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# High Court Rules, 1980

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# Lesotho

## High Court Act, 1978

## High Court Rules, 1980

### Legal Notice 9 of 1980

Published in Government Gazette on 31 December 1980

#### Commenced

*[This is the version of this document from 31 December 1980.]*

*[This legislation was digitised using the Laws of Lesotho Volumes I à XLVII, which were produced by the Attorney General of Lesotho, as reference. As the volumes do not include precise publication dates, the last day of the year of publication has been used as the date of publication.]*

(Prescribed by the Chief Justice under section 16 of the High Court Act 1978)

1. The attached Rules of the High Court shall come into effect three months after the date of publication thereof in the *Government Gazette*.
2. Rules of the High Court prescribed by High Commissioner's Notice No. 8 of 1941 are repealed upon coming into effect of this notice.

Chief Justice.

T. S. Cotran

Chief Justice

High Court

Maseru.

### 1. Interpretation

- (1) In these Rules and attached forms unless the contents otherwise indicates—

"**Act**" shall mean the High Court Act of 1978 (Act [No. 5 of 1978](#) with all amendments thereto).

"**action**" shall mean a proceeding commenced by summons or by writ issued in terms of Rule 7.

"**advocate**" shall mean a person admitted and enrolled as such in terms of section 6 of the Legal Practitioners' Act of 1967 (Act [No. 11 of 1967](#)).

"**attorney**" shall mean a person admitted and enrolled as such in terms of section 7 of the Legal Practitioners' Act of 1967.

"**court**" shall mean the High Court of Lesotho constituted and sitting in terms of the High Court Act of 1978.

"**Court day**" shall mean any day other than a Saturday, Sunday or Public Holiday.

"**days**" shall mean court days except that in the computation of time expressed in days prescribed by these rules and fixed by any order of court, Saturdays shall be included except those Saturdays which are public holidays. Provided that when the last day of the number of days prescribed is a non-court day or Saturday the time shall end on the next court day following [Legal Notice No. 12 of 1981](#).

"**deliver**" of any document or process referred to in these rules shall mean serving such copies on all parties and file the original with the registrar.

"**judge**" shall mean a judge of the High Court duly appointed under the High Court Act 1978 sitting otherwise than in open court.

"**Lesotho**" means the Kingdom of Lesotho.

"**party**" or any reference to a plaintiff or other litigant in these rules shall include his attorney with or without an advocate, as the context may require.

"**proceeding**" includes any action or any application instituted in terms of these rules.

"**registrar**" shall mean the Registrar appointed in terms of the High Court Act of 1978 and shall include any assistant registrar duly appointed as such.

"**sheriff**" shall mean the person duly appointed as such and shall include any deputy sheriff duly appointed and assistants to the sheriff or deputy sheriffs.

- (2) In these rules unless the context otherwise indicates:—
- (a) words having a singular meaning shall include the plural and words having a plural meaning shall include the singular.
  - (b) words in the masculine shall include the feminine meaning.

### *Sessions of the Court and vacations*

## **2. Court sessions and vacations**

- (1) Notice of the dates and times of the sessions of the High Court as determined by the Chief Justice in terms of section 11 of the Act shall be published by notice which shall be affixed to a board in a conspicuous place within the court precincts.
- (2) If the day prescribed for the commencement of a term or session is not a court day the term or session shall commence on the next court day. If the day prescribed for the ending of a term or session is not a court day the term or session shall end on the day preceding.
- (3) The periods between the said terms or sessions shall be periods of vacation during which, subject to the provisions of sub-rule (4) the ordinary business of the court shall be suspended but at least one judge shall be available on such days to perform such duties as the Chief Justice shall direct.
- (4) During and out of term one judge shall sit on such days for the discharge of such business as the Chief Justice shall direct.
- (5) If it appears convenient to the Chief Justice or to the judge before whom any proceeding is brought the court may sit at any place or at any time including during vacation.

## **3. Office hours**

Registrar's office hours

The office of the Registrar shall be open on all court days from 9.00 a.m. to 12.30 p.m. and from 2.30 p.m. to 4.00 p.m.

## **4. Service of process**

- (1) Service of any process of the court directed to the sheriff shall be effected by the sheriff in one or other of the following manners:—
  - (a) By delivering a copy of the process personally to the person to be served: Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor or curator of such minor or person under disability.

- (b) By leaving a copy of such process at the place of business or residence of the person to be served or if the guardian, tutor or curator aforesaid with the person who is apparently in charge of the premises at the time of delivery and who is apparently of the age of 16 years or older:  
  
Provided that where such place of business or residence is a building other than a hotel or boarding house or hostel, which boarding house is occupied by more than one person or family, "place of business" or "residence" means that portion of the building occupied by the person who is to be served.
- (c) By delivering a copy of the process at the place of employment of the person, guardian, tutor or curator to be served to some person apparently of the age of 16 years or older and apparently in authority over the person to be served or over the guardian, tutor or curator of such person.
- (d) Where the person to be served is a company or other corporate body service shall be effected by delivering a copy of the process, to some responsible employee thereof at the registered office or principal place of business of such company or corporate body within the court's jurisdiction. Provided that if there is no such employee willing to accept service, by affixing a copy of the process to the main door of such office or place of business or by addressing a registered copy of such process to the registered office or principal place of business of such company or corporate body;  
  
Provided further that if there is any statute or law providing for a manner of service on such company or corporate body service shall be effected in such manner as provided by the statute or law.
- (e) Where any partnership or firm is to be served by delivering a copy of the process to a partner or to the proprietor of the firm at the place of business of the partnership or firm in one of the manners set out in this rule.
- (f) Where a church or a voluntary association is to be served by delivering a copy of the process to the chairman or secretary of the committee or other managing body of such church or association in one of the manners set out in this rule.
- (g) Where a local authority or other statutory body is to be served by delivering, a copy of the process to the secretary or member of the board or committee of such body, or in any manner provided by any statute or law.
- (h) Where the Government of Lesotho or any Minister of the Government is to be served, by delivering a copy of the process to the Solicitor-General.
- (2) If two or more persons are served in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity service shall be effected upon each of them in any manner set out in the sub-rule (1) herein.
- (3) Service shall be effected as near as possible between the hours of 7.00 a.m. and 7.00 p.m.
- (4) No service of any civil summons, process, or notice or any proceeding in any civil action, other than the issue or execution of a warrant of arrest, shall be effected on a Sunday unless the court or a judge directs such service.
- (5) (a) If service is effected by the sheriff, it is his duty to explain the nature and contents of the process or documents served to the person upon whom service is effected and to state in his return that he has done so.  
  
(b) If service is effected by a person other than the sheriff it will be the duty of such person to explain the nature and contents of the documents served and he must in an affidavit state that he has done so.
- (6) If it is not possible to effect service in any manner aforesaid, the court may, upon the application of the person wishing to cause service to be effected give directions for such service. If the person on

whom service is to be effected is known or believed to be in Lesotho but whose address is unknown the application must set out such person's last known whereabouts and must set out fully what enquiries have been made to ascertain his whereabouts. If the court orders service by publication such publication may be in accordance with form 'B' of the First Schedule hereto, approved and signed by the Registrar. If the person on whom service is to be effected is not within Lesotho the provisions of Rule 5 infra shall apply.

- (7) (a) Whenever a request for service on a person in Lesotho is received from a territory recognised by Lesotho as a foreign state and is transmitted to the Registrar the Registrar shall transmit to the sheriff or deputy sheriff two copies of the process or citation to be served. If such process or citation is in any language other than English, the Registrar shall request the foreign State to furnish two copies and two translations in English. When such are furnished the Registrar shall transmit to the sheriff or his deputy two copies of the process to be served together with the copies of the English translation.
- (b) Service shall be effected by delivering to the person to be served one copy of the process or citation.
- (c) After service has been effected the sheriff or deputy sheriff shall return to the Registrar one copy of the process or citation together with proof of service. Proof of service shall be by affidavit made before a magistrate or commissioner of oaths and verified by the seal of office of the sheriff or registrar.
- (d) Particulars of charges for the costs of effecting service shall be transmitted to the Registrar who shall be transmitted to the Registrar who shall certify the correctness of such charges.
- (e) The Registrar shall transmit to the Permanent Secretary for Justice the request for service, proof of service, and particulars of charges together with a certificate in accordance with form "A" of the First Schedule hereto.
- (f) Service of any process or citation received from the Republic of South Africa, Botswana or Swaziland may be effected by an attorney practising as such in Lesotho, but all other provisions of this sub-rule shall apply.
- (g) The provisions of [Proclamation No. 2 of 1964](#) shall apply as to authentication of documents

## 5. Edictal citation

- (1) Except by leave of the court no process or any document whereby proceedings are instituted shall be served outside Lesotho.
- (2) Any person wishing to obtain such leave shall make application to the court setting out concisely the nature and extent of his claim, the grounds upon which it is based, the grounds upon which this court has jurisdiction to adjudicate on the claim and also the manner of service which the court is asked to authorise.
- (3) If there cannot be personal service the application must also set out details of the last known whereabouts of the person to be served and of the enquiries which were made to ascertain his present whereabouts.
- (4) Upon such application the court may make such order as to the manner of service as to it seems appropriate and shall further order the time upon which notice of entry of appearance is to be given or any further step to be taken by the person to be served. Where service by publication is ordered it may be in a form as may be in accordance with form "B" of the First Schedule hereto, approved and signed by the Registrar, except that the word "citation" should appear whenever the word "summons" occurs.
- (5) Where personal service can be effected on the person to be served the form of citation shall be as near as possible in accordance with form "C" of the First Schedule hereto.
- (6) In the case of the Republic of South Africa Botswana and Swaziland, personal service may be effected by an attorney practising as such in the country concerned.

- (7) In countries other than those referred to in sub-rule (6) service may be effected by any diplomatic or consular officer in the service of the Government of Lesotho serving as such in the foreign country concerned.

Service may also be effected by any official authorised by the law of the country concerned to effect service.

- (8) In all cases there must be proof to the satisfaction of the court that the person who effected service was entitled to do so.
- (9) (a) Any process of court or document to be served in a foreign country shall be accompanied by a sworn translation thereof into an official language of that country together with a certified copy of the process or document and such translation.
- (b) Any process of court or document to be served as provided by sub-rule (7) herein shall be delivered to the Registrar together with revenue stamps to the value of R10.00 fixed thereto and such sum of money the Registrar considers for the cost of service;
- provided that no revenue stamps shall be required where service is to be effected on behalf of the Government of Lesotho.
- (c) Any process of court or document delivered to the Registrar aforesaid shall, after defacement of the Revenue stamps affixed thereto, be transmitted by him, together with the translation referred to the Permanent Secretary for Foreign Affairs or to a destination indicated by the Permanent Secretary for Foreign Affairs, for service in the foreign country concerned.
- (d) Authentication of all documents shall be in accordance with the provisions of [Proclamation 2 of 1964](#).

## 6. Attachment of property or arrest of person to found or confirm jurisdiction

- (1) The court may on application grant leave for property of a peregrinus which is in Lesotho to be attached in order to give the court jurisdiction in an action which the applicant intends to bring against such peregrinus.
- (2) The applicant must satisfy the court (a) that he has a *prima facie* cause of action against the peregrinus and
- (b) that the property sought to be attached is the property of the peregrinus or that the peregrinus has some right in the property, and
- [Please note: numbering as in original.]*
- (c) that the applicant himself is an Incola of Lesotho and that the respondent is a peregrinus
- (d) The applicant may in the same application apply for leave to serve defendant by Edictal citation.
- (3) Such application shall be an *ex parte* one but if the court grants the order such order shall be served on the peregrinus within such time as the court deems fit.
- (4) The peregrinus may at any time before judgment apply to court on notice to the plaintiff to set aside the attachment on good cause shown and the court may make any order it deems fit.
- (5) If the application for attachment is granted the court may order the citation to be issued within such time as it considers fit.
- (6) If any person can show that the property attached is his property and not that of the peregrinus such person may apply to court on notice to the plaintiff to set aside the attachment and the court may make such order as it deems just.

- (7) If it is alleged by the applicant that the property of the peregrinus sought to be attached, is in the possession of a Third Party or is a debt owing by a Third Party to the peregrinus, such Third Party shall have notice of the application.

Provided that if it appears to the court to be just the Court may, if notice of the application has not been given to the Third Party, issue a rule calling upon the Third Party to show cause on a specified date, why such property or debt shall not be attached. Such rule may, at the discretion of the Judge hearing the application, operate as an interim interdict preventing such Third Party from parting with the property or from paying the debt to the peregrinus, as the case may be.

- (8) On the application of an incola of Lesotho the court may order the arrest of a peregrinus who is temporarily within the jurisdiction of the court subject to the following conditions:—
- (a) The applicant must show he has a good cause of action against the peregrinus and *inter alia* he must produce a certificate of an advocate or attorney who certifies that he has considered the question on information given and from documents produced by the applicant and that in his opinion the applicant has a good cause of action against the peregrinus.
  - (b) If the court grants the application it shall order a warrant of arrest to be addressed to the sheriff. Such warrant shall be as near as possible in accordance with form "E" of the First Schedule herein.
  - (c) The sheriff shall bring the peregrinus to court as soon as possible and if the peregrinus gives such security for the claim or for his further presence within Lesotho as may seem to the court to be adequate, the peregrinus shall be immediately released from custody.
- (9) If the court orders attachment of goods of a peregrinus it shall order a warrant to be issued which shall as near as possible be in accordance with form "D" of the First Schedule herein.

## 7. *Arrest suspectus de Fuga*

- (1) No civil process whereby any person may be arrested or held to bail in order to compel his appearance to answer any claim and to abide the judgment of the court therein shall be sued out against any person where the cause of action is less than the value of M300, exclusive of any costs which may be incurred in the recovery thereof.
- (2) In all cases where any person may be arrested or brought to bail the process shall be by writ of arrest addressed to the sheriff or his deputy and to the officer commanding the prison and signed as is required in the case of a summons and shall as near as may be, be in accordance with form "F" of the First Schedule hereto.
- (3) The writ of arrest when handed to the Registrar for signature shall be accompanied by an affidavit sworn by the plaintiff or his agent.
- (4) The affidavit shall contain a true description of the person making it, setting forth his place of residence, and a statement due to the plaintiff, the cause of action and when and where incurred, in the case of a claim for moveable property the value and description of such property must be given. The affidavit must show that the deponent has personal knowledge of the facts stated, provided, however, that if plaintiff sues as Executor or Administrator of a deceased person or as a Trustee of an insolvent estate or as a curator *bonis* or in any similar representative capacity it shall be sufficient to aver in the affidavit that the defendant is indebted as stated, as appears from the books and documents in the possession of the deponent and that the deponent verily believes that the debt is due. The affidavit in all cases shall contain an allegation that the plaintiff has no or insufficient security for his demand, specifying the nature and extent of the security, if any, and alleging that a sum or value of at least M300 remains wholly unsecured. If the claim is one for damages it must be alleged that the plaintiff has sustained damage to an amount of not less than M300.

- (5) In all cases the affidavit shall contain an allegation that the deponent believes that the defendant is about to depart, or is making preparations to depart from Lesotho and shall state fully the grounds for such belief.
- (6) The writ of arrest and affidavit shall be filed with the Registrar, and the defendant or his attorney shall be allowed at all reasonable times to peruse and to copy them without charge.
- (7) In all cases where a sum of money or a specific thing is claimed, it shall be set forth in the writ of arrest. The costs of issuing any such writ shall be endorsed thereon by the Registrar, and the sheriff shall upon any arrest made by virtue thereof, give the defendant a copy of such writ, together with copies of the affidavit aforesaid and any documents upon which the claim is founded. All such copies shall be furnished by the plaintiff.
- (8) If on arrest the defendant or anyone of his behalf gives to the sheriff adequate security by bond or obligation of the said defendant and of another person residing and having sufficient means within Lesotho that the defendant will appear according to the exigency of the said writ and will abide the judgment of the court thereon, or if the said defendant pays to the sheriff the sum of money or delivers to the sheriff the thing mentioned on the said writ together with the costs and charges endorsed thereon and a further sum of M6.00 as costs for the execution of the writ the sheriff shall permit the defendant to go free of the said writ of arrest. The bond or obligation to be given to the sheriff under this rule shall be as near as may be in accordance with Form "G" of the First Schedule hereto;

Provided that the personal bond of the defendant without a surety shall be sufficient for the purposes of this rule if accompanied by a deposit of the amount or thing claimed and costs as aforesaid, such deposit being referred to in the bond as one of the conditions thereof.

- (9) If the defendant at any time after his arrest satisfies the claim contained in the writ, including the costs and charges endorsed thereon, and the costs of execution of the writ or if he gives a bond or obligation in terms of sub-rule (8) herein, he shall be entitled to immediate release.
- (10) If a bond or obligation has been given or on behalf of the defendant in terms of sub-rule (8) the plaintiff shall proceed with his action as if there had been no arrest, and save in those cases where summons has already been issued the writ of arrest and affidavit shall stand as a combined summons and declaration in the action.
- (11) Any person arrested shall be entitled to anticipate the day of appearance and to apply to the court for his release upon giving the plaintiff (or his attorney) and to the Registrar at least 24 hours notice.
- (12) If the sheriff takes from the party arrested any bond or obligation by virtue of any writ, he shall, as soon as practicable and on request by the plaintiff or his attorney, assign to the plaintiff such bond or obligation, by an endorsement thereon made by the sheriff (or his deputy). Such assignment shall be as near as may be in accordance with Form "H" of the First Schedule hereto.
- (13) If on the return day or anticipated return day of defendant admits the plaintiff's claim, final judgment may be given against him, whereupon he shall be released and discharged from such arrest.
- (14) If the defendant has not satisfied or admitted the plaintiff's claim and has not given security as aforesaid, the plaintiff may on the return or anticipated return day, apply for confirmation of the arrest, whereupon the court, unless sufficient cause to the contrary is shown, shall confirm such arrest and order the return of the defendant to prison and shall make such further order as to it seems fit for the speedy termination of the proceedings, the writ and affidavit standing as a combined summons and declaration in such proceedings.
- (15) If in any such proceedings judgment is given against the defendant he shall be entitled to his release and discharge from such arrest, provided that such discharge shall not free him from liability under the judgment.



- (16) No writ of arrest may be issued against a person under this rule merely because the applicant has, in his favour, a judgment against the respondent which has not been satisfied.

## 8. Applications

- (1) Save where proceedings by way of petition are prescribed by any law, every application shall be brought on notice of motion supported by an affidavit setting out the facts upon which the applicant relies for relief.
- (2) When relief is claimed against any person, or where it is proper to give any person notice of such application, the notice of motion shall be addressed to both the Registrar and such person, otherwise it shall be addressed to the Registrar only.
- (3) Where application is brought by way of petition such petition shall conclude with the form of order sought and be signed by the petitioner and be verified upon oath by or on behalf of petitioner.
- (4) Every application brought *ex parte* shall be filed with the Registrar before noon on two court days preceding the day on which it is to be set down to be heard. If brought upon notice to the Registrar, such notice shall set forth the form of order sought, specifying the affidavit filed in support thereof and request the Registrar to place the matter on the roll for hearing. Such notice shall be as near as may be in accordance with Form "I" of the First Schedule hereto.
- (5) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application by him for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he desires to be heard, whereupon the Registrar shall set down such application for hearing at the same time as the *ex parte* application.
- (6) On the hearing the court may grant or dismiss either of or both such application as the case may require, or may adjourn both upon such terms as to the filing of further affidavits by either applicant or otherwise as to it seems fit.
- (7) Every application other than one brought *ex parte* shall be brought on notice of motion as near as may be in accordance with Form "J" of the First Schedule hereto and true copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.
- (8) In such notice the applicant shall appoint an address within 5 kilometres of the office of the Registrar at which he will accept notice and service of all documents in such proceedings, and shall set forth a day not being less than five days after service thereof on the respondent on or before which such respondent is required to notify the applicant in writing whether he intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than seven days after service on the said respondent of the said notice.
- (9) If the respondent does not, on or before the day stated for that purpose in such notice, notify the applicant of his intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the application is to be heard.
- (10) Any person opposing the grant of any order sought in the applicant's notice of motion shall:
  - (a) within the time stated in the said notice, give applicant notice in writing that he intends to oppose the application, and in such notice he must state an address within five kilometres of the office of the Registrar at which he will accept notice and service of all documents.
  - (b) Within fourteen days of notifying the applicant of his intention to oppose the application deliver his answering affidavit (if any), together with any other documents he wishes to include; and
  - (c) if he intends to raise any question of law without any answering affidavit, he shall deliver notice of his intention to do so, within the time aforesaid, setting forth such question.



- (11) Within seven days of the service upon him of the answering affidavit aforesaid the applicant may deliver a replying affidavit.
- (12) No further affidavit may be filed by any party unless the court in its discretion permits further affidavits to be filed.
- (13) Where no answering affidavit nor any notice referred to in sub-rule 10(c) has been delivered within the period referred to in sub-rule 10(b) the applicant may within four days of the expiry of such period apply to the registrar to allocate a date for the hearing of the application. Where an answering affidavit or notice is delivered the applicant may apply for such allocation within four days of the delivery of his replying affidavit or if no replying affidavit has been delivered within four days of the expiry of the period referred to in sub-rule 11. If the applicant fails to apply for such allocation within the appropriate period as stated aforesaid, the respondent may do so immediately upon the expiry thereof. Notice in writing of the date allocated by the Registrar shall forthwith be given by applicant or respondent, as the case may be, to the opposite party.
- (14) If in the opinion of the court the application cannot properly be decided on affidavit the court may dismiss the application or may make such order as to it seems appropriate with a view to ensuring a just and expeditious decision. In particular, but without limiting its discretion, the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear to be examined and cross-examined as a witness, or it may order that the matter be converted into a trial with appropriate directions as to pleadings or definition of issues, or otherwise as the court may deem fit.
- (15) The court hearing an application whether brought *ex parte* or otherwise may make no order thereon, save as to costs if any, but grant leave to the applicant to renew the application on the same papers supplemented by such affidavits as the case may require.
- (16) Any party to an application may bring a counterapplication or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties in such action.
- (17) The periods prescribed with regard to applications shall apply *mutatis mutandis* to counter-applications;  
  
Provided that the court may in its discretion post-pone the hearing of the application so that it be heard together with the counter-application.
- (18) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 48 hours notice.
- (19) When an application is made to court, whether *ex parte* or otherwise, in connection with the estate of any person deceased, or alleged to be a prodigal or under any legal disability mental or otherwise, a copy of such application, must, before the application is filed with the Registrar, be submitted to the Master for his consideration and report. If any person is to be suggested to the court for appointment of curator to property such suggestion shall also be submitted to the master for his consideration and report. There must be an allegation in every such application that a copy has been forwarded to the Master.
- (20) The provisions of sub-rule 19 above shall *mutatis mutandis* apply to all applications for the appointment of administrators or trustees under deeds or contracts relating to trust funds or to the administration of trusts set up by wills.
- (21) Notwithstanding anything to the contrary contained in this Rule, interlocutory and other applications incidental to pending proceedings may be brought on notice accompanied by such affidavits as may be required and set down at a time assigned by the Registrar or as directed by a judge.

- (22) (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure as the court or judge may deem fit.
  - (b) In any petition or affidavit filed in support of an urgent application, the applicant shall set forth in detail the circumstances which he avers render the application urgent and also the reasons why he claims that he could not be afforded substantial relief in an hearing in due course if the periods presented by this Rule were followed.
  - (c) Every urgent application must be accompanied by a certificate of an advocate or attorney which sets out that he has considered the matter and that he *bona fide* believes it to be a matter for urgent relief.
- (23) In every application against a Minister or other officer or servant of the Crown in his capacity as such the respective periods referred to in sub-rule (8) herein shall be not less than fourteen days after the service of notice of motion unless the court shall have specially authorised a shorter period. The same period of fourteen days shall apply to the return of a *rule nisi* after service of such rule.

## 9. Provisional sentence

- (1) Where by law any person may be summoned to answer a claim made for provisional sentence on any instrument other than a mortgage bond proceedings shall be instituted by way of a summons as near as may be in accordance with Form "K" of the First Schedule hereto, calling upon such person to pay the amount claimed or failing such payment calling upon him to appear personally or by counsel upon a day named in such summons not being less than seven days after the service upon him or such summons, to admit or deny his liability. Where the claim is based on a mortgage bond the summons shall, as near as may be, be in accordance with Form "L" of the First Schedule.
- (2) Such Summons shall be issued by the Registrar and the provisions of sub-rules (6), (7) and (8) of Rule 18 shall *mutatis mutandis* apply.
- (3) Copies of all documents upon which the claim is based shall be annexed to the summons and served with it.
- (4) The plaintiff shall set down the case for hearing before noon on the court day but one preceding the day upon which it is to be heard.
- (5) Upon the day named in the summons the defendant may appear personally or by an advocate or attorney to admit or deny his liability and he may, not later than noon of the court day but one preceding the day upon which he is called upon to appear in court, deliver an affidavit setting forth the grounds upon which he disputes liability and particularly as to whether he admits his signature to the said instrument or the signature of his agent and the authority of the agent to sign. In such case the plaintiff shall be afforded a reasonable opportunity of replying thereto. Unless the parties agree upon the period within which the plaintiff is to reply such period shall be decided by the court.
- (6) If at the hearing the defendant admits his liability or if he has previously filed with the Registrar an admission of liability signed by himself and witnessed by an attorney acting for him and not acting for the opposite party, or, if not so witnessed, verified by affidavit, the court may give final judgment against him.
- (7) The court may hear oral evidence as to the authenticity of the defendant's signature, or that of his agent, to the document upon which the claim for provisional sentence is founded or as to the authenticity of the defendant's agent, if the document has been signed by such agent.
- (8) Should the court refuse provisional sentence it may order the defendant to file a plea within a stated time and make such order as to the costs of the proceedings as to it may seem just. Thereafter the provision of these rules as to pleading and the further conduct of trial actions shall *mutatis mutandis* apply.

- (9) The plaintiff must furnish the defendant with security *de restituendo* to the satisfaction of the Registrar, against payment of the amount due under the judgment.
- (10) Any person against whom provisional sentence has been granted may not enter into the principal case unless he has satisfied the judgment for provisional sentence with taxed costs or unless the amount due has been tendered to plaintiff and plaintiff fails to furnish security in terms of sub-rule (9).
- (11) Any person wishing and entitled to enter into the principal case shall, within two months of the grant of provisional sentence or within one month after he has satisfied the judgment (whichever is the earlier date), deliver notice of his intention to do so, in which event the summons shall be deemed to be a combined summons. The defendant shall deliver his plea within 14 days after such notice. If no notice of intention to enter into the principal case is given within the times allowed as aforesaid the provisional sentence shall automatically become a final judgment and any security given by the plaintiff shall lapse.

## 10. Joinder of Parties and causes of action

- (1) Any number of persons, each of whom has a claim, whether jointly, and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiff, depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise in each action, provided further that there may be a joinder conditionally upon the claim of any other plaintiff failing.
- (2) Unless the Court otherwise directs a plaintiff may join several causes of action in the same action even where each cause is different from each other.
- (3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each action.
- (4) In any action in which any parties or any causes of action have been joined the court at the conclusion of the trial may grant such judgment in favour of such of the parties as shall be entitled to relief or may grant absolution from the instance and may make such order as to costs as it, in its discretion, think fit. Without in any way limiting the discretion of the court (a) it may order that any plaintiff who is unsuccessful shall be liable to any other party, whether plaintiff or defendant, for any costs occasioned by his joining in that action as plaintiff or (b) if judgment is given in favour of any defendant or if any defendant is absolved from the instance the court may order any plaintiff to pay such defendants' costs or it may order that any unsuccessful defendants to pay the costs of the successful defendant jointly or severally, or (c) if judgment is given in favour of any plaintiff against more than one of the defendants, the court may order that the unsuccessful defendants pay the plaintiffs' costs jointly and severally and that if one of the unsuccessful defendants pay more than his *pro rata* of the plaintiffs' costs such defendant may recover from the other unsuccessful defendants their *pro rata* share of such costs.
- (5) Where there has been any joinder of causes of action or of parties the court may, on the application of any of the parties at any time order that separate trials be held either in respect of some or all of the causes of action or in respect of some or all of the parties or may make any order as to it seems fit including any order as to costs of the application.

## 11. Consolidation of actions

- (1) Where separate actions have been instituted, the court may order, upon the application of any party thereto and after notice to all interested parties make an order consolidating such actions if it considers it convenient to do so.

- (2) If such order is made:—
- (a) the said actions shall proceed as one action; and
  - (b) the provisions of rule 10 shall *mutatis mutandis* apply with regard to the action so consolidated; and
  - (c) the court may make such order as it seems fit with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said action including any order as to costs which it seems appropriate.

## 12. Intervention of parties as plaintiffs or defendants

- (1) Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action, may on notice to all parties, at any stage in the proceedings before judgment, apply to court for leave to intervene as a plaintiff or a defendant. The court may, on such application, make any order, including any order as to costs which it thinks fit and may, if granting such order, give such directions as to further pleadings or other procedure in the action as it thinks fit.
- (2) Any party to an action whether as plaintiff or defendant may at any stage in the proceedings before judgment apply to court, on notice to all parties and to the respondent, for leave to join another person (referred to as the respondent) whether as plaintiff or defendant in the aforesaid action. The court may on such an application make any order including any order as to costs which it thinks fit and may give such directions as it thinks fit as to further procedure in the action.

## 13. Proceedings by and against partnerships, firms and associations

- (1) In this Rule;
- "Action" includes an application
- "Association" means any unincorporated body of persons other than a partnership.
- "Firm" means a business or occupation carried on by the sole proprietor thereof under a name other than his own.
- "Defendant" includes a respondent.
- "Plaintiff" includes an applicant.
- "Relevant Date" means the date of accrual of the cause of action.
- "sue" and "sued" are used in relation to actions and applications.
- "Summons" includes a notice of motion.
- (2) A partnership, a firm or an association may sue or be sued in its own name.
- (3) A plaintiff who sues a partnership need not allege the name of the partners but should he allege any name, any error of omission or inclusion shall not afford a defence to the partnership.
- (4) The previous sub-rule apply *mutatis mutandis* to a plaintiff who sues a firm.
- (5)
- (a) A plaintiff suing a firm or a partnership may include in any summons a notice calling for particulars as to the full name and residential address of the proprietor of the firm or of each partner, as the case may be, as at the relevant date.
  - (b) The defendant shall within seven days deliver a written statement containing such information.
  - (c) Concurrently with the said statement the defendant shall serve upon the persons referred to in such statement, as being the proprietor or partners, as the case may be, a notice which

shall be as near as may be, *mutatis mutandis*, in accordance with Form "M" of the First Schedule hereto. The defendant must deliver proof by affidavit of such service.

- (d) A plaintiff suing a firm or a partnership and alleging in the summons or notice of motion that a specified person was at the relevant date the proprietor or a partner, shall notify such person accordingly by delivering a notice as near as may be, *mutatis mutandis*, in accordance with Form "M" of the First Schedule aforesaid.
  - (e) Any person served with a notice in terms of paragraph (c) or (d) herein shall be deemed to be a party to the proceedings, with the rights and duties of a defendant.
  - (f) Any party to such proceedings may aver in the pleadings or affidavits that such person was at the relevant date a partner or the proprietor, or that he is estopped from denying such status.
  - (g) If any party to such proceedings disputes such status, the court may, at the hearing, decide that issue *in limine*.
  - (h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof, and after such execution, against the private assets of any person held to be a partner, or held to be estopped from denying his status as such, as if judgment had been entered against him.
- (6) The provisions of sub-rule (5) shall apply *mutatis mutandis* to a defendant sued by a partnership or by a firm.
  - (7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.
  - (8) The provisions of sub-rule (7) shall apply *mutatis mutandis* where it appears that a firm has been discontinued.
  - (9)
    - (a) A plaintiff suing an association may include in any civil summons a notice calling for a certified copy of its current constitution and a list of the names and addresses of the office-bearers and their respective offices at the relevant date.
    - (b) Such notice shall be complied with within seven days.
    - (c) Paragraphs (a) and (b) shall apply *mutatis mutandis* to a defendant sued by an association.
  - (10) Paragraphs (d) and (h) of sub-rule (5) shall apply *mutatis mutandis* when:—
    - (a) a plaintiff alleges that any member, servant, or agent of the association is liable in law for its alleged debt;
    - (b) a defendant alleges that any member, servant or agent of the plaintiff association will be responsible in law for the payment of any costs which may be awarded against the association.
  - (11) Sub-rule (7) shall apply *mutatis mutandis* in regard to the continuance of the proceedings against any member, servant or agent referred to in sub-rule (10).
  - (12) If any partnership, firm or association fails to deliver the statement requested in terms of paragraph (b) of sub-rule (5) or in terms of sub-rule (6) or of paragraph (a) of sub-rule (9) or paragraph (c) of sub-rule (9) the plaintiff or defendant, as the case may be, may apply to court for an order for the delivery of the statement or for the striking out of the defence or for the dismissal of the action whereupon the court may make such order as to it may seem fit.

#### 14. Change of parties

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

- (2) Whenever by reason of death or any change of status it becomes necessary or proper to introduce a further party in such proceedings either in addition to or in substitution for the party to whom such proceedings relate, any party to such proceedings may forthwith by notice to such further person and to every other party and to the registrar, add or substitute such further person to the proceedings, and subject to any order made under sub-rule (6) of the Rule, such proceedings shall thereupon continue in respect of the party thus added or substituted as if he had been a party from the commencement thereof. All steps validly taken before such addition or substitution shall be of full force and effect.
- (3)
  - (a) Notwithstanding anything sub-rule (1) no notice as provided thereon shall be given after the commencement of the hearing of any opposed matter unless the court hearing such matter grants leave for such notice to be given.
  - (b) The court may grant leave on such terms as to adjournment and as to costs or otherwise as to it may seem fit.
- (4) A copy of the notice given to any person to be joined or substituted as a party to the proceedings shall be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered and in trial matters by copies of all pleadings and material documents already filed on record.
- (5) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator or trustee, may by notice to all parties and to the Registrar intimate that he desires, in his capacity as such, to be substituted for the party who has died or who has become incapable of acting as a party to the proceedings. After giving such notice the executor, curator or trustee aforesaid shall be deemed for all purposes to be so substituted unless the court, on the application of any party to the proceedings, otherwise orders.
- (6)
  - (a) The court may upon notice of application delivered by any party to the proceedings, set aside or vary any addition or substitution of a party thus added or substituted in terms of sub-rules (2), (3) and (5) herein or the court may dismiss such application or confirm such addition or substitution on such terms, if any, as to delivery of any affidavits or pleadings, or as to postponement or adjournment or as to costs or otherwise as to it may seem fit.
  - (b) The application referred to in paragraph (a) of this sub-rule must be brought within 14 days of the service of the notice referred to in sub-rules (2), (3) and (5) herein.
- (7) If a Mosotho who is party to the proceeding dies and if his estate is not to be administered in terms of the Administration of Estates [Proclamation 19 of 1935](#) having regard to the provisions of section 3(b) of such Proclamation, the customary heir of the deceased shall be entitled to give the notice referred to in sub-rule (5) herein and shall be entitled to be substituted for the deceased in the proceedings referred to, unless the court otherwise orders.

## 15. Representation of parties

- (1) Any party bringing or defending any proceedings in person may at any time appoint an attorney to act on his behalf, who shall file a power of attorney and give notice of his name and address to all other parties to the proceedings.
- (2)
  - (a) Any party represented by an attorney in any proceedings may at any time, subject to the provisions of Rule 16, terminate such attorney's authority to act on his behalf, and thereafter he may act in person, or may appoint another attorney to act for him in the proceedings.
  - (b) The party acting in terms of sub paragraph (a) of this sub-rule shall forthwith give notice to the Registrar and to all other parties of the termination of his former attorney's authority, and if he has appointed another attorney to act for him, of such attorney's name and address. The attorney so appointed to act shall forthwith file with the Registrar a power of attorney authorising him so to act. If no further attorney is appointed to act for the party, such party shall in the notice of the termination of his former attorney's authority as aforesaid, also



notify the Registrar and all other parties of an address within 5 kilometres of the office of the Registrar for the service on him of all documents in such proceedings.

- (3) Upon receipt of a notice in terms of sub-rule (1) or (2) the address of the attorney or of the party, as the case may be, shall become the address of such party for the service upon him of all documents in such proceedings, but any service duly effected elsewhere before receipt of such notice shall, notwithstanding such change, for all purposes be valid.
- (4) Where an attorney acting for any party ceases so to act he shall forthwith notify the Registrar and all parties accordingly.

The notification to the Registrar shall specify the date when, the parties to whom and the manner in which the notification was sent to all parties, and shall be accompanied by a copy of the notification so sent.

Such notification shall be of the same force and effect as a notice under sub-rule (2). Provided that unless the party for whom the attorney was acting himself within 3 days notifies all other parties to the proceedings of a new address for service, it shall not, save in so far as the court otherwise orders, be necessary to serve the documents on him.

## 16. *In forma pauperis* proceedings

- (1)
  - (a) A person who desires to bring or defend proceedings *in forma pauperis*, may apply to the Registrar, who if it appears to him that he is a person such as is contemplated in paragraph (a) of sub-rule (2) shall refer him to an attorney.
  - (b) Such attorney shall thereupon enquire into such person's means and as to the merits of his cause and upon being satisfied that the matter is one in which he may properly act *in forma pauperis* he shall refer the matter to an advocate.
  - (c) If such attorney is for some reason unable to act in the matter he shall inform the Registrar who shall then refer the matter to another attorney.
- (2)
  - (a) The applicant must satisfy the attorney by affidavit that his financial position is such that, excepting household goods, wearing apparel and tools of trade he is not possessed of property to the amount of M200 and will not be able within a reasonable time to provide such sum from his earnings.
  - (b) The advocate to whom the matter is referred must be satisfied after a consideration of all the facts given to him that the applicant has a *bona fide* claim or defence, as the case may be, which claim or defence has a reasonable prospect of success, and shall give a certificate accordingly.
- (3)
  - (a) Thereafter an application to a judge in chambers shall be made by the pauper on notice or motion addressed to the Registrar supported by the above affidavit and certificate and a further affidavit setting out the nature of the proceedings and the names of all parties who may be affected by such.
  - (b) The notice of motion shall contain a prayer asking for an order giving the applicant leave to proceed as a pauper in the proceedings and for the appointment of an attorney, or, if the judge thinks fit, an attorney and an advocate to act on his behalf.
- (4) The judge after considering the matter, and if he thinks fit after an examination of the applicant on oath, may issue a rule to be served on all parties who may be interested in the proceedings to show cause on a specified date why the applicant should not be permitted to proceed *in forma pauperis*.
- (5) On the return day of the rule the judge after hearing any party opposing the confirmation of the rule may confirm the rule or may discharge it and he may or postpone the matter for further evidence to be submitted and he may make any order as to costs which to him seem fit.
- (6) Save as is provided in this Rule no attorney or advocate shall be entitled to any fees from the applicant and may not be at liberty to withdraw from the matter until the conclusion of the

proceedings without leave of the court or a judge, who may give directions as to the appointment of substitutes if he grants leave for the original attorney or advocate to withdraw.

- (7) No proceedings in which a person sues or defends *in forma pauperis* may be withdrawn, settled or compromised without the leave of the court or judge.
- (8) If upon the conclusion of the proceedings or if in a settlement approved by the court or judge costs are awarded to the litigant *in forma pauperis*, his attorney or advocate or both shall be entitled to such costs as the Taxing Master may allow including such costs incurred in bringing the application for leave to proceed *in forma pauperis*.
- (9) From the costs awarded to the litigant *in forma pauperis* the amount which would have been due to the Registrar in respect of revenue stamps shall first be deducted and paid to the Registrar.
- (10) The provisions of this Rule shall apply *mutatis mutandis* to a litigant who in the course of proceedings become unable to proceed by reason of his financial position deteriorating to the extent set out in paragraph (a) of sub-rule (2) and shall also apply to a litigant who wishes to appeal or defend an appeal in respect of any proceedings and whose financial position is as set out in the aforesaid paragraph of sub-rule (2).
11.
  - (a) Notwithstanding anything in this Rule, the Registrar may, if he thinks the applicant is a person who is likely to be eligible for legal aid in terms of the Legal Aid Act [No. 19 of 1978](#), he may, instead of referring the applicant to an attorney, refer him to the Legal Aid Counsel duly appointed in terms of that Act.
  - (b) If an application under this Rule is made to a Judge in Chambers and such Judge deems it likely that the applicant is a person who would be entitled to Legal Aid in terms of Act [19 of 1978](#), he may, notwithstanding anything in this Rule, refer the application to the above said Legal Aid Counsel and may postpone the application before him *sine die* or may make such other order as to him seems fit.
  - (c) Whenever the Chief Legal Aid Counsel appointed under Act [No. 19 of 1978](#) has undertaken the legal representation of any person in terms of such Act, it shall not be competent for such person to make any application under this Rule, and if such application has been made it shall be dismissed.

## 17. Audience in Court

- (1) The following persons are entitled to an audience in the High Court
  - (a) a litigant in person;
  - (b) an attorney;
  - (c) an advocate, only when duly instructed by an attorney.
- (2) Notwithstanding the provisions of paragraph (a) of sub-rule (1) a company or other incorporated body or any association is not entitled to an audience in the High Court except through a duly appointed attorney or an advocate duly instructed by an attorney.

## 18. Summons

- (1) Every person making a claim against any other person may, through the office of the Registrar, issue out a summons which shall be in a form as near as possible with Form "N" of the First Schedule annexed hereto.
- (2) In the summons the defendant shall be informed that he is given a specified time to enter appearance to defend and it shall be stated how he should do so.
- (3) The defendant shall be allowed not less than seven days to enter appearance if he resides within twenty kilometres from the office of the Registrar and shall be allowed one extra day for every



twenty kilometres his residence is distant from such office, provided that the maximum time to be allowed is one month, unless the court on application otherwise provides.

- (4) No summons may be issued against a judge of the High Court or of the Court of Appeal without the leave of the High Court.
- (5) The summons shall contain a concise statement of the material facts relied upon by plaintiff in support of his claim, in sufficient detail to disclose a cause of action.
- (6) The summons shall be signed by the Registrar and the plaintiff's attorney or plaintiff personally and must disclose the attorney's address or plaintiff's address which must be within, five kilometres from the office of the Registrar at which he will accept service of all documents.
- (7) The summons must contain the name of the defendant (including where possible the first name or initials), the defendant's sex and if a female, her marital status. The defendant's residence or place of business, and his occupation shall be stated and if he is sued in his representative capacity such capacity shall be stated.
- (8) The summons shall also contain the full names, sex, occupation residence and place of business of the plaintiff and if he sues in a representative capacity this shall be set out. If the plaintiff is a female her marital status shall be stated.
- (9) In every action against the Crown or any Minister or official of the Government the time for entering appearance shall not be less than one month.
- (10) Every summons shall have revenue stamps to the value of M10.00 attached to it.

## **19. Entry of appearance**

- (1) The defendant in every case which he wishes to defend shall enter appearance to defend within the time referred to in the summons by giving notice of intention to do so by entering appearance at the office of the Registrar.
- (2) A copy of such notice must be served on the plaintiff's attorney or plaintiff at the address referred to in the summons.
- (3) The defendant may enter appearance personally or through his attorney.
- (4) The defendant or his attorney must in his notice give an address (which must not be a post-box or poste restante) within five kilometres of the Registrar's office at which he will accept all documents and processes in the action.
- (5) Service on the defendant at such address shall be valid or effectual except where by order or practice of the court personal service is required.
- (6) A defendant shall not, merely by entering appearance, be deemed to have waived his right to object to the jurisdiction of the court or to any irregularity in the proceedings.

## **20. Rules relating to pleadings generally**

- (1) Every pleading shall be signed personally by the party or by an attorney or by an advocate duly instructed by such attorney. Each pleading shall have revenue stamps to the value of M10.00 attached to it.
- (2) The title of the action describing the parties thereto and the number assigned thereto by the Registrar, shall appear at the head of each pleading. Where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it may be so abbreviated.
- (3) Every pleading shall be divided into paragraphs which may include sub-paragraphs. Each paragraph shall be consecutively numbered and shall, as nearly as possible, contain a separate averment.

- (4) Every pleading shall contain a clear and concise statement of the facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.
- (5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively but shall answer issuably and to the point.
- (6) Where a party, in his pleading, relies upon a contract he shall state whether the contract was verbal or in writing, and where and when and by whom it was concluded.
- (7) A party who relies upon an implied term in a contract shall state the circumstances from which such term can be implied.

## **21. The declaration**

- (1) Within 14 days after service upon him of the entry of appearance the plaintiff shall deliver a declaration.
- (2) In the declaration the plaintiff shall set forth the nature of his claim, the conclusions of law which the plaintiff claims he is entitled to deduce from the facts therein and the prayer for the relief claimed.
- (3) In actions for divorce, judicial separation, restitution of conjugal rights and other matrimonial matters and in actions for damages, when there is no entry of appearance, the plaintiff shall file a declaration with the Registrar within a reasonable time.
- (4) Where a plaintiff who sues for restitution of conjugal rights, divorce or judicial separation has been guilty of adultery he shall state the time and place of such adultery and in both summons and declaration he must pray for condonation thereof.
- (5) A plaintiff in matrimonial proceedings who relies on constructive desertion must state the particulars thereof in his declaration.
- (6)
  - (a) A plaintiff who sues for damages must set out particulars of his claim in such a manner as will enable the defendant reasonably to assess the quantity thereof.
  - (b) Where the claim is for damages for personal injuries the plaintiff shall state in his declaration the nature and effects of the disability alleged to give rise to such damages and shall as far as is reasonably possibly state separately, what amount, if any, is claimed for:—
    - (i) medical, hospital and other similar expenses.
    - (ii) pain and suffering.
    - (iii) loss of amenities of life, (full particulars to be given).
    - (iv) disability in respect of loss of income including loss to date of declaration and future loss of income. In this respect the plaintiff's earnings before the event giving rise to the claim must be fully set out together with prospects for earnings he might still be able to recover and prospects for earnings he would have had but for the disability.
  - (c) In all cases the particulars of damages must be set out in such a manner as will enable the defendant, if he so desires, to make a reasonable tender.
- (7) The declaration must comply with the provisions of Rule 20.

## **22. Plea**

- (1) Where the defendant has entered appearance to defend he shall within 21 days of the service of the declaration upon him deliver a plea, or an application for further particulars to the declaration, or an exception to the declaration or an application to strike out portions of the declaration.

- (2) The defendant may, if he thinks fit, deliver an exception or application to strike out and at the same time deliver a plea stating that the plea should be considered only in the event of the exception or application to strike out not succeeding.
- (3) The defendant shall, in his plea, admit or deny or confess and avoid all the material facts alleged in the declaration or state which of the said facts are not admitted and to what extent. He must clearly and concisely state all material facts on which he relies.
- (4) Every allegation of fact in the declaration, which is not stated in the plea to be denied or to be not admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.
- (5)
  - (a) If by reason of any claim in reconvention, the defendant claims that on the giving of judgment on such claim, the plaintiff's claim will be extinguished wholly or in part, the defendant may, in his plea refer to the fact of such claim in reconvention and request that judgment in respect of plaintiff's claim, or such portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention.
  - (b) In such a case the defendant must, together with his plea, deliver particulars of the claim in reconvention on which he relies.
  - (c) Judgment on the claim shall either wholly or in part thereupon be postponed unless the court, on the application of any party interested, otherwise orders. The court, if no other defence is raised, may give judgment on such part of the claim as would not be extinguished, as if the defendant was in default of filing a plea in respect thereof, or may, on the application of either party, make such order as to it seems fit including an order as to costs.
- (6) The plea must comply with the provisions of Rule 20

### **23. Claim in reconvention**

- (1)
  - (a) The defendant may, together with his plea deliver a claim in reconvention.
  - (b) If not filed together with his plea, the defendant may, before pleadings are closed, except in the circumstances set out in sub-rule (5) of Rule 22, deliver a claim in reconvention.
  - (c) If not delivered before pleadings are closed, a claim in reconvention cannot be delivered unless the court grants leave on such terms as to the court seems fit.
- (2) A claim in reconvention shall be in a separate document from the plea and shall be headed "Defendant's claim in Reconvention" or "Defendant's counterclaim".
- (3) If the defendant is entitled to take action against the plaintiff and any other person whether jointly, jointly and severally, separately or in the alternative, the court may grant him leave to take such action by way of a claim in reconvention against the plaintiff and such other persons in such manner and on such terms as the court, in its discretion, may direct.
- (4) All claims in Reconvention must comply *mutatis mutandis* with the provisions of Rules 20 and 21.

### **24. Replication, plea in reconvention and further pleadings**

- (1) Within 14 days of the service upon him of a plea the plaintiff may deliver a Replication to the plea.
- (2) The plaintiff shall, when there is a claim in reconvention file a plea to such claim within 14 days of the service to him of such claim.
- (3) The mere fact that a replication is not delivered shall not mean that the allegations in the plea are admitted.
- (4) When a replication or subsequent pleading is delivered a party may thereupon join issue on the allegations in the previous pleading. To the extent to which allegations in the previous pleading

are not admitted such joinder of issue shall operate as a denial of every allegation of fact in the previous pleading.

- (5) Where there is a plea by plaintiff to a claim in reconvention the defendant may within 14 days file a replication in reconvention to such plea. The provisions of sub-rule (3) herein shall *mutatis mutandis* apply.
- (6) Pleadings subsequent to a replication if delivered shall be delivered by the parties within eight days of the previous pleading delivered by the opposite party. Such pleadings shall be destined by the names by which they are customarily known such a rejoinder, surrejoinder etc.
- (7) The replication and all subsequent pleadings whether in convention or reconvention must comply *mutatis mutandis* with the provisions of Rule 20.

## 25. Further particulars for pleading

- (1) A party may, before delivering any pleading in answer to a pleading delivered to him and for the purpose of enabling him to plead thereto or to tender an amount in settlement, deliver a notice within the time allowed for him to deliver a plea or replication or any other pleading, as the case may be calling for such further particulars as may be strictly necessary to plead, replicate, or to enable a tender to be made.
- (2) Answers to the request for such particulars shall be made in a document within fourteen days of the receipt of the request.
- (3) The request for such particulars together with the reply thereto shall form part of the pleadings. But the request alone, unless and until a reply is received shall not be considered to be a pleading.
- (4) The request for the particulars and the reply thereto shall be signed by the parties personally or by an attorney or by an advocate duly instructed by an attorney.
- (5) Both the request and the reply shall comply with sub-rule (2) of Rule 20.
- (6) If a request for particulars is not complied with, the party requesting the same may subject to the provisions of subparagraph (5) of Rule 30 apply to court for an order for or for the dismissal of the action or the striking out of the defence and on such an application the court may make such order which it seems fit to make.
- (7) At the conclusion of the trial the court may *mero motu* consider whether any further particulars requested were strictly necessary, and it may disallow all costs of and flowing from any unnecessary request or reply or both and may order either party to pay the costs thereby wasted, on an attorney and client scale or otherwise.

## 26. Barring, extension and removal of bar

- (1) Any party who fails to deliver a replication or subsequent pleading within the time stated in Rule 24 shall be automatically barred.
- (2) If any party fails to deliver any pleading, save as is stated in sub-rule (1), within the time laid down in these rules or within any extended time allowed in terms thereof or allowed by agreement between the parties, any other party may by notice served upon the party in default, require him to deliver such pleading within three days after the day the notice is served upon him.
- (3) Any party failing to deliver the pleading referred to in the notice within the time required, or within such furthering period as may be agreed upon between the parties, shall be automatically barred from delivering such pleading.
- (4) Notwithstanding anything contained in these Rules the court may, upon application by any party and on notice delivered to other parties and on good cause shown make an order extending any time prescribed by these Rules for delivering any pleading or for taking any step in connection with the proceedings.

- (5) Any such extension may be ordered by the court although the application therefor is not made until after the expiry of the time prescribed or fixed.
- (6) If there has been a barring of any party from delivering a pleading in terms of sub-rule (3) herein, the court may upon application by such party on notice given to all other parties remove such bar and allow the party applicant to deliver such pleading within the time fixed by the order.
- (7) Where an order of court is granted for an extension of time or for removal of bar, this will not prevent a subsequent court, if it thinks fit, from giving an order allowing a further time for the pleading.
- (8) On any application made in terms of sub-rules (4), (5), (6) and (7) herein, the court may refuse the application or grant it on such terms as to costs or otherwise as it may think fit.

## **27. Judgment on confession or by default**

- (1) Except in actions for divorce and other matrimonial matters and matters affecting the status or legitimacy of any person, a defendant may at any time confess in whole or in part the claim contained in the summons. Such confession shall be signed by the defendant personally and his signature shall either be witnessed by an attorney acting for him, not being the attorney acting for the plaintiff, or be verified by affidavit. The written confession so signed and witnessed or verified shall be furnished to the plaintiff.
- (2) The plaintiff may then apply to court without notice for judgment in terms of such confession.
- (3) Whenever the defendant is in default of entry of appearance or is barred from delivery of a plea, the plaintiff may set the action down for application for judgment. When the defendant is in default of entry of appearance no notice to him of the application for judgment shall be necessary but when he is barred from delivery of a plea not less than three days notice shall be given to him of the date of hearing of the application for judgment.
- (4) Where a plaintiff has been barred from delivering a declaration, the defendant may set the matter down for application of absolution from the instance. Not less than three days notice shall be given to the plaintiff of the date of hearing of such application.
- (5) Whenever the plaintiff applies for judgment against a defendant in terms of sub-rule (3) herein, the court may grant judgment without hearing evidence where the claim is for a liquidated debt or a liquidated demand. In the case of any other claim the court shall hear evidence before granting judgment, or may make such order as it seems fit.
- (6)
  - (a) Where judgment has been granted against defendant in terms of this rule or where absolution from the instance has been granted to a defendant, the defendant or plaintiff, as the case may be, may within twenty-one days after he has knowledge of such judgment apply to court, on notice to the other party, to set aside such judgment.
  - (b) The party so applying must furnish security to the satisfaction of the Registrar for the payment to the other party of the costs of the default judgment and of the application for rescission of such judgment.
  - (c) At the hearing of the application the court may refuse to set aside the judgment or may on good cause shown set it aside on such terms including any order as to costs as it thinks fit.

## **28. Summary judgment**

- (1) Where the defendant has entered appearance to defend the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only—
  - (a) on a liquid document
  - (b) for a liquidated amount in money

- (c) for delivery of specified movable property, or
- (d) for ejectment

together with any claim for interest and costs.

- (2) The plaintiff, who so applies, shall within fourteen days after the date of delivery of entry of appearance, deliver notice of such application, which notice must be accompanied by an affidavit made by the plaintiff or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any claimed and such affidavit must state—
  - (a) that in the opinion of the deponent the defendant has no *bona fide* defence to the action and
  - (b) that entry of appearance has been entered merely for the purpose of delay.

If the claim is founded on a liquid document a copy of the document must be annexed to the affidavit.

The notice of application shall state that the application will be set down for hearing on a specified date which shall be not less than seven days from the date of delivery of the notice.

- (3) Upon the hearing of the application for summary judgment, the defendant may—
  - (a) give security to the plaintiff to the satisfaction of the Registrar for any judgment including such costs which may be given; or
  - (b) satisfy the court by affidavit or, with leave of the court, by oral evidence of himself or of any other person who can swear positively to the fact, that he has a *bona fide* defence to the action.

Such affidavit shall be delivered before noon not less than two court days before the hearing of the application. Such affidavit or oral evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

- (4) No evidence may be adduced by the plaintiff other than the affidavit referred to in sub-rule (2) nor may either party cross-examine any person who gives evidence *visa voce* or by affidavit, The Court may however put to any person who gives *viva voce* evidence such questions as it considers may elucidate the matter.
- (5) If the defendant finds security as aforesaid or if he satisfied the court that he has a *bona fide* defence to the claim the court shall grant the defendant leave to defend the action and shall make such order as to further proceedings as it thinks fit.
- (6) If the defendant does not find security or satisfy the court as provided in sub-rule (3) herein, the court may enter summary judgment for the plaintiff.
- (7) If on the hearing of the application for summary judgment it appears—
  - (a) that any defendant is entitled to defend and any other defendant is not so entitled; or
  - (b) that a defendant is entitled to defend as to part of the claim but not to the whole of such claim the court may—
    - (i) give leave to defend to a defendant so entitled and give judgment against the defendant not so entitled; or
    - (ii) give leave to defend to the defendant as to part of the claim and enter judgment against him as to the balance of the claim, unless he shall have paid such balance to the plaintiff or shall have paid such balance into court or
    - (iii) make both orders mentioned in this subparagraph or
    - (iv) make any order which it deems to be just under all the circumstances of the case.

- (8) (a) If the defendant finds security or pays the amount into court or if he satisfies the court as provided in paragraph (b) of sub-rule (3) the court shall give leave to defend and the action shall proceed as if no application for summary judgment had been made, provided however that leave to defend may be given subject to such terms as to security, time for delivery of further pleadings, or otherwise as the court deems fit.
- (9) The court may at the hearing of the application make such order as to costs which it deems just. It may, if the plaintiff makes an application for summary judgment where the claim does not fall within the terms of sub-rule (1), or if the plaintiff makes such an application, which in the opinion of the court he should not have made because he well knew that the defendant relied upon contentions which would entitle him to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs and the court may further order that such costs be taxed as between attorney and client.
- (10) In any case in which summary judgment was refused and in which the court after trial gives judgment substantially as prayed, and the trial court finds that summary judgment would have been granted if the defendant had not raised a defence which the trial court finds the defendant could not reasonably substantiate, the court may order plaintiff's costs of the action be taxed as between attorney and client.

## 29. Exceptions and applications to strike out

- (1) (a) Where any pleading lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party, within the period allowed for the delivery of any subsequent pleading, may deliver an exception thereto.
  - (b) The grounds upon which the exception is founded must be clearly and concisely stated.
- (2) (a) Where any pleading is vague and embarrassing, the opposing party, within the period allowed for the delivery of any subsequent pleading, deliver a notice to the or plaintiff, as the case may be, may within twenty-one party whose pleading is attacked, stating that the pleading is vague and embarrassing setting out the particulars which are alleged makes the pleading so vague and embarrassing, and calling upon him to remove the cause of complaint within seven days and informing him that if he does not do so an exception would be taken to such pleading.
  - (b) If the cause of complaint is not removed to the satisfaction of the opposing party within the time stated such party may take an exception to the pleading on the grounds that it is vague and embarrassing. The grounds upon which this exception is founded must be fully stated.
- (3) (a) Where any pleading does not comply with any of the Rules of this court, the opposing party may deliver a notice to the party whose pleading is attacked informing him of the breach of these Rules and calling upon him to remedy the breach within seven days.
  - (b) Such notice must be delivered within the period allowed for delivery of any subsequent pleading, and if the breach is not remedied within the seven days as aforesaid an exception may be taken to the pleading on the ground that it does not comply with the Rules of court. Particulars must be given as to which Rule or Rules are breached.
- (4) An exception on any grounds may be set down for hearing on a date allotted by the Registrar on notice given to both parties.
- (5) (a) Where any pleading contains averments which are scandalous, vexatious, argumentative, irrelevant or superfluous the opposite party may, within the period allowed for delivering any subsequent pleading, apply for the striking out of the matter, aforesaid, setting out the grounds upon which the application is made.
  - (b) Such an application may be set down on not less than seven days notice to the opposing party as an opposed application before the motion court.



- (c) The court may dismiss the application if it is not satisfied that the applicant will be prejudiced in the conduct of his claim or defence if it be not granted.
- (6) Whenever an exception is taken to a pleading or whenever another pleading will be compulsory but may be delivered.
- (7) Where the court allows an exception or an application to strike out it may grant leave to the party whose pleading is attacked to amend such pleading or may make any other order on such terms as to costs, adjournments or other procedure as it may think just.
- (8) Nothing in these Rules will prevent a party from applying to strike out portions of a pleading as an alternative to an exception to such pleading.

### 30. Irregular proceedings

- (1) Where a party to any cause takes an irregular or improper proceeding or improper step any other party to such cause may within fourteen days of the taking of such step or proceeding apply to court to have it set aside:

Provided that no party who has taken any further step in the cause with knowledge of the irregularity or impropriety shall be entitled to make such application.

- (2) Application in terms of sub-rule (1) shall be on notice to all parties in the cause specifying particulars of the irregularity or impropriety involved.
- (3) If at the hearing of such application the court is of the opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part either as against all the parties or as against some of them, and grant leave to amend or make any such order as it deems fit, including any order as to costs.
- (4) Until a party has complied with any order of court made against him, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.
- (5) Where a party fails to comply timeously with a request made or notice given pursuant to these Rules, the party making the request or giving the notice may notify the defaulting party that he intends after the lapse of seven days, to apply for an order that such request or notice be complied with, or that the claim or defence be struck out. Failing compliance within the seven days, application may be made to court and the court may make such order thereon as it deems fit.

### 31. Close of pleadings

- (1) Pleadings shall be considered closed:—
  - (a) if either party has joined issue without alleging any new matter and without delivering any further pleading or
  - (b) if the last day allowed for filing a replication or further pleading has elapsed and such pleading has not been delivered: or
  - (c) if the parties agree in writing that the pleadings are closed and such agreement is filed with the Registrar; or
  - (d) if the parties are unable to agree whether or not the pleadings are closed, and the court upon the application of a party declares them closed.
- (2) An application to court in terms of paragraph (d) of sub-rule (1) may be made by either party on giving seven days notice to the other party and the court on such application may make any order, including an order as to costs or as to further proceedings that it deems just.



### 32. Special cases and adjudication on points of law

- (1) The parties to any civil action may, after institution of proceedings agree upon a written statement of facts in the terms of a special case for the adjudication of the court.
- (2) Such statement shall set forth the facts agreed upon, and by agreement of all parties copies of documents may be annexed thereto and the statement shall also set out the questions of law in dispute between the parties and the respective contentions of each.
- (3) The statement shall be divided into consecutively numbered paragraphs in such a manner as will be most convenient for the court. It shall be signed by the parties personally or by an attorney on behalf of each party or by an attorney and an advocate duly instructed by such attorney on behalf of a particular party.
- (4) Such special case shall be set down for hearing in the manner provided for the setting down of trials.
- (5) Where a minor, a person of unsound mind or other person under any legal disability is a party to an action a special case cannot be set down without leave of the court or a Judge. Application for such leave shall be supported by sufficient proof that the statements of fact in the statement in the special case are true in so far as it affects the interests of the person under legal disability as aforesaid.
- (6) At the hearing of the special case the court and the parties may refer to the whole of the contents of the statement including the contents of the documents annexed and the court may draw any inference of facts or of law from the statement and documents as if proved at a trial.
- (7) If it appears to the court *mero motu* or on the application of any party that there is in any pending action a question of law or fact which it would be convenient to decide either before any evidence is led or separately from any other question the court may make an order directing the trial of such question in such manner as it may deem fit, and may order that all further proceedings be stayed until such question is disposed of.
- (8) When giving its decision upon any question in terms of this rule the court may give such judgment as may, upon such decision be appropriate, and may give any direction with regard to the hearing of any other issues in the proceeding which may be necessary for the final disposal thereof.
- (9) If any question in dispute is one of law only and the parties are agreed upon all the facts, the facts may be admitted and recorded at the trial and the court may give judgment without hearing any evidence.

### 33. Amendment of pleadings and of documents

- (1) Any party desiring to amend any pleading or document, other than an affidavit filed in connection with any proceeding, may give notice to all other parties, to the proceeding of his intention so to amend.
- (2) Such notice must state that unless objection in writing is made within fourteen days to the said amendment, the party giving the notice may amend the pleading or document in question accordingly.
- (3) If no objection in writing be so made, the party receiving such notice shall be deemed to have agreed to the amendment.
- (4)
  - (a) If any objection be made within the said period, the party wishing to amend, shall within seven days of the receipt of such objection apply to court, on notice to all other parties that he will apply to court for leave to amend.
  - (b) such notice shall state the date when the application will be heard which date must be not less than ten days from the date on which the notice is given. The applicant shall at the same time set down the matter for hearing on such date.

- (5) Whenever the court has ordered an amendment or no objection has been made within the time specified in sub-rule (2), the party amending shall deliver the pleading or document as amended within the time specified in the court's order or within seven days of the expiry of the time prescribed in sub-rule (2) as the case may be.
- (6) When an amended pleading has been delivered in terms of this rule, the other party shall be entitled to plead thereto or to amend consequentially any pleading already filed by him within fourteen days of the receipt of the amended pleading or within such time as the court may have ordered, if such be the case.
- (7) A party giving notice of amendment shall, unless the court otherwise order, be liable to pay the costs thereby occasioned to any other party.
- (8) If an amendment is made by leave of the court in an application made under sub-rule (4) the court on granting leave may attach such conditions as to costs, or to further proceedings in the matter or such other conditions as it deems just.
- (9) Nothing in this Rule shall be deemed to prevent any party applying to the trial court during the trial for an amendment of any pleading or document, at any time before judgment and. the court on such application may grant or refuse the amendment and if granting it may make such order as to costs or adjournment or both, or otherwise as it thinks fit.

#### **34. Discovery and inspection of documents**

- (1) Any party to an action may, by notice in writing, require any other party thereto to make discovery on oath within twenty-one days, of all documents relating to any matter in question in such action, which are or have at any time been in the possession or control of such other party.
- (2) Such notice shall not be given before the close of pleadings unless leave of a Judge has first been obtained.
- (3) The party required to make discovery shall within twenty-one days from receipt of such notice, or within the time stated in any order of a Judge, make discovery of such documents on affidavit which must be in a form as near as possible with form "O" of the First Schedule.
- (4) A document shall be deemed to be sufficiently specified if it be described as being one of a bundle of documents of a specified nature, which have been initialled and consecutively numbered by the deponent.
- (5) Statements of witnesses taken for the purposes of the proceedings, communications between attorney and client or between attorney and advocate, pleadings, affidavits and notices in the action shall be omitted from the schedules.
- (6) If any party has reason to believe that, in addition to documents disclosed as aforesaid, documents or copies of such, which may be relevant to any matter in question, are in the possession of any party thereto, the former party may give notice to the latter requiring him to make such documents available for inspection in accordance with sub-rule (8) infra, or to state on oath within fourteen days that such documents are not in his possession, in which case he shall if known to him, state their whereabouts.
- (7) Any document not disclosed in terms of this rule, may not be used for any purpose at the trial by the party who was obliged, but failed, to disclose it, unless the court grants leave for it to be so used on such terms as the court orders, provided that any other party may use such document.
- (8) Any party may at any time by notice, which shall as near as possible be in accordance with Form "P" of the First Schedule hereto, require any party who has made discovery to make available for inspection any documents disclosed in terms of sub-rule (3) and (4) herein. Such notice shall require the party to whom notice is given to deliver to him within seven days a notice which shall, as near as may be, in accordance with form "Q" of the First Schedule hereto, which notice shall state a time, within three days from the delivery of such latter notice, when such documents may be inspected at the office of his attorney, or, if not represented by an attorney, at some convenient

place stated in the notice, or, in the case of banker's books or other books of account or books for the purposes of any trade or undertaking, at their usual place of custody. In cases where the documents are to be inspected at the office of an attorney such office must be that of an attorney within five kilometres from the office of the Registrar.

The party receiving the notice allowing him to inspect shall be entitled at the time therein stated, and for a period of seven days thereafter during normal business hours or on any one or more of such days, to inspect such documents and to take copies thereof. A party's failure to produce any such document for inspection shall preclude him from using such document at the trial unless the court, on good cause shown, otherwise orders.

- (9) If any party fails to give discovery as aforesaid, or having been served with a notice under sub-rule (8) omits to give notice of a time for inspection as aforesaid or fails to give inspection as required by that sub-rule, the party desiring discovery or inspection may apply to court which may order compliance with this rule and, failing such compliance, may dismiss the claim or strike out the defence.
- (10) Any party to an action may after the close of pleadings give notice to any other party to specify in writing particulars of dates and parties of or to any document intended to be used at the trial of the action on behalf of the party to whom notice is given. The party receiving such notice shall not less than fourteen days before the date of trial give a notice—
  - (a) specifying the dates and parties of or to and the general nature of any such document which is in his possession; and
  - (b) specifying such particulars as he may have to identify any such document not in his possession, at the same time furnishing the name and address of the person whose possession such document is.

In making any specification of a document the party so specifying may give particulars of such documents as may be in his possession by reference to any discovery affidavit in so far as such particulars in such affidavit are sufficient.

- (11) Any party to any action or proceeding may at any time before the hearing thereof give a notice, which shall be as near as may be in accordance with form "R" of the First Schedule hereto, to any other party in whose pleadings or affidavits reference is made to any document to produce such document for his inspection and to permit him to take a copy thereof. Any party failing to comply with such notice shall not, unless the court grants him leave, use such document in such action or proceeding but any other party is entitled to use such document.
- (12) Any party preparing to prove documents at a trial may give notice to any other party requiring him within fourteen days of receipt of such notice to admit that those documents were properly executed and are what they purported to be. If the party receiving the said notice admits as requested or does not reply that he refuses to admit them, then as against such party the party giving the notice shall be entitled to produce the documents specified at the trial without proof other than proof (if it is disputed) that the documents are the documents referred to in the notice and that the notice was duly given. If the party receiving the notice states that the documents are not admitted as aforesaid, such documents shall be proved by the party giving the notice before he is entitled to use them at the trial but the court may, in its discretion, order that the party not admitting the documents be ordered to pay the costs of their proof, even though he may be a successful party eventually.
- (13) Any party may give to any other party, who has made discovery of a document which is in his possession, notice to produce at the hearing the original of such document, unless the said document is a privileged one. Such notice shall be given not less than four days before the hearing but may if the court grants leave be given during the course of the hearing. If any such notice is so given, the party giving the same may require the party to whom notice is given to produce the said document in court and shall be entitled without calling any witness, to hand in the said document, which shall be receiveable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.

- (14) The court may during the course of any action or proceeding, order the production by any party thereto under oath of such documents in his power or control relating to any matter, in question in such action or proceeding as the court may think just, and the court may deal with such documents, when produced, as it thinks fit.
- (15) (a) Where a registered insurance company in terms of the Motor Vehicle Insurance Order No. 17 of 1972, is a party to any action by reason of the provisions of the said Order any party thereto may obtain discovery against the driver or owner (as defined in the said Order) of the vehicle insured by the said company, by delivering a notice to the said driver or owner which shall be, as near as may be, in accordance with Form "S" in the First Schedule hereto.
- (b) Where the plaintiff sues as a cessionary, the defendant, shall *mutatis mutandis* have the same rights under this Rule against the cedent.
- (c) The provisions of paragraph (a) of this sub-rule shall apply *mutatis mutandis* against the driver of a vehicle owned by person or company or association or government which may be liable as an insurer in terms of the Order aforesaid.

### 35. Examination of persons and of things and expert evidence

- (1) Subject to the provisions of this rule any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed shall have the right to require any party claiming such damages or compensation whose state of health is relevant for the determination thereof to submit to medical examination.
- (2) Any party requiring another party to submit to such examination shall deliver a notice specifying the nature of the examination required, the place where and the date and time when it is desired that such examination shall take place, and requiring such other party to submit himself for examination then and there. The date shall not be less than fourteen days from the date of the notice and the notice shall state that the party to be examined may have his own medical adviser present at such examination and the notice shall be accompanied by a remittance in respect of the reasonable expense to be incurred by the party in attending to be examined.

Such expense shall be tendered on the scale as if such person were a witness in a civil case before the court, provided that if the party to be examined is immobile the amount to be paid to him shall include the cost of his travelling by motor vehicle and, where necessary, the reasonable cost of a person attending upon him. If the party to be examined will actually lose wages or other remuneration during period of absence from work, his remuneration, in addition to expenses as if he were a witness as aforesaid, shall include an amount not exceeding R10 per day in respect of the wages or other remuneration he will actually lose.

- (3) The amounts paid by a party as aforesaid shall be costs in the cause unless the court otherwise orders.
- (4) The person receiving such notice shall within seven days of the service thereof notify the party delivering it in writing of any objection he may have in relation to
  - (a) the nature of the proposed examination,
  - (b) the medical practitioner or practitioners by whom the examination is to be conducted
  - (c) the place, date or time of such examination
  - (d) the amount of expenses tendered to him. The notice shall further state, if his objection is as to date, place or time of the examination, an alternative date, time and place as the case may be. If his objection is to the amount of the expenses tendered to him, the notice shall state particulars of the amount he requires.
- (5) Should the person receiving the notice not deliver any objection within the seven days aforesaid, he shall be deemed to have agreed to the examination upon the terms set out by the party delivering the notice. Should the person giving the notice regard, the objection raised by the person receiving

such notice as invalid or unreasonable in whole or in part he may on notice to the person to be examined, make application to a Judge to determine the conditions upon which the examination, if any, is to be conducted.

- (6) Any party to such an action as aforesaid may at any time by notice in writing require any person claiming such damages to make available in so far as he is able to do so to such party within ten days of receipt of such notice any medical reports, hospital records, X-ray photographs or any other documentary information of a like nature relevant to the assessment of such damages.
- (7) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a Judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.
- (8) If it appears that the state or condition of anything of any nature whether movable or immovable may be relevant with regard to the decision of any matter at issue in any action or proceedings, any party thereto may at any stage thereof not later than fourteen days before the hearing, give notice requiring the party relying upon the existence of such state or condition of such thing or having such thing in his possession or under his control to make it available for inspection or examination in terms of this sub-rule, and may in such notice to require him to submit the thing or a fair sample thereof for inspection or examination within a period of not more than ten days from the date of the receipt of the notice.
- (9) The party called upon to admit the thing for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such thing thereto if such will materially prejudice such party by reason of the effect of such examination upon the thing. If there is any dispute as to whether the thing should be submitted for examination, such dispute shall be referred to a Judge on notice delivered by either party stating that the examination is required and that objection is taken in terms of this sub-rule. On a consideration of such dispute the Judge may make any order as to him seems just.
- (10) Any party requiring an examination in terms of sub-rule (1) and (8) shall—
  - (a) cause the person making the examination to give a full report in writing of the results of his examination and the opinions that he formed as a result thereof on any relevant matter;
  - (b) after receipt of such report furnish any other party with a complete copy thereof; and
  - (c) bear the expense of carrying out such examination. Provided that such expense shall form part of that party's costs, if costs are awarded to him at the trial.
- (11) No party shall, save with leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he shall—
  - (a) not less than fourteen days before the hearing have delivered notice of his intention to do so, and
  - (b) not less than ten days before the trial, delivered a summary of such experts opinions and his reasons therefor.
- (12)
  - (a) No person shall, save with leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless he shall, not less than ten days before the hearing have delivered a notice stating his intention to do so, offering inspection thereof and requiring the party receiving such notice to admit the same within seven days of his receipt of the notice.
  - (b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received upon its mere production and without further proof thereof. If such party states that he does not admit them the said plan,

diagram, model or photograph may be proved at the hearing and the court may order the party receiving the notice to pay the costs of that proof in any event.

### 36. Pre-trial conference

- (1) Before an action may be set down for trial an attorney acting for one of the parties shall make a written request to all the other attorneys acting for other parties to such action to attend a conference at a mutually convenient time with the object of reaching agreement as to possible ways of curtailing the duration of the trial and in particular as to all or any of the following matters:—
  - (a) The possibility of obtaining admissions of fact and of documents;
  - (b) The holding of an inspection or examination;
  - (c) The making of any discovery of documents;
  - (d) The exchange between parties of reports of experts;
  - (e) The giving of any further particulars reasonably required for the purposes of trial;
  - (f) The plans, diagrams, photographs, models and such like, to be used at the trial;
  - (g) The consolidation of trials;
  - (h) The quantum of damages;
  - (i) The preparation and handing in at the trial of copies of correspondence and other documents in the form of paged bundles with copies for the court and for all parties.
- (2) If any attorney refuses to attend such a conference, the attorney requesting such may apply on notice to all parties to a Judge for an order that such conference be held and the Judge may make such order as he thinks fit for the holding of such conference and as to its conditions, or he may order that such conference need not be held.
- (3) At the conclusion of such conference the attorneys shall draw up and sign a minute of the matters on which they are agreed.
- (4) When an attorney sets a case down for trial or makes a written request for a date for the hearing thereof, as the case may be, he must state in writing that a pre-trial conference has been held or has been excused by order of a Judge given under sub-rule (2) herein.
- (5) At the commencement of the trial the attorneys or advocates for the parties, as the case may be, shall hand in the signed minute referred to in sub-rule (3) herein, or report that no pre-trial conference has been held because it had been excused by a Judge.
- (6) Before the trial proceeds the Judge may call to his chambers the legal representatives of the parties with a view to receiving agreement on any matters likely to curtail the duration of the trial.
- (7) When giving judgment on the action the court may in considering the question of costs award portions of the costs against any parties who should have agreed to certain matters at a pre-trial conference or prior to the hearing but had refused to do so when such an agreement would have curtailed the duration of the trial.

### 37. Further particulars for trial

- (1) After the close of pleadings any party may, not less than twenty one days before the date of trial, deliver a notice calling for such further particulars as are strictly necessary to enable him to prepare for trial.
- (2) Such request shall be complied with within ten days of receipt thereof.
- (3) If the party requested refuses or fails to deliver the particulars requested timeously or sufficiently, the party requesting the same may apply to a Judge or to the trial court (if because of the time



factor it would be too late to apply to a Judge) for the delivery of a reply or for such other relief as may be deemed fitting and the Judge or court may make such order as to costs or postponement of the trial or make such other order as it deems fit.

- (4) In considering whether a request for the particulars is reasonable the Judge or court may have regard to the particulars, if any, which may have been agreed upon at a pre-trial conference.
- (5) The notice of the request for particulars and the reply thereto must comply with the provisions of sub-rules (1) and (2) of Rule 20.

### 38. Tender and payment into court

- (1)
  - (a) In any action for payment of a sum of money the defendant may at any time pay unconditionally into court the sum so claimed or any part thereof.
  - (b) The defendant in making such payment into court shall simultaneously deliver a notice referring to such payment serving copies on the plaintiff (or his attorney) and to all other defendants, if any.
  - (c) The Registrar shall, upon the application of the plaintiff or his attorney pay the sum paid into court to the plaintiff or his attorney.
  - (d) in his notice referring to the payment the defendant shall state that he admits liability for the amount so paid in and also whether he acknowledges or disavows liability for the payment of plaintiff's costs in whole or in part.
  - (e) If the defendant in making such payment into court does, in terms of paragraph (d) of this sub-rule, admit liability for costs wholly or in part and fails to pay such costs, when taxed, within seven days after demand the plaintiff may apply in writing through the Registrar to a Judge for payment of the same.
  - (f) If the defendant in making payment into court disavows liability for any portion of the plaintiff's costs in terms of paragraph (d) of this sub-rule he shall state in his notice accompanying the payment the grounds upon which he disavows such liability, and in such a case the action may be set down for hearing on the question of costs only.
- (2) Nothing in the provisions of sub-rule (1) shall prevent the plaintiff from setting down the action for trial on any portion of his claim for which the defendant does not admit liability.
- (3)
  - (a) In any action in which a sum of money is claimed either alone or with any other relief, the defendant may, at any time without prejudice, pay an amount of money into court by way of an offer of settlement or compromise of plaintiff's claim.
  - (b) Notice regarding such payment must be delivered and the provisions of paragraph (b) of sub-rule (1) shall *mutatis mutandis* apply to such notice which shall also state whether the defendant admits or disavows liability for any portion of the plaintiff's costs. Such notice may also contain an admission of liability for costs incurred up to a certain date.
- (4)
  - (a) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender unconditionally or without prejudice to perform such act. Unless such act must be performed by the defendant personally, the defendant must file, *pari passu* with such tender, with the Registrar an irrevocable power to perform such act on behalf of the person making the tender.
  - (b) The notice regarding such tender must be delivered and the provisions of paragraph (b) of sub-rule (3) shall *mutatis mutandis* apply to such notice.
- (5)
  - (a) One of several defendants, whether sued jointly, jointly and severally, separately or in the alternative, may either unconditionally or without prejudice by way of an offer of settlement pay into court a sum of money in respect of the plaintiff's claim or tender in terms of these rules to do any act or acts the performance of which is claimed by the plaintiff.

- (b) Notice regarding the payment must be delivered and such notice shall *mutatis mutandis* comply with the provisions of paragraph (b) of sub-rule (3).
- (6) A plaintiff may within ten days of the receipt of any notice referred to in this Rule or thereafter with the consent of the defendant or order of a Judge accept any payment or tender to perform an act and shall notify all other parties to the action accordingly, and the Registrar upon being satisfied that the requirements of this sub-rule have been complied with, shall pay out to the plaintiff's attorney or to the plaintiff (if he has no attorney) the money paid into court or give effect to or deliver to the plaintiff's attorney (or to the plaintiff who sues in person) the power of attorney referred to in sub-rule (4).
- (7) If a tender or payment in terms of the sub-rules aforesaid is not stated to be in satisfaction of a plaintiff's claim for costs, the plaintiff may, on notice to the defendant apply to the court for judgment for costs. The court has discretion to make any order which to it seems fit.
- (8)
  - (a) Where a payment into court or a tender is made without prejudice or as an offer of compromise or does not admit liability for the claim or portion thereof such tender or payment must not be disclosed to the court at any time before judgment has been given nor shall it be referred to in any pleadings. No reference to the fact of such payment or tender shall appear on any file in the Registrar's office containing the papers in the said case.
  - (b) Any party to an action who shall, contrary to this sub-rule, by himself or by his attorney or by his advocate, mention or disclose to the court such payment or tender shall, even if successful in the action be liable to have costs given against him. If such tender or payment is referred to in any pleading, the claim or defence, as the case may be, may be struck out by the court.
  - (c) The fact of such a payment or tender referred to in this sub-rule may be brought to the notice of the court when judgment has been given as being relevant to the question of costs. If the court has given judgment on the question of costs in ignorance of such payment or tender and such is brought to the notice of the court within two days, the question of costs shall be considered by the court afresh. Nothing however in this sub-rule shall affect the court's discretion on the question of costs.
- (9) Nothing in this rule shall prevent any party from stating in any pleading that he has made a tender or payment with admission of liability of a portion or of the whole of plaintiff's claim providing that such payment or tender has been an unconditional one.
- (10) Nothing in this rule shall prevent a defendant from stating in his plea that he consents to judgment for a portion only of the plaintiff's claim.

### 39. Setting down of defended cases for trial

- (1)
  - (a) In cases where the parties have stated a special case for the adjudication of the court on a question of law only, or
  - (b) when an order has been granted in terms of Rule 32 that a question of law has been raised for the adjudication of the court any of the parties concerned in such matters may apply to the Registrar to set the case down for argument on a date to be agreed upon by all the parties and the Registrar.
- (2) In cases where the pleadings have been closed and where a pre-trial conference has been held the plaintiff may apply to the Registrar to set the case down for trial. If the plaintiff does not apply within 30 days after the latter of the dates in which the pleadings are closed or on which the pre-trial conference has been held either the plaintiff or defendant may set the case down for trial.
- (3) At least two court days notice of the date on which application will be made in terms of sub-rule (2) must be given to all other parties who shall be entitled to appear before the Registrar and to state any objections they may have to the proposed date of set-down.



- (4) Whenever a case has been set down the party who sets it down shall forthwith give written notice of such set-down to all other parties; thereafter the party who sets the case down may withdraw such set-down only with the written consent of the other party or by order of a Judge given after application has been made on notice to all other parties.
- (5) After a set-down has been withdrawn either party may apply to the Registrar for a new date on which the case may be again set-down. Notice of such application shall be given to all parties concerned in the case.
- (6) Nothing in these Rules shall prohibit all parties agreeing to have the trial heard at an earlier date than that on which the case has been set-down provided that the Registrar has an earlier date available and that after obtaining the consent of the Chief Justice or of the senior Judge available the Registrar agrees to set the matter down for the date agreed upon.
- (7) Whenever a matter is set down with the Registrar, the party setting down such matter shall pay a set down fee of M3.00.

*[L.N. 12/1981]*

- (7) No Defended Civil Trial and no Criminal Trial shall be set down on the last week of any session without the leave of the Chief Justice.

*[Please note: numbering as in original.]*

#### **40. Procuring evidence for trial**

- (1) Any party to an action who desires the attendance of any person to give evidence at a trial may sue out from the office of the Registrar one or more subpoenas for that purpose. Each subpoena shall contain the names of not more than four persons, and service thereof upon any person named therein shall be effected by the sheriff or his deputy in the manner prescribed by Rule 4.

The process for subpoenaing such witnesses shall be as near as possible in accordance with Form "T" of the First Schedule.

If any witness has in his possession or control any deed, instrument, writing or thing which the party requiring his attendance desires to be produced at the trial in evidence, the subpoena shall specify such documents or thing and require the witness to produce it to the court at the trial.

- (2) The witnesses at the trial of any action shall be examined *viva voce*, but the court may, at any time, for sufficient reason, order that all or any of the evidence at any trial be given on affidavit or that the affidavit or any witness be read at the hearing, on such times and conditions as the court may think fit, provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.
- (3) A court may, on application made on notice to all parties in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner appointed by the court. The court may permit any party to any such matter to use such deposition in evidence on such terms, if any, as the court thinks fit. The court may, in particular, order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or of any particulars in the action.
- (4) Where the evidence of any person to be taken on commission before any commissioner within Lesotho, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.
- (5) Unless the court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before a commissioner in terms of an order granted under sub-rule (3) shall be adduced upon oral examination in the presence of the parties and /or their legal representatives, and the witness concerned shall be subject to cross-examination and re-examination.

- (6) A commissioner shall not decide upon the admissibility of evidence tendered, but shall note any objections made and such objections shall be decided by the court hearing such matter.
- (7)
  - (a) Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court. The transcript of any shorthand record or record taken by mechanical means must be duly certified by the person transcribing the same and by the commissioner and such shall constitute the record of the examination.
  - (b) Nothing in this sub-rule shall prevent evidence before the commissioner to be taken down in narrative form.
- (8) The record of the evidence shall be returned by the commissioner to the Registrar with his certificate to the effect that it is the record of the evidence given before him and such evidence shall thereupon become part of the record in the case.

#### 41. Trial

- (1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof is upon him, and judgment shall be given accordingly, in so far as he has discharged such burden;  
  
Provided that where the claim is for a liquidated amount or a liquidated demand no evidence shall be necessary unless the court otherwise orders.
- (2) When a defendant has by his default been barred from pleading and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court otherwise orders in the interests of justice, be permitted either personally or by a legal representative, to appear at the hearing.
- (3) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant shall be entitled to an order granting absolution from the instance with costs, but he may lead evidence with a view to satisfying the court that final judgment should be granted in his favour and the court, if so satisfied, may grant such judgment.
- (4) The provisions of sub-rules (1) and (2) shall apply to a party making a counterclaim as if he were a plaintiff and the provisions of sub-rule (3) shall apply to any person against whom a counterclaim is made as if he were a defendant.
- (5) In a defended trial where the burden of proof is on the plaintiff he, or one legal representative for the plaintiff may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.
- (6) At the close of the case for the plaintiff, the defendant or one legal representative on his behalf may apply for absolution from the instance and may address the court in support of the application and the plaintiff or one legal representative may thereupon reply on any matter arising from the address of the plaintiff or his legal representative.
- (7) If absolution from the instance is not applied for or if it has been refused and the defendant has not closed his case, the defendant or one legal representative on his behalf may briefly outline the facts intended to be proved and the defendant may then proceed to the proof thereof.
- (8) Each witness shall, where a party is represented, be examined, cross-examined or re-examined, as the case may be, by only one, though not necessarily the same, legal representative for such party.
- (9) If the burden of proof is on the defendant, he or his legal representative shall have the same right as those accorded to the plaintiff by sub-rule (5) herein.
- (10) When the cases on both sides are closed, the plaintiff or one or more legal representatives on his behalf may address the court and the defendant or one or more representatives on his behalf may do so, after which the plaintiff or one only legal representative on his behalf may reply on any matter arising out of the address of the defendant or his legal representative.

- (11) If the onus of proof on the whole case is on the defendant the defendant or his legal representative shall have the rights *mutatis mutandis*, of the plaintiff under sub-rule (10) herein and the plaintiff shall have the rights of the defendant under such sub-rule.
- (12) Either party may apply at the opening of the trial for a ruling by the court upon the onus of adducing evidence or as to the right to begin and the court after hearing argument may give a ruling as to the party on whom the onus lies, provided that such ruling may be altered by the court thereafter if the court deems it necessary to prevent injustice.
- (13) If there be one or more defendants to a claim in reconvention who are not plaintiffs in the action; any such defendant is entitled to address the court and shall lead his evidence after the evidence of the plaintiff and of defendant has been concluded and before any addresses at the conclusion of such evidence. Save in so far as the court may otherwise direct, the defendants to any counter-claim who are not plaintiffs shall lead their evidence in the order in which they became defendants. If the onus of adducing evidence is on the defendant to any claim in reconvention the court may make such order as may seem just with regard to the order in which the parties shall conduct their cases and address the court and in regard to their respective rights of reply. The provisions of sub-rule (1) shall *mutatis mutandis* apply with regard to any dispute as to onus of adducing evidence or as to the right to begin.
- (14) Where the onus of adducing evidence on one or more of the issues is on the plaintiff and that of adducing evidence on any other issue is on the defendant, the plaintiff shall first call his evidence on any of the issues in respect of which the onus is upon him, and then may close his case. The defendant, if absolution from the instance is not granted, shall, if he does not close his case, thereupon call his evidence on all issues in respect of which such onus is upon him as well as rebutting evidence in respect of the other issues.
- (15) After the defendant has called his evidence, the plaintiff shall have the right to call rebutting evidence on any issues in respect of which the onus was on defendant, provided that if the plaintiff shall have called evidence on any such issues before closing his case he shall not have the right to call any further evidence thereupon.
- (16) Nothing in sub-rules (14) and (15) shall prevent the defendant from cross-examining any witness called at any stage by the plaintiff on any issue in dispute, and the plaintiff shall be entitled to re-examine such witness consequent upon such cross-rule (15) to call evidence at a later stage on the issue on which such witness has been cross-examined. The plaintiff may further call the witness so re-examined to give evidence on any such issue at a later stage.
- (17) A record shall be made of
  - (a) any evidence given in court,
  - (b) any judgment or ruling given by the court,
  - (c) any objection made to any evidence tendered or received,
  - (d) any inspection *in loco* and any matter demonstrated by any witness in court and
  - (e) any proceedings of the court generally and any proceedings of the court generally and any proceedings which the court may specifically order to be recorded.
- (18) Such record shall be kept by such means as the court deems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.
- (19) The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed by the Registrar. It shall not be necessary to transcribe them unless the court or a Judge so directs or any party, appealing or considering an appeal, so requires. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the Registrar.

The transcript of the shorthand notes or mechanical record certified as correct shall be deemed to be correct unless the court otherwise orders.

- (20) Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the Registrar to a Judge to have such record transcribed. If an order to that effect has not already been made such party shall be entitled to a copy of any transcription ordered to be made upon payment of the prescribed fees.
- (21) The presiding Judge may, at the conclusion of evidence in trial actions, confer with the legal representatives of the parties in his chambers as to the form and duration of the addresses to be submitted in court.
- (22) Notwithstanding anything in this Rule the court may, at any time make any order with regard to the conduct of the trial as it seems fit and it may vary any procedure laid down in this Rule.
- (23) Where the court considers that the proceedings have been unduly prolonged by the successful party by calling unnecessary witnesses or by excessive examination or cross-examination or by unnecessarily prolonged argument it may penalise such party in the matter of costs.

#### **42. Restitution of conjugal rights**

- (1) In any action for the restitution of conjugal rights the plaintiff may in the alternative claim a decree of divorce.
- (2) Upon the hearing of the action for restitution of conjugal rights the court may upon proof of the malicious desertion of plaintiff by defendant order restitution of conjugal rights and may further direct the defendant to show cause on a day to be named in such order why a decree of divorce should not be granted.
- (3) The order for restitution of conjugal rights shall, unless the court otherwise directs, be served on the defendant personally.
- (4) If upon the return day it is proved by affidavit or otherwise that the defendant has failed to comply with the order for restitution of conjugal rights the court may grant a decree of divorce or make such order as to it may seem just.
- (5) If the court grants leave to the plaintiff to publish a restitution order such publication shall be as near as in accordance with form "U" of the First Schedule annexed hereto.

#### **43. Withdrawals or settlement of proceedings**

- (1)
  - (a) A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or by leave of the court, withdraw such proceedings.
  - (b) To withdraw the proceedings a notice of withdrawal must be delivered to the Registrar and a copy of such notice must be sent to all parties to the proceedings.
  - (c) The notice may contain a consent to pay costs in which case the Taxing Master shall tax such costs if requested by any other party to the proceedings.
  - (d) If there is no consent to pay costs contained in the notice of withdrawal or if such taxed costs are not paid within fourteen days of demand, such other party may apply to court on notice for an order for costs.
- (2) If in any proceedings a settlement or an agreement to postpone or withdraw is reached it shall be the duty of the attorney for the plaintiff or the applicant immediately to inform the Registrar accordingly.
- (3) Unless such proceedings have been withdrawn any party to a written settlement shall, if the settlement has not been carried out, be entitled to judgment in terms hereof on not less than four days notice delivered to all interested parties.

- (4) Nothing in this Rule shall affect the discretion of the court as to whether or not grant a postponement of any proceedings.

#### **44. Abandonment of judgment or orders**

- (1) Any party in whose favour any order or judgment has been given may abandon such order or judgment in whole or in part by delivering notice thereof to the Registrar and all parties affected by such judgment.
- (2) If the order or judgment is abandoned as to part only the order or judgment shall have effect subject to such abandonment.

#### **45. Variation and rescission of orders and judgments**

- (1) The court may, in addition to any other powers it may have *mero motu* or upon the application of any party affected, rescind or vary—
  - (a) an order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
  - (b) an order or judgment in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;
  - (c) an order or judgment granted as a result of a mistake common to the parties
- (2) Any party desiring any relief under this Rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.
- (3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.
- (4) Nothing in this Rule shall affect the rights of the court to rescind any judgment on any ground on which a judgment may be rescinded at common law.

#### **46. Execution - General and movables**

- (1) A party in whose favour any judgment of the court has been given may, at his own risk, sue out of the office of the and Registrar one or more writs for execution thereof as near as may be in accordance with Form V( 1) of the First Schedule annexed hereto,

Provided that, except where by judgment of the court immovable property has been specially declared executable, no such process shall issue against the immovable property of any person until a return shall have been of any process which may have been issued against his movable property, and the Registrar perceives therefrom that the said person has not sufficient movable property to satisfy the writ.
- (2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until such costs have been taxed by the taxing Master or agreed to in writing by the party concerned in a fixed amount, provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to a judgment creditor but not then taxed, subject to the taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the sheriff or deputy sheriff before the day of the sale, such costs shall be excluded from the account and plan of distribution.
- (3) Whenever by any process of the court the sheriff or deputy sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling house or place of business or employment of such person, unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached, and there
  - (a) demand satisfaction of the writ and failing satisfaction,

- (b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,
- (c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of sub-rule (5) hereunder, shall be taken into the custody of the deputy-sheriff; Provided—

- (i) that if there is any claim made by any other person to any such property seized or about to be seized by the deputy-sheriff, then if the judgment creditor gives the deputy sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the deputy shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and
  - (ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the deputy-sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.
- (4) The deputy-sheriff shall file with the Registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.
- (5) Where any movable property has been attached by the deputy-sheriff the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the deputy-sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner have been legally removed, whereupon the deputy-sheriff shall leave the said property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with Form 'V' (2) of the First Schedule hereto.
- (6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the deputy-sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.
- (7) Where any movable property is attached as aforesaid the deputy sheriff shall where practicable (unless there is an interpleader action pending) sell it by auction to the highest bidder after due advertisement by him in one or more newspapers and after the expiration of not less than fourteen days from the date of seizure thereof. Where perishables are attached as aforesaid, they may with the consent of the execution debtor or upon the execution creditor indemnifying the deputy-sheriff against any claim for damages, which may arise from such sale, be sold immediately by the deputy-sheriff concerned in such manner as to him seems expedient.
- (8) If incorporeal property whether movable or immovable is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:—
- (a) where the property or right to be attached is a lease, or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when—
    - (i) notice has been given by the deputy-sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security, as the case may be, and
    - (ii) the deputy-sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond, or other security as the case may be, and

- (iii) in the case of a registered lease or any registered right, notice has been given to the Registrar of Deeds.
- (b) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the deputy-sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution. The deputy-sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.
- (c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid, (i) the attachment shall only be complete when
  - (a) notice of the attachment has been given in writing by the deputy-sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right to immovable property, notice shall also have been given to the Registrar of Deeds, and
  - (b) the deputy-sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document.
  - (ii) the deputy-sheriff may upon exhibiting the origins of the warrant of execution to the person having possession of property in which incorporeal right exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

*[Please note: numbering as in original.]*

- (9) Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub-paragraph (b) of sub-rule (8).
- (10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he otherwise agrees.
- (11) (a) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with the deputy-sheriff before the day of the sale in execution shall rank *pro rata* in the distribution of proceeds in the goods sold in the order of preference referred to in the insolvency [Proclamation No. 51 of 1957](#).  
*[L.N. 12/1981]*
- (b) If there should remain any surplus, the deputy-sheriff shall pay it over to the judgment debtor; and the deputy sheriff shall make out and deliver to the judgment debtor an exact account in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the deputy-sheriff shall refund such sum to the judgment debtor.
- (12) (a) Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment debtor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment to him by the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro-tanto*, of the debt attached.
- (b) If the garnishee shall refuse or neglect to comply with such notice, the sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why he should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute



the debt due, or claimed to be due by him to the party against whom execution is issued, or if he does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

- (c) If the garnishee disputes his liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner *mutatis mutandis* in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.
- (d) Nothing in these rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference or retention claimed by any third person in respect of such debts.
- (e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.
- (f) Where the sheriff is of the opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with his consent.
- (g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal of the writ.
- (h) Whenever the court is of opinion that a debtor is able to satisfy a debt by instalments out of his earnings, it may make an order for payment of such debt by instalments.

Whenever an order has been made for payment by instalments and the debtor makes default in such payment, any salary, earnings, or emoluments due or accruing to such debtor to the extent of the arrears may, without further notice to the debtor, but subject to the rights of the garnishee, be attached under the provisions of paragraph (a) of the rule.

- (i) Any writ issued for the attachment of salary, earnings or emoluments shall remain in force and may be executed periodically as such salary, earnings or emoluments accrue to the debtor, until the same is satisfied.
- (13) When a writ is issued in respect of a judgment for provisional sentence such writ as against movable property shall be as hear as may be in accordance with Form V(3) of the First Schedule hereto.

#### 47. Execution - Immovables

Subject to the laws relating to land tenure

- (1) A writ of execution against immovable property shall contain a full description of the nature, situation and address of the immovable property to enable it to be traced and identified by the Sheriff or his deputy and it shall be accompanied by sufficient information to enable the Sheriff or deputy to give effect to sub-rule (3) hereof.
- (2) An attachment shall be made by the Sheriff or deputy-Sheriff of the district in which the property is situate or of the district in which the office of the Registrar of Deeds is situate. The writ of attachment shall be as near as may be in accordance with Form W(1) of the First Schedule hereto.
- (3) The mode of attachment of immovable property shall be by notice in writing by the deputy-Sheriff served upon the owner thereof, and upon the Registrar of Deeds or other officer charged with the registration of such immovable property, and if the property is in occupation of some person other than the owner, also upon such occupier. Any such notice as aforesaid shall be served by means of a registered letter, duly prepaid and posted addressed to the person intended to be served.
- (4) After attachment, any sale in execution shall take place in the district in which the attached property is situate and shall be conducted by the deputy-Sheriff of such district:



Provided that the sheriff in the first instance and subject to the provisions of paragraph (b) of sub-rule (8) *infra* may on good cause shown authorize such sale to be conducted elsewhere and by another deputy-sheriff. Upon receipt of written instructions from the execution creditor to proceed with such sale the deputy-sheriff shall ascertain what bonds or other encumbrances are registered against the property together with the names and addresses of the person or persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

- (5) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless—
  - (a) the execution creditor has caused notice, in writing, of the intended sale to be served by registered post upon the preferent creditor, if his address is known, and if the property is reteable, upon the local authority concerned calling upon them to stipulate within ten days of a date to be stated a reasonable reserve price or to agree in writing to a sale without reserve; and has provided proof to the deputy-sheriff that the preferent creditor has so stipulated or agreed, or
  - (b) the deputy-sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule of the proposed sale, or such creditor, having been duly notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) of this sub-rule within the time stated in such notice.
- (6) The deputy-sheriff may, by notice served upon any person require such person to deliver to him forthwith all documents in his possession or under his control relating to the debtor's title to such property.
- (7)
  - (a) The deputy-sheriff shall appoint a day and place for the sale of such property, such day being, except by special leave of the court, not less than one month after service of the notice of attachment.
  - (b) The execution creditor shall, after consultation with the deputy-sheriff, prepare a notice of sale containing a short description of the property, its situation and street number, if any, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the deputy-sheriff, and he shall furnish the deputy-sheriff, with as many copies of the notice as the latter may require.
  - (c) if the site of such property is under the control of a chief or headman this fact must be stated in the notice and the name of such chief or headman must be stated also.
  - (d) the deputy-sheriff shall indicate a suitable newspaper circulating in the district in which the property is situated and require the execution creditor to publish the said notice in the said newspaper and in the *Government Gazette*, not later than fourteen days before the date appointed for the sale and to furnish him not later than the day prior to the date of the sale, with a copy of the said newspaper and with the number of the *Gazette* in which the notice appeared.
  - (e) if the site on which the property is situated is under the control of a chief or headman the notice referred to in paragraph (d) *supra* shall be in both English and the Sesotho languages.
  - (f) not less than ten days prior to the date of the sale, the deputy-sheriff shall forward by registered post a copy of the notice of sale referred to in paragraph (b) *supra* to every judgment creditor who had caused the said immovable property to be attached and to every mortgage thereof whose address is known. If the site on which the property is situated is under the control of a chief or headman notice must also be posted to such person.
  - (g) not less than ten days prior to the date of sale, the deputy-sheriff shall affix one copy of the notice on the notice board of the subordinate court of the district in which the property is situate, or if the property is situate in the district in which the court out of which the writ was issued is situated, then on the notice board of such court and one copy at, or as near as may be to, the place where the sale is to take place.

- (8) (a) The conditions of sale shall, not less than twenty eight days prior to the date of the sale, be prepared by the execution creditor as near as may be in accordance with Form W(2) of the First Schedule hereto, and such conditions must be submitted to the deputy-sheriff to settle them. The execution creditor shall thereafter supply the deputy-sheriff with two copies of the conditions of sale, one of which shall lie for inspection by interested parties at his office.
- (b) Any interested party may, not less than seven days prior to the date of sale, upon twenty-four hours notice to the execution creditor and the bondholders, apply to the court for any modifications of the conditions of sale and the court may make such order thereon, including an order as to costs, as the court may deem just.
- (9) The execution creditor may appoint an attorney to attend to the transfer of the property when it is sold in execution.
- (10) Immovable property attached in execution shall be sold by the deputy-sheriff by public auction, unless the court on application by an interested party or by the deputy-sheriff otherwise orders.
- (11) If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a Judge on the report of the deputy-sheriff after due notice to the purchaser and the property shall then be put for sale. In such case the purchaser shall be liable for any loss sustained by reason of his default, which loss may be on the application of any aggrieved creditor whose name appears on the deputy-sheriff's distribution account, be recovered from him under a judgment of the Judge pronounced summarily on a written report of the deputy-sheriff, after the defaulting purchaser has received notice in writing that such report will be laid before the Judge for such purpose. If the defaulting purchaser is in possession of the property, the deputy-sheriff may on seven days notice, apply to a Judge for an order ejecting him or any person claiming to hold under him therefrom.
- (12) Subject to the provisions of sub-rule (5), the sale shall be without reserve and upon the conditions stipulated under sub-rule (8), and the property shall be sold to the highest bidder.
- (13) The deputy-sheriff shall give transfer to the purchaser against payment of the purchase price and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer into the name of the purchaser, and anything done by him for that purpose shall be as valid and effectual as if he were the owner of the property.
- (14) (a) The deputy-sheriff shall not pay out to any creditor any portion of the purchase price until transfer has been given to the purchaser, but upon receipt thereof he shall forthwith pay into the deposit account of the magistrate of the district or, if the district is Maseru, he shall pay such purchase moneys to the Registrar of the Court.
- (b) The deputy-sheriff shall as soon as possible after the sale prepare a plan of distribution of the proceeds showing the order of preference, as provided infra, and he shall forward a copy of such plan to the Registrar. Immediately thereafter the deputy-sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for fourteen days, from a date mentioned in the notice, at his office and at the office of the Registrar, and unless all parties shall signify in writing their agreement to the plan such plan shall so lie for inspection.
- (c) After deduction from the proceeds of the costs and charges of execution the order of preference shall be as follows:—
  - (i) the claims of preferent creditors ranking in priority in their legal order of preference; and thereafter
  - (ii) the claims of other creditors whose writs have been lodged with the deputy-sheriff in the order of preference as appearing from sections 96 and 99 to 101 (inclusive) of the insolvency [Proclamation No. 51 of 1957](#).
- (d) Any interested person objecting to such plan shall, within four days of the expiry of the notice referred to in paragraph (b) of this sub-rule, give notice in writing to the deputy-

sheriff and all other interested parties of the particulars of his objection and shall bring such objection before a Judge for review on ten days notice to the deputy-sheriff and all interested persons.

- (e) The Judge shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as to him seems just.
  - (f) If no objection be lodged to such plan, or if all interested parties signify their agreement to such plan or if the plan is confirmed or amended on review, the magistrate or Registrar, as the case may be, shall on production of a certificate from the conveyancer that transfer has been given to the purchaser and on the request of the deputy-sheriff, pay out in accordance with the plan of distribution. If the address of any payee is unknown, the amount due to him shall be paid into the Guardian's Fund established under the Administration of Estates Proclamation.
- (15) Where a writ is issued in pursuance of a judgment for provisional sentence it shall be as near as may be in accordance with Form "W (3)" of the First Schedule hereto.

#### **48. Security for costs**

- (1) A party to proceedings entitled and desiring security for costs from another shall, as soon as practicable after the commencement of proceedings deliver a notice setting forth the grounds upon which such security is claimed and the amount demanded.
- (2) If the amount of security only is contested the Registrar shall determine the amount to be given and his decision shall be final.
- (3) If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded or the amount fixed by the Registrar within ten days of the demand or the demand or of the Registrar's decision, as the case may be, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

*[L.N. 12/1981]*

- (4) The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default or make such other order as it deems just.
- (5) Any security for costs shall, unless the court otherwise directs, be given to the satisfaction of the Registrar.
- (6) The Registrar may, upon the application of the party in whose favour security is to be provided and on notice to all interested parties, increase, the amount thereof if he is satisfied that the amount originally furnished is no longer sufficient and his decision shall be final.

#### **49. Review of taxation**

- (1) Any party who is not satisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed mero metu by the taxing master may within fourteen days of the allocatur require the taxing master to state a case for the decision of a Judge, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall include any relevant findings of fact by the taxing master,

Provided that, save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed, or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed respectively, is less than ten rand.

- (2) The taxing master shall supply a copy of the case to each of the parties, who may within ten days of the receipt of the copy submit contentions in writing thereon, including grounds of objection not

advanced at the taxation, in respect of any item which was objected to before the taxing master or disallowed *mero motu* by him. Thereafter the taxing master shall frame his report and shall supply a copy thereof to each of the parties who may within seven days of the receipt thereof submit contentions in writing thereon to the taxing master who shall forthwith lay the case together with the contentions of the parties thereon, his report and any contentions thereon before a Judge. The Judge may then decide the matter upon the case and contentions so submitted, together with any further information he may require from the taxing master, or may decide it after hearing, if he deems fit the parties or their advocates or attorneys in his chambers, or he may refer the case for decision to the court. Any further information to be supplied by the taxing master to the Judge shall be supplied by the taxing master to the parties who may within seven days of the receipt thereof submit further contentions in writing to the taxing master who shall forthwith lay such further information together with any contentions of the parties before the Judge.

- (3) The Judge or the court, as the case may be, when deciding the matter may make such order as to the costs of the case as he or it may deem just, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the Judge or by the court as and for costs.

## 50. Reviews

- (1)
  - (a) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any subordinate or other inferior court and of any tribunal, board or officer or any person performing judicial, quasi-judicial or administrative and deliver shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings of the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer or person as the case may be, and to all other parties who may be affected by the decision or proceedings.
  - (b) Such notice shall call upon all the persons to whom the notice is addressed to show cause why such decision or proceedings should not be reviewed and corrected or set aside and the notice shall call upon the magistrate, presiding officer, chairman, officer or person (as the case may be) to despatch, within fourteen days of the receipt of the notice, to the Registrar of this court the record of such proceedings sought to be corrected or set aside together with such reasons as he is required or desired to give, and to notify the applicant that he has done so.
- (2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and the circumstances upon which the applicant relies to have decision or proceedings set aside or corrected.
- (3) The Registrar shall make available to the applicant the record dispatched to him as aforesaid on such terms as the Registrar may think appropriate to ensure its safety and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the Registrar with two copies and each of the other party with one copy thereof in each case certified by the applicant as true copies. The costs of the transcription shall be borne by the applicant and shall be costs in the cause.
- (4) The applicant may within seven days after the Registrar has made the record available to him, by notice and accompanying affidavit amend, add to, or vary the terms of the notice of motion and supplement the supporting affidavit, and shall deliver the said notice and affidavit to the Registrar and all interested parties.
- (5) Should the presiding officer, chairman, officer or other person (as the case may be) or any party affected desire to oppose the granting of the order prayed in the notice of motion he shall—
  - (a) within fourteen days of the receipt to him of the notice of motion or any amendment thereof deliver notice to the Registrar and to the applicant that he intends so to oppose and shall in such case appoint an address within five kilometres of the office of the Registrar at which he will accept notice and service of all process in such proceedings, and

- (b) within twenty-one days of the expiry of the time referred to within sub-rule (4) *supra*, deliver any affidavits he may desire in answer to the allegations made by the applicant.
- (6) The applicant shall have the rights and obligations in regard to replying affidavits set out in Rule 8 of these Rules.
- (7) The provisions of Rule 8 as to set down of applications and all other relevant matters not specifically referred to in this Rule shall *mutatis mutandis* apply to review proceedings.

## 51. Interpleader

- (1) (a) Where any person, (hereinafter called "the applicant") alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, (hereinafter called "the claimants") in respect thereto, the applicant may deliver a notice (hereinafter called "an interpleader notice") to the claimants.
- (b) Where there are conflicting claims as regards property attached in execution, the sheriff or the deputy-sheriff shall have the rights of an applicant and the execution creditor involved shall have the rights of a claimant.
- (2) (a) Where the claims relate to money the applicant shall be required on delivering the notice referred to in sub-rule (1) hereof, to pay the money to the Registrar who shall hold it until the conflicting claims have been decided, and the notice referred to must state that the money has been so paid.
- (b) Where the claims relate to a thing capable of being delivered the applicant shall tender the subject matter to the Registrar when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the Registrar may direct. The notice must state whether the thing has been delivered to the Registrar or describe what steps had been taken with regard to its availability.
- (c) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him, in the possession of the Registrar when delivering the interpleader notice and shall at the same time hand to the Registrar an undertaking to sign all documents and to do all things necessary to effect transfer of such immovable property in accordance with any order which the court may make with regard to the claimants or as to any agreement between the claimants.

The interpleader notice shall state that the applicant has complied with the terms of this sub-rule.

- (3) The interpleader notice shall:—
  - (a) state the nature of the liability, property or claim which is the subject matter of the dispute;
  - (b) call upon the claimants within the time stated in the notice, not being less than fourteen days from the date of service thereof, to deliver particulars of their claim; and
  - (c) state that upon a further date, not being less than fourteen days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his liability or the validity of the respective claims.
- (4) There shall be delivered together with the interpleader notice on affidavit by the applicant stating that—
  - (a) he claims no interest in the subject matter of the dispute other than for charges and costs;
  - (b) he does not collude with any of the claimants;
  - (c) he is willing to deal with or act in regard to the subject matter of the dispute as the court may direct.

- (5) If a claimant to whom an interpleader notice and affidavit have been delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred, as against the applicant from making any claim on the subject matter of the dispute.
- (6) If a claimant delivers particulars of his claim and appears before the court, the court may—
  - (a) then and there adjudicate upon such claim after hearing such evidence as it deems just;
  - (b) order that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant;
  - (c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which the defendant;
  - (d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;
  - (e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph (b) of sub-rule (2) as to it seems just.
- (7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.

## **52. Civil appeals from Subordinate Courts**

- (1)
  - (a) When an appeal has been noted from a judgment or order of a subordinate court the appellant may within four weeks after noting of the appeal apply in writing to the Registrar for a date of hearing.
  - (b) Notice must be given to all other parties interested in the judgment appealed against that such application for a date of hearing has been delivered.
  - (c) If the appellant fails to apply for a date of hearing within the four weeks as aforesaid, the respondent may at any time before the expiration of two months from the date of the noting of appeal set down the appeal for hearing giving notice to the appellant and all other parties that he has done so.
  - (d) If neither party applies for a date of hearing as aforesaid the appeal shall be deemed to have lapsed unless the court on application by the appellant and on good reasons shown shall otherwise order.
  - (e) If an appeal lapses but a cross appeal has been noted the cross appeal shall also lapse unless application for a date of hearing is made to the Registrar for a date of hearing of such cross appeal within three weeks of the date of lapse of the appeal.
- (2) When a day is fixed for the hearing of an appeal, such day shall automatically be the date of hearing of any cross appeal which has been noted. The party who has applied for a date of hearing shall give notice to all other parties of the date fixed for hearing. The party who gives such notice shall file with the Registrar at least seven days before the date of hearing an affidavit to the effect that, such notice has been given.
- (3) Notwithstanding the provisions of sub-rule (2) if all parties or their legal representatives appear in court on the date of hearing of the appeal or cross-appeal, the court may allow the hearing to proceed even if the provisions of sub-rule (2) have not been carried out.
- (4)
  - (a) It shall be the duty of the appellant or of the party who has applied for a date of hearing to prepare and lodge with the Registrar four typed or photocopied copies of the record of the case (other than the original) not less than fourteen days before the date fixed for hearing.



- (b) two copies of such record shall be delivered to each respondent to the appeal or to the cross-appeal as the case may be.
  - (c) The record shall contain a correct and complete copy of the pleadings, evidence and all other documents necessary for the hearing of the appeal but save in so far as these affect the merits of the appeal documents of a formal nature including subpoenas, notices of trial, consents to adjournments, schedules of documents and notices to produce or inspect shall be omitted from the copies of the record aforesaid. A list of the documents so omitted shall, however, be included in the record.
  - (d) By consent of all parties, exhibits having no bearing on a point at issue in an appeal or cross-appeal and immaterial portions of any documents may likewise be omitted from the copies of the record. Such consent setting out what documents or parts of documents have been omitted, shall be signed by the parties or their attorneys and shall be filed with the Registrar when such copies are lodged.
  - (e) The copies of the record shall be typed or photocopied in double spacing and the pages shall be numbered consecutively. Every tenth line on every page shall be numbered also.
  - (g) The copies of the record shall also contain a complete index indicating at what page or pages each document and the evidence of each witness will be found. The exhibits shall be given the same lettering in the index as they bear in the original record.
- [Please note: numbering as in original.]*
- (4) (a) The necessary costs of the making of copies of the record by each party to the appeal for the use of his legal representatives and for the copies furnished to the court shall form part of the costs of appeal or cross-appeal, as the case may be.
  - (b) The costs to be allowed by the taxing master for the making of the said copies shall be at the rate of fifty cents per page of three hundred and fifty words for each of the said copies, a half page or less to be charged at the rate of twenty-five cents, provided that if the copies are made by the Registrar or any official of the court the taxing master shall allow as costs the actual fees paid by the party or his legal representative therefor.
  - (c) The court may disallow the costs of any portion of the copies which it considers were not necessary to include.
- (5) (a) Notwithstanding anything contained in sub-rule (1) and (2) if the appellant in an appeal from the court of the Judicial Commissioner includes in his notice of appeal which he serves upon the respondent, a statement to the effect that the appeal will be heard at the next session of the High Court and stamps the said notice as a notice of set down as well as a notice of appeal, it shall not be necessary for him to serve a separate notice of set down on the respondent, but it shall be the duty of the Registrar to give both parties reasonable notice of the date of hearing of the appeal.
  - (b) Subject to the provisions of paragraph (a) herein, the provisions of this Rule shall *mutatis mutandis* apply to appeals from the court of the Judicial Commissioner.
  - (c) Where leave to appeal against a judgment or order of the Judicial Commissioner is necessary the provisions of Rule 8 shall apply to applications for such leave.
- (6) The court on application by any party may in its discretion condone any breach of the provisions of this Rule. The provisions of Rule 8 shall apply to such application unless the court at the hearing of the appeal or cross-appeal condones such breach on application made orally. The court, if it condones or refuses to condone such breach may make any order as to costs which it considers just.
  - (7) A party after noting an appeal shall within seven days after such noting give security, to the satisfaction of the Registrar for payment of the costs of appeal to the respondent should the respondent be awarded such costs by the court.

**53. Court fees**

- (1) The court fees to be paid shall be those prescribed in the Second Schedule hereto.
- (2) No court fees shall be payable by any party who has been given leave to act *in forma pauperis* unless the court otherwise orders.  
  
Provided that if the pauper is awarded costs in an action or on appeal the provisions of Rule 16 shall apply.
- (3) Court fees shall be paid by means of revenue stamps affixed to the document unless another method is provided in the schedule.
- (4) The provisions of the Second Schedule are subject to the provisions of Stamp Duties [Proclamation No. 16 of 1907](#) and any amendments or substitutions to or for such Proclamation.

**54. Sheriff's fees**

- (1) The fees and charges to be allowed to the sheriff or deputy-sheriff in respect of executing the process of the court shall be as set forth in the Third Schedule hereto, provided that no fees may be charged for the service of process *in forma pauperis* proceedings except that necessary disbursements for the purpose of such service may be recovered.
- (2) Where there are more than one way of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.
- (3) Where any dispute shall arise as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made in the Third Schedule hereto, the matter shall be determined by the taxing officer of the court.

**55. Tariff of fees for advocates**

- (1) The tariff of fees for advocates when costs are awarded as between party and party are as set out in the Fourth Schedule hereto.
- (2) Where the tariff of fees provide for varying amounts the taxing master may award such amount as he considers reasonable in the circumstances.
- (3) The attorney who claims fees disbursed to advocates must produce to the taxing master the marked brief of the advocate in each case.
- (4) Fees of only one advocate shall be allowed unless the court otherwise directs.
- (5) Where a case is settled before the hearing in court on the basis that one party shall pay the costs, the fees for the advocate appearing for the party in whose favour costs are to be paid shall not be allowed unless the advocate has been briefed not more than 21 days before the date of hearing.
- (6) Where the court awards the costs of two advocates in any matter the fees allowed for the junior advocate on a party and party basis shall not exceed one-half of the fees allowed for the senior advocate.
- (7) Where costs are awarded to a party on an attorney and client basis, the taxing master shall allow such fees of an advocate as he considers reasonable having regard to all the circumstances including the fee the advocate has marked on his brief.

**56. Taxation and tariff of fees for attorneys**

- (1) It shall be competent for the taxing master to tax all bills of costs actually rendered by an attorney in his capacity as such, whether or not in connection with litigation,



Provided that the taxing master shall not tax costs in instances where some other official is empowered by statute to do so.

- (2) At the taxation of any bills of costs, the taxing master may call for such books, documents, papers or accounts as, in his opinion, are necessary to enable him properly to determine any matter arising upon such taxation.
- (3) The taxing master shall allow such costs, charges, expenses, and disbursements as, in his opinion appear to him to have proper or necessary for the attainment of justice or for defending the rights of any party but, save as against the party who has incurred the same, no costs shall be allowed which, in the opinion of the taxing master, were incurred through overcaution, negligence or by mistake or by unusual disbursements.
- (4) The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he is entitled to be present thereat provided that such notice shall not be necessary in the following instances:—
  - (a) if the person liable to pay costs has consented in writing to taxation in his absence;
  - (b) for the taxation of writ and post writ bills.
- (5) The tariff of fees for attorneys where costs have been awarded to a party on a party and party basis shall be as set out in the Fifth Schedule hereto.

Provided that the taxing master shall be entitled in his discretion to depart from any of the provisions of the tariff in exceptional circumstances, where adherence to such provisions would be inequitable.

- (6) (a) If the taxing master shall consider there has been unnecessary copying of documents he shall not allow the costs of such unnecessary copies.
- (b) No fees shall be allowed by the taxing master as between party and party for the copying of any document not used at the hearing of a trial or other proceedings, unless the court otherwise directs.
- (7) Where, in the opinion of the taxing master, more than one attorney has been necessarily engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.
- (8) A folio, as referred to in the tariff shall contain 158 words or part thereof; four figures shall be counted as one word.

## **57. Superannuation of judgments**

- (1) After the expiration of three years from the day on which a judgment or order has been pronounced, no writ of execution may be issued pursuant to such judgment or order unless the debtor consents to the execution of a writ or unless the judgment has been revived by the court.
- (2) A judgment shall not be revived by the court unless the debtor has received not less than seven days notice that application to the court will be made for the revival of such judgment.
- (3) Subject to the provisions of sub-rule (2) herein, in any application for revival of any judgment, the court shall not require new proof of the debt on which the judgment is based.
- (4) Where a judgment has been given for periodical payments the three years referred to in sub-rule (1) herein shall begin to run, in respect of any payment, from the due date of such payment.
- (5) Writs of execution of a judgment once issued remain in force and may be executed at any time without being renewed until the judgment has been satisfied in full.

- (6) Nothing in this rule shall be interpreted as in any way changing any laws relating to prescription or any other statutory or customary law.

## **58. Translation of documents and interpretation of evidence**

- (1) If any document is in a language other than English it shall be accompanied by a translation certified to be correct by a sworn translator before being admitted as evidence before the court.
- (2) A translation so certified as above set out shall be deemed *prima facie* to be a correct translation.
- (3) If no sworn translator is available, there may, if it considers it to be in the interests of justice, and having regard to the expense or delay which would otherwise occur, notwithstanding the provisions of sub-rule (1) admit as evidence a translation certified to be correct by any person the court considers competent to make such translation.
- (4) Where evidence in any proceedings is given in any language other than in English such evidence shall be interpreted by a competent interpreter.
- (5) If such interpreter is not a sworn translator admitted as such by the court, he must before interpreting the evidence take an oath that he will faithfully and to the best of his ability interpret the evidence into English from the language in which the evidence is given.
- (6) The court may call upon the suggested interpreter to satisfy the court as to his competence and integrity either by witnesses or in any manner it deems just.
- (7) When the services of an interpreter are employed in any matter the costs, if any, shall be costs in the cause, unless the court, in its discretion, orders otherwise.

## **59. Savings as to the court's discretion**

Notwithstanding anything contained in these Rules the court shall always have discretion, if it considers it to be in the interests of justice, to condone any proceedings in which the provisions of these rules are not followed.

## **60. Recording of evidence**

- (1) Every person who takes down evidence in shorthand shall take an oath to the effect that to the best of his ability he will take down the evidence correctly and if he afterwards transcribes such evidence into the English language he shall certify by an affidavit that the evidence has been correctly transcribed.
- (2) Every person who takes down evidence by mechanical means shall take a similar oath that such evidence is recorded correctly to the best of its ability. If the evidence is taken down by means of a tape recorder, and such evidence is subsequently transcribed, the person making such a transcript shall certify by an affidavit that it has been correctly transcribed.
- (3) Where in any proceedings evidence is taken down by means of a tape-recorder the tapes shall be placed in charge of the Registrar. The Chief Justice may order tapes on which evidence has been recorded to be prepared for re-use.
  - (a) if no appeal has been noted after the lapse of two years from the date on which Judgment has been given,
  - (b) if an appeal has been noted and is pending after Judgment of the Court of Appeal has been delivered.
  - (c) with the consent of the parties or their legal representatives immediately after the tapes have been transcribed and certified as correct.
- (4) Subject to the above the provisions of sub-rules (17), (18), (19) and 20 of Rule 41 shall *mutatis mutandis* apply in which evidence is recorded in Court.

## First Schedule

### Form A – Certificate of service of foreign process (Rule 4(7))

I \_\_\_\_\_ Registrar of the High Court of Lesotho hereby certify that the following documents are annexed:—

- (1) The original request for service of process or citation received from (state, territory, country or court)  
In the matter between \_\_\_\_\_ and \_\_\_\_\_;
- (2) The process received with such request.
- (3) The proof of service upon \_\_\_\_\_  
The person named in such request for service, together with the certificate of verification of  
\_\_\_\_\_

I also certify that the service so proved and the proof thereof are such as are required by the Rules of the High Court of Lesotho. I further certify that the cost of effecting such service, duly certified by the taxing officer of this Court, amounts to the sum of M \_\_\_\_\_

Given under my hand and seal of office at Maseru this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

\_\_\_\_\_  
Registrar of the High Court of Lesotho.

Seal.

### Form B

#### *Substituted service — Short form of process (If in accordance with Rule 4(6))*

#### *(or edictal citation — Short form of process. (If in accordance with Rule 5(4))*

In the High Court of Lesotho

In the matter between \_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

To (Defendant) \_\_\_\_\_ (sex) \_\_\_\_\_ (occupation)

formerly residing at \_\_\_\_\_ but whose present whereabouts are unknown;

Take Notice that by summons (or citation) sued out of the court, you have been called upon to give notice within \_\_\_\_\_ days after publication hereof, to the Registrar and to the plaintiff's attorney of your intention to defend (if any) in an action wherein the plaintiff claims

(a)

(b)

(c)

etc.

Take Notice further that if you fail to give such notice, judgment may be granted against you without further notice to you.

Dated at Maseru this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Registrar

Plaintiff's attorney

Address for service;  
\_\_\_\_\_  
\_\_\_\_\_

### Form C – Edictal citation process for personal service (Rule 5(5))

Whereas by order of the High Court of Lesotho, \_\_\_\_\_ (name) the plaintiff herein was on the \_\_\_\_\_ (date) \_\_\_\_\_ granted leave to issue a citation against you \_\_\_\_\_ (name) \_\_\_\_\_ of (address) in an action, in which the plaintiff claims:

*(here set out the claims)*

Now therefore you are called upon to give notice of your intention to defend the above claims or any of them if you wish to do so by entering appearance to defend by notice given to the Registrar of the High Court of Lesotho and to plaintiff's attorney within \_\_\_\_\_ days of service of this citation upon you.

Further take notice that if you intend to defend you must when entering appearance give an address in Lesotho within five kilometres of the office of the Registrar at which you will accept notice and service of all documents in these proceedings. Further take notice that if you fail to enter appearance to defend within the period aforesaid judgment may be granted against you without further notice.

Signed: \_\_\_\_\_

Registrar of the High Court

Signed: \_\_\_\_\_

Plaintiff's attorney,

### Form D – Warrant of attachment of goods to found or confirm jurisdiction (Rule 6(9))

In the matter between \_\_\_\_\_ applicant incola and \_\_\_\_\_ respondent, a peregrinus

To the sheriff:— \_\_\_\_\_ (or his deputy)

You are hereby directed to attach the following goods of (respondents) \_\_\_\_\_

(or the following immovable property of \_\_\_\_\_)

(or the following incorporeal property of \_\_\_\_\_)

and to keep the same in your custody pending the decision of an action in which the applicant as plaintiff claims against the respondent, as defendant:—

(a)

(b)

(c)

For which this writ shall be your warrant.

Dated at Maseru this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Registrar of the High Court

\_\_\_\_\_  
Applicant's attorney

(address)

### **Form E – Warrant of arrest to found or confirm jurisdiction (Rule 6(8))**

In the matter between

\_\_\_\_\_ Plaintiff

\_\_\_\_\_ Defendant

Moshoeshe The Second, by the Grace of God, King of Lesotho

#### **1. To the Sheriff**

You are hereby commanded to apprehend \_\_\_\_\_ (name) of \_\_\_\_\_ (address) \_\_\_\_\_ presently in \_\_\_\_\_ (address in Lesotho) (hereinafter called the defendant) and to detain him and bring him before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_ O'clock \_\_\_\_\_ to show cause why he should not be committed to prison and detained pending delivery of the judgment of the Court in an action wherein the plaintiff claims

(1)

(2)

(3)

from the defendant unless he shall give surity to the satisfaction of the court that he will abide such judgment or remain within the jurisdiction of the Court until such judgment is delivered,

#### **2. To the officer commanding the gaol to whom the Sheriff presents this writ**

You are commanded and required to receive the said \_\_\_\_\_ and to keep him safely until such time as he shall be removed to have him before the Court in accordance with the first part of this writ or until he shall be otherwise lawfully discharged.

\_\_\_\_\_ (signed by Registrar)

(Signed by Plaintiff's attorney) \_\_\_\_\_ (date)

### **Form "F"- Writ of arrest (Rule 7(2))**

#### ***In the High Court of Lesotho***

Moshoeshe The Second, by the Grace of God, King of Lesotho

## 1. To the Sheriff

You are hereby commanded to apprehend \_\_\_\_\_ (sex) \_\_\_\_\_ (occupation) \_\_\_\_\_ of \_\_\_\_\_ (address) \_\_\_\_\_ (hereinafter called the defendant) and to detain and bring him before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ O'clock in the forenoon to answer \_\_\_\_\_ (sex) \_\_\_\_\_ (occupation) \_\_\_\_\_ of \_\_\_\_\_ (address) \_\_\_\_\_ (hereinafter called the plaintiff) in an action wherein the plaintiff claims \_\_\_\_\_

(1)

(2)

(3)

etc.

from defendant, and to abide the judgment of the Court thereon or to show cause why he should not be ordered to abide the judgment of the Court or furnish security for his further presence within its jurisdiction until its judgment has been delivered in the above action or failing the due provisions of such security, why he should not be committed to prison and detained pending the judgment of this Court in the said action.

## 2. To the officer commanding the gaol to whom the Sheriff presents this writ:—

You are hereby commanded and required to receive the said \_\_\_\_\_ and to keep him safely until such time as he shall be removed to have him before the Court in accordance with the first part of this writ or until he shall be otherwise lawfully discharged.

\_\_\_\_\_  
Registrar of the High Court

\_\_\_\_\_  
Plaintiff's attorney

*Note: The costs of this writ have been taxed and allowed at \_\_\_\_\_ exclusive of the Sheriff's caption fee of \_\_\_\_\_*

\_\_\_\_\_  
(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Registrar)

**Form "G" – Arrest – Bail bond (Rule 7(8))**

We the undersigned \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ hereby acknowledge ourselves to be firmly bound to the Sheriff of the High Court of Lesotho in an amount of \_\_\_\_\_ to be paid to the Sheriff or his cessionaries or assigns, for which payment we bind ourselves jointly and severally, and our respective executors and administrators in like manner the condition of this bond being that if the said \_\_\_\_\_ duly appear before the High Court of Lesotho on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the forenoon to answer \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called the plaintiff) in an action wherein the plaintiff claims from the said \_\_\_\_\_ and thereafter remains within the jurisdiction of the Court until its judgment has been delivered in the said action, and abides such judgment, this bond shall be void; otherwise it shall be of full force and effect.

Signed by us in the presence of the subscribing witness at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Signed by defendant and Surety)

\_\_\_\_\_  
(witnesses).

**Form "H" – Assignment of bail bond (Rule 7(12))**

I, \_\_\_\_\_ in my capacity as sheriff of the High Court of Lesotho (or deputy sheriff for the district of \_\_\_\_\_) hereby assign and make over to \_\_\_\_\_ all my right, title and interest in the foregoing bail bond.

Signed by me in the presence of the subscribing witnesses at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 Sheriff or Deputy-Sheriff

Witnesses:

**Form "I" – Notice of motion to Registrar (Rule 8(4))*****In the High Court of Lesotho***

In the matter of \_\_\_\_\_ Applicant

Take notice that application will be made on behalf of the above-named applicant on the \_\_\_\_\_ day of \_\_\_\_\_ at 9:30 a.m. as soon thereafter as counsel (or attorney) may be heard for an order in the following terms:—

- (a)
- (b)
- (c)

etc.

and that the affidavit of \_\_\_\_\_ annexed hereto will be used in support thereof.

Please place the matter on the roll for hearing accordingly.

Dated at \_\_\_\_\_

\_\_\_\_\_  
 Applicant's attorney

**Form "J" – Notice of motion to Registrar and Respondent(s)*****In the High Court of Lesotho***

In the matter between

\_\_\_\_\_ Applicant

and

\_\_\_\_\_ Respondent

Take Notice that \_\_\_\_\_ (hereinafter named the applicant) intends to make application to Court an order:—

- (a)
- (b)
- (c)

and that the accompanying affidavit of \_\_\_\_\_ (or a petition if such is required by statute) will be used in support of such application.

Take Notice further that the applicant has appointed \_\_\_\_\_ (*here set forth an address which must be within 5 kilometres of the office of the Registrar*) at which he will accept notice and service of all process in these proceedings. Take notice further that if you intend opposing this application you are required

- (a) to notify applicant's attorney in writing on or before the \_\_\_\_\_,
- (b) and within fourteen days of such notification, to file your answering affidavits if any; and further take notice that you are required to appoint in such notification an address within 5 kilometres of the Registrar at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the \_\_\_\_\_ at \_\_\_\_\_ a.m.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Applicant's attorney (address)

\_\_\_\_\_  
\_\_\_\_\_

### **Form "K" – Provisional sentence (Rule 9(1))**

#### ***Claim on a negotiable instrument***

Moshoeshoe The Second, by the Grace of God, King of Lesotho

To the Sheriff

Inform \_\_\_\_\_ (sex)(occupation) \_\_\_\_\_ of \_\_\_\_\_ (address)

(hereinafter called the defendant):

1. That he is hereby called upon immediately to pay to (name) \_\_\_\_\_ (occupation) \_\_\_\_\_ of \_\_\_\_\_ (address) the sum of \_\_\_\_\_ together with interest at the rate of \_\_\_\_\_ percent per annum which he owes to the plaintiff by reason of a certain cheque (or other instrument to be described) bearing date \_\_\_\_\_ drawn and signed by the defendant in favour of plaintiff upon the \_\_\_\_\_ (banker) \_\_\_\_\_ of which cheque plaintiff is the legal holder and which cheque though duly presented to the aforesaid banker for payment was dishonoured by non payment, notice of dishonour being dispensed with by reason of the fact that as between himself and the banker there was no obligation on the banker to pay such cheque.

A copy of such cheque is hereinto annexed marked "A" and

- (2) That failing such payment, he is hereby called upon to appear before this Court personally or by a legal representative on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the morning (or as soon thereafter as the matter may be heard) to admit or deny liability for the said amount.

and

- (3) That if he denies liability for the said claim he shall not later than noon on \_\_\_\_\_ the day of \_\_\_\_\_ file an affidavit with the Registrar of this Court and serve a copy thereof on plaintiff's attorney, which affidavit shall set forth the grounds of his defence to the said claim, and in particular must state whether he admits or denies his signature to the said cheque \_\_\_\_\_ (or whether he admits or denies the signature of his agent and his authority to sign) and whether he admits the validity of the said debt.

And inform the said defendant further that in the event of his not paying the amount and interest abovementioned to the plaintiff immediately and if the said defendant further fails to file an affidavit as aforesaid, and to appear before the Court at the time above stated provisional sentence may forthwith be



granted against him with costs and execution may be levied against him by the plaintiff who must however give security as against payment of the said amount for the restitution thereof if the said sentence should thereafter be reversed.

And serve a copy of this summons and of the said cheque (or other instrument) on the said defendant and then return this summons to the Registrar with your return of what you have done thereon.

Witness:

The Honourable Chief Justice of Lesotho \_\_\_\_\_)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Registrar

Plaintiff's attorney

(address for service)

### Form "L"- Provisional sentence on a mortgage bond (Rule 9(1))

Moshoeshe The Second, by the Grace of God, King of Lesotho

To the Sheriff

Inform \_\_\_\_\_ (sex)

(occupation) \_\_\_\_\_ of \_\_\_\_\_ (address) \_\_\_\_\_ (hereinafter called the defendant).

1. That he is hereby called upon immediately to pay to \_\_\_\_\_ (hereinafter called the plaintiff) the sum of \_\_\_\_\_ which he owes to the plaintiff by reason of a certain mortgage bond bearing date \_\_\_\_\_ day of \_\_\_\_\_ to date of payment which said bond has become due and payable by reason of the fact that due date of payment in terms of the bond was the \_\_\_\_\_ day of \_\_\_\_\_ (or by reason of the fact interest due in terms of the bond on \_\_\_\_\_ has not been paid and payment of the capital has become due in terms of paragraph of the bond)

A copy of the said bond is hereby annexed marked "A" and

2. That failing such payment, he is hereby called upon to appear before this Court personally or by a legal representative on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the morning (or as soon thereafter as the matter may be heard) to admit or deny liability for the said amount \_\_\_\_\_ and
3. That if he denies liability for the said claim he shall not later than noon \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ file an affidavit with the Registrar of this Court and serve a copy thereof on plaintiff's attorney, which affidavit shall set forth the grounds of his defence to the said claim and in particular must state whether he admits or denies the signature of \_\_\_\_\_ affixed to the said bond and whether he admits or denies the authority of the said to sign such bond and whether he admits or denies the validity of the bond and also to show cause why the property specially mortgaged by the said bond should not be declared executable, and inform the said defendant further that in the event of his not paying the said amount with interest to the plaintiff immediately and if the defendant further fails to file an affidavit as aforesaid and to appear before the Court at the time above stated provisional sentence may forthwith be granted against him with costs and the aforesaid property specially mortgaged by the bond be sold in execution but that the plaintiff must give security as against payment to him of the said amount for the restitution thereof if the said sentence should thereafter be reversed.

And serve a copy of the summons and of the said bond on the said defendant and then return this summons to the Registrar with your return of what you have done thereon.

Witness:

The Honourable Chief Justice of Lesotho.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Registrar,

Plaintiff's attorney

(address for service)

### **Form "M" – Notice to alleged partner or proprietor of a firm (Rule 13(5))**

#### ***In the High Court of Lesotho***

In the matter between \_\_\_\_\_

Case No. \_\_\_\_\_

\_\_\_\_\_ Plaintiff or

\_\_\_\_\_ Applicant

and

\_\_\_\_\_ Defendant or

\_\_\_\_\_ Respondent

Take Notice that action has been instituted by the above named plaintiff against the above named defendant for the sum of \_\_\_\_\_ and that the plaintiff alleges that the above named defendant is a partnership at which you were from \_\_\_\_\_ to \_\_\_\_\_ a partner. If you dispute that you were a partner or that the above mentioned period is in any way relevant to your liability as a partner you must within eight days of the service of this notice give notice of your intention to defend. Upon giving such notice a copy of the summons served upon the above named defendant will be served upon you.

To give such notice you must file with the Registrar and serve a copy thereof upon the plaintiff at the address set out at the foot thereof upon the plaintiff at the address set out at the foot thereof a notice stating that you intend to defend. Your notice must give an address (which must not be a post office box or poste restante) within 5 kilometres of the office of the Registrar for the service upon you of notices and documents in the action. Unless you do all these things your notice will be invalid.

Thereafter you should file a plea within seven days after you have filed such notice with the Registrar in which you may dispute that you were a partner or that the period alleged above is relevant or that the defendant is liable on all or any of such matters or any defence you may have. If you do not give such notice you will not be liable to contest any of the above issues or to contest your liability to the plaintiff in any way, if the above named plaintiff obtains a judgment against the above named defendant, you will be liable to have execution issued against you, should the defendant's assets be excused in execution and be insufficient to satisfy the judgment.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Attorney for \_\_\_\_\_

**Note:** *In application proceedings or in action against a firm the wording of the above should be approximately altered).*

### **Form "N" – Summons (Rule 18(1))**

Moshoeshe The Second, by the Grace of God, King of Lesotho

Case No. \_\_\_\_\_

In the High Court of Lesotho

In the matter between

\_\_\_\_\_ Plaintiff

and

\_\_\_\_\_ Defendant

To the Sheriff or his Deputy,

Inform \_\_\_\_\_ (name of Defendant) (sex) \_\_\_\_\_, status and occupation of Defendant) \_\_\_\_\_ of (address of Defendant) \_\_\_\_\_ (sex, status and occupation of plaintiff) \_\_\_\_\_ of \_\_\_\_\_ (address of plaintiff) hereby institutes action against him in which action the plaintiff claims:—

*(Here set out in concise terms the plaintiff's cause of action and the terms of the relief he claims).*

and command the defendant that if he disputes the claim and wishes to defend the action he must enter an appearance in Court within \_\_\_\_\_ days after service of the summons and that to do so he must file with the Registrar of the Court a notice stating his intention to defend the action and that he must serve a copy of such notice on the plaintiff's attorney at the address given below which notice shall give an address (which must not be a post office box or a poste restante) within 5 kilometres of the office of the Registrar for the service upon the defendant of all notices and documents in the action.

And inform the defendant further that if he fails to enter appearance as aforesaid, judgment as claimed may be given against him without further notice.

Dated at Maseru \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Registrar

Plaintiff's attorney

(address of attorney)

\_\_\_\_\_  
Witness

The Honourable Chief Justice \_\_\_\_\_

### **Form "O" - Discovery — Form of affidavit (Rule 34(3))**

#### ***In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the matter between \_\_\_\_\_ Plaintiff

and

\_\_\_\_\_ Defendant

I \_\_\_\_\_ (deponent's full name) \_\_\_\_\_ the above named defendant make oath and say:

- (1) I have in my possession or power the documents relating to the matters in question in this cause set forth in the first and second parts of the First Schedule aforesaid.
- (2) I object to produce the said documents set forth in the second part of the First Schedule aforesaid.
- (3) I so object for the reason that \_\_\_\_\_ *(here state upon what grounds the objection is made, and verify the fact as far as possible)* \_\_\_\_\_

- (4) I have had, but have not now, in my possession or power, the documents relating to the matters in question in this action, set forth in the second schedule annexed hereto.
- (5) The last-mentioned documents were last in my possession or power on \_\_\_\_\_ (*state date when*)
- (6) The said documents are \_\_\_\_\_ (*state what has become of the last-mentioned documents and in whose possession they now are.*)
- (7) According to the best of my knowledge and belief, I have not now, and have never had in my possession, custody, or power, or in the possession, custody or power of my attorney or agent, or any other person on my behalf, any document, or copy of, or extract from any document, relating to any matters in question in this cause, other than the documents set forth in the First Schedules hereto.

Dated at \_\_\_\_\_ (Date)

(usual ending of affidavits sworn to and signed

by \_\_\_\_\_ Deponent \_\_\_\_\_)

### **Form "P" – Discovery – Notice to produce (Rule 34(8))**

#### ***In the High Court of lesotho***

Case No. \_\_\_\_\_

In the matter between: \_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

Take Notice that the above-named \_\_\_\_\_ (Plaintiff or defendant) requires you to produce within seven days for his inspection within seven days the following documents referred to in your affidavit, dated \_\_\_\_\_

(*Describe documents required*)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

Attorney for \_\_\_\_\_ (address)

To:

\_\_\_\_\_

Attorney for the \_\_\_\_\_ (address)

**Form "Q" – Discovery – Notice to inspect documents (Rule 34(8))*****In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the matter between: \_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

Take Notice that you may inspect the documents mentioned in your notice dated \_\_\_\_\_ at my office (or at \_\_\_\_\_) at \_\_\_\_\_ and between the hours of \_\_\_\_\_ and \_\_\_\_\_ on the following days

or

Take Notice that the (plaintiff or Defendant) objects to giving you inspection of the documents mentioned in your notice dated \_\_\_\_\_

on the grounds that \_\_\_\_\_

*(state grounds)*

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

Attorney for \_\_\_\_\_

(address)

To:

Attorney for \_\_\_\_\_

(address)

**Form "R" – Discovery – Notice to produce documents in pleadings etc. (Rule 34(11))*****In the Lesotho High Court***

Case No. \_\_\_\_\_

In the matter between: \_\_\_\_\_ Plaintiff (Applicant)

and \_\_\_\_\_ Defendant (Respondent)

Take Notice that the (plaintiff or defendant, applicant or respondent) requires you to produce for his inspection the following documents referred to in your (plea or declaration or affidavit)

*(Describe documents required)*

Attorney for \_\_\_\_\_ (address)

To:

Attorney for \_\_\_\_\_ (address)

**Form "S" – Notice in terms of Rule 34(15)*****In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the matter between: \_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

To \_\_\_\_\_

Please take notice that the abovementioned plaintiff requires you within fourteen days to deliver to the undermentioned address a written statement setting out what documents of the following nature you have presently or had previously in your possession.

*(Description of Documents)*

In such statement you must specify in detail which documents are still in your possession. If you no longer have any such documents which were previously in your possession you must state in whose possession they now are.

If you fail to deliver the statement within the time aforesaid, application will be made to court for an order compelling you to do so and directing you to pay the costs of such application.

\_\_\_\_\_  
Plaintiff's attorney

(address)

**Form "T" – Subpoena (Rule 40(1))**

In the High Court of Lesotho.

Case No. \_\_\_\_\_

In the Matter between: \_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

To the Sheriff or his deputy:

Inform:

(1)

(2)

(3)

(4)

(names, sex, occupation, and place of business or residence of each witness to be stated)

that each of them is hereby required, to appear in person before this Court at Maseru on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon and there--after remain in attendance until excused by the Court, in order to testify on behalf of the abovenamed plaintiff/defendant in regard to all matters within his knowledge relating to an action now pending in the said Court and wherein the plaintiff claims:

(1)

(2)

etc.

from the abovementioned defendant.

And inform him that he is further required to bring with him and to produce to the said Court \_\_\_\_\_  
*(describe accurately each document, book or thing to be produced)* \_\_\_\_\_

And inform each of the said persons further that he should on no account neglect to comply with this subpoena as if he does so he may thereby render himself liable to a fine of R50 or to imprisonment for three months.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
 Registrar of the High Court

\_\_\_\_\_  
 Plaintiff's attorney (or Defendant's attorney)

(address)

### **Form "U" – Restitution of conjugal rights (Rule 42(5))**

#### ***In the High Court of Lesotho***

Case No. \_\_\_\_\_

To: \_\_\_\_\_ (*name of defendant*) formerly of \_\_\_\_\_ (*former address*) but whose present address is unknown.

Take Notice that by Order of the above Court dated the \_\_\_\_\_ day of \_\_\_\_\_ you are required to return and restore conjugal rights to \_\_\_\_\_ (*name of plaintiff*) your (wife or husband as the case may be) on or before the \_\_\_\_\_ day of \_\_\_\_\_

Should you fail to do so and not show cause to the contrary before the above mentioned court at 9.30 a.m. on the \_\_\_\_\_ day of \_\_\_\_\_ an order of divorce may be granted against you with costs and your (wife or husband) may be granted custody of the minor children of the marriage and you may be ordered to pay maintenance for \_\_\_\_\_ at the rate of \_\_\_\_\_

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

(signed) \_\_\_\_\_ Registrar of the Court

(signed) \_\_\_\_\_ Plaintiff's attorney

(address)

\* *Other relief may be asked for such a forfeiture of the benefits of the marriage in community etc.*

**Form "V(I)" – Writ of Execution (Rule 46(1))*****In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the matter between:

\_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

To the Sheriff or his deputy:

For the district of \_\_\_\_\_

You are hereby directed to attach and take into execution the movable goods of \_\_\_\_\_ the abovenamed defendant of \_\_\_\_\_ (address) \_\_\_\_\_ and of the same to cause to be realized by public auction the sum of \_\_\_\_\_ together with interest thereon at the rate of \_\_\_\_\_ per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ and the sum of \_\_\_\_\_ for the taxed costs and charges of the said \_\_\_\_\_ which he recovered by judgment of this Court dated the day of \_\_\_\_\_ in the abovementioned case, and also all other costs and charges of the plaintiff in the said case to be hereafter duly taxed according to law, besides all your costs thereby incurred.

Further pay to the said \_\_\_\_\_ or his attorney the sum or sums due to him with costs as above mentioned, and for so doing this shall be your warrant.

And return you this writ with what you have done thereupon.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

(signed) \_\_\_\_\_ Registrar of the High Court

(signed) \_\_\_\_\_ Plaintiff's attorney

(address) \_\_\_\_\_

**Form "V(2)" – Form of Security under (Rule 46(5))*****In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the matter between:

\_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant.

Whereas by virtue of certain writ of the High Court of Lesotho dated \_\_\_\_\_ issued at the instance of \_\_\_\_\_ (name of judgment creditor) against \_\_\_\_\_ (name of judgment debtor) \_\_\_\_\_ of \_\_\_\_\_ (address of judgment debtor) the deputy-sheriff has seized and laid under attachment the undermentioned articles, namely:

(10 head of cattle) \_\_\_\_\_ (name goods)

(etc. etc.)

Now, therefore, the said \_\_\_\_\_ (judgment debtor) and (surety) \_\_\_\_\_ of \_\_\_\_\_ (address of surety and his occupation) as surety for him, bind ourselves severally and in solidum, hereby undertaking to the said deputy-sheriff or his cessionaries, assigns or successors in office, that the said goods shall not be made away with or disposed of, but shall remain in the possession of the said (judgment debtor), under the said attachment,



and be produced to the said deputy-sheriff (or other person authorized by him to receive such goods) on the \_\_\_\_\_ (the day appointed for sale) or on any other day when the same may be required in order to be sold, unless the said attachment shall legally be removed, failing which I, the said (surety) hereby bind myself, my person, goods and effects, to pay and satisfy the sum of (estimated value of the goods seized) to the said deputy--sheriff, his cessionaries, assigns or successors in office, for and on account of the said (judgment creditor).

In Witness \_\_\_\_\_

**Form "V(3)" – Writ of Execution – Movable  
property – Provisional sentence (Rule 46(13))**

Case No. \_\_\_\_\_

***In the High Court of Lesotho***

In the matter between: \_\_\_\_\_ Plaintiff

and \_\_\_\_\_ Defendant

To the Sheriff or his Deputy:

You are hereby directed to attach and take into execution the movable goods of \_\_\_\_\_ the above-named defendant of \_\_\_\_\_ (address) \_\_\_\_\_ and of the same to cause to be realized by public auction the sum of \_\_\_\_\_ together with interest thereon at \_\_\_\_\_ per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ in the above-mentioned suit, and also all other costs and charges of the said plaintiff in the said suit to be hereafter taxed according to law, besides all your costs thereby incurred, and four rand in addition in case the said defendant shall require security *de restituendo* and further to pay to the said plaintiff or his attorney the sum or sums due to him with costs as abovementioned upon sufficient security being given by him for the restitution thereof, if in the principal case the said sentence is reversed, and for so doing this shall be your warrant.

And return this writ with what you have done thereupon.

(Signed) \_\_\_\_\_ Registrar

(Signed) \_\_\_\_\_ Plaintiff's attorney

(address) \_\_\_\_\_

In witness whereof we the said (judgment debtor and surety) have hereunto set out hands on this \_\_\_\_\_ day of \_\_\_\_\_

(signed) \_\_\_\_\_ Judgment Debtor and Surety.

(Signed) \_\_\_\_\_ Deputy-sheriff

**Form "W(1)" – Writ of Attachment – Immovable property (Rule 47(2))*****In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the Matter between:

\_\_\_\_\_ Plaintiff

and

\_\_\_\_\_ Defendant

To the Sheriff or Deputy-sheriff for the district of \_\_\_\_\_

Whereas you were directed to cause to be realised the sum of \_\_\_\_\_ in satisfaction of a judgment debt and costs obtained by the above mentioned plaintiff against the above mentioned defendant on the \_\_\_\_\_ (date) and whereas your return stated \_\_\_\_\_ (*here quote the deputy-sheriff's return on the writ against movables*). Now, therefore, you are directed to attach and take into execution the immovable property of the said defendant being \_\_\_\_\_ (*here give the full description of the property*) to cause to be realised therefrom the sum of \_\_\_\_\_ together with the costs hereof and the costs of the prior writ amounting to \_\_\_\_\_ and your charges in and about the same, and thereafter to dispose of the proceeds thereof in accordance with the provisions of Rule No. 47.

For which this shall be your warrant.

Dated at \_\_\_\_\_ this day of \_\_\_\_\_

(signed) \_\_\_\_\_ Registrar of the High Court

(signed) \_\_\_\_\_ Plaintiff's attorney

(address)

**Form "W(2)" – Conditions of sale in execution of immovable property (Rule 47(8))**

In re: \_\_\_\_\_ Plaintiff

\_\_\_\_\_ Defendant

The property which will be put up for auction on \_\_\_\_\_ (date) consists of \_\_\_\_\_ (*description of property*)

The sale will be subject to the following conditions:—

1. The property shall be sold by the deputy-sheriff of \_\_\_\_\_ at \_\_\_\_\_ (place and time) to the highest bidder without reserve (or with a reserve price of \_\_\_\_\_)
2. The sale shall be for maloti, and no bid of less than one loti shall be accepted.
3. If any dispute arises about any bid the property may again be put up to auction.
4. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both amounts. On the refusal of a bid under such circumstances the property may immediately again be put up to auction.
5. The purchaser shall, as soon as possible after the sale, and immediately on being requested by the auctioneer sign these conditions, and if he has bought as agent for a principal, state the name of the principal.

6. (a) The purchaser shall pay a deposit of ten per cent of the purchase price in cash on the day of the sale, the balance against transfer to be secured by a bank or building society guarantee, to be approved by plaintiff's attorney, to be furnished to the deputy-sheriff within \_\_\_\_\_ days after the date of sale.
- (b) If transfer of the property is not registered within one month after the date of sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate of \_\_\_\_\_ % per annum and to the bondholder (name) \_\_\_\_\_ at the rate of \_\_\_\_\_ per cent per annum of the respective amounts of the award to the plaintiff and the (name of bondholder) \_\_\_\_\_ the aforesaid bondholder in the plan of distribution as from the expiry of one month after the date of sale to the date of transfer.
7. If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a Judge summarily on the report of the deputy-sheriff after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the deputy-sheriff's distribution account, be recovered from him under judgment of a Judge pronounced summarily on a written report of the deputy-sheriff, after such purchaser shall have received notice in writing that such report will be laid before the Judge for that purpose; and if the purchaser is already in possession of the property, the deputy-sheriff may on seven days' notice, apply to a Judge for an order ejecting him or any person claiming to hold under him therefrom.
8. The purchaser shall pay the auctioneers charges on the day of sale and in addition shall pay transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney acting for the execution creditor.
9. The property may be taken possession of immediately after payment of the initial deposit, and such property shall, after such deposit be at the risk and profit of the purchaser.
10. The purchaser may obtain transfer forthwith if he pays the whole price and complies with conditions set out in paragraph 8 above, in which case any claim for interest shall lapse, otherwise transfer shall be passed after the purchaser has complied with the provisions of conditions 6 and 8 above.
11. The deputy-sheriff may demand that the property sold shall be immediately insured by the purchaser for the full value of the same, and the insurance policy handed to him and kept in force as long as the whole price has not been paid, and if the purchaser does not do so, the deputy-sheriff may effect the insurance at the purchaser's expense.
12. The property is sold as described and subject to the conditions that the deputy-sheriff does not hold himself liable for any deficiency or defects that may be found to exist and renouncing all excess. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.
13. The execution creditor shall be entitled to appoint an attorney to attend to transfer.
14. The purchaser may appoint an attorney to look after his interests.

(signed) \_\_\_\_\_ Deputy-sheriff

I hereby certify that to-day the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ the hereinbefore mentioned property was sold in my presence for the sum of \_\_\_\_\_ to \_\_\_\_\_ (purchaser)

(signed) \_\_\_\_\_ Deputy-sheriff

I, the undersigned \_\_\_\_\_ (purchaser) \_\_\_\_\_ resident at \_\_\_\_\_ in the district of \_\_\_\_\_ do hereby bind myself as the purchaser of the hereinbefore mentioned property to pay the purchase price and to perform all and singular the conditions stated above.

(signed) \_\_\_\_\_ Purchaser

**Form "W(3)" – Writ of attachment: Provisional  
sentence – Immovable property (Rule 47(13))**

***In the High Court of Lesotho***

Case No. \_\_\_\_\_

In the matter between:

\_\_\_\_\_ Plaintiff and \_\_\_\_\_ Defendant

To the deputy-sheriff for the district of \_\_\_\_\_

You are hereby directed to attach (*here set out fully description of the place and place where situated*) \_\_\_\_\_ which was by a sentence of this court hearing the date \_\_\_\_\_ specially declared executable to satisfy the sum of \_\_\_\_\_ and interest thereon at the rate of \_\_\_\_\_ per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ to date of payment which the above named plaintiff by said sentence recovered provisionally against the said defendant together with the sum of \_\_\_\_\_ for the taxed costs and charges of the said plaintiff and \_\_\_\_\_ in addition in case the said defendant shall require security *de restituendo*, and also the sum of \_\_\_\_\_ being the taxed costs of this writ besides all your costs thereby incurred, and pay to the said plaintiff or his attorney the sums due to him with costs as aforementioned upon sufficient security being given by him for restitution thereof if in the principal case the said sentence be reversed, and for so doing this shall be your warrant.

And return you this writ with what you have done thereupon.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

(signed) \_\_\_\_\_ Registrar

(signed) \_\_\_\_\_ Attorney for Plaintiff

(address)

## Second Schedule

### Court fees

|      |   |  |
|------|---|--|
| (1)  | For every power of attorney to sue or defend  | M 3.00                                       |
| (2)  | For every summons   | M10.00                                       |
| (3)  | For every declaration, plea or other pleading   | M 5.00                                       |
| (4)  | For every petition or notice of motion  | M10.00                                       |
| (5)  | For every copy of any record or part thereof made by a court official<br><br>The Registrar may accept such fees in cash | 30 cents for every page of 150 words or less |
| (6)  | For every notice other than a notice of motion or of appeal   | M 3.00                                       |
| (7)  | For every subpoena of 4 witnesses or less   | M 5.00                                       |
| (8)  | For every annexure, other than an original affidavit to a summons, pleading petition or notice of motion                | M 0.50                                       |
| (9)  | For every original affidavit  | M 1.00                                       |
| (10) | For every annexure to one original affidavit  | 50 Cents                                     |
| (11) | For every liquid document upon which provisional sentence is prayed   | M 3.00                                       |
| (12) | For every writ  | M 4.00                                       |

|      |  |   |
|------|--|---|
| (13) | For every recognition or bond of security for restitution (other than recognisance in a criminal matter) | M 5.00  |
| (14) | For every document exhibited or admitted or filed of record  | 30 cents  |
| (15) | Request for a copy of any record or part thereof, if made by an official of the court                    | 30 cents for every page of 150 words or less            |
| (16) | For certifying any document as a true copy   | a minimum of 80 cents otherwise 20 cents for each folio |
| (17) | For every decree, order or other rule of court   | M10.00  |
| (18) | For every certificate made under the hand of the Registrar, other than a certified copy                  | M 2.00  |
| (19) | For every application to search for any entry or document on a record                                    |   |
|      | (a) If the number of the record is given   | 50 cents  |
|      | (b) If the number of the record is not given, for every week required to be searched                     | 50 cents  |
| (20) | For all Bill of costs, one per cent of the amount allowed  |   |
| (21) | For notice of appeal from a subordinate or Judicial Commissioner's court                                 | M10.00  |

### Third Schedule

#### Tariff for Sheriff and Deputy-sheriffs

|    |   |        |
|----|---|--------|
| 1. | <p>For service of any summons petition together with notice of motion or notice of set down, notices, orders, or any other documents</p> <p>Provided that the fee for service shall be payable, although the summons or other process as above stated shall not have been actually served, if the sheriff, shall be satisfied that reasonable attempts to effect service at the appointed place have been made and that the failure was due to any want of diligence on the part of the deputy-sheriff charged with the duty of effecting service.</p> <p>Provided further that when any document to be served with any process is mentioned in the process no fee shall be charged for the service of such document, otherwise the fee of M2.00 may be allowed in respect of each separate document served except in respect of criminal cases. Provided further that an attempted service of more than one document on the same person shall be considered as an attempt service of one document only.</p>  | M 2.00 |
| 2. | <p>Travelling allowance.</p> <p>(a) For the distance travelled reckoned from the office of the sheriff or deputy-sheriff (as the case may be) both on the forward and return journey per kilometre or fraction of a kilometre 20 cents except in the case of service of a criminal process when it shall be ten cents per kilometre or fraction thereof.</p> <p>(b) Whenever it is found necessary for the deputy-sheriff to take an officer with him on any journey, 10 cents per kilometre shall be allowed for such officer.</p> <p>(c) The above allowance may be charged only if the deputy-sheriff or his officer actually travels the full distance. If process is sent by post any part of the distance, postage only will be allowed for such part, who is not to effect service, and therefore cannot be regarded as competent to do so, travelling allowance at the rate of six cents per kilometre may be charged.</p> <p>(d) When two or more summonses or other process, whether at the instance of the same plaintiff or of different plaintiffs shall have been or, in the opinion of the sheriff or taxing officer, should have been served on one and the same journey, the travelling allowance for performing the different services shall be equitably apportioned among the several cases, regard being had to the distances at which the parties against whom such processes are directed respectively reside. The fee for service shall, however, be payable for each service made or attempted to be made.</p> |        |

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|    | (e) | The above travelling allowances shall not be payable in cases where service is to be executed three kilometres or less from the office of the deputy-sheriff.  |                      |
| 3. | (a) | Postage in civil matters.  | As per postal tariff |
|    | (b) | Postage in criminal matters.   | Free.                |
| 4. |     | For taking inventory and copy for defendant for each hundred words or portion)   | M 1.00               |
| 5. |     | For making copy of inventory for sheriff for each hundred words or portion thereof)  | M 0.20               |
| 6. |     | For drawing advertisement of sale of goods attached)   | M 1.50               |
| 7. | (a) | When a writ is paid on presentation, one per cent on the amount of the writ with a minimum fee of  | M 4.00               |
|    | (b) | When a writ is withdrawn by the judgment creditor or the judgment debtor's estate is placed under sequestration before any movable property is attached  | M 4.00               |
|    | (c) | When a writ is withdrawn by the judgment creditor after movable property has been attached but before sale or if after such attachment before sale the debtor's estate is placed under sequestration, 2½ per cent on the value of the property attached subject however to the provision that commission shall not in any case exceed the amount directed by the writ to be recovered. |                      |
|    | (d) | When a writ is paid by the judgment debtor to the deputy-sheriff after movable property has been   |                      |



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|    |   | attached but before sale, three per cent on the amount so paid.  |                |
|    | (e)   | After sale in execution<br>(i) for the first two hundred rands or less than that amount, five per cent of the amount.<br>(ii) for every subsequent two hundred rands or less than such, four per cent of the amount.   |                |
|    | (f)   | Commission shall not in any case be allowed on the value of movable property attached, but subsequently claimed by a person other than the judgment debtor and released in consequence of such claim, unless such property has been attached on the express direction of the judgment creditor.  |                |
| 8. | For keeping possession of property attached:— |  |                |
|    | (a)   | for each officer (not exceeding two in number) necessarily left in possession<br><br><i>Note:— "Possession as above means the continuous and necessary presence on the premises and for the period in respect of which possession is charged for a person employed and paid by the deputy-sheriff for the sole purpose of retaining possession."</i> | M1.50 per day  |
|    | (b)   | For removal and storage, the reasonable and necessary expenses of such removal and storage; and if an animal has to be stabled and fed, the reasonable expenses of such stabling and storage.  |                |
|    | (c)   | For herding and preserving livestock, the reasonable and necessary expenses of herding and preserving such stock.  |                |
|    | (d)   | Disbursements as above will be allowed only when actually and reasonably made, and on production of receipts therefor when such receipts are obtainable.   |                |
|    | (e)   | When no officer is left in possession, and   | M 0.50 per day |

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|    |   | no security bond is taken, but the movable property attached remains under the supervision of the deputy-sheriff  |                 |
|    | (f)   | A deputy-sheriff may insure movable property attached if it is necessary and he is authorized in writing by the judgment creditor to do so, and for effecting such insurance, he shall be allowed a fee of three rands in addition to the premium paid. |                 |
| 9. | Execution of writ against immovable property. |   |                 |
|    | (a)   | for execution, including service of notice of attachment upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property   | M 6.00          |
|    | (b)   | for notice of attachment to a single lessee or occupier of the property   | M 2.00          |
|    |   | If however there are several lessees or occupiers for identical notices of attachment   | M 0.50 for each |
|    | (c)   | For notice of attachment to a headman or chief (if any) having jurisdiction in respect of the property  | M 2.00          |
|    | (d)   | For making a valuation or report for the purposes of sale a minimum of M10.00 otherwise   | M5.00 per hour. |
|    | (e)   | When a deputy-sheriff has been authorized to sell property and the property is not sold by reason of the fact   | M 5.00          |

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|     | that the attachment is withdrawn or stayed  |        |
| (f) | The necessary notice for the withdrawal of any attachment for the first notice  | M 2.00 |
|     | For other identical notices each  | M 0.50 |
| (g) | For ascertaining and recording what bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds and encumbrances are so registered, including any correspondence in connection therewith | M10.00 |
| (h) | For notifying the execution creditor of such bonds or encumbrance's and of the names and addresses of the persons in whom such bonds or encumbrances are registered   | M 1.00 |
| (i) | For consideration of the proof that the execution creditor has complied with the requirements of sub-rule (5) of Rule 47  | M 1.50 |
| (j) | For each notice referred to in sub-rule (6) of Rule 47  | M 1.00 |
| (k) | For consideration of the notice of sale prepared by the execution creditor in consultation with the deputy-sheriff  | M 4.00 |
| (l) | For verifying that the notice of sale   | M 1.50 |

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|     |     | has been published in the <i>Gazette</i> and newspaper   |        |
|     | (m) | For affixing a copy of the notice of sale on the notice board of the Subordinate Court referred to in terms of sub-rule (7) of Rule 47     | M 2.00 |
|     | (n) | For considering the conditions of sale   | M 4.00 |
|     | (o) | On the sale of immovable property by the deputy-sheriff as auctioneer 2½ per cent of the proceeds of the sale with a minimum of            | M25.00 |
|     | (p) | For any report referred to in sub-rule 47  | M 5.00 |
|     | (q) | For giving transfer to the purchaser   | M 2.00 |
|     | (r) | For preparing a plan of distribution of the proceeds(including necessary copies) and for forwarding a copy to the Registrar                | M12.50 |
|     | (s) | For giving notice to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection — for each notice | M1.00  |
|     | (t) | For request to the magistrate or Registrar to pay out in accordance with the plan of distribution  | M1.00  |
| 10. | (a) | For the execution of a writ of personal arrest   | M10.00 |

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|-----|---|---|--------|
|     |   | including conveying defendant to court and to the attorneys office or to prison, for each person  |        |
|     | (b)   | For conveying defendant to court from place of custody on a day subsequent to the day of arrest and for attending at court, for each hour M5.00 with a minimum fee of | R15.00 |
|     | (c)   | For execution of a writ for attachment of property to found or confirm jurisdiction   | M 7.00 |
|     | (d)   | For the execution of a writ of ejectment M5.00 per hour with a minimum fee of   | M15.00 |
|     | The above fee is in addition to reasonable expenses incurred by the deputy-sheriff  |   |        |
| 11. | For any service performed by the deputy-sheriff which are not otherwise specified in this schedule a reasonable fee for such services shall be determined by the sheriff in consultation with the taxing master of the court. |   |        |

### Fourth Schedule

#### Tariff of fees for advocates

In this Schedule "Senior Counsel" means a King's counsel or senior counsel appointed as such by His Majesty the King of Lesotho or a Queen's counsel appointed as such by Her Majesty Queen Elizabeth II in Great Britain or in any portion of the British Commonwealth or in South Africa or a senior counsel appointed as such by the President of the Republic of South Africa, provided that in all cases the counsel is admitted to practice in the High Court of Lesotho—

The following shall be the fees allowed for advocates on a party and party basis.

|     |   | <b>Senior counsel</b> | <b>Junior counsel</b> |
|-----|---|-----------------------|-----------------------|
| 1.  | Motions unopposed and applications for Provisional sentence unopposed   | M25 to M75            | M17.50 to M200        |
| 2.  | Motions opposed (including Provisional) sentence, Reviews and arguments on pleadings including exceptions                       | M120 to M300          | M80 to M200.00        |
| 3.  | Consultations to settle affidavits stated cases and on trial and to receive advice on litigation or in the course of litigation | M50                   | M35                   |
| 4.  | Settling of notice of motion or affidavits.   | M75                   | M50                   |
| 5.  | Appearances in court.   |                       |                       |
| (a) | First day of hearing  |                       |                       |
|     | (i) opposed applications  | M150                  | M100                  |
|     | (ii) exceptions or motions to strike out  | M150                  | M100                  |
|     | (iii) stated cases  | M150                  | M100                  |
|     | (iv) Trials   | M200 to M400          | M150 to M300          |
|     | (v) Appeals or Reviews from Subordinate Courts  | M150 to M300          | M100 to M200          |
|     | (vi) Appeals from judicial Commissioner   | M150 to M300          | M100 to M200          |
|     | (viii) Review Proceedings from Subordinate or   | M150 to M300          | M100 to M200          |

|     |  |  |              |
|-----|--|--|--------------|
|     | other courts or from tribunals                       |  |              |
| (b) | Subsequent days                                      | Two-thirds the amount allowed on the First day for each day          |              |
| (c) | Term Refresher                                       | Two-thirds the amount allowed for the first day of trial or hearing. |              |
| (d) | Nothing Judgment                                     | M15.00   | M10.00       |
|     | (i) (with no argument on any matter                  |  |              |
|     | (ii) (with argument as to costs or other matter      | M30.00   | M20.00       |
| (e) | Application for leave to appeal                      | as on opposed motion   |              |
| (f) | Postponement previously arranged                     | M15.00   | M35.00       |
| (g) | Postponement opposed                                 | as on an opposed motion  |              |
| (4) | Drawing Pleadings                                    |  |              |
|     | (i) other than replication or Rejoinder              | M50.00   | M35.00       |
|     | (ii) Replication, Rejoinder                          | M30.00   | M20.00       |
| 5.  | Advice on Evidence                                   | M50.00 to M35.00 to M70  |              |
| 6.  | All consultations other than those referred to above | M50 per hour   | M35 per hour |
| 7.  | Drawing Exceptions, application to strike out etc.   | M50.00   | M35.00       |
| 8.  | Settling Summons                                     | M30.00   | M20.00       |

|    |                      |        |        |
|----|----------------------|--------|--------|
| 9. | Settling Stated case | M75.00 | M50.00 |
|----|----------------------|--------|--------|

*[Please note: numbering as in original.]*

### **Travelling and subsistence allowance**

- (1) A travelling allowance for advocates shall be allowed at the rate of 20 cents per kilometer where the advocate travels by a car to court.
- (2) A subsistence allowance for advocates shall be allowed at the rate of ten rands per night for every night it is necessary for the advocate to, remain at the place where the court-house is situated for the hearing of any appeal, cause or other matter.

## **Fifth Schedule**

### **Tariff of fees for attorneys**

#### **A – Taking instructions**

|    |  |                 |
|----|--|-----------------|
| 1. | To institute or defend any proceedings   | M3.00 to M50.00 |
| 2. | For advice on evidence or on commission  | M2.00 to M20.00 |
| 3. | For case on opinion or for counsel's or for counsel's guidance in preparing pleadings, including exceptions a fee equivalent to the fee allowed under item I of Section D for drafting the document.   |                 |
| 4. | For statement of witnesses   | M2.00 to M20.00 |
| 5. | To set down cause, issue subpoena or writ or any other single document   | M1.00           |
| 6. | To draft a petition or affidavit; a fee equivalent to one-half of the fee allowed under item 6 of Section D. for drafting the document, provided that in cases where no petition or affidavit is actually drawn, the taxing master shall allow a fee in his discretion but not less than | M3.00           |
| 7. | To note an appeal  | M3.00           |
| 8. | To prosecute or defend an appeal (exclusive of perusal of the record)  | M2.00 to M20.00 |



**B – Attendance and perusal**

|    |   |   |                 |
|----|---|---|-----------------|
| 1. | Attending the review of, perusing and considering—  |   |                 |
|    | (a)   | any summons, petition, affidavit, pleading, counsel's advice and drafts, report and important notice per folio for the first ten folios | M1.00           |
|    |   | And thereafter per folio  | M0.50           |
|    | (b)   | Any letter, record or any material document not elsewhere specified, per folio  | M0.50           |
|    |   | (with a minimum fee of  | M1.00.          |
| 2. | Attending the receipt of and considering any plan or exhibit or other material document in respect of which the basis of remuneration in item 1 of this section cannot be applied |   | M1.00 to M15.00 |
| 3. | Making searches in offices of record per half hour or part thereof)   |   | M2.50           |
| 4. | Sorting out, arranging and paginating papers for pleading, advice on evidence or brief on trial per half hour or part thereof)  |   | M2.50           |
| 5. | Attending to give or take disclosure, per half hour or part thereof)  |   | M2.50           |
| 6. | Attending on client to obtain particulars of his claim and to settle same)  |   | M2.50           |
| 7. | Attending to bespeak and thereafter to procure translation)   |   | M2.50           |
| 8. | Other attendances, including telephone calls other than formal telephone calls per half hour or part thereof)   |   | M2.50           |

*Note: The fees allowed under this Section shall be in addition to such fees as may be allowed for instructions under Section A. In computing the fees chargeable for perusal of documents in connection with instructions under Item AI and A6, the number of words in all documents to be perused shall be added together and the total divided by one hundred.*

**C – Attendance – Formal**

|     |   |       |
|-----|---|-------|
| 1.  | To serve or deliver (other than by post) any necessary document or letter, or dispatch any telegram | M1.00 |
| 2.  | To sue out any process or file any document)  | M1.00 |
| 3.  | To set down causes for trial)   | M1.00 |
| 4.  | To search for any return or appearance)   | M1.00 |
| 5.  | On receipt of notice of appearance  | M1.00 |
| 6.  | On counsel, e.g. with brief or to make appointment  | M1.00 |
| 7.  | On signature of powers of attorney to sue or defend)  | M1.00 |
| 8.  | On Jurat  | M1.00 |
| 9.  | Attending receipt of a formal acknowledgment)   | M1.00 |
| 10. | Other formal attendances, including telephone calls)  | M1.00 |

**D – Drafting and drawing**

|    |  |       |
|----|--|-------|
| 1. | Drafting instructions for case on opinion, for counsel's guidance in preparing pleadings (including further particulars and requests for same); including exceptions per folio   | M1.00 |
| 2. | Drafting instructions to counsel for advice on evidence, for brief on trial or on commission per folio   | M1.00 |
| 3. | Drafting instructions to counsel for argument in respect of all cases of pleading, exception or on motion, petition or appeal per folio  | M1.00 |
| 4. | Drafting statements of witnesses per folio   | M1.00 |
| 5. | Drawing subpoenas, powers of attorney to sue or defend formal notices per folio  | M1.00 |
| 6. | Drawing a petition, affidavit, any notice except formal notice, summons, further particulars and request for same, writs of execution, arrest or attachment and any other important document not otherwise provided for per folio (for the first twenty folios)  | M2.00 |
|    | And thereafter, at per folio   | M1.00 |
|    | (Provided that the minimum charge under this item for drafting a summons, petition or affidavit shall be ten rands save that the minimum charge shall not apply in the case of a formal affidavit of non return in restitution suits, verifying affidavits, affidavits of service and other formal affidavits) |       |

|    |                                  |       |
|----|----------------------------------|-------|
| 7. | Letter or telegram               | M1.00 |
| 8. | Drawing index to brief per folio | M0.75 |
| 9. | Drawing short brief              | M1.00 |

*Note 1 In computing the number of folios of any documents referred to in Items 1, 2, 3, 4 and 6 of this Section, the taxing master may deduct, but if he does so shall treat as annexures where relevant, any portions consisting of quotations from other documents or papers.*

*Note 2 The charges allowed in this Section for drafting and drawing, do not, save in the case of items No. 5, 7 and 9, include making the first fair copy which shall be charged for under Item 1 of Section F.*

**E – Appearance, conference and inspection**

|    |   |   |
|----|---|---|
| 1. | Attendance by attorney in court or before a Judge in Chambers or before an arbitrator, commissioner, referee or at an inspection directed by the court—   |   |
|    | If counsel employed   | M10.00 per hour or part thereof         |
|    | If counsel not employed   | M12.50 per hour or part thereof         |
|    | The above rate of remuneration shall not be applicable in respect of the time spent in travelling or waiting, but the taxing master shall, in respect of time necessarily so spent, allow such additional remuneration not exceeding thirty rands per day as he, in his discretion, may deem fair and reasonable amount, and he shall also allow a reasonable amount to cover the cost of necessary conveyance. |   |
| 2. | Attendance aforesaid of attorney's articulated clerk—   |   |
|    | If counsel employed   | M3.00 per hour                          |
|    | If counsel not employed   | M5.00 per hour                          |
|    | When assisting attorney   | M6.50 per hour.                         |
| 3. | Any conference or consultation with counsel with or without witnesses and on pleadings including exceptions and particulars to pleadings, applications, petitions, affidavits, testimony and on any other matter which the taxing master may consider necessary—  | per half hour or part thereof<br>M5.00. |
| 4. | Any conference or consultation with client, witness, opposite party, and any other conference or consultation which the taxing master may consider necessary—   | per half hour or part thereof<br>M5.00  |
| 5  | Any inspection <i>in situ</i> , or otherwise provided that the above rate of remuneration shall not be applicable in respect of time spent in travelling, but the   | M10.00 per hour or part thereof         |

|    |   |  |
|----|---|--|
|    | taxing master shall, in respect of time necessarily so spent, allow additional remuneration not exceeding thirty rands per day, and he shall also allow a reasonable amount to cover the costs of necessary conveyance.   |  |
| 6. | Evidence:— Such just and reasonable charges and expenses as may in the opinion of the taxing master, have been properly incurred in procuring the evidence and attendance of witnesses whose fees have been allowed on taxation, provided that the qualifying expenses of a witness shall not be allowed, unless there is an order of court that such shall be allowed. |  |

### F – Miscellaneous

|    |  |                  |
|----|--|------------------|
| 1. | Briefing and copying: For making copies for the court, for counsel or for attorney, or for service or for any necessary purpose, the charge shall be for the first copy at the rate of 30 cents per folio, including the first copy of any document drafted in respect of which a charge is reasonable under items 1, 2, 3, 4, 6 and 8 of Section D of this tariff, and for all other copies 20 cents per folio. |                  |
| 2. | Drawing insolvency schedules, including petition, affidavits and relative attendance   | M10.00 to M40.00 |
|    | Each necessary copy (the charge provided in item I of this section)  |                  |
| 3. | For giving a verbal or written opinion (as between attorney and client)  | M5.00 to M40.00  |
| 4. | General, inclusive fee for consultation and discussions with client and for counsel on trial — not otherwise provided for or separately charged  | M5.00 to M40.00  |

### G – Bill of costs

In connection with a bill of costs for work done or services rendered by an attorney, such attorney shall be entitled to charge:—

- (1) For drawing the bill of costs, making the necessary copies, and attending settlement, five per cent on the first three hundred rands or portion thereof, two and a half per cent on the second two hundred rands or portion thereof and one per cent on the amount in excess of five hundred rands of the amount of the at-

torney's fees, either as charged in the bill if not taxed or as allowed on taxation: and in addition thereto, if course is had to taxation:—

- (2) For arranging and attending taxation, five per cent on the first three hundred or portion thereof, and two and a half per cent on the second two hundred rands or portion thereof, and one and a half per cent on the amount in excess of five hundred rands of the fees allowed. Provided that if more than twenty-five per cent of the fees is taxed off this fee shall be disallowed.

*Note: The minimum fee under each item of this Section shall be M2.00*

## **H – Counsel's fees**

See the Fourth Schedule *supra* as to reasonable fees to counsel to be allowed on a Party and Party basis.

## **I – Travelling and subsistence allowance**

1. A travelling allowance for attorneys shall be allowed at the rate of twenty cents per kilometer where the attorney travels to court by car.
2. A subsistence allowance for attorneys shall be allowed at the rate of ten rands for every night it is necessary for the attorney employed to remain at the place where the court-house is situated for the hearing of any appeal, cause or matter.

## **J**

Where an attorney does any work which, but for the provisions of Section 33 of the Legal Practitioners Act 1967, could only be done by an advocate, he shall be entitled to charge the fees for Advocates, but, he shall not be entitled to charge fees as an attorney in addition to fees as an advocate in respect of the same appearance.