties under rule 11.

(7) Execution of an order against an entity referred to in subrule (1) must first be levied against the assets thereof, and, after that excussion, against the private assets of any party held liable for the obligations of that entity.

(8) An alleged failure to comply with any provision of this rule must be dealt with in terms of rule 32(5).

11. JOINDER OF ALLEGED OFFICE BEARERS OR MEMBERS OF ENTITIES

(1) Any party may join as a party in a case a person who, he or she alleges—

(a) is an office bearer or member of an entity referred to in rule 10(1); and

(b) is in law personally liable for an alleged obligation of that entity; or

(c) will in law be personally liable for the payment of any costs which may be awarded against that entity,

by delivering a notice to that effect, which notice must—

(i) be based on Form 12 of Schedule 1;

(ii) have attached to its face a notice based on Form 9 of Schedule 1;

(iii) set out the grounds upon which personal liability is claimed;

(iv) be served on the person concerned; and

(v) contain the names and service addresses of all parties.

(2) Any person served with a notice under subrule (1)—

(a) becomes a party in the case; and

(b) if he or she disputes the allegation that he or she is or was a member or office bearer of that entity, or is in law liable for those obligations or costs, must—

(i) within 10 days of receipt of that notice, deliver a notice of appearance; and

(ii) within 15 days thereafter, deliver an answering affidavit in response to the allegations contained in the notice,

failing which he or she will be personally liable for any obligations for which the entity may be found liable and for any award of costs, as set forth in the notice, unless the Court orders otherwise.

(3) The party that issued the notice under subrule (1) may, within 10 days of receipt of the answering affidavit, deliver a replying affidavit. Thereafter the Court may decide the issue, either separately or during the hearing of the case.

12. 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 or applicants in a case against the same person, if their claims relate to substantially the same question of law or fact.

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

(3) Several parties may be joined in the same case, either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or applicant relates to substantially the same question of law or fact.

(4) Subject to any Court order on service, anybody initiating a case must cite as parties all persons—

(a) against whom relief is claimed;

(b) whose rights may be affected by the relief claimed; and

(c) who may have an interest in the claim.

(5) The Court may at any time upon application by any party or of its own accord, order that a person be joined as a party in the case upon such terms and conditions as the Court considers appropriate, including conditions as to—

(a) the payment of costs;

(b) the delivery of a notice of appearance; and

(c) the further procedure in the case.

(6) When there has been a joinder of causes of action or of parties, the Court may, on the application of any party, order that separate hearings be held in respect of some or all of the causes of action or some or all of the parties.

(7) Whenever causes of action or parties are joined in the same case, the Court may make an order in favour of those parties who may be entitled to relief or grant absolution from the instance, and must make an order for costs as it considers just.

13. INTERVENTION OF PERSONS

(1) Any person whose rights may be affected by the relief claimed in a case and who is not a party in the case may, within a reasonable time after he or she became aware of the case, apply to the Court for leave to intervene in the case.

(2) The Court may grant an application under subrule (1) on conditions which the Court considers appropriate, including conditions as to—

(a) the payment of costs; and

(b) the further procedure in the case.

(3) The state may intervene as a party in a case by delivering a notice to that effect.

14. ADMISSION OF AN *AMICUS CURIAE*

(1) Any person or organisation may be admitted to the case as an *amicus curiae* by—

(a) the filing of a written agreement between that person or organisation and all participating parties; or

(b) order of the presiding judge or of the Court made of its own accord or upon application by that person or organisation,

(1A) An agreement contemplated in subrule (1)(a) must be delivered and an application contemplated in subrule (1)(b) must be made—

(a) in the case of an application, within 10 days after the applicant's replying affidavit has been filed or the time for filing such replying affidavit has expired;

(b) in the case of an action, within 10 days after the plaintiff's reply has been filed or the time for filing such reply has expired; and

(c) in the case of a referral, within 10 days after a response has been filed or the time for filing such a response has expired.

[R 14(1A) ins by r 1 of GoN 345 in G. 18728.]

(2) Any application for an order in terms of subrule (1)—

(a) must be on notice to all participating parties;

(b) must be supported by an affidavit or affidavits—

(i) setting forth the interest of the *amicus curiae* in the matter at issue in the case;

(ii) identifying the position to be adopted by the *amicus curiae* in the case; and

(iii) containing a summary of the evidence (if any) to be presented and the submissions to be advanced by the *amicus curiae*, their relevance to any matter at issue and why that evidence and submission will be useful to the Court and be different from those of the other parties.

(3) Any party may deliver an answering affidavit within five days after a formal application for an order has been received by it.

(4) The applicant may deliver a replying affidavit within five days after an answering affidavit has been received by it.

(5) The application will be considered by the presiding judge in chambers, without any party being present, whereupon the presiding judge may—

(a) make an order on the application; or

(b) refer the application to the Court for argument and decision.

(6) The terms on which an *amicus curiae* is admitted to a case must be set forth in the written agreement or in the order of the Court referred to in subrule (1), and will include the right (if any) which the *amicus curiae* has—

(a) to present evidence to the Court;

(b) to cross-examine witnesses;

(c) to make written submissions; and

(d) to present oral argument to the Court:

Provided that the Court may at any time vary that right.

(7) Unless the Court orders otherwise, an *amicus curiae*—

(a) is not entitled to any order for costs against any party; and

(b) may not be subject to any order for costs in favour of any party.

15. SUBSTITUTION OF PARTIES

(1) If a party—

(a) has died or ceased to be capable of litigating, his or her executor, curator or trustee may be substituted for that party;

(b) is a statutory body which has by law been succeeded by another statutory body, the latter body may be substituted for that party; or

(c) is a provisional communal property association whose assets have been transferred to a communal property association in terms of section 8(6)(f) of the Communal Property Associations Act, 1996 (Act 28 of 1996), that latter association may be substituted for that party.

(2) Unless the Court orders otherwise, a substitution under subrule (1) is effected by the delivery of a notice of substitution by that executor, curator, trustee, statutory body or communal property association.

(3) The Court may, on application by· any party delivered within 10 days of receipt of a notice in terms of subrule (2)—

(a) set aside, vary or confirm any substitution thus effected, and

(b) make such order as to postponement or as to costs or otherwise as it considers just.

(4) Any party may, upon application to the Court and by order of the Court (which may include an order as to costs), be substituted by any other party.

16. SECURITY FOR COSTS

(1) A party that is entitled in law to demand security for costs from any other party may, as soon as practicable after the commencement of the case, deliver a notice setting out the grounds upon which security is demanded and the amount of security required.

(2) A party for whom legal aid was arranged by the Commission or to whom legal aid is rendered by a statutorily established legal aid board need not give security for costs, unless the Court orders otherwise.

(3) If only the amount of security is contested, the Registrar must determine the amount and his or her decision will be final.

(4) If the party from whom security is demanded fails or refuses to furnish security in the amount required or the amount fixed by the Registrar within 10 days of the demand or the Registrar's decision, the party that demanded security may apply to Court for an order that such security be given and that proceedings in the case be stayed until that order is complied with.

(5) The Court may, if an order that security be given is not complied with, dismiss the case or make another order as it considers just.

(6) Security for costs must be given in the form, amount and manner directed by the Registrar, unless the Court orders otherwise, or the parties agree otherwise.

(7) The Registrar may, on request of the party in whose favour security must be provided and on notice to the party having to give security, increase the amount thereof if he or she is satisfied that the amount originally furnished is no longer sufficient, and his or her decision shall be final.

D. DOCUMENTS

17. PROCESS BY WHICH CASES ARE INITIATED

(1) Upon receipt of the process by which a case is initiated, the Registrar must allocate a consecutive number for the year concerned.

(2) The original process by which the case is initiated must, when filed—

(a) bear the revenue stamps prescribed in rule 5(1); and

(b) be signed by the party issuing the process or his or her legal representative.

(3) Every copy of that process must, when served on a party—

(a) bear the number allocated to the case;

(b) be signed by the party issuing the process or his or her legal representative; and

(c) have attached thereto notices based on forms 9 and 10 of Schedule I, except in the case of service on—

(i) a legal representative (in his or her capacity as such);

(ii) the President of the Republic;

(iii) the government of the Republic;

(iv) a Minister of the government of the Republic;

(v) the legislature of any province;

(vi) the Premier of any province;

(vii) a member of the Executive Council of any province;

(viii) a transitional metropolitan council, a transitional metropolitan substructure, a transitional local council or a successor body to any of them;

(ix) an officer of the government of the Republic or of the government of any province, in his or her capacity as such;

(x) an organ of state;

(xi) an officer of an organ of state, in his or her capacity as such; or

(xii) the Commission.

(4) Every copy of process served on a Registrar of deeds pursuant to section 97(1) of the Deeds Registries Act must be accompanied by a notice to the Registrar of deeds—

(a) informing him or her what act in a deeds registry is involved; and

(b) inviting him or her to report to the Court thereon.

18. FILING NOTICES

(1) All documents must be filed under cover of a filing notice, except—

(a) process; and

(b) notices and documents which, in themselves, contain the requisites of a filing notice as set out in subrule (2).

(2) A filing notice must contain—

(a) the title of the case, which must—

(i) in referrals under section 14 or section 388(4) of the Restitution of Land Rights Act, or in applications under section 34 of the Restitution of Land Rights Act, be "*In the case of* ... ", followed by the full names of the claimant and "*concerning* ... ", followed by a general description of the land concerned;

[R 18(2)(a)(i) am by r 2 of GoN 345 in G. 18728.]

(ii) in referrals by the Director-General under the Land Reform (Labour Tenants) Act, be "*In the case of ..... "*, followed by the full names of the applicant, and *"and ..... "*, followed by the full names of the respondent; and

(iii) in all other cases be *"In the case of..... "* followed by the full names of the plaintiff or applicant and *"and ..... "*, followed by the full names of the defendant or respondent:

Provided that where there is more than one plaintiff, applicant, claimant, defendant or respondent, only the name of the first must be given, followed by the words *"and another"* or *"and others"*, as the case may be;

(b) the case number assigned by the Registrar;

(c) the name and signature of the party or of his or her legal representative filing the document;

(d) the service address of the party filing the document;

(e) the names of the parties to whom the document was delivered; and

(f) proof of delivery of the document, which proof may be endorsed on the filing notice or be contained in a separate document annexed to the filing notice.

(3) After a party has given a service address, that address will remain his or her service address until changed by delivery of a notice to that effect.

19. PREPARATION AND FILING OF DOCUMENTS

(1) All pleadings, affidavits, responses, reports, expert opinions, summaries of evidence, written submissions and similar documents must be divided into concise, consecutively numbered paragraphs.

(2) All documents filed in a case must be legible.

(3) All documents filed in a case, other than exhibits or documents which are photocopies of other documents, must—

(a) be in typescript in double spaced format on one side of a sheet only;

(b) be marked with the case number allocated by the Registrar;

(c) be on A4 paper which must be strong, pliable, smooth, mat, durable and free from cracks, creases and folds; and

(d) be reasonably free from erasures and from alterations, overwritings and interlineations.

(4) Documents in cases relating to—

(a) any matter contemplated in section 14(1)(a), (b) and (d) of the Restitution of Land Rights Act which has been referred to the Court by the Commission; and

(b) any application in terms of section 34 of the Restitution of Land Rights Act,

must be filed in duplicate.

[R 19(4) am by r 4 of GoN 594 in G. 20049.]

(5) The Registrar need not accept any document for filing which does not comply with this rule. If the Registrar refuses to accept a document, he or she must point out why the document does not comply and render reasonable assistance to achieve compliance. If proper compliance takes place within five days thereafter, that filing will be deemed to have been timeous.

20. TRANSLATIONS

(1) When any document filed or produced in a case contains material—

(a) in an official language which is not understood by any member of the Court hearing the matter, the Registrar must have that document translated by a sworn translator into a language or languages which will be understood by that member, and must furnish the parties with copies of that translation; or

(b) in a language which is not an official language, the party that filed or produced the document must at his or her own expense provide a translation certified correct by a sworn translator.

(2) Any translation certified by a sworn translator is deemed to be a correct translation unless the contrary is proved and is admissible as such upon its production.

(3) If no sworn translator is available or if, in the opinion of the Court, the attendant expense, inconvenience or delay does not justify using a sworn translator, the Court may, notwithstanding the provisions of subrule (1), admit in evidence a translation of a document certified to be correct by any person who is competent to make that translation.

21. AUTHENTICATION OF DOCUMENTS

(1) Any document executed in any place outside the Republic is sufficiently authenticated for the purpose of use within the Republic if it is authenticated in terms of the provisions of rule 63 of the Uniform Rules.

(2) Notwithstanding subrule (1), the Court may accept in evidence any document which is shown to have been actually signed by the person purporting to have signed it.

22. AMENDMENT OF DOCUMENTS

(1) Any party wishing to amend any notice of referral, notice of motion, notice of action, response, statement of claim, plea, reply or further particulars filed in terms of these Rules must deliver to all other parties a notice of his or her intention to do so.

(2) The notice must contain full particulars of the intended amendment and must state that, unless written objection to the proposed amendment is delivered within 10 days of receipt of the notice, the party giving notice will amend the document accordingly.

(3) If an objection has been delivered within the abovementioned period, the party wishing to amend may, within 10 days of receipt of the objection, apply to the Court for permission to amend.

(4) If permission to amend is granted, or if no objection was made within the prescribed period, the party wishing to amend may deliver an amended document within 10 days after expiry of the prescribed period or after the date of the Court order, as the case may be.

(5) After an amended document has been delivered under this rule, any other party may make consequential amendments to his or her plea, reply or further particulars (as the case may be) within 15 days of receipt of such amended document.

(6) Any party that has delivered a notice of intention to amend will, unless the Court orders otherwise, be liable for the costs incurred by any other party as a result of that notice and any consequential amendment.

(7) The Court may, on application by any party during the hearing of a case, grant an amendment of any document envisaged in subrule (1) on conditions (also relating to costs) which it considers just.

E. CASES

23. INITIATION OF CASES

(1) Every case before the Court must be initiated in one of the following manners—

(a) a case which can properly be decided on affidavit may be brought on notice of motion, based on form 1 of Schedule 1 to these Rules, as set out in rule 33 of these Rules;

(b) a review of any decision or act which is reviewable by the Court must be brought on notice of motion, based on form 2 of Schedule 1 to these Rules, as set out in rule 35 of these Rules;

(c) an application under section 34 of the Restitution of Land Rights Act that land or any rights in land shall not be restored to any claimant or prospective claimant must be brought on notice of motion based on form 1 of Schedule 1 to these Rules, as set out in rule 36 of these Rules;

(d) a case emanating from the referral of a matter to the Court by the Chief Land Claims Commissioner under section 14 of the Restitution of Land Rights Act must be brought on notice of referral, as set out in rule 38 of these Rules;

(e) a case emanating from a referral of a matter to the Court by the Director-General under the Land Reform (Labour Tenants) Act must be brought on notice of referral, as set out in rule 40 of these Rules;

(f) every other case except an appeal must be brought on notice of action based on form 8 of Schedule 1 to these Rules, as set out in rule 44 of these Rules;

(g) an appeal against a determination by an arbitrator under the Land Reform (Labour Tenants) Act must be brought as set out in rule 70 of these Rules; and

(h) an appeal from the magistrate's court as envisaged in section 13 of the Land Reform (Labour Tenants) Act must be brought as set out in rule 71 of these Rules.

(2) No claim for the determination of compensation may be brought by way of notice of motion.

(3) Applications for interlocutory orders in pending cases may be brought as set out in rule 37 of these Rules.

24. SERVICE OF PROCESS

(1) All process requiring service must be served in accordance with the provisions of rule 4(1) of the Uniform Rules, unless these Rules provide otherwise or the Court orders otherwise.

(2) Service of process—

(i) on a person or entity listed in rule 17(3)(c); or

(ii) by a person employed in the office of the Chief Land Claims Commissioner or in the office of a Regional Land Claims Commissioner,

may be effected by hand delivery to the person or entity concerned, or to a responsible person in the office or at the place of residence of that person or entity, provided a receipt is obtained. The receipt must—

[Words preceding r 24(2)(a) am by r 5 of GoN 594 in G. 20049.]

(a) state the name and position of the recipient;

(b) contain the signature of the recipient;

(c) indicate the time, date and place of service; and

(d) bear the official stamp or be on the letterhead of the person or body concerned.

(3) If, for any reason—

(a) it is not possible or feasible to effect service of process in terms of subrule (1);

(b) the address of any person is unknown and not readily ascertainable; or

(c) a party does not know which persons must be joined as parties in any case,

the Court may, on application, make an order containing the requisite directions.

(4) Service must be proved in one of the following manners—

(a) where service has been effected by the sheriff, by the return of service of the sheriff;

(b) where service has been effected in any other manner, by an affidavit of the person who effected the service, together with—

(i) a receipt as described in subrule (2), where service was effected by hand delivery to a responsible recipient in the office of a person or body listed in rule 17(3)(c);

(ii) a tear sheet of the *Gazette* and of any newspaper in which notice of the process may have been published; or

(iii) a certificate of posting, where service was effected by registered post.

Proof of service must include proof that rule 17(3)(c) and rule 17(4) (if applicable) have been complied with.

(5) Service of any process in a foreign country must be effected in accordance with the provisions of rules 4(3), 4(4) and 4(5) of the Uniform Rules.

(6) Rule 5 of the Uniform Rules will apply to the initiation of a case which requires the service of process outside the Republic.

25. NOTICE OF APPEARANCE

(1) Any party that wants to participate in a case must, within 10 days after service on him or her of the process by which the case is initiated, file a notice of appearance based on form 10 of Schedule 1 and furnish a similar notice to the applicant or plaintiff, or if there is more than one, to the first applicant or plaintiff.

(2) Every notice of appearance must—

(a) be to the effect that the person concerned wants to participate in the case; and

(b) contain the requisites for a filing notice, as set out in rule 18(2).

(3) After the process by which the case is initiated has been served on all parties and after all of them have either filed a notice of appearance or the time within which they may do so has expired, the applicant or plaintiff must deliver a notice, based on form 11 of Schedule 1—

(a) containing the names and service addresses of all parties who filed notices of appearance; and

(b) calling upon such parties to deliver their answering affidavits, responses or pleas (as the case may be) within 15 days of receipt of that notice.

(4) Subrule (3) does not apply where the Director-General refers to the Court an application in which no settlement agreement was reached.

26. RIGHT TO PARTICIPATE IN CASES

(1) A party that—

(a) has initiated a case as described in rule 23;

(b) has filed a notice of appearance in accordance with these Rules;

(c) has been granted leave to intervene in a case under rule 13(2);

(d) has intervened in a case under section 29 of the Restitution of Land Rights Act;

(e) has been admitted to the case as an *amicus curiae* under rule 14; or

(f) has participated in arbitration proceedings which led to a determination under the Land Reform (Labour Tenants) Act,

is a participating party.

(2) Only a participating party in a case is entitled to—

(a) deliver or file documents;

(b) have documents delivered to him or her;

(c) participate in any procedures before the hearing;

(d) participate in or be represented at the hearing; and

(e) apply for leave to appeal or participate in any appeal against any order of the Court,

unless the Court orders otherwise.

(3) In these Rules, every reference to “party” in relation to the matters contained in sub rule (2) includes participating parties only, unless the context indicates otherwise.

(4) Notwithstanding the provisions of subrule (2), any government department, government official or organ of state may file a report in any case without participating in that case.

27. WITHDRAWAL OF CASES

(1) Any party that has initiated a case in the Court may withdraw that case by delivering a notice of withdrawal—

(a) at any time before a date for the hearing has been determined; or

(b) thereafter, only with the consent of all participating parties or by leave of the Court.

(2) A notice of withdrawal may contain an offer to pay costs. Such an offer will have the effect of an order of the Court for those costs.

(3) Should a notice of withdrawal not contain an offer to pay costs or should that offer be insufficient, any party may apply to the Court for an appropriate order as to costs.

F. PROCEDURE

28. PRACTICE AND PROCEDURE OF THE COURT

(1) The practice and procedure of the Court is governed by these Rules, subject to the provisions of the Restitution of Land Rights Act, the Land Reform (Labour Tenants) Act, the Extension of Security of Tenure Act and the Communal Property Association Act.

[R 28(1) subs by r 3 of GoN 758 in G. 21411.]

(2) Where these Rules are silent on any matter, the Uniform Rules and the procedure in civil actions and applications followed by the division of the Supreme Court having jurisdiction in the area where the land concerned is situated, apply.

(3) Where no form is prescribed for any notice, writ or other document required in terms of these Rules, a form prescribed under the Uniform Rules, suitably adapted, may be used, or otherwise any appropriate form.

(4) The Court may, on good cause—

(a) deviate from these Rules or from the Uniform Rules and act in a manner which it considers to be appropriate in the circumstances; and

(b) condone any deviation from or non-compliance with these Rules.

29. ALLOCATION OF A CASE TO A JUDGE

(1) Any party may at any stage of the proceedings in a case, file a written request for the allocation of the case to a judge.

(2) The President may allocate a case to a judge—

(a) at the request of any party; or

(b) of his or her own accord,

as soon as such an allocation becomes desirable. The judge to whom the case is allocated is the presiding judge in that case.

(3) Nothing in these Rules will prevent—

(a) the President from re-allocating any case to a different judge; or

(b) any judge other than the presiding judge from making orders or giving directions in a case.

(4) The presiding judge in a case is responsible for guiding the case to an expeditious, economic and effective disposal.

30. CONFERENCES

(1) The presiding judge may, of his or her own accord or at the request of any party before or during the hearing of any case, convene one or more conferences of the participating parties to promote the expeditious, economic and effective disposal of the case.

(2) The presiding judge must determine—

(a) the time, manner, date and venue or venues of each conference; and

(b) the manner in which participating parties must be notified of a conference.

A conference may take place over the telephone by conference call if the presiding judge so directs.

(3) It is the duty of a party to attend every conference, either personally or through his or her legal representative. A conference may take place in the absence of a party to whom notice was given.

(4) In exceptional circumstances and where it appears to the presiding judge that no injustice will be caused thereby, a conference to determine procedures only may take place—

(a) before the case has been initiated; or

(b) in the absence of some of the participating parties.

The rights of a party that has not received notice of a conference may not be adversely affected by any direction given thereat. The presiding judge may, at the request of any such party, amend or withdraw any direction so given.

(5) Every conference will be presided over by the presiding judge or by any other judge nominated to do so by the presiding judge or the President. In the latter event, that other judge will perform the functions of the presiding judge.

(6) Insofar as may be practical, a party must deliver prior notice of all information, admissions, directions and orders which he or she will seek at a conference.

(7) The presiding judge may at a conference—

(a) make any interlocutory order or give any direction which the Court may make or give under any provision of these Rules; and

(b) investigate any non-compliance with these Rules or with any order or direction previously given in the matter and give such orders or directions in relation thereto as may be just, including an order for costs or a postponement of any hearing.

(8) If any party is present at a conference where an interlocutory order or a direction is applied for informally, no further notice of the application needs to be given to that party, unless the Court directs otherwise.

(9) Without limiting the general powers of the presiding judge, the matters set out hereunder may be dealt with at a conference. The presiding judge may make orders or give directions in relation to these matters, insofar as it may be appropriate for the type of case concerned—

(a) the issues to be tried—

(i) the identification and simplification of the issues to be tried by the Court;

(ii) issues to be decided separately under rule 57;

(b) the joinder of further parties;

(c) the amendment of documents filed in the case;

(d) the evidence to be presented—

(i) admissions of fact to avoid unnecessary evidence;

(ii) the admissibility under section 30 of the Restitution of Land Rights Act of evidence which would otherwise not be admissible;

(iii) the production of evidence by way of affidavit or in any other manner; and

(iv) the prior exchange between the parties of summaries of evidence to be given by witnesses;

(e) the discovery of documents by any party under rule 46, to the extent that any other party may reasonably require discovery in respect of any issue in the case;

(f) the documents to be used—

(i) the documents or copies of documents or extracts from documents which will, without further proof, serve as evidence of what they purport to be, and any other matter regarding the submission and proof of documents;

(ii) the plans, diagrams, photographs, models and the like to be used at the hearing and the proof thereof;

(iii) the preparation of bound, paginated and indexed volumes containing documents for use at the hearing, with copies for the Court and the parties; and

(iv) the portions of the record in review proceedings to be copied in terms of rule 35(4)(a);

(g) information required—

(i) authorisation for any party to request further particulars from any other party under rule 45;

(ii) any further information, evidence, documents, investigation or witnesses which the presiding judge may require on any issue before the Court; and

(iii) the preparation of a statement of agreed facts and facts in dispute;

(h) the witnesses to testify—

(i) the witnesses to be called at the hearing, the order in which they will be called, and the limitation of their number; and

(ii) the examination by interrogatories of persons whose evidence is required in terms of section 28H of the Restitution of Land Rights Act;

(i) the referral of any matter to a referee in terms of section 28C of the Restitution of Land Rights Act;

(j) the hearing of the case—

(i) the date, venue or venues and duration of the hearing;

(ii) the desirability of simultaneously hearing more than one case;

(iii) the holding of any site inspection or examination;

(iv) the use of video-conference facilities for any part of the proceedings;

(v) the duty to begin; and

(vi) the preparation and delivery of heads of argument; and

(k) deviations from any of these Rules which the expeditious, effective and economical disposal of the case may require.

(10) The presiding judge may require any party to prepare minutes of any conference, or may himself or herself prepare such minutes. Any order made or direction given by the presiding judge may be incorporated in those minutes. If feasible, the minutes must be submitted to the parties who attended the conference for comment. Thereafter the minutes will (with or without amendments) be certified by the presiding judge, whereupon those minutes will be binding on all parties.

31. OFFER TO SETTLE

(1) Any party may, at any time before or during the hearing of any proceedings, by written notice, and without prejudice to his or her rights, make an offer to settle to any other party.

(2) Subject to any order of the Court to the contrary and unless the offer provides otherwise, the party that made the offer will be liable for the costs of the party that accepted the offer up to the date of receipt of the offer.

(3) The party to whom the offer is made may accept the offer—

(a) within 10 days of receipt of the notice, if the offer was made not less than 15 days prior to the hearing of the proceedings;

(b) within 72 hours of receipt of the notice, if the offer was made later than 15 days, but not less than five days prior to the hearing of the proceedings; or

(c) within 24 hours of receipt of the notice, if the offer was made later than five days prior to the hearing of the proceedings but before the termination of the hearing.

After expiry of the periods concerned, the offer may be accepted only with the consent of the party that made the offer or of the Court. Acceptance of the offer will, subject to the provisions of these Rules, suspend all further proceedings.

(4) Should the offer not be accepted and should the Court decide the case in a manner which is less advantageous to the non-accepting party than that contained in the offer—

(a) the Court must, unless there is good reason to order otherwise, order the non-accepting party to pay the costs of the party that made the offer incurred after receipt of the notice containing the offer; and

(b) the Court may make an order which it considers just in respect of costs incurred before receipt of the notice containing the offer.

(5) An offer may not be disclosed to the Court before judgment is given and may not be placed on the file in the Registrar's office containing the documents relating to the case.

(6) The Court may make an order for costs against any party that mentioned or disclosed an offer in contravention of subrule (5).

(7) Any party may apply to the Court within 10 days for the reconsideration of any order for costs made in ignorance of an offer.

32. NON-COMPLIANCE WITH RULES

(1) Should any party that is, under these Rules, entitled to deliver an answering affidavit, response or plea, fail to do so within the time limits prescribed by these Rules, any other party may serve a notice

of bar on the defaulting party calling upon him or her to deliver the answering affidavit, response or plea within five days.

(2) Should any party deliver—

(a) a notice of appearance out of time; or

(b) an answering affidavit, response or plea after having been placed under bar and after the five days referred to in subrule (1) have expired,

any other party may forthwith apply to Court to set aside that notice of appearance, answering affidavit, response or plea, and if the Court makes such an order, the defaulting party will no longer be a participating party.

(3) Should any party—

(a) deliver any answering affidavit, response or plea while under bar;

(b) deliver any other document out of time;

(c) deliver any document which does not comply with these Rules or with any order or direction of the Court; or

(d) perform any act in contravention of these Rules or of an order or direction of the Court,

this will be an irregular step.

(4) The Court may, upon application and on good cause shown at any stage of the proceedings—

(a) extend or abridge any period of time prescribed by these Rules or by any order or direction of the Court;

(b) condone any irregular step or any non-compliance with these Rules or with any order or direction of the Court; or

(c) reinstate any appeal which has lapsed in terms in rule 70(7) or (8),

upon terms which it considers just.

(5) In the event of an irregular step, or in the event of any party failing to comply timeously or at all with any provision of these Rules or with any order or direction of the Court, any other party may, within a

reasonable time of becoming aware of such irregular step or such failure, give written notice to the defaulting party—

(a) to rectify (if rectification is possible) or withdraw the irregular step; or

(b) to comply with the applicable provision of these Rules or with the order or direction of the Court (as the case may be),

within five days, failing which the Court may upon application—

(i) set aside the irregular step;

(ii) condone the irregular step;

(iii) strike out the non-complying portion of any document;

(iv) order the defaulting party to comply with the applicable provision of these Rules or with the order or direction of the Court (as the case may be) within a stated period;

(v) strike out the claim, defence or response of the defaulting party, whereupon the defaulting party will no longer be entitled to exercise the rights set out in rule 26(2); or

(vi) order that any appeal lodged by the defaulting party shall lapse; and

(vii) make any order (including an order as to costs) which it considers just.

(6) The parties may, by written agreement, extend, or abridge any time period prescribed in these Rules, subject to any contrary order or direction given by the Court before or after that agreement.

(7) If a party fails to comply with any of these Rules or an order or direction of the Court, the Court may, of its own accord and after granting that party an opportunity to be heard, make any of the orders set out in subrule (5).

(8) No party may refuse to accept service of any process or delivery of any document which does not comply with these Rules or which is out of time. Such acceptance will not prejudice any right to relief which that party may have in terms of these Rules.

G. APPLICATIONS

33. APPLICATIONS IN GENERAL

(1) Every application must be initiated by notice of motion based on form 1 of Schedule 1 to these Rules and must be supported by an affidavit or affidavits as to the facts upon which the applicant relies together with copies of all documents that may be required to substantiate the facts.

(2) Where relief is claimed against any party, or where it is necessary or proper to give a party notice of the application, the notice of motion must be addressed to the Registrar and to every such party. Otherwise, the notice of motion must be addressed to the Registrar only.

(3) Every application brought *ex parte* must be filed with the Registrar. The Registrar must thereafter inform the applicant of the time, date and venue or venues for the hearing.

(4) Any party opposing the grant of an order sought in the notice of motion—

(a) must file a notice of appearance as prescribed in rule 25(1);

(b) may within 15 days of receipt of a notice listing the participating parties as required by rule 25(3), deliver an answering affidavit together with any relevant documents; and

(c) must, if he or she intends to raise a question of law only, deliver within the time stated in subparagraph (b) a notice to that effect, setting out the question of law.

(5) The applicant may, within 10 days of receipt of any answering affidavit, deliver a replying affidavit, together with any relevant documents.

(6) The Court may, in its discretion, permit the delivery of further affidavits.

(7) Any party in a case brought by way of application may, together with the delivery of his or her answering affidavit, bring a counter-application against the applicant. The provisions of these Rules with regard to applications (including all prescribed time limits) will apply *mutatis mutandis* to counter-applications.

(8) Where an application cannot properly be decided on affidavit, the Court may dismiss the application or make any other order with a view to ensuring a just and expeditious decision. Without limiting this discretion, the Court may, on such conditions as it may determine—

(a) order that oral evidence be heard on specific issues with a view to resolving any dispute of fact; and

(b) order any deponent to appear personally or grant leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness; or

(c) refer the matter to trial with appropriate directions on further procedure.

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

(10) The Court may, on application, order to be struck 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 must not grant the application unless it is satisfied that the applicant will be prejudiced in his or her case if it is not granted.

34. URGENT APPLICATIONS

(1) In urgent applications the Court may—

(a) dispense with any provision of these Rules, including those which prescribe the forms, service requirements and time limits for applications; and

(b) dispose of the matter at a time and place and in a manner and in accordance with a procedure (which must as far as practicable be in accordance with these Rules) as it considers just.

(2) The applicant must set out in his or her founding affidavit the circumstances which he or she avers render the matter urgent and the reasons why he or she cannot obtain substantial redress at a hearing in due course.

(3) The applicant may, through the Registrar—

(a) approach the President for the appointment of a presiding judge; and

(b) approach the presiding judge for directions on the form of the notice of motion, the service thereof, the time limits for delivery of answering and replying affidavits, the time, date and venue or venues for the hearing and the service or delivery of a notice of set down.

(4) No directions given by the presiding judge in terms of subrule (3) will prevent a party from—

(a) applying to the Court for an amendment of the directions or a postponement of the hearing; or

(b) disputing the urgency of the case.

(5) Subject to any directions given under subrule (3)(b) or to any order of the Court to the contrary, the further procedure for the hearing of an urgent application will be the same as for an application.

(6) Any party against whom an order is granted *ex parte* may anticipate any return day upon delivery of not less than 24 hours' notice, unless the order provides otherwise.

35. APPLICATIONS FOR REVIEW

(1) All applications to bring under review any decision or action of—

(a) an inferior court;

(b) an arbitrator;

(c) the Commission;

(d) the Minister;

(e) any tribunal or board; or

(f) any functionary,

must be brought by way of notice of motion based on form 2 of Schedule 1 to these Rules—

(i) identifying the decision or action which the Court must review; and

(ii) calling upon the person or entity whose decision or action is to be reviewed, to dispatch to the Registrar—

(aa) the record of the proceedings and all documents relevant to the decision or action sought to be reviewed; and

(bb) his or her reasons for the decision or action,

within 15 days after receipt of the notice of motion, and to notify the applicant that he or she has done so.

(2) The notice of motion must—

(a) be addressed to the Registrar and to the person or entity whose decision or action is to be reviewed and, where it is necessary or proper to give any other parties notice of the application, also to those other parties; and

(b) be supported by one or more affidavits containing the grounds for review and setting out the facts and circumstances upon which the applicant relies to have the decision or action reviewed and corrected or set aside.

(3) The Registrar must, upon terms which he or she considers appropriate to ensure its safety, make the record available for inspection—

(a) to the applicant; and

(b) to any other party.

(4) The applicant must within 20 days after the Registrar has made the record available to him—

(a) cause copies of those portions of the record as may be necessary for purposes of the review to be made;

(b) certify those copies as true copies; and

(c) deliver those copies.

The transcription and copying costs, if any, must be borne by the applicant and will be costs in the cause.

(5) The applicant may, together with delivery of copies of the record under subrule (4)—

(a) amend, add to or vary the terms of his or her notice of motion by delivery of an amended notice of motion; and

(b) supplement any supporting affidavit.

(6) Should the entity or person whose decision or action is to be reviewed, or any other party, oppose the granting of the order prayed for in the notice of motion, he or she—

(a) must file a notice of appearance as prescribed in rule 25(1);

(b) may within 15 days of receipt of—

(i) a notice listing the participating parties under rule 25(3); and

(ii) copies of the relevant portions of the record under subrule (4),

deliver an answering affidavit together with any relevant documents; and

(c) must, if he or she intends to raise a question of law only, deliver within the time limit stated in paragraph (b), a notice to that effect, setting forth the question of law.

(7) The applicant may deliver a replying affidavit or affidavits within 10 days of receipt of any answering affidavits.

(8) The Court may, in its discretion, permit the filing of further affidavits.

35A. AUTOMATIC REVIEW

(1) A magistrate making an order for eviction under the Extension of Security of Tenure Act must—

(a) allow not less than 15 days for the review process in determining the date for vacation of the land and the date on which the eviction order may be carried out, unless the urgency of the matter justifies a shorter period;

(b) forthwith transmit to the Court the record of the proceedings and his or her reasons for the order; and

(c) inform the parties to the proceedings who were present when the order was applied for or when the order was made that the record of the proceedings will be transmitted to the Court for automatic review.

(2) Before deciding a matter coming before it on automatic review, the Court may—

(a) seek further information from the magistrate;

(b) afford any party an opportunity to deliver submissions or further submissions on specific issues; or

(c) set the matter down for oral argument before the Court.

(3) After a review has been decided, the Registrar must return the record of the proceedings to the magistrate.

[R 35A ins by r 6 of GoN 594 in G. 20049.]

36. APPLICATIONS THAT LAND SHALL NOT BE RESTORED

(1) All applications under section 34 of the Restitution of Land Rights Act that land or any rights in land shall not be restored to any claimant or prospective claimant must be brought by way of notice of motion in accordance with rule 33, except where this rule provides otherwise.

(2) Before bringing the application, the applicant must submit the papers to be filed in draft form to the Commission, whereupon the relevant regional land claims commissioner may direct what steps the applicant must take to bring the application to the attention of persons who may have an interest therein.

(3) The application (in its final form) must be served—

(a) on the Commission;

(b) in accordance with any directives which the relevant regional land claims commissioner may have given under section 34(3) of the Restitution of Land Rights Act, as envisaged in subrule (2); and

(c)

(i) on every person against whom relief is claimed or to whom it is necessary or proper to give notice of the application; or

(ii) in such manner and on such persons as the Court may, upon application by the applicant with service on the regional land claims commissioner, have ordered.

(4) Every presiding judge must give priority to applications under section 34 of the Restitution of Land Rights Act in determining dates of hearing.

37. APPLICATIONS FOR INTERLOCUTORY ORDERS

(1) The Court may, on application by any party or of its own accord—

(a) make an interlocutory order in a pending case;

(b) make orders relating to any previous order which has not been fully or timeously complied with;

(c) give directions in respect of procedure or evidence; or

(d) upon good cause shown, amend or supplement any directions previously given.

(2) Formal applications for interlocutory orders in pending cases—

(a) must be brought on notice supported by affidavits if the matter so requires; and

(b) must be set down for a time and date and at a venue to be determined by the presiding judge; the party bringing the application may request the presiding judge to do that before or after filing of the notice of application.

(3) Every notice of application for an interlocutory order must—

(a) set out the relief claimed;

(b) give the time, date and venue for the hearing if it has already been determined; and

(c) be delivered not later than 15 days before the date of hearing, if that date has already been determined.

(4) Any party may deliver an answering affidavit within five days after a formal application for an interlocutory order has been received by it.

(5) The applicant may deliver a replying affidavit within five days after an answering affidavit has been received by it.

(6) If the notice of application for an interlocutory order does not contain the time, date and venue for the hearing, it must be contained in a separate notice of set down, which must be delivered after the answering and replying affidavits (if any) have been delivered, and not later than five days before the date of hearing.

H. REFERRALS

38. REFERRALS UNDER THE RESTITUTION OF LAND RIGHTS ACT

(1) When the Commission refers any matter to the Court in terms of section 14 of the Restitution of Land Rights Act, it must initiate the case by a notice of referral—

(a) in cases where an agreement on how the claim should be finalised has been signed, based on form 3 of Schedule 1 to these Rules; and

(b) in all other cases, based on form 4 of Schedule 1 to these Rules.

(2) When filing the original notice of referral, the Commission must also file a bundle which must contain at least the information and documents listed in rule 39, to the extent that it may be applicable.

(3) Every notice of referral by the Commission, together with—

(a) a copy of the Commission's report in terms of section 14(2) or (3) of the Restitution of Land Rights Act; and

(b) a list of documents contained in the bundle filed with the Registrar,

must be served by the Commission on—

(i) every person (including the claimant) against whom an order is sought or whose rights or interests may be affected by the claim;

[R 38(3)(b)(i) am by r 7(a) of GoN 594 in G. 20049.]

(ii) all government departments and officials having an interest in the matter, including the Registrar of deeds concerned, if section 97(1) of the Deeds Registries Act applies.

[R 38(3)(b)(ii) am by r 7(b) of GoN 594 in G. 20049, r 7(d) of GoN 594 in G. 20049.]

(iii) the Department of Land Affairs, at both—

(aa) the office of the Chief Director: Restitution; and

(bb) the office of the head of the provincial office concerned.

[R 38(3)(b)(iii) ins by r 7(c) of GoN 594 in G. 20049.]

…

[Proviso to rule 38(3) rep by r 7(d) of GoN 594 in G. 20049.]

(3A) It is not necessary to effect service of the notice of referral on—

(a) any person (other than the first claimant) who has signed a request for an agreement on how the claim should be finalised to be made an order of the Court, unless the Court orders otherwise; or

(b) the owner of land, where no restoration is claimed in respect of such land.

[R 38(3A) ins by r 7(e) of GoN 594 in G. 20049.]

(4) After service of the documents referred to in subrule (3) has been effected, the Commission must file a notice to that effect with the Registrar and submit proof of service.

(5) Where the parties concerned have submitted a request that an agreement on how the claim should be finalised be made an order of the Court, the Court may, after considering the matter in chambers or hearing the matter in open court (as the presiding judge may direct)—

(a) make the agreement an order of the Court; or

(b) reject the request that the agreement be made an order of the Court, in which event the Court may order that the case—

(i) revert to the Commission; or

(ii) proceed in the form of an action as described in subrule (9).

(6) The claimant before the Commission—

(a) will be deemed to have withdrawn his or her claim if he or she has not filed a notice of appearance under rule 25(1), unless the Court orders otherwise;

(b) will be the plaintiff in the case before the Court, and will have all the rights and duties of a plaintiff; and

(c) must deliver a notice listing the participating parties as required under rule 25(3).

(7) Any party on whom a notice of referral was served and who wishes to appear in the case—

(a) must file a notice of appearance as prescribed in rule 25(1) and furnish a copy thereof to the plaintiff and to the Commission; and

(b) may, within 15 days of receipt of a notice listing the participating parties under rule 25(3), deliver a response to any report or document filed by the Commission.

(8) The Commission must deliver copies of any further report made by it in terms of section 32(3)(a) of the Restitution of Land Rights Act to every party, and every party may deliver a response to it within 15 days of receipt.

(9) Unless the Court—

(a) has made an agreement on how the claim should be finalised an order of the Court under subrule (5); or

(b) has ordered that the case revert to the Commission,

the case proceeds in the form of an action. The rules relating to the preparation for and conduct of an action will apply, except that no statement of claim, plea or reply may be filed and no counter-claim is permissible, unless the Court orders otherwise.

39. INFORMATION AND DOCUMENTS TO BE SUBMITTED BY THE COMMISSION

(1) Every report by the Commission or by a regional land claims commissioner to the Court must contain at least the following information and be accompanied by a bundle containing at least the following documents, where relevant—

(a) in respect of each individual claimant, where the claimant is not a community—

(i) his or her full name;

(ii) his or her physical and postal addresses including, where available, telephone and facsimile numbers;

(iii) if he or she is represented by a legal representative, the name and address of the legal representative and also, where available, telephone and facsimile numbers;

(b) if the claimant is a community—

(i) its name;

(ii) its legal status and constitution (if any);

(iii) the physical address of its offices (if any), its postal address and, where available, its telephone and facsimile numbers;

(iv) a list of its office bearers and members, if available;

(v) if the community is represented by a legal representative, his or her name and address and, where available, telephone and facsimile numbers;

[R 39(1)(b)(v) am by r 3(a) of GoN 345 in G. 18728.]

(vi) …

[R 39(1)(b)(vi) rep by r 3(b) of GoN 345 in G. 18728.]

(c) full particulars of—

(i) the rights of which the claimant has allegedly been dispossessed;

(ii) the circumstances surrounding the alleged dispossession; and

(iii) the laws or practices under or for the purpose of furthering which the dispossession is alleged to have occurred;

(d) comments on whether the loss of the right in land on which the claim is based—

(i) constitutes a dispossession of rights in property; and

(ii) occurred under or for the purpose of furthering past racially discriminatory laws or practices;

(e) whether the claimant is the person who was dispossessed, and if not, whether and on what basis he or she is entitled to bring the claim;

(f) particulars of the land to which the case relates, which must include—

(i) a complete title description (including the title deed number) of the land concerned, where the land is held under separate title which is registered in any government registration office; or

(ii) where the land concerned is not held under separate title, a title description (including the title deed number) of the property or properties of which the land concerned forms part together with a general description sufficient to identify the land; and

(iii) the magisterial or administrative district where the land is situated;

(g) a list containing the full names and addresses of every person whose rights may be affected or who may have an interest in the claim, together with information on what steps were taken to ensure that the list is complete;

(h) all requisite agreements, certificates, reports, lists and recommendations required in terms of section 14 of the Restitution of Land Rights Act;

(i) all relevant information as contemplated in rule 5 of the rules drawn up by the Chief Land Claims Commissioner under section 16(1) of the Restitution of Land Rights Act and published in Government Notice R703 dated 12 May 1995 (as amended from time to time);

(j) any certificate of feasibility required in terms of section 15 of the Restitution of Land Rights Act;

(k) if state-owned land is involved, the name of the government department which administers the land and the attitude of that department towards the claim;

(l) information and comments on any factor which the Court has to consider under section 33 of the Restitution of Land Rights Act;

(m) sufficient particulars to enable the Court to make an order under section 35(1), (2), (3), (4) or (6) of the Restitution of Land Rights Act, if any such order is required or ought to be considered by the Court;

[R 39(1)(m) am by r 3(c) of GoN 345 in G. 18728.]

(n) details of any compensation that was paid to the claimant upon the dispossession of his or her right in land; and

(o) in the event that the persons concerned have reached agreement as to how the claim should be finalised, also—

(i) the agreement concerned;

(ii) a certificate under section 14(1)(c) of the Restitution of Land Rights Act that the regional land claims commissioner concerned is satisfied that the agreement is appropriate;

(iii) a written request signed by the parties to the agreement that the agreement be made an order of the Court;

(iv) an endorsement of the written request by the Chief Land Claims Commissioner under section 14(3) of the Restitution of Land Rights Act; and

(v) where the agreement or the request that it be made an order of the Court was signed on any party's behalf, proof that the signatory was duly authorised.

(2) Any interested person is, upon payment of the fee prescribed in Schedule 2, entitled to copies (all documents contained in the bundle.

40. REFERRALS UNDER THE LAND REFORM (LABOUR TENANTS) ACT

(1) When the Director-General refers any application or agreement to the Court in terms of section 17(6) or section 18(6) or (7) of the Land Reform (Labour Tenants) Act, he or she must initiate the case by a notice of referral based on form 5 or 6 (as the case may be) of Schedule 1 to these Rules.

[R 40(1) am by r 4(a) of GoN 758 in G. 21411.]

(2) When filing a notice of referral, the Director-General must also file a bundle which contains at least the information and documents listed in rule 41, where relevant.

(3) Every notice of referral by the Director-General, together with a list of documents contained in the bundle filed with the Registrar, must be served by the Director-General on-

(a) every person (including the applicant) against whom an order is sought or whose rights or interests may be affected; and

(b) all government departments and officials having an interest in the matter, including the Registrar of deeds concerned, if section 97(1) of the Deeds Registries Act applies.

(4) Where the parties concerned have concluded a settlement agreement for the resolution of an application as envisaged in section 18(6) of the Land Reform (Labour Tenants) Act—

[Words preceding r 40(4)(a) am by r 4(b) of GoN 758 in G. 21411.]

(a) the Court may—

(i) make an order as envisaged in the settlement agreement;

(ii) order that technical variations be made to the order envisaged in the settlement agreement, in which event the provisions of rule 42(6)(b) and (7) to (10) will apply *mutatis mutandis*;

(iii) order that possible interested persons who are not parties to the settlement agreement be furnished with a copy of the settlement agreement and be given an opportunity to comment on it, before the Court makes any order under this paragraph (a); or

(iv) make no order pursuant to the settlement agreement, in which event the Court may order that the case revert to the Director-General;

[R 40(4)(a)(iv) am by r 4(c) of GoN 758 in G. 21411.]

(b) the Court must not make any order on a settlement agreement to which section 97(1) of the Deeds Registries Act applies, unless the Registrar of Deeds has been given an opportunity to file a report.

[R 40(4)(b) subs by r 4(d) of GoN 758 in G. 21411.]

(c) …

[R 40(4)(c) am by r 4 of GoN 345 in G. 18728; rep by r 4(d) of GoN 758 in G. 21411.]

(5) In a case referred to the Court under section 17(6) or section 18(7) of the Land Reform (Labour Tenants) Act, the President or a judge nominated by him or her may take the necessary steps for the initiation of arbitration proceedings in terms of the provisions of section 19 of the Land Reform (Labour Tenants) Act and the Labour Tenancy Arbitration Rules.

[R 40(5) am by r 4(e) of GoN 758 in G. 21411.]

41. INFORMATION AND DOCUMENTS TO BE SUBMITTED BY THE DIRECTOR-GENERAL

When the Director-General refers any application or agreement to the Court as envisaged in rule 40(1), he or she must submit the following information and documents to the Court, where relevant—

[Words preceding r 41(a) am by r 5 of GoN 758 in G. 21411.]

(a) in respect of each applicant and owner—

(i) his or her full name;

(ii) his or her physical and postal addresses, including, where available, telephone and facsimile numbers; and

(iii) if he or she is represented by a legal representative, the name and address of the legal representative and also, where available, telephone and facsimile numbers;

(b) a complete title description and copies of the title deeds (if they exist) of—

(i) the land claimed; or

(ii) any property or properties of which the land claimed forms part,

where the land or property is held under a title which is registered in any government registration office;

(c) where the land claimed is not held under separate title, a description of the land sufficient to identify it;

(d) the magisterial or administrative district where the land claimed is situated;

(e) a list containing the full name and address of every person—

(i) who has any right, whether registered or not, in the land claimed; and

(ii) whose rights or interests may be affected by the application,

together with information on what steps were taken to ensure that the list is complete;

(f) copies of all notices and any other documents—

(i) referred to in sections 17 and 18 of the Land Reform (Labour Tenants) Act; or

(ii) summarising the facts and the law which the parties rely on;

(g) any joint nomination which may have been made by the persons concerned as to who should be appointed as the arbitrator in the matter; and

(h) where a settlement agreement for the resolution of any claim has been concluded, also—

(i) the settlement agreement;

(ii) where the settlement agreement was signed on any party's behalf, proof that the signatory was duly authorised to sign; and

(iii) a certificate from the Director-General indicating whether or not he or she is satisfied that the settlement is reasonable and equitable.

42. REFERRALS BY ARBITRATORS UNDER THE LAND REFORM (LABOUR TENANTS) ACT

(1) Upon receipt of a determination made by an arbitrator under the Land Reform (Labour Tenants) Act, the Registrar must—

(a) ascertain whether all parties have been furnished with a copy of the determination and with a notice informing them of their rights in relation to any appeal against, review or technical variation of the determination, in accordance with the provisions of the Labour Tenancy Arbitration Rules;

(b) to the extent that there was not full compliance with the Labour Tenancy Arbitration Rules, take the necessary steps to achieve full compliance.

(2) Each party to the arbitration proceedings must, within 15 days after receiving the determination and the notice referred to in subrule (1)(a), deliver—

(a) a notice stating that he or she accepts the determination as it stands;

(b) a notice stating that he or she accepts the determination, but requests that technical variations be made to it, the details of and reasons for which must be contained in the notice;

(c) a notice of motion under rule 35(1), if he or she intends to bring the determination under review; or

(d) a notice of appeal under rule 70(1), if he or she intends to appeal against the determination.

(3) A party that fails to deliver any notice as contemplated in subrule (2) will be deemed to have accepted the determination.

(4) If any party delivers a notice in terms of subrule (2)(c) or (d), the matter must be dealt with in terms of rule 35 or rule 70, as the case may be.

(5) The Registrar must—

(a) upon expiry of the 15 days period referred to in subrule (2), if no review proceedings or appeal have been initiated;

(b) upon the withdrawal of any review proceedings under subrule (2)(c);

(c) upon the lapsing or withdrawal of any appeal under subrule (2)(d); or

(d) at the hearing of any review proceedings or appeal,

present to the presiding judge—

(i) the determination;

(ii) any record which might have been kept of the proceedings;

(iii) any exhibits; and

(iv) any notices submitted in terms of subrule (2)(a) or (b),

to the extent that such documents are not already before the Court.

(6) The Court may, upon receipt of the documents, and after the hearing of any review proceedings or appeal—

(a) make the determination an order of the Court, as it stands:

(b) order that technical variations be made to the determination which the Court considers appropriate (which variations must be specified in the order), unless reasons to the contrary are given by any party by not later than a date to be determined by the Court; or

(c) if it concludes that there has been an irregularity in the proceedings before the arbitrator which cannot be remedied by a technical variation—

(i) refer the case back to the arbitrator with directions regarding the rehearing of the matter which it considers appropriate;

(ii) set aside the proceedings before the arbitrator and appoint a new arbitrator to hear the case afresh in accordance with its directions; or

(iii) set aside the proceedings before the arbitrator and order that the case be reheard by the Court in accordance with its directions; and

(d) make any order which it considers just in respect of costs.

(7) Where section 97(1) of the Deeds Registries Act applies, no order must be made under subrule (6) before a copy of the arbitrator's award and / or the contents of a proposed Court order have been furnished to the Registrar of deeds concerned for comment.

(8) The Registrar must furnish the parties to the arbitration proceedings with copies of any order as contemplated in subrule (6)(b), within sufficient time to allow them to deliver comments on the technical variations contained in the order. The comments must be in writing. Any facts upon which the party relies must be set out in one or more affidavits. The comments and supporting documents (if any) must be delivered by no later than noon on the day preceding the return day fixed by the Court under subrule (6)(b).

(9) Unless the presiding judge orders otherwise, the matter will be dealt with in chambers on the return day and no party is entitled to be present or to present further argument on the return day.

(10) On the return day the presiding judge may—

(a) confirm the order made in terms of subrule (6)(b) with the technical variations specified in it; or

(b) discharge the order made in terms of of subrule (6)(b), and

(i) confirm the determination of the arbitrator without any variations; or

(ii) make a new order with the technical variations which the presiding judge considers appropriate, taking into account the facts, if any, and comments submitted in terms of subrule (8).

43. REFERRALS OF EVICTION CASES TO ARBITRATION

(1) As soon as a judge decides to refer an eviction case to arbitration under section 33(3) of the Land Reform (Labour Tenants) Act—

(a) he or she must appoint an arbitrator; and

(b) the Registrar must inform the parties by sending them a notice based on form 7 of Schedule 1 to these Rules.

(2) A judge must refer an eviction case to arbitration only after a reply to a plea or a replying affidavit has been delivered, or the time for delivery has passed.

(3) At or as soon as possible after the arbitration planning meeting referred to in rule 5 of the Labour Tenancy Arbitration Rules has taken place, the judge must—

(a) set a time, date and venue for the arbitration hearing; and

(b) give directions on the procedure which the arbitrator and the parties must follow from then on,

and the Registrar must notify the parties thereof.

I. ACTIONS

44. ACTIONS IN GENERAL

(1) Every action must be initiated by way of notice of action, based on form 8 in Schedule 1. A notice of action must have attached to it a statement of claim and copies of all supporting documents.

(2) In every statement of claim—

(a) the plaintiff must set forth truly and concisely his or her name, address and identity or registration number, the capacity in which the plaintiff brings the action, the nature of the claim, the facts on which the plaintiff relies, the conclusions of law which the plaintiff deduces from the facts, and the relief claimed;

(b) where the plaintiff seeks relief in respect of separate claims founded upon separate sets of facts, the claims and facts must be separately stated; and

(c) where compensation is claimed, or the amount thereof has to be determined, the plaintiff must set forth sufficient particulars to show how the amount has been arrived at.

(3) A party opposing the relief claimed in the action—

(a) must file a notice of appearance as described in rule 25(1);

(b) may, within 15 days after receipt of a notice listing the participating parties under rule 25(3), deliver a plea wherein he or she must—

(i) admit or deny, or confess and avoid all allegations contained in the statement of claim, and clearly and concisely state all the facts on which he or she relies and the conclusions of law which he or she deduces from the facts;

(ii) specifically deal with each averment of fact contained in the statement of claim; and

(iii) set out sufficient particulars to show how he or she determines the amount of any compensation which has to be determined in the case.

(4) Each averment of fact specifically denied in a plea is deemed to be admitted.

(5) Any plaintiff may, within 10 days of receipt of a plea, deliver a reply to that plea. No reply which would be a mere joinder of issue or a bare denial of the allegations contained in the plea is necessary. A plaintiff who fails to deliver a reply to a plea is deemed to have denied all allegations of fact contained in the plea which are contradictory to the allegations contained in the statement of claim.

(6) Any party in an action may, together with the delivery of his or her plea, bring a counter-claim against the plaintiff. The rules relating to a plea and a reply and the periods prescribed for the delivery of a plea and a reply apply *mutatis mutandis* in respect of a counter-claim.

45. FURTHER PARTICULARS

(1) Any party in an action may—

(a) with leave of the Court at any time; and

(b) without leave of the Court, only once and after a reply has been delivered or the time for doing so has expired,

deliver a request to any other party for further particulars which are necessary to enable him or her to prepare for the hearing.

(2) The request under subrule (1) may, among other matters, require—

(a) details of the date of purchase, purchase price, size and title description (where available) of every property transaction to be used as a comparable transaction in the case; and

(b) in the Form of an abridged resume, the basis upon which any compensation claimed or offered in the case is calculated.

(3) Any party to whom a request under subrule (1) was delivered must respond to it within 15 days.

46. DISCOVERY OF DOCUMENTS

(1) Any party may, with leave of the Court and upon terms laid down by it, require any other party to make discovery on oath, within 15 days of receipt of a notice requiring him or her to do so, of all documents and tape recordings which—

(a) are or were in his or her possession or under his or her control; and

(b) are relevant to any of the issues in the case, or to those issues which the Court may have specified, as the case may be.

(2) Every discovery affidavit and the schedules to it must be based on Form 13 of Schedule 1 to these Rules.

(3) Statements of witnesses taken for purposes of the case, communications between attorney and client, attorney and correspondent and attorney and advocate, and documents delivered in the case must be omitted from the schedules to the discovery affidavit.

(4) Should the party making discovery have a valid objection to producing any of the documents or tape recordings specified in the schedules, those documents or tape recordings must be specified separately and the grounds upon which the objection is based must be stated.

(5) If any party believes that there are documents or tape recordings in the possession of the party making discovery which have not been disclosed and which may be relevant to any issue in respect of which discovery was made, the Former may give notice to the latter requiring him or her to make them available for inspection or to state on oath within 10 days that they are not in his or her possession, in which event he or she must state their whereabouts, if known.

(6) Where a notice requiring discovery has been furnished to a party, no document or tape recording which should have been discovered but was not discovered may be used in the hearing of the case by the party that failed to discover that document or tape recording. Any other party will be entitled to use such document or tape recording.

(7) Notwithstanding the provisions of subrule (6), the Court may grant permission to a party that has failed to discover a document or tape recording to use it on conditions relating to adjournment and costs as it considers just.

(8) A party that has made discovery—

(a) must allow every other party to inspect all discovered documents and tape recordings and to make copies thereof; and

(b) may, on notice from any other party, be required to produce, at the hearing of the case, any discovered document or tape recording as well as any other document or tape recording in his or her possession or under his or her control which may be relevant to the case,

excluding documents in respect of which objection is made under subrule (4), u objection is overruled by the Court.

(9) Any party may apply to the Court—

(a) for an order that a party that was required to make discovery under subrule (1), further discovery if the prior discovery is insufficient or incomplete; or

(b) for the adjudication of an objection to the production of any document or tape record.

47. USE OF DOCUMENTS, PLANS, DIAGRAMS, PHOTOGRAPHS OR MODELS

(1) No party may use any document at the hearing of any action unless—

(a) he or she has at least five days before the date of the hearing, delivered a notice to other parties that he or she intends to do so, together with a copy of such document;

(b) agreement has been reached at a conference that the document may be used;

(c) the document has been discovered by the party intending to use the document; or

(d) the Court, on conditions it may determine, permits the document to be used,

nothing in this subrule relieves a party of the burden of proving any document which he or she wishes to use.

(2) No party may, except with leave of the Court, hand in any plan, diagram, photograph or model as an exhibit unless he or she has, at least 15 days before the hearing, delivered a notice that he or she intends to do so. The notice must—

(a) be accompanied by a copy of the plan, diagram or photograph, and a tender of the model for inspection; and

(b) include a request to every party to admit the exhibit within 10 days of receipt of the notice.

(3) If all parties who received a notice under subrule (2) fail to respond within the specified time, the plan, diagram, photograph or model may be accepted as evidence by the mere submission thereof without further proof, unless the Court orders otherwise. Should any party, within the specified time, deliver a

notice that he or she refuses to admit it, then the plan, diagram, photograph or model must be proved in the ordinary manner. A party that refuses to admit may be ordered to pay the costs of proof.

48. PROCURING EVIDENCE

(1) Any party that requires a person to give evidence at the hearing of a case where oral evidence is receivable, may sue out from the office of the Registrar one or more subpoenas for service by the sheriff. Each subpoena may contain the names of not more than four persons, and must be based on form 14 in Schedule 1.

(2) If any person has in his or her possession or control any document, tape recording or thing which the party requiring his or her attendance wants to be produced in evidence, the subpoena must specify such document, tape recording or thing and require him or her—

(a) to hand it over as soon as possible to the Registrar or to the secretary of the presiding judge; and

(b) to produce it at the hearing.

After the document, tape recording or thing has been handed over, the parties may inspect it and make copies or transcriptions thereof. Thereafter, the person is entitled to its return, subject to his or her obligation to produce it at the hearing.

49. EXPERT EVIDENCE

(1) No witness may give opinion evidence as an expert at the hearing of any action, unless—

(a) the party calling that witness has, not later than 15 days before the hearing, delivered a summary of his or her opinions and the reasons therefor; or

(b) the Court orders otherwise.

(2) The Court may, after giving all parties an opportunity to be heard thereon, limit the number of expert witnesses who may be called. No party may, without leave of the Court, call expert witnesses in excess of that limit.

(3) The presiding judge may direct expert witnesses employed by the parties to meet for a discussion of their evidence, and to prepare and sign a minute of their discussions, which must set forth—

(a) those facts, opinions and conclusions on which the expert witnesses agree;

(b) those facts, opinions and conclusions on which the expert witnesses do not agree; and

(c) the reasons for any disagreement,

the presiding judge may direct how and by whom the minute must be prepared, and who may be present at that meeting.

50. ADDUCING EVIDENCE AT A HEARING

(1) The obligation to adduce evidence first at the hearing of an action rests upon the plaintiff, unit the Court determines otherwise.

(2) The witnesses at the hearing of an action must give oral evidence. The Court may, for sufficient reason, order that evidence may be adduced on affidavit, on terms and conditions which it considers just: Provided that where it appears to the Court that any party reasonably requires the attendance of a witness for cross-examination, and that witness can be produced, his or her evidence must not be adduced on affidavit.

(3) Any witness who is not a party in a case—

(a) may not be in the courtroom until after he or she has given evidence; and

(b) must remain in the vicinity of the courtroom while he or she is not giving evidence, until he or she is excused by the Court,

unless the Court orders otherwise.

(4) Subject to subrule (5), after a party has adduced evidence, all other parties have the right to adduce rebutting evidence on any issue in regard to which the onus rests on the first-mentioned party.

(5) A party may not, without leave of the Court, adduce rebutting evidence on any issue contemplated in subrule (4) when he or she has already adduced evidence thereon, before he or she closes his or her case.

(6) Every witness called by a party may be cross-examined by all other parties, and re-examined by the party that called the witness. A witness called by the Court may be cross-examined by the parties.

(7) Where a party is represented, every witness may be examined, cross-examined and re-examined, as the case may be, by only one legal representative of that party, although not necessarily the same legal representative.

(8) The Court may refuse to allow any evidence or cross-examination which, in the opinion of the Court, is irrelevant, argumentative, unnecessary, repetitive, vexatious or not conducive to a decision on the issues in the case.

(9) All oral evidence must be recorded.

51. INTERPRETATION OF EVIDENCE

(1) Where evidence or argument in an action is given in a language with which—

(a) any member of the Court;

(b) the legal representative of any party; or

(c) any party, if he or she is unrepresented,

is not sufficiently conversant, the evidence or argument must be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his or her ability.

(2) Every party that intends to present evidence or argument which he or she knows or ought to foresee will require interpretation, must arrange with the Registrar at least five days in advance to have an interpreter available. If the Registrar cannot make the arrangements, the party concerned must do so.

(3) 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 the person after hearing evidence or otherwise.

(4) Where the services of an interpreter are used in any action, the costs (if any) of the interpretation will, unless the Court orders otherwise, be costs in the cause: Provided that where the interpretation of evidence or argument given in one of the official languages of the Republic is required—

(a) by a party, the costs (if any) will be payable by that party; or

(b) by the Court, the costs will be payable by the state.

52. SITE INSPECTIONS

(1) The Court may, subject to applicable law, enter and inspect—

(a) any land which is the subject of the case;

(b) any alternative state-owned land which might be awarded to the plaintiff; and

(c) any other land which is the subject of an alleged comparable transaction to which the attention of the Court has been drawn.

(2) All parties are entitled to be present and to be represented at site inspections.

(3) Nobody except parties may, without leave of the presiding judge, be present at any site inspection.

53. PRESENTING ARGUMENT TO THE COURT

(1) The plaintiff may, before adducing evidence, make an opening statement to Court.

(2) Any other party may, before leading evidence, make an explanatory statement to the Court.

(3) The plaintiff may, after all evidence in the action has been given, address oral argument to the Court, after which every other party may do the same and the plaintiff may reply to anything arising therefrom. Oral argument must be succinct and relevant to the issues before the Court.

(4) No argument may rely on facts not substantiated by evidence before the Court, except facts of which the Court is, by Jaw, entitled to take judicial notice.

53A. DIRECT ACCESS TO THE COURT

(1) A claimant who wishes to lodge a claim directly with the Court in terms of section 388 of the Restitution of Land Rights Act must do so in accordance with this rule.

(2) A claimant must initiate the case by—

(a) a notice of motion in terms of rule 33; or

(b) a notice of action in terms of rule 44, depending on whether or not the claimant reasonably anticipates any dispute of fact.

(3) The supporting affidavit or statement of claim must contain or have annexed thereto—

(a) In the case of—

(i) an application, the evidence; or

(ii) an action, the averments necessary to make out a claim;

(b) if the claimant is a community, its—

(i) registration number;

(ii) constitution; and

(iii) a list of its office bearers and members, if any;

(c) particulars of the land to which the case relates, which must include—

(i) a complete title description (including the title deed number) of the land concerned, if the land is held under separate title registered in any government registration office; or

(ii) if the land is not held under separate title, a title description (including the title deed number) of the property or properties of which the land concerned forms part, together with a general description sufficient to identify the land;

(iii) a topographical or compilation map indicating the location of the land; and

(iv) the magisterial or administrative district in which the land is situated;

(d) a list containing the full names and addresses of every person whose rights may be affected or who may have an interest in the claim, including—

(i) any other person with an existing or potential claim to the land being claimed; and

(ii) the steps that were taken to ensure that the list is complete;

(e) evidence or averments on any factor which the Court has to consider under section 35 of the Restitution of Land Rights Act;

(f) sufficient particulars to enable the Court to make orders under section 35(1), (2), (3), (4) or (6) of the Restitution of Land Rights Act, if any such orders are required or ought to be considered by the Court;

(g) details of any compensation or compensatory land received by the claimant on the dispossession of his or her right in the land;

(h) details of the relief claimed; and

(i) in the event of the persons concerned having reached an agreement as to how the claim should be finalised—

(i) the agreement; and

(ii) where the agreement was signed on any party's behalf, proof that the signatory was duly authorised thereto.

(4) A copy of the notice of motion or notice of action and all annexures thereto must be served on—

(a) the regional land claims commissioner;

(b) the Director-General; and

(c) all other persons on whom service is required in terms of the law or these Rules.

(5) If the Director-General or the regional land claims commissioner—

(a) wishes to file a report in terms of section 38C of the Restitution of Land Rights Act, he or she must do so not later than 30 days after—

(i) the delivery of a replying affidavit or reply; or

(ii) the last day for filing such replying affidavit or reply, whichever is the earlier;

(b) is ordered by the Court to file a report in terms of section 38C, he or she must do so in accordance with the Court's directions.

(6) No application or action under this rule may be set down for hearing before the time period referred to in subrule (5)(a) has expired.

(7) If the Court makes an order in terms of section 388(4), the regional land claims commissioner must ensure that the documents in respect of each claim are separately paginated, indexed and filed under cover of a filing notice in terms of rule 18.

[R 53A ins by r 5 of GoN 345 in G. 18728.]

J. HEARINGS

54. HEARING IN CHAMBERS

The presiding judge may decide a matter in chambers in the absence of the parties—

(a) which is unopposed;

(b) where the participating parties consent thereto;

(c) in cases in which any law or these Rules so provide; or

(d) after hearing the participating parties by conference telephone call,

in cases where the presiding judge considers such procedure appropriate.

55. DATE OF HEARING

(1) The presiding judge will, at the request of any party, and may, of his or her own accord, determine a date, time and venue or venues for the hearing of a case, if he or she is of the opinion that the case is sufficiently advanced to make the determination of a hearing date appropriate.

(2) In deciding whether a case is sufficiently advanced to make the determination of a hearing date appropriate, the presiding judge may assume that any party that is under bar in respect of the delivery of an answering affidavit, response or plea, will not be delivering such document.

(3) The Registrar must send a notice of the time, date and venue or venues determined by the presiding judge for the hearing of a case to all parties, except those present at any conference during which the determination was made.

(4) A notice of set-down containing the time, date and venue or venues of any hearing, must be delivered by the applicant or plaintiff within 10 days of being informed (at a conference or by the Registrar) of the date.

(5) No case may be postponed after a date of hearing has been allocated, except with leave of the Court.

(6) It is the duty of the applicant or plaintiff to inform the Registrar immediately after a settlement has been reached or a case has been withdrawn.

56. COLLATION AND INDEX OF DOCUMENTS

(1) The applicant or plaintiff must not later than five days before the hearing of any case—

(a) collate, number and firmly secure in a bundle, all pages of all documents filed in the case;

(b) prepare sufficient additional bundles of documents if the case is to be heard by more than one judge or if assessors will be assisting the Court; and

(c) prepare and deliver a complete index.

(2) Formal notices and other documents which are not relevant to the matters at issue must not be included in the bundle or in the index. Those notices and documents must, however, remain in the Court file.

57. PRIOR ADJUDICATION UPON ISSUES OF LAW OR FACT

(1) Should the Court, upon application by any party or of its own accord, be of the opinion that there is an issue of law or fact in a case which may conveniently be decided—

(a) before further documents are delivered in the case;

(b) before evidence is led in an action; or

(c) separately from some other issue,

the Court may order a separate hearing of that issue, and grant any extensions of time periods prescribed in the rules which may be desirable because of the separate hearing.

(2) When the Court decides the issue, it may make an order thereon and if the order does not dispose of the case, the Court—

(a) may allow any party in application proceedings to amend any notice or to file further affidavits; or

(b) may allow any party in an action to amend any notice, statement of claim, plea, reply or further particulars; and

(c) must determine how any remaining issues will be dealt with.

(3) Should the issue be a question of law and should the parties agree upon the facts, the facts may be admitted and recorded at the hearing and the Court may make an order without taking evidence.

58. HEARING WHERE A PARTY IS IN DEFAULT

[Rule heading am by r 8(a) of GoN 594 in G. 20049.]

(1) Should the applicant or plaintiff appear at the commencement of a hearing and any other party fail to appear, the Court may continue with the hearing and make any order which it considers just in the absence of that party.

(2) Should the applicant or plaintiff fail to appear at the commencement of a hearing, the Court may dismiss the case or make any other order which it considers just.

(3) If a party has failed to deliver a notice of appearance in terms of rule 25(1), application for the matter to be heard may be made in terms of rule 55, without notice to that party.

[R 58(3) ins by r 8(b) of GoN 594 in G. 20049.]

(4) If a party—

(a) is barred from delivering an answering affidavit, response or plea; or

(b) is no longer entitled to the rights given to a participating party in terms of rule 26(2), the matter may be set down for hearing on at least five days' written notice to that party.

[R 58(4) ins by r 8(b) of GoN 594 in G. 20049.]

(5) If any party applies for default judgment, he or she must present the evidence necessary to support the judgment.

[R 58(5) ins by r 8(b) of GoN 594 in G. 20049.]

(6) A party may apply to the Court to rescind or vary any judgment or order granted in his or her absence, provided the application is filed within 10 days after he or she became aware of the judgment or order.

[R 58(6) ins by r 8(b) of GoN 594 in G. 20049.]

(7) An application in terms of subrule (6) may be granted only if the applicant shows good cause for such rescission or variation.

[R 58(7) ins by r 8(b) of GoN 594 in G. 20049.]

59. HEADS OF ARGUMENT

(1) The Court may direct the parties, or any of them, to furnish heads of argument in a case.

(2) Any direction under subrule (1)—

(a) must stipulate when and by whom heads of argument must be delivered;

(b) must indicate specific issues on which argument is required; and

(c) must be brought to the attention of the parties concerned at a conference or by the Registrar.

(3) The heads of argument must include a list of the authorities to be quoted in support of each head.

K. ORDERS

60. ORDERS IN GENERAL

(1) Every order of the Court must be in writing or be recorded.

(2) An order need not be pronounced in open Court when it is inconvenient to do so. The Registrar must forthwith inform all parties by written notice sent to their service addresses of any order which was not made in open Court.

61. ORDERS FOR COSTS

(1) The Court may make orders in relation to costs which it considers just, and it may, in exercising that discretion—

(a) elect not to award costs against an unsuccessful party—

(i) who has put a case or made submissions to the Court in good faith in order to protect or advance his or her legitimate interest; or

(ii) for any other sufficient reason;

(b) award costs on the scale of party and party or attorney and client;

(c) award costs against any legal representative or office bearer of a party *de bonis propriis*; and

(d) penalise, in the award of costs, any party—

(i) who has unnecessarily protracted the case by calling unnecessary witnesses or by handing in unnecessary documents or by excessively long examination or cross-examination of witnesses or by unnecessarily labouring any point;

(ii) who or whose legal representative has failed to attend a conference, unless that party or legal representative has given a good reason for his or her failure;

(iii) who failed to comply, timeously or at all, with the provisions of these Rules;

(iv) who failed to a material degree to promote the expeditious, economical and effective disposal of the case;

(v) who failed to deliver heads of argument timeously or at all after being directed to do so under rule 59(1); or

(vi) who or whose legal representative has been guilty of any objectionable or unprofessional conduct.

(2) If the Court makes or has made an order in terms of which a party—

(a) must pay compensation to another party; and

(b) is entitled to the payment of costs by that other party,

it may order that the costs be set off against the compensation. In this event, the compensation (or any balance thereof) only becomes payable at a time or times set out in the Court order.

62. ORDERS ON SETTLEMENT

(1) The Court may, on application by any party to a settlement—

(a) note the settlement;

(b) make the deed of settlement, or any portion thereof, an order of the Court;

(c) give an order pursuant to the settlement;

(d) if the settlement agreement was cancelled, give an order confirming the cancellation and directions for the continuation of the case or the commencement of a fresh hearing; or

(e) dismiss the application; and

(f) make an order on the costs of the application.

(2) Any application in terms of subrule (1) must be on notice, unless the application is made in Court or during a conference where the parties concerned are present or represented, or where a written waiver of this right is submitted (which waiver may be contained in the deed of settlement).

63. WAIVER OF ORDERS

(1) Any party in whose favour an order of the Court has been made may waive the order either in whole or in part by delivering a notice to that effect. Where there has been a waiver in part only, the remaining part of the order stands.

(2) The provisions of rule 27(2) and (3) relating to costs apply *mutatis mutandis* to a waiver under this rule, unless the Court orders otherwise or the parties agree otherwise.

64. VARIATION AND RESCISSION OF ORDERS

(1) Subject to section 35(11) of the Restitution of Land Rights Act, the Court may suspend, rescind or vary, of its own accord or upon the application of any party, any order, ruling or minutes of a conference which contains an ambiguity or a patent error or omission, in order to clarify the ambiguity or to rectify the patent error or omission.

(2) Any party seeking the rescission or variation of an order in terms of section 35(11) or (12) of the Restitution of Land Rights Act or in terms of subrule (1) may do so only upon—

(a) application delivered within 10 days from the date upon which he or she became aware of the order; and

(b) good cause shown for the rescission or variation.

(3) Any party applying under this rule must deliver notice of his or her application to all parties whose interests may be affected by the rescission or variation sought.

65. SUSPENSION OF ORDERS

(1) Subject to subrule (2), where—

(a) notice of an application has been delivered for leave to appeal against an order of the Court, either to the Court or to any other court having jurisdiction to hear the application;

(b) an appeal against an order of the Court has been noted after leave to appeal has been obtained; or

(c) an application has been made to correct, vary or amend an order of the Court,

the operation and execution of the order in question is suspended pending the determination of the application or appeal.

(2) The Court may, on application by any party, order that the suspension referred to in subrule (1) will not come into effect or is lifted.

(3) The Court may, upon application by any party or of its own accord, suspend any order of the Court for a given period or until the happening of a particular event.

L. EXECUTION

66. TAXATION OF COSTS

(1) Costs awarded in favour of any party must be taxed at the tariff applicable from time to time in the Supreme Court, subject to any deviations ordered by the Court.

(2) The tariff of fees and claims for deputy sheriffs in force from time to time in the Supreme Court under the Uniform Rules and relating to the service and execution of process, and the provisions relating to the taxation thereof, apply *mutatis mutandis* to the service and execution of process of the Court.

(3) The Registrar must tax bills of costs in accordance with the provisions of these Rules or, where these Rules are silent, in accordance with the provisions of the Uniform Rules.

(4) Any costs awarded include the qualifying fees of expert witnesses who testified and the fees of referees, unless the Court orders otherwise. Such fees are subject to taxation by the Registrar.

(5) Any party may apply to the presiding judge for review of any costs or expenses awarded or refused by the Registrar in taxing a bill of costs. The application must be made *mutatis mutandis* in accordance with the procedures which apply to applications for a review of taxation by a taxing master of the Supreme Court.

67. EXECUTION OF ORDERS

Rules 45 and 46 of the Uniform Rules and the forms prescribed under those rules apply *mutatis mutandis* to the execution of any order of the Court.

68. SUPERANNUATION

(1) After three years from the date on which an order was made, no writ of execution may be issued pursuant thereto unless the debtor consents to the issue of the writ or unless the order is revived by the Court upon application on notice to the debtor.

(2) Writs of execution once issued remain in force, and may, subject to prescription in terms of any law, be executed at any time without being renewed.

M. APPEALS

69. APPEALS TO THE SUPREME COURT OF APPEAL AND CONSTITUTIONAL COURT

[Rule heading am by r 6 of GoN 758 in G. 21411.]

(1) A party that wishes to appeal against an order of the Court must apply to the Court for leave to appeal—

(a) orally at the time when the order is made by the Court, in which event that party must at the same time deal with the matters referred to in subrule (2); or

(b) by notice of application for leave to appeal delivered within 15 days—

(i) after the order was made; or

(ii) after full reasons for the order were given, if the reasons were given on a later date.

(2) The notice referred to in subrule (1) (b) must specify—

(a) the findings of fact and law appealed against;

(b) whether the whole or part only of the order is appealed against, and if part only, which part;

(c) the grounds on which leave to appeal is sought; and

(d) the court to which leave to appeal is sought.

(3) The application referred to in subrule (1)(b) must be heard—

(a) by the judge or judges who were members of the Court at the hearing, or if the judge is or judges are not available, by a judge or judges appointed by the President for that purpose; and

(b) on a date set by the judge or judges who will be hearing the application.

The Registrar will inform the parties of the date.

(4) The Court may direct that reasons for granting or refusing leave to appeal will only be given on request by any of the parties. A request for reasons must be filed within 10 days after leave to appeal was granted or refused.

70. APPEALS AGAINST DETERMINATIONS BY ARBITRATORS

(1) A notice of appeal against a determination of an arbitrator must—

(a) be delivered by the party wishing to appeal within 15 days after that party was furnished with a copy of the determination;

(b) state whether the whole or part only of the determination is appealed against, and if part only, what part;

(c) set out the grounds of appeal, specifying the findings of fact and law appealed against; and

(d) contain a service address for delivery of further documents in the case.

(2) Any party wishing to cross-appeal must do so by delivering a notice of cross-appeal within 10 days after delivery of the notice of appeal. The notice must comply with subrule (1).

(3) Any party wishing to oppose an appeal or cross-appeal must deliver a notice of appearance within 10 days of receipt of the notice of appeal or cross-appeal.

(4) In the event of an appeal or cross-appeal, the case will be reheard by the Court. The hearing will take the form of an action. The rules relating to the preparation for and conduct of an action shall apply, except that no statement of claim, plea or reply may be filed, unless the Court orders otherwise. The portions of the determination not appealed against will stand as an agreement between the parties as to the contents thereof.

(5) After delivery of any notices of cross-appeal, or after expiry of the period for delivery thereof, the Registrar must furnish copies of the notices of appeal and cross-appeal to the arbitrator who must, within 15 days thereafter, deliver a statement setting out—

(a) the facts found to be proved;

(b) the grounds for arriving at any finding of fact appealed against;

(c) the reasons for any finding of law appealed against; and

(d) the reasons for rejecting or admitting any evidence where such rejection or admission has been appealed against,

but only to the extent that those matters have not already been dealt with in the determination.

(6) A party may abandon the whole or part only of a determination in his or her favour by delivering a notice to that effect, stating whether he or she abandons the whole determination or part only, and if part only, which part.

(7) The appellant must, within 30 days after noting the appeal, deliver a request directed to the Registrar for the allocation of the case to a presiding judge. Failing delivery of such a request the appeal will lapse.

(8) If a cross-appeal has been noted and the appeal has lapsed, the cross-appeal will also lapse unless the cross-appellant delivers a request to the Registrar for the allocation of the case to a presiding judge within 15 days after the appeal has lapsed.

(9) The appeal will be heard at a time, on a date and at a venue or venues determined by the presiding judge. The Registrar will send a written notice of the time, date and venue or venues to all parties at their respective service addresses.

(10) A notice of set-down containing the time, date and venue or venues of the hearing must be delivered by the appellant or, if the appeal has lapsed, by the cross-appellant within 10 days of being informed of the hearing date.

(11) Notwithstanding the provisions of this rule, the President or the presiding judge may in consultation with all the parties—

(a) direct that an appeal be heard as an urgent matter;

(b) call on the parties to attend a conference; or

(c) give further directives on the conduct of the appeal which he or she considers appropriate.

(12) The appellant, or if the appeal has lapsed the cross-appellant, must, no later than 20 days before the hearing of the appeal or cross-appeal, as the case may be—

(a) in consultation with the Registrar, ensure that the record is complete, is properly indexed and paginated and that there are sufficient copies where the appeal is to be heard before more than one judge; and

(b) deliver copies of the record and of the index.

71. APPEALS FROM COURTS

(1) Any party that has appealed against a decision of a magistrates' court over which the Court enjoys appellate jurisdiction must prosecute such appeal in the Court in the same manner as a civil appeal from a magistrate's court to the Supreme Court.

(2) Any party that has appealed against a decision of a division of the Supreme Court over which the Court enjoys appellate jurisdiction must prosecute that appeal in the Court in the same manner as an appeal from a court constituted by a single judge to a full court of that division.

(3) Any function which is ordinarily performed by a Registrar or judge president of a division of the Supreme Court in relation to a civil appeal will be performed by the Registrar or the President respectively in an appeal contemplated in subrule (1).

N. PENDING CASES

72. APPLICATION OF RULES

(1) These Rules will, from the date of publication thereof in the *Gazette*, apply to all cases pending before the Court.

(2) It will not be necessary to—

(a) re-issue any process which has already been issued; or

(b) re-file or re-deliver any document which has already been filed or delivered,

in a pending case. The further conduct of the case must be according to these Rules.

73. TRANSFER OF CASES

(1) A case which is pending in another court in respect of which the Court has jurisdiction may be transferred to the Court on application made jointly by all the parties for leave to do so.

(2) The provisions of rule 72(2) will apply *mutatis mutandis* to any case transferred to the Court under this rule.

SCHEDULE 1

Form 1 Notice of motion for applications

Form 2 Notice of motion for review proceedings

Form 3 Notice of referral by the Chief Land Claims Commissioner where agreement on the finalisation of the claim has been reached

Form 4 Notice of referral by the Chief Land Claims Commissioner where no agreement on the finalisation of the claim bas been reached

Form 5 Notice of referral by the Director-General of Land Affairs where agreement on the finalisation of the claim bas been reached

[Form 5 am by r 7(a) and 7(b) of GoN 758 in G. 21411.]

Form 6 Notice of referral by the Director-General of Land Affairs where no agreement on the finalisation of the claim bas been reached

[Form 6 am by r 7(a), 7(c) and 7(d) of GoN 758 in G. 21411.]

Form 7 Notice of referral of case to arbitration

Form 8 Notice of action

Form 9 Document warning of importance of case and attached to notices by which cases are initiated

Form 10	Notice of appearance
Form 11	Notice to deliver answering affidavit / plea / response
Form 12	Notice to member / office bearer
Form 13	Discovery affidavit
Form 14	Subpoena

[Form 14 am by r 6 of GoN 345 in G. 18728.]

(Please note that a copy of any / all of the above Forms will be provided upon request. Kindly refer to our website for our contact details.)

SCHEDULE 2
TARIFF OF COURT FEES

Court fees are payable as follows:

1	in the form of revenue stamps affixed on the following documents in the amounts indicated:	
1.1	on every original document instituting an action (notice of action) or making an application (notice of motion)	R80,00
1.2	on every power of attorney filed with the registrar	R80,00
1.3	on every power of attorney to appeal against the judgment of a magistrate's court	R80,00
1.4	on every notice of appeal against the judgment of the Court to the Appellate Division or Constitutional Court	R80,00
1.5	on every notice of appeal against a determination by an arbitrator	R80,00
1.6	on every bill of costs to be taxed which is not related to an action or application already registered in the Court	R50,00
2	for the Registrar's certificate on certified copies of documents (each)	R1,00
3	for each copy of any document –	
3.1	for every 100 typed words or part thereof	R1,00
3.2	for every photocopy of an A4-size page or part thereof	R1,00

[Sch 2 am by r 9 of GoN 594 in G. 20049.]