

Rules



REPUBLIC OF NAMIBIA

Magistrates Court

INDEX TO AMENDMENTS:
(First combined set of rules published in GN R1108 of 1967)

Rules

1(2)(a)	:	GN R2222 of 1978
1(2)(b)	:	GN R3002 of 1969; GN 51115 of 1974
2(1)	:	GN R1338 of 1984; GN 75 of 2000
2(2)	:	GN R689 of 1976
4(1)(c)	:	GN R2222 of 1978
4(1)(d)	:	GN R689 of 1976
4(bis)	:	GN R2222OF 1978
4(ter)	:	GN R2222 of 1978
5(1)	:	GN R1115 of 1974; GN R2222 of 1978
5(3)	:	GN R2222 of 1978
5(5)	:	GN 75 of 2000
6(1)(a)	:	GN R2222 of 1978
6(1)(a)(iv)	:	GN R2222 of 1978
6(2)(c)	:	GN R3002 of 1969; GN R490 of 1970; GN R1115 of 1974; GN 75 of 2000
6(2)cA	:	GN R490 of 1970; GN R1115 of 1974; GN 75 of 2000
6(2)cB	:	GN R490 of 1970; GN R1115 of 1974; GN 75 of 2000
6(4)	:	GN R2221 of 1977
6(5)(a)	:	GN R1338 of 1984; GN 43 of 1997
7(3)(a)	:	GN R1449 of 1979; GN R1339 of 1982
7(3)(b)	:	GN R1449 of 1979; GN R1339 of 1982
8(1)(b)	:	GN R3002 of 1969; GN 75 of 2000
8(6)	:	GN R1115 of 1974; GN R689 of 1976
9(3)(e)	:	GN R689 of 1976
9(3)(g)	:	GN R1115 of 1974; GN 75 of 2000
9(6)	:	GN R689 of 1976
9(11)(c)	:	GN R3002 of 1969
9(13)(a)	:	GN R689 of 1976
9(13)(b)	:	GN R1115 of 1974 GN R689 of 1976
9(14)(a)	:	GN R689 of 1976
9(14)(b)	:	GN R689 of 1974
10	:	GN 43 of 1997
11(3)	:	GN R2222 of 1978
11(6)	:	GN R2222 of 1978
12(1)(a)	:	GN R689 of 1976
12(1)(a)(iii)	:	GN R689 of 1976; GN R2222 of 1978
12(1)(b)	:	GN R689 of 1976
12(1)(e)	:	GN 75 of 2000
12(2)(a)	:	GN R689 of 1976
12(2)(b)	:	GRN 200 of 2007
12(10)	:	GN 75 of 2000
13	:	GN 200 of 2007
13(2)	:	GN R1338 of 1984
13(3)	:	GN R490 of 1970; GN R1115 of 1974
13(4)(c)	:	GN R3002 of 1969; GN R490 of 1970; GN R1115 of 1974; GN 75 of 2000
13(4)(cA)	:	GN R490 of 1970; GN R1115 of 1974; GN 75 of 2000

13(4)(cB)	:	GN R3002 of 1969; GN R490 of 1970; GN R1115 of 1974; 75 of 2000
13(7)	:	GN 200 of 2007
14(2)(b)	:	GN R2221 of 1977
14(3)(a)	:	GN R1338 of 1984
15(1)	:	GN R947 of 1972
16(1)	:	GN R689 of 1976
17(1)(a)	:	GN R947 of 1972
18(2)(b)	:	GN R689 of 1976
18(11)	:	GN R689 of 1976; GN R1338 of 1984
19(7)(b)	:	GN R1338 of 1984
19(7)(c)	:	GN R1338 of 1984
19(9)	:	GN R1338 of 1984
19(13)	:	GN R947 of 1972
20(2)	:	GN R2221 of 1977
20(4)	:	GN R689 of 1976
20(5)	:	GN R689 of 1976
22(3)	:	GN R1139 of 1982
23(1)	:	GN R1139 of 1982
24(4)	:	GN R689 of 1976
24(6)	:	GN R689 of 1976
24(9)(a)	:	GN R689 of 1976
24(10)(a)	:	GN R689 of 1976
25(3)	:	GN R689 of 1976
27(3)	:	GN R689 of 1976
27(9)	:	GN R947 of 1972
29(16)	:	GN 75 of 2000
30(4)	:	GN R3002 of 1969
30(7)(a)	:	GN R1449 of 1979; GN R1139 of 1982; GN R1338 of 1984; GN 75 of 2000
30(7)	:	GN R261 of 1977
30(8)	:	GN R3002 of 1969
30(9)(a)	:	GN R1338 of 1984; GN 75 of 2000
30(9)(b)	:	GN R1338 of 1984; GN 75 of 2000
33(1)	:	GN 75 of 2000
33(5)(a)(ii)	:	GN R2222 of 1978
33(5)(a)(iii)	:	GN R2222 of 1978
33(5)(b)	:	GN R2222 of 1978
33(5)(aA)	:	GN R3002 of 1969; GN R947 of 1972; GN R1115 of 1974; GN R327 of 1978
33(9)	:	GN 75 of 2000
33(14)(a)	:	GN R2222 of 1978
33(14)(b)	:	GN R2222 of 1978
33(15)	:	GN R2221 of 1977
33(16)	:	GN R689 of 1976
33(19)	:	GN R689 of 1976
33(22)	:	GN R1139 of 1982
34(3)(c)	:	GN R490 of 1970; GN R1689 of 1983; GN 75 of 2000
34(4)	:	GN R947 of 1972

35(1)	:	GN R689 of 1976
35(2)	:	GN R689 of 1976
35(3)	:	GN R689 of 1976; GN 75 of 2000
35(5)	:	GN R689 of 1976
37(1)	:	GN R2222 of 1978; GN 43 of 1997
38(5)	:	GN R1115 of 1974; GN 75 of 2000
39(6)	:	GN R689 of 1976
41(1)(a)	:	GN R1115 of 1974; GN R1139 of 1982
41(7)(a)	:	GN R689 of 1976; GN R1314 of 1980
41(7)(e)	:	GN R1115 of 1974; GN 200 of 2007
41(8)(c)	:	GN 75 of 2000
42(2)	:	GN R1139 of 1982
43(2)	:	GN R2222 of 1978
43(6)(c)	:	GN 75 of 2000
43(14)(b)	:	GN R2221 of 1977
43(14)(d)	:	GN R1314 of 1980
43(14)(e)	:	GN R1314 of 1980
43(14)(g)(iv)	:	GN R1314 of 1980
45	:	GN R2222 of 1978
45(2)	:	GN R1115 of 1974; GN R2221 of 1977; GN R2222 of 1978
45(7)	:	GN R3002 of 1969; GN R2222 of 1978
45(11)	:	GN R3002 of 1969; GN R2222 of 1978
46(1)	:	GN R2221 of 1977; GN R2222 of 1978
46(2)	:	GN R2221 of 1977; GN R2222 of 1978
46(3)	:	GN R2221 of 1977
47	:	GN R2222 of 1978
48	:	GN R2222 of 1978
48(4)	:	GN R689 of 1976; GN R2222 of 1978; GN 75 of 2000
48A	:	GN 75 of 2000
49(3)	:	GN R1338 of 1984; GN 75 of 2000; GN 200 of 2007
49(11)	:	GN R947 of 1972
51(1)	:	GN R1115 of 1974; GN R689 of 1976; GN 75 of 2000
51(4)	:	GN R947 of 1972; GN R2221 of 1977; GN R1449 of 1979; GN 75 of 2000
51(7)(c)	:	GN R947 of 1972
51(8)(a)	:	GN 75 of 2000
52(1)	:	GN R1115 of 1974
54(2)	:	GN R689 of 1976
55(1)	:	GN R2221 of 1977
55A	:	GN R2221 of 1977
56(5)	:	GN R2221 of 1977; GN R1689 of 1983; GN R1946 of 1983
56(15)	:	GN R1338 of 1984
58	:	GN R689 of 1976; GN R2222 of 1978

59(6)	:	GN 75 of 2000
60(9)	:	GN 200 of 2007
62(1)	:	GN R947 of 1972; GN R689 of 1976; GN R1338 of 1984
62(2)	:	GN R689 of 1976
63	:	GN R2222 of 1978
65(4)(c)	:	GN R2221 of 1977
66(1)	:	GN R3002 of 1969
66(4)(a):		<i>GN R261 of 1977; GN R1449 of 1979; GN R1139 of 1982; GN R1338 of 1984; GN 75 of 2000</i>
66(5)	:	GN R3002 of 1969
66(7)(a)	:	GN R1338 of 1984; GN 75 of 2000
66(7)(b)	:	GN R1338 of 1984; GN 75 of 2000
67(1)	:	GN R2221 of 1977
67(3)(b)(iii)	:	GN R947 of 1976
68	:	GN R1115 of 1974

Annexure 1

Numerical Index	:	GN R2222 of 1978; GN 75 of 2000
Alphabetical Index	:	GN R2222 of 1978; GN 75 of 2000
Form 2	:	GN R3002 of 1969; GN R2222 of 1978; GN R1314 of 1980; GN 75 of 2000
Form 3	:	GN R3002 of 1969; GN R2222 of 1978; GN R1314 of 1980; GN 75 of 2000
Form 5A	:	GN R2222 of 1978; GN R1800 of 1981; GN R1338 of 1984
Form 5B	:	GN R2222 of 1978; GN R1800 of 1981; GN R1338 of 1984
Form 11	:	GN R1689 of 1983; GN R1338 of 1984
Form 13	:	GN R1689 of 1983
Form 17	:	GN R1314 of 1980; GN R1338 of 1984
Form 32	:	GN R947 of 1972
Form 38	:	GN R2222 of 1978
Form 39	:	GN R2222 of 1978
Form 40	:	GN R1139 of 1982
Form 41	:	GN R1139 of 1982
Form 42	:	GN R1139 of 1982

Form 51	:	GN R1115 of 1974
Form 52A	:	GN R2222 of 1978
Form 56	:	GN R2222 of 1978
Form 57	:	GN R2222 of 1978
Form 58	:	GN R2222 of 1978
Form 59	:	GN R2222 of 1978
Form 60	:	GN 75 of 2000

Annexure 2

Table A : GN R3062 of 1969; GN R490 of 1970; GN R947 of 1972; GN R1115 of 1974; GN R689 of 1976; GN R327 of 1978; GN R2222 of 1978; GN R1449 of 1979; GN R1314 of 1980; GN R1800 of 1981; GN R1139 of 1982; GN R1689 of 1983; GN R1338 of 1984; GN 148 of 1985; GN AG86 of 1989; GG537 of 1992; GN 75 of 2000

Table B	:	GN R3062 of 1969; GN R490 of 1970; GN R947 of 1972; GN R1115 of 1974; GN R2222 of 1978; GN R1314 of 1980; GN R1800 of 1981; GN R1338 of 1984; GN 148 of 1985; GN AG86 of 1989; GG537 of 1992; GN 75 of 2000
Table C	:	GN R947 of 1972; GN R1115 of 1974; GN R327 of 1978; GN R2222 of 1978; GN R1314 of 1980; GN R1800 of 1981; GN R1689 of 1983; GN R1946 of 1983; GN R1338 of 1984; GG537 of 1992; GN R43 of 1997; GN 75 of 2000; GN 200 of 2007.
Table D	:	GN R947 of 1972; GN R1115 of 1974; GN 75 of 2000
Table E	:	GN R1115 of 1974; GN R2222 of 1978; GN 75 of 2000
Appendix	:	GN R1752 of 1970; GN R652 of 1980; GN 36 of 1987

RULES OF THE MAGISTRATES' COURT ACT,

ACT 32 OF 1944

RULE 1

1 GENERAL

(1) The provisions contained in rules 19, 21 and 23 to 26, inclusive, of these rules shall be applicable only if-

- (a) the plaintiff has not applied for summary judgment; or
 - (b) 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) (a) With the exception of forms 2, 3, 5A and 5B which shall in all respects conform to the specimens, the forms contained in Annexure 1 may be used with such variation as circumstances require. Non-compliance with this rule shall not in itself be a ground for exception but at any court in which a machine has been installed for the purpose of facilitating the issue of summonses, the clerk of the court may refuse to issue any summons purporting to be in the form of form 2 or 3 but which does not comply with the prescribed requirements or to comply with a request contained in form 5A or 5B.

[Para. (a) of sub-rule (2) amended by GN R.2222 of 1978.]

- (b) 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 or on foolscap paper: Provided that after the expiration of a period of 12 months from the commencement of these rules such process or documents or copies other than documents or copies filed of record as documentary proof shall be on such A4 standard paper only.

[Para. (b) amended by GN R.3002 of 1969 and by GN R.1115 of 1974.]

- (c) Any process or notice or document issued or delivered shall be endorsed with the name and address of the party issuing or delivering it.

RULE 2

2 DEFINITIONS

(1) In these rules and in the forms annexed hereto, unless the context otherwise indicates

- (a) a word to which a meaning has been assigned in the Act shall bear that meaning; and
- (b) "**apply**" means apply on motion and "**application**" has a corresponding meaning;

"**clerk of the court**" means a clerk of the court appointed under section 13 of the Act and includes an assistant clerk of the court so appointed;

"company" means an incorporated or registered company;

"counsel" means a legal practitioner briefed by another legal practitioner specifically for his or her expertise in a specific field, relevant to the matter in which he or she is briefed.

[**"counsel"** amended by GN 75 OF 2000.]

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

"deliver" (except in rule 9) means to file with the clerk of the court and serve a copy on the opposite party and **"delivery"** and

"delivered" and **"delivering"** have a corresponding meaning;

"give security" includes the giving of a security bond either by the party with someone as his surety or by two or more other persons;

[**"give security"** amended by GN R.1338 of 1984.]

"legal practitioner" includes a law agent instructed by a party to act on his behalf and legally entitled so to act;

[**"attorney"** substituted by GN 75 of 2000.]

"messenger" means a messenger of the court appointed under section 14 of the Act and includes a deputy messenger of the court so appointed;

"money" includes all coined money, whether or not current in the Republic, and all banknotes, bank-drafts, cheques, orders, warrants, or authorities for the payment of money;

"notice" means notice in writing;

"pending case" means a case in which summons has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been entered or given;

"plaintiff", "defendant", "applicant", "respondent" and "party" include the legal practitioner or counsel appearing for any such party and the officer of any local authority nominated by it for the purpose;

[**"attorney"** substituted by GN 75 of 2000.]

"property" includes everything animate or inanimate, corporeal or incorporeal, movable or immovable, capable of being the subject of ownership;

"the Act" means the Magistrates' Courts Act, 1944 (Act 32 of 1944);

"valuable security" includes any document which is the property of any person and which is the 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 part of any period calculated in terms of these rules.

[Sub-Rule (2) substituted by GN R.689 of 1976.]

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

RULE 3

3 GENERAL DUTIES OF THE CLERK OF THE COURT IN CIVIL MATTERS

- (1) 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.
- (2) 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.
- (3) All documents delivered to the clerk of the court to be filed of record and any minutes made by the court shall be filed of record under the number of the respective action or application.
- (4) Copies of such records may be made by any person in the presence of the clerk of the court.

RULE 4

4 GENERAL DUTIES OF THE CLERK OF THE COURT IN CIVIL MATTERS

- (1) It shall also be the duty of the clerk of the court-
 - (a) to sign (manually or by machining a facsimile of his signature) and issue all such process of the court as may be sued by any person entitled thereto 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 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 a legal practitioner and in what respect 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)

[Para. (c) deleted by GN R.2222 of 1978.]
 - (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

[Sub-par. (i) substituted by GN R.689 of 1976.]
 - (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 write 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 pay such fine to the clerk of the court.

RULE 4bis

4bis WRITTEN REQUEST AS FIRST DOCUMENT IN ACTION

4bis A written request as referred to in section 59 of the Act shall be directed to the clerk of the court by means of form 5A or 5B, as the case may be.

[Rule 4bis inserted by GN R.2222 of 1978.]

RULE 4ter

4ter CONTENTS OF LETTER OF DEMAND

4ter The letter of demand referred to in sections 57 and 58 of the Act shall contain particulars about the nature and amount of the claim.

[Rule 4ter inserted by GN R.2222 of 1978.]

RULE 5

5 SUMMONS COMMENCING ACTION

(1) Subject to the provisions of section 59 of the Act, 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 a stated time after service (which shall not be less than 3 days, plus one additional day for each 30 kilometers, distance of the place of service from the court-house, but which shall not exceed 15 days in all) to answer the claim of the plaintiff and warning the defendant of the consequences of failure to do so.

[Rule 5 (1) amended by GN R.1115 of 1974 and substituted by GN R.2222 of 1978]

(2) The summons shall be signed by the clerk of the court and shall bear the date of issue by him.

(3) The summons, including the forms and notice referred to in rule 6 (1) (a) (i), (ii), (iii) and (iv), shall be in printed form.

[Sub-Rule (3) amended by GN R.2222 of 1978.]

(4) For purposes of this rule the said summons, forms and notice 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 off-set 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.

(5) Any document attached to the summons in support of the plaintiff's claim which is not in the English language shall be accompanied by a sworn translation thereof in English

[Sub-Rule (5) inserted by GN 75 of 2000.]

RULE 6

6 ENDORSEMENT OF A SUMMONS

- (1) (a) The summons shall before issue be endorsed with particulars of the claim and shall include-
- (i) a form of consent to judgment;
 - (ii) a form of appearance to defend;
 - (iii) a notice drawing the defendant's attention to the provisions of section 109 of the Act; and
 - (iv) a notice in which the defendant's attention is directed to the provisions of sections 57, 58, 65A, 65D and 65F of the Act in cases where the action is based on a debt as referred to in section 55.

[Rule 6(1)(a) amended by GN R2222 of 1978. Sub-par. (iv) added by GN R.2222 of 1978.]

- (b) The notice referred to in paragraph (a) (iii) shall be printed in bold type.

- (2) (a) The endorsement shall be signed by the plaintiff.
- (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 the provisions of paragraph (cB), the address where the plaintiff will accept service of process, notices or documents shall, in places where there are three or more Legal Practitioners or firms of Legal Practitioners practising independently of one another, be not more than 15 km distant from the courthouse.

[Para. (c) substituted by GN R.3002 of 1969, and GN R.490 of 1970 and amended by GN R.1115 of 1974 and GN 75 of 2000.]

- (cA) . . .

[Para. (cA) inserted by GN R.490 of 1970 and amended by GN R.1115 of 1974 and deleted by GN 75 of 2000.]

- (cB) 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 a consent, in writing, to an address being furnished further than 15 km distant from the courthouse, 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.

[Para. (cB) inserted by GN R.3002 of 1969 as par. (cA), renumbered (cB) by GN R.490 of 1970 and amended by GN R. 1115 1974 and GN 75 of 2000.]

- (d) The address given for service shall not be that of the clerk of the court or the messenger unless the office of the Government Attorney or any branch thereof is given as the address of the person signing the endorsement.
- (3) (a) The particulars of claim shall show the nature and amount of the claim, the rate of interest and the amount thereof claimed up to the date of the summons, and, in addition hereto, the amount claimed for Legal Practitioner's costs and court fees if the action is not defended.
- (b) The particulars shall also show any abandonment of part of the claim under section 38 of the Act and any set-off under section 39 of the Act.
- (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 Legal Practitioner's costs or court fees; or
- (b) subject to the provisions of rule 6 (2) (cA), the requirements of rule 6 (2) (b) and (c) have not been complied with.

[Sub-Rule (4) substituted by GN R.2221 of 1977.]

(5) The summons shall also-

- (a) show the surname of the defendant by which he or she is known to the plaintiff, the defendant's sex and residence or place of business, and, where known his or her first name or initials and his or her occupation, and if the defendant is sued in a representative capacity, the capacity in which he or she is being sued;

[Para. (a) amended by GN R.1338 of 1984 and by GK 1513 of 10 March 1997.]

- (b) show the first name, surname, sex, occupation and the residence or place of business of the plaintiff;
- (c) where the plaintiff sues as cessionary, show 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, state the capacity in which he sues;
- (e) where the plaintiff sues upon an instrument presentment whereof was necessary, state the fact and date of presentment;
- (f) where the defendant is cited under the jurisdiction conferred upon the Court by section 28 (1) (d) of the Act, 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;
- (g) where the defendant is cited under the jurisdiction conferred upon the court by section 28 (1) (g) of the Act, contain an averment that the property concerned is situate within the district.

(6) More claims than one 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.

RULE 7

7 AMENDMENT OF SUMMONS

(1) Subject to the provisions of 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 initialed by the clerk of the court in the original summons, and, until so initialed, such alterations and amendments shall have no effect.

- (3) (a) When no first name or initial or an incorrect or incorrectly spelt first name is 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 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 the summons.

[Para. (a) deleted by GN R. 1449 of 1979 and inserted by GN R.1139 of 1982.]

- (b) The provisions of rule 55A shall apply to the amendment of a summons after service.

[Para. (b) deleted by GN R.1449 of 1979 and inserted by GN R1139 of 1982.]

- (c) When no first name or initial or an incorrect or incorrectly spelt first name is 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 or all 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, notwithstanding the provisions of paragraph (a), 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 the summons.

RULE 8

8 MESSENGER OF THE COURT

- (1) (a) Every messenger who is not an officer of the Public Service or a deputy messenger of the court appointed under section 14 (2) of the Act shall give security to the satisfaction of the magistrate of the district for the due fulfillment 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 2 sureties other than legal practitioners or persons in the employ of legal practitioners in accordance with the following scale:

Where the civil cases recorded during the preceding calendar year numbered-

1 to 200	N\$ 50 000-00
201 to 500	N\$100 000-00
Above 500	N\$200 000-00

[Para. (b) amended by GN R.3002 of 1969 and substituted by GN 75 of 2000.]

- (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 section 1 of the Police Act, 1958 (Act 7 of 1958) 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) In any court for which an officer of the Public Service has been appointed messenger, the return of any process shall be denied to have been properly effected if the said process is placed in a receptacle specially set apart for the legal practitioner of that party in the office of the said messenger.
 - (6) After service or attempted service of any process, notice or document, the messenger, other than a messenger who is an officer of the Public Service, shall specify the total amount of his charges on the original and all copies thereof and the amount of each of his charges separately on the return of service
- [Sub-Rule (6) substituted by GN R. 1115 of 1974 and by GN R.689 of 1976.]
- (7) The Secretary for Justice shall by notice in the *Gazette* publish the name of every court for which a messenger who is an officer of the Public Service has been appointed.

RULE 9

9 SERVICE OF PROCESS NOTICES AND OTHER DOCUMENTS

- (1) A party requiring service of any process, notice or other document to be made by the messenger shall deliver to him the original of such process, notice or document, together with as many copies thereof as there are persons to be served.
- (2) (a) Except as provided in paragraph (b) 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 30*bis* of the Act may be executed on any day at any hour and at any place.
- (3) All process shall, subject to the provisions of this rule, be served 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;
 - (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;

"**residence**" for the purpose of this paragraph, when a building is occupied by more than one person or family, means that portion of the building occupied by the defendant;

- (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 his 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 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 or in any other manner specially provided by law;

[Para. (e) substituted by GN R.689 of 1976.]

- (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) in the case of the State President, a Minister or Deputy Minister, in his or her official capacity, or the State, at the office of the Government Attorney in Windhoek, or a branch of that office which serves the area of jurisdiction of the court from which the process has been served **and** on the person in charge of the office of the State President or the Permanent Secretary or Deputy Permanent Secretary of the Ministry concerned;

[Para. (g) inserted by GN R.1115 of 1974 and substituted by GN 75 of 2000.]

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 whom it has been delivered and the capacity in which such person stands in relation to the person, 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, 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, treat such service as invalid.

[Proviso substituted by GN R.1115 of 1974.]

- (4) The messenger shall, on demand by the person upon or against whom process is served, exhibit to him the original of the process except where service has been effected by post in which case the original may be inspected where it is filed of record.
- (5) 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.
- (6) 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 Sub-Rule (3) (b) or, in the case of a body corporate referred to in Sub-Rule (3) (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*.

[Sub-Rule (6) substituted by GN R.689 of 1976.]

- (7) Where the relief claimed in any action is limited to an order for ejectment from Certain premises or land or 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 Sub-Rule (3), service of process may be effected by affixing a copy thereof to the outer or principle door of such premises or on some outer conspicuous part of the premises or land in question.
- (8) Service of an interpleader summons where claim is made to any property attached under process of the Court may be made upon the legal practitioner of record (if any) of the party to be served.
- (9) 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 syndicate, 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 officer thereof in any manner hereinbefore prescribed.
- (10) 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.

- (11) (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 service given in the summons or appearance to depend 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 on the next day but two after the postmarked date upon the receipt for registration.

[Para. (c) amended by GN R.3002 of 1969.]

- (d) Service under this Sub-Rule need not be effected through the messenger.
- (12) Where the court is satisfied that service cannot be effected in any manner hereinbefore prescribed and that the action is within its jurisdiction, it may make an order allowing service to be effected by the person and in the manner specified in such order.
- (13) 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 so served is the State, at least 21 days; or

[Para. (a) amended by GN R.689 of 1976.]

- (b) in the case where any other party is to be so served, at least 7 days plus 1 additional day for each 30 km distance of the place of service from the courthouse (not exceeding 15 days in all),

[Para. (b) amended by GN R.1115 of 1974 and by GN R.689 of 1976.]

before the time specified in such *ex parte procedure* or interpleader summons for the appearance of such party.

- (14) 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 State, at least 21 days; or

[Para. (a) amended by GN R.689 of 1976.]

- (b) in the case of any other party, at least 7 days,

[Para. (b) amended by GN R.689 of 1976.]

before the day appointed for the hearing of the application, but the court may on cause shown reduce such period.

- (15) (a) Unless otherwise provided, where service of process may be effected by registered post such service shall be effected by the messenger placing a copy thereof in an envelope, addressing and posting it by pre-paid registered letter to the address of the party to be served and making application at the time of registration for an acknowledgement by the addressee of the receipt thereof as provided in regulation 44 (5) of the regulations published under Government Notice R. 550 of 14 April 1960.
- (b) A receipt form completed as provided in regulation 44 (8) of the said regulations shall be a sufficient acknowledgement of receipt for the purposes hereof.
- (c) If no such acknowledgement 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 re-addressed. If delivery is not effected before, 19....., this letter must be delivered to the Messenger of the Magistrate's Court at".

RULE 10

10 DELAY IN THE PROSECUTION OF AN ACTION

If summons in an action be not served within 24 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 plaintiff or his or her legal practitioner files an affidavit with the Clerk of the court before the expiration of such period setting out-

- (a) that at the request of the defendant an extension of time in which to pay the debt claimed or any portion thereof has been granted to the defendant;
- (b) that in terms of the agreement judgment cannot, save in case of default, be sought within a period of 24 months from the issue of the summons; and
- (c) the period of the extension,

the summons shall not lapse until 24 months after the expiration of the period of extension.

[Rule 10 substituted by GK 1513 of 10 March 1997.]

RULE 11

11 JUDGMENT BY CONSENT

- (1) A defendant may before entry of appearance consent to judgment-

- (a) by signing the form of consent endorsed on the original summons;
- (b) by 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) by lodging with the clerk of the court a consent in a similar form duly signed by him and by 2 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) Subject to the provisions of section 58 of the Act a defendant so consenting before the expiration of the time limited for appearance shall not be chargeable with judgment charges.

[Sub-Rule (3) amended by GN R.2222 of 1978.]

- (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 legal practitioner 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 section 58 of the Act and 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 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).

[Sub-Rule (6) amended by GN R.2222 of 1978.]

RULE 12

12 JUDGMENT BY DEFAULT

- (1) (a) If a defendant has failed to enter appearance to defend within the time limited by the summons or before the lodgment of the request hereinafter mentioned [except as provided in the proviso to rule 13 (3)] and has not consented to judgment, the plaintiff may lodge with the clerk of the court a written request, in duplicate, for judgment against such defendant for-

[Rule 12 (1) (a) amended by GN R689 of 1976]

- (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 from the date of the summons to the date of judgment at the rate specified in the summons or, if no rate be specified, at the rate prescribed under section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975).

[Sub par. (iii) amended by GN R.689 of 1976 and substituted by GN R.2222 of 1978.]

- (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 3 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.

[Par. (b) amended by GN R.689 of 1976.]

- (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 sub-rules (2), (3), (4), (5), (6) and (7), enter judgment in terms of the plaintiff's request and if the request for judgment was lodged in duplicate 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.
- (e) If the original summons cannot be found for purposes of judgment, due to it being lost or mislaid, the plaintiff may file with the clerk of the court -
- (i) a copy or duplicate original of the summons on which the following certificate has been affixed by the plaintiff:

'I hereby certify that court fees have been paid on the original summons of which this is a true copy or duplicate original (as the case may be)'

and a copy of the signed return of service received from the messenger of the court;
and

- (ii) a statement stating the reasons why the original summons and return cannot be filed;

[Para. (e) inserted by GN 75 of 2000.]

- (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 enter judgment against the defendant unless the plaintiff has delivered 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.

[Rule 12(2)(a) amended by GN R689 of 1976.]

- (b) Such notice shall set out in what respect the defendant's entry of appearance is defective, and shall, notwithstanding the provisions of rule 9, be served
 - (i) if the defendant has provided an address in terms of rule 13 (4)(c), by delivery on the address so provided;
 - (ii) if the defendant has only provided postal address, by forwarding the notice by registered post to the postal address and in that event the defendant is deemed to have received the notice after 7 days from dispatch of the notice; or
 - (iii) if no physical or postal address has been given, by delivery on the address where the summons was served.

[Paragraph (b) amended by GRN 200 of 2007]

- (c) 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.
- (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 acknowledgement of receipt referred to in rule 9 (15) (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 an appropriate 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 Credit Agreements Act, 1980 (Act 75 of 1980), 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 judgment file of 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 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 making a minute of record thereof.
- (10) Any document lodged with the clerk of the court in support of a request for default judgment which is not in the English language shall be accompanied by a sworn translation thereof in English.

[Sub-rule (10) inserted by GN 75 of 2000]

RULE 13

13 APPEARANCE TO DEFEND AND WITHDRAWAL OF LEGAL PRACTITIONER OF RECORD

[Heading amended by GRN 200 of 2007]

- (1) A defendant intending to defend the action shall within the period limited by the summons enter an appearance to defend by delivery of a notice that he intends to defend.
- (2) In actions against the State or a servant of the State in his official capacity, appearance to defend may be entered at any time within 21 days after service of the summons.

[Sub-Rule (2) amended by GN R.1338 of 1984.]

- (3) Notwithstanding the provisions of Sub-Rules (1) and (2), an appearance to defend, even though entered after the expiry of the period mentioned in the summons or in Sub-Rule (2), shall be effective, provided a request for default judgment has not yet been filed: 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 entered, 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.

[Sub-Rule (3) substituted by GN R.490 of 1970 and amended by GN R.1115 of 1974.]

- (4)
 - (a) The notice shall be signed by the defendant.
 - (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 the provisions of paragraph (cB), the address where the defendant will accept service of process, notices or documents shall, in places where there are three or more legal practitioners or firms of legal practitioners practising independently of one another, be not more than 15 km distant from the courthouse.

[Para. (c) substituted by GN R.3002 of 1969 and by GN R.490 of 1970 and amended by GN R.1115 of 1974 and substituted by GN 75 of 2000.]

[Para. (cA) inserted by GN R.490 of 1970 and amended by GN R.1115 of 1974 and deleted by GN 75 of 2000.]

- (cB) The plaintiff may, at the request of the defendant, deliver a consent, in writing, to an address being furnished further than 15 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.

[Para. (cB) inserted by GN R.3002 of 1969 as para. (cA), renumbered (cB) by GN R.490 of 1970 and amended by GN R.1115 of 1974 and substituted by GN 75 of 2000.]

- (d) The address given for service shall not be that of the clerk of the court or the messenger unless the office of the Government Attorney or any branch thereof is given as the address of the person signing the notice.
- (5) The clerk of the court shall at the request of an illiterate defendant who does not employ a Legal Practitioner, enter an appearance for him.
- (6) The entry of an appearance shall be without prejudice to any exception which the defendant may have.
- (7) (a) Where a legal practitioner acting in any proceedings for a party ceases to so act, he or she shall forthwith deliver notice thereof to such party, the clerk of the Court and any other parties to the proceedings, but if the notice to the part for whom he or she acted is sent by registered post, such party is deemed to have received the notice after 7 days from dispatch of the notice.
- (b) After the notice, unless the party formerly represented, within 7 days after the notice, himself or herself notifies all other parties of a new address for service as contemplated in subrule (4), it is not necessary to serve any document upon such party unless the Court otherwise orders, but any of the other parties may, before receipt of the notice of his or her new address for service of the documents, serve any document upon the party who was formerly represented.
- (c) The notice to the clerk of 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, as well as the last known physical and postal address of the party formerly represented.
- (d) The notice to the party formerly represented shall inform the party of the provisions paragraph (b)

[Subrule (7) inserted GRN 200 of 2007]

RULE 14

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 costs.

- (2) Such application shall be made on not less than 7 days' notice delivered not more than 7 days after the date of the defendant's appearance to defend and the plaintiff shall deliver with such notice-

- (a) if the claim is a claim referred to in Sub-Rule (1) (b), (c) or (d), a copy of an affidavit, made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed, if any, and stating that in his belief there is not a *bona fide* defence to the claim and that appearance has been entered solely for the purpose of delaying the action.
- (b) if the claim is founded on a liquid document, a copy of such document.

[Sub-Rule (2) amended by GN R.2221 of 1977.]

- (3) 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 as the court may determine or give security to the satisfaction of the plaintiff for such sum;

[Para. (a) amended by GN R.1338 of 1984.]

- (b) in the case of a claim sounding in money or of an alternative claim sounding in money, give security to satisfy any judgment which may be given against him in the action; or
- (c) satisfy the court by affidavit delivered not later than noon of the day preceding the hearing of the application (which affidavit may by leave of the court be supplemented by oral evidence) 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. Such affidavit and evidence shall disclose the nature and grounds of the defence or counterclaim.

- (4) Money paid into court under Sub-Rule (3) not disposed of before the expiration of a period of 3 years, may be paid into the Consolidated Revenue Fund, after 3 months' notice of such intention in writing has been given to the parties concerned. Thereafter the parties concerned may apply for a refund of the amount paid into the said Fund.

- (5) *Subject to the provisions of Sub-Rule (2), no evidence shall be adduced by the plaintiff at the hearing of the application; nor shall any person giving oral evidence at such hearing be cross-examined by the plaintiff, but such person may after examination by the defendant be examined by the court.*

- (6) Subject to the provisions of rule 17 (7), the court may, if the defendant does not so pay into court or find security or satisfy the court, give summary judgment for the plaintiff.

- (7) If the defendant complies with the provisions of paragraph (a), (b) or (c) of Sub-Rule (3), the court shall give leave to defend and the action shall thereupon proceed as if no application under this rule has been made.

- (8) *Where leave to defend is given under Sub-Rule (7), no evidence given on the hearing of the application for summary judgment shall, except by consent, at any subsequent hearing be admissible in favour of the party on whose behalf it was given except in so far as the respective deponents and witnesses are produced at such subsequent hearing for cross-examination.*

- (9) *If on the hearing of an application made under this rule it appears either that one defendant is entitled to leave to defend and another is not so entitled or that the defendant is entitled to leave to defend as to part only of the claim, the court may-*

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

- (b) give leave to defend to the defendant as to such part of the claim and give judgment against the defendant as to the balance of the claim unless the defendant shall have paid such balance into court; or
- (1) make both such orders.

RULE 15

15 FURTHER PARTICULARS

- (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 of the 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.

[Sub-Rule (1) substituted by GN R.947 of 1972.]

- (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.

RULE 16

16 FURTHER PARTICULARS (*continued*)

- (1) Any party may by notice delivered not more than 7 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.

[Sub-Rule (1) amended by GN R.689 of 1976.]

- (2) The party delivering such pleading shall within 7 days after receipt of such notice deliver such particulars.

RULE 17

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 rule 17 (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 delivery of a notice referred to in rule 17 (5) (c) if the cause of the complaint has not been removed.

[Para. (a) substituted by GN R.947 of 1972.]

- (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 summons has not been properly served;
 - (e) that the copy of the summons served upon defendant differs materially from the original.
- (3) Any other defence shall be raised by means of 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 Sub-Rule (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 7 days' notice set down such exception or application for hearing before the trial.

RULE 18

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 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 7 days after receipt of notice of such payment into court deliver a request for the payment out to him of the amount paid in and further proceedings shall thereupon be stayed save as hereinafter provided for the recovery of costs not included in the payment.

[Para. (b) amended by GN R.689 of 1976.]

- (3) A defendant paying money into court in terms of Sub-Rule (1) after entry of appearance or at any time in terms of Sub-Rule (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 Sub-Rule (1) or as an offer of settlement under Sub-Rule (2) and if the amount paid in under Sub-Rule (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 Sub-Rule (1) or (2): Provided that moneys paid into court under Sub-Rule (2) shall be paid out only on delivery of the request mentioned in paragraph (b) of that Sub-Rule.
- (5) A plaintiff entitled to payment out under Sub-Rule (4) shall, save when a defendant making payment in under Sub-Rule (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 Sub-Rule (2) as an offer of settlement and the court finds on a trial of the action that 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 thereof 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 Sub-Rule (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) Where the claim is for damages or compensation 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. 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).
- (10) Moneys paid into court under this rule and not disposed of before the expiration of 3 years, may be paid into the Consolidated Revenue Fund, after 3 months' notice of such intention has been given to the parties concerned. On compliance with the provisions of Sub-Rule (8) the parties concerned may apply for a refund of the amounts paid into the said Fund.
- (11) (a) A defendant may, instead of paying into court a sum of money as referred to in this rule, lodge a security including a guarantee by an insurance company as defined in section 1 of the Compulsory Motor Vehicle Insurance Act, 1972 (Act 56 of 1972), for the payment of such sum to the plaintiff in a form which is acceptable to the legal practitioner of the plaintiff (or to the plaintiff where he sues in person).

[Rule 18(11)(a) inserted by GN R689 of 1976 and substituted by GN R1338 OF 1984]

- (b) The provisions of the preceding Sub-Rules, except the provisions relating to the payment by the clerk of the court, apply *mutatis mutandis* in respect of security referred to in paragraph (a).

[Rule 18(11)(b) inserted by GN R689 of 1976 and substituted by GN R1338 OF 1984]

- (c) Payment to the plaintiff's legal practitioner (or to the plaintiff where he sues in person) by the defendant or 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.

[Rule 18(11)(c) inserted by GN R689 of 1976 and substituted by GN R1338 OF 1984]

RULE 19

19 PLEA

- (1) The defendant shall within 7 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 in review, the plea shall be delivered within such time as may be directed by the court of appeal or, on application, by the court.

- (2) If the defendant be the State and the summons has been served elsewhere than at the permanent head office of the defendant department, 7 days shall be added in each case to the number of days prescribed in Sub-Rule (1).
- (3) The plea shall be dated and be signed by the defendant or his Legal Practitioner.
- (4) 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.
- (5)
 - (a) For the purposes 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 and order that it be served upon the real defendant.
- (6) 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.
- (7) Subject to the provisions of 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;

[Para. (b) amended by GN R.1338 of 1984.]

- (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 disallowed 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.

[Para. (c) amended by GN R.1338 of 1984.]

- (8) The provisions of rule 18 (10) shall *mutatis mutandis* apply to money paid into court under this rule.

- (9) Where 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 (2) or by way of tender under Sub-Rule (7) 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.

[Sub-Rule (9) amended by GN R.1338 of 1984.]

- (10) 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.
- (11) 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.
- (12) 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 7 days' notice at any time after such defence has been raised.
- (13) A plaintiff may within seven days of delivery of the plea or further particulars or where a notice in terms of rule 19 (15) (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 with or before delivering a reply deliver particulars of an exception to the plea.

[Sub-Rule (13) substituted by GN R.947 of 1972.]

- (14) 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.
- (15) (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 the complaint.
- (16) Particulars delivered by the defendant in terms of rule 16 shall be deemed to be included in the plea.
- (17) (a) A plaintiff may apply to strike out any of 2 or more defences which, not being pleaded in the alternative, are mutually contradictory, or any argumentative, irrelevant, superfluous or contradictory matter which may be stated in a plea.
- (b) The provisions of Sub-Rule (12) shall apply *mutatis mutandis* to the delivery of particulars of an application to strike out.
- (18) An exception to or application to strike out matter from a plea may be set down for hearing by either party on 7 days' notice.
- (19) 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 discloses no defence, give judgment for the plaintiff.

RULE 20

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 convention, 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 the 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 as to claims in convention.

[Sub-Rule (2) substituted by GN R.2221 of 1977.]

- (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 3 days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 47 of the Act.

[Sub-Rule (4) amended by GN R.689 of 1976.]

- (5) Where the court finds that the claim in reconvention exceeds its jurisdiction, the defendant may forthwith or by notice delivered within 3 days after such finding apply for stay of the action.

[Sub-Rule (5) amended by GN R.689 of 1976.]

- (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 38 of the Act sufficient of such claim to bring it within the jurisdiction of the court.
- (7) Where both the claim in convention and the claim in reconvention proceed to trial under rule 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.

RULE 21

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 7 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 Sub-Rule (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.

RULE 22

22 SET-DOWN OF DOCUMENTS

- (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 14 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 21 days before the day so approved.

[Sub-Rule (3) amended by GN R. 1139 of 1982.]

RULE 23

23 DISCOVERY OF DOCUMENTS

- (1) After the close of pleadings, but not later than 14 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 and documents 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 the delivery of the aforesaid notice. If privilege be claimed for any of the books or documents scheduled, such books or documents shall be separately listed in the Schedule and the ground on which privilege is claimed in respect of each shall be set out.

[Sub-Rule (1) amended by GN R. 1139 of 1982.]

- (2) A book or document not so disclosed may not be used for any purpose on 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 or document 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 and documents disclosed in terms of Sub-Rule (1) or specified in a notice delivered in terms of Sub-Rule (4) and shall, on prepayment therefore, 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, on the trial of the action, the books and documents so disclosed and also any other books and documents specified in detail. Such notice shall have the effect of a subpoena under rule 26 as regards all such books or documents as are in the possession or under the control of the party to whom notice is so given.

RULE 24

24 MEDICAL EXAMINATIONS, INSPECTION OF THINGS, EXPERT TESTIMONY AND TENDERING IN EVIDENCE ANY PLAN, DIAGRAM, MODEL OR PHOTOGRAPH

- (1) Subject to the provisions of this rule, any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed 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 an 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 14 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 shall be accompanied by a remittance 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 person 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 R6 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 Sub-Rule shall be costs in the cause, unless the court otherwise directs.
- (3)
 - (a) Any party receiving a notice referred to in Sub-Rule (2) shall, within 7 days of the service thereof, notify the party delivering it in writing of the nature and grounds of any objection which he may have in relation to-
 - (aa) the nature of the proposed examination;
 - (bb) the person or persons by whom the examination is to be conducted;
 - (cc) the place, date or time of the examination;
 - (dd) the amount of the expenses tendered to him, and shall further-
 - (i) 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;
 - (ii) in the case of his objection being to the amount of the expenses tendered, furnish particulars of such increased amount 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 part 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 Sub-Rule (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 14 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.

[Sub-Rule (4) amended by GN R.689 of 1976.]

- (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 Sub-Rule (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 movable 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 14 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 this 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 10 days from the receipt of the notice.

[Sub-Rule (6) amended by GN R.689 of 1976.]

- (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 therefore if he will be materially prejudiced by reason of the effect thereof upon such thing;
 - (b) In the event of any dispute 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 Sub-Rule (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 opinions 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 expense 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 14 days before the hearing, have delivered notice of his intention to do so; and

[Para. (a) amended by GN R.689 of 1976.]

- (b) not less than 7 days before the hearing, have delivered a summary of such opinions of such expert and his reasons therefore.
- (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 any plan, diagram, model or photograph unless he shall not less than 7 days before the hearing of the action, have given every such other party notice of his intention to do so.

[Para. (a) amended by GN R.689 of 1976.]

- (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 7 days of the receipt thereof, to state whether he has any objection to such plan, diagram, model or photograph being admitted in evidence without proof.
- (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.

RULE 25

25 PRE-TRIAL PROCEDURE FOR FORMULATING ISSUES

- (1) The request in writing referred to in section 54 (1) of the Act shall be made in duplicate to the clerk of the court requesting the court to call a pre-trial conference and shall indicate generally the matters which it is desired should be considered at such conference.
- (2) The clerk of the court shall forthwith place such request before a judicial officer who shall, if he decides to call a conference, direct the clerk of the court to issue the necessary process.
- (3) 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, together with a copy of the request, if any, referred to in Sub-Rule (1). Such letter shall be delivered by hand or registered post at least 7 days prior to the date fixed for the said conference.

[Sub-Rule (3) amended by GN R.689 of 1976.]

RULE 26

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 the 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 sum of 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.

RULE 27

27 WITHDRAWAL DISMISSAL AND SETTLEMENT

- (1) Where the 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 Sub-Rule (1), a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver notice of withdrawal.
- (3) Any party served with notice of withdrawal may within 14 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 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.

[Sub-Rule (3) amended by GN R.689 of 1976.]

- (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 14 days after the pleadings have been closed given notice of trial either for a day not more than 21 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) 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.
- (7) Such application shall be on notice, except when 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.
- (8) 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.
- (9) When the terms of settlement provide for the future fulfillment 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 12 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.

[Sub-Rule (9) substituted by GN R.947 of 1972.]

- (10) After hearing the parties the court may-
- (a) dismiss the application;
 - (b) give judgment for the applicant as specified in the terms of settlement;

- (c) set aside the settlement and give such directions for the further prosecution of the action as it may deem lit;
- (d) make such order as may be just as to the costs of the application.

RULE 28

28 INTERVENTION OF PERSONS IN ANY PROCEEDINGS

- (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.

RULE 29

29 TRIAL

- (1) Unless the court shall otherwise order, the trial of an action shall take place at the courthouse 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 issues of fact or questions of law which are in dispute and may record the issues so stated.
- (4) Where upon the pleadings it appears to the court that there are several issues of fact and the court is of opinion that the determination of any one of such issues would dispose of the whole case it may require the parties to deal with that issue before proceeding with the other issues and the court may thereupon give final judgment without dealing with such other issues.
- (5) If the question in dispute is a question 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 thereon without further evidence.
- (6) When questions of law and issues of fact arise in the same case and the court is of opinion that the case may be disposed of upon the questions of law only, the court may require the parties to argue upon those questions 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 defendant has closed his case. If he has called any such evidence, he shall have no such right.

(10) In a case of dispute as to the party upon whom the burden of proof rests, 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 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 4 days of the order and cross-interrogatories within 4 days thereafter.

(16) Any document handed in at trial which is not in the English language shall be accompanied by a sworn translation thereof in English

[Sub-Rule (16) inserted by GN 75 of 2000.]

RULE 30

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; and
- (d) the proceedings of the court generally, including the record of any inspection in loco.

(2) The court shall also mark each document put in evidence and note such mark on the record.

(3) Such minutes and marks may be made by the clerk of the court and, save where made by the clerk of the court, or as hereinafter provided, they shall be made by the presiding judicial officer.

(4) The addresses of the parties, viva voce evidence given, any exception or objection taken 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.

[Sub-Rule (4) substituted by GN R.3002 of 1969.]

- (5) (a) Every person employed 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 following form:-

"I,....., swear/solemnly and sincerely affirm and declare 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 an officer of the court and that I will similarly, when required to do so, transcribe the same or, as far as I am able to do so, any other notes taken by any officer of the court/recorded by mechanical means".

- (b) Such oath or affirmation shall be administered in the manner prescribed for the taking of an oath or affirmation.
- (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 Sub-Rule (7), 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 Sub-Rule (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 Sub-Rule (4) and shall pay a fee of N\$7-50 per A4 size page or part thereof for such transcription.

[Para. (a) amended by GN R. 1139 of 1982, GN R.1338 of 1984 and by GN75 of 2000.]

- (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 it 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.

[Rule 30(7) amended by GN R261 of 1977]

(8) Subject to the provisions of Sub-Rule (11), 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.

[Sub-Rule (8) amended by GN R.3002 of 1969.]

(9) Subject to the provisions of Sub-Rule (7) (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 of a fee of-

- (a) in the case of a copy of a transcript referred to in Sub-Rule (6), N\$2-50 per A4 size page or part thereof;

[Para. (a) amended by s. 7 (ii) of GN R.1338 of 1984 and by GN75 of 2000.]

- (b) in the case of a copy of a transcript referred to in Sub-Rule (7), N\$2-50 per A4 size page or part thereof.

[Para. (b) amended by s. 7 (ii) of GN R.1338 of 1984 and by GN 75 of 2000.]

(10) Any reference in this rule to shorthand notion or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing 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 employed for the making of such mechanical record, or to a person transcribing such record, as the case may be.

(11) Any party may, not later than 7 days after judgment, or where the proceedings have been noted in shorthand or by mechanical means, within 7 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.

(12) 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.

RULE 31

31 ADJOURNMENT AND POSTPONEMENT

(1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent of the party's or by the court, either on application or of its own motion.

(2) Where such an adjournment or postponement 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 7 days after delivery of such notice.

(3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties may agree to or as the court may order.

RULE 32

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.

RULE 33

33 Costs

(1) The court in giving judgment or in making any order, including any adjournment or amendment, may award such costs as may be just and may, in the case of any adjournment without evidence being taken or argument heard, also award as counsel's fee payment of a refresher fee referred to in Part IV of Table A of Annexure 2.

[Sub-Rule (1) substituted by GN 75 of 2000.]

(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 2 or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

(5) (a) The scale of fees to be taken by Legal Practitioners as between party and party shall-

- (i) be that set out in Table A of Annexure 2 in addition to the necessary expenses;
- (ii) in relation to proceedings under section 65, 65A to 65M, inclusive, and 72 of the Act and all matter., ancillary thereto be that set out in Parts I and II respectively of Table B of the said Annexure; and

[Sub-para. (ii) substituted by GN R.2222 of 1978.]

- (iii) in relation to proceedings under section 74 and 74A to 74W, inclusive, of the Act and all matter.; ancillary thereto be that set out in Part 111 of Table B of the said Annexure.

[Sub-para (iii) substituted by GN R.2222 of 1978.]

(aA)

[Para. (aA) inserted by GN R.3002 of 1969 and substituted by GN R.947 of 1972 and by GN R.1115 of 1974 and deleted by GN R.327 of 1978.]

- (b) The scale of fees referred to in paragraph (a) (iii) of this Sub-Rule shall also be the scale of fees to be taken between legal practitioner-and-client in relation to proceedings under section 74 and 74A to 74W, inclusive, of the Act.

[Para. (b) substituted by GN R.2222 of 1978.]

(6) Save as to appearance in open court without counsel, such fees shall be allowable whether the work has been done by the legal practitioner or by his clerk, but shall, except in the case of the fee referred to in paragraph 13 of the general provisions under Table A of Annexure 2, 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 1 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) The court may on request made at or immediately after the giving of judgment in any contested action or proceeding in which-

- (a) is involved any difficult question of law or of fact; or
- (b) the plaintiff makes two or more claims which are not alternative claims; or
- (c) 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.

(9) Where in any proceedings it is impossible for a party to obtain the services of a local Legal Practitioner, he may employ the nearest 1 available or some other Legal Practitioner, and upon proof

thereof the court may, if costs are awarded to him, order that such costs shall include the reasonable traveling expenses of such legal practitioner and also a special allowance not exceeding N\$200-00 for each day's absence from such Legal Practitioner's usual place of business: Provided that if the legal practitioner employed be not the nearest available Legal Practitioner, the traveling expenses and special allowance so allowed shall not exceed the expenses and allowance which would have been allowed if the nearest available legal practitioner had been employed.

[Sub-Rule (9) amended by GN 75 of 2000.]

(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 legal practitioner 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 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) (a) 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.

(b) The costs payable by the judgment debtor in respect of any proceedings under section 65 or 65A to 65M, inclusive, or 72 of the Act shall be inserted by the judgment creditor or his legal practitioner on the face or reverse side of any process issued under either of those sections and assessed by the clerk of the court before issue.

[Para. (b) substituted by GN R.2222 of 1978.]

(c) The clerk of the court may refuse to issue any process under section 65 or 65A to 65M, inclusive, or 72 of the Act in which the costs are not inserted or inserted but not according to tariff.

[Para. (c) substituted by GN R.2222 of 1978.]

(15)

[Sub-Rule (15) deleted by GN R.2221 of 1977.]

(16) 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 3 days' notice of taxation for an hour to be fixed (generally or specially) by the clerk of the court and he may include in such bill all such payments as have been necessarily and properly made by him.

[Sub-Rule (16) amended by GN R.689 of 1976.]

(17) 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.

(18) 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.

(19) Where a bill of costs as between legal practitioner-and-client is required to be taxed, taxation shall take place on at least 3 days' notice thereof to the legal practitioner or client, whether or not an

action therefore is pending: Provided that, notwithstanding the provisions of Sub-Rule (3), a bill of costs as between legal practitioner-and-client may be taxed at any time after termination of the mandate.

[Sub-Rule (19) amended by GN R.689 of 1976.]

(20) 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 (8), such costs shall be taxable by the clerk of the court as if they had been awarded by the court.

(21) 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.

(22) 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.

[Sub-Rule (22) added by GN R. 1139 of 1982.]

RULE 34

34 FEES OF THE MESSENGER AND THE CLERK OF THE COURT

(1) The fees and charges to be taken by a messenger who is an officer of the Public Service shall be those prescribed in Part I of Table C of Annexure 2 and in the case of any other messenger those prescribed in Part II of the said Table and Annexure.

(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 N\$60-00 for the attending of 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.

[Para. (c) substituted by GN R.490 of 1970 and amended by GN R.1689 of 1983 and by GN 75 of 2000.]

(4) The fees to be taken by the clerk of the court shall be those prescribed by Table E of Annexure 2 and payment shall be indicated by the use of adhesive revenue stamps or imprinted stamps by means of an approved stamp within the meaning of the definition of "stamp" in the Stamp Duties Act, 1968 (Act 77 of 1968).

[Sub-Rule (4) substituted by GN R.947 of 1972.]

RULE 35

35 REVIEW OF TAXATION

(1) Any interested party may, within 14 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.

[Sub-Rule (1) amended by GN R.689 of 1976.]

(2) Such review shall be on 7 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.

[Sub-Rule (2) amended by GN R.689 of 1976.]

(3) Any party dissatisfied with the decision of the judicial officer as to any item or part of an item which was objected to before the clerk of the court, may, after notice to the other party, within 7 days of the decision require the judicial officer to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the judicial officer: Provided that, save with the consent of such officer, no case shall be stated where the total of the amounts which he has disallowed or allowed as the case may be, and which the dissatisfied party seeks to have allowed or disallowed, respectively, is less than N\$40-00.

[Sub-Rule (3) amended by GN R.689 of 1976 and by GN 75 of 2000.]

(4) Any party may within 7 days after the judicial officer has so stated a case submit contentions in writing to the judicial officer.

(5) The judicial officer shall lay the case together with the written contentions submitted and his own report not later than 14 days after receipt of such contentions, before a judge of the court of appeal who may then-

- (a) decide the matter upon the case and contentions so submitted, together with any further information which he may require from the judicial officer; or
- (b) decide it after hearing the parties and their counsel or Legal Practitioners in chambers; or
- (c) refer the case for decision to the court of appeal.

[Sub-Rule (5) amended by GN R.689 of 1976.]

(6) The judge or the court so deciding may make such order as he or it deems fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or the court as costs.

RULE 36

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 1 month shall not be deemed to be a suspension.

(4) Any alterations in such process shall be initialed 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 Sub-Rule (i) 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 misspelling 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 a 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 the judgment is given.

RULE 37

37 SECOND OR FURTHER WARRANTS OR EMOLUMENTS ATTACHMENT ORDERS OR GARNISHEE ORDERS

(1) Where any warrant or emoluments attachment order or garnishee order has been lost or mislaid, the court may authorise the issue of a second or further warrant or emoluments attachment order or garnishee order, as the case may be, upon the production of a certificate issued by the plaintiff's legal practitioner stating that such warrant or order has been lost or mislaid, as the case may be.

[Sub-Rule (1) substituted by GK 1513 of 10 March 1997.]

(2) Notice of such application shall be on not less than 3 days' notice and shall state the reasons for the application.

(3) The provisions of Sub-Rules (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 onand 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 Sub-Rule (1) becomes available it shall immediately be cancelled by the clerk of the court by endorsing across the face thereof between 2 parallel transverse lines the words "*Cancelled. Fresh warrant (describe nature of warrants) 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.

[Rule 37 amended by GN R.2222 of 1978.]

RULE 38

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 7 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 moneys 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 moneys 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 by the execution debtor without formal transfer thereof to him.
- (5) The provisions of this rule shall not apply where the party issuing out the process in execution or the execution creditor is the President, a Minister or a Deputy Minister in his or her official capacity or the State.

[Sub-Rule (5) inserted by GN R.1115 of 1974 and substituted by GN 75 of 2000.]

RULE 39

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 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 Sub-Rule (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 7 days after receipt of the notice referred to in Sub-Rule (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 realized, 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.

RULE 40

40 EXECUTION AGAINST A PARTNERSHIP

(1) Where a judgment debtor is a partner in a firm and the judgment is against him for a separate debt, 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 interests 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.

RULE 41

41 EXECUTION AGAINST MOVABLE PROPERTY

(1) (a) The messenger shall, upon receiving a warrant directing him to levy execution on movable property, repair to the residence, place of employment or business of the execution debtor or to another place pointed out by the execution creditor where movable 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 movable property be pointed out as the said messenger may deem sufficient to satisfy the warrant, and if such last-mentioned request be complied with the said 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 movable property as may be pointed out in part execution of such warrant.

[Para. (a) amended by GN R. 1115 of 1974 and substituted by GN R. 1139 of 1982.]

(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 movable property belonging to the execution debtor as he may deem sufficient to satisfy the warrant or of so much of the movable 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 and documents are found and attached, the number and kinds thereof shall be specified in the inventory and any such specie or documents 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 legal practitioner shall, where movable 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 movable property, other than specie or documents, on the premises and in the possession of the person in whose possession the said movable property is attached: Provided that the execution creditor or his legal practitioner 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.

[Para. (a) amended by GN R.689 of 1976 and substituted by GN R. 1314 of 1980.]

(b) Where a messenger is instructed as aforesaid to remove the movable 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 movable 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 or her to detain any movable property under attachment for such further period as may be stipulated in such order, the attachment shall automatically lapse after the expiry of four months from the date of attachment, unless a sale in respect of such property is pending. If such order was made on application made ex parte, such order is not subject to confirmation.

[Para. (e) substituted by GN R.1115 of 1974 and again substituted by GN 200 of 2007.]

(8) (a) Any movable property sold in execution of process of the court shall be sold publicly and for cash by the messenger or, with the approval of the magistrate, by an auctioneer or other person appointed 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 2 copies thereof to the messenger in sufficient time to enable 1 copy to be affixed not later than 7 days before the day appointed for the sale on the notice board or door of the courthouse or other public building in which the said court is held 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 N\$500 he shall indicate some local or other newspaper circulating in the district and require the execution creditor to publish the notice of sale in that newspaper not later than 7 days before the date appointed for the sale in addition to complying with paragraph (h) and to furnish him with a copy of the said paper in which the publication appeared not later than the day preceding the date of sale.

[Para. (c) amended by GN 75 of 2000.]

(9) The day appointed for the sale shall be not less than 14 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 Sub-Rule or Sub-Rule (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 the same to the execution debtor if he can be found, otherwise he shall pay such balance into court and the provisions of rule 18 (10) shall *mutatis mutandis* apply to any balance so paid into court.

RULE 42

42 EXECUTION AGAINST MOVABLE PROPERTY (*continued*)

(1) Where the property attached in execution is a lease or a bill of exchange, 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 concerned.

(2) Where the movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person 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 as prescribed the court may make an order allowing service to be effected in the manner as 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.

[Sub-Rule (2) amended by GN R. 1139 of 1982.]

(3) The method of attachment of property under section 32 of the Act shall *mutatis mutandis* be the same as that of attachment in execution.

RULE 43

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 (including the address) 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 Sub-Rule (2).

- (2) (a) 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, 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, and upon the local authority in whose area the property is situated.
- (b) If the period of attachment is extended as referred to in section 66 (5) of the Act, notice of such extension shall be given to the persons referred to in paragraph (a) in the manner as referred to in that paragraph.

[Sub-Rule (2) substituted by GN R.2222 of 1978.]

(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 to enable the latter to give notice in terms of section 66 (2) of the Act.

(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 party requiring execution 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 1 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 2 newspapers circulating in the district in which the property is situate and require the execution creditor to publish the said notice once in each of the said newspapers and in the *Gazette* not later than 7 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 1 copy of each of the said papers and with the number of the *Gazette* in which the notice appeared.

[Para. (c) amended by GN 75 of 2000]

- (d) Not less than 7 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 (h) 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.
- (e) Not later than 7 days before the day appointed for the sale the messenger shall affix 1 copy of the notice on the notice board or door of the courthouse or other public building

in which the said court is held and 1 copy at or as near as may be to the place where the said sale is actually to take place.

- (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 28 days prior to the appointed date of sale, deliver 2 copies of the conditions of sale to the messenger and 1 copy thereof to each person who may be entitled to notice of the sale.
- (b) Any interested party may not less than 21 days prior to the appointed date of sale, upon 24 hours' 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 realization of such property may, by notice given to the messenger within 14 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 2 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 provisions of section 66 (2) of the Act and to the other conditions of sale, be sold to the highest bidder.
- (11) The sale shall be held in front of the courthouse of the district or, for good cause shown, at such other place as the magistrate 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 moneys 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 moneys 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 of persons having an interest therein for a period of 14 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.

[Para. (b) amended by GN R.2221 of 1977.]

- (c) After deduction from the purchase money of the costs of execution, the following shall be the 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 14 days after the expiration of the first-mentioned period, bring such plan before the court for review.

[Para. (d) substituted by GN R.1314 of 1980.]

- (e) Such review shall be on 4 days' notice to the persons mentioned in paragraph (d).

[Para. (e) substituted by GN R.1314 of 1980.]

- (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 71 of the Act, be paid to the execution debtor, if he can be found: Provided that if the messenger is an officer of the Public Service and has certified that no objection has been lodged against such plan or that all the persons having an interest therein have informed him that they have no objection or if an objection is lodged against such plan and notice in accordance with the proviso in paragraph (e) has not been given or that it has been amended in accordance with an order of the court or that it has been confirmed on review, such amount shall be paid out by the clerk of the court or any person authorised thereto by him in accordance with the plan of distribution so certified.

[Para. (g) substituted by GN R.1314 of 1980.]

- (h) The provisions of rule 18 (10) shall, subject to the provisions of section 71 of the Act, *mutatis mutandis* apply to any surplus amount not paid out to an execution debtor under paragraph (g).

(15) The Messenger shall, when notifying the result of the execution in terms of rule 8 (4) (a), 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.

RULE 44

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 2 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 Annexure 1 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 setting out-
 - (i) that he claims no interest in the subject matter in dispute other than for 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 other than the execution debtor (hereinafter in this rule referred to as the "claimant") 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 claimant 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 Annexure 1 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 item 1 of Table E 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 7 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 Sub-Rule (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 Sub-Rule (1) , order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or
 - (c) try the matters in dispute in a 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.

RULE 45

45 ENQUIRY INTO FINANCIAL POSITION OF JUDGMENT DEBTOR

(1) A notice referred to in section 65A (1) of the Act calling upon the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as the representative of the juristic person and in his personal capacity, to appear before the court in chambers shall be in a printed form and shall indicate the date of the judgment or order, the amount thereof, the balance of the capital, interest, costs and collection fees which the defendant undertook to pay under section 57 (1) (c) of the Act owing as at the date of issue or reissue of such notice and shall be supported by an affidavit (or affirmation) by the judgment creditor or a certificate by his Legal Practitioner, stating-

- (a) the date of the judgment or the date of the expiry of the period of suspension under section 48 (e) of the Act, as the case may be;
- (b) that the judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or became payable or from the expiry of the period of suspension in terms of section 48 (e) of the Act;
- (c) in what respect the judgment debtor has failed to comply with the judgment or order referred to in section 65A (1) of the Act, the amount in arrear and outstanding balance on the date whereupon the notice is issued;
- (d) that the judgment debtor has been advised by registered letter of the terms of the judgment or of the expiry of the period of suspension under section 48 (e) of the Act, as the case may be, and of the consequences of his failure to satisfy the judgment, and that a period of 10 days has elapsed since the date on which the said letter was posted;
- (e) that the court is not barred by the provisions of section 18 of the Credit Agreements Act, 1980 (Act 75 of 1980), from making an order referred to in that section.

(2) Any alterations in the notice referred to in Sub-Rule (1) shall be initialed by the judgment creditor or his legal practitioner and by the clerk of the court before issue or re-issue.

[Rule 45(2) amended by GN R.1115 of 1974 and by GN R.2221 of 1977]

(3) When a judgment or order referred to in section 65A (1) of the Act has been given in any court other than the court of the district in which the enquiry is held, the clerk of the court shall not issue the notice until there is lodged with him a copy of the judgment or order of such other court duly certified by the clerk of that court, who shall also certify that the court is not barred by the provisions of section 18 of the Credit Agreements Act, 1980 (Act 75 of 1980), from making an order referred to in that section.

(4) The authority for the issue of a warrant referred to in section 65F (1) or section 65G of the Act shall lapse if the warrant is not issued within one year from the date of its authorization: Provided that if it is proved to the satisfaction of the court that for good cause the authority was not acted upon within that period, the court may, on application, extend that period by a period not exceeding 12 months.

(5) For the purposes of this rule the expressions "printed form" and "printed" shall have a meaning corresponding to that of the expression "printed form" in rule 5.

(6) The provisions of rule 55 (1), (2), (4), (8) and (10) shall apply *mutatis mutandis* to the request referred to in section 65A (3) of the Act.

(7) The written offer referred to in section 65 shall be in affidavit or affirmation form setting out-

- (a) the full names of the judgment debtor, his residential and business address;
- (b) the name and address of his employer;
- (c) is marital status;
- (d) the number of his dependants, their age and their relationship to him;
- (e) his assets and liabilities;
- (f) his gross weekly or monthly income (including that of his spouse and dependants) and expenses;
- (g) the number of emoluments attachment orders or other court orders against him and the total amount payable thereunder;
- (h) his offer and the dates of the proposed installments.

[Rule 45 amended by GN R.3002 of 1969, GN R.1115 of 1974 and GN R.2221 of 1977, and substituted by GN R.2222 of 1978.]

RULE 46

46 ATTACHMENT OF EMOLUMENTS BY EMOLUMENTS ATTACHMENT ORDER

(1) When an emoluments attachment order is issued by the judgment creditor out of any court other than the court in which the judgment or order was obtained, a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in section 65J (2) (k) of the Act.

(2) An emoluments attachment order shall be issued in the form as prescribed in Annexure 1 and shall contain sufficient information to enable the garnishee to identify the judgment debtor, including the identity number or work number or date of birth of the judgment debtor.

[Rule 46 amended by GN R.2221 of 1977 and substituted by GN R.2222 of 1978.]

RULE 47

47 ATTACHMENT OF A DEBT BY GARNISHEE ORDER

(1) An application for an attachment of a debt shall be supported by an affidavit or affirmation by the creditor or a certificate by his legal practitioner 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 55 and costs in specific installments;
- (b) that the court is not barred by the provisions of section 18 of the Credit Agreements Act, 1980 (Act No 75 of 1980), from issuing an order referred to in that section;
- (c) that such judgment or order referred to in Sub-Rule (1) (a) is still unsatisfied, stating the amounts still payable thereunder;
- (d) that the garnishee resides, carries on business or is employed within the district, with mention of the address of the garnishee; and

- (e) that a debt is at present or in future owing or accruing by or from the garnishee to the judgment debtor and the amount thereof.

(2) Unless the application is directed to the court which granted the judgment or order referred to in Sub-Rule (1) (a), a certified copy of the judgment or order against the judgment debtor shall accompany the affidavit or affirmation or certificate referred to in Sub-Rule (1).

(3) Sufficient information including the identity number or work number or date of birth of the judgment debtor 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 legal practitioner 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 the 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 Sub-Rule (6), 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 legal practitioner on the dates 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 Sub-Rule.

(10) If the garnishee disputes his liabilities 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, on oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his defence thereto and may either 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 Sub-Rule (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.

[Rule 47 substituted by GN R.2222 of 1978.]

RULE 48

48 ADMINISTRATION ORDERS

(1) A creditor who, in terms of section 74F (3) of the Act, wishes to object to any debt listed with the administration order or to the manner in which the order commands payments to be made, shall do so within 28 days after the granting of the order has come to his notice.

(2) A creditor who, in terms of section 74G (10) (b) of the Act, wishes to object to any debt included in the list of creditors shall, within 14 days after he has received a copy of the administration order, notify the administrator in writing of his objections and the grounds whereupon his objections are based.

(3) In a matter referred to in Sub-Rule (2) the administrator shall obtain from the clerk of the court a suitable day and time for the hearing of the objections by the court and thereupon, in writing, notify the creditor referred to in Sub-Rule (2), the debtor and any other involved creditors, of the said day and time.

(4) An administrator may, in terms of section 74L (1) (b) of the Act, before making a distribution referred to in that section detain an amount not exceeding 25 per cent of the amount collected to cover the costs that he may have to incur if the debtor is in default or disappears: Provided that the amount in the possession of the administrator for this purpose at any stage shall not exceed the amount of N\$300.

[Rule 48(4) amended by GN R.689 of 1976 and GN 75 of 2000]

(5) Should the administrator be an officer employed by the State the remuneration referred to in section 74L of the Act shall accrue to the State.

[Rule 48 substituted by GN R.2222 of 1978.]

RULE 48A

48A ENFORCEMENT OF FOREIGN CIVIL JUDGMENTS

(a) A certified copy of a judgment lodged with the clerk of the court in terms of section 3(1) of the Enforcement of Foreign Civil Judgments Act, 1994 (Act 28 of 1994), shall be registered by the clerk of the court by –

- a. applying his or her signature on the judgment; and
- b. applying the date stamp of the clerk of the civil court, which stamp shall bear the date of registration by him or her; and
- c. entering the particulars of the parties and the date of the registration of the judgment in the register kept by the clerk of the court for the issue of new actions or applications, not relating to pending cases in the civil court; and

- d. *numbering the judgment with a consecutive number for the year during which it is filed, in sequence with the existing civil cases in that specific court; and*
 - e. *defacing the revenue stamp referred to in Item 1 of Table E; and*
 - (f) *by opening a court file.*
- (2) The judgment creditor shall, together with the certified copy of the judgment referred to in the Sub-Rule (1) -
- (a) file an affidavit by himself or herself or somebody else who can confirm the undermentioned facts -
 - (i) stating the amount of interest due, the appropriate rate of interest and how the amount of interest has been calculated; and
 - (ii) stating whether any amount has been paid by the judgment debtor since judgment, and if so, whether such amount has been deducted from the capital amount of the judgment debt or from the interest or costs, as the case may be.
- (3) The notice referred to in section 3(2) of the Enforcement of Foreign Civil Judgments Act, 1994, shall be issued in quadruplicate in the form as set out in Form 60 of Annexure 1, of which the original and one copy, must be handed to the messenger of the court for service on the judgment debtor, one copy must be handed to the judgment creditor or his or her legal practitioner and one copy must be kept on the court file.
- (4) The judgment referred to in Sub-Rule (1) together with the affidavit referred to in Sub-Rule (2) and all other supportive documents thereto, if any, shall together with the notice referred to in Sub-Rule (3), be served on the judgment debtor.
- (5) (a) The messenger shall, if so requested by the judgment creditor or his or her legal practitioner of record, and at the expense of the judgment creditor, simultaneously with the service of the notice referred to in Sub-Rule (4), make an inventory of the assets of the judgment debtor and forward such inventory together with his or her return of service and account to the judgment creditor or his or legal practitioner of record.
- (b) A request referred to in paragraph (a) shall be in writing and be lodged with the clerk of the court simultaneously with the judgment referred to in Sub-Rule (1)
- (6) The judgment creditor may collect from the judgment debtor the charges of the messenger of the court for the service of the notice and annexures referred to in Sub-Rule (4), and for the making of an inventory referred to in Sub-Rule (5)
- (7) (a) An application in terms of section 5(1) of the Enforcement of Foreign Civil Judgments Act, 1994 for setting aside the registration of the judgment in terms of section 3(1) of that Act must -
- (i) be made on notice, setting forth the relief claimed and the date and time of the hearing and supported by an affidavit, which shall set forth the grounds on which the application is made;
 - (ii) be accompanied by payment into court of an amount of N\$1500-00 as security for the costs of the application;
- (b) A copy of the application as supported by affidavit must be served on the judgment creditor or his or her legal practitioner of record and the original thereof filed with the clerk of the court, at least 5 days prior to the date of hearing as stipulated in the notice of application.
- (c) If the judgment creditor wishes to oppose the application he or she shall deliver an opposing affidavit by not later than noon the day preceding the date of the hearing, setting forth the grounds on which the application is opposed.

- (d) The court may make such order with regard to the costs of the application, and the monies paid into court in terms of Sub-Rule (7)(a)(ii), as it may consider appropriate in the circumstances.

[Rule 48A inserted by GN 75 of 2000.]

RULE 49

49 REVIEW OF JUDGMENTS

(1) Any party to an action or proceedings in which a default judgment is given may apply to the court to rescind or vary such judgment provided that the application shall be set down for hearing on a date within 6 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 53, 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 20% of the principal debt to a maximum amount of N\$3000.00 as security for the costs of the application, but the judgment Creditor may, by consent in writing lodged with the clerk of the court, waive compliance with this requirement.

[Sub-Rule 3 amended by s. 8 of GN R.1338 of 1984 and GN75 of 2000 and GN 200 of 2007.]

(4) Where the amount of the costs awarded against the applicant under such judgment has not at the date of the hearing 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) The provisions of rule 18 (10) shall *mutatis mutandis* apply to moneys paid into court under this rule.

(6) Unless the applicant proves the contrary, it shall be presumed that he had knowledge of such judgment within 2 days after the date thereof.

(7) 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.

(8) The court may also make such order as may be just in regard to moneys paid into court by the applicant.

(9) If such application is dismissed, the judgment shall become a final judgment,

(10) 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 36 of the Act.

(11) 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 not later than one year after the applicant first had knowledge of such voidness, fraud or mistake.

[Sub-Rule (11) substituted by GN R.947 of 1972.]

(12) 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.

(13) The provisions of Sub-Rules (1) to (9) inclusive shall *mutatis mutandis* apply to any such application.

RULE 50

50 APPEALS AND TRANSFER OF ACTIONS TO MAGISTRATES' COURTS

(1) Where an appeal lies to a magistrate's court it may be noted by delivery of notice within 7 days after the date of the judgment appealed against.

(2) The notice of appeal shall set out concisely and distinctly the grounds of appeal.

(3) The party noting the appeal shall prosecute the same within 21 days after the noting of the appeal.

(4) The hearing of the appeal shall be subject to the delivery by the appellant of notice of set-down for a day approved by the clerk of the court.

(5) Such notice shall be delivered at least 7 days before the day of hearing.

(6) At any time after delivery of notice of appeal but not later than delivery of notice of set-down the appellant shall cause to be filed with the clerk of the court the record, or a duly certified copy thereof, of the proceedings which resulted in the judgment or decision appealed against.

(7) Subject to the provisions of any other law regulating procedure of the court on such appeals, the court may, in its discretion, grant leave to a party to adduce oral evidence at the hearing of the appeal or proceed by way of rehearing either in whole or in part.

(8) The court may in its discretion award to either party the costs incurred in the appeal. Such costs shall be taxed on such scale of costs prescribed for actions in the court as the court may direct.

(9) The summons or other initial document issued in a case transferred to a court in terms of rule 39 (22) of the rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa 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.

(10) Costs incurred in the case before transfer as aforesaid shall, unless the court otherwise directs, be cost in the cause.

RULE 51

51 APPEALS IN CIVIL CASES

(1) Upon a request in writing by any party within 7 days after judgment and before noting an appeal and upon payment by such party of a fee of N\$200, which shall be affixed to such request in the form of a revenue stamp, the judicial officer shall within 21 days after a typed record of the proceedings has been handed to him or her by the clerk of the court, hand to the clerk of the court a written judgment which shall become part of the record showing-

- (a) the facts he or she found to be proved; and
- (b) his or her reasons for judgment:

Provided that the fee referred to herein shall not be payable by a party who, together with his request in writing, also lodges a document in which he is authorized by an officer or agent of a legal aid board, established by statute, to make such request.

[Sub-Rule (1) amended by GN 75 of 2000 and Proviso added by GN R.1115 of 1974 and substituted by GN R.689 of 1976.]

(2) The clerk of the court shall forthwith on receipt from the judicial officer of such written judgment supply to the party applying therefore a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

(3) An appeal may be noted within 21 days after the date of the judgment appealed against or within 14 days after the clerk of the court has so supplied a copy of the written judgment to the party applying therefore, whichever period shall be the longer.

(4) An appeal shall be noted by the delivery of notice, and, unless the court of appeal shall otherwise order, by giving security for the respondent's costs of appeal to the amount of N\$5000: Provided that no security shall be required from the State or, unless the court of appeal otherwise orders, from a person to whom legal aid is rendered by a statutorily established legal aid board.

[Sub-Rule (4) amended by GN R.947 of 1972, GN R.1449 of 1979 and GN 75 OF 2000. Proviso to Rule 51(4) substituted by GN R.2221 of 1977.]

(5) Money paid into court under Sub-Rule (4) and outstanding for more than 3 years, may be paid into the Consolidated Revenue Fund, after 3 months' notice of such intention in writing has been given to the parties concerned. Thereafter the parties concerned may apply for a refund of the amount paid into the said Fund.

(6) A cross-appeal shall be noted by the delivery of notice within 8 days after the delivery of the notice of appeal.

(7) 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;
- (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against: and
- (c)

[Para. (c) deleted by GN R.947 of 1972.]

- (8) (a) Upon the delivery of a notice of appeal the judicial officer shall within 21 days after the typed record of the proceedings has been handed to him or her by the clerk of the court, hand to the clerk of the court a statement in writing showing (so far as may be necessary having regard to any written judgment already handed in by him or her)-
 - (i) the facts found to be proved;
 - (ii) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and
 - (iii) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

[Paragraph (a) or Sub-Rule (8) amended GN 75 of 2000.]

(b) Such statement shall become part of the record.

(c) The provisions of this rule shall also, so far as may be necessary, apply to a cross-appeal.

(9) The party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary.

(10) The clerk of the court shall, within 14 days after he receives notice that an appeal has been set down for hearing, transmit to the registrar of the court of appeal the record in the action duly certified.

(11) (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 shall become part of the record.

(12) Where the parties agree in terms of section 82 of the Act 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.

RULE 52

52 REPRESENTATION OF PARTIES

(1) (a) A party may institute or defend and may carry to completion any legal proceedings either in person or by a practitioner.

(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 a practitioner shall be entitled to recover therefore 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 7 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 or application to enable him to do so: Provided that no power of attorney shall be required to be filed by the Government Attorney, any deputy Government Attorney or any professional assistant to the Government Attorney or to a deputy Government Attorney or any legal practitioner instructed in writing or by telegram by or on behalf of the Government Attorney or a deputy Government Attorney in any matter in which the State Attorney or a deputy Government Attorney is acting in his capacity as such.

[Proviso added by GN R.1115 of 1974.]

(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.

RULE 53

53 PRO DEO APPLICANTS

(a) 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 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 20 rand and no fee 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 a legal practitioner or 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 a legal practitioner 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 legal practitioner'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 there-out *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 legal practitioner 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.

RULE 54

54 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 co-partners 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 7 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 a firm name; 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 in the name of the firm or in such name or style or in the name of the 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 Sub-Rule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in Sub-Rule (2).

RULE 55

55 APPLICATIONS

(1) Except where otherwise provided, an application to the court for an order affecting any other person shall be on notice, in which shall be stated shortly the terms of the order applied for and the time when the application will be made to the court. Delivery of such notice shall be effected in the case where the State is the respondent, not less than 21 days and in any other case not less than 7 days before the date of hearing.

[Sub-Rule (1) amended by GN R.2221 of 1977.]

(2) Except where otherwise provided, an application need not be supported by affidavit but 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 issue 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 summons or that the applicant shall deliver such particulars of his claim as are prescribed in rule 6 within 7 days or such shorter time as the court may appoint.

(3) For the purposes of the action, appearance to defend shall be deemed, when the notice of application is ordered to stand as 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.

(4) 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.

(5) 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 and shall be signed by the party making the application.

(6) 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.

(7) Any person affected by an order made *ex parte* or by an interdict notice in a summons for rent under section 31 of the Act may apply to discharge it with costs on not less than 12 hours' notice.

(8) in every application the person substantially interested shall be made respondent.

(9) All interlocutory matters 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.

(10) All opposed applications shall be heard in open court.

RULE 55A

55A AMENDMENT OF PLEADINGS

(1) Any party desiring to amend any pleading 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 7 days after the delivery of the notice to 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 act in accordance with the procedure prescribed in rule 55.

(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 14 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.

[Rule 55A inserted by GN R.2221 of 1977.]

RULE 56

56 ARRESTS TANQUAM SUSPECTUS DE FUGA, INTERDICTS, ATTACHMENTS TO SECURE CLAIMS 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 a *mandament van spolie* under section 30 of the Act, 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 summons for rent under section 31 of the Act shall be in the form prescribed therefore in Annexure 1

(5) (a) An order made *ex parte* shall call upon the respondent to show cause against it at a time stated in the order, which 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 a less time after service than the time stated in rule 9 (14) (a) or (b), as the case may be.

(b) An order made *ex parte* for the arrest of a person shall call upon the respondent to show cause against it at a time stated in the order, which shall be the first court day after service.

[Sub-Rule (5) amended by GN R.2221 of 1977 and substituted by GN R.1689 of 1983 as corrected by GN R.1946 of 1983.]

- (6) The return day of an order made *ex parte* may be anticipated by the respondent upon 12 hours' notice to the applicant.
- (7) A copy of any order made *ex parte* and of the affidavit, if any, on which it was made shall be served forthwith on the respondent thereto.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.

[Sub-Rule (15) substituted by GN R.1338 of 1984.]

RULE 57

57 ATTACHMENT TO FOUND OR CONFIRM JURISDICTION

- (1) Any application to the court for any order under section 30*bis* of the Act may be made *ex parte*.
- (2) (a) Any application for an order of attachment of person or property under the said section shall be supported by an affidavit in which is stated-
- (i) the name, address, occupation and place of residence of the applicant;
 - (ii) the name, and, if known, the address, occupation and place of residence of the respondent;
 - (iii) the amount of the claim or the value of the matter in dispute and facts from which it is apparent that the action to be instituted against the respondent is within the jurisdiction of the court and that the attachment is necessary;
 - (iv) whether the attachment is intended to found or confirm jurisdiction;
 - (v) if application is made for attachment of respondent's person, details as to his present whereabouts;
 - (vi) if application is made to attach property, details of the property, including its ownership, value and situation;
 - (vii) such other information as may be necessary to secure an order; (viii) the terms of the order applied for.

- (b) Such affidavit shall be made by the applicant or, if thereto authorized, by Someone on his behalf and shall state whether the deponent knows of his own knowledge the facts to which he deposes: Provided that where the facts are not known to the deponent of his own knowledge but are alleged to be true to the best of his information and belief it shall be stated how the information was obtained or on what grounds he bases his belief.
 - (c) Any application for an order in regard to service of any process In any action referred to in section 30*bis* of the Act may be combined with any application for attachment referred to in paragraph (a).
- (3) The court may, before granting an order of attachment of person or property require the applicant to give security for any damages which may be caused by such order and may, in regard to any application under Sub-Rule (2), require such additional evidence as it may think fit.
- (4) (a) Any order of attachment under Sub-Rule (2) shall call upon the respondent to show cause at a time and on a date stated in the order why such order should not be confirmed.
 - (b) The return date may be anticipated by the respondent upon 12 hours' notice to the applicant.
 - (c) Where the respondent appears to show cause against any such order, the court may order the applicant or deponent to the affidavit or the respondent to attend for examination or cross-examination and may confirm, discharge or vary such order on such terms as to costs as may be just.
- (5) The minutes of any order referred to herein required for service or execution shall be prepared by the applicant and approved and signed by the clerk of the court and shall state that the return date may be anticipated by the respondent upon 12 hours' notice to the applicant and that the applicant may obtain his release or that of his property upon security being given as hereinafter provided.
- (6) (a) Upon receipt of the minutes of the order and of a copy of the affidavit on which it was made the messenger shall forthwith proceed to attach the person or property specified therein, as the case may be.
 - (b) Upon the person mentioned in such minutes being attached the messenger shall deal with such person as provided in section 16 of the Act.
 - (c) Subject to paragraph (d), the rules relating to the powers and duties of the messenger in regard to the method of attachment in execution against movable and immovable property shall, in so far as those rules are appropriate and can be applied, *mutatis mutandis* apply to an attachment of property under this rule.
 - (d) Subject to any order of the court, the messenger shall where movable property is attached, remove such property to a place of security or, if such property be inconvenient to remove, shall leave such property upon the premises in the charge and custody of some person acting on his behalf.
 - (e) Any expense incurred in removing such property to a place of security or for the storage of such property or in leaving such property in the charge or custody of some person acting on behalf of the messenger, shall be borne by the applicant and shall, subject to any order of the court, be costs in the cause.
- (7) Unless the court shall otherwise order, any person or property attached as provided in this rule shall, upon security being given to the satisfaction of the messenger of the court for the amount of the applicant's claim and the costs of the application for attachment, be released from attachment.
- (8) An order made for the attachment of person or property under Sub-Rule (1) shall *ipso facto* be discharged upon security being given by the respondent as provided in Sub-Rule (7).

RULE 58

58 INTEREST

If the defendant has not consented to judgment before the expiration of the time allowed for appearance to defend, interest from the date of issue of the summons to the date of judgment may in the judgment be added to the amount claimed in the summons at the rate claimed in the summons, or, if there be no such rate, then at the rate prescribed under section 1 (2) of the Prescribed Rate of interest Act, 1975 (Act 55 of 1975).

[Rule 58 amended by GN R.689 of 1976 and substituted by GN R.2222 of 1978.]

RULE 59

59 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 34 of the Act and who are willing so to act upon reasonable notice and upon payment of the fees prescribed in Table D of Annexure 2.

(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 to 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) Nothing in this rule shall prevent the court from summoning, with the consent of all parties to the action, persons not on the list to act as assessors in any particular action.

(4) The number and names of the assessors to sit in any case shall be decided by consent of the parties or, where they are unable to agree, by the court: Provided that not more than 2 assessors shall sit in any case.

(5) A party who desires the trial to take place with assessors shall deliver notice of application for assessors, if he be the plaintiff, with the notice of trial, and if he be the defendant not more than 3 days after receiving notice of trial. Such notice shall contain either a consent by the other party or a notice setting down the application for hearing.

(6) The party who desires the trial to take place with assessors shall, at the time of delivering the notice of application, deposit with the clerk of the court the sum of N\$450 for each assessor applied for and shall be liable for any further sum becoming due to the assessors for fees. The fees and expenses of the assessors shall, unless otherwise ordered by the court, be costs in the action.

[Sub-Rule 6 amended by GN 75 of 2000.]

(7) If the application be consented to or granted, the clerk of the court shall summon the assessors named in the consent or 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.

(8) If at the time and place appointed for the trial either of the assessors summoned does not attend, the court may either proceed to try the action with the assistance of the assessors, if any, who is in attendance, or without assistance, if none attended, or may adjourn the trial.

(9) Where a trial is postponed or adjourned, the party who applied for assessors shall, forthwith after the order for postponement or adjournment, pay to the clerk of the court, in addition to the deposit mentioned in Sub-Rule (6), the fees due up to the hour of postponement or adjournment to such assessors as have attended.

(10) Where such payment is not made the court may stay the action until it be made or may continue the trial without the assistance of assessors or may make such order as may be just.

(11) Every assessor acting in a case shall be entitled to the fees set out in Table D of Annexure 2.

RULE 60

60 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 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 51 (3) and (6), 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 and 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 short service, 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 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) (a) A party to a cause in which an irregular or improper step or proceeding has been taken by any other party may, within 7 days after becoming aware of the irregularity or impropriety, apply to the Court to set aside the step or proceeding, but a party who has taken any further steps in the cause with knowledge of the irregularity or impropriety is not entitled to make such application.
- (b) Application in terms of paragraph (a) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged.
- (c) If at the hearing of such application the Court is of the opinion that the step or proceeding is irregular or improper, it may set aside the step or proceeding in whole or in part, either as against all parties or as against some of them and grant leave to amend or make such order as it considers fit.
- (d) Until a party has complied with any order of Court made against him or her in terms of this rule, he or she may not take any further step in the cause, save to apply for an extension of time within which to comply with such order

RULE 61

61 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.

RULE 62

62 SECURITY FOR COSTS BY PLAINTIFF

(1) Where a plaintiff-

- (a) is not resident within the Republic;
- (b) is an unrehabilitated insolvent;
- (c) is a registered or incorporated company;
- (d) has no substantial interest in the cause of the action;
- (e) is a person in respect of whom the court has made an order, which is still in force, in terms of section 74 of the Act whereby provision is made for the administration of his estate; or
- (f) is a person to whom assistance is rendered in terms of the Agricultural Credit Act, 1966 (Act 28 of 1966),

the defendant may (unless the plaintiff has obtained leave to sue as a pauper) after service of the summons and before the closing of the pleadings require him to give security to him for the costs of the action in a form which is acceptable to him (excluding the principal or 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 closing of pleadings, the defendant may within seven days after such fact has come to his knowledge require that such security be given.

[Rule 62(1) substituted by GN R947 of 1972 amended by GN R689 of 1976 and again substituted by GN R1338 of 1984.]

(2) If such request is not complied with within 7 days, the court may on application either stay the proceedings until such request is complied with or dismiss the action.

[Sub-Rule (2) amended by GN R.689 of 1976.]

(3) In this rule "plaintiff" shall not include a plaintiff in reconvention nor shall "action" include a claim in reconvention.

(4) Money paid into court under Sub-Rule (1) and outstanding for more than 3 years, may be paid into the Consolidated Revenue Fund, after 3 months' notice of such intention in writing has been given to the parties concerned. Thereafter the parties concerned may apply for a refund of the amount paid into the said Fund.

(5) The provisions of this rule shall *mutatis mutandis* apply to proceedings instituted by way of application.

RULE 63

63

[Rule 63 deleted by GN R.2222 of 1978.]

RULE 64

64 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 subpoenaed, shall be delivered to the messenger or other person authorized to serve subpoenas in the area where the witness is residing or to the person referred to in section 15 (2) or (3) of the Act, as the case may be.

(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.

RULE 65

65 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) Where the court has issued a warrant in terms of the provisions of section 309 (3) or section 309bis of the Criminal Procedure Act, 1955 (Act 56 of 1955), and the prosecutor subsequently withdraws the charge, it shall not be necessary to again enter particulars of such case in the criminal record book: Provided that if such particulars are not entered in the criminal record book a separate register shall be kept by the clerk of the court of all warrants issued in terms of the aforesaid sections and at each successive stage he shall enter therein particulars of the date of issue of the warrant, the case number, the name of the accused, the date upon which the warrant was forwarded to the police for execution, the fact that the case has been withdrawn and any other particulars that circumstances may require.

(3) 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.

(4) The particulars recorded in the criminal record book shall include-

- (a) the date of hearing;

- (b) the case number;
- (c) the name of the accused;

[Para. (c) amended by GN R.2221 of 1977.]

- (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 the Supreme Court of South Africa varying the verdict or sentence on review or appeal).

(5) 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.

RULE 66

66 RECORDS OF CRIMINAL CASES

(1) The plea and explanation or statement, if any, of the accused, the evidence orally given, any exception or objection taken 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.

[Sub-Rule (1) substituted by GN R.3002 of 1969.]

(2) Every person employed for the taking of shorthand notes in terms of Sub-Rule (1) 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).

- (3) (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 Sub-Rule (4) and rule 67 (3), (8) and (10), 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 such transcript and shall be filed with the record.
- (4) (a) In any case in which no transcription was ordered in terms of Sub-Rule (3), 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 Sub-Rule (1) and shall, save in the case of the State, pay a fee of N\$7-50 per A4 size page or part thereof for such transcription.

[Para. (a) amended by GN R261 of 1977, GN R1449 of 1979 GN R.1139 of 1982, GN R.1338 of 1984 and by GN75 of 2000.]

- (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 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.

(5) Subject to the provisions of Sub-Rule (6), 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.

[Sub-Rule (5) amended by GN R.3002 of 1969.]

(6) The prosecutor or the accused may, not later than 7 days after judgment or where the proceedings have been taken down in shorthand or by mechanical means, within 7 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.

(7) Subject to the provisions of Sub-Rule (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 the State, of a fee of-

- (a) in the case of a copy of a transcript referred to in Sub-Rule (3), N\$2-50 per A4 size page or part thereof;

[Para. (a) amended by GN R.1338 of 1984 and by GN75 of 2000.]

- (b) in the case of a copy of a transcript referred to in Sub-Rule (4) (a), N\$2-50 per A4 size page or part thereof.

[Para. (b) amended by GN R.1338 of 1984 and by GN 75 of 2000.]

(8) 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 employed for the taking of such notes, or to a person transcribing such notes, shall be construed 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 employed for the making of such mechanical record, or to a person transcribing such record as the case may be.

(9) Where a magistrate or the court is satisfied that an accused is unable to pay the costs of obtaining a copy of any record or of any transcript thereof or is able to pay only part of such costs, such magistrate or court may, at the request of the accused, direct the clerk of the court to deliver a copy of such record or transcript to the accused free of charge or at such reduced charge as the magistrate or court may determine.

RULE 67

67 CRIMINAL APPEALS

(1) A convicted person desiring to appeal under section 103 (1) of the Act, shall within 14 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 grounds, whether of fact or law or both fact and law, on which the appeal is based: Provided that if such appeal is noted by a legal practitioner on behalf of a convicted person he shall simultaneously with the lodging of the notice of appeal lodge a power of attorney authorizing him to note an appeal and to act on behalf of the convicted person. A convicted person who, after a judge of the court of appeal has refused to certify that there are reasonable grounds for appeal, still desires to prosecute an appeal which he has noted shall, within 14 days after being notified of such refusal, in writing indicate or cause to be indicated to the clerk of the court whether he intends prosecuting the appeal other than in person and unless he so indicates and takes the necessary steps to prosecute the appeal within the said period, the noted appeal shall be deemed to have lapsed.

[Sub-Rule (1) amended by GN R.2221 of 1977.]

(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-

- (a) by a person other than a person referred to in section 103 (6) of the Act; or

- (b) by a person referred to in section 103 (6) of the Act and a judge of the court of appeal has certified that there are reasonable grounds for appeal or if the appeal is proceeded with by a legal practitioner on behalf of such a person,

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 66 (1), and then place such copy before the judicial officer who shall within 14 days thereafter furnish to the clerk of the court a statement in writing showing-

- (i) the facts lie found to be proved;
- (ii) his reasons for any finding of fact specified in the appellant's notice as appealed against; and
- (iii) his reasons for any ruling on any question of law or as to the admission or rejection of evidence so specified as appealed against.

[Sub-Rule (3) substituted by GN R.947 of 1976.]

(4) The clerk of the court shall upon receipt of the judicial officer's statement forthwith inform the person who noted the appeal that the statement has been furnished.

(5) Within 14 days after the person who noted the appeal has been so informed, the appellant may by notice to the clerk of the court, amend his notice of appeal and the judicial officer may, in his discretion, within 7 days thereafter furnish to the clerk of the court a further or amended statement of his findings of fact and reasons for judgment.

(6) When an appeal is noted in a case in which the prosecution was not at the public instance the notice referred to in Sub-Rule (1) and any amended notice provided for in Sub-Rule (5) shall be served by the appellant also upon the prosecutor.

(7) An attorney-general desiring to appeal under section 103 (2) of the Act against the dismissal of a summons or charge shall, within 28 days after such dismissal, deliver a notice of appeal.

(8) Upon an appeal being noted as provided in Sub-Rule (7) 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 66 (1), and then place the record before the judicial officer who shall within 14 days thereafter furnish to the clerk of the court a statement in writing of his reasons for dismissing the summons or charge.

(9) An attorney-general or other prosecutor who contemplates an appeal under section 104 (1) of the Act, shall, within 28 days after the conclusion of the criminal proceedings, in writing request the judicial officer to state a case.

(10) Upon receipt of the request referred to in Sub-Rule (9), 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 66 (1), and then place the record before the judicial officer who shall within 14 days thereafter furnish a stated case to the clerk of the court who shall forthwith transmit a copy thereof to the attorney-general or other prosecutor, as the case may be. The stated case shall be divided into paragraphs, numbered consecutively and shall be arranged in the following order-

- (a) The judicial officer's findings of fact in so far as they are material to the questions of law on which decision in favour of the accused was given;
- (b) questions of law;
- (c) the judicial officer's decision on such questions and his reasons therefore.

(11) The attorney-general or other prosecutor may, within 14 days after the receipt by him of the stated case, deliver notice of appeal against the decision on questions of law.

(12) Every notice of appeal, judicial officer's statement and stated case filed of record with or furnished to the clerk of the court under the provisions of this rule shall become part of the record.

(13) The clerk of the court shall within 7 days after receipt by him of the statement referred to in Sub-Rule (5) or (8) or of the notice of appeal delivered in terms of Sub-Rule (11), as the case may be, transmit to the registrar of the court of appeal the record of the criminal proceedings or the stated case, together with 3 copies thereof. When the prosecution is at the public instance he shall also transmit one such copy to the attorney-general: Provided that if the appellant has not amended his notice of appeal as provided in Sub-Rule (5), the clerk of the court shall so transmit the record without delay after the period allowed for an amendment of the notice of appeal has lapsed.

RULE 68

68 OATH OF OFFICE OF INTERPRETER

(1) Every interpreter other than a casual interpreter shall upon entrance into office, in writing, take an 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 magistrate's court I shall truly and correctly to the best of my ability interpret from the language I may be called upon to interpret into either of the official languages 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 either of the official languages 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 by such casual interpreter or that he has affirmed to interpret truly and correctly shall be endorsed on the court record and also the language he is called upon to interpret from or into, excluding the official languages.

(5) Whenever a casual interpreter is employed on a daily basis for a certain period to interpret from or into a particular language 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 magistrate's court into one of the official languages 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.

[Rule 68 substituted by GN R.1115 of 1974.]

RULE 69

69 REPEAL OF RULES

(1) Subject to the provisions of paragraph (h), Government Notices 814 dated 18 May 1945, 362 dated 13 February 1948, 1154 dated 11 June 1954, 1212 dated 18 June 1954, 918 dated 6 May 1955, 802 dated 13 June 1958, 2014 dated 4 December 1959, and 1313 dated 28 August 1964 are hereby repealed.

(b) For a period of 12 months from the date upon which these rules come into operation the use of the forms contained in the First Annexure to the rules published under Government Notice 814 dated 18 May 1945, as amended, and repealed by paragraph (a), may, with the necessary variations as circumstances may require, be continued

ANNEXURE 1

[The forms are reproduced here, as amended by GN R3002 OF 1969, GN R947 of 1972, GN R2222 of 1978, GN R1314 of 1980, GN R1800 of 1981, GN R1139 of 1982, GN R1689 of 1983 , GN R1338 of 1994 and GN 75 of 2000]

FORMS

NUMERICAL LIST

[Numerical index of forms amended by GN R2222 of 1978 and GN75 of 2000]

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.*
- 5A Request for judgment in terms of section 57 of the Act.*
- 5B Request for judgment in terms of section 58 of the Act.*
- 6 Notice of withdrawal.*
- 7 Notice of application for summary judgment.*
- 8 Affidavit in support of application for summary judgment.*
- 9 Affidavit under section 32 of the Act.*
- 10 Security under section 32 of the Act.*
- 11 Order under section 32 of the Act.*
- 12 Consent to sale of goods attached under section 32 of the Act.*
- 13 Notice to deliver schedule of documents.*
- 14 Notice to produce documents for inspection.*
- 15 Notice to produce at trial.*
- 16 Order for interdict obtained ex parte.*
- 17 Order for arrest of person suspectus de fuga.*
- 18 Order for attachment of person or property to found or confirm jurisdiction.*
- 19 Direction to attend pre-trial conference.*

- 20 *Order - Pre-trial conference.*
- 21 *Application for trial with assessors.*
- 22 *Summons to assessor.*
- 23 *Commissions de bene esse.*
- 24 *Subpoena.*
- 25 *Warrant for payment of fine or arrest of witness in default.*
- 26 *Warrant for the arrest of a witness in default.*
- 27 *Security on arrest, attachment or interdict ex parte.*
- 28 *Security when execution is stayed pending appeal.*
- 29 *Security when execution is allowed pending appeal.*
- 30 *Warrant of ejectment.*
- 31 *Warrant for delivery of goods.*
- 32 *Warrant of execution against property.*
- 33 *Notice of attachment in execution.*
- 34 *Notice to preferent creditor [section 66 (2) (a) of the Act].*
- 35 *Interpleader summons [section 69 (1) of the Act].*
- 36 *Interpleader summons [section 69 (2) of the Act].*
- 37 *Security under rule 38.*
- 38 *Emoluments attachment order.*
- 39 *Garnishee order.*
- 40 *Notice to show cause under section 65A (1) of the Act.*
- 41 *Notice of set-down of postponed proceedings under section 65E (3) of the Act.*
- 42 *Warrant for arrest and detention under section 65F (1) read with section 65H of the Act.*
- 43 *Warrant of liberation in a civil matter under section 65L (c) of the Act.*
- 44 *Application for an administration order under section 74 (1) of the Act.*
- 45 *Statement of affairs of debtor in an application for an administration order in terms of section 65I (2) or 74A of the Act.*
- 46 ...
- 47 *Notice to debtor that an additional creditor has lodged a claim against him for a debt owing before the making of the administration order.*
- 48 *Notice to debtor that a creditor has lodged a claim for a debt owing after granting of the administration order.*
- 49 *Notice to add an additional creditor to the list of creditors of a person under administration.*

- 50 *Notice to creditor that his name has been added to the list of creditors of a person under administration.*
- 51 *Administration order.*
- 52 *Distribution account in terms of section 74J (5) of the Act.*
- 52A *Rescission of an administration order.*
- 53 *Notice of abandonment of specified claim, exception or defence.*
- 54 *Agreement not to appeal.*
- 55 *Request to inspect record.*
- 56 *Criminal record book.*
- 57 *Notice under section 109 (2) of the Act.*
- 58 *Warrant of arrest and committal under section 109 (4) of the Act.*
- 59 *Certificate of liberation.*
- 60 *Notice to judgment debtor of registration of foreign judgment*

ALPHABETICAL LISTALPHABETICAL LIST

[Alphabetical index substituted by GN R2222 of 1978 and GN 75 of 2000]

- 51 *Administration order*
- 8 *Affidavit in support of application for summary judgment.*
- 9 *Affidavit under section 32 of the Act.*
- 54 *Agreement not to appeal.*
- 44 *Application for an administration order under section 74 (1) of the Act.*
- 21 *Application for trial with assessors.*
- 59 *Certificate of liberation.*
- 23 *Commissions de bene esse.*
- 12 *Consent to sale of goods attached under section 32 of the Act.*
- 56 *Criminal record book.*
- 52 *Distribution account in terms of section 74J (5) of the Act.*
- 19 *Direction to attend pre-trial conference.*
- 38 *Emoluments attachment order.*
- 39 *Garnishee order.*
- 35 *Interpleader summons [section 69 (1) of the Act].*
- 36 *Interpleader summons [section 69 (2) of the Act].*
- 1 *Notice of application (general form).*
- 4 *Notice under rule 9 (12) for substituted service.*
- 6 *Notice of withdrawal.*
- 7 *Notice of application for summary judgment.*
- 13 *Notice to deliver schedule of documents.*
- 14 *Notice to produce documents for inspection.*
- 15 *Notice to produce at trial.*
- 33 *Notice of attachment in execution.*
- 34 *Notice to preferent creditor [section 66 (2) (a) of the Act].*
- 40 *Notice under section 65A (1) of the Act to show cause.*
- 41 *Notice of set-down of postponed proceedings under section 65E (3) of the Act.*
- 47 *Notice to debtor that an additional creditor has lodged a claim against him for a debt owing before the making of the administration order.*

- 48 *Notice to debtor that a creditor has lodged a claim for a debt owing after granting of the administration order.*
- 49 *Notice to add an additional creditor to the list of creditors of a person under administration.*
- 50 *Notice to creditor that his name has been added to the list of creditors of a person under administration.*
- 53 *Notice of abandonment of specified claim, exception or defence.*
- 57 *Notice under section 109 (2) of the Act.*
- 60 *Notice to judgment debtor of registration of foreign judgment.*
- 11 *Order under section 32 of the Act.*
- 16 *Order for interdict obtained ex parte.*
- 17 *Order for arrest of person suspectus de fuga.*
- 18 *Order for attachment of person or property to found or confirm jurisdiction.*
- 20 *Order - pre-trial conference.*
- 5 *Request for default judgment.*
- 5A *Request for judgment in terms of section 57 of the Act.*
- 5B *Request for judgment in terms of section 58 of the Act.*
- 55 *Request to inspect record.*
- 52A *Rescission of an administration order.*
- 10 *Security under section 32 of the Act.*
- 27 *Security on arrest, attachment or interdict ex parte.*
- 28 *Security when execution is stayed pending appeal.*
- 29 *Security when execution is allowed pending appeal.*
- 37 *Security under rule 38.*
- 45 *Statement of affairs of debtor in an application for an administration order under section 651 (2) or 74A of the Act.*
- 24 *Subpoena.*
- 2 *Summons commencing action (ordinary).*
- 3 *Summons commencing action (in which is included an automatic rent interdict).*
- 22 *Summons to assessor.*
- 25 *Warrant for payment of fine or arrest of witness in default.*
- 26 *Warrant for the arrest of a witness in default.*
- 30 *Warrant of ejectment.*
- 31 *Warrant for delivery of goods.*
- 32 *Warrant for execution against property.*

- 42 *Warrant of arrest and detention under section 65F (1) read with section 65H of the Act.*
- 43 *Warrant of liberation in a civil matter.*
- 58 *Warrant of arrest and committal under section 109 (4) of the Act.*

NO. 1 NOTICE OF APPLICATION (GENERAL FORM).

In the Magistrate's Court for the District of..... held at.....

Case No of

In the matter between

..... Applicant

and

..... Respondent

Take notice that application will be made to the above-mentioned Court on the day of
....., at.....a.m./p.m. for an order (*state terms of order applied for*).

Dated at.....this.....day of.....

.....
Applicant / Legal Practitioner for the Applicant.

To :
.....

And To:
.....

NO. 2 SUMMONS COMMENCING ACTION (ORDINARY).

Sued out by
P.O Box/Private Bag.....
Tel number
Fax number
Ref
.....

Signature of Plaintiff or Plaintiff's Legal Practitioner of Record

Date of signature

In the Magistrate's Court for the District of..... held at

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 or her legal practitioner, 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: Plaintiff's claim against defendant is for payment of the sum/balance of N\$..... in respect of :

(2) Prayers : Wherefore plaintiff prays for judgment against the defendant for:

Costs if the action is undefended and if costs are awarded by the court on a party and party scale will be as follows:

	Summons N\$	Judgment N\$
Court fees
Legal Practitioner's fees
G.S.T.
Messenger's fees
Messenger's fees : non-service
Sub-Total
TOTAL	N\$.....	.....

(3) 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 installments or otherwise, you may approach the plaintiff or his legal practitioner. Your attention is directed to the provisions of section 75 of the Magistrates' Court Act, 1944 (Act 32 of 1944), should you wish to pay the said claim in installments, and to section 58 of that Act, should you wish to consent to judgment.
- (d) **Any person against whom a court has, in a civil case, given any judgment or made any order, and who has not, satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith, shall, if he or she has changed his or her place of residence, business or employment, within 14 days from the date of every such change notify the clerk of the court which gave judgment or made such order and the judgment creditor or his or her legal practitioner, fully in writing of the particulars of his or her new place of residence, business or employment (section 109). Upon failure to do so he or she may be convicted and sentenced to a period of imprisonment not exceeding 3 months or fined for an amount not exceeding N\$1000;**
- (e) Any person against whom a court has in a civil case, given any judgment or made an order and who has not within 10 days, satisfied in full such judgment or order may for such failure be called upon by notice to appear before the court in chambers to enable the court to inquire into his or her financial position and to make such order as the court deems just and equitable (section 65A & D of the Act)
- (1) Any person who fails to appear upon a notice in terms of section 65A(1) of the Act shall be guilty of an offence and may be sentenced to a fine not exceeding N\$1000 or to imprisonment for a period not exceeding 3 months or to both such fine and imprisonment or to periodical imprisonment of not less than 100 hours and not more than 2000 hours

(2) Consent to judgment.

*I the undersigned, being the defendant in this matter, admit that I am liable to the plaintiff as claimed in the summons (or in the amount of N\$.....) And costs to date and I consent to judgment accordingly.
Dated at.....this.....day of.....,*

.....
Defendant

(5) Notice of intention to defend the Action.

*To the Clerk of the Court:
Kindly take notice that the defendant hereby notifies his or her intention to defend this action. Service of all process, notices and documents will be accepted at
(physical address). The postal address of defendant is
Dated at.....this.....day of.....,*

.....
Defendant/Defendant's Legal Practitioner

To The Plaintiff or Plaintiff's Legal Practitioner
Acknowledge receipt of this document on this day of,

Signature

NOTE: A copy of this document must be delivered to the plaintiff or plaintiff's legal practitioner and the original must be filed of record with the clerk of the court subsequent to the delivery of the copy to the plaintiff or his or her legal practitioner

[Form 2 substituted by GN 75 OF 2000]

NO. 3 SUMMONS COMMENCING ACTION (IN WHICH IS INCLUDED AN AUTOMATIC RENT INTERDICT)

Sued out by

P.O Box/Private Bag.....

Tel number

Fax number

Ref

.....

Signature of Plaintiff or Plaintiff's Legal Practitioner of Record

Date of signature

In the Magistrate's Court for the District of..... held at

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 or her legal practitioner, 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.

(3) Particulars: Plaintiff's claim against defendant is for :

- (i) arrear rent in terms of an agreement concluded by and between the parties on or about which is due and payable in respect of defendant's tenancy of of which arrear rent the particulars are as follows:

Date due and payable	For period	In the amount of
_____	_____	_____
_____	_____	_____

and which despite demand defendant neglects or fails to pay;

(ii) and for confirmation of the interdict appearing in this summons;

- (iii) and for cancellation of the said agreement or confirmation of the cancellation of the agreement which cancellation was done in with effective date being

(iv) and for ejectment from the said premises being

- (v) damages in the amount of N\$..... per months calculated from the date of to date of eviction;

(vi) interest at the rate of %

(vii) Costs of suit;

.....

Costs if the action is undefended and if costs are awarded by the court on a party and party scale will be as follows:

	<i>Summons N\$</i>	<i>Judgment N\$</i>
<i>Court fees .. .. .</i>	.....
<i>Legal Practitioner's fees .. .. .</i>	.....	.....
<i>G.S.T. .. .. .</i>	.....	.....
<i>Messenger's fees .. .. .</i>	.....
<i>Messenger's fees : non-service .. .. .</i>	.....	.....
<i>Sub-Total</i>	_____	_____
<i>TOTAL</i>	N\$ _____	

(1) And take notice that-

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 DESCRIBED IN THE PARTICULARS OF CLAIM ENDORSED HEREIN BEFORE WHICH ARE SUBJECT TO THE PLAINTIFF'S HYPOTHEC FOR RENT UNTIL AN ORDER RELATIVE THERETO SHALL HAVE BEEN MADE BY THE COURT.

(3) 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 installments or otherwise, you may approach the plaintiff or his legal practitioner. Your attention is directed to the provisions of section 75 of the Magistrates' Court Act, 1944 (Act 32 of 1944), should you wish to pay the said claim in installments, and to section 58 of that Act, should you wish to consent to judgment.

(d) Any person against whom a court has, in a civil case, given any judgment or made any order, and who has not, satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith, shall, if he or she has changed his or her place of residence, business or employment, within 14 days from the date of every such change notify the clerk of the court which gave judgment or made such order and the judgment creditor or his or her legal practitioner, fully in writing of the particulars of his or her new place of residence, business or employment (section 109). Upon failure to do so he or she may be convicted and sentenced to a period of imprisonment not exceeding 3 months or fined for an amount not exceeding N\$1000;

(e) Any person against whom a court has in a civil case, given any judgment or made an order and who has not within 10 days, satisfied in full such judgment or order may for such failure be called upon by notice to appear before the court in chambers to enable the court to inquire into his or her financial position and to make such order as the court deems just and equitable (section 65A & D of the Act)

(f) Any person who fails to appear upon a notice in terms of section 65A(1) of the Act shall be guilty of an offence and may be sentenced to a fine not exceeding N\$1000 or to imprisonment for a period not exceeding 3 months or to both such fine and imprisonment or to periodical imprisonment of not less than 100 hours and not more than 2000 hours

(4) Consent to judgment.

I the undersigned, being the defendant in this matter, admit that I am liable to the plaintiff as claimed in the summons (or in the amount of N\$......) And costs to date and I consent to judgment accordingly.

Dated at.....this.....day of.....,

.....
Defendant

(5) Notice of intention to defend the Action.

To the Clerk of the Court:

*Kindly take notice that the defendant hereby notifies his or her intention to defend this action. Service of all process, notices and documents will be accepted at
(physical address). The postal address of defendant is*

Dated at.....this.....day of.....,

.....
Defendant/Defendant's Legal Practitioner

To The Plaintiff or Plaintiff's Legal Practitioner:

Acknowledge receipt of this document on this day of,

.....

Signature

NOTE: A copy of this document must be delivered to the plaintiff or plaintiff's legal practitioner and the original must be filed of record with the clerk of the court subsequent to the delivery of the copy to the plaintiff or his or her legal practitioner.

[Form 3 substituted by GN R2222 of 1978 and by GN R1314 of 1980 and GN 75 of 2000.]

NO. 4 NOTICE UNDER RULE 9 (12) FOR SUBSTITUTED SERVICE.

In the Magistrate's Court for the District of held at ..
.....

Case No. of

To:
of

Take notice that a summons has been issued against you in this court by
.....
of for the sum of R
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 Legal Practitioner

Address :
.....

NO. 5 REQUEST FOR DEFAULT JUDGMENT

In the Magistrate's Court for the District of held
at.....

Case No of

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 be given against the defendant, as claimed in the summons for R..... (*state particulars if judgment is applied for something less than that claimed in the summons*), together with R..... interest at per cent from the date of summons.

Dated at.....this.....day of....., 19.....,

.....
Plaintiff/Plaintiff's Legal Practitioner

[Form 5 substituted by GN R391 of 7 March 1986.]

NO. 5A REQUEST FOR JUDGMENT WHERE THE DEFENDANT HAS ADMITTED LIABILITY AND UNDERTOOK TO PAY THE DEBT IN INSTALLMENTS OR OTHERWISE - SECTION 57 OF THE MAGISTRATES' COURTS ACT, 1944 (ACT 32 OF 1944). No. 5A Request for Judgment where the defendant has admitted liability and undertook to pay the debt in instalments or otherwise - Section 57 of the Magistrates' Courts Act, 1944 (Act 32 of 1944).

In the Magistrate's Court for the District of
held at

Case No. of

In the matter between

..... Plaintiff

and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 57 (2) of the Magistrates' Courts Act, 1944, be noted in his favour against the defendant as follows:

Judgment debt	Costs
Outstanding balance of the debt	
[Section 57 (2) (c) (i)]	
Interest at per cent per annum	
Accounted from	
Court fees (only when this is the first Document in action)	
(section 59)	
Collection fees [section 57 (1) (c)]	
Summons, if any (Legal Practitioner's charges, court Fees, messenger's fees and messenger's Fees on re-issue) [section 57 (1)]	
Costs of affidavit or affirmation by Plaintiff / certificate by plaintiff's legal practitioner [Section 57(2)(c)]	
Costs of registered letter [section 57 (1)]	
Costs of notice in terms of rule 54 (1)	
Letter of demand, only if no summons has been issued [section 56]	
Request for judgment [section 57]	
Totals	R R
	Total R

plus further interest at per cent per annum as from the date of judgment to the date of payment, and that payment thereof take place in accordance with defendant's offer.

The following documents are attached:

- A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.
- The defendant's written acknowledgment of liability towards the plaintiff for the amount of the debt and costs claimed (or for any other amount) and his offer.
- A copy of the plaintiff's or his Legal Practitioner's written acceptance of the offer.
- An affidavit (or affirmation) by the plaintiff/a certificate by the plaintiff's legal practitioner in terms of section 57 (2) (c) of the Magistrates' Courts Act, 1944.

Dated at.....this.....day of.....,

.....
Plaintiff/Plaintiff's legal practitioner

.....(Address)

Judgment noted on the day of, in favour of the plaintiff for the amount of R..... and the amount of R costs. The defendant is further ordered to pay the said judgment and costs in monthly/weekly installments of R The first installment must be paid on or before and thereafter on or before the day of every succeeding month/week until the outstanding balance of the judgment debt and costs has been paid in full.

.....
Clerk of the Court

NO. 5B REQUEST FOR JUDGMENT WHERE THE DEFENDANT HAS CONSENTED TO JUDGMENT - SECTION 58 OF THE MAGISTRATES' COURTS ACT, 1944 (ACT 32 OF 1944).

In the Magistrate's Court for the District of.....
held at

Case No.of

In the matter between

..... Plaintiff
and

..... Defendant

Plaintiff requests that judgment in the above-mentioned matter in terms of section 58(1) of the Magistrates' Courts Act, 1944, be noted in his favour against the defendant as follows:

	Judgment debt	Costs
	R c	R c
Amount of the debt [Section 58 (1)(i)].....		
Interest at .....per cent per annum		
Accounted from		
Court fees (only when this is the first Document in action) (section 59)		
Summons, if any (Legal Practitioner's charges, court Fees, messenger's fees and messenger's Fees on re-issue) [section 57 (1)]		
Costs of notice in terms of rule 54 (1)		
Letter of demand, only if no summons has been issued [section 56]		
Request for judgment [section 58]		
Totals	R	R
	Total R	

and that payment thereof take place in accordance with defendant's consent.

The following documents are attached:

- (a) A copy of the letter of demand sent to the defendant in terms of section 56 of the Magistrates' Courts Act, 1944.
- (b) The defendant's written consent to judgment and costs.

Dated at.....this.....day of....., 19.....

Plaintiff/Plaintiff's Legal Practitioner

.....(Address)

.....

Judgment noted on the day of,in favour of the plaintiff for the amount of R..... and the amount of R..... costs for which the defendant has consented to judgment. The defendant is further ordered to pay the said judgment debt and costs in monthly/weekly installments of R or until the judgment debt and costs have been paid in full.

.....
Clerk of the Court.

[Form 5B inserted by GN R2222 of 1978, substituted by GN R1800 of 1981 and by GN R1338 of 1984.]

NO. 6 NOTICE OF WITHDRAWAL.

In the Magistrate's Court for the District of.....
held at.....

Case No.of

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 Legal Practitioners

To:
.....
.....

and: The Clerk of the Court,
.....

NO. 7 NOTICE OF APPLICATION FOR SUMMARY JUDGMENT.

In the Magistrate's Court for the District of.....
held at.....

Case No.of

In the matter between
..... Applicant
and
..... Respondent

Take notice that application will be made to the above-mentioned court on the..... day of
....., at a.m./p.m., for summary judgment against you in this action for
Rand 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 thisday of,

.....

To:
.....
.....

and: The Clerk of the Court,
.....

[Form 7 amended by GN R2409 of 1991.]

NO. 8 AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT.

In the Magistrate's Court for the District of.....

Held at.....

Case No.of

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 R..... on the grounds stated in the summons.
- 1 I verily believe that the defendant has not a bona fide defence to the claim and that appearance has been entered solely for 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 if appointment is held ex officio

NO. 9 AFFIDAVIT UNDER SECTION 32 OF THE ACT.

In the Magistrate's Court for the District of.....
held at.....

Case No.of

In the matter between

.....Applicant

and

.....Respondent

I,.....,of
..... (address), make oath and say:

- (a) I am the landlord (or the agent of the landlord.) of premises situate
(describe the premises).
- (b)(tenant) is justly indebted to me (or to my said
principal) in the sum of R.....for rent of the said premises from the..... day of
.....,..... to the day of,
- (c) The said sum of Rbecame due and recoverable upon the day of
.....,
- (d) The said rent was demanded from the saidon the.....day of
.....,but has not yet been paid.
- or
- 2 I believe that the said is about to remove certain movables, now
upon the said premises, from such premises in order to avoid payment of the said rent.

.....
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 if appointment is held ex officio

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Applicant

and

.....Respondent

Whereas(landlord) has applied for the issue of an order to attach the movable property upon (*describe the leased premises*) for the sum of R.....for rent due by..... of(name tenant) and R..... for costs;

Now, therefore, the said and of (*name the surety*) as surety and co-principal debtor for the saidhereby bind themselves jointly and severally that the said and or either of them shall pay to the said or whom else it may concern all damages, costs and charges which he or they may sustain by reason of the attachment of the said movable property in case the said attachment is set aside.

Signed and dated at this day of,in the presence of the undersigned witnesses.

.....
Surety and Co-Principal Debtor

.....
Landlord

Witnesses :

2.1.1.1
Signature and address

.....

2.1.1.2
Signature and address

.....

NO. 11 ORDER UNDER SECTION 32 OF THE ACT

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter betweenApplicant
andRespondent

It is ordered :

That the Messenger of the court do attach so much of the (*describe the movables*) in the (*house, store as the case may be*) situate at (*describe the premises*) as shall be sufficient to satisfy the sum of R rent and R costs.

Dated this day of,

.....
Clerk of the Court

.....
Applicant / Applicant's Legal Practitioner
Address
.....

Further should the respondent wish to show cause why the order of attachment should not be confirmed, he shall appear before this Court on the first court day following the service of this order at Am/pm for that purpose

Dated this day of,

.....
Clerk of the Court

.....
Applicant / Applicant's Legal Practitioner
Address
.....

[Form 11 substituted by GN R1689 of 1983 and by GN R1338 of 1984]

NO. 12 CONSENT TO SALE OF GOODS ATTACHED UNDER SECTION 32 OF THE ACT

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Applicant

and

.....Respondent

To the Clerk of the Court :

I,

.....of

..... the abovementioned
respondent, hereby admit that the property attached in the above matter is subject to a hypothec to the above
applicant to the extent of R and I consent to the sale of the said property in satisfaction of the said
amount of R..... plus costs and messenger's charges.

Dated at This day of,

.....

Respondent

Witnesses:

1.
Signature
Address

1.
Signature
Address

NO. 13 NOTICE TO DELIVER SCHEDULE OF DOCUMENTS

In the Magistrate's Court for the District of
held at.....

Case No.of

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 relating to the action which you intend to use in the action, or are material to prove or disprove either party's case .

Dated thisday of,

.....
Legal Practitioner for

Address

.....

To ; The Clerk of the Court
.....

And To :
.....
.....

[Form 13 substituted by GN R1689 of 1983]

NO. 14 NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Plaintiff

and

.....Defendant

Take notice that the requires you to produce for his inspection at On theday of, atam/pm 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 theday of, In terms of rule 23(4).

Dated thisday of,

.....
Legal Practitioner for

Address

.....

To :
.....
.....

NO. 15 NOTICE TO PRODUCE AT TRIAL

In the Magistrate's Court for the District of
held at.....

Case No.of

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 :

.....
.....
.....

Dated thisday of,

.....
Legal Practitioner for

Address

.....

To ; The Clerk of the Court
.....

And To :
.....
.....

NO. 16 ORDER FOR INTERDICT OBTAINED EX PARTE

In the Magistrate's Court for the District of
held at.....

Case No.of

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 to this court on theday of, atam/pm or so soon thereafter as he can be heard why Shall not be interdicted from (*set out the acts from which 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 withindays
- 3 That this rule operate as an interim interdict.

By order of the Court

.....
Clerk of the Court

.....
Applicant's Legal Practitioner
Address

.....
.....

NO. 17 ORDER FOR ARREST OF PERSON SUSPECTUS DE FUGA

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Applicant

and

.....Respondent

It is ordered :

- 1 That the Messenger of the court take the body of (respondent) and safely keep him and have him before this court on the day of, ath..... to show cause why he should not be detained to abide the judgment of this court in an action for a sum of R..... to be instituted against him by the applicant.
- 2 That the said action be instituted within 48 hours from the date of this order.

By order of the Court

.....
Clerk of the Court

.....
Applicant's Legal Practitioner
Address

.....
.....

TO BE COMPLETED BY THE MESSENGER OF THE COURT:

To the Officer-in-charge of the Prison

In terms of section 16 of the Magistrates' Court Act, 1944 (Act 32 of 1944), you are hereby commanded to take into your custody the body of And keep him/her there safely until theday of, Or until he/she shall be otherwise legally liberated.

Dated at thisday of,

.....
Messenger of the Court

[Form 17 substituted by GN R1314 of 1980]

NO. 18 ORDER FOR ATTACHMENT OF PERSON OR PROPERTY TO FOUND OR CONFIRM JURISDICTION

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Applicant

and

.....Respondent

To the Messenger of the Court :

You are hereby directed pursuant to an order of the abovementioned court made on theday 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 doing so this will be your warrant

Further should the respondent wish to show cause why the order of attachment should not be confirmed, he
shall appear before this court on theday of, Atam/pm
for that purpose.

The aforesaid date may be anticipated by the respondent upon 12 hours notice to the applicant.

Upon security being given to the satisfaction of the Messenger of the aforesaid court 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 thisday of,

.....
Clerk of the Court

TO BE COMPLETED BY THE MESSENGER OF THE COURT:

To the Officer-in-charge of the Prison
In terms of section 16 of the Magistrates' Court Act, 1944 (Act 32 of 1944), you are hereby commanded to
take into your custody the body of And keep him/her there safely until the
.....day of, Or until he/she shall be otherwise legally liberated.
Dated at thisday of,

.....
Messenger of the Court

NO. 19 DIRECTION TO ATTEND PRE-TRIAL CONFERENCE

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Plaintiff

and

.....Defendant

[Direction in terms of section 54(1) of the Magistrates' Court Act, 1944 (Act 32 of 1944)]

To the Plaintiff's Legal Practitioner / the Defendant's Legal Practitioner

You are hereby directed to attend a conference to be held before the magistrate in chambers on the
.....day of, Ath.... to consider –

- 1 the simplification of the issues;
- 2 the necessity or desirability of amendments to the pleadings;
- 3 the possibility of obtaining admissions of fact and of documents with a view to avoiding
 unnecessary proof;
- 4 the limitation of the number of expert witnesses
- 5

Dated at Thisday of,

By order of the Court,

.....
Clerk of the Court

NO. 20 ORDER PRE-TRIAL CONFERENCE

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Plaintiff

and

.....Defendant

Order in terms of section 54(2) of the Magistrates' Court Act, 1944 (act 32 of 1944)

To the Plaintiff's Legal practitioner / the Defendant's Legal Practitioner

The following is a recital of what took place at a conference held in chambers ath..... on theday
of, Between the parties and/or their representatives :

- 1
- 2
- 3
- 4
- 5

Dated at thisday of,

By order of the Court

.....
Clerk of the Court

To Plaintiff's Legal Practitioner

To Defendant's Legal Practitioner

NO. 21 APPLICATION FOR TRIAL WITH ASSESSORS

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Plaintiff

and

.....Defendant

The Plaintiff / Defendant hereby applies to have the above action tried with assessors

- 1 The plaintiff/defendant consents to such application and to the appointment of the following assessor:

.....of
.....(address)

.....
Plaintiff / Plaintiff's Legal Practitioner

.....
Defendant / Defendant's Legal Practitioner

OR

- 2 The defendant/plaintiff consents to such application, but the parties are unable to agree upon the names of assessors.

Wherefore the parties pray the court to appoint an assessor (or two assessors) excluding the following assessors (set out the names of those assessors whom one or other of the parties objects to) :

.....
Plaintiff / Plaintiff's Legal Practitioner

.....
Defendant / Defendant's Legal Practitioner

OR

The defendant/plaintiff objects to such application

Wherefore the plaintiff/defendant has set down this application for hearing on theday of
....., Atam/pm

.....
Plaintiff's / Defendant's Legal Practitioner
Or
Plaintiff / Defendant

To The Clerk of the Court

And

Application granted / refused thisday of,
Assessors appointed:

.....
Clerk of the Court

NO. 22 SUMMONS TO ASSESSOR

In the Magistrates Court for the District of ,
held at

Case No of

In the matter between :

..... Plaintiff
and
..... Defendant

Sir,

You are hereby summoned to attend and serve as an assessor in this court on the day of
....., at am/pm, to assist the court in the above action
in accordance with the provisions of section 34 of the Magistrates' Court Act, 1944 (Act 32 of 1944).

I have the honour to be

Sir,

Your obedient servant

.....
Clerk of the Court

To:
.....
.....

In the Magistrates' Court for the district of
held at

Case no. Of

In the matter between

..... Plaintiff

and

..... Defendant

To :

.....

.....

Greeting :

Under and by virtue of the authority vested in me by section 53 of the Magistrates' Court Act, 1944 (Act 32 of 1944), I do hereby commit to you full power and authority as a Commissioner of this court to examine of
..... (and such
other witnesses as either of 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,

Magistrate

.....

No. 24 Subpoena

Case no. Of

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 at on the day of, at pm/am 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

SEE BACK

[Print on back, paragraphs (a) and (b) of section 51(2) of the Act]

Case no. Of

In the matter between

..... Plaintiff

and

..... Defendant

To the Messenger and 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 am/pm on the day of
, And has made default;

And whereas this court has imprisoned upon the said for
 his said default a fine ofrand and for non-payment has
 committed him to the abovementioned prison for a period of

*This is therefore to authorize and require you, the said Messenger of the court, to arrest the said
 and, unless he shall pay to you the said sum of
 rand, 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
 rand 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

.....
CLERK OF THE COURT

Case no. Of

In the matter between

..... Plaintiff

and

..... Defendant

To the Messenger of Court**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 am/pm on the day of, And
 has made default;

This is therefore to authorize and require you, to arrest the said and, bring him/her before this court on theday of, Then and there to give evidence and to be otherwise dealt with according to law.

To the Officer in charge of thePrison:

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 part of this warrant or until he/she shall be otherwise lawfully discharged.

Dated at this Day of

.....
CLERK OF THE COURT

[Form 26 substituted by GN R2629 of 1989 and amended by GN R2409 of 1991]

NO. 27 SECURITY ON ARREST, ATTACHMENT OR INTERDICT EX PARTE

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Applicant

and

.....Respondent

Whereasof
..... has applied for the issue of a warrant for
the arrest of

.....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 R.....;

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

Andof
..... hereby binds
himself as surety for and co-principal debtor with the said
..... in a sum not exceeding the said sum
of R..... for the due fulfillment by the said of
the obligation hereby undertaken by him.

Signed at thisday of, ...

.....
Applicant

.....
Surety and Co-Principal Debtor

Witnesses

1.
.....
.....
Signature and Address

2.
.....
.....
Signature and Address

NO. 28 SECURITY WHEN EXECUTION IS STAYED PENDING APPEAL

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Judgment Creditor

and

.....Judgment Debtor

*Whereas the said on theday of,
..... obtained judgment in this court against the said
for the sum of R..... together with a sum of R..... 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 binds 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
suspension, so far as such judgment may not be reversed or varied on appeal/review;
And further severally
.....(*insert any further terms required*)

Signed at thisday of, ...

.....
Judgment Debtor

.....
Surety and Co-Principal Debtor

Witnesses

1.
.....
.....
Signature and Address

2.
.....
.....
Signature and Address

NO. 29 SECURITY WHEN EXECUTION IS ALLOWED PENDING APPEAL

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

.....Judgment Creditor

and

.....Judgment Debtor

*Whereas the said on theday of,
..... obtained judgment in this court against the said
for the sum of R..... together with a sum of R..... 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 binds themselves jointly and severally to refund the
above sums of R..... and R..... should the judgment of the said court be reversed;
And further severally
.....*(insert any further terms required)*

Signed at thisday of, ...

.....
Judgment Debtor

.....
Surety and Co-Principal Debtor

Witnesses

1.
.....
.....
Signature and Address

2.
.....
.....
Signature and Address

NO. 30 WARRANT OF EJECTMENT

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between Plaintiff
and Defendant

To the Messenger of the Court.

Whereas in this action the said plaintiff on theday of, obtained judgment for the ejectment of the said defendant from the premises or land known as This is to authorize 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 thisday of,

By order of the Court

.....
Clerk of the Court

.....
Plaintiff / Plaintiff's Legal Practitioner
Address

NO. 31 WARRANT FOR THE DELIVERY OF GOODS

In the Magistrate's Court for the District of
held at.....

Case No.of

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 certain
..... *(describe the thing to be delivered)*

This is to authorize and require you to take the said
..... *(describe the thing to be delivered) 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 thisday of,

By order of the Court

.....
Clerk of the Court

.....
Plaintiff / Plaintiff's Legal Practitioner
Address.....
.....

NO. 32 WARRANT OF EXECUTION AGAINST PROPERTY

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Execution Creditor
and

..... Execution Debtor

To the Messenger of the Court.

<p style="text-align: center;"><i>Amounts to be Levied</i></p> <p style="text-align: right;">R c</p> <p>.....</p> <p><i>Judgment Debt</i> </p> <p><i>Costs</i> </p> <p style="text-align: center;"><i>Costs of Issuing Warrant</i></p> <p><i>Costs of Appeal</i> </p> <p>.....</p> <p style="text-align: center;"><i>SUBTOTAL</i></p> <p style="text-align: center;"><i>Less</i></p> <p><i>Amount paid since judgment</i> </p> <p>.....</p> <p><i>TOTAL DUE</i> </p> <p> <i>Plus interest at% per annum calculated from To date of final payment</i></p>	<p><i>Whereas in this action the said on the .....day of, obtained judgment in the abovementioned Court against the said of for the several sums set out in the margin hereof amounting in all to the sum of R....., of which R..... has since been paid;</i></p> <p> <i>This is to authorize and require you to raise on the property of the said the sum of R..... together with your costs of this execution and pay to the said the aforesaid sum of R..... and return to this court what you have done by virtue hereof.</i></p>
--	---

Dated thisday of,

By order of the Court

.....
Execution Creditor /
Execution Creditor's Legal Practitioner
Address.....

.....

.....

Clerk of the Court

Note

- 1 *If the execution debtor pays the amounts specified in the margin hereof with Messenger's charges of R..... 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 executed is*
..... *(set out its situation and nature sufficiently to enable it to be identified)*
- 4 *In 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 legal practitioner and by the clerk of this court.*
- 5 *Any alterations made herein shall be initialed by the clerk of the court before the warrant is issued or reissued by him*

[Form 32 substituted by GN R947 of 1972]

NO. 33 NOTICE OF ATTACHMENT IN EXECUTION

In the Magistrate's Court for the District of
held at.....

Case No.of

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 comprised in the above inventory in pursuance 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 R..... and R..... 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 Thisday of,

.....

Messenger of the Court

NO. 34 NOTICE TO PREFERENT CREDITOR

[Section 66(2)(a) of Act 32 of 1944]

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Judgment Creditor

and

..... Judgment Debtor

To : Preferent Creditor

.....

*Whereas the undermentioned immovable property was laid under judicial attachment by the Messenger of the Court on theday of
....., You are hereby notified that it will be sold in execution in front of the Court-house at
..... on theday of, atam/pm*

Short description of property and its situation:

.....
.....

Dated at Thisday of,

.....

Judgment Creditor / Legal Practitioner for Judgment Creditor

Address :

.....

NO. 35 INTERPLEADER SUMMONS

[Section 69(1) of Act 32 of 1944]

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Execution Creditor

and

..... Execution Debtor

To : Execution Creditor

And To : Claimant

You are hereby summoned to appear before this court on theday of
....., atam/pm to have it determined and declared
whether certain movable property,

to wit , attached on theday of
....., In the execution issued by this court on theday
of In the action in which you, the said
....., obtained judgment for the sum of R.....
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 to have the claim by you, the said
..... (claimant) to the proceeds of property namely
..... attached on theday of
..... by the Messenger by virtue of a warrant of execution issued
out of this court on theday of In the action in which the
execution creditor obtained judgment for the sum of R..... against
..... Of
.....(execution debtor) and which property
was sold in execution on theday of , , adjudicated upon.

Dated at Thisday of

.....
clerk of the Court

NO. 36 INTERPLEADER SUMMONS

[Section 69(2) of Act 32 of 1944]

In the Magistrate's Court for the District of
held at.....

Case No.of

To the Messenger of the Court

Whereas

..... of
..... has
interpleaded in this court as to , (state
subject matter) which is adversely claimed by
..... *Of hereinafter called the*
claimants;

Summon the said claimants that they appear before the abovementioned court on theday of
....., atam/pm 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 Thisday of,

.....

clerk of the Court

In the Magistrate's Court for the District of
held at.....

Case No.of

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 theday of, in the sum of R..... together with the sum of R..... 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 of the court 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 R..... for the due fulfillment by the said execution creditor of the obligation undertaken by him.

Signed and Dated at thisday of

.....

Execution Creditor

Surety and Co-Principal Debtor

Witnesses:

1. 2.

Signature

Signature

Address

Address

.....

.....

Note : Where the security is for the repayment of monies attached by a garnishee order, a similar form should be used, the words 'refund the gross amount paid by the garnishee' being substituted for the words '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'

NO. 38 EMOLUMENT ATTACHMENT ORDER – SECTION 65J OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Judgment Creditor
and

..... Judgment Debtor

Particulars for the Identification of the Judgment Debtor

Inclusive of his identity or work number or date of birth

And ADDRESS

.....
.....
.....
.....

..... Garnishee

Address of Garnishee

Whereas it has been made to appear to the abovementioned Court that emoluments are at present or in future owing or accruing to the judgment debtor by or from the garnishee and that after satisfaction of the following order sufficient means will be left to the judgment debtor to maintain himself and those dependent upon him;

It is ordered :

- 1 That the said emoluments are attached;
- 2 That the garnishee pay to the judgment creditor or his legal practitioner on theday of each and every month/week after this order has been granted the sum of R..... of the emoluments of the said judgment debtor until a sufficient amount has been paid to satisfy a judgment or order obtained against the judgment debtor by the judgment creditor in thecourt at on theday of, for the amount of R.....(on which judgment or order the amount of R.....remains unpaid) with costs amounting to R..... and the costs of attachment amounting to R..... as well as R..... messenger's fees.

Dated at thisday of,

By order of the Court

.....
Clerk of the Court

.....
Judgment Creditor or

Legal Practitioner for the Judgment Creditor

Address
.....

Attention is directed to the provisions of section 65J(10) of the Magistrates' Court Act, 1944 , which reads as follows: 'Any garnishee may, in respect of the service rendered by him in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor'

[Form 38 substituted by GN R2222 of 1978]

NO. 39 GARNISHEE ORDER – SECTION 72 OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Judgment Creditor
and

..... Judgment Debtor
Particulars for the Identification of the Judgment Debtor
Inclusive of his identity or work number or date of birth
And ADDRESS

..... Garnishee
Address of Garnishee

Whereas it has been made to appear to the abovementioned Court that a debt is at present or in future owing or accruing to the judgment debtor by or from the garnishee;

It is ordered :

- 1 That the said debt be attached;
- 2 That the garnishee pay to the judgment creditor or his legal practitioner so much of the debt as may be sufficient to satisfy a judgment or order obtained against the judgment debtor by the judgment

creditor in thecourt at on theday of
....., for the amount of R.....(on which judgment or order the
amount of R.....remains unpaid) and the costs of the proceedings of attachment
amounting to R..... as well as R..... messenger's fees.

If the garnishee fails to pay the judgment creditor or his legal practitioner as aforesaid, he shall appear before
this Court on theday of, ath..... to show cause why
he should not pay the same.

Dated at thisday of,

By order of the Court

.....
Clerk of the Court

.....
Judgment Creditor or

Legal Practitioner for the Judgment Creditor

Address
.....

[Form 39 substituted by GN R2222 of 1978]

NO. 40 NOTICE TO SHOW CAUSE – SECTION 65A(1) OF THE MAGISTRATES' COURT ACT 1944, (ACT 32 OF 1944)

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Judgment Creditor
and

..... Judgment Debtor
TO:

..... (If the judgment debtor is a juristic person it must be indicated
.....that the responsible person is summoned in his personal capacity
..... and in his capacity as the representative of the juristic person)

You are hereby required to appear before abovementioned Court on theday of,
..... ath..... to show cause why in terms of the abovementioned section you should not be
committed for contempt of court and why you/the juristic person should not be ordered to pay the judgment
debt and costs in installments or otherwise, as you/the juristic person failed to satisfy –

- 1 the judgment of the said court/..... given against you /the juristic person on the
....day of, for the payment of the amount of R..... and
R..... costs; OR
- 2 The order of the said Court of,that you/the juristic person
shall pay in installments the amount of R..... AND R..... costs within
10days of the date on which the judgment was given or

The balance of the relevant debt amounts to R..... and the balance of the costs to R.....

You are further required to submit a full statement to the said Court –

- 1 of your / the juristic person's assets and liabilities;
- 2 of your monthly/weekly income and expenditures, supported by documentary proof inclusive of a
statement by you employer in which full particulars of your emoluments are indicated
- 3 as well as the following.....

THE COURT MAY, AT THE HEARING OF THE PROCEEDINGS, WHETHER OR NOT YOU ARE PRESENT IN COURT, GRANT AN ORDER IN TERMS OF SECTION 65F(1) OF THE SAID ACT FOR YOUR COMMITMENT FOR CONTEMPT OF COURT FOR A PERIOD NOT EXCEEDING 90 DAYS OR MAY IN LIEU THEREOF SENTENCE YOU IN ACCORDANCE WITH THE PROVISIONS OF ANY LAW RELATING TO PRISONS TO PERIODICAL IMPRISONMENT FOR A PERIOD NOT EXCEEDING 2160 HOURS IF THE JUDGMENT DEBTOR IS A JURISTIC PERSON AND YOU ARE SUMMONED IN YOUR CAPACITY AS THE REPRESENTATIVE OF THE JURISTIC PERSON, THE COURT MAY, WHETHER OR NOT YOU ARE PRESENT IN COURT, ON CONVICTION FOR CONTEMPT OF COURT SENTENCE YOU TO A FINE, NOT EXCEEDING R100, WHICH FINE SHALL BE PAYABLE BY THE JURISTIC PERSON.

Dated at thisday of,

By order of the Court

.....

Clerk of the Court

.....

Judgment Creditor or

Legal Practitioner for the Judgment Creditor

Address

.....

[Form 40 substituted by GN R2222 of 1978 and by GN R1139 of 1982]

**NO. 41 NOTICE OF SET DOWN OF POSTPONED PROCEEDINGS UNDER SECTION 65E(3) OF
THE MAGISTRATES' COURT ACT 1944, (ACT 32 OF 1944)**

In the Magistrate's Court for the District of
held at.....

Case No.of

In the matter between

..... Judgment Creditor

and

..... Judgment Debtor

By Hand / By registered post

TO: (Judgment Debtor)

.....
.....

CLERK OF THE COURT

Take notice that the proceedings against you, the abovementioned Judgment Debtor, which were postponed on theday of, in terms of section 65E(1) of the Magistrates' Court Act, 1944, have again been placed on the roll of the abovementioned Court. You are hereby in terms of section 65E(3) of the said Act directed to appear before the abovementioned Court on theday of, Ath.....

Dated at thisday of,

.....

Judgment Creditor or

Legal Practitioner for the Judgment Creditor

Address

.....

[Form 41 substituted by GN R2222 of 1978 and by GN R1139 of 1982]

NO. 42 WARRANT OF ARREST AND DETENTION UNDER SECTION 65F(1) READ WITH SECTION 65H OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrates' Court for the district of

Held at

Case no of

In the matter between :

.....Judgment Creditor

and

.....Judgment Debtor

WARRANT OF ARREST AND DETENTION

To the Messenger of the Court.....

You are hereby commanded to arrest (the abovementioned judgment debtor/director or officer of the abovementioned judgment debtor) who has been ordered by the Magistrates' Court at on in terms of section 65F of the said Act to undergo a period ofdays committal /hours periodical imprisonment for contempt of court and to deliver him/her to the Officer in charge of thePrison, together with this warrant.*

To the Officer in Charge of thePrison

You are hereby commanded to receive the abovementioned Into your custody and safely keep him/her until –

1 the expiration ofdays from the date on which the said judgment debtor shall be so received in the said prison by virtue of this warrant; or

2 he/she has served a term ofhours periodical imprisonment; or

3 he/she shall be otherwise legally liberated.

The outstanding amount of the judgment debt plus interest at Per cent per annum accounted from is at present R..... with R..... costs plus further interest at per cent per annum from date hereof to date of payment.

**The amount in arrear in respect of the order of the said Court of That the said judgment debtor shall pay the amount of R..... and R..... costs in monthly/weekly installments of R..... is at present R.....*

Dated at Thisday of,

.....

Clerk of the Court

.....

Judgment Creditor / Legal Practitioner for Judgment Creditor

Address.....

.....

**Delete which is not applicable*

[Form 42 substituted by GN R2222 of 1978 and by GN R1139 of 1982]

NO. 43 WARRANT OF LIBERATION IN A CIVIL MATTER- SECTION 65L(c) OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrates' Court for the district of

Held at

Case no of

In the matter between :

.....Applicant / Judgment Creditor

and

.....Respondent / Judgment Debtor

To the Officer in Charge of thePrison

You are hereby commanded to liberate from your custody the body of Committed thereto
by warrant dated Owing to an order by a judicial officer of the abovementioned Court or the
..... Court at unless he/she is lawfully detained otherwise than
in respect of the said warrant.

Dated at Thisday of,

.....

Designation

[Form 43 substituted by GN R2222 of 1978]

In the Magistrates' Court for the district of

Held at

Case no of

APPLICATION FOR AN ADMINISTRATION ORDER BY

.....(full names and surname)

To

4 The Clerk of the Court at

5

.....

.....

Take notice that I shall apply to the abovementioned Court on theday of, ath....., to make an order providing for the administration of my estate under the provisions of section 74 of the Magistrates' Court Act, 1944.

A full statement of my affairs confirmed by an affidavit in support of this application is attached.

Dated at Thisday of,

.....

Applicant

Full Address

.....

.....

NOTE – Section 74A(5) of the Magistrates' Court Act 1944, provides that the applicant shall deliver to each of his creditors at least 3 days before the date appointed for the hearing, personally or by registered post a copy of this application and statement of affairs (Form 45) on which shall appear the case number under which this application was filed.

[Form 44 substituted by GN R2222 of 1978]

CASE NO of

In the application for an Administration Order of (hereinafter referred to as the Applicant)

6 Surname of Applicant
First Names
Date of Birth Identity Number

7 Residential Address.....

8 Marital Status..... If married, state whether in or out of community of property.....
Full names of spouse.....
Date of Birth..... Identity number
If Applicant and spouse are living apart, state from which date.....

9 Dependants:
Full Names Age Relationships
.....
.....
.....

10 Name and business address of employer:
Applicant Spouse
.....
.....
.....

11 If not employed furnish reasons:
Applicant Spouse
.....
.....
.....

12 Occupation:
Applicant..... Spouse.....

8 Gross Income:
Applicant.....per week/month Spouse.....per week/month

13 Full particulars of all deductions from income (by way of stop order or otherwise) supported as far as possible by written statements of employer
Applicant: Spouse:
Particulars Amount Particulars Amount
.....
.....
.....
Total Total

10 Detailed particulars of essential weekly or monthly expenses, including transport expenses:
Applicant (including his dependants) Spouse
Particulars Amount Particulars Amount
.....
.....
.....
Total Total

11 Full particulars, supported by statements and copies of the agreements of goods purchased under hire-purchase agreements and not paid for in full (Credit Agreements Act , 1980, Act 75 of 1980)

Particulars	Balance	Installment	Payable weekly/monthly	Date when will be paid for in full	Reason why provisions should be made for remaining installments
	R	R			
	R	R			
	R	R			

- 1 Full particulars of assets purchased under written agreement (excluding hire-purchase agreement) which are not paid in full

Particulars	Balance	Installment	Payable weekly/monthly	Date when will be paid for in full	Reason why Administration should provide for the payment thereof
	R	R			
	R	R			
	R	R			

- 1 Full particulars and estimated value of security which creditors have in respect of debt which the applicant or his spouse is liable for (the name and address of any other person who, in addition to the debtor, is liable for the debt must also be stated)

.....
.....
.....
.....

- 2 Full particulars of immovable property of the Applicant or spouse which is mortgaged:
Mortgage.....
Address.....

Description	Market Value	Balance of the bond(s) thereon	Installments payable	Date when will be paid for in full	Reason why Administration Order should provide for the payment thereof
	R	R			
	R	R			
	R	R			

- 1 Full particulars of movable property of applicant or spouse:
Description

Estimated Value
R

.....
.....
.....
.....

- 2 Full particulars of outstanding claims, bills, investments, bonds or other securities in favour of Applicant investing moneys in a savings or other account with a bank or elsewhere:

- 3 Name and address of debtor or institution Particulars Amount
R

.....
.....
.....
.....

- 4 If an Administration Order was at any time granted in respect of Applicant's estate state:
Date of expiry..... Date set aside.....
Reasons.....
.....

- 5 If an Administration Order is granted, state the amount of the weekly, monthly or other installments which the Applicant offers to pay towards settlement of the debts mentioned in the list of creditors in the annexure to this statement:

R.....with effect from and weekly/monthly thereafter, or
.....
..... from

I from declare under oath :

- 6 I am the applicant
- 7 A judgment/judgments has/have been obtained against me and I am unable forthwith to pay the amount(s), or to meet my financial obligations.
- 8 I have no sufficient assets capable of attachment to satisfy such judgment(s) or obligations.
- 9 The total amount of all my debts due does not exceed R4000-00.
- 10 All particulars contained in this statement and in the list of creditors in the Annexure to this statement, as well as the amounts due to them separately, are, to the best of my knowledge true and correct and that the statement contains all particulars, assets, income and debts of me and my spouse, including my obligations.

.....
Signature

- 11 I certify that before administering the prescribed oath I asked the Deponent the following questions and wrote down his/her answers in his/her presence:
 - 11.1 Do you know and understand the contents of the above declaration?
.....
 - 11.2 Do you have any objection to taking the prescribed oath?
.....
 - 11.3 Do you consider the prescribed oath to be binding on your conscience?
.....
- 12 I certify that the Deponent has acknowledged that he/she knows and understands the contents of this declaration which was sworn to before me and the Deponent's signature was placed thereon in my presence at on thisday of,

.....
Commissioner of Oaths
Full names and surname.....
Address.....
Area.....
Designation if appointment is held ex officio.....

[Form 46 deleted by GN R2222 of 1978]

NO. 47 NOTICE TO DEBTOR THAT AN ADDITIONAL CREDITOR HAS LODGED A CLAIM AGAINST HIM FOR A DEBT OWING BEFORE THE MAKING OF THE ADMINISTRATION ORDER – SECTION 74G(2) OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrates' Court for the District of

Held at

Case No.....of.....

To (Debtor)

.....(Address)

.....

.....

Take notice that –

.....

(name and address of creditor) lodged a claim in terms of section 74G(2) of the Magistrates' Court Act 1944, for the amount of R..... in respect of

*.....
(particulars of claim) which is not listed in the administration order made against you on theday of
....., in the Magistrates' Court at*

Kindly notify me in writing whether you admit or dispute this claim on or before theday of, Please note that if you admit the claim or no reply is received from you on or before the said date, this claim shall be deemed to be proved, subject to the right of any other creditor who has not received notice of the claim to object to the debt, and shall be added to the list of names of your creditors who share pro rata in the payments made by you in terms of the Administration Order.

Dated at thisday of,

.....

Administrator

NO. 48 NOTICE TO DEBTOR THAT A CREDITOR HAS LODGED A CLAIM FOR A DEBT OWING AFTER GRANTING OF THE
ADMINISTRATION ORDER SECTION 74H(1) OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrates' Court for the District of

Held at

Case No.....of.....

To (Debtor)

..... (Address)

.....

.....

Take notice that –

.....
.....

(name and address of creditor) lodged a claim for the amount of R..... in respect of
..... (particulars
of claim) as a result of which he allegedly became your creditor after the Administration Order was issued against
you on theday of, in the Magistrates' Court at

Kindly notify me in writing on or before theday of, Whether you admit or dispute this claim. Please note
that if you admit the claim or no reply is received from you on or before the said date, this claim shall be deemed to
be proved, subject to the right of any other creditor who has not received notice of the claim to object to the debt, and
shall be added to the list of names of your creditors who share pro rata in the payments made by you in terms of the
Administration Order.

Dated at thisday of,

.....

Administrator

**NO. 49 NOTICE TO ADD AN ADDITIONAL CREDITOR TO THE LIST OF CREDITORS OF A PERSON UNDER ADMINISTRATION -
SECTION 74G(3) AND 74H(2) OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)**

In the Magistrates' Court for the District of

Held at

Case No.....of.....

To The Clerk of the Court

.....

.....

Administration Order against.....

*Kindly add the name of as a creditor to the list of creditors sharing pro rata
in the payments in terms of the Administration Order for the amount of R..... in respect of
.....*

Dated at thisday of,

.....

Administrator

[Form 49 substituted by GN R2222 of 1978]

NO. 50 NOTICE TO CREDITOR THAT HIS NAME HAS BEEN ADDED TO THE LIST OF CREDITORS OF A PERSON UNDER ADMINISTRATION - SECTION 74G(3) AND 74H(2) OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrates' Court for the District of

Held at

Case No.....of.....

To

.....

.....

Administration Order against.....

The abovementioned Debtor admitted or did not dispute your claim against him for the amount of R..... and your name and the amount due to have been added to the list of creditors sharing pro rata in payments in terms of the Administration Order.

Kindly note that other creditors may still object against the debt so listed. In this event, you will be notified.

A copy of the Administration Order issued against the debtor on theday of, in the Magistrates' Court at is attached/has already been received by you.

Dated at thisday of,

.....

Administrator

In the Magistrates' Court for the District of

Held at

Case No of

In the Application of

(hereinafter referred to as the applicant)

13 *It is ordered –*

(a) *that the estate of the applicant be placed under administration in terms of section 74 of the Magistrates' Court Act, 1944;*

13.1 *that
from be appointed Administrator of
the Applicant's estate in terms of section 74E on condition that he gives the following security for the due and prompt payment
by him to all the parties entitled thereto of all the moneys which come into his possession by virtue of this appointment:*

.....
.....

13.2 *that the Applicant pays the amount of R..... weekly/monthly to the Administrator for distribution among the
creditors. First payment on or before the day of and weekly/monthly
thereafter on or before every/ the of each month;*

13.3
.....

13.4
.....

2 *Authority is granted –*

13.5 *for the issue of an Emoluments Attachment order under section 65J of the Magistrates' Court Act, 1944, against the
Applicant's employer for payment to the Administrator of the said amount on or before the said times until the costs of
administration and the creditors have been paid in full. This authority is suspended on condition that
.....*

13.6 *for the issue of a garnishee order under section 72 of the Magistrates' Court Act, 1944, against
..... This authority is suspended on condition that
.....*

13.7 for the realization and distribution of the proceeds of the following assets among the creditors:

14

15

16

17 of the following assets that are the subject of an agreement in terms of the Credit Agreements act, 1980, Act 75 of 1980, with the written permission of the seller:

17.1

17.2

17.3 for the return of the following assts to the seller in terms of the Credit Agreements Act, 1980:

18

19

(e) other (give details).....
.....

Dated at thisday of,

.....

Magistrate

NOTE – In terms of section 74F(1) of the Magistrates' Court Act, 1944 the Clerk of the Court shall hand or send by registered post a copy of this order to the debtor and in terms of section 74F(2) the Administrator shall forward a copy hereof by registered post to each creditor whose name is mentioned in the Debtor's statement of affairs (Form 45) or who has given proof of a debt.

[Form 51 substituted by GN R2222 of 1978]

Distribution Account No

To The Clerk of the Court

.....

.....

Case Noof.....

Administration Order against

Distribution Account for the period to

			A	B	C
A	(1)	Amount payable to creditors in terms of the Administration Order / outstanding amount carried forward from previous statements			
	(2)	Total amount due to additional creditors listed after granting of Administration Order / since lodging of previous statement			
	(3)	Interest			
B	(1)	Administration costs paid for the said period in terms of section 74L			
	(2)	Claims paid during the said period that enjoy preference in terms of section 74J(3)			
	(3)	Urgent or extraordinary medical, dental or hospital expenses paid during the said period			
	(4)	Other payments during the said period (supply details)			
Totals					
C	Total amount received by the Administrator during the said period				
	Minus total of B				
	Disposal for pro rata distribution				

<i>Pro Rata Distribution (* The names of creditors to whom pro rata amounts were paid)</i>			
*			
*			
*			
*			
<i>Total amount paid during the said period</i>			
<i>Total of A minus total of B</i>			

Outstanding amount carried forward to next statement

Dated at Thisday of,

.....

Administrator

[Form 52 substituted by GN R2222 of 1978]

In the Magistrates' Court for the District of

Held at

Case No of

Administration Order against..... (hereinafter referred to as the Debtor)

Whereas after consideration of an application by the Debtor*/an interested party, i.e.
*, it appears that good cause exists for the rescission of the Administration
 Order granted on theday of, In abovementioned Court, the said Administration Order is
 rescinded with effect from theday of,

Dated at thisday of,

.....

Magistrate

NOTE -

1.1.1 The clerk of the court must send a copy of this order by registered post to the Administrator

1.1.2 The Administrator must deliver personally or send by registered post a copy of this order to the Debtor and to each creditor and inform the latter of the Debtor's last known address

**Delete which is not applicable*

In the Magistrates' Court for the District of
Held at

Case No.of.....

In the matter between :

..... Plaintiff
and

..... Defendant

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

Particulars :
.....
.....

Dated at Thisday of,

.....
Plaintiff/Plaintiff's Legal Practitioner
Or
Defendant/Defendant's Legal Practitioner

To :
.....
.....

In the Magistrates' Court for the District of
Held at

Case No.of.....

In the matter between :

..... Plaintiff
and
..... Defendant

We, of
....., and
..... of
.....,

the abovenamed plaintiff and defendant, respectively, do hereby agree, in terms of section 82 of the Magistrates' Court Act, 1944 (Act 32 of 1944), that the decision of the Court in the abovementioned action shall be final

Signed and dated at thisday of,

Witnesses:

1.
Signature and address Plaintiff
.....
.....
2.
Signature and address Defendant
.....
.....

NO. 55 REQUEST TO INSPECT RECORD

In the Magistrates' Court for the District of

Held at

I, of
....., hereby apply to
inspect the record of case no..... of

(If number of record not known, then as follows)

I, of
....., 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 legal practitioner of such party, his capacity should be stated after his signature)

DATE OF HEARING AND CASE No.	NAME AND DESCRIPTION OF ACCUSED	CRIME OR OFFENCE CHARGED	VERDICT AND SENTENCE	REMARKS

In the Magistrates' Court for the District of
Held at

Case No.of.....

In the matter between :

..... Judgment Creditor
and

..... Judgment Debtor

Whereas you have not yet satisfied in full or paid all costs for which you are liable in connection with a judgment given or an order made against you by the abovementioned Court on theday of, and, consequently, have to notify the Clerk of the court at and the judgment creditor (or his legal practitioner/the administrator (or his legal practitioner) in terms of section 109(1) of the Magistrates' Court Act 1944 within 14 days after you have changed your place of residence, business or employment fully and correctly in writing of your new place of residence, business or employment, as the case may be;

And whereas you have failed to do so, you are hereby directed to appear before the abovementioned Court on theday of, at to adduce reasons why you should not be committed for such failure under section 109(2) of the Magistrates' Court Act, 1944.

Further take notice that at the hearing of the proceedings the Court may in terms of section 109(4) of the Magistrates' Court Act 1944, whether you are present or not, make an order for your committal for a period not exceeding 30 days or sentence you to periodical imprisonment, in accordance with any law relating to prisons, for a period not exceeding 720 hours in addition, make an order with regard to costs as the Court may deem just and reasonable.

Dated at thisday of,

.....
Clerk of the Court

.....
Judgment Creditor / Legal Practitioner for Judgment creditor
Administrator / Legal Practitioner for Administrator

[Form 57 inserted by GN R2222 of 1978]

In the Magistrates' Court for the District of
Held at

Case No.of.....

In the matter between :

..... Judgment Creditor
and

..... Judgment Debtor

WARRANT FOR ARREST AND COMMITTAL

To the Messenger of the Court.....

You are commanded to arrest (the abovementioned judgment debtor/director or officer of the abovementioned judgment debtor) who has been ordered in terms of section 109(4) of the said Act by the Magistrates' Court at To undergo a period ofdays committal /hours periodical imprisonment for his failure to notify the Clerk of the Court of the abovementioned Court, *the judgment creditor *or his legal practitioner *the administrator *or his legal practitioner correctly and in writing within 14 days after he changed his place of residence, business or employment thereof and to deliver him/her to the Officer in charge of thePrison, together with this warrant

To the Officer in Charge of thePrison

You are hereby commanded to receive the abovementioned Into your custody and safely keep him/her until –

1 the expiration ofdays from the date on which the said judgment debtor shall be so received in the said prison by virtue of this warrant; or

2 he/she has served a term ofhours periodical imprisonment; or

3 he/she shall be otherwise legally liberated.

The outstanding amount of the judgment debt plus interest at Per cent per annum accounted from is at present R..... with R..... costs plus further interest at per cent per annum from date hereof to date of payment.

*The amount in arrear in respect of the order of the said Court of That the said judgment debtor shall pay the amount of R..... and R..... costs in monthly/weekly installments of R..... is at present R.....

Dated at Thisday of,

.....
Clerk of the Court

.....
Judgment Creditor / Legal Practitioner for Judgment Creditor

Address.....
.....

*Delete which is not applicable

NO. 59 CERTIFICATE OF LIBERATION - SECTION 65L(b) OF THE MAGISTRATES' COURT ACT, 1944 (ACT 32 OF 1944)

In the Magistrates' Court for the district of

Held at

Case no of

In the matter between :

..... Judgment Creditor

and

..... Judgment Debtor

To the Officer in Charge of thePrison

This is to certify that the judgment debt/the amount of R..... and costs of R..... being the outstanding balance of the debt/the installment(s) and the costs in arrear in the abovementioned case has/have been paid.

You are hereby commanded to liberate from your custody the body of Detained in terms of a warrant issued by the Magistrates' Court for the District of at on theday of Unless he/she is lawfully detained otherwise than in respect of the said warrant.

Dated at Thisday of

.....
Judgment Creditor/Legal practitioner for Judgment Creditor

Address.....

.....

[Form 59 inserted by GN R2222 of 1978]

NO. 60 NOTICE TO JUDGMENT DEBTOR OF REGISTRATION OF FOREIGN JUDGMENT

In the Magistrates' Court for the District of

Held at

Case no.....of.....

In the matter between :

.....Plaintiff (Judgment Creditor)

and

.....Defendant (Judgment Debtor)

To the Messenger of the Court.....

A Please inform

.....of
..... The Defendant
(Judgment Debtor) in this matter that :

1The Plaintiff
(Judgment Creditor) in this matter has obtained judgment against him/her on in the
.....Court of Case number for the
following:

1.1 Payment in the amount of

1.2 Interest at the rate of% on the amount of Calculated from To date
of final payment;

1.3 Cost of suite

2 The above-mentioned judgment has been registered at this court by the Clerk of the Court on

3 In terms of section 3(1) and (5) of the Enforcement of Foreign Civil Judgments Act, 1994 (act 28 of 1994) the Defendant is liable for the
following amounts:

Balance of the Claim Plus

Taxed Costs

Total

PLUS

Interest at% on the amount of calculated from to Which amounts to

PLUS

Costs of registration, including certified copy, amounting to Plus messenger's fee for service of this document to be added. This amount is calculated as follows:

<u>Item</u>	<u>Fee</u>
Certified copy of foreign judgment
Registration of judgment in Namibia
Request i.t.o. Rule 48A(5)(a)
.....
.....
Total

PLUS

est at the rate of% on the amount of plus Plus messenger's fee for service of this document calculated from being the date of registration in terms of Rule 48A(1), until date of final payment of such amounts, -

- 4 Registration of a judgment in terms of section 3(1) of the Enforcement of Foreign Civil Judgments Act, 1994 has in terms of section 4(1) of that Act the same effect as a civil judgment of the court at which that judgment has been so registered, But in terms of section 4(2) of that Act a judgment registered in terms of section 3(1) thereof shall not be executed before the expiration of 21 days after service of this Notice by the messenger of the court, or until an application in terms of section 5 of that Act has been finally disposed of.

- 5 In terms of section 8 of the Enforcement of Foreign Civil Judgments Act, 1994 this notice shall operate as an interdict against the defendant (judgment debtor) and against any person having knowledge of the notice, not to remove or dispose of any assets of the defendant (judgment debtor) if such removal or disposal would prejudice the execution of the judgment.

- B Make an inventory of all assets belonging to the defendant (judgment debtor) which inventory will serve as proof of the statutory interdict against the defendant (judgment debtor) in terms of section 8 of the Enforcement of Foreign Civil Judgments Act 1994 (Act 28 of 1994)

(delete if not applicable)

Signed at thisday of,

.....

Clerk of the Civil Court

Magistrates' Court

Physical Address :

Postal Address :

TO

Judgment Debtor

From *Served by the Messenger of the Court*

.....

AND TO

Judgment Creditor

From *Handed by the Clerk of the Court*

.....

[Form 60 inserted by GN 75 of 2000]

ANNEXURE 2
SCALE OF COSTS AND FEES

Table A - Costs

- Part I - General provisions.
- Part II - Undefended actions.
- Part III - Defended actions.
- Part IV - Matters other than those provided for in Table B.

Table B - Costs (continued).

- Part I - General provisions (proceedings in terms of section 65 of the Act). Tariff.
- Part II - General provisions (proceedings in terms of section 72 of the Act). Tariff.
- Part III - General provisions (proceedings in terms of section 74 of the Act). Tariff.

Table C. - General provisions and tariff of fees (Messenger of the Court).

- Part I - Sheriffs who are not officers of the Public Service.

Table D. - Fees to assessors.

Table E. - Court fees.

**TABLE A
COSTS**

**PART 1
GENERAL PROVISIONS**

- 1 Undefended actions shall be taxed on the scale in Part II, defended actions shall be taxed on the scale in Part III and in other matters and interpleader proceedings on the scale in Part IV.
- 2 Costs taxable in terms of rule 33(20) 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.
- 3 Fees to counsel shall be allowed on taxation only in cases where the amount in dispute is N\$2 500-00 or more, or where the court has made an order in terms of rule 33(8) and may not be so allowed unless payment of them is vouched by the signature of counsel.
- 4 Where the amount allowed for an item is specified, the amount is inclusive of all necessary copies, attendances and services (other than services through the messenger) in connection therewith.
- 5 Where the amount allowed for an item is left blank -
 - (a) the drawing of documents shall be allowed at N\$15-00 for each folio
 - (b) copies for filing and service (where the court requires more than one set) shall also be allowed and in addition to such copies allowed one set of copies to be kept by the legal practitioner of record, drafting the original of such documents will also be allowed.
 - (c) service shall be allowed at N\$10-00 for each necessary service
- 6
 - (a) Where any document appears to the court to be unnecessary prolix, the court may disallow all or any part of the charge thereof
 - (b) Where printed forms of documents are available, and in fact used, the charges for copying shall be limited to the necessary matters inserted in such printed documents.
- 7 A folio is 100 written or printed words or figures. Four figures shall be reckoned as one word.
- 8
 - (a) Unless otherwise provided, a charge for perusing shall be allowed at N\$6-00 per folio in respect of any document or pleading necessarily perused, subject to a minimum charge of N\$12-00.
 - (b) Where a charge is allowed for copying, it shall be N\$2-50 per page, notwithstanding the number of words on the page.
- 9 Where there are more than one defendant, N\$15-00 shall be added in respect of each additional defendant for each of items 2 and 3 of Part II, item 2 of Part III and item 10 of Part IV of this Table.
- 10 *A fee of 10 per cent on each installment collected in redemption of the capital and costs of the action shall be allowed, subject to a maximum amount of N\$500-00 on each installment.*
- 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.
- 13 The amount allowable for the issue (inclusive of appearance in court) of a notice to show cause in terms of section 109(2) shall be N\$187-50
- 14 General Sales Tax payable in terms of the Income Tax Act, 1981 (Act No 24 of 1981) on fees and disbursements shall on taxation be allowed by the clerk of the court.

PART II

UNDEFENDED ACTIONS

N\$

Item 1	Registered letter of demand in terms of section 56 of the Act	22-50
Item 2	Summons, inclusive of a letter of demand other than the letter of demand referred to in item 1:	
	(a) Where the claim does not exceed N\$1 000-00	100-00
	(b) Where the claim exceeds N\$1 000-00 but is not more than N\$5 000-00	200-00
	(c) Where the claim exceeds N\$5 000-00	300-00
Item 3	Judgment	
	(a) Where the claim does not exceed N\$1 000-00	75-00
	(b) Where the claim exceeds N\$1 000-00 but is not more than N\$5 000-00	150-00
	(c) Where the claim exceeds N\$5 000-00	250-00
Item 4	Notice in terms of rule 12(2)	30-00
Item 5	Notice in terms of rule 54(1)	30-00
Item 6	Affidavit or Certificate	- - -
Item 7	Attending court at the request of the magistrate when claim referred to court for judgment	As allowed under Item 15 of Part III
Item 8	For each registered letter which is forwarded to the debtor in terms of section 57(1), 57(3) or section 58(2) of the Act by the creditor or his legal practitioner	22-50
Item 9	Admission of liability and undertaking to pay debt in installments or otherwise (section 57 of the Act)	60-00
Item 10	Consent to judgment or to judgment and an order for the payment of judgment debt in installments (Section 58 of the Act)	60-00

Notes :

(a) The amount of the fees allowed under items 4, 5, 6, 7, 8, 9 and 10 shall without taxation be included in the amount of the costs for which judgment is entered.

- (b) *For the purposes of computing costs, the expression “claim” referred to in items 2 and 3, shall mean where costs are awarded to the Plaintiff on a default judgment, the amount or value of the judgment and where more than one claim is involved in the action, the total of the amounts on which judgment was granted and on claims for ejectment the amount of the claim for purposes of computing costs, shall be computed at two month’s rent of the premises.*

PART III
DEFENDED ACTIONS

1	Instructions to sue or defend or to counterclaim or defend a counterclaim, perusal of all documentation and consideration of merits and all necessary consultations to issue summons	350-00
---	--	--------

2	Summons	
(a)	Particulars of claim less than 100 words	250-00
(b)	Particulars of claim more than 100 words and contained in an annexure in terms of rule 6(3)(d), in addition to the fee allowed in III.2(a), a fee for the annexure per folio , subject thereto that no additional fee(s) shall be chargeable for any other item(s), but for drawing of document	- - -
3	Appearance to Defend	30-00
4	Notice under rule 12 (1) (b) and (2)	30-00
5	Plea	250-00
6(a)	Claim in reconvention	250-00
6(b)	Plea in reconvention	250-00
7	Reply if necessary	250-00
8	Drawing up of documents not specifically mentioned, including request for further particulars, further particulars, schedule of documents, affidavits, subpoenas, any other notice not otherwise provided for and drawing up of statements by witnesses, per folio	- - -
9	Production of documents for inspection or inspection of documents per quarter of an hour or any part thereof	87-50
10	Each copy for service, per page	2-50
11	The recording of statements by witnesses, per quarter of an hour or any part thereof.....	87-50
12	Notice of trial or re-instatement	30-00
13	Preparing for trial (if counsel not employed)	700-00
14	Attendance at settlement negotiations, for each quarter of an hour or part thereof actually spent in such negotiations	87-50

15	Attending court during trial, or at on-the-spot inspection, for each quarter of an hour or part thereof spent in court while case is actually being heard	
	(a) If counsel is not employed	87-50
	(b) If counsel is employed	45-00
16	Attending pre-trial conference for each quarter of an hour or part thereof actually spent on such conference	87-50
17	Attending court to hear reserved judgment, per quarter of an hour or any part thereof	87-50
18	Correspondence:	
	(a) Each necessary formal letter or telegram or telefax written, including copy to retain	15-00
	(b) Each necessary non-formal letter or telegram or telefax written, including copy to retain, per folio	15-00
	(c) Each necessary formal letter or telegram or telefax received, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for	12-00
	(d) Each necessary non-formal letter or telegram or telefax, received, per folio, provided that an additional fee for perusal shall not be allowed in addition to the fee herein provided for	6-00
19	For each necessary attendance not otherwise provided for, per attendance	10-00
20	Necessary formal telephone calls, per call	15-00
21	Each necessary non-formal telephone consultations : For every 5 minutes or part thereof, subject to a maximum of N\$150-00 per consultation	15-00

22	Each necessary consultation, per quarter of an hour	87-50
23	The court may, on request made at the hearing, allow in addition to the fee prescribed in item 13 above, a refresher fee in postponed or partly heard trials	400-00
24	Time spent waiting at court (owing to no court being available) per quarter of an hour, or any part thereof	87-50
25	Travelling time [subject to the provisions of rule 33(9)], per quarter of an hour or any part thereof	87-50
26	Subsistence and travelling expenses as laid down in rule 33(9)	3-00/km

PART IV

OTHER MATTERS

(Exceptions, applications to strike out, applications for summary judgments, interlocutory applications, arrest, interdict, *ex parte* applications under rule 27(9), applications to review judgment, including application for setting aside registration of foreign judgment order or taxation

1	Instructions to make application or to oppose or to show cause, including perusal of all documentation and consideration of merits and all necessary consultations to make Application or to oppose application	350-00
2	Drawing up of all documents, affidavits, applications and notices, orders, etc, per folio	- - -
3	Attending court on hearing	
	(a) If unopposed, for each quarter of an hour or any part thereof	87-50
	(b) If opposed, where counsel is employed, for each quarter of an hour or any part thereof	45-00
	(c) If opposed, where counsel is not employed, for each quarter of an hour or any part thereof	87-50
4	Fee for preparing for trial, when opposed, if allowed by the court on request	350-00
5 (a)	Consultations and settlement negotiations - per quarter of an hour or any part thereof	87-50
5 (b)	Correspondence:	
	i Each necessary formal letter or telegram or telefax written, including copy to retain	15-00
	ii Each necessary non-formal letter or telegram or telefax written, including copy to retain, per folio	15-00
	iii Each necessary formal letter or telegram or telefax received, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for	12-00
	iv Each necessary non-formal letter or telegram or telefax, received, per folio, provided that an additional fee for perusal shall not be allowed in addition to the fee herein provided for	6-00
5	Telephone Calls received and made	
(c)	i Necessary formal telephone calls, per call	15-00

	<p>ii Each necessary non-formal telephone consultations: For every 5 minutes or part thereof, subject to a maximum of N\$150-00 per consultation</p> <p>15-00</p> <p>Note : The court may on request made at the hearing allow, as an alternative to the fees prescribed in item 4, a fee for preparing argument under items 13 and 23 of the scale for defended actions</p> <p style="text-align: center;">INTERPLEADER PROCEEDINGS</p> <p>Instruction:</p>	
6	<p>(a) Where interpleader proceedings are initiated by messenger</p> <p>(b) Otherwise</p>	<p>175-00</p> <p>350-00</p>
7	Summons if not sued out by messenger	175-00
8	Affidavit	---
9 (a)	Attending court on return of summons, if not being heard or for Interpleader Hearing, if the matter is being heard, per quarter of an hour or any part thereof	87-50
9 (b)	Correspondence:	
	i Each necessary formal letter or telegram or telefax written, including copy to retain	15-00
	ii Each necessary non-formal letter or telegram or telefax written, including copy to retain, per folio	15-00
	iii Each necessary formal letter or telegram or telefax received, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for	12-00
	iv Each necessary non-formal letter or telegram or telefax, received, per folio, provided that an additional fee for perusal shall not be allowed in addition to the fee herein provided for	6-00
9 (c)	Telephone Calls received and made	
	i Necessary formal telephone calls, per call	15-00
	ii Each necessary non-formal telephone consultations: For every 5 minutes or part thereof, subject to a maximum of N\$150-00 per consultation	15-00

	TAXATION OF COSTS	
10	Drawing up bill of costs : 5% of fees allowed	
11	Attending taxation : 5% of the total bill allowed	
12	Attending on review of taxation, for each quarter of an hour or part thereof in court, while review is actually being heard	87-50
13	Notice of application for review of taxation	--
14	Affidavit where necessary	--
	EXECUTION	
15	(a) Issue of warrant of execution, ejectment, arrest and committal in terms of section 109, delivery of possession	87-50
	(b) For re-issue thereof	45-00
16	Inclusive fee for work done in connection with releasing of immovable property attached	100-00
17	Inclusive fee for work done in connection with sale in execution of immovable property only (excluding work for which fees are already provided for elsewhere and the drawing up of the conditions of sale)	187-50
18	(a) Drawing up of notice of sale in terms of rule 41(8) or rule 43(6) or	

	conditions of sale in terms of rule 43(7) per folio	---
	(b) For all other work done and papers and documents supplied to the messenger in connection with the sale in execution of movable property, an inclusive fee of	137-50
19(a)	Security for restitution, where necessary	250-00
19(b)	Any amount necessary and actually disbursed in tracing the judgment debtor, where the capital amount of the debt at the time the tracing agent was employed was not less than N\$300-00, the total amount to be allowed for each tracing shall not exceed N\$150-00	
WHERE COUNSEL IS EMPLOYED		
20	Instructions to brief counsel for interpleader, exception or application, where allowed	87-50
21	Instructions to brief counsel on trial	175-00
22	Drawing brief on exception or application	---
23	Drawing brief Interpleader on hearing	---
24	Drawing brief on trial	---
25	Attending each necessary consultation with counsel, per quarter of an hour or any part thereof	87-50
	Note : Counsel is for all purposes of these tables defined to be another legal practitioner specifically employed for his or her expertise in a specific field, relevant to the matter in which he or she is briefed	
	FEES TO COUNSEL	

26	With brief to argue exception or application	700-00
	Note : a fee to counsel on application or on Interpleader hearing shall be allowed only where the court certifies that the briefing of counsel was warranted	
27	With brief to argue at interpleader hearing	700-00
28	With trial brief for the first day, not exceeding	2 100-00
29	In any court held more than 30 kilometers from the town or city, where counsel's ordinary place of business is, there may be allowed by special order of the court a travelling allowance (in addition to the fee on brief) of	3-00/km
30	Each necessary consultation, per quarter of an hour or any part thereof	87-50
31	For every trial day exceeding one on which evidence is taken or arguments heard, a refresher fee not exceeding	1 750-00
32	Drawing up pleadings, per folio	- - -
	Notes :	
	(a) In regard to items 26, 27 and 28 a fee in lieu of the fee for the first day's hearing shall be allowed as follows when the case is settled or withdrawn or postponed at the instance of any party on or before the date of hearing:	
	(I) not more than 2 days prior to the date of hearing : the fee otherwise allowable on taxation for the first day's hearing;	
	(II) not less than 3 days and not more than 7 days prior to the date of hearing : two-thirds of the fee under sub-paragraph (I); and	
	(III) not less than 8 days and not more than 21 days prior to the date of hearing : half of the fee under sub-paragraph (I)	
	(b) The court may on request allow a higher fee for counsel in regard to items 26, 27, 28, 30 and 31	
	(c) A fee for travelling time by counsel shall be allowed by the court on request, at the same rate as for legal practitioners under part III, Item 25	
	MISCELLANEOUS	
33	Obtaining certified copy of judgment	50-00

34	Obtaining payment in terms of rule 18(4)	40-00
35	Request for security in terms of rule 62(1)	- - -
36	Furnishing security in terms of rule 62(1)	- - -
37	Preparation, Lodging and effecting registration of a foreign judgment in terms of Act 28 of 1994	175-00
38	Request in terms of Rule 48A(5)(a) and to make an inventory.....	25-00

TABLE B

COSTS

PART I

GENERAL PROVISIONS IN RESPECT OF PROCEEDINGS IN TERMS OF SECTION 65 AND 65A TO 65M OF THE ACT

1. Subject to the provisions of paragraph 3, no fees other than those in the Tariff to this Part shall be allowed.
2. Subject to the provisions of section 65K of the Act, the fees laid down in items (a), (b) or (c) of the Tariff to this Part, as the case may be, shall be payable for the drawing up of the notice referred to in section 65A(l), including appearance at the inquiry into the judgment debtor's financial position referred to in section 65D, or any appearance at subsequent suspension, amendment or rescission proceedings, and shall, with the exception of the fee allowed under item (m) of the tariff, be chargeable only once for the drawing up, issue and all reissues of the notice and all postponements of the inquiry, irrespective of the number of days on which the proceedings are heard in court: Provided that where the debtor leaves the area of jurisdiction of the court after issue of the notice referred to in section 65A(l) and the notice is reissued in any other district, the aforesaid fee may also be charged in such other district if the court so orders.
3. The following shall be allowed in addition to the fees laid down in the Tariff to this Part:
 - (a) All necessary disbursements incurred in connection with the proceedings.
 - (b) A fee of 10% on each installment collected in redemption of the capital and costs of the action, subject to a maximum amount of N\$500,00 on every installment. Where the amount is payable in installments the collection fees shall be recoverable only on payment of every installment. Such fees shall be in substitution for and not in addition to the collection fees prescribed in paragraph 13 of Part 1 of Table A.

- (c) All necessary disbursements incurred in connection with any prior abortive proceedings under section 72, if the court has so ordered.
- (d) Any amount necessarily and actually disbursed in tracing the judgment debtor, where the capital amount of the debt at the time the tracing agent was employed was not less than N\$300-00. The total amount to be allowed for each tracing shall not exceed N\$150-00.
4. For the purpose of the Tariff to this Part the amount of the claim shall, subject to the provisions of paragraph 3(d), be the total of the capital amount and costs outstanding at the date of the first institution of proceedings under section 65A(1) of the Act.
- 5 General Sales Tax payable in terms of the Income Tax Act shall be allowed on all fees and disbursements.

TARIFF

		N\$
(a)	Instructions to proceed with section 65 collection procedure, including all relevant consultations, perusals and drafts not otherwise provided for, where the claim does not exceed the amount of N\$5 000-00	125-00
(b)	Instructions to proceed with section 65 collection procedure, including all relevant consultaions, perusals and drafts not otherwise provided for, where the claim exceeds the amount of R5 000,00 but is not more than N\$10 000-00	187-50
(c)	Instructions to proceed with section 65 collection procedure, including all relevant consultations, perusals and drafts not otherwise provided	

	for, where the claim exceeds the amount of N\$10 000-00	225-00
(d)	Warrant of Arrest and Detention when prepared by the judgment creditor (Form 42)	60-00
(e)	(i) Emoluments Attachment Order (Form 38)	87-50
	(ii) Re-issue (Certificates included)	45-00
(f)	Warrant of Liberation (Form 43) or Certificate of Liberation (Form 59)	30-00
(g)	Application for costs on notice (including appearance in court)	175-00
(h)	Obtaining a certified copy of a judgment	50-00
(i)	Affidavit or certificate by the judgment creditor or his attorney	60-00
(j)	For each registered letter forwarded to the debtor in terms of sections 65A(2), 65E(6) or 65J(2) of the Act by the creditor or his attorney	22-50
(k)	Affidavit or affirmation by debtor [Rule 45(7)]	30-00
(l )	.....	45-00
(m)	Request for an order under section 65 of the Act	
	Attending postponed proceedings in terms of section 65E(3) or attending application for the suspension of a warrant issued in terms of section 65F(1) of the Act	175-00
(n)	Subpoena:	
	(i) Drawing up of subpoena, per folio	15-00

	(ii)	Every necessary attendance, per attendance	10-00
(o)	(i)	Correspondence: For every necessary letter or telegram written, including copy to retain, per folio	15-00
	(ii)	Correspondence: For every necessary letter or telegram received, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for, per folio	6-00
	(iii)	Attendances: For each necessary attendance not otherwise provided for, per attendance	10-00
	(iv)	Necessary formal telephone calls, per call	40-00

PART 11

GENERAL PROVISIONS IN RESPECT OF PROCEEDINGS IN TERMS OF SECTION 72 OF THE ACT

1. Subject to the provisions of paragraphs 2 and 3 no fees other than those laid down in the Tariff to this Part shall be allowed.
2. Paragraph 3(a), (b) and (d) of the general provisions under Part 1 of this Table shall apply *mutatis mutandis* to this Part.
3. All necessary disbursements incurred in connection with any prior abortive proceedings under section 65 shall be allowed if the court has so ordered.

4. For the purpose of the Tariff to this Part the amount of the claim shall, subject to the provisions of paragraph 3(d) of the general provisions under Part 1 of this Table, be the total of the capital amount outstanding at the date of the first institution of proceedings in terms of section 72 of the Act.
- 5 General Sales Tax in terms of the Income Tax Act, shall be allowed on all fees and disbursements, where payable.

TARIFF

	N\$
(a) Instructions to proceed with section 72 procedure, including all relevant consultations, perusals and drafts not otherwise provided for, where the claim does not exceed N\$5 000-00	87-50
(b) Instructions to proceed with section 72 procedure, including all relevant consultations, perusals and drafts not otherwise provided for, where the claim exceeds \$5 000-00	175-00
(c) Obtaining certified copy of a judgment	50-00
(d) Application for an order of execution against the garnishee, including drafting the application with all relevant annexures and appearing at court to obtain order	350-00
(e) Garnishee Order (Form 39)	87-50

PART III

GENERAL PROVISIONS IN RESPECT OF PROCEEDINGS IN TERMS OF SECTION 74 OF THE ACT

1. The following fees shall be allowed in addition to those laid down in the Tariff to this Part:
 - (a) All necessary disbursements incurred in connection with the proceedings.
 - (b) In addition to the fees stated below, the administrator shall be entitled to a fee of 10% on each installment collected for the redemption of capital and costs.
 - (c) General Sales Tax in terms of the Income Tax Act , payable on all fees and disbursements

2. For the purposes of items 4 and 5 of the Tariff to this Part, a folio shall consist of 100 written or printed words or figures and four figures shall be reckoned as one word.

	ITEM	1 - 10 CREDITORS	11 - 20 CREDITORS	21 OR MORE CREDITORS
1	Instructions to apply for administration order, including the necessary perusal of summonses, demands, etc, and ascertaining the amount of assets and liabilities, including all attendances and correspondence necessary in connection with [sic]	100-00	150-00	200-00
2	Instructions on application under section 74(1) or to oppose such application or the granting of administration order	87-50	87-50	87-50
3	Drawing up application for administration order or review thereof and affidavit, including all annexures thereto and all attendances, excluding attendance in court	125-00	150-00	175-00
4	Making copies of application, affidavit and annexures for creditors, per page	2-50	2-50	2-50
5	Perusal of application and other documents served, if any, per folio <i>Note:</i> The fees under this item are only claimed	6-00	6-00	6-00

	by the attorney of an opposing party			
6	Attending court:			
	(a) On postponement or setting aside, if not occasioned by the attorney or his client	87-50	87-50	87-50
	(b) On any other hearing	175-00	175-00	175-00
7	For furnishing to a creditor by the administrator of the information referred to in section 74M(a) of the Act, per application	15-00	15-00	15-00
8	For furnishing of a copy of the debtor's statement of affairs referred to in sections 74 and 74A(l) of the Act by the administrator in terms of section 74M(b) or of a list or account referred to in section 74G(l) or 74J of the Act or of the debtor's statement of affairs referred to in section 651(2) of the Act, per page	2-50	2-50	2-50
9	Correspondence	15-00	15-00	15-00
10	Attendances	10-00	10-00	10-00

TABLE C
GENERAL PROVISIONS AND TARIFF OF FEES
(MESSENGERS OF THE COURT)

PART I

MESSENGERS WHO ARE NOT OFFICERS OF THE PUBLIC SERVICE

- 1A. For registration of any document for service or execution upon receipt thereof: N\$3,25.
- 1 B. (a) For the service of a summons, subpoena, notice, order or other document not being a document mentioned in item 2, the journey to and from the place of service of any of the abovementioned documents
- (i) within a distance of 6 kilometers from the court-house of the district for which the messenger is appointed: N\$22-50;
- (ii) within a distance of 12 kilometers but further than 6 kilometers from the court-house of the district for which the messenger is appointed: N\$27-00;
- (iii) within a distance of 20 kilometers but further than 12 kilometers from the court-house of the district for which the messenger is appointed: N\$33-50
- (iv) where a mandator instructs the messenger in writing to serve a document referred to in item 1 B(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 1B(a)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.

- (b) For the attempted service of the documents mentioned in paragraph (a), the journey to and from the place of attempted service of any of the above-mentioned documents -
- (i) within a distance of 6 kilometers from the court-house of the district for which the messenger is appointed: N\$18-00
 - (ii) within a distance of 12 kilometers but further than 6 kilometers from the court-house of the district for which the messenger is appointed: N\$22-50
 - (iii) within a distance of 20 kilometers but further than 12 kilometers from the court-house of the district for which the messenger is appointed: N\$27-00
 - (iv) where a mandator instructs the messenger in writing to serve a document referred to in item 1 B(a) urgently on the day of receipt of such document or after normal office hours and the messenger is unsuccessful in his or her attempt to effect service, the costs shall be calculated at double the tariff in item 1 B(b)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.
- (c)
- (i) Where a document must be served together with a process of the court and is mentioned in such process or an annexure thereto, no additional fees shall be charged for service of the document, otherwise N\$5-00 may be charged for every separate document served.
 - (ii) No fees shall be charged for a separate document when process in criminal matters are served.
 - (iii) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

- 2.
- (a) For the execution of a warrant, interdict or garnishee order, the journey to and from the place of execution of the above-mentioned documents -
 - (i) within a distance of 6 kilometers from the court-house of the district for which the messenger is appointed: N\$29-25
 - (ii) within a distance of 12 kilometers but further than 6 kilometers from the court-house of the district for which the messenger is appointed: N\$36-00
 - (iii) within a distance of 20 kilometers but further than 12 kilometers from the court-house of the district for which the messenger is appointed: N\$39-00
 - (iv) where a mandator instructs the messenger in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 2(a)(i), (ii) and (iii) respectively, which additional costs shall be paid by the mandator, save where the court orders otherwise.
 - (b) For the attempted execution of the documents mentioned in paragraph (a), the journey to and from the place of attempted execution of the above-mentioned documents -
 - (i) within a distance of 6 kilometers from the court-house of the district for which the messenger is appointed: N\$24-50
 - (ii) within a distance of 12 kilometers but further than 6 kilometers from the court-house of the district for which the messenger is appointed: N\$29-25;
 - (iii) within a distance of 20 kilometers but further than 12 kilometers from the court-house of the district for which the messenger is appointed: N\$36-00

- (iv) where a mandator instructs the messenger in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours and the messenger is unsuccessful in his or her attempt to effect execution, the costs shall be calculated at double the tariff in item 2(b)(i), (ii) and (iii) respectively, which costs shall be paid by the mandator, save where the court orders otherwise.
 - (c)
 - (i) For the ejectment of a defendant from the premises referred to in the warrant of ejectment: N\$30-00 per half hour or part thereof (except extraordinary expenses necessarily incurred).
 - (ii) A further fee of N\$20-00 shall be paid after execution for every person over and above the person named or referred to in the process of ejectment, in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor, respondent or garnishee is necessary in order to complete the execution, the fee laid down in item IB(a) may be charged in respect of each such service.
 - (d) For the arrest of a defendant in terms of an order *tanquam suspectus de fuga*, or an order to found or confirm jurisdiction in terms of section 30bis or an order in terms of section 65 of the Act or any other arrest in terms of the Act, not otherwise provided for, the messenger shall be entitled to, in addition to the tariff in item 2(a), an amount of N\$30-00 per half hour or part thereof, for waiting time during negotiations between the several parties and/or waiting time at the court, due to the unavailability of a court.
3. Compilation of any return in terms of rule 8, in duplicate:N\$10-00.
 4. If it is necessary for the messenger to travel further than 20 kilometers from the court-house of the district for which he or she is appointed, a travelling allowance of N\$3-00 per kilometer for each kilometer or part thereof travelled further than the aforesaid distance to and from the place of service or execution shall be allowed in

addition to the fees mentioned in item 1B(a)(iii), 1 B(b) (iii), 2(a) (iii) or 2(b) (iii) as the case may be.

5. (a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, a travelling allowance of N\$3-00 per kilometer for every kilometer or part thereof, shall be payable to the messenger for going and returning, and it shall be calculated from the court-house of the district for which the messenger is appointed.
- (b) (i) A travelling allowance shall include all the expenses incurred in travelling, including train fares.
- (ii) In respect of the discharge of any official duty, should it be necessary for a messenger, due to the lack of possible roads, to travel on foot or by means of animal transportation, such messenger is in addition to the fee allowed in paragraph 4 entitled to a subsistence allowance of N\$200-00 per 24 hours in excess of the first 24 hours or part thereof so travelled provided that not less than 20km per day is travelled in such manner
- (c) travelling allowance shall be calculated in respect of each separate service, except that -
 - (i) where more services than one can be done on the same journey beyond a radius of 20 kilometers from the court-house, the distance from the radius of 20 kilometers to the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and
 - (ii) where service of the same process has to be effected on more than one person by a messenger within the area served by him or her, only one charge for travelling shall be allowed.

- (d) When it is necessary for the messenger to convey any person under arrest for any distance of more than 20 kilometers, an allowance of N\$3-00 per kilometre in respect of that portion of his or her journey on which he or she was necessarily accompanied by such person shall be allowed.
 - (e) The drawing up and handing over of a warrant of liberation or certificate of liberation to the officer-in-charge of a prison: N\$22-50. A travelling allowance at the tariff mentioned in item 5(a) shall be payable for the execution of this duty.
- 6.
 - (a) Making an inventory, including the making of all necessary copies and time spent on stock-taking: N\$30-00 per half hour or part thereof.
 - (b) For assistance, if necessary, with the making of an inventory, N\$15-00 per half hour or part thereof, for each assistant, provided that not more than two assistants are to be used.
- 7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: N\$15-00.
- 8. Charge or custody of property (money excluded), hereinafter referred to as "possession":
 - (a)
 - (i) For each officer necessarily left in possession, a reasonable inclusive amount not exceeding N\$75-00 per day.
 - (ii) In addition to the fee in (a) (I), a reasonable allowance for board and substance shall be allowed, provided that the person referred to in 9 (a), actually stays on the premises, which premises is not to be the same as the one from where the messenger usually conducts his business and that such allowance does not exceed N\$50-00 per day.
 - (b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.

- (c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.
- 9.
- (a) “Possession” shall mean actual physical possession by a person employed and paid by the messenger, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.
 - (b) “Cost of removal” shall mean the amount actually and necessarily disbursed for removal or attempted removal if the goods were removed by a third party or an attempt was made to remove them, if they were removed by the messenger him- or herself, such amount as would fairly be allowable in the ordinary course of business if the goods were removed by a third party, or an attempt was made to so remove them.
 - (c) “Cost of storage” shall mean the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the messenger provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with the third person.
- 10.
- (a) (i) Where a warrant of execution or garnishee order is paid in full, or in part, to the messenger or moneys attached in execution against movables, 7,5 per cent of the amount so paid or attached, with a minimum of N\$50-00 and a maximum of N\$300-00.
 - (ii) Notice of attachment to defendant and to each person to be notified: N\$5-00.
 - (b) (i) Where an execution debtor at the attempted execution of a warrant of arrest and detention, pays the amount due in full or in part to the messenger, 7,5 per cent of the amount so paid, with a minimum of N\$50-00 and a maximum of N\$300,00.

- (ii) The rules that apply to the collection of money on warrants of execution or garnishee orders shall apply *mutatis mutandis* to money received in terms of this paragraph.
- 11 Where property is released from attachment in terms of rule 41 (7)(e), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestrated after the attachment, but before the sale, 2 per cent of the value of the goods attached, subject to a maximum of N\$150-00: Provided that if a sale subsequently takes place in consequence of the said attachment, the amount so paid shall be deducted from the commission payable under item 12.
12. Where the warrant of execution against movables is completed by sale, 7,5 per cent for the first N\$15 000,00 or part thereof and thereafter 5 per cent.
13. For the insurance of attached property if deemed necessary and on written instructions of the judgment creditor to the messenger, in addition to the premium to be paid, an all inclusive amount of N\$30,00.
14. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of N\$150-00 shall be payable to the messenger or to the person in fact authorised to act as auctioneer, as the case may be.
- 15 (a) The drawing up of a report of the improvements on the property for the purpose of sale, N\$30-00 per half hour or part thereof.
- (b) Written notice to the purchaser who has failed to comply with the conditions of sale: N\$25-00.
- (c) Consideration of conditions of sale: N\$45-00
16. When immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the Act: N\$22,75.

17. When an execution against immovable property is completed by sale, the following auctioneer's fees shall be allowed to the messenger on the proceeds of the sale:
- (a) On the sale of immovable property by the messenger as auctioneer 5 per cent on the first N\$30 000,00 of the proceeds of the sale and 3 per cent on the balance thereof, subject to a minimum of N\$260,00 (inclusive in all instances of the messenger's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.
 - (b) If an auctioneer is employed as provided in rule 43(9), 2,5 per cent on the first N\$30 000,00 of the proceeds of the sale and 1,5 per cent on the balance thereof, subject to a minimum of N\$260,00 (inclusive in all instances of the messenger's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.
18. In addition to the fees allowed by items 11 to 17, both inclusive, there shall be allowed -
- (a) the sum actually and reasonably paid by the messenger or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution;
 - (b) the sum of N\$15-00 to the messenger for giving transfer to the purchaser.
19. Where the messenger is in possession under more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.

20. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
21. The fees and expenses of the messenger in execution of a garnishee order, shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment debtor.
22. If it is necessary for the messenger to return a document received by him or her for service or execution to the mandator because -
 - (a) the address of service which appears on the process does not fall within his or her jurisdiction; or
 - (b) the mandator requested, before an attempted service or execution of the process, that it be returned to him or her,an amount of N\$5-00 shall be payable.
23. For the conveyance of any person arrested by the messenger or committed to his or her custody from the place of custody to the court on a day subsequent to the day of arrest: N\$15-00 per journey and N\$30,00 per thirty minutes or part thereof for attending at court.
24. For the examination of indicated newspapers and the *Gazette* in which the notice of sale has been published as referred to in rule 43(6)(c) and rule 41(8)(c): N\$5-00.
25. For forwarding a copy of the notice of sale to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable, for each copy: N\$5-00.
26.
 - (a) For affixing a copy of the notice of sale on the notice board or door of the court-house or other public building referred to in rule 43(6)(e) and rule 41(8)(b): N\$6-00.

- (b) For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a) above and travelling costs referred to in item 5(a).
- 27. For the drawing up and issuing of an interpleader summons: N\$40-00.
- 28. In addition to the fees prescribed in this Table, the messenger shall be entitled to the amount actually disbursed for postage and telephone calls.
- 29. For the writing of each necessary letter, excluding formal letters accompanying process or returns: N\$6-00.
- 30. Each necessary attendance by telephone (in addition to prescribed trunk charges and cellular charges): N\$6-00.
- 31. Sending and receiving of each necessary facsimile per A4 size page (in addition to telephone charges): N\$6-00.
- 32. For the perusal of the records of the Registrar of Deeds in terms of rule 43(3) to determine the order of precedence of creditors:
 - (a) if investigated by the messenger him- or herself: N\$25-00 per case;
 - (b) if the messenger utilizes the services of a third party for the investigation, the actual cost as required by the third party, provided that it is reasonable.
- 33. For the making of all necessary copies of documents: N\$2-50 per A4 size page.

- 34. For the drawing up of the bill for taxation by the messenger: N\$35-00
- 35. Bank charges: Actual costs incurred relating to bank charges and cheque forms.
- 36. The general sales tax payable on messengers fees shall be allowed on taxation by the clerk of the court.

**TABLE C
GENERAL PROVISIONS AND TARIFF OF FEES
(MESSENGERS OF THE COURT)**

PART I

MESSENGER WHO ARE STAFF MEMBERS OF THE PUBLIC SERVICE

1. For each service or execution or attempted service or execution of any process or document: N\$20,00.
2. The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

PART II

MESSENGERS WHO ARE NOT OFFICERS OF THE PUBLIC SERVICE

- 1A. For registration of any document for service or execution upon receipt thereof: N\$3,25.
- 1B. (a) (i) For the service of a summons, subpoena, notice, order or other document not being a document mentioned in item 2: N\$46,00.
(ii) Where a mandatory instructs the messenger in writing to serve a document referred to in (i) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff referred to in (i) which additional costs shall be paid by the mandatory, save where the court orders otherwise.
- (b) (i) For the attempted service of the documents mentioned in paragraph (a): N\$29,00.
(ii) Where a mandatory instructs the messenger in writing to serve a document referred to in subitem (a)(i) urgently on the day of receipt of such document or after normal office hours and the messenger is unsuccessful in his or her attempt to effect service, the costs shall be calculated at double the tariff referred to in (i), which additional costs shall be paid by the mandatory, save where the court orders otherwise.
- (c) (i) Where a document must be served together with a process of the court and is mentioned in such process or an annexure thereto, no additional fees shall be charged for service of the document, otherwise N\$5,00 may be charged for every separate document served.
(ii) No fees shall be charged for a separate document when process in Criminal matters is served.
(iii) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.
2. (a) (i) For the execution of a warrant, interdict or garnishee order: N\$51,00.
(ii) Where a mandatory instructs the messenger in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 2(a)(i), which

additional costs shall be paid by the mandatory, save where the court orders otherwise.

- (b) (i) For the attempted execution of the documents mentioned in paragraph (a): N\$35,00.
- (ii) Where a mandatory instructs the messenger in writing to execute a document referred to in 2(a) urgently on the day of receipt of such document or after normal office hours and the messenger is unsuccessful in his or her attempt to effect execution, the costs shall be calculated at double the tariff in item 2(b)(i), which costs shall be paid by the mandatory, save where the court orders otherwise.
- (c) (i) For the ejectment of a defendant from the premises referred to in the warrant of ejectment: N\$50,00 per half hour or part thereof (except extraordinary expenses necessarily incurred).
- (ii) A further fee of N\$20,00 shall be paid after execution for every person over and above the person named or referred to in the process of ejectment, in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor, respondent or garnishee is necessary in order to complete the execution, the fee laid down in item B(a) may be charged in respect of each such service.
- (d) For the arrest of a defendant in terms of an order *tanquam suspectus de fuga*, or an order to found or confirm jurisdiction in terms of section 30bis or an order in terms of section 65 of the Act or any other arrest in terms of the Act, not otherwise provided for, the messenger shall be entitled to, in addition to the tariff in item 2(a), an amount of N\$30,00 per half an hour or part thereof, for waiting time during negotiations between the several parties or waiting time at the court, due to the unavailability of a court.

3. Compilation of any return in terms of rule 8, in duplicate: N\$15,00.

4. If it is necessary for the messenger to travel, a travelling allowance of N\$4,00 per kilometre or part thereof travelled to and from the place of service or execution, calculated from the court-house for the district for which he or she is appointed, shall be allowed in addition to the fees mentioned in items 1 B(a)(i), 1 B(b)(i), 2(a)(i), 2(b)(i), 2(c)(i) or 2(d).

5. (a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, a travelling allowance of N\$4,00 per kilometre for every kilometre or part thereof beyond a radius of one kilometre from the office of the messenger, shall be payable for the forward and return journey, and shall be calculated from the court house of the district for which the messenger is appointed.

- (b) (i) A travelling allowance shall include all the expenses incurred in Travelling, including train fares.
- (ii) In respect of discharge of any official duty, should it be necessary for a messenger, due to lack of passable roads, to travel on foot or by means of animal transportation, such messenger is in addition to the fee allowed in paragraph 4 entitled to a subsistence allowance of N\$200,00 per 24 hours in excess of the first 24 hours or part thereof so travelled.

- (c) Travelling allowance shall be calculated in respect of each separate service, except that -
 - (i) where more services than one can be done on the same journey, the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and
 - (ii) where service of the same process has to be effected on more than one person by a messenger within the area served by him or her, only one charge for travelling shall be allowed.
 - (d) When it is necessary for the messenger to convey any person under arrest, an allowance of N\$3,00 per kilometre in respect of that portion of his or her journey on which he or she was necessarily accompanied by such person, shall be allowed.
 - (e) The drawing up and handing over of a warrant of liberation or certificate of liberation to the officer-in-charge of a prison: N\$22,50. A travelling allowance at the tariff mentioned in subitem (a) shall be payable for the execution of this duty.
6. (a) Making an inventory, including the making of all necessary copies and time spent on stocktaking: N\$50,00 per half an hour or part thereof.
- (b) For assistance, if necessary, with the making of an inventory: N\$30,00 per half an hour or part thereof, for each assistant, provided that not more than two assistants are to be used.
7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: N\$15,00.
8. Charge of custody of property (money excluded), hereinafter referred to as "possession":
- (a) (i) For each officer necessarily left in possession, a reasonable inclusive amount as per invoice of the relevant security company.
 - (ii) In addition to the fee in (a)(i), a reasonable allowance for board and subsistence shall be allowed, provided that the person referred to in 8(a) actually stays on the premises, not being the premises from where the messenger usually conducts business and that such allowance is a reasonable inclusive amount: Provided further that such board and subsistence is not included in the invoice of the security company.
 - (b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.
 - (c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.

9. For the purposes of Item 8 of this Part –

"possession" means actual physical possession by a person employed and paid by the messenger, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.

“cost of removal” means the amount actually and necessarily disbursed for removal or attempted removal if the goods were removed by a third party or an attempt was made to remove them, if they were removed by the messenger himself or herself, such amount as would fairly be allowable in the ordinary course of business if the goods were removed by a third party, or an attempt was made to so remove them.

“cost of storage” means the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the messenger provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.

10. (a) (i) Where a warrant of execution or garnishee order is paid in full, or in part, to the messenger, or monies attached in execution against movables, 7.5 per cent of the amount so paid or attached, with a minimum of N\$50,00 and a maximum of N\$1500,00.
(ii) Notice of attachment to defendant and to each person to be notified: N\$5,00.
 - (b) (i) Where an execution debtor at the attempted execution of a warrant of arrest or detention, pays the amount due in full or in part to the messenger, 7.5 per cent of the amount so paid, with a minimum of N\$50,00 and a maximum of N\$1500,00.
(ii) The rules that apply to the collection of money on warrants of execution or garnishee orders shall apply with the necessary changes to money received in terms of this paragraph.
11. Where property is released from attachment in terms of rule 47(7)(e), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestered after the attachment, but before the sale, 2 per cent of the amount of the warrant of execution, subject to a maximum of N\$150,00: Provided that if a sale subsequently takes place in consequence of the said attachment, the amount so aid shall be deducted from the commission payable under item 12.
 12. Where the warrant of execution against movables is completed by sale, 7.5 per cent of the amount realized.
 13. For the insurance of attached property, if deemed necessary, and on the written instructions of the judgment Creditor to the messenger, in addition to the premium to be paid, an all inclusive amount of N\$30,00.
 14. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of N\$150,00 shall be payable to the messenger or to the person in fact authorised to act as auctioneer, as the case may be.
 15. (a) The drawing up of a report of the improvements on the property for purpose of sale, N\$50,00 per half hour or part thereof.

- (b) Written notice to the purchaser who has failed to comply with the conditions of sale: N\$30,00.
 - (c) Consideration of conditions of sale: N\$45,00.
16. When immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the Act: N\$22,75.
17. When an execution against immovable property is completed by sale, the following auctioneer's fees shall be allowed to the messenger on the proceeds of the sale:
- (a) On the sale of immovable property by the messenger as auctioneer, 5 per cent of the proceeds of the sale, subject to a minimum of N\$260,00 (inclusive in all instances of the messenger's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.
 - (b) If an auctioneer is employed as provided in rule 43(9), 2.5 per cent of the proceeds of the sale, subject to a minimum of N\$260,00 (inclusive in all instances of the messenger's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.
18. In addition to the fees allowed by items 11 to 17, both inclusive, there shall be allowed:
- (a) the sum actually and reasonably paid by the messenger or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution;
 - (b) the sum of N\$15,00 to the messenger for giving transfer to the purchaser.
19. Where the messenger is in possession of more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each Execution Creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.
20. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
21. The fees and expenses of the messenger in execution of a garnishee order, shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment Debtor.
22. If it is necessary for the messenger to return a document received by him or her for service or execution to the mandator because -
- (a) the address of service which appears on the process does not fall within his or her jurisdiction; or
 - (b) the mandator requested, before an attempted service or execution of the process, that it be returned to him or her, an amount of N\$5,00 shall be payable.
23. For the conveyance of any person arrested by the messenger or committed to his or her custody, from the place of custody to the court on a day subsequent

to the day of arrest: N\$30,00 per journey and N\$50,00 per half an hour or part thereof for attending court.

24. For the examination of indicated newspapers and the Gazette in which the notice of sale has been published as referred to in rule 43(6)(c) and rule 41(8)(c): N\$5,00.
25. For forwarding a copy of the notice of sale to every Execution Creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable, for each copy: N\$40,00.
26. (a) For affixing a copy of the notice of sale on the notice board or door of the court-house or other public building referred to in rule 43(6)(e) and rule 41(8)(b): N\$10,00.
(b) For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a) above and travelling costs referred to in item 5(a).
27. For the drawing up and issuing of an interpleader summons: N\$40,00.
28. In addition to the fees prescribed in this Table, the messenger shall be entitled to the amount actually disbursed for postage and telephone calls.
29. For the writing of each necessary letter, excluding formal letters accompanying process or returns: N\$10,00.
30. Each necessary attendance by telephone (in addition to prescribed trunk charges and cellular charges): N\$10,00.
31. Sending and receiving of each necessary facsimile per A4 size page (in addition to telephone charges): N\$10,00.
32. For the perusal of the records of the Registrar of Deeds in terms of rule 43(3) to determine the order of precedence of Creditors:
 - (a) if investigated by the messenger personally: N\$40,00 per case;
 - (b) if the messenger utilizes the services of a third party for the investigation, the actual cost as required by the third party, provided that it is reasonable.
33. For the making of all necessary copies of documents: N\$4,00 per A4 size page.
34. For the drawing up of the bill of taxation and attendance of the taxation by the messenger: N\$35,00.
35. Bank charges: Actual costs incurred relating to bank charges and cheque forms.
36. The VAT payable on messengers' fees shall be allowed on taxation by the clerk of the court.

37. For drawing a plan of distribution of proceeds (including the necessary copies): N\$35,00.

TABLE D

FEES TO ASSESSORS

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1. For every attendance when the case is wholly or partly heard: N\$75-00 for each hour or part of an hour of such attendance, but not to be less than N\$150-00 or more than N\$525-00 for every such attendance.
 2. For every attendance when the case is not heard but is postponed or settled, at the above rate, but the minimum to be N\$75-00
 3. Attendance to be reckoned from the hour for which the assessor is summoned to the hour at which judgment is given or reserved, or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.
 4. When the case is adjourned, postponed or settled, attendances to be reckoned from the hour for which the assessor is summoned to the hour at which the case is adjourned, postponed or settled, or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.
 5. An assessor shall be entitled to a travelling allowance of N\$3-00 per kilometer actually and necessarily taken between the courthouse and his or her residence or place of business
 6. The party who desires an assessor in terms of rule 59(6) shall pay to the clerk of the court an amount of N\$525-00 for each assessor applied for.

TABLE E
COURT FEES

	ITEM	N\$
1	On every initial summons, or the initial documents in an application which are not related to civil proceedings already on record in that court, or an application for an order under section 74 of the Act or an application for a spoliation order	25-00
2	On any request to inspect any record - (a) if the correct number is furnished	2-00
	(b) if an incorrect or no number is furnished, for every 100 records searched	5-00
3	For a copy of a record made by the clerk of the court - (a) for every 100 typed words or part thereof	3-00
	(b) for every photocopy of an A4-size page or part thereof	3-00
4	For examining and certifying a copy of a record - each 100 words or part thereof	2-00
5	For completion of the statement referred to in section 74A(4)	30-00

NOTES

1. For the purposes of item 1 the expression 'action' does not include a counter-claim.
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 to which such document is lodged, but such decision shall be without prejudice to any other rights of any person interested.
3. No charge shall be made for the inspection of the record of any case -
(a) on the business day next succeeding the day on which judgment was delivered in such case if the number of civil cases recorded in that court exceeded 5 000 during the preceding year; or
(b) within seven days after judgment if the number of civil cases recorded in that court during the preceding year did not exceed 5000; or
(c) to any party to any case at any time before judgment or within seven days after judgment.