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Subordinate Courts Order, 1988

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## Subordinate Court Rules, 1996

### Contents

Rule 1. – Citation, commencement and application .....	1
Subrule (1) .....	1
Subrule (2) .....	1
Paragraph (a) .....	1
Paragraph (b) .....	1
Paragraph (c) .....	1
Paragraph (d) .....	1
Subparagraph (i) .....	1
Subparagraph (ii) .....	1
Rule 2. – Interpretation .....	1
Subrule (1) .....	1
Subrule (2) .....	2
Subrule (3) .....	2
Rule 3. – Documentation, filing, numbering, access to records .....	2
Subrule (1) .....	2
Paragraph (a) .....	2
Paragraph (b) .....	2
Paragraph (c) .....	2
Paragraph (d) .....	2
Subrule (2) .....	2
Subrule (3) .....	2
Subrule (4) .....	3
Subrule (5) .....	3
Subrule (6) .....	3
Subrule (7) .....	3
Subrule (8) .....	3
Rule 4. – General duties of the clerk of court in civil matters .....	3
Subrule (1) .....	3
Paragraph (a) .....	3
Paragraph (b) .....	3
Subparagraph (i) .....	3
Subparagraph (ii) .....	3
Subparagraph (iii) .....	3
Subparagraph (iv) .....	3

Paragraph (c) .....	3
Paragraph (d) .....	3
Subparagraph (i) .....	3
Subparagraph (ii) .....	4
Subrule (2) .....	4
Subrule (3) .....	4
Rule 5. – Summons commencing action .....	4
Subrule (1) .....	4
Subrule (2) .....	4
Subrule (3) .....	4
Subrule (4) .....	4
Subrule (5) .....	4
Rule 6. – Endorsement of a summons .....	4
Subrule (1) .....	4
Paragraph (a) .....	4
Paragraph (b) .....	4
Subrule (2) .....	4
Paragraph (a) .....	4
Paragraph (b) .....	4
Paragraph (c) .....	4
Paragraph (d) .....	4
Subrule (3) .....	4
Paragraph (a) .....	4
Subparagraph (i) .....	4
Subparagraph (ii) .....	5
Subparagraph (iii) .....	5
Paragraph (b) .....	5
Paragraph (c) .....	5
Paragraph (d) .....	5
Subrule (4) .....	5
Paragraph (a) .....	5
Paragraph (b) .....	5
Subrule (5) .....	5
Paragraph (a) .....	5
Paragraph (b) .....	5

Paragraph (c) .....	5
Paragraph (d) .....	5
Paragraph (e) .....	5
Paragraph (f) .....	5
Subrule (6) .....	5
Rule 7. – Amendment of summons .....	5
Subrule (1) .....	5
Subrule (2) .....	5
Subrule (3) .....	5
Paragraph (a) .....	5
Paragraph (b) .....	6
Rule 8. – Messenger of the court .....	6
Subrule (1) .....	6
Paragraph (a) .....	6
Paragraph (b) .....	6
Subrule (2) .....	6
Subrule (3) .....	6
Subrule (4) .....	6
Paragraph (a) .....	6
Paragraph (b) .....	6
Subrule (5) .....	6
Subrule (6) .....	6
Rule 9. – Service of process, notices and other documents .....	6
Subrule (1) .....	6
Subrule (2) .....	6
Paragraph (a) .....	6
Paragraph (b) .....	6
Paragraph (c) .....	7
Paragraph (d) .....	7
Paragraph (e) .....	7
Paragraph (f) .....	7
Paragraph (g) .....	7
Subrule (2) .....	7
Subrule (3) .....	7
Subrule (4) .....	7

Subrule (5) .....	7
Subrule (6) .....	7
Subrule (7) .....	7
Paragraph (a) .....	7
Paragraph (b) .....	8
Paragraph (c) .....	8
Subrule (8) .....	8
Subrule (9) .....	8
Subrule (10) .....	8
Subrule (11) .....	8
Paragraph (a) .....	8
Paragraph (b) .....	8
Subrule (12) .....	8
Subrule (13) .....	8
Paragraph (a) .....	8
Paragraph (b) .....	8
Paragraph (c) .....	8
Paragraph (d) .....	8
Subrule (14) .....	8
Subrule (15) .....	8
Paragraph (a) .....	8
Paragraph (b) .....	8
Subrule (16) .....	9
Paragraph (a) .....	9
Paragraph (b) .....	9
Subrule (17) .....	9
Paragraph (a) .....	9
Paragraph (b) .....	9
Paragraph (c) .....	9
Paragraph (d) .....	9
Rule 10. – Delay in the prosecution of an action .....	9
Rule 11. – Judgment by consent .....	9
Subrule (1) .....	9
Paragraph (a) .....	9
Paragraph (b) .....	9

Paragraph (c) .....	9
Subrule (2) .....	9
Subrule (3) .....	9
Subrule (4) .....	9
Subrule (5) .....	9
Subrule (6) .....	10
Rule 12. – Judgment by default .....	10
Subrule (1) .....	10
Paragraph (a) .....	10
Subparagraph (i) .....	10
Subparagraph (ii) .....	10
Subparagraph (iii) .....	10
Paragraph (b) .....	10
Paragraph (c) .....	10
Paragraph (d) .....	10
Subrule (2) .....	10
Paragraph (a) .....	10
Subparagraph (i) .....	10
Subparagraph (ii) .....	10
Subparagraph (iii) .....	10
Subparagraph (iv) .....	10
Paragraph (b) .....	10
Paragraph (c) .....	10
Paragraph (d) .....	11
Subrule (3) .....	11
Subrule (4) .....	11
Subrule (5) .....	11
Subrule (6) .....	11
Subrule (7) .....	11
Paragraph (a) .....	11
Paragraph (b) .....	11
Paragraph (c) .....	11
Paragraph (d) .....	11
Paragraph (e) .....	11
Paragraph (f) .....	11

Subrule (8) .....	11
Subrule (9) .....	11
Rule 13. – Appearance to defend .....	11
Subrule (1) .....	11
Subrule (2) .....	11
Subrule (3) .....	12
Paragraph (a) .....	12
Paragraph (b) .....	12
Paragraph (c) .....	12
Paragraph (d) .....	12
Paragraph (e) .....	12
Subrule (4) .....	12
Subrule (5) .....	12
Rule 14. – Summary judgment .....	12
Subrule (1) .....	12
Paragraph (a) .....	12
Paragraph (b) .....	12
Paragraph (c) .....	12
Paragraph (d) .....	12
Subrule (2) .....	12
Paragraph (a) .....	12
Subparagraph (i) .....	12
Subparagraph (ii) .....	12
Paragraph (b) .....	12
Subrule (3) .....	12
Subrule (4) .....	12
Paragraph (a) .....	12
Paragraph (b) .....	12
Paragraph (c) .....	13
Subrule (5) .....	13
Subrule (6) .....	13
Subrule (7) .....	13
Subrule (8) .....	13
Subrule (9) .....	13
Paragraph (a) .....	13

Paragraph (b) .....	13
Subrule (10) .....	13
Subrule (11) .....	13
Rule 15. – Documents supporting action .....	13
Subrule (1) .....	13
Subrule (2) .....	13
Subrule (3) .....	13
Rule 16. – Further particulars .....	14
Subrule (1) .....	14
Subrule (2) .....	14
Subrule (3) .....	14
Subrule (4) .....	14
Rule 17. – Exceptions and applications to strike out .....	14
Subrule (1) .....	14
Paragraph (a) .....	14
Paragraph (b) .....	14
Subrule (2) .....	14
Paragraph (a) .....	14
Paragraph (b) .....	14
Paragraph (c) .....	14
Paragraph (d) .....	14
Paragraph (e) .....	14
Subrule (3) .....	14
Subrule (4) .....	14
Subrule (5) .....	14
Paragraph (a) .....	14
Paragraph (b) .....	14
Paragraph (c) .....	14
Subrule (6) .....	14
Paragraph (a) .....	14
Paragraph (b) .....	15
Subrule (7) .....	15
Subrule (8) .....	15
Subrule (9) .....	15
Rule 18. – Payment into court .....	15



Subrule (1) .....	15
Subrule (2) .....	15
Paragraph (a) .....	15
Paragraph (b) .....	15
Subrule (3) .....	15
Subrule (4) .....	15
Subrule (5) .....	15
Subrule (6) .....	15
Subrule (7) .....	15
Subrule (8) .....	15
Subrule (9) .....	16
Paragraph (a) .....	16
Paragraph (b) .....	16
Subrule (10) .....	16
Subrule (11) .....	16
Paragraph (a) .....	16
Paragraph (a) .....	16
Paragraph (c) .....	16
Rule 19. – Plea .....	16
Subrule (1) .....	16
Paragraph (a) .....	16
Paragraph (b) .....	16
Paragraph (c) .....	16
Paragraph (d) .....	16
Paragraph (e) .....	16
Paragraph (f) .....	16
Subrule (2) .....	16
Subrule (3) .....	16
Subrule (4) .....	16
Paragraph (a) .....	16
Paragraph (b) .....	17
Subrule (5) .....	17
Subrule (6) .....	17
Paragraph (a) .....	17
Paragraph (b) .....	17

Paragraph (c) .....	17
Subrule (7) .....	17
Subrule (8) .....	17
Subrule (9) .....	17
Subrule (10) .....	17
Subrule (11) .....	17
Subrule (12) .....	17
Paragraph (a) .....	17
Paragraph (b) .....	17
Paragraph (c) .....	17
Subrule (13) .....	17
Paragraph (a) .....	17
Paragraph (b) .....	17
Paragraph (c) .....	17
Subrule (14) .....	18
Subrule (15) .....	18
Paragraph (a) .....	18
Paragraph (b) .....	18
Subrule (16) .....	18
Subrule (17) .....	18
Rule 20. – Claims in reconvention .....	18
Subrule (1) .....	18
Subrule (2) .....	18
Subrule (3) .....	18
Subrule (4) .....	18
Subrule (5) .....	18
Subrule (6) .....	18
Subrule (7) .....	18
Subrule (8) .....	18
Subrule (9) .....	18
Subrule (10) .....	18
Rule 21. – Reply .....	19
Subrule (1) .....	19
Subrule (2) .....	19
Subrule (3) .....	19

Subrule (4) .....	19
Rule 22. – Set down of trial .....	19
Subrule (1) .....	19
Subrule (2) .....	19
Subrule (3) .....	19
Rule 23. – Discovery of documents .....	19
Subrule (1) .....	19
Subrule (2) .....	19
Subrule (3) .....	19
Subrule (4) .....	19
Subrule (5) .....	19
Paragraph (a) .....	19
Paragraph (b) .....	20
Subrule (6) .....	20
Subrule (7) .....	20
Subrule (8) .....	20
Subrule (9) .....	20
Rule 24. – Medical examinations, inspection of things, expert testimony and tendering in evidence of any plan, diagram, model or photograph .....	20
Subrule (1) .....	20
Subrule (2) .....	20
Paragraph (a) .....	20
Paragraph (b) .....	20
Paragraph (c) .....	20
Subparagraph (i) .....	20
Subparagraph (ii) .....	20
Subparagraph (iii) .....	21
Subrule (3) .....	21
Paragraph (a) .....	21
Subparagraph (i) .....	21
Subparagraph (ii) .....	21
Subparagraph (iii) .....	21
Subparagraph (iv) .....	21
Subparagraph (aa) .....	21
Subparagraph (bb) .....	21

Paragraph (b) .....	21
Paragraph (c) .....	21
Subrule (4) .....	21
Subrule (5) .....	21
Subrule (6) .....	21
Subrule (7) .....	21
Paragraph (a) .....	21
Paragraph (b) .....	21
Subrule (8) .....	22
Paragraph (a) .....	22
Paragraph (b) .....	22
Paragraph (c) .....	22
Subrule (9) .....	22
Paragraph (a) .....	22
Paragraph (b) .....	22
Subrule (10) .....	22
Paragraph (a) .....	22
Paragraph (b) .....	22
Paragraph (c) .....	22
Paragraph (d) .....	22
Rule 25. – Pre-trial procedure for formulating issues .....	22
Subrule (1) .....	22
Paragraph (a) .....	22
Paragraph (b) .....	22
Paragraph (c) .....	22
Paragraph (d) .....	22
Paragraph (e) .....	23
Paragraph (f) .....	23
Subrule (2) .....	23
Subrule (3) .....	23
Subrule (4) .....	23
Subrule (5) .....	23
Subrule (6) .....	23
Subrule (7) .....	23
Subrule (8) .....	23

Rule 26 – Subpoenae, interrogatories and commissions de bene esse .....	23
Subrule (1) .....	23
Subrule (2) .....	23
Subrule (3) .....	23
Rule 27. – Withdrawal, dismissal and settlement .....	23
Subrule (1) .....	23
Subrule (2) .....	23
Subrule (3) .....	23
Subrule (4) .....	24
Subrule (5) .....	24
Subrule (6) .....	24
Paragraph (a) .....	24
Paragraph (b) .....	24
Paragraph (c) .....	24
Paragraph (d) .....	24
Paragraph (e) .....	24
Subparagraph (i) .....	24
Subparagraph (ii) .....	24
Subparagraph (iii) .....	24
Subparagraph (iv) .....	24
Rule 28. – Intervention of persons in any proceedings: Third party .....	24
Subrule (1) .....	24
Subrule (2) .....	24
Subrule (3) .....	24
Paragraph (a) .....	24
Paragraph (b) .....	25
Subrule (4) .....	25
Subrule (5) .....	25
Paragraph (a) .....	25
Paragraph (b) .....	25
Paragraph (c) .....	25
Subrule (6) .....	25
Subrule (7) .....	25
Subrule (8) .....	25
Subrule (9) .....	25

Paragraph (a) .....	25
Paragraph (b) .....	25
Subrule (10) .....	25
Subrule (11) .....	25
Rule 29. – Trial .....	26
Subrule (1) .....	26
Subrule (2) .....	26
Paragraph (a) .....	26
Paragraph (b) .....	26
Subrule (3) .....	26
Subrule (4) .....	26
Paragraph (a) .....	26
Paragraph (b) .....	26
Subrule (5) .....	26
Subrule (6) .....	26
Subrule (7) .....	26
Paragraph (a) .....	26
Paragraph (b) .....	26
Subrule (8) .....	26
Subrule (9) .....	26
Paragraph (a) .....	26
Paragraph (b) .....	26
Subrule (10) .....	26
Subrule (11) .....	26
Subrule (12) .....	26
Subrule (13) .....	27
Subrule (14) .....	27
Subrule (15) .....	27
Rule 30. – Record of proceedings in civil matters .....	27
Subrule (1) .....	27
Paragraph (a) .....	27
Paragraph (b) .....	27
Paragraph (c) .....	27
Paragraph (d) .....	27
Paragraph (e) .....	27

Subrule (2) .....	27
Subrule (3) .....	27
Subrule (4) .....	27
Subrule (5) .....	27
Subrule (6) .....	27
Paragraph (a) .....	27
Paragraph (b) .....	27
Paragraph (c) .....	27
Subrule (7) .....	27
Paragraph (a) .....	27
Paragraph (b) .....	27
Subrule (8) .....	27
Subrule (9) .....	28
Subrule (10) .....	28
Subrule (11) .....	28
Subrule (12) .....	28
Rule 31. – Postponement and adjournment .....	28
Subrule (1) .....	28
Subrule (2) .....	28
Subrule (3) .....	28
Rule 32. – Non-appearance of a party-withdrawal and dismissal .....	28
Subrule (1) .....	28
Subrule (2) .....	28
Subrule (3) .....	28
Rule 33. – Costs .....	28
Subrule (1) .....	28
Subrule (2) .....	28
Paragraph (a) .....	28
Paragraph (b) .....	29
Paragraph (c) .....	29
Subrule (3) .....	29
Subrule (4) .....	29
Subrule (5) .....	29
Subrule (6) .....	29
Subrule (7) .....	29

Paragraph (a) .....	29
Paragraph (b) .....	29
Subrule (8) .....	29
Paragraph (a) .....	29
Subparagraph (i) .....	29
Subparagraph (ii) .....	29
Subparagraph (iii) .....	29
Paragraph (b) .....	29
Subrule (9) .....	29
Subrule (10) .....	29
Subrule (11) .....	29
Subrule (12) .....	29
Subrule (13) .....	30
Subrule (14) .....	30
Subrule (15) .....	30
Subrule (16) .....	30
Subrule (17) .....	30
Subrule (18) .....	30
Subrule (19) .....	30
Subrule (20) .....	30
Subrule (21) .....	30
Rule 34. – Fees of the messenger and court fees .....	30
Subrule (1) .....	30
Subrule (2) .....	30
Subrule (3) .....	30
Paragraph (a) .....	30
Paragraph (b) .....	30
Paragraph (c) .....	30
Subparagraph (i) .....	30
Subparagraph (ii) .....	30
Subrule (4) .....	30
Subrule (5) .....	31
Subrule (6) .....	31
Subrule (7) .....	31
Subrule (8) .....	31



Paragraph (a) .....	31
Paragraph (b) .....	31
Subparagraph (i) .....	31
Subparagraph (ii) .....	31
Rule 35. – Review of taxation .....	31
Subrule (1) .....	31
Paragraph (a) .....	31
Paragraph (b) .....	31
Paragraph (c) .....	31
Paragraph (d) .....	31
Subrule (2) .....	31
Rule 36. – Process in execution .....	31
Subrule (1) .....	31
Subrule (2) .....	31
Subrule (3) .....	31
Subrule (4) .....	32
Subrule (5) .....	32
Subrule (6) .....	32
Subrule (7) .....	32
Rule 37 – Second or further warrants or emoluments attachment orders or garnishee orders .....	32
Subrule (1) .....	32
Subrule (2) .....	32
Subrule (3) .....	32
Subrule (4) .....	32
Paragraph (a) .....	32
Paragraph (b) .....	32
Subrule (5) .....	32
Rule 38. – Security by judgment creditor .....	32
Subrule (1) .....	32
Subrule (2) .....	32
Paragraph (a) .....	32
Paragraph (b) .....	33
Subrule (3) .....	33
Subrule (4) .....	33
Rule 39. – General provisions regarding execution .....	33

Subrule (1) .....	33
Subrule (2) .....	33
Subrule (3) .....	33
Subrule (4) .....	33
Subrule (5) .....	33
Subrule (6) .....	33
Subrule (7) .....	33
Subrule (8) .....	33
Rule 40. – Execution against a partnership .....	33
Subrule (1) .....	33
Subrule (2) .....	34
Subrule (3) .....	34
Rule 41. – Execution against moveable property .....	34
Subrule (1) .....	34
Paragraph (a) .....	34
Paragraph (b) .....	34
Paragraph (c) .....	34
Subrule (2) .....	34
Subrule (3) .....	34
Subrule (4) .....	34
Subrule (5) .....	34
Subrule (6) .....	34
Subrule (7) .....	34
Paragraph (a) .....	34
Paragraph (b) .....	35
Paragraph (c) .....	35
Paragraph (d) .....	35
Paragraph (e) .....	35
Subrule (8) .....	35
Paragraph (a) .....	35
Paragraph (b) .....	35
Paragraph (c) .....	35
Subrule (9) .....	35
Subrule (10) .....	35
Subrule (11) .....	35

Rule 42. – Execution against incorporeal property .....	36
Subrule (1) .....	36
Paragraph (a) .....	36
Paragraph (b) .....	36
Subrule (2) .....	36
Paragraph (a) .....	36
Paragraph (b) .....	36
Rule 43. – Execution against immovable property .....	36
Subrule (1) .....	36
Subrule (2) .....	36
Subrule (3) .....	36
Subrule (4) .....	36
Subrule (5) .....	36
Subrule (6) .....	36
Paragraph (a) .....	36
Paragraph (b) .....	36
Paragraph (c) .....	37
Paragraph (d) .....	37
Subrule (7) .....	37
Paragraph (a) .....	37
Paragraph (b) .....	37
Subrule (8) .....	37
Subrule (9) .....	37
Paragraph (a) .....	37
Paragraph (b) .....	37
Paragraph (c) .....	37
Subrule (10) .....	37
Subrule (11) .....	37
Subrule (12) .....	37
Subrule (13) .....	37
Subrule (14) .....	38
Paragraph (a) .....	38
Paragraph (b) .....	38
Paragraph (c) .....	38
Subparagraph (i) .....	38

Subparagraph (ii) .....	38
Subparagraph (iii) .....	38
Paragraph (d) .....	38
Paragraph (e) .....	38
Paragraph (f) .....	38
Paragraph (g) .....	38
Subparagraph (i) .....	38
Subparagraph (ii) .....	38
Subparagraph (iii) .....	38
Subparagraph (iv) .....	38
Paragraph (h) .....	38
Subrule (15) .....	39
Rule 44. – Interpleader claims .....	39
Subrule (1) .....	39
Paragraph (a) .....	39
Paragraph (b) .....	39
Paragraph (c) .....	39
Subparagraph (i) .....	39
Subparagraph (ii) .....	39
Subparagraph (iii) .....	39
Subrule (2) .....	39
Paragraph (a) .....	39
Paragraph (b) .....	39
Subparagraph (i) .....	39
Subparagraph (ii) .....	39
Paragraph (c) .....	39
Paragraph (d) .....	39
Subrule (3) .....	39
Subrule (4) .....	39
Paragraph (a) .....	39
Paragraph (b) .....	40
Paragraph (c) .....	40
Subrule (5) .....	40
Subrule (6) .....	40
Rule 45. – Attachment of a debt by garnishee order .....	40

Subrule (1) .....	40
Paragraph (a) .....	40
Subparagraph (i) .....	40
Subparagraph (ii) .....	40
Paragraph (b) .....	40
Paragraph (c) .....	40
Paragraph (d) .....	40
Paragraph (e) .....	40
Subrule (2) .....	40
Subrule (3) .....	40
Subrule (4) .....	40
Subrule (5) .....	40
Subrule (6) .....	40
Subrule (7) .....	40
Subrule (8) .....	40
Subrule (9) .....	41
Subrule (10) .....	41
Paragraph (a) .....	41
Paragraph (b) .....	41
Subrule (11) .....	41
Subrule (12) .....	41
Subrule (13) .....	41
Paragraph (a) .....	41
Paragraph (b) .....	41
Paragraph (c) .....	41
Paragraph (d) .....	41
Subrule (14) .....	41
Paragraph (a) .....	41
Paragraph (b) .....	41
Paragraph (c) .....	41
Rule 46. – Review of judgments .....	41
Subrule (1) .....	41
Subrule (2) .....	41
Subrule (3) .....	42
Subrule (4) .....	42

Subrule (5) .....	42
Subrule (6) .....	42
Subrule (7) .....	42
Subrule (8) .....	42
Subrule (9) .....	42
Subrule (10) .....	42
Subrule (11) .....	42
Subrule (12) .....	42
Rule 47. – Appeals and transfer of actions to Subordinate Courts .....	42
Subrule (1) .....	42
Subrule (2) .....	42
Rule 48. – Appeals in civil cases .....	42
Subrule (1) .....	42
Subrule (2) .....	43
Subrule (3) .....	43
Subrule (4) .....	43
Subrule (5) .....	43
Paragraph (a) .....	43
Paragraph (b) .....	43
Subrule (6) .....	43
Subrule (7) .....	43
Subrule (8) .....	43
Subrule (9) .....	43
Paragraph (a) .....	43
Paragraph (b) .....	43
Subrule (10) .....	43
Subrule (11) .....	43
Rule 49. – Representation of parties .....	43
Subrule (1) .....	43
Paragraph (a) .....	43
Paragraph (b) .....	43
Paragraph (c) .....	43
Paragraph (d) .....	43
Subrule (2) .....	43
Subrule (3) .....	44

Subrule (4) .....	44
Subrule (5) .....	44
Subrule (6) .....	44
Paragraph (a) .....	44
Paragraph (b) .....	44
Subrule (7) .....	44
Subrule (8) .....	44
Paragraph (a) .....	44
Paragraph (b) .....	44
Paragraph (c) .....	44
Paragraph (d) .....	44
Rule 50. – Pro Deo applicants .....	44
Subrule (1) .....	44
Subrule (2) .....	44
Subrule (3) .....	45
Paragraph (a) .....	45
Paragraph (b) .....	45
Paragraph (c) .....	45
Subrule (4) .....	45
Paragraph (a) .....	45
Paragraph (b) .....	45
Paragraph (c) .....	45
Subrule (5) .....	45
Subrule (6) .....	45
Subrule (7) .....	45
Paragraph (a) .....	45
Paragraph (b) .....	45
Rule 51. – Actions by and against partners, a person carrying on business in a name or style other than his own name, an unincorporated company, syndicate or association .....	45
Subrule (1) .....	45
Subrule (2) .....	45
Subrule (3) .....	45
Subrule (4) .....	45
Subrule (5) .....	45
Subrule (6) .....	46

Rule 52. – Applications .....	46
Subrule (1) .....	46
Paragraph (a) .....	46
Paragraph (b) .....	46
Paragraph (c) .....	46
Paragraph (d) .....	46
Subrule (2) .....	46
Subrule (3) .....	46
Subrule (4) .....	46
Paragraph (a) .....	46
Paragraph (b) .....	46
Paragraph (c) .....	46
Subrule (5) .....	46
Subrule (6) .....	46
Subrule (7) .....	46
Subrule (8) .....	46
Paragraph (a) .....	46
Paragraph (b) .....	46
Subrule (9) .....	47
Subrule (10) .....	47
Subrule (11) .....	47
Subrule (12) .....	47
Subrule (13) .....	47
Subrule (14) .....	47
Subrule (15) .....	47
Rule 53. – Amendment of pleadings .....	47
Subrule (1) .....	47
Subrule (2) .....	47
Subrule (3) .....	47
Subrule (4) .....	47
Subrule (5) .....	47
Rule 54. – Arrests, tanquam suspectus de fuga, interdicts, attachments and mandamenten van spolie .....	47
Subrule (1) .....	47
Subrule (2) .....	47
Subrule (3) .....	47



Subrule (4) .....	47
Paragraph (a) .....	47
Paragraph (b) .....	47
Subparagraph (i) .....	47
Subparagraph (ii) .....	48
Subparagraph (iii) .....	48
Subrule (5) .....	48
Subrule (6) .....	48
Subrule (7) .....	48
Subrule (8) .....	48
Subrule (9) .....	48
Subrule (10) .....	48
Subrule (11) .....	48
Subrule (12) .....	48
Subrule (13) .....	48
Subrule (14) .....	48
Subrule (15) .....	48
Rule 55. – Assessors .....	48
Subrule (1) .....	48
Subrule (2) .....	48
Subrule (3) .....	48
Subrule (4) .....	48
Subrule (5) .....	49
Subrule (6) .....	49
Rule 56. Non compliance with rules, including time limits and errors .....	49
Subrule (1) .....	49
Subrule (2) .....	49
Subrule (3) .....	49
Subrule (4) .....	49
Subrule (5) .....	49
Paragraph (a) .....	49
Paragraph (b) .....	49
Subrule (6) .....	49
Subrule (7) .....	49
Subrule (8) .....	49

Subrule (9) .....	49
Rule 57. – Records, entries or documents as evidence in civil matters .....	49
Subrule (1) .....	49
Subrule (2) .....	49
Rule 58. – Security for costs by plaintiff .....	50
Subrule (1) .....	50
Paragraph (a) .....	50
Paragraph (b) .....	50
Paragraph (c) .....	50
Paragraph (d) .....	50
Subrule (2) .....	50
Subrule (3) .....	50
Subrule (4) .....	50
Rule 59. – Procedure for securing the attendance of witnesses in criminal cases .....	50
Subrule (1) .....	50
Subrule (2) .....	50
Subrule (3) .....	50
Subrule (4) .....	50
Subrule (5) .....	50
Subrule (6) .....	50
Rule 60. – Criminal record book .....	50
Subrule (1) .....	50
Subrule (2) .....	50
Subrule (3) .....	51
Paragraph (a) .....	51
Paragraph (b) .....	51
Paragraph (c) .....	51
Paragraph (d) .....	51
Paragraph (e) .....	51
Paragraph (f) .....	51
Paragraph (g) .....	51
Subrule (4) .....	51
Rule 61. – Record of criminal cases .....	51
Subrule (1) .....	51
Paragraph (a) .....	51

Paragraph (b) .....	51
Paragraph (c) .....	51
Paragraph (d) .....	51
Paragraph (e) .....	51
Paragraph (f) .....	51
Paragraph (g) .....	51
Paragraph (h) .....	51
Subrule (2) .....	51
Subrule (3) .....	51
Subrule (4) .....	51
Paragraph (a) .....	51
Paragraph (b) .....	51
Paragraph (c) .....	52
Subrule (5) .....	52
Paragraph (a) .....	52
Paragraph (b) .....	52
Paragraph (c) .....	52
Paragraph (d) .....	52
Subrule (6) .....	52
Subrule (7) .....	52
Subrule (8) .....	52
Paragraph (a) .....	52
Paragraph (b) .....	52
Subrule (9) .....	52
Rule 62. – Criminal appeals .....	52
Subrule (1) .....	52
Paragraph (a) .....	52
Paragraph (b) .....	52
Subrule (2) .....	52
Subrule (3) .....	53
Subrule (4) .....	53
Subrule (5) .....	53
Subrule (6) .....	53
Paragraph (a) .....	53
Paragraph (b) .....	53

Paragraph (c) .....	53
Subrule (7) .....	53
Subrule (8) .....	53
Rule 63. – Oath of office of interpreter .....	53
Subrule (1) .....	53
Subrule (2) .....	53
Subrule (3) .....	53
Subrule (4) .....	53
Subrule (5) .....	53
Rule 64. – Repeal of Rules .....	54
Subrule (1) .....	54
Subrule (2) .....	54
Second Schedule .....	77

# Lesotho

## Subordinate Courts Order, 1988

## Subordinate Court Rules, 1996

### Legal Notice 132 of 1996

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#### Commenced

*[This is the version of this document from 31 December 1996.]*

*[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.]*

In exercise of the powers conferred upon me by section 81 of the Subordinate Courts Order, 1988 and pursuant to section 28(1) of the Interpretation Act, 1977, I, Joseph Lebona Kheola; Chief Justice, make the following Rules—

#### 1. Citation, commencement and application

- (1) These Rules may be cited as the Subordinate Court Rules, 1996 and shall come into operation on the date of their publication in the *Gazette*.
- (2)
  - (a) The provisions of rules 1, 2, 3, 8 and 63 shall apply to all matters whether civil or criminal.
  - (b) The provisions of rules 4 to 7 inclusive and 9 to 58 inclusive shall apply only to civil matters.
  - (c) The provisions of rules 59 to 62 inclusive shall apply only to criminal matters.
  - (d) The provisions of rules 19, 21 and 23 to 26 inclusive shall be applicable only if—
    - (i) the plaintiff has not applied for summary judgment; or
    - (ii) the plaintiff has applied for summary judgment and the application has been dismissed or an order has been made giving the defendant leave to defend.

#### 2. Interpretation

- (1) In these Rules, unless the context otherwise requires—

"**action**" means a proceeding instituted by way of summons under rule 5;

"**apply**" means apply on motion and "application" has a corresponding meaning;

"**attorney**" means a person admitted and enrolled in terms of section 8 of the Legal Practitioners Act, 1983;

"**clerk of the court**" means a clerk of the court appointed under section 9 of the Order and includes an assistant clerk of the court so appointed;

"**company**" means an incorporated or registered company;

"**copy**" means a true and correct copy;

"**court**" means a subordinate court as constituted under section 3 of the Order;

"**default judgment**" means a judgment entered or given in the absence of the party against whom it is made;

**"deliver"** (except when a summons is served on the opposite party only, and under rule 9) means to file with the clerk of the court and serve a copy on the opposite party, and "delivery", "delivered" and "delivering" have corresponding meanings;

**"give security"** means to give security to the satisfaction of the clerk of the court either by a payment into court of the amount determined by him or by the giving of a security bond either by the party personally with someone as his surety or by two or more other persons;

**"messenger"** means a messenger of the court appointed under section 10 of the Order and includes any person specially approved of and appointed by the court to effect any particular service;

**"money"** includes all coined money whether or not current in Lesotho and all bank notes, bank drafts, cheques, orders, warrants or authorities for the payment of money;

**"notice"** means notice in writing;

**"party"** means any person who is a party to a proceeding under these Rules;

**"pending case"** means any matter before court and which has not been withdrawn, discontinued or dismissed, and in which judgment has not yet been entered or given;

**"plaintiff", "defendant", "applicant", "appellant", "respondent" and "party"** include the attorney or Counsel appearing for any such party and the Mayor, Chairman, Town Clerk, Secretary or similar officer of any local authority or similar body nominated by it for the purpose;

**"plea"** means a statement in writing delivered by a defendant pursuant to rule 19 in answer to the claim endorsed on a summons under rule 6;

**"property"** includes everything animate or inanimate, corporeal or incorporeal, moveable or immoveable, capable of being the subject of ownership;

**"the Order"** means the Subordinate Courts Order, 1988 (Order 9 of 1988);

**"valuable security"** includes any document which is the property of any person and which is evidence of the ownership of any property or of the right to recover or receive any property.

- (2) A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as a part of any period calculated in terms of these Rules or fixed by an order of Court.
- (3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

### 3. Documentation, filing, numbering, access to records

- (1) The clerk of the court shall keep a book to be called the Civil Record Book and shall enter therein forthwith at each successive stage of the action—
  - (a) the number of the action;
  - (b) the names of the parties and their attorneys, if any;
  - (c) the date and hour of issue of summons;
  - (d) any remarks required by these rules or by the special circumstances of the case.
- (2) The clerk of the Court shall also keep the Civil Judgment Book and shall enter therein the number of the action in the Civil Record Book, the date of the judgment, the name and address of the judgment debtor, the name of the judgment creditor, the nature of the debt, and the amount of the judgment and of the judgment creditor's costs when these have been taxed or fixed by the clerk.
- (3) The summons or other first document filed in a case or any application not relating to a then pending case shall be numbered by the clerk of the court with a consecutive number for the year during which it is filed, and the action or application shall be entered by him in the Civil Record Book under that number.

- (4) Every document afterwards served or delivered in such case or application or in any subsequent case in continuation of any such application shall be marked with such number by the party delivering it and shall not be received by the clerk of the court until so marked.
- (5) All documents delivered to the clerk of the court to be filed on record and any minutes made by the court shall be filed on record under the number of the respective action or application.
- (6) Copies of such records shall, upon pre-payment of the prescribed fees, be made and issued by the clerk of the court to any person applying therefor and entitled thereto, or such copies may be made by such a person in the presence of the clerk of the court.
- (7) All process of the court for service or execution and all documents or copies to be filed of record other than documents or copies filed of record as documentary proof shall be on paper known as A4 standard paper of a size of approximately 210 mm by 297 mm.
- (8) Any process sued out or notices or documents issued or delivered shall be endorsed with the name and address of the party issuing or delivering the same.

#### 4. General duties of the clerk of court in civil matters

- (1) It shall also be the duty of the clerk of the court—
  - (a) to sign and issue all such process of the court as may be sued by any person entitled so to sue or, at the request of any party by whom process was sued out, to reissue such process after its return by the messenger;
  - (b) to notify the plaintiff forthwith by post and in writing—
    - (i) of the defendant's consent to judgment before entry of appearance;
    - (ii) of a defective memorandum of entry of appearance entered by a defendant who is not represented by an attorney and in what respects such entry of appearance is defective;
    - (iii) of payment into court before entry of appearance, of the amount claimed or any part thereof; and
    - (iv) of an application for a judgment by default having been refused;
  - (c) to write out, upon request of any party and on payment of the following court fees, any process of the court which any party requests him to write out, viz:—

Summons, defence or counterclaim	M0, 50
Application or security bond	25
Subpoena, warrant of execution or other process or document	10

Provided that such assistance shall not be rendered to the plaintiff in actions where the claim or value of the matter in dispute in convention exceeds the sum of M200.00. The above fees shall be for the clerk's services, and in addition to the fees laid down in table D of the Second Annexure to these rules;

- (d) to note on a certified copy of a judgment at the request of the party to whom such copy is issued—
  - (i) particulars of any other judgment by the court, or any other court, stating which court, in that case; and

- (ii) any costs incurred after judgment and payable by the judgment debtor.
- (2) Any act or notice to be performed or signed by the clerk of the court in terms of these rules may be performed or signed by a judicial officer, except that no judicial officer shall writ out any affidavit, pleading or process for any party or tax any bill of costs.
- (3) When a court imposes upon a person any fine, such person shall forthwith or within such period as the court may order; pay such fine to the clerk of the court.

## **5. Summons commencing action**

- (1) The process of the court for commencing an action shall be by summons calling upon the defendant to enter an appearance to defend the action within three days after service if the place of service is within 30 kilometres from the courthouse and seven days after service if the place of service is further than 30 kilometres from the courthouse to answer the claim of the plaintiff and warning the defendant of the consequences of failure to do so.
- (2) In every action against the Crown, the Government of Lesotho, any Minister, the Attorney-General or any official of the Government in his official capacity, appearance to defend may be entered at any time within 21 days after service of the summons.
- (3) The summons shall be signed by the clerk of the court and shall bear the date of issue by him.
- (4) The summons shall be in printed form.
- (5) For the purposes of this rule the said summons shall not be regarded as being in printed form if any substantial part of those portions thereof which have been prescribed by rule of court have been reproduced by handwriting, duplicated typing or duplicated by the wax stencil method or printed by the office offset or direct lithographic method, unless the master stencil or plate is an electronic or photographic copy of the type-set original. Forms so reproduced shall be on white paper suitable for handwriting in ink.

## **6. Endorsement of a summons**

- (1) The summons shall before issue be endorsed with particulars of the claim and shall include—
  - (a) a form of consent to judgment;
  - (b) a form of appearance to defend.
- (2)
  - (a) The endorsement of claim shall be signed by the plaintiff or by his attorney.
  - (b) The full address where the plaintiff will accept service of process, notices or documents and also the postal address of the person signing the endorsement shall be given in the summons.
  - (c) Subject to paragraph (d), the address where the plaintiff will accept service of process, notices or documents shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be not more than 8km distance from the courthouse.
  - (d) Where an appearance to defend the action is entered in terms of rule 13(1), the defendant may, at the request of the plaintiff, deliver in writing, a consent to an address being furnished further than 8 km distance from the court-house, and upon delivery of such consent the plaintiff shall deliver, in writing, full particulars of the address where he will accept service of further process, notices or documents.
- (3)
  - (a) The particulars of the claim shall contain—
    - (i) the nature and amount of the claim;



- (ii) if the claim bears interest, the rate at which the interest is calculated, stating whether such rate was the subject of agreement, or not; and
  - (iii) the amount claimed for attorney's costs and court fees if the action is not defended.
- The messenger shall endorse the amount of his charges on the summons on service thereof.
- (b) The said particulars shall also contain any abandonment of part of the claim under section 23 of the Order and any set-off under section 24 of the Order.
- (c) Where the summons contains more than one claim, the particulars of each claim and the relief sought in respect of each claim shall be stated separately.
- (d) Where the particulars contain more than 100 words, they may be contained in an annexure, which shall form part of the summons.
- (4) The clerk of the court may refuse to issue a summons in which—
  - (a) an excessive amount is claimed for attorney's costs or court fees; or
  - (b) the requirements of rule 6(2)(b) and (c) have not been complied with.
- (5) The summons shall also—
  - (a) contain the full names, sex, occupation and residence or place of business of the plaintiff;
  - (b) contain the surname of the defendant by which he is known to the plaintiff, the defendant's sex, residence or place of business, and, where known, his first name or initials, his occupation and, in the case of a woman, her marital status; and, if the defendant is sued in his representative capacity, the capacity in which he is so sued;
  - (c) where the plaintiff sues as cessionary, contain the name, address and description of the cedent at the date of the cession, and the date of the cession;
  - (d) where the plaintiff sues in a representative capacity, contain the capacity in which he sues;
  - (e) where the plaintiff sues upon an instrument, presentment whereof was necessary, contain the fact and the date of presentment;
  - (f) where the defendant is cited under the jurisdiction conferred upon the court by section 16(1)(d) of the Order, contain an averment that the whole cause of action arose within the district but need set out no further particulars in support of such averment: Provided that the defendant may in terms of rule 16 require the delivery of such particulars.
- (6) More than one claim may be made in a summons either alternatively or otherwise, but claims which are not expressed to be alternative shall not be mutually inconsistent, nor based on inconsistent averments of fact.

## 7. Amendment of summons

- (1) Subject to this rule, a summons may, before service, be amended by the plaintiff as he may think fit.
- (2) Any alteration or amendment of a summons before service and whether before or after issue shall, before the summons is served, be initialled by the clerk of the court and the plaintiff or his attorney on the original summons and, until so initialled, such alteration or amendment shall have no effect.
- (3)
  - (a) When no first name or initial or an incorrect or incorrectly spelt first name is reflected, or not all the first names of the defendant are reflected in the summons and the first name or initial or the correct or correctly spelt first name of the defendant is furnished, or all the first names of the defendant are furnished by the person on whom service of the summons was effected and such first name or initial or correct or correctly spelt first name is disclosed in the return of the messenger, or all the first names of the defendant are so disclosed, the clerk of the court may, at the request of the plaintiff and without notice to the defendant,

insert such name or initial in the summons as being the name or initial of the defendant and such amendment shall for all purposes be considered as if it had been made before service of summons.

- (b) The provisions of rule 53 shall apply to the amendment of a summons after service.

## **8. Messenger of the court**

- (1)
  - (a) Every messenger who is not an officer in the Public Service shall give security to the satisfaction of the magistrate of the district for the due fulfilment of the duties of his office, including the due and punctual payment by him to the parties entitled thereto of all moneys which shall come into his hands by virtue of his office.
  - (b) Except in the case of suretyship by an insurance company, such security shall be given by means of at least two sureties other than legal practitioners or persons in the employ of legal practitioners.
- (2) Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the messenger.
- (3) Service or execution of process of the court shall be effected without any avoidable delay, and the messenger shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably anticipated, have power to call upon any member of the Force (as defined in the Police Order, 1971) to render him aid.
- (4) The messenger to whom process is entrusted for service or execution shall, in writing notify—
  - (a) the clerk of the court and the party who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution and return the said process to the clerk of the court; or
  - (b) the party who sued out the process that he has been unable to effect service or execution, and of the reason for such inability, and return the said process to such party. The messenger shall keep a record of any process so returned.
- (5) Any messenger who is not an officer in the Public Service may charge such fees and necessary expenses for the execution of his duties as are contained in Table B of the Second Schedule.
- (6) After service or attempted service of any process, notice or document, the messenger shall specify the total amount of his fees and expenses on the original and all copies thereof and the amount of each of his charges separately on the return of service.

## **9. Service of process, notices and other documents**

- (1) The clerk of the court shall deliver to the messenger the original of any process, notice or other document to be served, with as many copies as there are persons to be served.
- (2) The messenger shall then effect service of same upon the person affected thereby, by delivery of a copy thereof in one or other of the following manners:
  - (a) to the said person personally or to his duly authorised agent:

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) at his residence or place of business to some person apparently not less than 16 years of age and apparently residing or employed there:

Provided that where such place of business or residence is a building which is occupied by more than 1 person or family, "place of business" or "residence", means that portion of the building occupied by the person who is to be served;

- (c) at his place of employment, to some person apparently not less than 16 years of age and apparently in authority over him or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charge at such place of employment;
- (d) if the person to be served has chosen a *domicilium citandi* at the *domicilium* so chosen;
- (e) in the case of a company or other body corporate, at its local office or principal place of business within the area of jurisdiction of the court concerned, to a responsible employee thereof:

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;

Provided further that if there is any statute or law providing for a manner of service on such company or body corporate, service shall be effected in such manner as provided by that statute or law;

- (f) if the plaintiff or his authorised agent has given written instructions to the messenger to serve by registered post, the process shall be so served;
- (g) where the party to be served is the Crown, the Government of Lesotho, any Minister, the Attorney-General or any official of the Government of Lesotho in his official capacity, service may be effected at the office of the Attorney-General in Maseru:

Provided that where such service has been effected in the manner prescribed by paragraphs (b), (c), (e) or (g), the messenger shall indicate in the return of service of the process the name of the person to which such person stands in relation to the person, company, body corporate or institution affected by the process and where such service has been effected in the manner prescribed by paragraphs (b), (c) or (f) the court or clerk of the court, as the case may be, may treat such service as invalid, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, and in the absence of satisfactory evidence showing that it has come to the knowledge of such person.

- (2) The messenger shall, on demand by the person upon or against whom process is served, exhibit to that person the original of the process.
- (3) Where the person to be served keeps his residence or place of business closed and thus prevents the messenger from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.
- (4) Where the messenger is unable after diligent search to find at the residence or *domicilium citandi* of the person to be served either that person or the person referred to in subrule (1)(b) or, in the case of a company or body corporate referred to in subrule (1)(e), a responsible employee, it shall be sufficient service to affix a copy of the process to the outer or principal door of such residence, local office or principal place of business or to leave a copy of the process at such *domicilium*.
- (5) Where the relief claimed in any action is limited to an order for ejectment from certain premises or land, or a judgment for the rent thereof and for the costs of such proceedings and it is not possible to effect service in the manner prescribed in subrule (1), service of process may be effected by affixing a copy thereof to a conspicuous part of the premises or land in question.
- (6) Service of an interpleader summons where claim is made to any property attached under process of the court may be made upon the attorney of record (if any) of the party to be served.
- (7) Where two or more persons are to be served with the same process, service shall be effected upon each, except—
  - (a) in the case of a partnership, when service may be effected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any manner hereinbefore prescribed;

- (b) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of them in any manner hereinbefore prescribed;
  - (c) in the case of a local authority or other statutory body, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairman or secretary or similar office thereof in any manner hereinbefore prescribed.
- (8) 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 as set out in this rule.
- (9) 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.
- (10) Service shall be effected as near as possible between the hours of 7.00 a.m. and 7.00 p.m.
- (11) (a) Except as provided in sub-paragraph (b) hereof, or in the case of service by post or upon order of the Court, process, notices or other documents shall not be served on a Sunday or public holiday.
- (b) An interdict, a warrant of arrest, a warrant of committal and a warrant of attachment of person or property under section 18(1) of the Order may be executed on any day at any hour and at any place.
- (12) Service of a subpoena on a witness may be effected at a reasonable time before attendance is required in any manner hereinbefore prescribed but need not be effected through the messenger.
- (13) (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend, as the case may be, or by sending it by registered post to the postal address so given.
- (b) An address for service or postal address so given may be changed by the delivery of notice of a new address and thereafter service may be effected as aforesaid at such new address.
- (c) Service by registered post under this sub-rule shall, until the contrary appears, be deemed to have been effected at 10 o'clock in the forenoon five days after the postmarked date upon the receipt for registration.
- (d) Service under this sub-rule need not be effected through the messenger.
- (14) If it is not possible to effect service in any manner as set out in this rule, the court may, upon the application of the party 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 address or whereabouts and must set out fully what enquiries have been made to ascertain his whereabouts.
- (15) Where service of an *ex parte* order calling upon the respondent to show cause at a time stated or limited in the order, or of an interpleader summons is to be effected upon any party, service of such *ex parte* order or interpleader summons shall be effected—
- (a) in the case where the party to be served is the Crown, the Government of Lesotho, a Minister, the Attorney-General or an official of the Government of Lesotho in his official capacity, at least 14 days; or
  - (b) in the case where any other party is to be so served, at least 7 days, before the time specified in such *ex parte* order or interpleader summons for the appearance of such party.

- (16) Except where otherwise provided, notice of any application to the court shall be served—
- (a) in the case where the party to be served is the Crown, the Government of Lesotho, a Minister, the Attorney-General or an official of the Government of Lesotho in his official capacity, at least 14 days; or
  - (b) in the case of any other party, at least 7 days, before the day appointed for the hearing of the application, but the court may on good cause shown reduce such period.
- (17) (a) Where under any rule service of any summons, process or notice may be effected by registered post, the service shall be so effected by the messenger placing a copy thereof in an envelope, addressing and posting it by pre-paid registered post to the address of the party to be served and, at the time of registration, making application for an acknowledgment by the addressee of the receipt thereof as provided in the Post Office Regulations.
- (b) A receipt form completed as provided in the Post Office Regulations shall be a sufficient acknowledgment of receipt for the purposes hereof.
  - (c) If no such acknowledgment be received the messenger shall state the fact in his return of service of the process.
  - (d) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:—
- "This letter must not be readdressed. If delivery is not effected before \_\_\_\_\_, 19 \_\_\_\_, this letter must be delivered to the messenger of the Subordinate Court at \_\_\_\_\_".

## 10. Delay in the prosecution of an action

If summons in an action be not served within 12 months of the date of its issue or, having been served, the plaintiff has not within that time after service taken further steps in the prosecution of the action, the summons shall lapse: Provided that where the defendant has requested the plaintiff, in writing, for an extension of time within which to pay the debt claimed or any portion thereof and such extension has been granted to him by the plaintiff, in writing, the summons shall not lapse until 12 months after the expiry of the period of extension.

## 11. Judgment by consent

- (1) A defendant may before entry of appearance consent to judgment by:
  - (a) signing the form of consent endorsed on the original summons; or
  - (b) lodging with the clerk of the court the copy of the summons served upon him with the form of consent endorsed thereon duly signed by him; or
  - (c) lodging with the clerk of the court a consent in a similar form duly signed by him and two witnesses whose addresses are also given.
- (2) Where a defendant so consents before instructions for service have been given to the messenger, it shall not be necessary to serve the summons, and the defendant shall not be chargeable with fees for service.
- (3) A defendant so consenting before the expiration of the time limited for appearance shall not be chargeable with judgment charges.
- (4) A defendant may after entry of appearance consent to judgment by delivering a consent similar in form to that endorsed on the summons and such consent shall be signed by the defendant or by his attorney of record.
- (5) If the defendant's consent is for less than the amount claimed in the summons, he may enter an appearance to defend or may continue his defence as to the balance of the claim. Notwithstanding

a judgment upon such consent, the action may proceed as to such balance, and it shall be in all subsequent respects an action for such balance.

- (6) When a defendant has consented to judgment, the clerk of the court shall, subject to the provisions of rule 12(5), (6) and (7), enter judgment in terms of the defendant's consent: Provided that where such consent to judgment is contained in the defendant's plea, the clerk of the court shall refer the matter to the court and the court may thereupon exercise its powers under rule 12(7).

## 12. Judgment by default

- (1) (a) If a defendant has failed to enter appearance to defend within the time limited therefor by the summons or before the lodgment of the request hereinafter mentioned, and has not consented to judgment, the plaintiff may lodge with the clerk of the court a written request, in duplicate, together with the original summons and return of service, for judgment against such defendant for—
- (i) any sum not exceeding the sum claimed in the summons or for other relief so claimed;
  - (ii) the costs of the action; and
  - (iii) interest either from the date of the issue of the summons or from when the defendant was *in mora* to the date of payment at the rate specified in the summons or, if no rate be specified, at the rate of 12% per annum, from the date of issue of summons.
- (b) If the defendant has entered appearance but has failed to deliver a plea within the time limited by rule 19 the plaintiff may deliver notice in writing calling upon the defendant to deliver a plea within three days of the receipt of such notice and, on failure of the defendant so to do, may lodge with the clerk of the court a written request for judgment in the same manner as if the defendant had failed to enter appearance to defend.
- (c) When the defendant has failed to enter appearance to defend or, having entered appearance, has failed to deliver a plea within the period specified in the notice delivered to him in terms of paragraph (b) and the plaintiff has in either case lodged a request for judgment, the clerk of the court shall, subject to the provisions of subrules (2), (3), (4), (5), (6) and (7), enter judgment in terms of the plaintiff's request and notify the plaintiff by returning to him the duplicate copy duly endorsed as to the result and the date thereof.
- (d) When a defendant has entered an appearance to defend but has failed to deliver a plea within the period specified in the notice delivered to him in terms of paragraph (b) and the clerk of the court has entered judgment, in terms of a request lodged by the plaintiff, costs shall be taxed as if it had been a defended action.
- (2) (a) If it appears to the clerk of the court that the defendant intends to defend the action but that his entry of appearance is defective, in that the memorandum thereof—
- (i) has not been properly delivered; or
  - (ii) has not been properly signed; or
  - (iii) does not set out the postal address of the person signing it or an address for service as provided in rule 13; or
  - (iv) exhibits any two or more of such defects or any other defect of form,
- he shall not, subject to paragraphs (b), (c) and (d) hereof, enter judgment against the defendant.
- (b) The plaintiff may deliver written notice to the defendant calling upon him to deliver a memorandum of entry of appearance in due form within 3 days of the receipt of such notice.
- (c) Such notice shall set out in what respect the defendant's entry of appearance is defective.

- (d) On failure of the defendant to deliver a memorandum of entry of appearance as provided in paragraph (a), the plaintiff may lodge with the clerk of the court a written request for judgment in default of due entry of appearance, and the clerk of the court shall duly enter judgment in accordance with the provisions of subrule (1) (c).
- (3) Judgment in default of appearance to defend shall not be entered in an action in which the summons has been served by registered post unless the acknowledgment of receipt referred to in rule 9(17)(a) has been filed by the messenger with his return of service.
- (4) The clerk of the court shall refer to the court any request for judgment for an unliquidated amount and the plaintiff shall furnish to the court evidence, either oral or by affidavit, of the nature and extent of the claim. The court shall thereupon assess the amount recoverable by the plaintiff and shall give judgment.
- (5) The clerk of the court shall refer to the court any request for judgment on a claim founded on any cause of action arising out of or based on any hire-purchase agreement governed by the Hire Purchase Act, 1974 (Act [No. 27 of 1974](#)) and the court shall thereupon make such order or give such judgment as it may deem just.
- (6) If the action be on a liquid document the plaintiff shall before entry of judgment, file on record the original of such document duly stamped or an affidavit setting out reasons to the satisfaction of the court why such original cannot or should not be filed.
- (7) The clerk of the court may refer to the court any request for judgment and the court may thereupon —
  - (a) if a default judgment be sought, call upon the plaintiff to produce such evidence either written or oral in support of his claim as it may deem necessary;
  - (b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;
  - (c) give judgment in terms of plaintiff's request or for so much of the claim as has been established to its satisfaction;
  - (d) give judgment in terms of the defendant's consent;
  - (e) refuse judgment; or
  - (f) make such other order as may be just.
- (8) When one or more of several defendants in an action consent to judgment or fail to enter appearance or to deliver a plea, judgment may be entered against the defendant or defendants who have consented to judgment or are in default and the plaintiff may proceed on such judgment without prejudice to his right to continue the action against another defendant or other defendants.
- (9) Judgment shall be entered by recording, in the Civil Judgment Book, the particulars of the judgment and the date of its entry.

### 13. Appearance to defend

- (1) A defendant intending to defend the action shall, within the period as set out in the summons, enter an appearance to defend by delivery of a notice that he intends to defend.
- (2) Notwithstanding the provisions of subrule (1), an appearance to defend, even though entered after the expiry of the period mentioned in the summons shall be effective: Provided, that a request for default judgment has not yet been filed with the clerk of the court: Provided further that if the notice of appearance to defend is filed on the same day as the request for default judgment and judgment has not been given, the notice of appearance to defend shall still be effective but the plaintiff shall be entitled to costs for such request for default judgment as if the matter had been an undefended action.



- (3)
  - (a) The notice of appearance to defend shall be signed by the defendant, or by his attorney.
  - (b) The full address where the defendant will accept service of process, notices or documents and also the postal address of the person signing the notice shall be given in the notice.
  - (c) Subject to paragraph (d), the address where the defendant will accept service of process, notices or documents shall, in places where there are three or more firms of attorneys practising independantly of one another, be not more than 8 km distant from the courthouse.
  - (d) The plaintiff may, at the request of the defendant, deliver a consent, in writing, to an address being furnished further than 8 km distant from the courthouse, and upon delivery of such consent the defendant shall deliver, in writing, full particulars of the address where he will accept service of further process, notices or documents.
  - (e) The address given for service shall not be that of the clerk of the court or the messenger, unless the office of the Attorney-General is given as the address of the person signing the notice.
- (4) The clerk of the court shall, at the request of an illiterate defendant who does not employ an attorney, enter an appearance for him.
- (5) The entry of appearance shall be without prejudice to any exception which the defendant may have.

#### 14. Summary judgment

- (1) When a defendant has entered an appearance to defend, the plaintiff in convention may apply to the court for summary judgment on one or more of such claims in the summons as are only—
  - (a) on a liquid document;
  - (b) for a liquidated amount in money;
  - (c) for the delivery of specified movable property; or
  - (d) for ejectment,in addition to a claim for interest and costs.
- (2) The plaintiff, who so applies, shall within seven days after the delivery of appearance to defend, deliver notice of such application, which notice must be accompanied by—
  - (a) if the claim is a claim referred to in sub-rule (1) (b) (c) or (d), 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 claimed, if any, and such affidavit must further state that—
    - (i) in the opinion of the deponent, the defendant has no *bona fide* defence to the action; and
    - (ii) entry of appearance has been entered merely for the purpose of delay;
  - (b) if the claim is founded on a liquid document, a copy of such document.
- (3) 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.
- (4) Upon the hearing of an application for summary judgment, the defendant may—
  - (a) pay into court to abide the result of the action the sum sued for, together with such sum for costs and interest as the court may determine or give security to the satisfaction of the clerk of the court; or
  - (b) in the case of a claim sounding in money or of an alternative claim sounding in money, give security to the satisfaction of the clerk of the court for any judgment including such costs and interest which may be given; or



- (c) satisfy the court by affidavit and, with leave of the court, supplement the affidavit by oral evidence of himself or of any other person who can swear positively to the facts, that he has a *bona fide* defence to the claim on which summary judgment is being applied for or a *bona fide* counterclaim against the plaintiff.
- (5) The affidavit mentioned in sub-rule (4) (c), shall be delivered not later than noon of the day preceding the hearing of the application. Such affidavit shall disclose fully the nature and grounds of the defence or counterclaim and the material facts relied upon therefor.
- (6) No evidence may be adduced by the plaintiff other than the affidavit referred to in sub-rule (2) (a) nor may the plaintiff cross-examine any person who gives evidence *viva voce* at the hearing. But such person, after examination by the defendant, or the defendant himself after giving evidence, may be examined by the court.
- (7) If the defendant does not either pay into court or furnish security or satisfy the court that he has a *bona fide* defence to the claim, the court may enter summary judgment for the plaintiff.
- (8) If the defendant complies with the provisions of paragraphs (a), (b) or (c) of subrule (4), the court shall grant the defendant leave to defend the action, 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) If, at 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, the court shall give leave to defend to a defendant so entitled and may give judgment against the defendant not so entitled, or may make any order which may be just;
  - (b) that a defendant is entitled to defend as to part of the claim but not to the whole of such claim, the court shall give leave to defend to a defendant as to such part of the claim and may 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.
- (10) The court may at the hearing of the application make such order as to costs as it may deem 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 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 award costs against the plaintiff and further order that the action be stayed until the plaintiff has paid the defendant's costs.
- (11) In any case in which summary judgment was refused and in which the court, after trial, gives judgment substantially as prayed, and the court finds that summary judgment would have been granted if the defendant had not raised a defence which the court finds that the defendant could not reasonably substantiate, the court may order that the defendant pay the plaintiff's costs of the action and that these costs be taxed as between attorney and client.

## 15. Documents supporting action

- (1) A defendant may at any time after entering appearance to defend but before delivery to him of a notice referred to in rule 12(1)(b) and before delivery by him of a plea, apply to the plaintiff by notice for copies of all or any of the accounts or documents upon which the action is founded. Such copies shall be delivered by the plaintiff within seven days of receipt of such notice.
- (2) The plaintiff shall, on notice, forthwith allow the defendant to inspect the originals of such accounts or documents.
- (3) If the plaintiff wrongfully refuses or fails to deliver such copies or to allow the defendant so to inspect, the action may, on application, be dismissed with costs.

## 16. Further particulars

- (1) Any party may by notice delivered not more than seven days after entry of appearance in the case of a summons or after the delivery of any other pleading or after judgment on any exception to such pleading has been given, require the party delivering such pleading to deliver such further particulars as are reasonably necessary to enable such party to plead, replicate or to make a payment into court or tender.
- (2) The party delivering such pleading shall within seven days after receipt of such notice deliver such particulars.
- (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) At the conclusion of the trial, the court may mero muto 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.

## 17. Exceptions and applications to strike out

- (1) (a) A defendant shall within seven days of entry of appearance deliver particulars of any exception to the summons:

Provided that where delivery of documents or particulars has been requested in terms of rule 15, or 16, or a notice referred to in subrule (5)(c) has been delivered, particulars of the exception may be delivered within seven days of delivery of such documents or particulars or within seven days of the expiration of a period of seven days after the delivery of a notice referred to in subrule (5)(c) if the cause of complaint has not been removed.
- (b) A defendant failing to deliver such particulars within such period may not thereafter raise any exception without leave of the court granted on application after notice to the plaintiff.
- (2) The only exceptions that may be taken by a defendant are—
  - (a) that the summons does not disclose a cause of action;
  - (b) that the summons is vague and embarrassing;
  - (c) that the summons does not comply with the requirements of rule 5 or 6;
  - (d) that the copy of the summons served upon defendant differs materially from the original;
  - (e) that the summons has not been properly served.
- (3) Any other defence shall be raised by means of a plea in accordance with the provisions of rule 19.
- (4) Where more than one claim is made in a summons, exception may be taken to any one or more of such claims.
- (5) (a) The court shall not uphold any exception unless it is satisfied that the defendant would be prejudiced in the conduct of his defence if the summons were allowed to stand.
- (b) A defendant raising an exception to the summons shall clearly and concisely state the grounds upon which the exception is founded.
- (c) The court shall not uphold an exception that the summons is vague and embarrassing unless the defendant has, prior to taking the exception, by delivery of a notice, given the plaintiff an opportunity of removing the cause of the complaint.
- (6) (a) A defendant may apply to strike out any one of two or more claims in a summons which, not being in the alternative, are mutually inconsistent or are based on inconsistent averments

of fact, or to strike out any argumentative irrelevant, superfluous or contradictory matter contained in the summons.

- (b) The provisions of subrule (1) shall *mutatis mutandis* apply to the delivery of particulars of such an application.
- (7) An exception or application to strike out shall, if particulars thereof have been delivered before the hearing of an application by the plaintiff for summary judgment, be heard and determined at the hearing of such application. If no such application be made, either party may, on seven days notice, set down such exception or application for hearing before trial.
- (8) Whenever an exception is taken to a pleading or whenever an application to strike out is made, no plea, replication or other pleading in answer to the former pleading need be delivered pursuant to these Rules, but may nonetheless be delivered.
- (9) Where the court allows an exception or an application to strike out, it may grant leave to the plaintiff to amend the pleading in question or make any other order on such terms as to costs, adjournment or other procedure as it may consider just.

## 18. Payment into court

- (1) A defendant may at any time pay into court unconditionally the amount claimed in the summons and thereupon all further proceedings in the action shall be stayed save as hereinafter provided for the recovery of any costs and interest not included in such payment.
- (2) (a) A defendant may without prejudice pay an amount into court by way of offer in settlement of the plaintiff's claim.
- (b) A plaintiff may within seven days after receipt of notice of such payment into court deliver a request for the payment out to him of the said amount and further proceedings shall thereupon be stayed save as hereinafter provided for the recovery of any costs and interest not included in the payment.
- (3) A defendant paying money into court in terms of subrule (1) after entry of appearance or at any time in terms of subrule (2) shall at the same time deliver a notice setting out that an amount has been paid into court and stating whether it has been paid in unconditionally under subrule (1) or as an offer of settlement under subrule (2) and if the amount paid in under subrule (2) is offered in settlement of both claim and costs, such fact shall also be stated.
- (4) The clerk of the court shall pay out to the plaintiff any moneys paid into court under subrule (1) or (2): Provided that moneys paid into court under subrule (2) shall be paid out only on delivery of the request mentioned in paragraph (b) of that subrule.
- (5) A plaintiff entitled to payment out under subrule (4) shall, save when a defendant making payment under subrule (2) states in his notice of payment that the amount paid in is inclusive of costs, be entitled to recover from the defendant the costs incurred by him up to the time of payment into court, together with his costs of obtaining payment out, in the same manner as if an order for such costs had been made by the court.
- (6) Where money has been paid into court under subrule (2) as an offer of settlement and the court finds on trial of the action that the plaintiff has failed to prove that there is any more due to him than the amount so paid in, the court shall first order payment out to the plaintiff of so much of the said amount as may be awarded to him (but subject to any order or judgment against him for the defendant's costs) and shall then give judgment for the defendant and shall order the plaintiff to pay the costs incurred by the defendant after payment into court and shall make such order as may be just in regard to costs previously incurred.
- (7) A defendant pleading tender shall on the day of filing his plea pay into court the amount so tendered if such amount has not already been paid to the plaintiff.
- (8) Save as provided in subrule (4), moneys paid into court under this rule shall be paid out only upon a judgment declaring who is entitled thereto or upon the written consent of the parties.

- (9) (a) Where a payment is made in terms of sub-rule (2)(a), the amount of a tender or payment into court shall not be disclosed to the court, or in the pleadings, until after judgment on the claim has been given. No reference to the fact of such payment or tender shall appear on any file in the clerk of the court's office containing the papers in the said case.
- (b) Any party to an action who, contrary to this rule, by himself or by his attorney, or by his advocate, mentions or discloses to the court such payment or tender shall, even if successful in the action, be liable to have costs awarded against him. If such tender or payment is referred to in any pleading, the claim or defence, as the case may be, shall be struck out by the court.
- (10) An order for costs shall be made only after disclosure of the amount tendered or paid into court and the court in awarding costs shall proceed as provided in sub-rule (6).
- (11) (a) An insurance company which is a registered company as defined in the Lesotho Motor Vehicle Insurance Order, 1989 may, instead of paying into court a sum of money as referred to in his rule, lodge with the clerk of the court, in a form which is acceptable to the clerk of the court, a guarantee for the payment of such sum to the plaintiff.
- (a) The lodging of a guarantee referred to in paragraph (a) shall not derogate from the provisions of the foregoing subrule of this rule and such provisions, except the provision relating to payment by the clerk of the court of any amount paid into court, shall apply as if the sum guaranteed had been paid into court.
- [Please note: numbering as in original.]*
- (c) Payment to the plaintiff's attorney (or to the plaintiff where he sues in person) by an insurance company referred to in paragraph (a) of the amount guaranteed shall be made within 14 days of the receipt of the plaintiff's notice of acceptance of the amount guaranteed and failing such payment the plaintiff may apply for judgment for such amount together with costs of application.

## 19. Plea

- (1) The defendant shall within seven days—
  - (a) after entry of appearance; or
  - (b) after delivery of documents or particulars in terms of rule 15 or 16; or
  - (c) after the dismissal of an application for summary judgment, if such application be made; or
  - (d) after the making of an order giving leave to defend; or
  - (e) after the dismissal of an exception or application to strike out, if such exception or application be set down for hearing in terms of rule 17(7); or
  - (f) after any amendment of the summons allowed by the court at the hearing of such exception or application,

deliver a statement in writing to be called a plea: Provided that if an appeal be noted against a decision on exception, or such proceedings be brought on review, the plea shall be delivered within such time as may be directed by the appellate court or, on application, by the court.
- (2) The plea shall be dated and signed by the defendant or his attorney.
- (3) The defendant in his plea shall either admit or deny or confess and avoid all the material facts alleged in the particulars to the summons and shall clearly and concisely state the nature of his defence and all the material facts on which it is based.
- (4) (a) For the purpose of this rule "defendant" includes a person upon whom a summons has been served and who alleges that he is not the defendant cited in the summons and enters

- appearance to defend on that ground. The court may on the hearing of any such defence order costs to be paid to or by such person as if he were a party to the action.
- (b) If such defence be sustained the court, instead of dismissing the summons may, if moved thereto by the plaintiff, allow any necessary amendment to the summons and order that it be served upon the real defendant.
- (5) A bare denial of liability or a defence of general issue shall not be admissible, but the defendant may, either as a sole defence or in combination with any other defence not inconsistent therewith, deny specifically any of the allegations in the summons.
- (6) Subject to rule 18
- (a) where a tender is pleaded as to part of the amount claimed, the plea shall specify the items of the plaintiff's claim to which the tender relates;
- (b) a plea of tender shall not be admissible unless the amount of the alleged tender is paid into court or secured to the satisfaction of the plaintiff on the delivery of the plea, if not already paid or secured to the plaintiff. Such amount shall be paid out to the plaintiff only on the order of the court or upon the written consent of the parties;
- (c) a tender after action brought shall imply an undertaking to pay the plaintiff's costs up to the date of the tender (unless such undertaking is expressly disavowed at the time of such tender) and shall be valid without a tender or payment into court or securement of the amount at which such costs may be taxed.
- (7) Where an unconditional payment into court or security of the amount is alleged in the plea, the particulars shall show whether the payment in or securement has been made under rule 18(1) or by way of tender under subrule (6) of this rule. If the nature of the payment in or security be not specified, it shall be deemed to be by way of tender after action brought.
- (8) Every allegation of fact by the plaintiff which is inconsistent with the plea shall be presumed to be 'denied and every other allegation shall be taken to be admitted.
- (9) If during the trial of an action it appears that there is *prima facie* evidence of a defence on some other ground than that pleaded, the court may, on application at the trial, allow such new defence to be then pleaded *viva voce* on such terms as to adjournment and costs as shall be just.
- (10) Any defence which can be adjudicated upon without the necessity of going into the main case may be set down by either party for a separate hearing upon seven days notice at any time after such defence has been raised.
- (11) A plaintiff may within seven days of delivery of the plea or further particulars thereto, or where a notice in terms of rule 17(5)(c) has been delivered and the cause of the complaint referred to therein has not been removed within seven days of delivery of such notice, and in the course of or before delivering a reply, deliver particulars of an exception to the plea.
- (12) A plaintiff may except to the plea on the ground either—
- (a) that it does not disclose a defence to the plaintiff's claim; or
- (b) that it is vague and embarrassing; or
- (c) that it does not comply with the requirements of this rule.
- (13) (a) The court shall not uphold any exception unless it is satisfied that the plaintiff would be prejudiced in the conduct of his case if the plea were allowed to stand.
- (b) A plaintiff raising an exception to the plea shall clearly and concisely state the grounds upon which the exception is founded.
- (c) The court shall not uphold an exception that the plea is vague and embarrassing unless the plaintiff has, prior to taking the exception, by delivery of a notice given the defendant an opportunity, of removing the cause of complaint.

- (14) Particulars delivered by the defendant in terms of rule 16 shall be deemed to be included in the plea.
- (15) (a) A plaintiff may apply to strike out any of two or more defences which, not being pleaded in the alternative, are mutually contradictory, or any argumentative, irrelevant, superfluous or contradictory matter stated in a plea.  
(b) The provisions of subrule (12) shall apply *mutatis mutandis* to the delivery of particulars of an application to strike out.
- (16) An exception to or application to strike out a matter from a plea may be set down for hearing by either party on seven days notice.
- (17) If such an exception or application be sustained and no application for amendment be made or, being made, be refused, the court may, if the plea then disclose no defence, give judgment for the plaintiff.

## 20. Claims in reconvention

- (1) The provisions of these rules shall *mutatis mutandis* apply to claims in reconvention except that it shall not be necessary to enter an appearance to defend and that all times which, in the case of a claim in reconvention, run from the date of appearance, shall, in the case of a claim in reconvention, run from the date of delivery of such claim in reconvention.
- (2) A claim in reconvention shall be made by delivery, within the time limited by rule 19 read with rule 12(1)(b) for the delivery of a plea, of a statement in writing giving such particulars of the claim in reconvention as are required in respect of claims in convention.
- (3) A defendant may set up by a claim in reconvention any right or claim of any amount which he may allege against the plaintiff, whether liquid or illiquid, whether liquidated or unliquidated, whether or not it arises out of or is connected with the subject-matter of the claim in convention and such claim (if within the jurisdiction of the court) shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action both on the claim in convention and on the claim in reconvention.
- (4) A defendant delivering a claim in reconvention may by notice delivered therewith or within three days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 30 of the Order.
- (5) Where the court finds that the claim in reconvention exceeds its jurisdiction, the defendant may forthwith; or by notice delivered within seven days after such finding apply for stay of the action.
- (6) If no application for stay be made or, having been made, be dismissed, the court shall on the application of the plaintiff or otherwise of its own motion dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon, under section 23 of the Order, sufficient of such claim bring it within the jurisdiction of the court.
- (7) Where both the claim in convention and the claim in reconvention proceed to trial under subrule 29, each action may be tried separately but judgment shall be given on both *pari passu*.
- (8) A claim in reconvention may not be made by a defendant in reconvention.
- (9) Where an action is withdrawn, stayed, discontinued or dismissed it shall nevertheless be competent to proceed separately with the claim in reconvention.
- (10) A defendant may claim in reconvention conditionally upon the claim or defence in convention failing.

**21. Reply**

- (1) Where the defence is other than a bare denial of one or more of the allegations in the summons, the plaintiff may, within seven days after the delivery of the plea or after the delivery in terms of rule 16 of further particulars in respect of the plea, deliver a statement in writing to be called a reply.
- (2) The rules applicable to the plea shall *mutatis mutandis* apply to the reply.
- (3) Where the plaintiff does not within the time specified in subrule (1) deliver a reply, he shall be taken to have denied all the allegations of fact contained in the plea.
- (4) Upon the delivery of a reply or, where no reply is delivered upon the expiration of the period limited for reply, the pleadings shall be deemed to be closed.

**22. Set down of trial**

- (1) The trial of an action shall be subject to the delivery by the plaintiff, after the pleadings have been closed, of notice of trial for a day or days approved by the clerk of the court: Provided that, if the plaintiff does not within fourteen days after the pleadings have been closed deliver notice of trial, the defendant may do so.
- (2) The delivery of such notice shall *ipso facto* operate to set down for trial at the same time any claim in reconvention made by the defendant.
- (3) Delivery of such notice shall be effected at least twenty one days before the day so approved.

**23. Discovery of documents**

- (1) After the close of pleadings, but not later than fourteen days before the date of trial, either party may deliver a notice to the other party calling on him to deliver a schedule specifying the books, documents and tape recordings in his possession or under his control which relate to the action and which he intends to use in the action or which tend to prove or disprove either party's case. Such schedule, verified by affidavit, shall be delivered by the party required to do so within seven days after delivery of the aforesaid notice. If privilege be claimed for any of the books, documents or tape recordings scheduled, such books, documents or tape recordings shall be separately listed in the Schedule and the ground on which privilege is claimed in respect of each shall be set out.
- (2) A book, document or tape recording not disclosed as aforesaid, may not be used for any purpose at the trial of the action by the party in whose possession or under whose control it is, without the leave of the court on such terms as to adjournment and costs as may be just, but the other party may call for and use such book, document or tape recording in the cross-examination of a witness.
- (3) Each party shall, on notice, forthwith allow the other party to inspect and make copies of all books, documents or tape recordings disclosed in terms of subrule (1) or specified in a notice delivered in terms of subrule (4) and shall, on prepayment therefor, forthwith furnish the other party with such copies thereof or extracts therefrom as may be requested.
- (4) Either party may, by notice to produce, require the other to produce, at the trial of the action, the books, documents and tape recordings so disclosed and also any other books, documents and tape recordings specified in detail. Such notice shall have the effect of a subpoena under rule 26 as regards all books, documents and tape recordings as are in the possession or under the control of the party to whom notice is so given.
- (5) Any party to an action may, after the close of pleadings, give notice to any other party to specify in writing particulars of dates of and parties 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 seven days before the date of trial, give notice—
  - (a) specifying the date of and parties to and the general nature of 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 or persons in whose possession such document is.

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

- (6) Any party proposing to prove documents at a trial may give notice to any other party requiring him, within seven days of the receipt of such notice, to admit that those documents were properly executed and are what they purport to be. If the party receiving the said notice does not within the said period so admit, then as against such party, the party giving the notice shall be entitled to produce the document 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 document shall be proved by the party giving the notice before he is entitled to use them at the trial, but the party not admitting them, may be ordered to pay the costs of their proof, even though he may be a successful party eventually.
- (7) Where a registered insurer, as defined in the Motor Vehicle Insurance Order, 1989, is a party to any action by virtue 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 registered insurer, by way of delivery of notice to the said driver or owner.
- (8) 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 fit, and the court may deal with such document, when produced, as it considers just.
- (9) The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications.

#### **24. Medical examinations, inspection of things, expert testimony and tendering in evidence of any plan, diagram, model or photograph**

- (1) Subject to this rule, any party to proceedings in which damages or compensation in respect of alleged bodily injuries is claimed may require any party claiming such damages or compensation, whose state of health is relevant to the determination of such damages or compensation, to submit to a medical examination by one or more duly registered medical practitioners.
- (2)
  - (a) Any party requiring another party to submit to such examination shall deliver a notice specifying the nature of the examination required, the person or persons by whom it will be conducted, the place where and the date (being not less than fourteen days from the date of such notice) and time it is desired that such examination shall take place and requiring such other party to submit himself for examination at such place, date and time.
  - (b) Such notice shall state that such other party may have his own medical adviser present at such examination, and such notice shall be accompanied by payment in respect of the reasonable expense to be incurred by such other party in attending such examination.
  - (c) The amount of the expense referred to in paragraph (b) shall be tendered on the scale as if such other party were a witness in a civil suit before the court: Provided that—
    - (i) if such other party is physically incapable of proceeding on his own to attend such examination, the amount to be paid to him shall include the cost of his travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him;
    - (ii) where such other party will actually forfeit any salary, wage or other remuneration during the period of his absence from work he shall, in addition to his expenses on the



- basis of a witness in a civil case, be entitled to receive an amount not exceeding M7,00 per day in respect of the salary, wage or other remuneration which he will actually forfeit;
- (iii) any amount paid by a party in terms of this subrule shall be costs in the cause unless the court otherwise directs.
- (3) (a) Any party receiving a notice referred to in subrule (2) shall, within seven days of the service hereof, notify in writing the party delivering it of the nature and grounds of any objection which he may have in relation to—
- (i) the nature of the proposed examination;
  - (ii) the person or persons by whom the examination is to be conducted;
  - (iii) the place, date or time of the examination;
  - (iv) the amount of the expenses tendered to him,
- and shall further—
- (aa) in the case of his objection being to the place, date or time of the examination, suggest an alternative place, date or time for the examination;
  - (bb) in the case of his objection being to the amount of the expenses tendered, furnish particulars of such increased amounts as he may require.
- (b) If the party receiving the notice does not deliver any such objection within the period referred to in paragraph (a), he shall be deemed to have agreed to the examination upon the terms set forth by the party giving the notice.
- (c) If the party receiving such objection is of opinion that the objection or any party thereof is not well-founded he may apply to the court to determine the conditions upon which the examination, if any, is to be conducted.
- (4) Any party to proceedings referred to in subrule (1), may at any time by notice require any party claiming any damages or compensation so referred to, to make available, in so far as he is able to do so, to such firstmentioned party within fourteen days any medical report, hospital record, x-ray photograph, or other documentary information of a like nature relevant to the assessment of such damages or compensation.
- (5) If it appears from any medical examination carried out either by agreement between the parties or in pursuance of any notice given in terms of this rule or any determination made by the court under subrule (3) that any further medical examination by any other medical practitioner is necessary or desirable for the purpose of obtaining full information on matters relevant to the assessment of such damages or compensation, any party may require a second and final examination in accordance with the provisions of this rule.
- (6) If it appears that the state or condition of anything of any nature whatsoever whether moveable or immovable may be relevant with regard to the decision of any matter at issue in any action, 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 and may in such notice require such party to have such thing or a fair sample thereof available for inspection or examination for a period not exceeding fourteen days from the receipt of the notice.
- (7) (a) The party requested to submit such thing for inspection or examination may require the party so requesting to specify the nature of the inspection or examination for which such thing is to be submitted and shall not be bound to submit such thing therefor if he will be materially prejudiced by reason of the effect thereof upon such thing.
- (b) In the event of any dispute as to whether the thing should be submitted for inspection or examination, either party may on application to the court state that the inspection or

examination has been required and objected to and the court may make such order as it may deem just.

- (8) Any party causing a medical examination or an inspection or examination to be made in terms of subrule (1) or (6) shall—
- (a) cause the person making the medical examination or the inspection or examination to give a full report in writing of the results of such medical examination or inspection or examination, as the case may be, and the opinion that he formed as a result thereof on any relevant matter;
  - (b) after receipt of such report and upon request, furnish any other party with a complete copy thereof; and
  - (c) bear the expenses of the carrying out of any such medical examination or inspection or examination and such expense shall form part of such party's costs.
- (9) No person shall, save with the leave of the court or the consent of all parties to the suit, be entitled to call as a witness any person to give evidence as an expert, upon any matter upon which the evidence of expert witnesses may be received, unless 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 seven days before the hearing have delivered a summary of the opinions of such expert and his reasons therefor.
- (10) (a) No party to an action shall, except with the consent of all the other parties to the action or with the leave of the court, be entitled to tender in evidence of any plan, diagram, model or photograph unless he shall not less than seven days before the hearing of the action, have given every such other party notice of his intention to do so.
- (b) Such notice shall state that every party receiving it shall be entitled to inspect such plan, diagram, model or photograph and shall require such party, within seven days of the receipt thereof, to state whether he has any objection to such plan, diagram, model or photograph being admitted in evidence upon its mere production and without further proof thereof.
  - (c) If the party receiving the notice fails within the period specified in the notice to state whether he objects to the admission in evidence of the plan, diagram, model or photograph referred to in the notice, such plan, diagram, model or photograph, as the case may be, shall be received in evidence upon its mere production and without further proof thereof.
  - (d) If such party objects to the admission in evidence of such plan, diagram, model or photograph, such plan, diagram, model or photograph, as the case may be, may be proved at the hearing of the action and the party receiving the notice may be ordered to pay the costs of such proof.

## 25. Pre-trial procedure for formulating issues

- (1) The court may, at any stage in any legal proceedings, in its discretion *mero motu* or upon the request in writing of either party, direct the parties or their representatives to appear before it, in chambers, for a conference to consider—
- (a) the simplification of the issues;
  - (b) the necessity or desirability of amendments to the pleadings;
  - (c) the possibility of obtaining admissions of fact and of documents with a view to avoiding unnecessary proof;
  - (d) the limitation of the number of the expert witnesses;

- (e) the desirability of deciding upon a question of fact or law in limine and separately from any other question to be decided;
  - (f) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.
- (2) The request in writing referred to in sub-rule (1) shall be made to the clerk of the court and served on the other party and it shall request the court to call a pre-trial conference and shall indicate generally the matters for consideration at such conference.
  - (3) The clerk of the court shall forthwith place such request before the court which shall, if it decides to call a conference, direct the clerk of the court to issue the necessary process.
  - (4) The process for requiring the attendance of parties or their legal representatives at a pre-trial conference shall be by letter signed by the clerk of the court. Such letter shall be delivered by hand or registered post at least seven days prior to the date fixed for the said conference.
  - (5) The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admission or agreement of the parties or their representatives.
  - (6) Such order shall be binding on the parties unless altered or amended by the court at the trial.
  - (7) If a party refuses or neglects to appear at the conference, the court may, without derogation from its power to punish for contempt of court, make such order as it considers equitable in the circumstances and upon conclusion of the proceedings may order the party who has so absented himself to pay such costs as in the opinion of the court were incurred as a result of the said absence.
  - (8) The court may make such order as to costs of any proceedings under this rule as it deems fit.

## **26 Subpoenae, interrogatories and commissions *de bene esse***

- (1) The process of the court for compelling the attendance of any person to give evidence or to produce any book, paper or document shall be by subpoena issued by the clerk of the court and sued out by the party desiring the attendance of such person. In the case of evidence taken on commission such process shall be sued out by the party desiring attendance of the witness and shall be issued by the commissioner.
- (2) There shall be handed to the messenger (if the party suing out the subpoena desires it to be served through the messenger) together with the said subpoena so many copies thereof as there are witnesses to be summoned and also such money as the party for whom they are to be summoned considers that the messenger shall pay or offer to the said witnesses for their conduct money.
- (3) The court may set aside service of any subpoena if it appears that the witness served was not given reasonable time to enable him to appear in pursuance of the subpoena.

## **27. Withdrawal, dismissal and settlement**

- (1) Where a summons has not been served or the period limited for entry of appearance to defend has expired and no such appearance has been entered, the plaintiff may withdraw the summons by notice to the clerk of the court.
- (2) Save as provided by subrule (1), a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver a notice of withdrawal.
- (3) Any party served with notice of withdrawal may within fourteen days thereafter apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn, together with the costs incurred in so applying: Provided that where the plaintiff or applicant in the notice of withdrawal embodies a consent to pay the costs, such consent shall have

the force of an order of court and the clerk of the court shall tax the costs on the request of the defendant.

- (4) Any party may by delivery of notice abandon any specified claim, exception or defence pleaded by him and such notice shall be taken into consideration in taxing costs.
- (5) A defendant may, if the plaintiff has not within fourteen days after the pleadings have been closed given notice of the trial either for a day not more than twenty one days distant or for the first day obtainable from the clerk of the court, apply to the court to dismiss the action and the court may on such application either dismiss the action with costs or make such other order in regard thereto and as to the costs of the application as may be just.
- (6)
  - (a) Application may be made to the court by any party at any time after entry of appearance and before judgment to record the terms of any settlement of an action without entry of judgment agreed to by the parties. If the terms of settlement so provide, the court may make such settlement an order of court.
  - (b) Such application shall be on notice, except where the application is made in court during the hearing of any proceeding in the action at which the other party is represented or when a written waiver (which may be included in the statement of the terms of settlement) by such other party of notice of the application is produced to the court.
  - (c) At the hearing of the application the applicant shall lodge with the court a statement of the terms of settlement signed by all parties to the action and, if no objection thereto be made by any other party, the court shall note that the action has been settled on the terms set out in the statement and thereupon all further proceedings in the action shall, save as hereinafter provided be stayed.
  - (d) When the terms of settlement provide for the future fulfilment by any party of stated conditions and such conditions have not been complied with by the party concerned, the other party may at any time within twelve months after the firstmentioned party has so failed to comply, apply for the entry of judgment in terms of the settlement. Such application shall be on notice to the party alleged to be in default, setting forth particulars of the breach by the respondent of the terms of settlement.
  - (e) After hearing the parties the court may—
    - (i) dismiss the application;
    - (ii) give judgment for the applicant as specified in the terms of settlement;
    - (iii) set aside the settlement and give such directions for the further prosecution of the action as it may deem fit;
    - (iv) make such order as may be just as to the costs of the application.

## **28. Intervention of persons in any proceedings: Third party**

### **Procedure**

- (1) The court may, on application by a person desiring to intervene in any proceedings and having an interest therein, grant leave to such person to intervene on such terms as may be just.
- (2) The court may, on application by any party to any proceedings, order that another person shall be added either as a plaintiff or applicant or as a defendant or respondent on such terms as may be just.
- (3) Where any party in any action claims that—
  - (a) as against any other person not a party to the action (in this rule called a "third party") such party is entitled, in respect of any relief claimed against him, to a contribution or indemnification from such third party, or;

- (b) any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between such party and the third party, and should properly be determined not only as between any party to the action but also as between such parties and the third party or between any of them, such party may issue a notice, hereinafter referred to as a "third party notice", as near as may be in accordance with the form prescribed in the First Schedule hereto, which notice shall be served by the messenger.
- (4) Such notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed. Insofar as the statement of the claim and the question or issue are concerned, the provisions of these Rules concerning pleadings and to summonses shall *mutatis mutandis* apply.
- (5)
  - (a) The third party notice shall be served before the close of pleadings in the action in connection with which it is issued.
  - (b) After the close of the pleadings, such notice may only be served with the leave of the court or with the written consent of the third party or his attorney.
  - (c) The third party notice shall be accompanied by a copy of all pleadings filed in the action up to the date of service of the notice.
- (6) If the third party intends to contest the claim set out in the third party notice, he shall deliver notice of intention to defend. Immediately upon receipt of such notice, the party who issued the third party notice shall inform all other parties accordingly.
- (7) The third party shall, after service upon him of a third party notice, be a party to the action and, if he delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.
- (8) The third party may plead or except to the third party notice within seven days of his notice of intention to defend, as if he were a defendant to the action. He may also, by filing a plea or other proper pleading, contest the liability of the party issuing the notice on any ground, notwithstanding that such ground has not been raised in the action by such latter party: Provided however that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice, save to the extent that he would be entitled to do so in terms of rule 20.
- (9) The provisions of these Rules concerning the filing of further particulars shall apply to third parties as follows:
  - (a) insofar as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant;
  - (b) insofar as the third party's plea relates to the plaintiff's claim, the third party shall be regarded as a defendant and the plaintiff shall file further particulars as provided by the said rules.
- (10) Where a party to an action has against any other party (whether such party became a party by virtue of any counterclaim by any person or by virtue of a third party notice or by any other means), a claim referred to in sub-rule (3); he may issue and serve on such other party a third party notice in accordance with the provisions of this rule. Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to such notice and they shall be subject to the same rights and duties as if such other party had been served with the third party notice in terms of sub-rule (3).
- (11) Any party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice and the court may upon such application make such order as to it seems meet, including an order, for the separate hearing and determination of any issue on condition that its decision of any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, shall be binding upon the applicant.

## 29. Trial

- (1) Unless the court shall otherwise order, the trial of an action shall take place at the court-house from which the summons was issued.
- (2) A witness who is not a party to the action may be ordered by the court—
  - (a) to leave the court until his evidence is required or after his evidence has been given; or
  - (b) to remain in court after his evidence has been given until the trial is terminated or adjourned.
- (3) The court may, before proceeding to hear evidence, require the parties to state shortly the issue of fact or questions of law which are in dispute and may record the issues so stated.
- (4)
  - (a) If it appears that there is, in any pending action, an issue of law or fact which the parties agree, in writing, would be convenient to decide either before any evidence is led or separately from any other issue and without the necessity of going into the main case, such issue of fact or law may be set down by either party for a separate hearing upon seven days notice.
  - (b) Where the court is of the opinion that the determination of any specific issue of law or of fact would dispose of the whole case it may require the parties to deal with that issue before proceeding with other issues and the court may thereupon give final judgment without dealing with such other issues.
- (5) If the issue in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted in court, either *viva voce* or by written statement, by the parties and recorded by the court and judgment may be given on such facts without further evidence.
- (6) When issues of law and of fact arise in the same case and the court is of the opinion that the case may be disposed of upon the issues of law only, the court may require the parties to argue upon those issues only and may give its decision thereon before taking evidence as to the issues of fact and may give final judgment without dealing with the issues of fact.
- (7)
  - (a) If on the pleadings the burden of proof is on the plaintiff he shall first adduce his evidence.
  - (b) If absolution from the instance is not then decreed, the defendant shall then adduce his evidence.
- (8) Where such burden of proof is on the defendant, the defendant shall first adduce his evidence and, if necessary, the plaintiff shall thereafter adduce his evidence.
- (9)
  - (a) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his evidence on any issues proof whereof is upon him, and may then close his case, and the defendant shall then call his evidence on all the issues.
  - (b) If the plaintiff has not called any evidence (other than that necessitated by his evidence on the issues proof whereof is on him) on any issues proof whereof is on the defendant, he shall have the right to do so after the defendant has closed his case. If the plaintiff has called any such evidence, he shall have no such right.
- (10) In a case of dispute as to which party has the right or duty to begin, the court shall direct which party shall first adduce evidence.
- (11) Any party may, with the leave of the court, adduce further evidence at any time before judgment; but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order.
- (12) The court may at any time before judgment, on the application of any party or of its own motion, recall any witness for further examination.

- (13) Any witness may be examined by the court as well as by the parties.
- (14) After the evidence on behalf of both parties has been adduced the party who first adduced evidence may first address the court and thereafter the other party, and the party who first adduced the evidence may reply.
- (15) Where the court has authorised the evidence of any witness to be taken on interrogatories, such interrogatories shall be filed within seven days of the order and cross-interrogatories within seven days thereafter.

### 30. Record of proceedings in civil matters

- (1) Minutes of record shall forthwith be made of—
  - (a) any judgment given by the court;
  - (b) any *viva voce* evidence given in court;
  - (c) any objection made to any evidence received or tendered;
  - (d) any submissions on addresses made by the parties; and
  - (e) the proceedings of the court generally, including the record of any inspection *in loco*.
- (2) The court shall also mark each document put in in evidence and note such mark on the record.
- (3) Such minutes and marks may be made in manuscript by the clerk of the court and, save where made by the clerk of the court, or as hereinafter provided, they shall be made in manuscript by the presiding judicial officer.
- (4) The address of the parties, *viva voce* evidence given, any exception or objection taking in the course of the proceedings, the rulings and judgment of the court and any other portion of the proceedings, may be noted in shorthand (hereinafter also referred to as "shorthand notes") either verbatim or in narrative form or recorded by mechanical means, as the presiding judicial officer may direct.
- (5) Every person appointed by the court for the taking of shorthand notes or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his duties in writing take an oath or make an affirmation before a judicial officer in the form prescribed in the First Schedule.
- (6)
  - (a) Shorthand notes so taken shall be certified as correct by the shorthand writer and filed with the record of the case by the clerk of the court.
  - (b) Subject to the provisions of subrules (7) and (12), no such shorthand notes shall be transcribed unless a judicial officer so directs.
  - (c) The transcript of any shorthand notes so transcribed shall be certified as correct by the person making it and shall be filed with the record.
- (7)
  - (a) In any case in which no transcription was ordered in terms of subrule (6), any person may on notice to the clerk of the court request a transcription of any shorthand notes taken by virtue of a direction given under subrule (4) and shall pay a fee to be fixed from time to time by the Chief Justice.
  - (b) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making it and shall be filed with the record of the case, and a copy thereof shall be furnished to the person who requested the transcription. Further copies may be furnished to any other persons on payment of a fee fixed from time to time by the Chief Justice.
- (8) Subject to the provisions of subrule (10), any shorthand notes and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.



- (9) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person appointed for the taking or transcribing of such notes, shall be construed also as a reference to a record of proceedings made by mechanical means, to a transcription or transcript of such record, or to a copy of such transcript to a person appointed for the making or transcribing of such mechanical record, as the case may be.
- (10) Any party may, not later than seven days after judgment, or where the proceedings have been noted in shorthand or by mechanical means, within seven days after having been notified by the clerk of the court that the transcript of the shorthand notes or mechanical record has been completed, apply to the court to correct any errors in the minutes of such proceedings or in the transcript of shorthand notes or mechanical record and the court may then correct any such errors.
- (11) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed, otherwise, costs shall be in the discretion of the court.
- (12) In the event of an appeal being noted and set down for hearing, such shorthand notes shall, so far as relevant to the appeal, be transcribed and certified on oath by such shorthand writer as a true record of the proceedings and such transcript shall thereafter form part of the record.

### **31. Postponement and adjournment**

- (1) The trial of an action or the hearing of an application or matter may be postponed or adjourned by the court, either on application or of its own motion.
- (2) Where such a postponement or adjournment is made *sine die*, any party may, by delivery of notice of reinstatement set down the action, application or matter for further trial or hearing on a day generally or specially fixed by the clerk of the court, not earlier than 21 days after delivery of such notice.
- (3) Any postponement or adjournment shall be on such terms as to costs and otherwise as the parties may agree to, or as the court may order.

### **32. Non-appearance of a party-withdrawal and dismissal**

- (1) If a plaintiff or applicant does not appear at the time appointed for the trial of the action or the hearing of the application, the action or application may be dismissed with costs.
- (2) If a defendant or respondent does not so appear, a judgment (not exceeding the relief claimed) may be given against him with costs.
- (3) The withdrawal or dismissal of an action or a decree of absolution from the instance shall not be a defence to any subsequent action, but if a subsequent action is brought for the same or substantially the same cause of action before payment of the costs awarded on such withdrawal, dismissal or decree of absolution, the court may on application, if it thinks fit and if the said costs have been taxed and payment thereof has been demanded, order a stay of such subsequent action until such costs shall be paid and that the plaintiff shall pay the costs of such application.

### **33. Costs**

- (1) The court in giving judgment or in making any order, including any postponement, adjournment or amendment, may award such costs in accordance with the provisions of these rules and in particular, those at Table A of the Second Schedule hereto as may be just and may, in the case of any postponement or adjournment, without evidence being taken or argument heard, also award as counsel's fee payment of a refresher fee referred to in item 26 of Part IV of the said Table A.
- (2) The costs of any application or order or issue raised by the pleadings may—
  - (a) be awarded by the court irrespective of the judgment in the action; or



- (b) may be made costs in the action; or
  - (c) may be reserved to be dealt with on the conclusion of the action, but if no order is made, such costs shall be costs in the action.
- (3) Unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.
- (4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.
- (5) The scale of fees to be taken by attorneys as between party and party shall be that set out in Table A of the Second Schedule hereto in addition to the necessary expenses.
- (6) Save as to appearance in open court without counsel, such fees shall be allowable whether the work has been done by the attorney or by his clerk, but shall, except in the case of the fee referred to in paragraph 10 of the general provisions under Table A of the Second Schedule hereto, be allowable only in so far as the work to which such fees have been allocated has in fact and necessarily been done.
- (7) The magistrate presiding over any civil proceedings which last for the period of one hour or longer, shall note on the record of the proceedings in respect of each day thereof—
  - (a) the time of the day when the proceedings actually commenced and actually ended; and
  - (b) the time of the day of the commencement and conclusion of each adjournment on that day.
- (8)
  - (a) The court may on request made at or immediately after the giving of judgment in any contested action or proceeding in which—
    - (i) is involved in any difficult question of law or of fact; or
    - (ii) the plaintiff makes two or more claims which are not alternative claims; or
    - (iii) the claim or defence is frivolous or vexatious, award costs on any scale higher than that on which the costs of the action would otherwise be taxable.
  - (b) Where the claim of the plaintiff is for damages and the court finds that the amount claimed in the summons was grossly inflated, the court may either on the application of the other party or *mero motu* disallow all or part of the plaintiff's costs.
- (9) Where in any proceedings it is impossible for a party to obtain the services of a local attorney, he may employ the nearest available or some other attorney, and upon proof of such impossibility and availability the court may, if costs are awarded to such party, order that such costs shall include the reasonable travelling expenses of such attorney and also a special allowance not exceeding M50.00 for each days absence from such attorney's usual place of business: Provided that if the attorney employed be not the nearest available attorney, the travelling expenses and special allowances so allowed shall not exceed the expenses and allowance which would have been allowed if the nearest available attorney had been employed.
- (10) Where the court is of opinion that at the hearing the party to whom costs are awarded has occupied time unnecessarily or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to his attorney or counsel.
- (11) The court may in its discretion order that the whole of the costs of an action (including the costs of any claim in reconvention) be paid by the parties in such proportions as it may direct.
- (12) Where the court is of the opinion that expense has been unnecessarily incurred because of the successful party's failure to take a course which would have shortened the proceedings and decreased the costs, it shall award only such costs as would have been incurred if the successful party had taken such course.

- (13) Where costs in convention and reconvention are awarded to different parties, the clerk of the court shall on taxation, subject to any order which has been made by the court, allow as costs in convention all such costs as would in his judgment have been incurred if no claim in reconvention had been made, and as costs in reconvention all other costs allowed.
- (14) The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the clerk of the court without notice and inserted in the warrant.
- (15) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's entry of appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least three days notice of taxation for an hour to be fixed (generally or specially) by the clerk of the court and such party may include in such bill all such payments as have been necessarily and properly made by him.
- (16) The clerk of the court shall thereupon tax and allow the costs and expenses so awarded: Provided that witness fees shall not be allowed in taxation unless properly vouched for.
- (17) Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs of taxation.
- (18) Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on at least three days notice thereof to the attorney or client, whether or not an action for such costs is pending: Provided that notwithstanding the provisions of subrule (3), a bill of costs as between attorney and client may be taxed at any time after termination of the mandate.
- (19) Where liability for costs is determined without judgment of the court by virtue of the provisions of rule 18(5) or by a settlement recorded in terms of rule 27(6)(c), such costs shall be taxable by the clerk of the court as if they had been awarded by the court.
- (20) On failure of the party giving notice of taxation to appear at the appointed time for taxation, such bill of costs may be taxed in his absence but such party shall not be allowed any costs of taxation.
- (21) If a party consents to pay the costs of another party, the clerk of the court shall, in the absence of an order of the court, tax such costs, as if they had been awarded by the court.

#### **34. Fees of the messenger and court fees**

- (1) The fees and charges to be taken by a messenger shall be those prescribed by Table B of the Second Schedule hereto.
- (2) Every account of fees or charges furnished by a messenger shall contain the following note:—  
"You may require this account to be taxed and vouched before payment".
- (3)
  - (a) Any party having an interest may by notice in writing require the fees and charges claimed by or paid to the messenger to be taxed by the clerk of the court, and may attend on such taxation.
  - (b) Upon such taxation the messenger shall vouch to the satisfaction of the clerk of the court all charges claimed by him.
  - (c) A fee of M5,00 for attending the taxation shall be allowed—
    - (i) to the messenger if the messenger's fees or charges are taxed and passed in full;
    - (ii) to the interested party concerned if the messenger's fees or charges are taxed but not passed in full.
- (4) The court fees to be paid to the clerk of the court shall be those prescribed in Table D of the Second Schedule hereto.

- (5) The fees shall be paid to the clerk of the court by means of adhesive revenue stamps issued by the Government.
- (6) The document to be stamped shall be stamped before presentation or delivery to the clerk of the court who shall ensure that each and every document is sufficiently and properly stamped on the face thereof before accepting the same.
- (7) Upon receipt of any such document, the clerk of the court shall forthwith cancel such revenue stamps by means of impressing indelible ink partly on or across each and every stamp and partly upon the document to which it is affixed, the Subordinate Court stamp with the true date of such impression and by writing his initials across or within the impression in such manner as effectively and permanently to render the revenue stamp incapable of being used for stamping any other document.
- (8)
  - (a) When any document not requiring to be stamp inadvertently stamped or when stamps in excess of the value required are inadvertently affixed or such document is not presented to or is not accepted for filing by the clerk of the Court, the document may at the instance of the party by whom it was so stamped, be cancelled and substituted by one bearing the correct value of stamps.
  - (b) Refunds to the value of the stamps affixed to any document cancelled under the provisions of subrule (a) may be made by the clerk of the court to the party responsible for the stamping thereof:  
Provided that—
    - (i) the application is made to the clerk of the court within thirty days of the date of cancellation of such document; and
    - (ii) the application is accompanied by the cancelled document which shall be attached by the clerk of the court to the voucher in support of the refund and shall thenceforth be the property of the Government.

### 35. Review of taxation

- (1) Any interested party may, within fourteen days after he has knowledge thereof, bring before a judicial officer for review—
  - (a) the costs and expenses claimed in any undefended action;
  - (b) the assessment by the clerk of the court of any costs and expenses;
  - (c) the taxation by the clerk of the court of any costs awarded in any action or matter;
  - (d) the taxation by the clerk of the court of any fees or charges of the messenger.
- (2) Such review shall be on seven days notice to the party entitled to receive or liable to pay such costs and expenses or to the messenger, as the case may be.

### 36. Process in execution

- (1) The process for the execution of any judgment for the payment of money, for the delivery of property whether movable or immovable, or for ejectment shall be by warrant issued and signed by the clerk of the court and addressed to the messenger.
- (2) Such process may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.
- (3) Such process may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the messenger by the party who has sued out such process. A request in writing made from time to time by such party to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

- (4) Any alterations in such process shall be initialled by the clerk of the court before it is issued by him.
- (5) The clerk of the court shall at the request of the party entitled thereto reissue process referred to in subrule (1) without the court having sanctioned the reissue.
- (6) Any such process shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid merely by reason of the mis-spelling of any name therein, or of any error as to date.
- (7) Except where judgment has been entered by consent or default, process in execution of judgment shall not be issued, without leave of the court, applied for at the time of granting the judgment, before the day following that on which that judgment is given.

### **37 Second or further warrants or emoluments attachment orders or garnishee orders**

- (1) Where any warrant or garnishee order has been lost or mislaid, the court may on the application of any interested party and after notice to any person affected thereby, authorise the issue of a second or further warrant or garnishee order as the case may be, on such conditions as the court may determine and may make such order as to costs as it may deem just.
- (2) Notice of such application shall be on not less than three days' notice and shall state the reasons for the application.
- (3) The provisions of subrules (1) to (6), inclusive, of rule 36 shall *mutatis mutandis* apply to any such warrant or emoluments attachment order or garnishee order authorised by the court and in addition such warrant or emoluments attachment order or garnishee order shall clearly be endorsed. "This second or further warrant \_\_\_\_\_ (describe nature of warrant) or emoluments attachment order or garnishee order (as the case may be) was authorised by the court on \_\_\_\_\_ and replaces any warrant \_\_\_\_\_ (describe nature of warrant) or emoluments attachment order or garnishee order (as the case may be) instead of which it is issued or reissued".
- (4)
  - (a) When any warrant or emoluments attachment order or garnishee order, which has been replaced by a warrant or emoluments attachment order or garnishee order issued in terms of subrule (1) becomes available it shall immediately be cancelled by the clerk of the court by endorsing across the face thereof between two parallel transverse lines the words, "Cancelled". Fresh warrant \_\_\_\_\_ (describe nature of warrant) or emoluments attachment order or garnishee order (as the case may be) issued in terms of an order of the court dated \_\_\_\_\_.
  - (b) Such endorsement shall be signed and dated by the clerk of the court.
- (5) The fact that a second or further warrant or emoluments attachment order or garnishee order has been issued and the date and amount thereof shall be endorsed on the record of the case by the clerk of the court.

### **38. Security by judgment creditor**

- (1) Where the messenger is in doubt as to the validity of any attachment or contemplated attachment, he may require that the party suing out the process in execution shall give security to indemnify him.
- (2) Unless the summons commencing the action has been served upon the defendant personally or he has entered appearance to defend or notice of attachment has been given to him personally—
  - (a) if any property corporeal or incorporeal is attached in execution, the execution creditor shall, at least seven days before the day appointed for the sale of such property give security to the satisfaction of the messenger for the payment to the execution debtor if such attachment be set aside of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon; and if security be not given the attachment shall cease to have effect:

Provided that the execution debtor may by endorsement to that effect on the warrant of execution dispense with the giving of security under this rule;

- (b) if monies are received by the messenger under any form of execution otherwise than as the proceeds of the sale in execution of property in respect of the attachment of which security has been given in terms of paragraph (a), such monies shall not be paid to the execution creditor until he has given security for the restitution of the full amount received by the messenger if the attachment be thereafter set aside: Provided that the execution debtor may in writing over his signature dispense with the giving of such security.
- (3) The prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution.
- (4) Any surety bond or other document of security given in terms of this rule may be sued upon the execution debtor without formal transfer thereof to him.

### 39. General provisions regarding execution

- (1) Unless otherwise ordered by the court, the costs and expenses of issuing a warrant and levying execution shall be a first charge on the proceeds of the property sold in execution and may so far as such proceeds are insufficient be recovered from the execution debtor as costs awarded by the court.
- (2) Subject to any hypothec existing prior to the attachment, all warrants of execution lodged with the messenger on or before the day immediately preceding the date of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold in execution.
- (3) Withdrawal of attachment shall be effected by note made and signed by the messenger on the warrant of execution that the attachment is withdrawn stating the time and date of the making of such note. The messenger shall give notice in writing of the withdrawal and of the time and date thereof to the execution creditor and the execution debtor and to any person by whom a claim to the property attached has been lodged with him: Provided that the property shall not be released from attachment so long as an unsatisfied warrant of execution lodged under subrule (2) remains in the hands of the messenger.
- (4) If any property attached or about to be attached in execution is claimed by any third party as his property or any third party makes any claim to the proceeds of property so attached and sold in execution, the messenger shall on receipt of the claim forthwith give notice to the execution creditor.
- (5) Notwithstanding such claim by a third party the messenger shall attach such property if he has not yet done so and the property shall remain under attachment pending the outcome of interpleader proceedings unless sooner released from attachment upon order of the court or otherwise. The provisions of rule 41(7) shall *mutatis mutandis* apply to property so attached.
- (6) If, in the case of property so attached, the execution creditor gives the messenger notice within seven days after receipt of the notice referred to in subrule (4) that he admits the claim, he shall not be liable for any costs, fees or expenses afterwards incurred and the messenger may withdraw from possession of the property claimed.
- (7) On completion of any sale in execution of property, whether movable or immovable, the messenger shall attach to his return a vendue roll showing details of the property sold, the prices realised, and, where known, the names and addresses of the purchasers and an account of the distribution of the proceeds.
- (8) No messenger or person on behalf of the messenger shall at a sale in execution purchase any of the property offered for sale either for himself or for any other person.

### 40. Execution against a partnership

- (1) Where a judgment debtor is a partner in a firm and the judgment is against him in his personal capacity, the court may, after notice to the judgment debtor and to his firm, appoint the messenger

as receiver to receive any moneys payable to the judgment debtor in respect of his interest in the partnership.

- (2) Such appointment shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the partnership assets.
- (3) Where the judgment is against a firm, the partnership property shall first be exhausted, so far as it is known to the judgment creditor, before the judgment is executed against the separate property of the partners.

#### **41. Execution against moveable property**

- (1) (a) The messenger shall, upon receiving a warrant directing him to levy execution on moveable property, repair to the house, place of employment or business of the execution debtor or to another place pointed out by the execution creditor where moveable property is to be attached as soon as circumstances permit, and there demand payment of the judgment debt and costs or else require that so much moveable property be pointed out as the said messenger may deem sufficient to satisfy the warrant, and if such lastmentioned request be complied with the messenger shall make an inventory and valuation of such property. If the property pointed out is insufficient to satisfy the warrant, the messenger shall nevertheless proceed to make an inventory and valuation of so much moveable property as may be pointed out in part execution of the warrant.
- (b) If the execution debtor does not point out such property, the messenger shall immediately make an inventory and valuation of so much of the moveable property belonging to the execution debtor as he may deem sufficient to satisfy the warrant or of so much of the moveable property as may be found in part execution of the warrant.
- (c) If on demand the execution debtor pays the judgment debt and costs (or part thereof) the messenger shall forthwith endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him and countersigned by the execution debtor or his representative.
- (2) So far as may be necessary to the execution of any such warrant, the messenger may open any door on any premises, or of any piece of furniture, if opening be refused or if there be no person there who represents the person against whom such warrant is to be executed and the messenger may, if necessary, use force to that end.
- (3) The messenger shall exhibit the original warrant of execution and shall hand to the execution debtor or leave on the premises a copy thereof.
- (4) As soon as the foregoing requirements of this rule have been complied with by the messenger, the goods so inventoried by him shall be deemed to be judicially attached.
- (5) The messenger shall hand a copy of the said inventory signed by himself to the execution debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.
- (6) Where specie or documents are found and attached, the number and kinds thereof shall be specified in the inventory and any such specie or document shall thereupon be sealed and forthwith removed to the office of the messenger where it shall be safely stored.
- (7) (a) The execution creditor or his attorney shall, where moveable property, other than specie or documents, has been attached, after notification of such attachment, instruct the messenger in writing, whether the property shall be removed to a place of security or left upon the premises in the charge and custody of the execution debtor or in the charge and custody of some other person acting on behalf of the messenger. Unless so instructed the messenger shall leave the moveable property, other than specie or documents, on the premises and in the possession of the person in whose possession the said moveable property is attached: Provided that the execution creditor or his attorney may, upon satisfying the clerk of the court, who shall endorse his approval on the document containing the instructions, of



- the desirability of immediate removal upon issue of the warrant of execution, instruct the messenger in writing, to remove immediately from the possession of the execution debtor all or any of the articles reasonably believed by the execution creditor to be in the possession of the execution debtor.
- (b) Where a messenger is instructed as aforesaid to remove the moveable property, he shall do so without any avoidable delay, and he shall in the meantime leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on his behalf.
  - (c) Any person in whose charge or custody moveable property which has been attached, has been left, shall not use, let or lend such property, or permit it to be used, let or lent, nor shall he in any way do anything which will decrease its value and, if the property attached shall have produced any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he is responsible for the property originally attached.
  - (d) If such a custodian, other than the execution debtor, makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody.
  - (e) Unless an order of court is produced to the messenger requiring him to detain any moveable property under attachment for such further period as may be stipulated in such order, the messenger shall, if a sale in respect of such property is not pending, release from attachment any such property which has been detained for a period exceeding three months. If such order was made on application made *ex parte*, such order shall not be subject to confirmation.
- (8) (a) Any movable property sold in execution of process of the court shall be sold publicly and for cash by the messenger to the highest bidder at or as near to the place where the same was attached or to which the same had been so removed as aforesaid as may be advantageous for the sale thereof.
- (b) The execution creditor shall, after consultation with the messenger, prepare a notice of sale and furnish two copies thereof to the messenger in sufficient time to enable one copy to be affixed not later than seven days before the day appointed for the sale on the notice board or door of the court-house or other public building in which the said court is holding and the other at or as near as may be to the place where the said sale is actually to take place.
  - (c) If in the opinion of the messenger the value of the goods attached exceeds M300,00 he shall indicate some local or other newspaper circulating in the district and require the execution creditor in addition to complying with paragraph (b), to publish the notice of sale in that newspaper not later than seven days before the date appointed for the sale and to furnish him with a copy of the said paper in which publication appeared not later than the day preceding the date of sale.
- (9) The day appointed for the sale shall not be less than fourteen days after attachment: Provided that where the goods attached are of a perishable nature, or with consent of the execution debtor, the court may, upon application, reduce any period referred to in this subrule or subrule (8) to such extent and on such conditions as it may think fit.
- (10) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 39(2) and the costs of the sale.
- (11) Should the messenger have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with him on or before the day immediately preceding the date of the sale and of all costs, he shall pay such balance to the execution debtor if he can be found, otherwise he shall pay such balance into court.

**42. Execution against incorporeal property**

- (1) Where the property attached in execution is a lease or a bill of exchange, a promissory note, bond or other security for the payment of money—
  - (a) attachment shall not be complete until after notice to the lessor, lessee or person liable on the bill of exchange or other security, as the case may be;
  - (b) the attachment shall not be valid unless and until the instrument in question is taken possession of by the messenger and notice has, in the case of a registered lease or bond, been given to the Registrar of Deeds.
- (2) Where the 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 or is under the supervision or control of a third person—
  - (a) attachment shall be effected by service by the messenger on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice were a summons: Provided that where service cannot be effected in any manner prescribed the court may make an order allowing service to be effected in the manner stated in the order;
  - (b) the messenger may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser, seller or such other third person, enter upon the premises where such property is and make an inventory and valuation of the said property.

**43. Execution against immovable property**

- (1) A warrant of execution against immovable property shall contain a full and complete description of the nature and situation of the immovable property to enable it to be traced and identified by the messenger, and shall be accompanied by sufficient information to enable the messenger to give effect to the provisions of subrule (2).
- (2) The mode of attachment of immovable property shall be by notice by the messenger served in like manner as a summons together with a copy of the warrant of execution upon the execution debtor as owner thereof and upon the Registrar of Deeds or other officer charged with the registration of such immovable property, upon all registered holders of bonds (other than the execution creditor) registered against the property attached and, if the property is in the occupation of some person other than the execution debtor, also upon such occupier.
- (3) After attachment the messenger shall ascertain and record whether the said property is subject to any claim preferent to that of the execution creditor and, if that be the case, he shall thereupon notify the execution creditor of the existence of any such claim.
- (4) The messenger may by notice, served in like manner as a summons, require the execution debtor to deliver to him forthwith all documents in his possession or under his control relating in any way to his title to the said property.
- (5) Where the said property is situate in a district other than that in which the judgment was given, the clerk of court of the latter district shall forward the warrant of execution to the messenger of the court of the district in which the said property is situate, who shall proceed to attach the property in the manner provided in this rule.
- (6)
  - (a) The messenger shall appoint a day and place for the sale of such property which day shall, except by special leave of the court, be not less than one month after service of the notice of attachment.
  - (b) The execution creditor shall, after consultation with the messenger, prepare a notice of sale containing a short description of the property and its situation, the date, time and place for



- the holding of the sale and the material conditions thereof and furnish the messenger with as many copies of the said notice as he may require.
- (c) The messenger shall indicate two local or other newspapers circulating in the district in which the property is situate and require the execution creditor to publish the said notice once in the said newspapers not later than seven 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 one copy each of the said newspapers in which the notice appeared.
- (d) Not less than seven days prior to the date of the sale the messenger shall forward by registered post a copy of the notice of sale referred to in paragraph (b) to every execution creditor who has lodged a warrant of execution and to every mortgagee, in respect of the immovable property, whose address is reasonably ascertainable.
- (7) (a) The conditions of sale shall be prepared by the execution creditor and shall, *inter alia*, provide for payment by the purchaser of any interest due to a preferent creditor from the date of sale of the property to date of transfer. The execution creditor shall not less than twenty-one days prior to the appointed date of sale, deliver two copies of the conditions of sale to the messenger and one copy thereof to each person who may be entitled to notice of the sale.
- (b) Any interested party not less than fourteen days prior to the appointed date of sale, upon three days notice to such other persons as may have received a copy of such conditions of sale and to the execution creditor, apply to a judicial officer for a modification of such conditions of sale and such judicial officer may make such order as he may deem just.
- (8) The execution creditor may appoint the conveyancer for the purposes of transfer.
- (9) (a) The execution creditor or any person having an interest in the due and proper realisation of such property may, by notice given to the messenger within fourteen days after attachment, but subject to the provisions hereinafter contained, require that such property shall be sold by an auctioneer in the ordinary course of business and may in such notice nominate the auctioneer to be employed.
- (b) Where such notice is given by any person other than the execution creditor, such notice shall be accompanied by the deposit of a sum sufficient to cover the additional expense of sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void, and such notice shall lapse if in fact the services of an auctioneer are not obtainable. If after satisfying the claim of the execution creditor and all warrants of execution lodged with the messenger on or before the day immediately preceding the date of the sale and all costs, there are surplus proceeds of such property, such deposit shall be returned to the depositor, but if there is not such a surplus such deposit shall, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.
- (c) If two or more such notices are given, the first shall have the preference.
- (10) The sale shall be by public auction without reserve and the property shall, subject to the conditions of sale, be sold to the highest bidder.
- (11) The sale shall be held in front of the court-house of the district or, for good cause shown, at such other place as the judicial officer may determine.
- (12) Where the said property is situate in a district other than that in which the judgment was given, the sale of the said property shall be effected by the messenger of the court of the district in which it is situate in the manner provided by this rule.
- (13) The messenger shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him shall be as valid and effectual as if he were the owner of the property.

- (14) (a) Subject to the provisions of paragraph (b), all monies in respect of the purchase price shall be paid to the messenger of the court and not to the execution creditor or any other person on his behalf. The messenger shall forthwith pay such monies into court and shall not pay out the purchase money until transfer has been given to the purchaser.
- (b) The messenger shall immediately after receipt of the full purchase price prepare in order of preference as hereinafter provided in this rule, a plan of distribution of the purchase money received and such plan shall lie in his office for inspection by persons having an interest therein for a period of fourteen days, unless all such persons inform the messenger in writing that they have no objection to such plan, and a copy thereof shall be lodged with the clerk of the court.
- (c) After deduction from the purchase money of the costs of execution, the following shall be the said order of preference:—
- (i) the claims of any creditors ranking in priority to the judgment debt in their legal order of preference;
  - (ii) the claim of the execution creditor to the extent of his judgment plus costs and the claims of other execution creditors who have lodged warrants of execution in terms of rule 39(2) plus costs;
  - (iii) the claims of creditors secured in respect of that property in their legal order of preference.
- (d) Any person having an interest in such plan and objecting thereto shall, within a period of seven days after the expiration of the period referred to in paragraph (b), give notice in writing to the messenger, the clerk of the court and all other persons having an interest therein of the particulars of his objection and may, if the grounds for his objection are not removed within fourteen days after the expiration of the first-mentioned period, bring such plan before the court for review.
- (e) Such review shall be on seven days notice to the persons mentioned in paragraph (d): Provided that if such notice is not given within twenty one days after the expiration of the period of fourteen days mentioned in paragraph (d), the objection will be deemed to be withdrawn.
- (f) The court, on review, may hear and determine the matter in dispute in a summary manner and may thereafter amend or confirm the plan of distribution or may make such order as may be just.
- (g) If—
- (i) no objection be lodged to such plan; or
  - (ii) the persons having an interest signify their concurrence therewith; or
  - (iii) an objection be lodged to such plan and notice in accordance with the proviso in paragraph (e) be not duly given; or
  - (iv) the plan be amended or confirmed on review, the clerk of the court shall, on production of evidence that transfer has been given to the purchaser, pay to the messenger the amount paid into court under paragraph (a), and when the messenger has received such amount from the clerk of the court, he shall pay it out in accordance with the plan of distribution, and any surplus shall, subject to the provisions of section 44 of the Order, be paid to the execution debtor, if he can be found.
- (h) The provisions of rule 41(11) shall, subject to the provisions of section 44 of the Order, *mutatis mutandis* apply to any surplus amount not paid to an execution debtor under paragraph (g).

- (15) The messenger shall, when notifying the result of the execution, also show the disposal of the amount recovered by him, and the notification to the clerk of the court shall be supported by a receipt for every amount paid out by him.

#### 44. Interpleader claims

- (1) (a) Where any third party (hereinafter in this rule referred to as the "applicant") has in his custody or possession property to which two or more persons (hereinafter in this rule referred to as the "claimants") make adverse claims the applicant may sue out a summons in the form prescribed for that purpose in the First Schedule to these Rules calling upon the claimants to appear and state the nature and particulars of their claims and have such claims adjudicated upon.
- (b) If the property in question consists of money, the applicant shall, when suing out the summons, pay the amount thereof into court.
- (c) The applicant shall annex to such summons an affidavit deposing,
- (i) that he claims no interest in the subject matter in dispute other than in respect of charges or costs;
  - (ii) that he is not colluding with any of the claimants; and
  - (iii) that in the case of property other than money paid into court in terms of paragraph (b), he is willing to deal with the property as the court may direct.
- (2) (a) Where any person (hereinafter in this rule referred to as the "claimant") other than the execution debtor makes any claim to or in respect of property attached by the messenger in execution of any process of the court and the execution creditor has not admitted the claim within the period referred to in rule 39(6) or where any such claim makes any claim to the proceeds of property so attached and sold in execution, the messenger shall forthwith prepare and sue out a summons in the form prescribed for the purpose in the First Schedule to these rules calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.
- (b) (i) The clerk of the court shall sign and issue such summons without the fee prescribed in Table D of the Second Schedule being paid.
- (ii) The court shall, when giving judgment, direct by which party such fee shall be paid and thereupon such party shall pay such fee to the clerk of the court.
- (c) Any person making a claim referred to in paragraph (a) shall, not less than seven days before the date specified in the summons, lodge with the messenger, an affidavit in triplicate setting forth the particulars of his claim and the grounds thereof.
- (d) The messenger shall forward one copy of such affidavit to the execution creditor and one copy to the execution debtor.
- (3) If any claimant does not appear in pursuance of any summons sued out under this rule or fails to file an affidavit referred to in subrule (2) (c) before the date so referred to or within such further period as the court may allow or appears but fails or refuses to comply with any order made by the court after his appearance, the court may make an order declaring him and all persons thereafter claiming under him barred from making any claim, in respect of the subject matter referred to in the summons, against the applicant or the messenger.
- (4) If any claimant referred to in this rule appears in pursuance of the summons, the court may—
- (a) order him to state, orally or in writing on oath or otherwise, as the court may deem expedient, the nature and particulars of his claim;

- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose and, if any such claimant is a claimant referred to in subrule (1), order which of the claimants shall be plaintiff and which shall be defendant for the purpose of trial; or
- (c) try the matters in dispute in summary manner.
- (5) Where the matters in issue are tried, whether summarily or otherwise, the provisions of rule 29 as to the trial of an action shall *mutatis mutandis* apply.
- (6) The court may, in and for the purposes of any interpleader proceedings, make such order as to any additional expenses of execution occasioned by the claim and as to payment of costs incurred by the applicant or messenger as may be just.

#### **45. Attachment of a debt by garnishee order**

- (1) An application for an attachment of a debt, salary or wages in terms of section 45 of the Order may be made *ex parte* and shall be supported by an affidavit by the creditor stating—
  - (a) that a court—
    - (i) has granted judgment to the judgment creditor; or
    - (ii) has ordered the payment of a debt referred to in section 50 and costs in specific instalments,
  - (b) that such judgment or order referred to in subrule (1)(a) is still unsatisfied, stating the amounts still payable thereunder;
  - (c) that the garnishee resides, carries on business or is employed within the district, with mention of the address of the garnishee;
  - (d) that a debt is at present owing or accruing by or from the garnishee to the judgment debtor and the amount thereof; and
  - (e) if the debt is in respect of salary or wages, that the judgment debtors will, after the execution of the order sought, have a sufficient balance of income to maintain himself and those dependent upon him, giving details.
- (2) Unless the application is directed to the court which granted the judgment or order referred to in subrule (1) (a), a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit referred to in subrule (1).
- (3) Sufficient information shall be furnished in a garnishee order to enable the garnishee to identify the judgment debtor.
- (4) Upon such application the court may require such further evidence as it may deem fit.
- (5) Upon such application the court may order the garnishee to pay to the judgment creditor or his attorney so much of the debt at present or in future owing or accruing by or from him to the judgment debtor as may be sufficient to satisfy the said judgment, together with costs of the garnishee proceedings (including the costs of service), or failing such payment to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.
- (6) The clerk of the court shall note upon the face of such order the day it was made.
- (7) Such order shall be served upon the garnishee and upon the judgment debtor and shall operate as an attachment of the said debt in the hands of the garnishee.
- (8) The judgment debtor and the garnishee may appear on the day fixed for the hearing of the application, but may not question the correctness of the judgment on which the application is based.

- (9) If the garnishee does not dispute his indebtedness to the judgment debtor, or allege that he has a set-off against the judgment debtor or that the debt sought to be attached belongs to or is subject to a claim by some other person, or if he shall not appear to show cause as provided in subrule (5), the court may order the garnishee to pay the debt (or such portion of it as the court may determine) to the judgment creditor or his attorney on the date set out in the said order; and should the garnishee make default, execution for the amount so ordered and costs of the said execution may be issued against the garnishee. The provisions of rules 36 to 43, inclusive shall *mutatis mutandis* apply to execution in terms of this subrule.
- (10) If the garnishee disputes his liability to pay the said debt or alleges that he has any other defence, set-off or claim in reconvention which would be available to him if he were sued for the said debt by the judgment debtor the court may order the garnishee to state, orally or in writing an oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his defence thereto and may hear and determine the matters in dispute in a summary manner or may order—
- (a) that the matters in issue shall be tried under the ordinary procedure of the court; and
  - (b) that, for the purpose of such trial, the judgment creditor shall be plaintiff and the garnishee defendant, or *vice versa*.
- (11) If the garnishee alleges that the said debt belongs to or is subject to a claim by some other person the court may extend the return day and order such other person to appear and state the nature and particulars of his claim and either to maintain or relinquish it, and may deal with the matter as if the judgment creditor and such other person were claimants in interpleader in terms of rule 44.
- (12) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him, or that the garnishee is not indebted to him, the court may try the issue summarily.
- (13) After hearing the parties or such of them as appear the court may—
- (a) order payment by the garnishee in terms of subrule (9);
  - (b) declare the claim of any person to the debt attached to be barred;
  - (c) dismiss the application;
  - (d) make such other order as may be just.
- (14) (a) Application for the attachment of future or accruing earnings shall be made on notice to the judgment debtor and the garnishee. The notice shall set forth, *mutatis mutandis*, the particulars specified in sub-rule (1) and the judgment creditor shall annex thereto a copy of any consent in writing by the judgment debtor to the granting of the order sought.
- (b) At the hearing of the application the court may, subject to the provisions of section 46 of the Order, order that the garnishee do pay to the messenger out of the earnings accruing to the judgment debtor such sums at such future times as it may direct.
- (c) If the garnishee fails to pay the messenger the sums of money at the time specified in such order, the judgment creditor may, on notice to the garnishee, make application for an order that execution issue against the garnishee. The provisions of sub-rules (10) and (11) shall apply to the hearing of such application.

#### 46. Review of judgments

- (1) Any party to an action or proceedings in which a default judgment has been given may apply to the court on notice to the other side to rescind or vary such judgment provided that the application shall be set down for hearing on a date within six weeks after such judgment has come to his knowledge.
- (2) Every such application shall be on affidavit which shall set forth shortly the reasons for the applicant's absence or default of delivery of a notice of intention to defend or of a plea and, if he

be the defendant or respondent, the grounds of defence to the action or proceedings in which the judgment was given or of objection to the judgment.

- (3) Save where leave has been given to defend as a *pro Deo* litigant in terms of Rule 50, no such application shall be set down for hearing until the applicant has paid into court or has secured to the satisfaction of the plaintiff, to abide the directions of the court, the amount of the costs awarded against him under such judgment and also the sum of M40 as security for the costs of the application: Provided that the judgment creditor may, by consent in writing lodged with the clerk of the court, waive compliance with this requirement.
- (4) Where the amount of the costs awarded against the applicant under such judgment has not at the date of set-down of the application been taxed, the clerk of the court shall assess the approximate amount of such costs and the amount so assessed shall be paid into court.
- (5) Unless the applicant proves the contrary, it shall be presumed that he had knowledge of such default judgment within two days after the date thereof.
- (6) The court may on the hearing of any such application, unless it is proved that the applicant was in wilful default and if good cause be shown, rescind or vary the judgment in question and may give such directions and extensions of time as may be necessary in regard to the further conduct of the action or application.
- (7) The court may also make such order as may be just in regard to monies paid into court by the applicant.
- (8) If such application is dismissed, the default judgment shall become a final judgment.
- (9) This rule shall *mutatis mutandis* govern all proceedings for the rescission or variation of any judgment by the court in the exercise of the jurisdiction conferred by section 21 of the Order.
- (10) Where rescission or variation of a judgment is sought on the ground that it is *void ab origine* or was obtained by fraud or mistake, application may be made no later than one year after the applicant first had knowledge of such voidness, fraud or mistake.
- (11) Any judgment of the court may, on the application of any person affected thereby, who was not a party to the action or matter, made within a month after he has knowledge thereof, be so rescinded or varied by the court.
- (12) The provisions of subrules (1) to (9) inclusive shall *mutatis mutandis* apply to any such application.

#### **47. Appeals and transfer of actions to Subordinate Courts**

- (1) The summons or other initial document issued in a case transferred to a court by the High Court or other Subordinate Court shall stand as summons commencing an action in the court to which such case has been so transferred and shall, subject to any right the defendant may have to except thereto, be deemed to be a valid summons issued in terms of the rules and any matter done or order given in the court from which such case has been transferred shall be deemed to have been done or given in the court to which such case has been so transferred and the case shall thereupon proceed from the appropriate stage following the stage at which it was terminated before such transfer.
- (2) Costs incurred in the case before transfer as aforesaid shall, unless the court otherwise directs, be costs in the cause.

#### **48. Appeals in civil cases**

- (1) Upon a request in writing by any party within seven days after judgment (as defined in subrule (2) and before noting an appeal and upon payment by such party of the prescribed fee which shall be affixed to such request in the form of a revenue stamp, the clerk of the court shall within seven days by hand supply to the party applying therefor a copy of the written judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

- (2) Where, subject to the provisions of section 52 of the Order, an appeal lies under the provisions of section 53 of the Order against any judgment, rule, order or decision (in this section collectively referred to as a "judgment") of the court, an appeal may be noted within twenty-one days after the date of the judgment appealed against or within fourteen days after the clerk of the court has supplied a copy of the written judgment to the parties, whichever period shall be longer.
- (3) An appeal shall be noted by the delivery of notice, and, unless the High Court shall otherwise order, by giving security for the respondent's costs of appeal to the amount of M400,00 as well as by paying the prescribed court fees: Provided that no security shall be required from the Attorney-General as nominal appellant on behalf of the Crown.
- (4) A cross-appeal shall be noted by the delivery of notice within seven days after the delivery of the notice of appeal.
- (5) A notice of appeal or cross-appeal shall state—
  - (a) whether the whole or part only of the judgment is appealed against, and if part only, then what part; and
  - (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.
- (6) The noting of an appeal or cross-appeal and the date thereof shall be recorded in the "Remarks" column of the Civil Judgment Book.
- (7) The party noting an appeal or a cross-appeal shall prosecute the same within such time and in such manner as may be prescribed by the Rules of the High Court.
- (8) The clerk of the court shall, within seven days after he receives notice that an appeal has been set down for hearing, transmit to the Registrar of the High Court the record in the action, duly certified and also furnish each of the parties to the appeal with a copy thereof.
- (9)
  - (a) A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing stating whether he abandons the whole, or if part only, what part of such judgment.
  - (b) Every such notice of abandonment and the dates thereof shall be duly recorded in the "Remarks" column of the Civil Judgment Book and shall become part of the record.
- (10) Where the parties agree in terms of section 52 of the Order that the decision of the Court shall be final, either party may lodge the memorandum of such agreement with the clerk of the court, and such memorandum shall thereupon become part of the record in the action or matter and shall be recorded in the "Remarks" column of the Civil Judgment Book.
- (11) Whenever any judgment is affirmed, reversed or varied on appeal or review, that fact and the date of the decision shall be recorded in the "Remarks" column of the Civil Judgment Book.

#### **49. Representation of parties**

- (1)
  - (a) A party may institute or defend and may carry to completion any legal proceedings either in person or by an attorney, or advocate duly instructed by an attorney.
  - (b) A local authority, company or other incorporated body in doing so may act through an officer thereof nominated by it for the purpose.
  - (c) A partnership or group of persons associated for a common purpose in doing so may act through a member thereof nominated by it for the purpose.
  - (d) No person acting under paragraphs (a), (b) or (c) other than an attorney or advocate shall be entitled to recover therefor any costs other than necessary disbursements.
- (2) It shall not be necessary for any person to file a power of attorney to act, but the authority of any person acting for a party may be challenged by the other party within seven days after he has



noticed that such person is so acting, or, with the leave of the court for good cause shown, at any time before judgment and thereupon such person may not, without the leave of, the court, so act further until he has satisfied the court that he has authority so to act and the court may adjourn the hearing of the action to enable him to do so.

- (3) If a party dies or becomes incompetent to continue an action the action shall thereby be stayed until such time as an executor, trustee, guardian or other competent person has been appointed in his place or until such incompetence shall cease to exist.
- (4) Where an executor, trustee, guardian or other competent person has been so appointed, the court may, on application, order that he be substituted in the place of the party who has so died or become incompetent.
- (5) If an attorney acts on behalf of any party in any proceedings, he shall notify all other parties of his name and address.
- (6)
  - (a) Any party represented by an attorney in any proceedings, may at any time, subject to the provisions of rule 50, terminate such attorney's authority to act for him, and thereafter act in person or appoint another attorney to act for him therein, whereupon he shall forthwith give notice to the clerk of the court and to all other parties of the termination of his former attorney's authority and if he has appointed a further attorney so to act for him, of the latter's name and address.
  - (b) If such party does not appoint a further attorney, such party shall in the notice of termination of his former attorney's authority also notify all other parties of an address within eight kilometres of the Court House, for the service on him of all documents in such proceedings.
- (7) Upon receipt of a notice in terms of sub-rule (5) or (6) 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, unless the court orders otherwise.
- (8)
  - (a) Where an attorney acting in any proceedings for a party ceases so to act, he shall forthwith deliver notice thereof to such party, the clerk of the court and all other parties: Provided that notice to the party for whom he acted may be given by registered post.
  - (b) After such notice, unless the party formerly represented within seven days after the notice, himself notifies all other parties of a new address for service as provided in subrule (6), it shall not be necessary to serve any document upon such party unless the court otherwise orders.
  - (c) The notice under paragraph (a) to the clerk of the court shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.
  - (d) The notice under paragraph (a) to the party formerly represented shall inform the said party of the provisions of paragraph (b).

## 50. Pro Deo applicants

- (1) Any person desiring to sue or defend as a *pro Deo* litigant may apply to the court on notice to the party to be sued or to the plaintiff, as the case may be, for leave to do so. The applicant shall deliver with such notice an affidavit made by himself setting out fully the grounds of action or of a defence on which he intends to rely and particulars of his means.
- (2) The clerk of the court shall, at the request of the applicant and on the direction of a judicial officer, write out such notice and affidavit, notwithstanding that the claim or value of the matter in dispute exceeds twenty maloti and no fees shall be payable by the applicant for such assistance.



- (3) The court may upon any such application—
  - (a) examine the applicant on oath as to his right of action or grounds of defence, and as to his means;
  - (b) require the applicant to call further evidence with reference to either question;
  - (c) refer any such application to an attorney for investigation and report as to the applicant's means and whether he has a *prima facie* right of action or defence, as the case may be.
- (4) If the court is thereafter satisfied that the applicant has a *prima facie* right of action or of defence and is not possessed of means sufficient to enable him to pay the costs of the action, court fees and messenger's charges and will not be able within a reasonable time to provide such sums from his earnings, the court may order—
  - (a) that process of the court shall be issued and served free of charge to the applicant other than for the disbursements of the messenger; and
  - (b) that an attorney be appointed to act for such applicant; or
  - (c) that the clerk of the court, without charge, write out such process, affidavits, notices and other documents as may be required to comply with these Rules.
- (5) If the *pro Deo* litigant succeeds and is awarded costs against his opponent he shall, subject to taxation, be entitled to include and recover in such costs his attorney's costs and also the court fees and messenger's charges so remitted and if he shall recover either the principal amount, the interest or the costs, he shall first pay and make good thereout *pro rata* all such costs, fees and charges.
- (6) If the *pro Deo* litigant does not succeed or recover upon a judgment in his favour no fees shall be taken from him by the attorneys So appointed to act for him.
- (7) An order made under this rule—
  - (a) shall not exempt the *pro Deo* litigant from liability to be adjudged to pay adverse costs; and
  - (b) may, on application at any time before judgment by any person affected thereby be reviewed and rescinded or varied by the court for good cause shown.

**51. Actions by and against partners, a person carrying on business in a name or style other than his own name, an unincorporated company, syndicate or association**

- (1) Any two or more persons claiming or being sued as copartners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action. In any such case any party may by notice require from the party so suing or sued a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.
- (2) The party receiving such notice shall, within seven days after receipt thereof, deliver the statement required.
- (3) When the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the summons; but all the proceedings shall nevertheless continue in the name of the firm.
- (4) Any person carrying on business in a name or style other than his own name may sue or be sued in such name or style as if it were the name of a firm; and so far as the nature of the case will permit, all the provisions of this rule relating to proceedings against firms shall apply.
- (5) The provisions of this rule shall also *mutatis mutandis* apply to an unincorporated company, syndicate or association.

- (6) When action has been instituted by or against a firm or by or against a person carrying on business in a name or style other than his own name or by or against an unincorporated company, syndicate or association, as the case may be, the court may on the application of the other party to the action made at any time either before or after judgment on notice to a person alleged to be a partner in such firm or the person so carrying on business, or a member of such company syndicate or association, declare such person to be a partner the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2).

## 52. Applications

- (1) Except where otherwise provided, an application to the court for an order affecting any other person shall be on notice,
- (a) stating shortly the terms of the Order applied for;
  - (b) giving an address within eight kilometres of the courthouse at which the applicant will accept, notice and service of all documents in such proceedings;
  - (c) stating the day and time when the application will be made to the court and;
  - (d) informing the respondent that, if he wishes to oppose the application, he shall, within three days after receipt of the said notice, notify the applicant in writing that he intends to oppose the application and, in such notice, state an address within eight kilometres of the courthouse at which he will accept notice and service of all documents and within seven days after delivery of the notice of intention to oppose, deliver his opposing affidavit, if any, together with any other documents he wishes to include.
- (2) Except where otherwise provided, an application need not be supported by affidavit.
- (3) In every application any person substantially interested therein shall be made respondent.
- (4) If the respondent intends to oppose such application, he shall,
- (a) within three days after receipt of the said notice, notify the applicant in writing that he intends to oppose the application;
  - (b) in such notice state an address within eight kilometres of the courthouse at which he will accept notice and service of all documents; and
  - (c) within seven days after delivery of the notice of intention to oppose, deliver his opposing affidavit, if any, together with any other documents he wishes to include.
- (5) Within seven days after service upon him of the respondent's opposing affidavit, the applicant may deliver a replying affidavit.
- (6) No further affidavit may be filed by any party unless the court in its discretion permits further affidavits to be filed.
- (7) In every application against the Crown, the respective periods referred to in sub-rules (1) (d) and (4) (a) and (b) herein shall not be less than fourteen days and seven days respectively, unless the Court shall have authorised a shorter period.
- (8) In the event of any dispute arising as to the facts, the court may—
- (a) receive evidence either *viva voce* or by affidavit and try the issues in dispute in a summary manner; or
  - (b) order that the issues shall be tried by way of action, that the applicant shall be plaintiff and the respondent be defendant and that the notice of application shall stand as a summons or that the applicant shall deliver such particulars of his claims as are prescribed in rule 6, within seven days or such shorter time as the court may determine.

- (9) For the purposes of the action, appearance to defend shall be deemed, when the notice of application is ordered to stand as a summons, to have been entered on the day on which such order is made and when the applicant is ordered under this rule to file particulars, to have been entered on the day on which such particulars are delivered.
- (10) Unless the court shall otherwise order, minutes, other than the minutes of the record, shall not be drawn up of orders on application on notice; and notice or service of such an order to or on any person who has had notice of the application shall not be necessary.
- (11) Except where otherwise provided, an *ex parte* application shall be made in writing stating shortly the terms of the order applied for and the grounds on which the application is made.
- (12) Except where otherwise provided, an *ex parte* application shall not, unless required by the court in any case, be supported by affidavit or other evidence.
- (13) Any person affected by an order made *ex parte* may apply to discharge it with costs on not less than one clear day's notice.
- (14) All interlocutory applications may be dealt with upon application, and any application which may be made *ex parte* may at the applicant's election be made on notice.
- (15) All opposed applications shall be heard in open court.

### 53. Amendment of pleadings

- (1) Any party desiring to amend any pleadings filed in connection with any proceedings, shall give notice to all other parties of his intention so to amend and the particulars of such amendment.
- (2) Such notice shall state that unless objection in writing is made within seven days after the delivery of the notice of the proposed amendment, the pleading shall be deemed to be so amended.
- (3) If any objection be made within the said period, the party wishing to pursue the amendment shall make application to the court in accordance with the procedure prescribed in rule 52.
- (4) When a pleading is deemed to have been amended as referred to herein, the other party may plead thereto or amend consequentially any pleading already filed by him within fourteen days after the receipt of the notice of amendment.
- (5) A party giving notice of amendment shall, unless the court otherwise orders, be liable for the costs thereby occasioned to any other party.

### 54. Arrests, *tanquam suspectus de fuga*, interdicts, attachments and *mandamenten van spolie*

- (1) Except where otherwise provided, every application to the court for an order of arrest, an interdict or attachment or for *mandament van spolie* under section 18 of the Order may be made *ex parte*.
- (2) Every such *ex parte* application shall be upon affidavit stating shortly the facts upon which the application is made and the nature of the order applied for.
- (3) The court may, before granting an order upon such an application, require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it may think fit.
- (4)
  - (a) An order made *ex parte* shall call upon the respondent to show cause against such order at a time stated therein, which time shall not, except in the case of an order for the arrest of any person or unless the court shall give leave for a shorter time, be less than the time allowed after service by rule 9(16) (a) or (b), as the case may be.
  - (b) An order made *ex parte* for the arrest of a person shall—
    - (i) call upon the respondent to show cause against it forthwith if the respondent can be brought before the court before it shall have risen for that day, or if service be effected otherwise than

- on a court day at a time stated in the order, which shall be in the forenoon of the first court day after service;
- (ii) provide that, failing institution, within two days, of the action for the debt claimed by the applicant, the order shall lapse; and
  - (iii) shall be signed by the presiding judicial officer.
- (5) The return day of an order other than one for the arrest or attachment of any person, made *ex parte* may be anticipated by the respondent upon one clear day's written notice to the applicant.
  - (6) A copy of any order made *ex pane* and of the affidavit, if any, on which it was made shall be served forthwith on the respondent thereto.
  - (7) Where cause is shown against any such order, the court may order the applicant or respondent or the deponent to any such affidavit to attend for examination or cross-examination.
  - (8) Any order made *ex parte* may be discharged or varied by the court on cause shown by any person affected thereby and on such terms as to costs as may be just.
  - (9) An order made *ex parte* shall *ipso facto* be discharged upon security being given by the respondent for the amount to which the order relates, together with costs.
  - (10) Such security may be given to abide the result of the action instituted or to be instituted; and may be assigned by the respondent to part only of the order and shall in that event operate to discharge the order as to that part only.
  - (11) Unless the court shall otherwise order, the messenger may release any person arrested upon such person giving security to the satisfaction of the messenger that he will appear upon the return day of the order for arrest.
  - (12) The minutes of any order required for service or execution shall be drawn up by the party entitled thereto and shall be approved and signed by the clerk of the court.
  - (13) The copies of such minutes for record and service shall be made by such party and the copy for record shall be signed by the clerk of the court.
  - (14) The provisions of rule 41 shall, in so far as it may be necessary in the execution of an order under this rule, *mutatis mutandis* apply to such execution.
  - (15) An interdict and a warrant of arrest may be executed on any day, at any hour, and at any place.

## 55. Assessors

- (1) The court may from time to time frame a list of persons who, having regard to the nature of the business of the court and to their ability and reputation, appear to be qualified to act as assessors under section 20 of the Order and who are willing so to act upon reasonable notice.
- (2) Every person for the time being named in such list shall be an assessor for the purposes of this rule and shall continue to be an assessor until a new list has been framed or until he gives the clerk of the court his resignation in writing. Upon receipt of such resignation the clerk of the court shall remove the name of such assessor from the list: Provided that an assessor summoned to act as such in any action may not, without the leave of the court, resign during the trial of the action.
- (3) Where the court, under section 20 of the Order, considers that it requires the assistance of one or more assessors, it shall select an assessor or assessors from the list: Provided that nothing in this rule shall prevent the court from summoning any person or persons not on the list to act as assessors in any particular action.
- (4) The clerk of the court shall summon the assessors selected by the court, by having a summons served upon each of them in the manner provided for the service of a summons commencing an action.

- (5) If at the time and place appointed for the trial or the continuation thereof, the assessor or one or more of the assessors summoned do not attend, the court may either proceed or continue to try the action with the assistance of the assessor, or assessors if any, who are in attendance, or without assistance, if none have attended, or may postpone or adjourn the trial.
- (6) Every assessor sitting in an action shall be entitled to the fees set out in Table C of the Second Schedule to these Rules.

## **56. Non compliance with rules, including time limits and errors**

- (1) Except where otherwise provided in these Rules, failure to comply with these Rules or with any request made in pursuance thereof shall not be ground for the giving of judgment against the party in default.
- (2) Where any provision of these Rules or any request be made in pursuance of any such provision has not been fully complied with the court may on application order compliance therewith within a stated time.
- (3) Where any order so made is not fully complied with within the time so stated, the court may on application forthwith give judgment in the action against the party so in default or may adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as may be just.
- (4) The court may on either such application order such stay of proceedings as may be necessary.
- (5) Subject to the provisions of rule 17(1)(b) any time limit prescribed by these Rules, except the period prescribed in rule 48(1) and (3) may at any time, whether before or after the expiry of the period limited, be extended—
  - (a) by the written consent of the opposite party; and
  - (b) if such consent is refused, then by the court on application on such terms as to costs and otherwise as may be just.
- (6) Where there has been short service without leave, of any notice of set down or notice of any application or of process of the court, the court may, instead of dismissing such notice or process, adjourn the proceedings for a period equivalent, at the least, to the period of proper notice upon such terms as to costs as may be just. If the proceedings be adjourned in the absence of the party who received such notice, due notice of the adjournment must be given to such party by the party responsible for the short service.
- (7) No process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.
- (8) If any party has in fact been misled by any such error in any process or notice served upon him, the court may on application grant him such relief as may be just and may for that purpose set aside the process or notice and rescind any default judgment given thereon.
- (9) The forms contained in the First Schedule or forms substantially to the like effect, with such variations as the circumstances of each case may require, shall be used for all matters to which they may be applicable.

## **57. Records, entries or documents as evidence in civil matters**

- (1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action, the clerk of the court shall, on reasonable notice, produce and show the original thereof and the cost of copies shall not be allowed.
- (2) Where it is necessary to give in evidence in another court any such record, entry or document, a copy thereof certified by the clerk of the court may be given in evidence without production of the original.

**58. Security for costs by plaintiff**

- (1) Where a plaintiff—
  - (a) is not resident within Lesotho;
  - (b) is an unrehabilitated insolvent;
  - (c) is a registered or incorporated company;
  - (d) has no substantial interest in the cause of action—

the defendant may (unless the plaintiff has obtained leave to sue as a *pro Deo* litigant) after service of the summons and before the closing of the pleadings require the plaintiff to give security to him for the costs of the action in a form which is acceptable to the defendant (excluding the principal of costs of any claim in reconvention made by the defendant): Provided that if the fact relied upon first came to the knowledge of the defendant after the close of pleadings, the defendant may within seven days after such fact has come to his knowledge require that such security be given.

- (2) If such request is not complied with within seven days, the court may on application either stay the proceedings until such request is complied with or dismiss the action.
- (3) In this rule "plaintiff shall not include a plaintiff in reconvention nor shall "action" include a claim in reconvention.
- (4) The provisions of this rule shall *mutatis mutandis* apply to proceedings instituted by way of application.

**59. Procedure for securing the attendance of witnesses in criminal cases**

- (1) The process for securing the attendance of any person before the court to give evidence in any criminal case or to produce any books, papers or documents, shall be by subpoena prepared by the party desiring the attendance of that person and issued by the clerk of the court.
- (2) The original subpoena and so many copies thereof as there are witnesses to be served, shall be delivered to the messenger or other person authorised to serve subpoenas in the area where the witness is residing.
- (3) A copy of the subpoena shall be served upon the witness personally or at his residence or place of business or employment by delivering it to some person thereat who is apparently not less than 16 years of age and apparently residing or employed thereat.
- (4) If the person to be served with a subpoena keeps his residence or place of business closed and thus prevents the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.
- (5) The person serving the subpoena shall, if required by the person upon whom it is served, exhibit to him the original.
- (6) The person serving the subpoena shall make a return of service by endorsing on the original or on a document attached thereto the manner in which the subpoena was served. The original shall be returned to the clerk of the court out of whose office it was issued.

**60. Criminal record book**

- (1) The clerk of the court shall keep a book to be styled the "Criminal Record Book" in which he shall daily enter particulars of every criminal case coming before the court on that day.
- (2) The charge sheet or, when the matter comes before the court by way of preparatory examination, the covering sheet, shall, when the matter first comes before the court, be numbered by him with

a consecutive number for the year and the case shall then be entered in the Criminal Record Book under that number.

- (3) The particulars recorded in the Criminal Record Book shall include—
- (a) the date of hearing;
  - (b) the case number;
  - (c) the name and description of the accused;
  - (d) the crime charged;
  - (e) the verdict;
  - (f) the sentence or other mode of disposal; and
  - (g) any remarks (including the date and effect of any order of a superior court varying the verdict or sentence on review or appeal).
- (4) The judicial officer presiding at the hearing shall himself record in the Criminal Record Book any Sentence imposed or other order of disposal made by him including acquittal, or other discharge, postponement of sentence, adjournment, remand to another court or committal for trial.

## 61. Record of criminal cases

- (1) Where a shorthand writer on the facilities for taking a record by mechanical means are not available, the judicial officer presiding over any criminal proceedings shall forthwith keep a manuscript record of—
- (a) any plea and accompanying statement or explanation by the accused;
  - (b) any opening or closing addresses or submissions by the parties;
  - (c) any *viva voce* evidence given in court, recorded in narrative form or, where reasonably possible, by way of question and answer;
  - (d) any objection and reply thereto made to any evidence received or tendered;
  - (e) any ruling given by the court in the course of the proceedings;
  - (f) the proceedings of the court generally, including any inspection *in loco*;
  - (g) the reasoned judgment given by the court; and
  - (h) any sentence or order, with reasons therefor, imposed by the court.

All of such matters so recorded shall constitute the record of the court.

- (2) Where a shorthand writer or the said facilities are available, the proceedings may be recorded in shorthand or by mechanical means as the presiding judicial officer may direct. Such record shall be verbatim of the entire proceedings: Provided that where the proceedings are so recorded, the presiding judicial officer shall nonetheless forthwith keep a manuscript record of at least the matters contained in paragraphs (a), (e), (f), (g) and (h) in subrule (1).
- (3) Every person employed for the taking of shorthand notes in terms of subrule (2) or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his duties in writing take an oath or make an affirmation before a judicial officer, as provided in rule 30(5), in the form prescribed in the First Schedule.
- (4) (a) Shorthand: notes so taken shall be certified as correct by the shorthand writer and filed with the record of the case by the clerk of the court.
- (b) Subject to the provisions of subrule (5) and rule 62(3) and (6)(b), no such shorthand notes shall be transcribed unless a judicial officer so directs.



- (c) The transcription of any shorthand notes so transcribed shall be certified as correct by the person making such transcript and shall be filed with the record.
- (5)
  - (a) In any case in which no transcription was ordered in terms of subrule. (4), any person may, on notice to the clerk of the court, request a transcription of any shorthand notes taken by virtue of a direction given under subrule (2) and shall, save in the case of the prosecutor or the accused, pay a fee of M3,00 per A4 size page or part thereof for such transcription.
  - (b) One copy of the transcript of such shorthand notes shall be supplied, free of charge, to the person at whose request the transcription was made.
  - (c) The original copy of the transcript of any shorthand notes referred to in paragraph (a), shall be certified as correct by the person making such copy and shall be filed with the record of the case.
  - (d) A sum sufficient to cover the approximate fee payable under paragraph (a) shall be deposited with the clerk of the court in advance.
- (6) Subject to the provisions of subrule (7), any shorthand notes and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.
- (7) The prosecutor or the accused may, not later than seven days after judgment or where proceedings have been taken down in shorthand within seven days after the transcription thereof has been completed, apply to the court to correct any error in the record or the certified transcript thereof and the court may correct any such error.
- (8) Subject to the provisions of subrule (4)(b), a copy of any transcript made simultaneously with the transcription of any shorthand notes may, upon application to the clerk of the court, be supplied to any person upon payment, save in the case of prosecutor or accused—
  - (a) in the case of a copy of a transcript referred to in subrule (4) 45 Lisente per A4 size page or part thereof;
  - (b) in the case of a copy of a transcript referred to in subrule (5) (a), 45 Lisente per A4 size page or part thereof.
- (9) Any reference in this rule to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person appointed for the taking or transcribing of such notes, shall be construed also as a reference to a record of proceedings made by mechanical means, to a transcription or transcript of such record, or to a copy of such transcript, to a person appointed for the making or transcribing of such mechanical record, as the case may be.

## 62. Criminal appeals

- (1)
  - (a) A convicted person desiring to appeal against any conviction, sentence or order in a criminal case shall, within fourteen days after the date of conviction, sentence or order in question lodge with the clerk of the court a notice of appeal in writing in which he shall set out clearly and specifically the ground, whether of fact or law or both fact and law, on which the appeal is based: Provided that if such appeal is noted by an attorney on behalf of a convicted person he shall simultaneously with the lodging of the notice of appeal lodge a power of attorney authorising him to note an appeal and to act on behalf of the convicted person.
  - (b) A convicted person shall state in the notice of appeal referred to in paragraph (a), a postal address where any notice may be served on him by registered post if he is not represented by an attorney or if he ceases to be represented by an attorney.
- (2) If the appellant is unable, owing to illiteracy or physical defect, to write out such notice of appeal, the clerk of the court shall, upon his request, do so.



- (3) Upon an appeal being noted, the clerk of the court shall cause to be prepared a copy of the record of the case including a transcript thereof if it was recorded in accordance with the provisions of rule 61(2) and then deliver such copy to the appellant.
- (4) Within fourteen days of receipt by the appellant of the copy of the record, he may by notice to the clerk of the court, amend his notice of appeal.
- (5) When an appeal is noted in a case in which the prosecution was not at the public instance the notice referred to in subrule (1) and any amended notice provided for in subrule (4) shall be served by the appellant also upon the prosecutor.
- (6)
  - (a) Where the Director of Public Prosecutions wishes to file an appeal under the provisions of subsections (2) or (6) of section 72 of the Order, or a private prosecutor under the provisions of subsection (6), they shall do so by way of notice of appeal filed with the clerk of the court within fourteen days of the date of the decision of the court against which the appeal is lodged;
  - (b) The provisions of subrules (1), (3) and (4) shall apply *mutatis mutandis* to any such appeal;
  - (c) The notice referred to in paragraph (a) and any amended notice referred to in subrule (4) shall be served upon the accused as respondent to the appeal.
- (7) Every notice of appeal or amended notice of appeal filed under the provisions of this rule shall become part of the record.
- (8) The clerk of the court shall, within seven days of the receipt by him of the amended notice of appeal filed under subrule (4), or if none is filed, within seven days after the period in subrule (4) has lapsed, transmit to the Registrar of the High Court the record of the criminal proceedings and three typed copies thereof.

### 63. Oath of office of interpreter

- (1) Every interpreter other than a casual interpreter shall upon entrance into office, in writing, take oath or make an affirmation subscribed by him before a judicial officer in the form set out below, namely:
 

"I, \_\_\_\_\_ (full name) do hereby swear/truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in any Subordinate Court I shall truly and correctly to the best of my ability interpret from the language I may be called upon to interpret into English and *vice versa*."
- (2) Such oath or affirmation shall be taken or made or administered in the manner prescribed for the taking or making or administration of an oath or affirmation.
- (3) Whenever a casual interpreter is appointed to interpret in a particular case he shall be required to take an oath or truly affirm before a judicial officer as follows;
 

"I, \_\_\_\_\_ (full name) do hereby swear/truly affirm that I shall truly and correctly to the best of my ability interpret from the language I am called upon to interpret in the proceedings of \_\_\_\_\_ held in the Magistrate's Court of \_\_\_\_\_ into English and *vice versa*".

Such oath or affirmation shall be taken or made or administered in the manner prescribed for the taking or making or administration of an oath or affirmation.
- (4) The fact that the oath has been taken or affirmation made by such casual interpreter shall be endorsed on the court record.
- (5) Whenever a casual interpreter is employed on a daily basis for a certain period to interpret, it shall not be necessary to administer an oath to him in every case or to require him to affirm in every case but he shall be required to take an oath or truly affirm in writing, before a judicial officer that he will truly and correctly to the best of his ability interpret from the language he may be called upon to interpret in any proceedings in any Subordinate Court into English and *vice versa* for the

period he is employed as a casual interpreter. Such oath or affirmation shall be taken or made or administered in the manner prescribed for the taking or making or administration of an oath or affirmation.

#### 64. Repeal of Rules

- (1) High Commissioner's Notice 111 of 1943, dated 21st May, 1943 is hereby repealed.
- (2) Notwithstanding such repeal, for a period of twelve months from the date upon which these Rules come into operation, the use of the forms contained in the First Annexure to the Rules set out in High Commissioner's Notice 111 of 1943 may, with any necessary variations or amendments as may be occasioned by the provisions of these Rules, be continued.

### First Schedule

#### Forms

#### Index

Form No.: \_\_\_\_\_

1. Notice of Application (General Form).
2. Summons Commencing Action (Ordinary).
3. Summons Commencing Action (in which is included an Automatic Rent Interdict).
4. Notice under Rule 9(12) for Substituted Service.
5. Request for Default Judgment.
6. Notice of Withdrawal.
7. Notice of Application for Summary Judgment.
8. Affidavit in Support of Application for Summary Judgment.
9. Notice to Deliver Schedule of Documents.
10. Notice to Produce Documents for Inspection.
11. Notice to Produce at Trial.
12. Order for Interdict Obtained Ex Parte.
13. Order for Arrest of Persons *Suspectus de Fuga*.
14. Order for Attachment of Person or Property to Found or Confirm Jurisdiction.
15. Subpoena.
16. Warrant for Payment of Fine or Arrest of Witness in Default.
17. Warrant for the Arrest of a Witness in Default.
18. Security on Arrest, Attachment or Interdict Ex Parte.
19. Security when Execution is Stayed Pending Appeal.
20. Security when Execution is Allowed Pending Appeal.
21. Warrant of Execution.
22. Warrant for Delivery of Goods.

23. Warrant of Execution Against Property.
24. Notice of Attachment in Execution.
25. Interpleader Summons.
26. Interpleader Summons.
27. Security under Rule 38.
28. Affidavit in Support of Application for a Garnishee Order.
29. Garnishee Order.
30. Notice of Abandonment of Specified Claim, Exception or Defence.
31. Agreement not to Appeal.
32. Request to Inspect Record.
33. Commission de Bene Esse.
34. Criminal Record Book.
35. Oath of Office of Shorthand Writer.
36. Notice to Third Party.

**Form 1 (Rule 52)**  
**Notice of application (General form)**

\* In the Subordinate Court of the Chief/Senior/Resident/Magistrate/of the First/Second/Third Class for the district of \_\_\_\_ held at \_\_\_\_\_ Case No \_\_\_\_\_

In the matter between \_\_\_\_\_ Applicant  
and

\_\_\_\_\_ Respondent

Take notice that application will be made to the above-mentioned Court on the \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ (time) for an order (state terms of order applied for).

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

\_\_\_\_\_  
Applicant/Attorney for Applicant

To: \_\_\_\_\_

and: \_\_\_\_\_

**Form 2 (Rules 5, 6)**

(Delete wherever inapplicable).

**Summons commencing action (Ordinary)**

Sued out by: \_\_\_\_\_

Name and address of plaintiff or his attorney: \_\_\_\_\_

Postal address: \_\_\_\_\_

Between:

Plaintiff

and

Defendant

To: \_\_\_\_\_

You are hereby summoned that you do within \_\_\_\_\_ days of the service of this summons deliver or cause to be delivered to the Clerk of the Aforesaid Court and also the Plaintiff or his Attorney, at the address specified herein, a notice in writing of your intention to defend this action and answer the claim of \_\_\_\_\_ the plaintiff herein, particulars whereof are endorsed hereunder.

## (1) Particulars:

Plaintiffs claim against defendant is for payment of the sum/balance of M \_\_\_\_\_

for:

Wherefore plaintiff prays for judgment against the defendant in the said sum, with costs.

Costs of the action if undefended, will be as follows:

	Summons M	Judgment M
Attorney's charges		
Court fees		
Messenger's fees		
TOTALS		

TOTAL

AND TAKE NOTICE THAT—

- (a) in default of your paying the amount of the claim and costs within the said period or of your delivering a notice of intention to defend you will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against you in your absence;
- (b) if you pay the said claim and costs within the said period judgment will not be given against you herein and you will save judgment charges. You will also save judgment charges if, within the said period, you lodge with the clerk of the aforesaid Court a consent to judgment;
- (c) if you admit the claim and wish to consent to judgment or wish to undertake to pay the claim in instalments or otherwise, you may approach the plaintiff or his attorney.

## (2) Consent to Judgment

I admit that I am liable to the plaintiff as claimed in this summons (or in the amount of M \_\_\_\_\_ and costs to date) and I consent to judgment accordingly.

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

\_\_\_\_\_ Defendant

## (3) Notice of Intention to Defend

To the Clerk of the Court:

Kindly take notice that the defendant hereby notifies his intention to defend this action.

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

\_\_\_\_\_ Defendant/Defendant's Attorney

Address \_\_\_\_\_

Postal address \_\_\_\_\_

*(Give full address for acceptance of service of process or documents within eight kilometres from the Court-house and also postal address).*

Issued by \_\_\_\_\_ Case No \_\_\_\_\_ Date \_\_\_\_\_

Clerk of the Court

M10 Revenue Stamp

**Form 3 (Rules 5, 6)****Summons commencing action (in which is included an automatic rent interdict)**

Sued out by \_\_\_\_\_

Name and address of plaintiff or his attorney \_\_\_\_\_

Postal address \_\_\_\_\_

Signature of Plaintiff or his Attorney \_\_\_\_\_

In the Subordinate Court (\* of the Chief/Senior/Resident/Magistrate/ of the/First/Second/Third Class) for the district of \_\_\_\_\_ held at \_\_\_\_\_

Between:

\_\_\_\_\_ Plaintiff

and

\_\_\_\_\_ Defendant

To: \_\_\_\_\_

You are hereby summoned that you do within \_\_\_\_\_ days of service of this summons deliver or cause to be delivered to the Clerk of the aforesaid Court and also to the plaintiff or his attorney, at the address specified

\*

*(Delete wherever inapplicable)*

herein, a notice in writing of your intention to defend this action and answer the claim of \_\_\_\_\_ the plaintiff herein, particulars whereof are endorsed hereunder.

AND TAKE NOTICE THAT—

- (a) in default of your paying the amount of the claim and costs within the said period of your delivering a notice of intention to defend you will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against you in your absence;
- (b) if you pay the said claim and costs within the said period judgment will not be given against you herein and you will save judgment charges. You will also save judgment charges if, within the said period, you lodge with the clerk of the aforesaid Court a consent to judgment;
- (c) if you admit the claim and wish to consent to judgment or wish to undertake to pay the claim in instalments or otherwise, you may approach the plaintiff or his attorney.

AND further take notice that you, the defendant, and all other persons are hereby interdicted from removing or causing or suffering to be removed any of the furniture or effects in or on the premises which are described in the particulars of claim endorsed hereon and which are subject to the plaintiff's hypothec for rent until an order, relative thereto shall have been made by the Court.

Costs, if the action is undefended, will be as follows:

	<b>Summons</b> <b>M</b>	<b>Judgment</b> <b>M</b>
Attorney's charges		
Court fees		
Messenger's fees		
<b>TOTALS</b>		

TOTAL

- (1) Particulars of claim.

Plaintiff's claim is—

- (i) for arrears of rent due in respect of the defendant's tenancy of \_\_\_\_\_ and for confirmation of the interdict appearing in this summons.

Particulars:

<b>Date</b>	<b>Period</b>	<b>Amount</b>	<b>M</b>

and

- (ii) for ejectment

Particulars \_\_\_\_\_

## (2) Consent to judgment

I admit that I am liable to the plaintiff as claimed in this summons (or in the amount of M \_\_\_\_\_ and costs to date) and I consent to judgment accordingly.

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

Defendant

## (3) Notice of intention to defend

To the Clerk of the Court

Kindly take notice that the defendant hereby notifies his intention to defend this action.

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

Defendant/Defendant's Attorney \_\_\_\_\_

Address where service of process or documents will be accepted \_\_\_\_\_ (within eight kilometres from the Court house)

Postal address \_\_\_\_\_

[+Note— The original notice must be filed of record with the Clerk of the Court and a copy thereof served on the plaintiff or his attorney.]

### Form 4 (Rule 9(14)) Notice of substituted service

In the matter between:

Plaintiff

and

Defendant

To: \_\_\_\_\_ of \_\_\_\_\_

Take notice that a summons has been issued against you in this court by \_\_\_\_\_ of \_\_\_\_\_ for the sum of M \_\_\_\_\_ for \_\_\_\_\_ (state cause of action briefly) and that an order has been made that the publication of notice of such summons shall be deemed to be good and sufficient service of the summons on you. You are required to enter an appearance to defend on or before the \_\_\_\_\_ day of \_\_\_\_\_ and if you do not do so, judgment may be given against you in your absence.

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

Clerk of the Court \_\_\_\_\_

Plaintiff/Plaintiff's Attorney \_\_\_\_\_

Address \_\_\_\_\_

### Form 5 (Rule 12)

### Request for default judgment

In the matter between

Plaintiff

and

Defendant

The Plaintiff hereby applies that—

- (a) the defendant having been duly served;
- (b) the time for entering appearance to defend having expired; and
- (c) the defendant not having entered an appearance to defend, judgment to be given against the defendant, as claimed in the summons, for M \_\_\_\_\_ (*state particulars if judgment is applied for.*

### Form 6 (Rule 27) Notice of withdrawal

In the matter between:

Plaintiff

and

Defendant

The Plaintiff hereby withdraws the above-mentioned action and consents to pay the defendant's taxed costs.

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

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

To: \_\_\_\_\_

and: The Clerk of the Court \_\_\_\_\_

### Form 7 (Rule 14) Notice of application for summary judgment

In the matter between:

Applicant

and

Respondent

Take notice that application will be made to the above-mentioned Court on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ (*time*) for summary judgment against you in the action for M \_\_\_\_\_ and costs.

And further take notice that the document on which the claim is based or the affidavit of \_\_\_\_\_ (copy served herewith) will be used in support of such application and that you may reply thereto by affidavit.

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

Applicant/Applicant's Attorney \_\_\_\_\_

To: \_\_\_\_\_ and:

The Clerk of the Court \_\_\_\_\_



**Form 8 (Rule 14)**  
**Affidavit in support of application for summary judgment**

In the matter between:

Applicant

and

Respondent

I, \_\_\_\_\_ of \_\_\_\_\_ (address),

declare on oath as follows:—

- (a) I am the plaintiff in this action (or the facts herein stated are within my own knowledge and I am duly authorised to make this affidavit).
- (b) The defendant is indebted to me/to the plaintiff in the sum of M \_\_\_\_\_ on the grounds stated in the summons.
- (c) I verily believe that the defendant has not a *bona fide* defence to the claim and that appearance has been entered solely for the purposes of delay.

Signature \_\_\_\_\_

The deponent has acknowledged that he knows and understands the contents of this affidavit.

Signed and sworn to before me at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

Commissioner of Oaths \_\_\_\_\_

Area \_\_\_\_\_

Office held \_\_\_\_\_

**Form 9 (Rule 23)**  
**Notice to deliver schedule of documents**

In the matter between:

Plaintiff

and

Defendant

Take notice that the \_\_\_\_\_ requires you, within 7 days after receiving this notice, to deliver a schedule specifying the books and documents in your possession or under your control which relate to the action which you intend to use in the action, or which are material to prove or disprove either party's case.

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

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

Address \_\_\_\_\_

To: The Clerk of the Court, \_\_\_\_\_ and \_\_\_\_\_

**Form 10 (Rule 23)**  
**Notice to produce documents for inspection (Notice)**

In the matter between:

Plaintiff

and

Defendant

Take notice that the \_\_\_\_\_ requires you to produce for his inspection at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ (time), the books and documents specified in your schedule of books and documents in terms of rule 23(1) (or the accounts and documents upon which the action is founded) and also the books and documents specified in the notice delivered to you on the \_\_\_\_\_ day of \_\_\_\_\_ in terms of rule 23(4).

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

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

Address \_\_\_\_\_

To: \_\_\_\_\_

### **Form 11 (Rule 23)** **Notice to produce at trial**

In the matter between:

Plaintiff

and

Defendant

Take notice that you are hereby required to produce on the trial of this action all books and documents disclosed in your schedule of books and documents in terms of rule 23(1) and also the following books and documents

\_\_\_\_\_

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

Address \_\_\_\_\_

To: The Clerk of the Court \_\_\_\_\_ and \_\_\_\_\_

### **Form 12 (Rules 52, 54)** **Order for interdict obtained *ex parte***

In the matter between:

Applicant

and

Respondent

It is ordered:—

- (1) That a rule nisi be and is hereby granted calling upon \_\_\_\_\_ (respondent) of \_\_\_\_\_ (address) to show cause at \_\_\_\_\_ (time), or so soon thereafter as he can be heard, why \_\_\_\_\_ shall not be interdicted \_\_\_\_\_ (set out the acts from which the respondent or any other person is restrained) pending the decision of an action to be brought by the applicant against the said \_\_\_\_\_ (respondent) for \_\_\_\_\_ (set out the nature of the claim).
- (2) That the said action be instituted within \_\_\_\_\_ days.

- (3) That this rule operate as an interim interdict.

By order of the Court,

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

Clerk of the Court

Applicant's Attorney \_\_\_\_\_

Address \_\_\_\_\_

### Order of arrest of persons suspectus de fuga

In the matter between:

Applicant

and

Respondent

It is ordered that:

- (1) That the messenger take \_\_\_\_\_ (*respondent*) in custody and have him before this court forthwith before it shall have risen for the day or the first court day after service of this order at \_\_\_\_\_ (*time*), in the forenoon, to show cause why he should not be deemed to abide the judgment of this court in an action for a sum of M \_\_\_\_\_ to be instituted against him by the applicant.
- (2) Upon security being given to the satisfaction of the messenger for the amount of the applicant's claim and the costs of the application for attachment, the aforesaid respondent shall be released from attachment and upon such security being given the order for attachment shall *ipso facto* be discharged.
- (3) That the said action be instituted within two days from the date of this order, failing which the order shall lapse and be of no effect.
- (4) To the Officer-in-Charge of the \_\_\_\_\_ Prison to whom the Messenger shall present this order:—

In terms of section 18 of the Subordinate Courts Order, 1988, you are hereby commanded to take into your custody the body of \_\_\_\_\_ (*respondent*) and keep him/her safely until such time as he shall be removed to have him before the court in accordance with this Order or until he shall be otherwise lawfully discharged.

Chief/Senior/Resident/Magistrate/Class/I/II/III \_\_\_\_\_

Applicant's Attorney \_\_\_\_\_

Address: \_\_\_\_\_

### Form 14 (Rule 54)

#### Order for attachment of person or property to found or confirm jurisdiction

In the matter between:

Applicant

and

Respondent.

1. To: The Messenger

You are hereby directed pursuant to an order of the above-mentioned Court made on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, forthwith to attach \_\_\_\_\_ (*state full names of respondent and address in the case of attachment of person and in the case of attachment of property, particulars of property and where situate*) to found or confirm jurisdiction of the said court in an action by \_\_\_\_\_ against \_\_\_\_\_ of \_\_\_\_\_ (*address of respondent*) for \_\_\_\_\_ (*set out particulars of claim*);

And for so doing this shall be your warrant.

Further, should the respondent wish to show cause why the order of attachment should not be confirmed, where the order is against his person, you shall have him before the Court forthwith before it shall have risen for the day, or on the first court day after service at \_\_\_\_\_ (*time*) in the forenoon and where the order is against property, he shall appear before this court on the \_\_\_\_ day of \_\_\_\_ at \_\_\_\_\_ (*time*), for that purpose.

The aforesaid date may be anticipated by the respondent upon one clear days notice to the applicant.

Upon security being given to the satisfaction of the messenger for the amount of the applicant's claim and the costs of the application for attachment, the aforesaid respondent/property shall be released from attachment and upon such security being given the order for attachment shall *ipso facto* be discharged.

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

2. To the Officer-in-Charge of the \_\_\_\_\_ Prison to whom the Messenger shall present this order:-

In terms of section 18 of the Subordinate Courts Order, 1988, you are hereby commanded to take into your custody the body of \_\_\_\_\_ (respondent) and keep him/her safely until such time as he shall be removed to have him before the court in accordance with this Order or until he shall be otherwise lawfully discharged.

CHIEF/SENIOR/RESIDENT/MAGISTRATE/CLASS/I/II/III \_\_\_\_\_

Applicant's Attorney \_\_\_\_\_

Address \_\_\_\_\_

### Form 15 (Rule 26) Subpoena

In the matter between:

Plaintiff

and

Defendant

To:

- (1) \_\_\_\_\_ of \_\_\_\_\_  
 (2) \_\_\_\_\_ of \_\_\_\_\_  
 (3) \_\_\_\_\_ of \_\_\_\_\_  
 (4) \_\_\_\_\_ of \_\_\_\_\_

You are hereby required to appear in person before this court \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at (*time*) in the abovementioned action to give evidence or to produce books, papers or documents on behalf of the \_\_\_\_\_ (*Where documents are required to be produced, add:-*)

and to bring with you and then produce to the court the several books, papers or documents specified in the list hereunder.

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

Clerk of the Court

***List of books, papers or documents to be produced***

Date	Description	Original or Copy

**Form 16 (Section 32(2))**

**Warrant for payment of fine or arrest and imprisonment of witness in default**

In the matter between:

Plaintiff

and

Defendant

To the Messenger, and to the Officer-in-Charge of the \_\_\_\_\_ Prison. Whereas \_\_\_\_\_ of \_\_\_\_\_ has been duly subpoenaed to give, evidence (or to produce certain books, papers or documents, as the case may be) in the above matter before this court at \_\_\_\_ (time) on the \_\_\_\_\_ day of \_\_\_\_\_, and has made default.

And whereas this Court has imposed upon the said \_\_\_\_\_ for his said default a fine of M \_\_\_\_\_ and for non-payment has committed him to the abovementioned prison for a period of \_\_\_\_\_; This is therefore to authorise and require you, the said Messenger, to arrest the said \_\_\_\_\_ and, unless he shall pay to you the said sum of M \_\_\_\_\_ to deliver him to the Officer-in-Charge of the \_\_\_\_\_ Prison together with this warrant to be safely kept there until he shall have paid the said sum of M \_\_\_\_\_ or until the expiration of the said period of \_\_\_\_\_ from the day on which the said \_\_\_\_\_ shall be received into or retained in the said prison by virtue of this warrant whichever of the two shall first happen or until the said \_\_\_\_\_ shall be otherwise legally discharged;

And this is to command you, the said Officer-in-Charge of the \_\_\_\_\_ Prison, to receive and safely keep the said \_\_\_\_\_ as aforesaid.

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

Chief/Senior/Resident/Magistrate/Class/I/II/III \_\_\_\_\_

**Form 17 (Section 32(3))**

### Warrant for the arrest of a witness in default

In the matter between:

Plaintiff

and

Defendant

(1) To the Messenger

Whereas \_\_\_\_\_ of \_\_\_\_\_ has been duly subpoenaed to give evidence (or to produce certain books, papers or documents, as the case may be) in the above matter before this Court on the \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ (time), and has made default;

This is therefore to authorise and require you to arrest the said \_\_\_\_\_ and bring him/her before this Court on the \_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ (time), then and there to give evidence and to be otherwise dealt with according to law.

(2) To the Officer-in-Charge of the \_\_\_\_\_ Prison: \_\_\_\_\_ You are hereby commanded to receive the said \_\_\_\_\_ and to keep him/her safely until such time as he/she shall be removed to have him/her before the court in accordance with the first period of this warrant or until he/she shall be otherwise lawfully discharged.

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

Chief/Senior/Resident/Maa/Class/I/II/III \_\_\_\_\_

### Form 18 (Rule 54) Security on arrest, attachment or interdict *ex parte*

In the matter between:

Applicant

and

Respondent

Whereas \_\_\_\_\_ of \_\_\_\_\_ has applied for the issue of a warrant for the arrest of \_\_\_\_\_ (or for an order for the attachment of or interdict against the goods of \_\_\_\_\_ at \_\_\_\_\_) and the court has fixed the security to be given by the said \_\_\_\_\_ in the sum of M \_\_\_\_\_;

Now, therefore, the said \_\_\_\_\_ binds himself to satisfy any lawful claim by the said \_\_\_\_\_ against the said \_\_\_\_\_ for damages which the said \_\_\_\_\_ may suffer by reason of the said arrest/attachment/interdict in case the said arrest/attachment/interdict be hereafter set aside;

And \_\_\_\_\_ of \_\_\_\_\_ hereby binds himself as surety for and co/principal debtor with the said \_\_\_\_\_ in a sum not exceeding the said sum of M \_\_\_\_\_ for the due fulfilment by the said \_\_\_\_\_ of the obligation hereby undertaken by him.

Signed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_

Applicant

Witnesses:

1. \_\_\_\_\_

Signature and address

\_\_\_\_\_

Surety and co-principal debtor

2. \_\_\_\_\_

Signature and address

### **Form 19 (Section 51)** **Security when execution is stayed pending appeal**

In the matter between:

\_\_\_\_\_ Judgment Creditor

and

\_\_\_\_\_ Judgment Debtor

Whereas the said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ obtained judgment in this Court against the said \_\_\_\_\_ for the sum of M \_\_\_\_\_ together with a sum of M \_\_\_\_\_ for costs;

And whereas the said \_\_\_\_\_ has applied to the court for a stay of execution pending appeal/review proceedings and the court has directed that execution be stayed accordingly subject to the said \_\_\_\_\_ giving security within \_\_\_\_\_ days;

Now therefore, the said \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ as surety and co-principal debtor for the said \_\_\_\_\_ hereby bind themselves jointly and severally to satisfy the said judgment and any further liability which may arise by way of damages or otherwise by reason of such stay, so far as such judgment may not be reversed or varied on appeal/review; and further severally \_\_\_\_\_

*(insert any further terms required)*

Judgment Debtor \_\_\_\_\_

Witnesses: \_\_\_\_\_

1. \_\_\_\_\_

Signature and address

\_\_\_\_\_

Surety and Co-principal Debtor

2. \_\_\_\_\_

Signature and address

### **Form 20 (Section 51)**

### Security when execution is allowed pending appeal

In the matter between:

Judgment Creditor \_\_\_\_\_

and

Judgment Debtor \_\_\_\_\_

Whereas the said \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ obtained judgment in this court against the said \_\_\_\_\_ for the sum of M \_\_\_\_\_ together with a sum of M \_\_\_\_\_ for costs;

And whereas the said court notwithstanding that the said \_\_\_\_\_ has noted an appeal against the judgment, has directed the judgment to be carried into execution upon security being given for restitution;

Now, therefore, the said \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ as surety and co--principal debtor for the said \_\_\_\_\_ hereby bind themselves jointly and severally to refund the above sums of M \_\_\_\_\_ and M \_\_\_\_\_ should the judgment of the said court be reversed and further severally

\_\_\_\_\_  
(insert any further terms required).

Signed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_

Judgment Creditor \_\_\_\_\_

Witnesses: \_\_\_\_\_

1. \_\_\_\_\_

Signature and address

\_\_\_\_\_

\_\_\_\_\_

Surety and Co-principal Debtor

\_\_\_\_\_

2. \_\_\_\_\_

Signature and address

\_\_\_\_\_

### Form 21 (Section 17) Warrant of ejectment

In the matter between:

Plaintiff

and

Defendant

To the Messenger of the Court.

Whereas in this action the said plaintiff on the \_\_\_\_\_ day of \_\_\_\_\_ obtained judgment for the ejectment of the said defendant from the premises or land known as \_\_\_\_\_

This is to authorise and require you to put the said plaintiff into possession of the said premises or land by removing therefrom the said defendant for which this shall be your warrant.

And return to this court what you have done by virtue hereof.



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

By Order of the Court.

Clerk of the Court \_\_\_\_\_

Plaintiff/Plaintiff's Attorney Address: \_\_\_\_\_

**Form 22 (Section 17)**  
**Warrant for delivery of goods**

In the matter between:

Plaintiff

and

Defendant

To the Messenger of the Court.

Whereas in this action the court ordered that the defendant should deliver to the plaintiff a certain  
\_\_\_\_\_ (*describe the thing to be delivered*);

This is to authorise and require you to take the said \_\_\_\_\_ (*describe the thing*) from the defendant and  
place the plaintiff in possession thereof, for which this shall be your warrant;

And return to this court what you have done by virtue hereof.

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

By Order of the Court.

Clerk of the Court \_\_\_\_\_

Plaintiff/Plaintiff's Attorney \_\_\_\_\_

Address:

**Form 23 (Rules 41, 42, 43)**

**Warrant of execution against property**

In the matter between:

Execution Creditor

and

Execution Debtor

To the Messenger:

Amounts to be levied

(with costs of execution)

	M	Whereas in this action the said on the ____ day of _____ obtained judgment in the above-mentioned Court against the said _____ of _____ for the several sums set out in the margin hereof amounting _____ in all to the sum of M _____ (of which M _____ has since been paidSubtotal _____ This is therefore to authorise and require you to raise on the property of the said _____ the aforesaid sum of M and _____ and return to this court what you have done by virtue hereof.
Judgment debt	_____	
Costs	_____	
Cost of issuing warrant	_____	
Costs of appeal	_____	
Less amount paid since judgement	_____	

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

By Order of the Court \_\_\_\_\_

Clerk of the Court \_\_\_\_\_

Attorney for Execution Creditor \_\_\_\_\_

Address:

NOTE—

- (1) If the execution debtor pays the amounts specified in the margin hereof with messenger's charges of M \_\_\_\_\_ within half an hour of the entry of the Messenger he will not be required to pay any further costs of execution. The amount of any payment made by the execution debtor and the date thereof shall forthwith

be endorsed on the original and copy hereof, which endorsement shall be signed by the messenger and countersigned by the execution debtor or his representative.

- (2) This execution may be paid out before sale, subject to the payment of the messenger's fees and charges of execution, which may be required to be taxed.
- (3) The only immovable property upon which this warrant may be *(set out its situation and nature sufficiently to enable it to be identified)*.
- (4) In the case of reissue the fact and date of reissue and any increase or reduction in the amounts to be levied shown on the face hereof shall be set out in a note endorsed hereon and signed by the execution creditor or his attorney and by the clerk of the court.
- (5) Any alterations made herein shall be initialled by the clerk of the court before the warrant is issued or reissued by him.

### Form 24 (Rule 41) Notice of attachment in execution

In the matter between:

Execution Creditor

and

Execution Debtor

To \_\_\_\_\_ Execution Debtor.

Take notice that I have this day laid under judicial attachment the property compromised in the above inventory in pursuant of a warrant directed to me under the hand of the Clerk of the Court for the district of \_\_\_\_\_, whereby I am required to cause to be raised of your property in this district the sum of M \_\_\_\_\_ and M \_\_\_\_\_ costs recovered against you by the judgment of the said Court in this action and my charges in respect of the said warrant.

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

Messenger of Court \_\_\_\_\_

### Form 25 (Rule 44(2)) Interpleader summons

In the matter between:

Execution Creditor

and

Execution Debtor

To: \_\_\_\_\_ (Execution Creditor)

\_\_\_\_\_ and \_\_\_\_\_ (claimant) \_\_\_\_\_. You are hereby summoned to appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ (time), to have it determined and declared whether certain moveable property, to with \_\_\_\_\_ attached on the \_\_\_\_\_ day of \_\_\_\_\_ by the Messenger by virtue of a warrant of execution issued by this Court on the \_\_\_\_\_ day of \_\_\_\_\_, in the action in which you, the said \_\_\_\_\_ obtained judgment for the sum of M \_\_\_\_\_ against \_\_\_\_\_ of \_\_\_\_\_ (execution debtor) and which said property is claimed by you, the said \_\_\_\_\_ as being your property, is or is not your property or to appear before this Court to have the claim by you, the said \_\_\_\_\_ (claimant) to the proceeds of property, namely \_\_\_\_\_ attached on the \_\_\_\_\_ day of \_\_\_\_\_ by the Messenger by virtue of a warrant of execution issued out of this court on the \_\_\_\_\_ day of \_\_\_\_\_ in the action in which the

execution creditor obtained judgment for the sum of M \_\_\_\_\_ against \_\_\_\_\_ of (*execution debtor*) and which property was sold in execution on the day of adjudicated upon.

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

Clerk of the Court \_\_\_\_\_

### **Form 26 (Rule 44(1)) Interpleader summons**

In the matter between:

The Applicant

and

The First Claimant

The Second Claimant

To the Messenger

Whereas \_\_\_\_\_ of \_\_\_\_\_ has interpleaded in this Court as to \_\_\_\_\_ (*state subject matter*) which is adversely claimed by \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ hereinafter called the claimants;

Summons the said claimants that they appear before the above-mentioned court on the \_\_\_\_ day of \_\_\_\_ at (*time*), and that they do then severally state the nature and particulars of their several claims and whether they will maintain or relinquish the same.

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

Clerk of the Court \_\_\_\_\_

### **Form 27 (Rule 38) Security by judgment creditor**

In the matter between:

Execution Creditor

and

Execution Debtor

Whereas the said execution creditor obtained judgment in this court against the said execution debtor on the \_\_\_\_ day of \_\_\_\_ in the sum of M \_\_\_\_\_ together with the sum of M \_\_\_\_ for costs;

And whereas under the said judgment execution has been issued and property/a debt/emoluments has/have been attached;

Now therefore the said execution creditor binds himself to the Messenger that if the attachment be hereafter set aside, he will satisfy any lawful claim against him by the said execution debtor for damages suffered by the said execution debtor by reason of the said attachment.

And \_\_\_\_\_ of \_\_\_\_\_ binds himself as surety and co-principal debtor in a sum not exceeding M \_\_\_\_\_ for the due fulfilment by the said execution creditor of the obligation undertaken by him.

Signed and dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_

Execution Creditor \_\_\_\_\_

Witnesses:

1. Signature and address \_\_\_\_\_

Surety and Co-principal Debtor \_\_\_\_\_

**Form 28 (Rule 45)**  
**Affidavit in support of application for a garnishee order**

In the matter between:

The Judgment Creditor

and

The Judgment Debtor

\_\_\_\_\_ of \_\_\_\_\_

of duly sworn, states,

- (1) That he is the abovenamed Judgment Creditor (or, that he is duly authorised by the abovenamed judgment creditor to act for him in this matter).
- (2) The judgment creditor has obtained judgment against the judgment debtor in this court (or, in the Subordinate Court for the district of \_\_\_\_\_ a certified copy of which judgment is annexed hereto marked "A") on the \_\_\_\_\_ day of \_\_\_\_\_ in an action numbered \_\_\_\_\_ for the sum of M \_\_\_\_\_ and costs amounting to M \_\_\_\_\_
- (3) The said judgment is still unsatisfied to the amount of M \_\_\_\_\_
- (4) The garnishee resides (or, carries on business as a \_\_\_\_\_ or, is employed as \_\_\_\_\_) at \_\_\_\_\_ within the district of this court and is indebted to the judgment debtor in the sum of M \_\_\_\_\_ (or in an amount of M \_\_\_\_\_ to the applicant unknown) for \_\_\_\_\_ (*set out the cause of the debt*) (not) being for salary or wages.
- (5) The said debt is due and payable on this the \_\_\_\_\_ day of \_\_\_\_\_, and (*if the debt is for salary or wages*),
- (6) The judgment debtor will, after the execution of the order herein sought, have a sufficient income, that is M \_\_\_\_\_ per month, arising from (*set out the source of such Income*) \_\_\_\_\_ to maintain himself and those dependent upon him, that is (*Set out the numbers and relationship to the judgment debtor of his dependants*).

Signature \_\_\_\_\_

Jurat

**Form 29 (Rule 45)**  
**Garnishee order**

In the matter between:

\_\_\_\_\_ Judgment Creditor

and

\_\_\_\_\_ Judgment Debtor

\_\_\_\_\_ (*Particulars for the identification of judgment debtor* \_\_\_\_\_ including business and residential addresses).

\_\_\_\_\_ Garnishee

\_\_\_\_\_ (Address of Garnishee)

Whereas it has been made to appear to the above Court that the garnishee is indebted to the judgment debtor and that the debt is now due and payable and is not for salary or wages; or, that the debt is now due and payable and

that the judgment debtor will, after the execution of this order, have a sufficient balance of income to maintain himself and those dependent upon him;

It is Ordered—

That the said debt to an amount not exceeding M \_\_\_\_\_ be attached to answer a judgment recovered against the judgment debtor by the judgment creditor in the \_\_\_\_\_ Court on the \_\_\_\_\_ day of \_\_\_\_\_ for the sum of M \_\_\_\_\_ on which judgment the sum of M \_\_\_\_\_ remains due and unpaid.

That the garnishee do pay to the Messenger of this Court the said sum of M \_\_\_\_\_, together with M \_\_\_\_\_ the costs hereof (but not exceeding in all the sum of M \_\_\_\_\_) out of his said debt, to the judgment debtor, or, failing such payment, that the garnishee appear before this court on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, then and there to show cause why he should not pay the same.

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

By Order of the Court

Clerk of the Court \_\_\_\_\_

Judgment Creditor / Attorney for Judgment Creditor \_\_\_\_\_

To the above-named Garnishee:—

If the debt due by you to the above-named judgment debtor was not owing both of the day and hour above-mentioned and at the time when this order was served upon you, you should appear at the court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over.

To the above-named Judgment Debtor:—

If the judgment against you has been satisfied or is, for any reason no longer operative against you, or if the debt is not due and payable or is due to you for salary or wages and its attachment will not leave you with a sufficient amount to enable you to maintain yourself and those dependent on you, you should appear at the Court and prove the facts; but you cannot be heard on any other point.

### **Form 30 (Rule 27)**

#### **Notice of abandonment of specified claim, exception or defence**

In the matter between:

The Plaintiff

and

The Defendant

Take notice that the plaintiff/defendant hereby abandons the undermentioned claim, exception/defence/(as the case may be) set out by him in his summons/plea/reply (as the case may be).

Particulars: \_\_\_\_\_

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

Plaintiff/Plaintiff's Attorney \_\_\_\_\_

Defendant/Defendant's Attorney \_\_\_\_\_

To: \_\_\_\_\_

### **Form 31 (Rule 48)**

### Agreement not to appeal

In the matter between:

The Plaintiff/Applicant

and

The Defendant/Respondent

We (*the respective attorneys of*) the abovenamed plaintiff and defendant do hereby agree under the provisions of section 52 of the Subordinate Courts Order, 1988, that the decision of the above-named Court in the abovenamed action shall be final.

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

Plaintiff/Attorney \_\_\_\_\_

Witnesses:

1. \_\_\_\_\_  
Signature and address

Defendant/Attorney

2. \_\_\_\_\_  
Signature and address

### Form 32 (Rule 3) Request to inspect record

I, \_\_\_\_\_ of \_\_\_\_\_ hereby apply to inspect the record of case No \_\_\_\_\_ of \_\_\_\_\_ (*If number of record is not known, then as follows:—*)

I, \_\_\_\_\_ hereby apply to inspect the record of the case between \_\_\_\_\_ (plaintiff) and \_\_\_\_\_ (defendant).

Search to begin with the month of \_\_\_\_\_

Signature \_\_\_\_\_

(*If the applicant is a party to the case or the attorney of such party, his capacity should be stated after his signature*).

### Form 33 (Rule 26) Commission *de bene esse*

In the matter between:

Plaintiff

and

Defendant

To \_\_\_\_\_ of \_\_\_\_\_

Greeting:

Under and by virtue of the authority vested in me by section 34 of the Subordinate Courts Order, 1988, I do hereby commit to you full power and authority as a Commissioner, of this Court to examine \_\_\_\_\_ of \_\_\_\_\_ (*and such other witnesses as the parties to this suit may desire to call*) and to take the evidence on oath of the said witness(es) in the above suit now pending in this court.

Given under my hand at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_

Chief/Senior/Resident/Magistrate/Class/I/II/III \_\_\_\_\_

**Form 34 (Rule 60)**  
**Criminal record book**

Date of hearing and Case no.	Name and description of Accused	Crime or offence	Verdict and Sentence	Remarks

**Form 35 (Rules 30, 61)**  
**Oath/affirmation of office of shorthand-writer**

I, \_\_\_\_\_ do swear solemnly and sincerely affirm that I will faithfully accurately and to the best of my ability take down in shorthand cause to be recorded by mechanical means, as directed by the Judicial Officer, the proceedings in any case in which I may be employed thereto as in officer of the Court and that I will similarly when required so to do transcribe the same or any other record taken by any Judicial Officer or by any other officer of the Court.

Sworn/Affirmed before me at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_

Judicial Officer \_\_\_\_\_

**Form 37 (Rule 28)**  
**Notice to third party**

In the matter between:

\_\_\_\_\_ Plaintiff

and

\_\_\_\_\_ Defendant

and

\_\_\_\_\_ Third Party

TO THE ABOVE-NAMED THIRD PARTY:

TAKE NOTICE that the above-named plaintiff has commenced proceedings against the above-named defendant for the relief set forth in the summons, a copy of which is herewith served upon you, together with all other pleadings filed to date hereof.

The above-named defendant claims a contribution or indemnification (or such other ground as may be sufficient to justify a third party notice) on the grounds set forth in the annexure hereto.

If you dispute those grounds or if you dispute the claim of the plaintiff against the defendant you must give notice of your intention to defend, within seven days of service of this notice upon you. Such notice must be in writing and filed with the clerk of the Court and a copy thereof served on the above-named defendant at the address set out at the foot of this notice. It must give an address referred to in Rule 13(3)(d) for the service upon



you of notices and documents in the action. Within seven days of your giving such notice you must file a plea to the plaintiffs claim against the defendant or a plea to the defendant's claim against you, or both such pleas.

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

\_\_\_\_\_  
Defendant's Attorney

(Address)

To: \_\_\_\_\_

\_\_\_\_\_  
And to: Plaintiffs Attorney

(Address)

## Second Schedule

### Table A - Costs

#### Part I – General provisions

1. In this Table, unless the context otherwise requires—

"amount in dispute" means,

- (a) where costs are awarded to the plaintiff, the amount of the judgment, and
- (b) where costs are awarded to the defendant, the amount of the claim;

"amount of the claim" includes, where more than one claim is involved in the action, the total of the amounts of all the claims, exclusive of interest and costs; "amount of the judgment" includes, where more than one claim is involved in the action, the total of the amounts involved in the judgment, exclusive of interest and costs;

"demand" means a notice in writing to a debtor from his creditor's Attorney, sent to the debtor in one or other of the manners provided for service of process (including registered post), demanding payment of the debt within a reasonable time thereafter, whether such demand was or was not required by law before action;

"scale" means any one of the three scales of cost, scales, X, Y or Z, as the case may be, contained in Part III and Part IV of this Table.

2.
  - (a) Costs in defended actions shall be taxed, where the amount in dispute does not exceed M1,000, on Scale X. Where such amount exceeds M1,000 but does not exceed M5,000, costs shall be taxed on Scale Y and where such amount exceeds M5,000 costs shall be taxed on Scale Z.
  - (b) Costs in other matters and interpleader proceedings shall be taxed as set out in Part IV of this Table.
  - (c) When the Court has made an order in terms of Rule 33(8) whereby costs are awarded on a higher scale, costs shall be taxed on the scale mentioned in the order of Court.
  - (d) In the event of a matter being settled at any time, the costs shall be taxed on the scale laid down in the agreement of settlement;
  - (e) Where the amount in dispute is not apparent on the face of the proceedings, or, in the event of there being no agreement as to the scale of fees applicable, the costs shall be computed in

accordance with Scale X; but the Court may, on the application of either party, assess the amount in dispute and determine the scale of fees to be applied at the taxation:

- (f) Claims for ejectment shall be computed at two months' rent of the premises.
- 3. Costs taxable under rule 33(19) shall be deemed to have been awarded under a judgment for the amount paid into Court or a judgment in terms of the settlement as the case may be.
- 4. The rate at which costs are computed shall not be increased by reason of any claim for confirmation of any interdict or other interlocutory order.
- 5. Fees to Counsel shall be allowable on taxation only in cases falling within Scale Y or Scale Z, or where the court has made an order in terms of rule 33(8) and may not be so allowed unless payment thereof is vouched by the signature of Counsel.
- 6. (a) Where the amount allowed for an item is specified, the amount is inclusive of all necessary copies, attendances and services (other than services through a Messenger) in connection therewith;  
(b) Where such amount is not specified, unless otherwise provided,
  - (i) the drawing of documents shall be allowed at M10,00 for each folio;
  - (ii) service shall be allowed at M5,00 for each necessary service;
  - (iii) copies for filing and service shall also be allowed;
  - (iv) where any document appears to the Court to be unnecessarily prolix the Court may disallow all or any part of the charge therefor;
  - (v) where printed forms of documents are available, the charges for copying shall be limited to the necessary matters inserted in such printed documents.
- 7. A folio constitutes 100 written or printed words, four figures being reckoned as one word.
- 8. Unless otherwise provided, where a charge is allowed;
  - (a) for perusing, it shall be allowed at M7,50 per folio in respect of any document or pleading necessarily perused;
  - (b) for copying, it shall be allowed at M1,00 per page;
- 9. Where there are more defendants than one, M5,00 shall be added for each additional defendant, not exceeding eight in number, to the amounts allowed in respect of items numbered 1 and 2 of Part II, item numbered 4 of Part III and items numbered 1, 4, 5, 14 and 18 of Part IV of this Table.
- 10. (a) Where the judgment debt is payable by instalments in terms of the judgment or in terms of a recurent garnishee order attaching future earnings in satisfaction of the judgment, the fees shall be taxable immediately the judgment or garnishee order is given, but shall be recoverable only on the payment of each instalment.  
(b) A fee of 10% on each instalment collected in reduction of the capital and costs of the action shall be allowed, subject to a maximum amount of M100,00 on each instalment.
- 11. The Clerk of the Court shall on taxation disallow any charge unnecessarily incurred.
- 12. Where the fee under any item is calculated on an hourly basis, the total number of hours on any one day shall be added together and the fee calculated on such total for that day.

## Part II – Undefended actions

Item		
1	Registered letter of demand.	M10,00
2	Summons: if the amount of the claim does not M100,00.	M10,00
3	<p>Judgment, if the amount of the claim does not exceed M100,00.</p> <p>Note — where the amount of the claim exceeds M 100,00 the fees under items 2 and 3 shall be increased by M 2,00 for every M100,00 or part of M100,00 exceeding the first M100,00.</p>	M 5,00
4	Notices under Rule 12(1)(b).	M10,00
5	Affidavit: The amounts prescribed under paragraph 6(b) of Part 1.	
6	Attending Court when claim referred to Court for judgment - as allowed under item 26 of Part III.	
	<p>Note— The amount of fees allowable under items 4, 5 and 6 shall without taxation be included in the amount of the costs for which judgment is entered.</p>	

**Part III – Defended actions**

Item		Scale X	Scale Y	Scale Z
		Up to M100,00	M1000,00 to M5000,000	In excess of M5000,00
1	Instructions to sue or defend or to counterclaim or defend counterclaim.	M 40,00	M 80,00	M120,00
2	Instructions on commission <i>de bene esse</i> .	M 10,00	M 12,50	M 15,00
3	Demand.	M 10,00	M 12,50	M 15,00
4	Summons.	M 25,00	M 50,00	M 75,00
5	Appearance.	M 10,00	M 10,00	M 10,00
6	Notice under Rule 12(1) (b) and (2).	M 10,00	M10,00	M10,00
7	Plea.	M25,00	M50,00	M75,00
8	Claim in reconvention.	M 20,00	M 30,00	M50,00
9	Instructions, after receipt of Plea, including reply if necessary.	M 20,00	M 30,00	M 50,00
10	Drawing up of all documents not specifically mentioned, including request for further particulars, schedule of documents, all affidavits,	M 10,00	M 10,00	M 10,00

	subpoenas, any notice not otherwise provided for and drawing up of statement by witnesses, per folio.			
11	Consent to adjournment or extension of time	M 10,00	M 10,00	M 10,00
12	Attendance, applying for costs on discontinuance.	M20,00	M 30,00	M 50,00
13	Production of documents for inspection, per half hour.	M10,00	M 15,00	M 20,00
14	Production of documents, per half hour.	M 10,00	M 15,00	M 20,00
15	Notice of trial or reinstatements.	M10,00	M10,00	M 10,00
16	Preparing for trial (if Counsel not employed).	M75,00	M150,00	M 200,00
17	Attending Court when action on roll but adjourned.	M20,00	M30,00	M 50,00
18	Attending Court on trial or at examination on commission, for each half hour or part of a half hour spent in Court while case is being heard:			
	(a) where Counsel not employed;	M20,00	M40,00	M 60,00

	(b) where Counsel employed;	M 5,00	M15,00	M 20,00
19	Attending Court to hear reserved judgment.	M 20,00	M 30,00	M 50,00
20	Attending Pre Trial Conference; for each hour or part of an hour spent in such conference.	M 20,00	M 30,00	M 50,00
21	Inspection <i>in loco</i> by parties or where the Court so orders	M 20,00	M 30,00	M 50,00
22	Necessary consultations; for each half hour or part of a half hour spent in such consultations.	M 20,00	M 40,00	M 60,00
23	Attendance at settlement negotiations; for each half hour or part of a half hour spent in such negotiations.	M 20,00	M 40,00	M 60,00
24	Agreement not to appeal.	M 7,50	M 7,50	M 7,50
25	Correspondence and attendance; for each necessary letter or telegram within or received, including copy to keep and each necessary attendance not otherwise provided for; Provided that a charge for perusing shall not be allowed in addition to the fee	M 3,50	M 7,50	M 7,50

	herein provided for.			
26	The Court may on application made at the hearing, allow in addition to the fee prescribed under item 16 above, a refresher fee in partly heard trials.	M40,00	M80,00	M120,00

### Part IV – Other matters

(Exceptions, applications to strike out, applications for summary judgment, interlocutory applications, arrest, interdict and *ex parte* applications or applications to review judgment, order or taxation).

Item		Scale X	Scale Y	Scale Z
1	Instructions to make application or to oppose or to slow cause	M 20,00	M 30,00	M 50,00
2	Drawing up of all documents affidavits, applications and notices, orders.	The amount as prescribed under paragraph 6(b) of Part I		
3	Attending Court on hearing.			
	(a) if unopposed.	M 20,00	M 30,00	M 50,00
	(b) If opposed (where Counsel is not employed) per half hour or part of a half hour spent in Court.	M 20,00	M 30,00	M 50,00
	(c) If opposed (where Counsel is employed per half hour or part of a half hour spent in Court	M 5,00	M 15,00	M 20,00
Note:- the Court may, on application made at the bearing, allow, in addition to the fee prescribed under subparagraph (b), a fee for preparing argument under item 16 of Part III.				
<b>Interpleader summons</b>				
Item		Scale X	Scale Y	Scale Z
4.	Instructions:			
	(a) where interpleader initiated by the Messenger.	M 15,00	M 25,00	M 40,00



	(b) otherwise	M 15,00	M 30,00	M 50,00
5.	Summons (if not sued out by Messenger)	M 15,00	M 30,00	M 50,00
6.	Affidavit	The amount as prescribed under paragraph 6(b) of Part I.		
7.	Attending Court on return of Summons (if matter not heard).	M 20,00	M 30,00	M 50,00
8.	Attending Court on trial of interpleader issue.	The amounts as prescribed under item 18 of Part III		
9.	Bill of Costs:	5 per centum of the fees allowed.		
10.	Notice of taxation and service.	M 10,00	M 10,00	M 10,00
11.	Attending taxation.	5 per centum of the amount allowed; Provided that if more than 25 per centum of the fees is taxed off, this attendance fee shall not be allowed.		
12.	Notice of application for review of taxation and service, including affidavit where necessary.	The amount as prescribed under paragraph 6(b) of Part I.		
13.	Attending on review of taxation, per half hour or part of a half hour in Court while review is being heard.	M 10,00	M 15,00	M 25,00
<b>Execution</b>				
14.	(a) issue of warrant of execution, ejectment, arrest,	M 10,00	M 15,00	M 20,00

	delivery up of possession.			
	(b) for reissue thereof.	M 5,00	M 7,50	M 10,00
15.	Inclusive fee for work involved in releasing of attachment of movable property.			
16.	Inclusive fee for work done in connection with sale in execution of immovable property (excluding work for which fees are already provided for elsewhere and the drawing up of the condition of sale).	M 25,00	M 30,00	M 50,00
17.	Security for restitution, where necessary	M 10,00	M 15,00	M 20,00
<b>Where counsel is employed</b>				
18.	Instructions to Advocate on application or exception where allowed.	M 15,00	M 30,00	
19.	Instructions on trial.	M 15,00	M 30,00	
20.	Drawing brief on exceptions or application, where allowed.	The amount as prescribed under paragraph 6(b) of Part I.		
21.	Drawing brief on trial:	The amount as prescribed under paragraph 6(b) of Part I.		

22.	Attending each necessary consultation with Counsel (per half hour)	M 20,00	M 40,00	M60,00
<b>Fees to counsel</b>				
23.	With brief to argue exception or application (a fee to Counsel on application shall only be allowed where the Court certified that the briefing of Counsel was warranted).		M150,00	M200,00
24.	With trial brief for the first day—		M250,00	M500,00
25.	Each necessary consultation (per half hour).		M 40,00	M 60,00
26.	For every day exceeding one, on which evidence is taken or arguments heard, a refresher of—		M150,00	M250,00
27.	Where trial is adjourned upon payment of costs of the day, as part of such costs (only by the party requesting such adjournment).		M 75,00	M 100,00
28.	Drawing pleadings.		M 40,00	M 60,00
<p>Note:- a fee shall be allowed when the case is settled or withdrawn or postponed at the instance of any party on or before the date of hearing, as follows:</p> <p>(i) not more than two days prior to the date of hearing: the fee otherwise allowable on taxation for the first day's hearing;</p>				

- (ii) not less than three days and not more than seven days prior to the date of hearing: two thirds of the fee under sub-paragraph (i); and;
- (iii) not less than eight days and not more than twenty-one days prior to the date of hearing: half of the fees under sub-paragraph (i).

**Travelling and subsistence allowances**

29. In any matter held in a Court more than eight kilometres distant from an Attorney's office there shall be allowed a travelling allowance (in addition to the fee on the brief) of M1,00 per kilometre for each kilometre between such Court and the Attorney's office on both the outward and return journeys.

Note:- Where a trial continues from day to day, or where portion of the trial so continues, the aforementioned allowances shall be allowed only once for such trial or for such portion of the trial, as the case may be.

30. A subsistence allowance for Advocates and Attorneys shall be allowed at the rate of M100,00 for every night it is necessary for the Advocate or Attorney employed to remain at the place where the Court is situated for the hearing of an appeal, cause or matter.

**Table B - Tariff of fees of messengers**

1.	<p>For service or attempted service of any summons or other process and endorsing the necessary return.</p> <p>Whenever any document to be served with any process is mentioned in such process, no fee shall be charged for the service of such document, otherwise the fee of M5,00 may be allowed in respect of each separate document served, provided that no such fee for the service of a separate document shall be allowed in respect of the service of process in criminal cases.</p>	M6,00
2.	Travelling allowance.	
	<p>(a) For the distance travelled reckoned from the office of the Messenger both on the forward and return journey, per kilometre or fraction of a kilometre, M1,00 except in the case of service of a criminal process where it shall be M0,50 per kilometre or fraction thereof.</p> <p>(b) Whenever it is found necessary for the Messenger to take an officer with him on any journey, M0,50 per kilometre shall be allowed for such officer.</p> <p>is sent by post, any part of the distances, postage only will be allowed for the full distance.</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</p>	

	<p>Messenger or Clerk of the Court, 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> <p><i>[Please note: numbering as in original.]</i></p> <p>(e) The above travelling allowances shall not be payable in cases where service is to be executed five kilometres or less from the office of the Messenger.</p>	
3.	<p>(a) Postage in civil matters: As per postal tariff.</p> <p>(b) Postage in criminal matters:</p>	Free
4.	For making an inventory, including the making of all necessary copies and time spent on stock taking: M2,50 for the first 30 minutes and thereafter M5,00 per hour or part thereof.	
5.	For drawing advertisement of sale of goods attached:	M5,00
6.	(a) When a writ is paid on presentation, 1 % on the amount of the writ, with a minimum fee of	M5,00
	(b) "When a writ is withdrawn by the judgment creditor, or the judgment debtor's estate is placed under sequestration before any immovable property is attached:	M5,00

	(c) When a writ is paid by the judgment debtor to the Messenger after moveable property has been attached but before sale, 3% on the amount so paid.	
	<p>(e) After sale in execution:-</p> <p>(i) For the first M 200.00 or less than that amount, 5 % of the amount.</p> <p>(ii) For every subsequent M 200.00 or less than such, 4 % of the amount.</p> <p>(iii) Commission shall not be allowed on the value of moveable 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</p>	
7.	Keeping possession of property seized:	
	<p>(a) for each officer (not exceeding two in number) necessarily left in possession, per day:</p> <p>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 Messenger for the sole purpose of retaining possession.</p> <p>(b) For removal and store, the reasonable and necessary expenses of such removal and storage; and if an animal has to be stabled and fed, the reasonable and</p>	M5,00

	<p>expenses of such stabling and feeding.</p> <p>(c) For herding and preserving livestock, the reasonable and necessary expenses of herding and preserving such stock.</p> <p>(d) Disbursements as above will be allowed only when actually and reasonably made, and on production of receipts therefor when such receipts are obtainable.</p> <p>(e) When no officer is left in possession, and no security bond is taken, but the moveable property attached remains under the supervision of the Messenger, a reasonable fee not exceeding M0,50 per day.</p> <p>(f) A Messenger may insure moveable property attached if it is necessary and he is authorised in writing by the judgment creditor to do so, and for effecting such insurance, he shall be allowed a fee of M5,00 in addition to the premium paid.</p>	
8.	For effecting an arrest:	M5,00
9.	For conveying a defendant to goal from the place of arrest, per kilometre or fraction of a kilometre;	M1,00
10.	For bringing a defendant to Court from the place of custody per day or fraction of a day:	M5,00
11.	For drawing and completing a bail bond, deed of security or indemnity bond:	M5,00
12.	For executing a writ of ejectment (per hour or part thereof):	M5,00



13.	For executing a writ of attachment of immovable property or an attachment ad fundandam jurisdictionem, including notices to the owner and the Registrar of Deeds and endorsing the necessary return:	M10,00
14.	Notice of attachment to a single lessee or occupier of the property:	M2,50
15.	For executing a writ of attachment of pension, salary, wages, and inheritance or rights of a similar character, including notices to the judgment debtor, the Treasury Executor, Master of the Court.	M10,00
16.	Notice to Registrar of Deeds withdrawing an attachment on immovable property:	M3,00
17.	For copies of writs and orders necessarily made (per page):	M0,50
18.	For notice of attachment to a headman or chief (if any) having jurisdiction in respect of the property:	M2,50
19.	For making a valuation or report for the purposes of sale, a minimum of M10,00 or otherwise M5,00 per hour	
20.	When a Messenger has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or stayed:	M10,00
21.	For ascertaining and recording the existence of 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

22.	For notifying the execution creditor of such bonds or encumbrances and the names and addresses of the persons in whose favour such bonds or encumbrances are registered:	M2,50
23.	For consideration of the notice of sale prepared by the execution creditor in consultation with the Messenger:	M2,50
24.	For verifying that the notice of sale has been published in the <i>Gazette</i> and newspaper:	M2,50
25.	For affixing a copy of the notice of sale on the notice-board of the Subordinate Court:	M4,00
26.	For considering the conditions of sale:	M5,00
27.	On the sale of immovable property by the Messenger as auctioneer, 2 1/2% of the proceeds of the sale with a minimum of	M50,00
28.	For giving transfer to the purchaser:	M10,00
29.	For preparing a plan of distribution of the proceeds (including necessary copies) and for forwarding a copy to the Clerk of the Court.	M12,50
30.	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:	M5,00
31.	For request to the Magistrate to pay out in accordance with the plan of distribution.	M2,50

32.	All disbursements actually made or liabilities incurred in the execution of process shall be subject to taxation by the Taxing Officer and the production of receipts when obtainable.	
33.	The fees and charges for all work reasonably and necessarily done in the service or execution of process for which no provision is made in this tariff shall be assessed, and every question arising under or relative to such tariff shall be determined by the Taxing Officer.	
34.	No fee may be charged for service of process in pauper cases, but the Messenger shall be entitled to receive his out of pocket expenses.	
35.	The Messenger's fees shall be added to the amount to be recovered under this tariff, and shall be chargeable against the judgement debtor.	

**Table C – Fees to assessors**

1.	For every attendance when the case is wholly or partially heard or when judgment is delivered (per hour or part thereof)	M60,00
2.	For every attendance when the case is not heard, or is postponed or settled on a plea of guilty to a lesser charge, otherwise.	M30,00
3.	For every attendance for the purpose of deliberations with the presiding judge (if this occurs otherwise than in circumstances described in (1) above).	
4.	Where an assessor's place of residence is 50 kilometres or more away from the Court house, and his attendance is required on the day or days following a hearing of a case and the assessor does not wish or it is inconvenient for him to return home, he shall be entitled to an accommodation allowance of M30.00 per night.	
5.	An assessor whose residence or place of business is more than 5 kilometres from the Court house shall be paid a travelling allowance at the rate of M1,00 a kilometre if travelling in his own vehicle, or to a refund of fare actually paid if travelling by public transport.	

**Table D – Court Fees**

1.	On every initial document commencing any action or application:	
	(a) If the total amount of the claim or claims or value of matter in dispute, where such value is stated in the summons or documents, does not exceed M100,00:	M4,50
	(b) Where the total amount exceeds M 100,00 but does not exceed M500,00:	M9,00
	(c) Where the amount exceeds M500,00 but does not exceed M2000,00:	M20,00
	(d) Where the amount exceeds M2000.00:	M30,00
	(e) Otherwise (including claims for ejection):	M4,50
2.	On any request to inspect any record (except when such request is made within seven days after judgement when no charge shall be made):	
	(a) If the correct number of the record is furnished:	M1,00
	(b) If no number or an incorrect number is furnished, for every month's records or part thereof required to be searched:	M1,00
3.	(a) For a copy of a record made by the Clerk of the Court, for every 100 words or part thereof:	M0,60
	(b) For each extra copy required, for every 100 words or part thereof:	M0,20

4.	For examining and certifying a copy of a record, for each 100 words or part thereof:	M0,25
5.	Request for a written judgement under rule 48(1)	M8,00
6.	Notice of appeal under section 16 of the Internal Security (Public Meetings and Prosecutions) Act Act 1966, from a direct given by a Peace Officer:	M20,00
7.	For appeal from the judgement of a Subordinate Court to the High Court:	

## NOTES

- (1) For the purpose of item 1, the expression “action” includes a claim in reconvention.
- (2) (a) Where any dispute arises between the clerk of the court and any person desiring to lodge any document, as to whether the document is or is not sufficiently stamped, the question shall be referred to a judicial officer, who shall decide the same in a summary manner.
- (b) Such judicial officer’s decision shall be final for the purpose of the action or matter in respect of which such document is lodged, but such decision shall be without prejudice to any other rights of any person interested.