



# GOVERNMENT GAZETTE

OF THE

## REPUBLIC OF NAMIBIA

N\$15.00

WINDHOEK - 25 August 2017

No. 6392

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### Government Notice

#### MINISTRY OF JUSTICE

No. 221

2017

#### RULES OF THE SUPREME COURT OF NAMIBIA: SUPREME COURT ACT, 1990

Under section 37 of the Supreme Court Act, 1990 (Act No. 15 of 1990), with the approval of the President of the Republic of Namibia, I -

- (a) have made the rules for the conduct of the proceedings of the Supreme Court of Namibia as set out in the Schedule and determine that the said rules come into operation on 15 November 2017; and
- (b) repeal Government Notices No. 56 of 1990, 80 of 2003 and 119 of 2003.

**P. S. SHIVUTE**  
**CHIEF JUSTICE**  
**REPUBLIC OF NAMIBIA**

Windhoek, 21 July 2017

## SCHEDULE

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#### Definitions

1. In these rules a word or expression to which a meaning has been assigned in the Act bears that meaning, and unless the context otherwise indicates –

“affidavit” means a written statement signed by the deponent thereof under oath or affirmation administered by a Commissioner of Oaths in terms of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);

“apply” means apply on notice of motion, and “application” has a corresponding meaning;

“court” means the Supreme Court of Namibia;

“court day” means any day which is not a Saturday, Sunday or public holiday and only court days must be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of the court;

“deliver” means to serve copies on all parties and file the original with the registrar and the service or filing could be by electronic means;

“electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic or other intangible form or similar capabilities;

“e-justice” means the internet-based system for delivering process and maintaining court case files in the court and the letter ‘e’ in the e-justice being reference to the word ‘electronic’ as defined;

“file” means to file with the registrar or the registrar of the court appealed from;

“instructed legal practitioner” means a legal practitioner instructed by another legal practitioner who does not practise in the same law firm or institution as the first named legal practitioner, the Government Attorney, the head of a law centre or the Director of Legal Aid appointed in terms of the Legal Aid Act, 1990 (Act No. 29 of 1990) to render advocacy services related to proceedings in any cause or matter, regardless of whether such instructed legal practitioner practises with or without a fidelity fund certificate issued in terms of the Legal Practitioners Act, 1995;

“interlocutory matters” means any matter relevant to a pending appeal where the decision on it does not dispose of the appeal;

“judge” means a judge, an acting judge or an *ad hoc* judge of the Supreme Court;

“Legal Practitioners Act, 1995” means the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“legal practitioner” means a person who, in terms of the Legal Practitioners Act, 1995 has been admitted and authorised to practice as a legal practitioner or is deemed to have been so admitted and authorised and practices for personal gain or is in the service of a law centre or the State;

“lodge” means to lodge process with the registrar by a legal practitioner practising in Windhoek, or by registered post, or by a party personally, if the party is not represented by a legal practitioner, after prior service of the process on any other party;

“party” means a litigant in terms of these rules, and includes his or her legal practitioner, as the context may require;

“process” includes any official court document and pleading;

“typed” includes duplicated by the wax stencil method and all other modes of representing or reproducing words in a visible form, but does not include duplicated typing, handwriting or printing;

“the Act” means the Supreme Court Act, 1990 (Act No. 15 of 1990); and

“the Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

#### **Registrar’s office hours**

2. (1) The office of the registrar must be open on court days from 08h30 to 13h00 and from 14h00 to 17h00.

(2) Despite subrule (1),

- (a) no documents may be lodged after 16h00; but
- (b) the registrar may in exceptional circumstances accept documents at any time, and must do so when directed by a judge.

#### **Sittings of court and vacations**

- 3. (1) There are three terms in each calendar year, namely -
  - (a) 1 March to 15 April inclusive;
  - (b) 1 June to 15 July inclusive; and
  - (c) 1 October to 15 November inclusive.
- (2) Despite subrule (1), the Chief Justice may extend or shorten the duration of any particular term.
- (3) The remainder of the year excluded in subrule (1) is vacation, but the Chief Justice may set down a hearing during the vacation if, in his or her opinion, a hearing is justified for its urgency or for any other sufficient reason.
- (4) If the day fixed for the commencement of a term is not a court day, the term commences on the next succeeding court day and, if the day fixed for the end of a term is not a court day, the term ends on the court day preceding.
- (5) A party to an appeal seeking to set down an appeal outside the terms prescribed under subrule (1) may make application, on notice to any other party, to the Chief Justice setting out the grounds upon which the application is made.
- (6) A party who receives the notice referred to in subrule (5) must file his or her response within three days, if he or she opposes the expedited hearing of the appeal.

#### **Application for leave to appeal**

- 4. (1) Whenever in terms of the Act a person is entitled to petition the Chief Justice for leave to appeal, that person must deliver to the registrar-
  - (a) in criminal matters, the petition together with a verifying affidavit and four copies of the petition and affidavit; and
  - (b) in all other matters, the petition together with a verifying affidavit and two copies of the petition and affidavit.
- (2) A petitioner must serve a copy of every petition and verifying affidavit, referred to in subrule (1), on the respondent or his or her legal practitioner.
- (3) If the petition mentioned in subrule (1) is referred to the court by the Chief Justice or any other judge of the court designated in terms of the Act -
  - (a) the petitioner must lodge with the registrar two additional typed copies of the petition within the time fixed by the Chief Justice or any other judge;
  - (b) the Chief Justice or such other judge may, if he or she considers it necessary, direct that at least four typed copies of the record must be filed with the court, one of which must be certified by the registrar of the court appealed from as a correct record; and

- (c) the registrar must inform any other party that the petition has been referred to the court.
- (4) Unless the respondent or his or her legal practitioner agrees to an extension of the time fixed under subrule (3)(a), the petitioner must make an application to the Chief Justice or any other judge to extend the time, which application must be lodged with the registrar.
- (5) The respondent must lodge two copies of every affidavit in answer to a petition within 21 days of service of a copy of the petition on the respondent or his or her legal practitioner, except that where a petition has been referred to the court in terms of subrule (3), the respondent must lodge two additional copies within 14 days of being informed of the referral in terms of subrule (3)(c).
- (6) Every application for leave to appeal must –
- (a) contain concise and sufficient information as may be necessary to enable the court to decide whether to grant the application; and
  - (b) be accompanied by a copy of the judgment delivered by the court appealed from, and where leave to appeal has been refused by that court, a copy of the judgment refusing such leave.
- (7) A petition must –
- (a) not contain any unrelated or irrelevant matter; and
  - (b) deal with the merits of the case only in so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought.
- (8) Whenever the court grants leave to appeal, rules 10 and 11 relating to the time limits allowed for the lodging of records and rule 14 which provides for security for costs of appeals apply with necessary changes required by the context, unless the court directs otherwise.
- (9) Whenever leave to appeal has been granted by the court or the court appealed from, the registrar may not set down the case for hearing in the court until proof has been furnished to the registrar that any security ordered under rule 14 or by the court appealed from, has been furnished by the appellant within the period fixed by the court in question.
- (10) Subrules (2), (3), (6), (7) and (8) apply with necessary changes required by the context to applications for condonation.
- (11) An application for condonation must be accompanied by two typed copies of the application or such number as the Chief Justice or the judges considering the application may direct.
- (12) In the case of a criminal matter, an application for condonation must be accompanied by four typed copies of the application or such number as the Chief Justice or the judges considering the application may direct.
- (13) Subrules (1), (4), (6) and (7) apply with necessary changes required by the context to a petition in connection with criminal matters addressed to the Chief Justice.
- (14) If the Chief Justice or a judge considering a petition so directs, the applicant must, within the period fixed by the Chief Justice or the judge, lodge -

- (a) two additional typed copies of the petition; and
- (b) four typed copies of the record, one of which must be certified by the registrar of the court appealed from.

#### **Interlocutory matters**

5. (1) An interlocutory matter –

- (a) may be brought before a single judge who may hear, decline to hear, or refer the matter to the court;
- (b) must be brought by application on notice of motion to every other party and to the registrar.

(2) A party opposing the application must, within 10 days of the service on him or her of the application, deliver an answering affidavit.

(3) An applicant may, within seven days of the service on him or her of the affidavit, deliver a replying affidavit.

(4) The registrar must set the matter down on any day, including a day outside the terms prescribed in rule 3(1).

(5) The judge hearing an interlocutory matter may –

- (a) make any order he or she considers fit, including an order as to costs;
- (b) refer the matter to the court to be heard together with the appeal; or
- (c) refer the question of costs to the court hearing the appeal.

#### **Summary dismissal of appeal in civil proceedings**

6. (1) A party to an appeal who is of the opinion that the appeal is frivolous or vexatious, may within 21 days of service of the notice of appeal apply on notice of motion supported by an affidavit setting out the reasons why the party contends that the appeal should be dismissed on the basis that it is frivolous or vexatious or that it has no prospects of success.

(2) The notice of motion referred to in subrule (1) must be lodged with the registrar and served on any other party to the appeal.

(3) A party upon whom a notice is served in terms of subrule (2) must, if he or she opposes the application, within 10 days of the service of the notice on him or her, deliver an answering affidavit.

(4) The Chief Justice or a designated judge may determine the application in terms of section 14(7) of the Act -

- (a) in chambers on the notice of motion and the affidavits; or
- (b) in chambers or in court after a hearing, if he or she considers it appropriate.

### Instituting an appeal

7. (1) Every appellant in a civil case who has a right of appeal must file his or her notice of appeal with the registrar and the registrar of the court appealed from and serve a copy of the notice on the respondent or his or her legal practitioner within 21 days or such longer period as may be allowed on good cause shown, after -

- (a) the judgment or order appealed against, including a judgment or order of the Income Tax Special Court in terms of the Income Tax Act, 1981 (Act No. 24 of 1981), has been pronounced;
- (b) in a case where leave to appeal is required, an order for leave to appeal has been granted; or
- (c) a direction of the High Court has been set aside.

(2) The appellant must file an order granting the leave referred to in subrule (1)(b) simultaneously with the notice of appeal.

(3) The notice of appeal referred to in subrule (1) must -

- (a) state whether the whole or part of the judgment or order is appealed against, except that where an appeal is noted against an order where reasons have not been given, this rule must be complied with not more than 14 days after the reasons have been given;
- (b) state which part of the judgment or order is appealed against, if only a part of the judgment or order is appealed against;
- (c) set forth concisely and distinctly -
  - (i) the grounds of appeal on which the appellant relies for the relief sought; and
  - (ii) in the grounds referred in subparagraph (i), in separate numbered paragraphs, the findings of fact and conclusions of law to which the appellant objects and the particular respects in which the variation of the judgment or order is sought.

(4) Every respondent who wishes to cross-appeal must, within 21 days or such longer period as may be allowed on good cause shown after receiving a notice of appeal from the party appealing, file notice of his or her cross-appeal with the registrar and the registrar of the court appealed from and serve a copy of the notice on the party appealing.

(5) The notice referred to in subrule (4) must set forth fully and distinctly the particulars in respect of which the variation of the judgment or order of the court cross appealed from is sought.

(6) If the notice of appeal or cross-appeal is filed by a legal practitioner, he or she must, within 21 days after filing such notice, file a power of attorney authorising him or her to prosecute the appeal or the cross-appeal.

(7) Where no cross-appeal is filed, the respondent's legal practitioner must lodge a power of attorney to oppose an appeal at the same time that copies of the respondent's main heads of argument are lodged under rule 17.

(8) No power of attorney is required to be filed by the Attorney-General, Government Attorney or Prosecutor-General, or any legal practitioner instructed in writing by or on behalf of the

Attorney-General, Government Attorney or Prosecutor-General in any matter in which the Attorney-General, Government Attorney or Prosecutor-General is acting in his or her official capacity or on behalf of the Government of Namibia or any Minister, Deputy Minister or other official of the Namibian Government.

#### Filing of record

8. (1) After an appeal has been noted in a civil case the appellant must, subject to any direction issued by the Chief Justice, file four copies of the record of the proceedings with the registrar and deliver such number of copies of the record to the respondent as may be considered necessary.

(2) The record referred to in subrule (1) must be filed –

(a) in a case where the order appealed against was given on an exception or an application to strike out, within six weeks after the date of the said order or, in cases where leave is required, within six weeks after the date of an order granting leave to appeal;

(b) in all other cases, within three months of the date of the judgment or order appealed against or, in cases where leave to appeal is required, within three months after an order granting the leave to appeal; or

(c) within such further period as may be agreed to in writing by the respondent.

(3) Despite subrule (7), whenever a decision in an appeal is likely to rest entirely on a specified issue of law or fact -

(a) the appellant must, within 10 days of the noting of the appeal, request the respondent to consent to submitting the issue to the court for adjudication; or

(b) if the appellant fails to make such request, the respondent must, within 10 days after the expiration of the time mentioned in paragraph (a), make a similar request to the appellant.

(4) The respondent or the appellant must, within 10 days after the expiration of the time allowed in subrule (3), state the reasons for not agreeing to the request mentioned in that subrule.

(5) The request and the response referred to in subrule (3) and the reasons referred to in subrule (4) form part of the record of proceedings.

(6) The court may make a special order of costs if a request is not made where it should have been made, or if a party unreasonably refuses to consent to a request from the other party.

(7) Where the parties reach agreement in terms of subrule (3), only those parts of the record of the proceedings in the court appealed from agreed upon by the parties must be included in the record lodged in terms of these rules, except that the court may call for the full record and may order full arguments in respect of the entire case.

#### Withdrawal of appeal

9. (1) If an appellant-

(a) withdraws his or her appeal;

(b) fails to file the record of the proceedings of the court appealed from; or



- (c) in terms of subrule (4), is deemed to have withdrawn the appeal,

a respondent who has noted a cross-appeal may, within 21 days from the date on which he or she or his or her legal practitioner received the notice of withdrawal by the appellant or the date on which the appellant is so deemed to have withdrawn his or her appeal, as the case may be, notify the registrar in writing that he or she desires to prosecute the cross-appeal.

(2) The respondent referred to in subrule (1) for the purposes of rule 8, is thereupon deemed to be the appellant, and the times prescribed in paragraphs (a) and (b) of subrule (2) of that rule are calculated from the date on which the appellant withdrew his or her appeal or on which the appeal is deemed to have been withdrawn, and in that event, the suspension of any judgment or order of the court appealed from no longer applies.

(3) If a respondent who has noted a cross-appeal fails to give the notification referred to in subrule 7(4) within the time allowed by that subrule, the cross-appeal is deemed to have been withdrawn; and, in that event, a suspension of any judgment or order of the court appealed from is considered lifted.

(4) If an appellant or a respondent who has noted a cross-appeal and, is therefore, considered to be an appellant in terms of subrule (2) -

- (a) fails to lodge the record within the period prescribed in rule 8(2);
- (b) has not within the time prescribed in rule 8 applied to the respondent or his or her legal practitioner for consent to an extension of time; and
- (c) has not given notice to the registrar that he or she has so applied for such extension,

he or she is deemed to have withdrawn his or her appeal, and in that event, the suspension of any judgment or order of the court appealed from is considered lifted.

#### **Appeal in terms of Criminal Procedure Act, 1977**

10. (1) After leave to appeal in terms of section 316 of the Criminal Procedure Act, 1977 has been granted in a criminal case, the appellant must -

- (a) within three months of the order granting leave to appeal; or
- (b) within such further period as may be agreed upon, in writing by the parties to the appeal,

file four copies of the record of the proceedings in the court appealed from, one of which must be certified by the registrar of the court appealed from, and, furnish such number of copies of the record to the Prosecutor-General as may be considered necessary by the Prosecutor-General.

(2) Despite subrule (1), with the consent of the accused and the Prosecutor-General, instead of the whole record being transmitted, only copies, one of which must be certified by the registrar of the court appealed from, of such parts of the record as may be agreed by the Prosecutor-General and the accused may be transmitted, unless the court directs otherwise.

(3) Subrule (2) does not apply to cases where the appellant is entitled to obtain, under rule 22(1), copies of the record or extracts of it from the registrar of the court from which he or she intends to appeal.

**Requirements for record**

11. (1) A record must comply with the following –
- (a) one copy of the record lodged must be certified as correct by the registrar of the court appealed from;
  - (b) a copy of the record must be typed clearly on A4-size paper, double-spaced in black ink and on one side of the paper;
  - (c) at the top of each page containing evidence, the name of the witness giving such evidence and the exhibit numbers must appear;
  - (d) the left side of each page must be provided with a margin of at least 40 mm in width that must be left clear, except in the case of exhibits that are duplicated by photocopying, where -
    - (i) it is impossible to obtain a margin with such dimension;
    - (ii) the margin of the exhibit may be so small that part of the document may be obscured by binding;
    - (iii) a document referred to in subparagraph (i) and (ii) must be affixed on to A4-size sheets of paper and folded back to ensure that the prescribed margin is provided;
  - (e) every tenth line of each page of a record must be numbered sequentially;
  - (f) the covers in which records are bound must be of the same size as the records;
  - (g) pages must be numbered clearly and consecutively and the pagination of the court appealed from must be retained where possible; and
  - (h) all references in the record to page numbers of exhibits must be transposed to reflect the page numbers of such exhibit in the appeal record.
- (2) All records, process, heads of argument and exhibits must be securely bound in suitable covers disclosing clearly –
- (a) the case number;
  - (b) the names of the parties;
  - (c) the court appealed from;
  - (d) the names and addresses of the instructing legal practitioners and instructed legal practitioners of the parties;
  - (e) the volume number and number of volumes and page numbers in that volume; and
  - (f) the names of the parties, the volume number and the number of pages contained in the volume must also appear on the spine of the record.
- (3) Bulky records must be divided into separate volumes, and each volume must not exceed 120 pages or 16 mm in thickness, and no plastic covers with holes on the binding edge with spiral plastic rings or metal rings, which bind the contents, may be used under any circumstances.

- (4) A copy of a record must -
- (a) include the notice of appeal, the judgment or order and the reasons given by the judge of the court appealed from ; and
  - (b) contain a correct and complete index of the evidence, all documents and exhibits in the case, together with a brief statement in the index indicating the nature of the exhibits.
- (5) Mere formal documents must be omitted and no document must be set forth more than once.
- (6) Costs of preparing copies of records under this rule form part of the costs of appeal.
- (7) The registrar may refuse to accept copies of records, if in his or her opinion, they do not comply with this rule.
- (8) Unless it is essential for the determination of an appeal the record must not contain -
- (a) heads of argument, a transcript of oral argument and opening addresses;
  - (b) discovery affidavits and similar documents;
  - (c) identical duplicates of any documents; and
  - (d) documents not proved or admitted.
- (9) The taxing master must, of his or her own accord, disallow costs on the scale as between a legal practitioner and own client in respect of every document mentioned in subrule (8).
- (10) Parties to an appeal or their legal practitioners, if they are represented, must -
- (a) within 20 days of the noting of the appeal, hold a meeting about the record with the view to eliminating portions of the record which are not relevant for the determination of an issue on appeal; and
  - (b) within 10 days of conclusion of that meeting submit to the registrar a written report about the meeting.
- (11) A court hearing an appeal may make a special order as to costs against a party or a legal practitioner where -
- (a) subrule (10) has not been complied with; or
  - (b) where costs of litigation in the appeal have unreasonably increased by reason of non-compliance with subrules (8) and (10).

#### **Procedure where court acts as court of first instance**

12. (1) Where the Attorney-General is, in terms of section 15 of the Act, entitled to approach the court directly for any relief or order as contemplated in that section, application to the Chief Justice must be made on petition, and in that event rule 4(1) to (4), dealing with time limits and the number of copies required to be lodged, apply with necessary changes required by the context to such petition.

(2) A copy of every petition referred to in subrule (1) and verifying affidavit must be served on the respondent, if any, or his or her legal practitioner and in that event, rule 4(5) applies with necessary changes required by the context to such respondent.

(3) The Attorney-General must comply with -

- (a) every procedural requirements of any law in terms of which he or she purports to exercise his or her right to approach the court for relief; and
- (b) every procedural directions made by the Chief Justice or a judge designated by him or her for that purpose with regard to the further conduct of the case.

(4) The Chief Justice or any other judge of the court designated for that purpose by the Chief Justice must consider a petition lodged in terms of this rule.

(5) If the Chief Justice or any other judge of the court, decides that an application is, by virtue of its urgency or is of such a nature as to justify the exercise of the court's jurisdiction as contemplated in section 15 of the Act -

- (a) the registrar must inform the petitioner or his or her legal practitioner and the respondent, if any, or his or her legal practitioner accordingly;
- (b) the Chief Justice or such other judge must thereafter direct -
  - (i) what process is required to be filed by the parties to the proceedings;
  - (ii) the period within which such process must be lodged;
  - (iii) whether or not any special dossiers are required to be compiled in terms of section 23 of the Act, and if so, the time within which such dossiers are required to be lodged;
  - (iv) the date on which the court may hear the matter, or hear any interlocutory proceedings pertaining to the matter.

(6) The Chief Justice or such other judge is entitled to call for or to hear arguments from affected parties with regard to the matters referred to in subrule (5), and the Chief Justice or judge of the court as the Chief Justice may designate for that purpose may consider such a hearing or such arguments.

#### **Procedure where court exercises review jurisdiction in terms of section 16 of Act**

13. Whenever it comes to the notice of the Chief Justice or any judge that an irregularity has occurred in any case contemplated in section 16 of the Act, and he or she decides to invoke the review jurisdiction of the court in terms of that section, the registrar must inform the parties affected and the court or tribunal or authority referred to in section 16 of the Act of that decision and in that event, rule 12(5)(b) and (6) apply with necessary changes required by the context.

#### **Security in case of appeals**

14. (1) If the judgment appealed from is carried into execution by direction of the court appealed from, the party requesting execution must, before such execution, enter into good and sufficient security *de restituendo*.

(2) If the execution of a judgment is suspended pending appeal, the appellant must, before lodging copies of the record, enter into good and sufficient security for the respondent's costs of appeal, unless -

- (a) the respondent waives the right to security within 15 days of receipt of the appellant's notice of appeal; or
- (b) the court appealed from, upon application of the appellant delivered within 15 days after delivery of the appellant's notice of appeal or such longer period as that court on good cause shown, has allowed the appellant to be released wholly or partially from that obligation.

(3) If the execution of a judgment is suspended pending appeal, the appellant must, when copies of the record are lodged, inform the registrar in writing whether he or she -

- (a) has entered into security in terms of this rule; or
- (b) has been released from that obligation, either by virtue of a waiver by the respondent or release by the court appealed from, as contemplated in subrule (2),

(4) Failure to inform the registrar in accordance with subrule (3) within 21 days is deemed to be a failure to comply with the provisions of that subrule.

(5) The registrar of the court appealed from must, whenever the parties are unable to agree as to the amount of security to be entered into under this rule, determine and fix the amount.

(6) No security is required under this rule from the Government of the Republic of Namibia.

(7) Despite any rule in these rules, a person to whom legal aid is rendered by or under any law is not compelled to give security for the costs of the opposing party, unless the court directs otherwise.

#### **Security where court exercises jurisdiction in terms of section 15 or 16 of Act**

15. (1) Where the court exercises its jurisdiction in terms of section 15 or 16 of the Act, it is entitled to direct that security be provided, and in that event, rule 14 applies with the necessary changes required by the context.

- (2) If a direction is issued in terms of subrule (1) -
  - (a) a reference to the appellant in that rule is deemed to be a reference to petitioner in proceedings under section 15 of the Act; and
  - (b) a reference to appellant in that rule is deemed to be a reference to the party affected by the irregularity in proceedings under section 16 of the Act.

#### **Date of hearing**

16. (1) The registrar must, where rules 4, 6, 7, 8, 9, 10, 11, 12 and rules 13, 14 and 15 as the case may be, have been complied with, and subject to the directions of the Chief Justice, notify the parties or their respective legal practitioners in writing of the set down date of hearing of the matter.

(2) Subject to section 34(3) of the Act, if the appellant, applicant, petitioner or affected party fails to appear in person or by instructed legal practitioner on the set down date, the petition

or appeal, or other proceedings, may be dismissed for non-prosecution, unless the court directs otherwise.

#### **Heads of argument in appeals**

17. (1) In every matter relating to appeals, the appellant, applicant or petitioner, must, not more than 21 days before the hearing, or such earlier date as may be determined by the Chief Justice or a judge or judges designated by the Chief Justice lodge four copies, and serve on the respondent or his or her legal practitioner one copy, of the heads of his or her argument, together with a list of authorities as referred to in rule 17(7)(f) to be quoted in support of each head.

(2) If the appellant fails to lodge heads of argument within the time allowed, for the lodging of heads of argument in subrule (1) or as directed by the Chief Justice or a judge or judges designated by the Chief Justice, the appeal lapses.

(3) The respondent must thereafter, as soon as possible, but not more than 10 days before the hearing, or such earlier date as may be determined by the Chief Justice or a judge or judges designated by Chief Justice, lodge four copies, and serve on the appellant or applicant or his or her legal practitioner one copy, of the heads of his or her argument, together with a list of authorities as referred to rule 17(7)(f) to be quoted in support of each head.

(4) If an appellant files, within the time allowed for the filing of heads of argument in subrule (1) or as directed by the Chief Justice or a judge or judges designated by him or her, and the respondent fails to file heads of argument within the time referred to in subrule (3) or as directed by the Chief Justice or a judge or judges designated by him or her, the appeal must be enrolled for hearing and in that event, the court may, in the absence of the defaulting party and after hearing argument, make such order as it considers fit.

(5) Heads of argument of an appellant must, if appropriate to the appeal or if ordered by the Chief Justice or a judge or judges designated by him or her, be accompanied by a chronological table, duly cross-referenced without argument.

(6) If the respondent disputes, in a material respect, the correctness of the chronological table submitted by the appellant, the respondent's heads of argument must be accompanied by the respondent's version of a chronological table.

(7) Heads of argument filed with the court in terms of these rules must -

- (a) be set out in separate paragraphs for each head, indicating, where evidence is referred to, the volume, page and line numbers where such evidence appears in the record;
- (b) be clear and concise and must not contain unnecessary elaboration;
- (c) state, in respect of each authority cited, the proposition of law that the authority makes and if more than one authority is cited for a proposition, state the reason for citing additional authorities;
- (d) not contain lengthy quotations from the record or authorities;
- (e) make specific, not general, reference to pages and paragraphs in a cited authority or a record;
- (f) include a list of authorities;
- (g) indicate, by an asterisk, the authority to which particular reference will be made during argument;

- (h) clearly set out the order sought from the court;
- (i) be accompanied by four copies of the front page, and relevant portions, of every statute, including an ordinance, a proclamation, a regulation, a rule, and a by-law, and unreported decisions of a court to which reference is made in the heads of argument;
- (j) be indexed and paginated; and
- (k) not exceed 40 A4-size pages, unless a judge on request, directs otherwise.

(8) Whenever, for any good reason, the lodging of the application or record on appeal is not practical because of urgency, for the heads of argument to be lodged and served in terms of subrule (1), the applicant or the appellant, must lodge his or her heads of argument, without delay and the respondent must lodge his or her heads of argument in reply as soon as possible.

#### **Heads of argument in proceedings under section 15 or 16 of Act**

18. (1) The Chief Justice, or judge designated by him or her for that purpose, is entitled to direct that rule 17, subject to such additions or variations as he or she may determine, apply to any proceedings in terms of section 15 or 16 of the Act.

(2) The registrar must inform all interested parties of a direction issued in terms of subrule (1).

#### **Citation of foreign authority**

19. (1) Where, in his or her heads of argument or any other written submissions or oral submissions, an appellant or respondent or his or her legal practitioner relies on foreign authority in support of a proposition of law, he or she must -

- (a) certify that he or she is unable, after diligent search, to find Namibian authority on the proposition of law under consideration;
- (b) whether or not Namibian authority is available on the point, certify that he or she has satisfied himself or herself that there is no Namibian law, including the Namibian Constitution, that precludes the acceptance by the court of the proposition of law that the foreign authority is said to establish;
- (c) indicate that he or she has considered the statutory context of the foreign judgment and is satisfied that it is comparable to Namibia's statutory context and the reason for his or her satisfaction; and
- (d) state that the foreign authority represents the law on the point under consideration and why the foreign authority is relevant.

(2) The court may grant a costs order against a legal practitioner if any information given in terms of subrule (1) is not correct in material respects.

#### **Oral argument**

20. Subject to the presiding judge's directions, if an appeal has been set down for one day, the time for argument may not exceed -

- (a) two hours for the applicant or appellant;

- (b) two hours for argument in answer, and
- (c) 15 minutes for argument in reply.

#### **Bundle of authorities**

21. (1) Each legal practitioner or party must lodge a bundle of authorities simultaneously with the lodging of his or her heads of argument.

- (2) A bundle of authorities referred to in subrule (1) must contain -
  - (a) a copy, marked with a tab of the authorities that the party intends to rely on -
    - (i) in the case of a respondent's bundle, only the authorities not referred to in the appellant's bundle of authorities, and
    - (ii) in the case of a bundle of any other party, only the authorities not referred to in either the appellant or the respondent's bundle of authorities; and
  - (b) a photocopy or a printout from an electronic database or the provisions of any legislation relied on.

#### **Copies of records in criminal cases**

22. (1) A person convicted of an offence in any court in Namibia, who
- (a) intends to appeal to the court and has a right to so appeal; or
  - (b) intends to make application to the court for leave to appeal, where such leave is required,

is entitled, on request to obtain from the registrar of the court from which he or she intends to appeal such number of copies of the record or such extracts from the record as may be necessary for his or her purpose, and on payment of the fees prescribed for the making of such copies or extracts.

- (2) If -
  - (a) a person referred to in subrule (1) is unable, by reason of poverty, to pay the prescribed fees; and
  - (b) the copies of the record or the extracts which he or she wishes to obtain from the registrar of the court he or she intends to appeal from are necessary for his or her purpose,

he or she is entitled to obtain the record of the extracts without paying any fees.

(3) The registrar referred to in subrule (1) must decide on any question regarding a person's inability to pay the prescribed fees, or regarding what number of copies of the record or what extracts from the record are necessary for the purpose of his or her appeal or application, and if that registrar's decision is approved by a judge of the court from which such person intends to appeal, the decision of that judge is final.



### Registration and electronic-filing

23. (1) Despite anything to the contrary in these rules, the Chief Justice must by notice in the *Gazette* determine the date on which the e-justice system in terms of these rules or any other rules comes into operation.

(2) As from the date determined under subrule (1), every party to an appeal, application or any other proceeding in the court must, as determined in the Administrative Policies and Procedures Manual referred to in subrule (7), file the original of any court process, notice or document electronically with the registrar by making use of the e-justice made available by the court.

(3) The filing of any court process, notice or document referred to in subrule (2) must be done by a registered user on the e-justice, unless a judge of the court, the Chief Justice or the registrar directs otherwise.

(4) The responsible legal practitioner representing a firm of legal practitioners which practises in the court may cause the firm to register as user of the e-justice system by making the necessary application which is subject to such terms and conditions as provided for in the e-justice manual referred to in subrule (7).

(5) Service of any process, notice or document of the court, other than service by the deputy-sheriff, must be done through the e-justice as long as both the party effecting service and the party on whom service is to be effected are represented by legal practitioners who are registered users.

(6) Service of any process, notice or document of the court, other than service by the deputy-sheriff, to be effected by or on a party or legal practitioner who is not a registered user of the e-justice system must be done personally and the original proof of service must be filed at the office of the registrar simultaneously with the original process, notice or document so served.

(7) The e-justice administrative policies and procedures contained in the Administrative Policies and Procedures Manual published by the registrar form part of these rules.

(8) A party who files any process, notice or document in the court through e-justice must keep in his or her custody and control the original hard copy of that process, notice or document and must produce them to the court on being required by the court to do so.

(9) The process, notice or document filed and kept in terms of subrule (8) must be available for the duration of the matter in which it has so been filed and must be kept for a period of at least five years after the case is considered finalised in terms of these rules.

(10) A legal practitioner resident in the jurisdiction of the court attached to a law firm which is a registered user of the e-justice must keep an account with the registrar for payment of court fees for the purposes of filing through the e-justice system.

### Availability of e-justice system

24. (1) Despite subrule (2), the e-justice system is designed to provide service for 24 hours a day.

(2) In case of a process, notice or document of court being filed after the hours provided for in rule 2, the date and time of filing of the document is, unless authorised by the registrar or the court, considered to have been filed at 9h00 on the first court day following the date of actual filing.

### Taxation of costs

25. (1) The registrar in his or her capacity as taxing master must tax costs incurred in an appeal or application on a scale as set out in Annexure A to these rules.

(2) Taxation of costs is subject to review by the court.

(3) A party dissatisfied with a ruling of the taxing master in respect of an item or part of an item, which was objected to or disallowed by the taxing master of his or her own accord, may, within 21 days of the issuance of a taxing masters certificate, require the taxing master to state a case for the decision of a judge.

(4) The case referred to in subrule (3) must -

(a) indicate each item or part of an item, together with the grounds of objection advanced during the taxation; and

(b) embody any relevant findings of facts by the taxing master in the stated case.

(5) The taxing master must supply a copy of the stated case to each of the parties, who may within 14 days of receiving the tax certificate, require the taxing master to state a case for the decision of a judge of the court.

(6) The case referred to in subrule (5) must set out each item or part of an item or part of an item which was objected to before the taxing master or disallowed by the taxing master of his or her own accord.

(7) After receiving the contentions, if any, referred to in subrule (5), the taxing master must -

(a) frame his or her report;

(b) supply a copy of the report to each party; and

(c) forthwith, lay the case, together with the contentions of the parties thereon and his or her report before the judge designated by the Chief Justice.

(8) After the taxing master has laid his or her report before the judge in terms of this rule, the judge may -

(a) without a hearing on the stated case and contentions so submitted, together with any other information which he or she may request from the taxing master, decide the matter; or

(b) after a hearing, decide the matter in his or her chambers or in court, if he or she considers it appropriate.

(9) A judge deciding a review in terms of this rule may make such order as to costs of the suit, as he or she considers appropriate, including an order that the unsuccessful party is to pay the opposing party a sum fixed by the judge as to costs.

### Legal practitioner's fees

26. (1) The fees allowed to legal practitioners conducting any matter before the court are as set out in Annexure A.

(2) Save where the court authorises fees consequent upon the employment of more than one instructed legal practitioner to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one instructed legal practitioner are allowed as between party and party

#### **Fees of court**

27. The court fees payable in respect of the court are contained in Annexure B.

#### **Service or execution of process of court**

28. The rules of the High Court, in so far as they relate to the practice and procedure in connection with –

- (a) the issue or service of summons, or other pleading, subpoena or other document in connection with the issue of interrogatories;
- (b) the issue or execution of a writ or warrant; and
- (c) the court fees payable and tariff of costs and expenses allowed in respect of a process,

apply with necessary modifications required by the context in respect of the court as if they are rules made under the Act.

#### **General power of court**

29. The Court may, for sufficient cause shown, condone a party's non-compliance with any of these rules, and may give such directions in matters of practice and procedure as it may consider just and expedient under the circumstances.

#### **Savings and transitional provisions**

30. Despite the repeal of the Rules of the Supreme Court of Namibia by these rules –

- (a) anything done under a provision of the repealed rules and which could have been done under a corresponding provision of these rules, is deemed to have been done under such corresponding provision of these rules;
- (b) a case that has been registered with the registrar under the repealed rules continues under these rules but if there is any uncertainty in this regard the Chief Justice or a judge designated for the purpose must direct the appropriate procedure to be followed after considering representations from the parties.

**ANNEXURE A**  
**LEGAL PRACTITIONERS FEES**  
(Rule 26)

Section A. – TAKING INSTRUCTIONS

		NS
1.	(a) To note an appeal or cross-appeal when leave to appeal is not required .....	500.00
	(b) To prosecute or defend an appeal, including continuation of a cross-appeal .....	500.00 to 900.00
	(c) To make or oppose an application .....	500.00 to 900.00
2.	To draft a petition or affidavit .....	500.00 to 900.00

Section B. – PREPARATION OF RECORDS

1.	Making for the purpose of preparing copies of the record on appeal (except where a charge is made under paragraph 5 hereof), a copy of such particulars of the record as were not in the possession of the appellant or his or her legal practitioner at the time when the order appealed from was made, per folio .....	2.50
2.	Arranging record for printing or typing, excluding unnecessary documents therefrom, and preparing index and list of documents not included in record on appeal, per half-hour or part thereof .....	250.00 to 450.00
3.	Correcting printer's proof or typed or renewed copy, per half-hour or part thereof .....	100.00 to 250.00
4.	Attending at the office of the registrar or office of the court appealed from to peruse or authenticate the record, per half-hour or part thereof .....	90.00
5.	(a) Making of copies of record on appeal and heads of arguments, per folio .....	2.50
	(b) Where copies are made other than by typewriter, the charge must be for the first copy, N\$1.50 per page, and for further copies, per page .....	2.50

(Note I. – In the calculation of the number of folios the total number of words of all necessary documents is to be divided by 100, i.e. the entire record is to be treated as one document).

(Note II. – In the calculation of the number of pages the total number of words of all necessary documents is to be divided by at least 250, i.e. the entire record is to be treated as one document).

- (c) Provided that in the case of printed documents or forms, for example, publications, bonds, contracts, credit agreements and special procurations, each page thereof is to be treated as only one page.

#### Section C. – PERUSAL

- |    |     |   |       |
|----|-----|---|-------|
| 1. | (a) | Perusing judgment of court <i>appealed from</i> when taking instructions for the continuation of an appeal or cross-appeal, where leave to appeal is not required, per page ..... | 35.00 |
|    | (b) | Perusing record on appeal, for each page or part thereof .....  | 10.00 |
|    | (c) | Perusing judgment of court <i>appealed from</i> by which leave to appeal was denied, when instructions are taken to address a petition to the Chief Justice, per page .....       | 35.00 |

(Note – The minimum fee under items (a) and (b) must be N\$135.00).

- |    |   |   |       |
|----|---|---|-------|
| 2. | Perusing any plan, diagram, photograph or other annexure to the record to which the remuneration hereinbefore set out cannot be applied ..... | 30.00<br>to 300.00<br>per item  |       |
| 3. | (a)   | Attendance on and perusal of any petition or affidavit or any other document not elsewhere provided for, per page .....     | 30.00 |
|    | (b)   | Attendance on and perusal of any annexure to a petition and answering affidavit, per page .....                             | 10.00 |
|    | (c)   | Attendance on and perusal of a petition or affidavit composed or corrected by instructed legal practitioner, per page ..... | 10.00 |

(Note I. – minimum fee under item (a) must be as follows: For formal affidavits, N\$30.00; for affidavits other than formal affidavits, N\$70.00).

(Note II. – In the calculation of the number of pages the total number of words of all necessary annexures is to be divided by at least 250, i.e. the entire record is to be treated as one document).

- |    |   |       |
|----|---|-------|
| 4. | Attendance on and perusal of heads of argument, excluding annexures, for example, unreported judgments of court or copies of publications attached as confirmation of heads of arguments, for every 10 pages or portion thereof | 75.00 |
|----|---|-------|

(Note – The minimum fee under this item must be N\$150.00).

#### Section D. – ATTENDANCE

- |    |   |                    |
|----|---|--------------------|
| 1. | Any formal attendance on an acknowledgement, receipt, etc. ....   | 25.00              |
| 2. | Attendance of any letter, email, telegram, document or telephone call, or any other necessary attendance not otherwise provided for ..... | 30.00<br>to 180.00 |

(Note – A composite fee must be charged for all letters received).

3.	(a)	Attendance at office of registrar to deliver a letter or document, or to uplift an order, etc. ....	25.00
	(b)	Attendance on business other than formal business, per half-hour or part thereof .....	180.00 to 300.00
4.	(a)	Attendance at any consultation with instructed legal practitioner or client, per half-hour or part thereof .....	180.00
	(b)	A comprehensive fee for attendance, obtaining and payment of legal practitioner for noting of judgement .....	900.00
5.		Attendance at court to note judgment -	
	(a)	by a legal practitioner .....	800.00
	(b)	by a candidate legal practitioner .....	250.00
		Attendance at court on hearing or application, per half-hour or part thereof -	
	(a)	by a legal practitioner .....	350.00 to 650.00
	(b)	by a candidate legal practitioner .....	250.00

#### Section E. – DRAFTING OF DOCUMENTS

1.		Any petition or affidavit, per folio .....	120.00
		<b>(Note – In the calculation of the number of folios, the taxing master must deduct, but treat as annexures, any relevant portion consisting of quotations from other documents).</b>	
2.		Instructions to another instructed legal practitioner, whether written or verbal -	
	(a)	on appeal per folio .....	150.00 to 600.00
	(b)	on petition per folio .....	150.00 to 600.00
	(c)	in justifiable cases, for the drawing up or correcting of petition or affidavit for an application for leave to appeal or disputing thereof per folio .....	150.00 to 600.00
3.		Drawing up notices of appeal or other necessary notices, per folio .....	1000.00 to 2500.00
4.		Letters and telegrams, per folio, including copy to keep.....	100.00

**(Note – A composite fee must be charged for all letters written).**

5.	Drawing up power of attorney, per folio .....	120.00
6.	Drawing up short brief to another legal practitioner .....	120.00
7.	Drawing up bond of security, per folio .....	120.00

#### Section F. – COPYING

Other documents not specially provided for the:

(a)	First copy, per page .....	4.00
(b)	Each further necessary copy, per page .....	2.50

#### Section G. – BILLS OF COSTS

In connection with a bill of costs for work done or services rendered by a legal practitioner, such legal practitioner must be entitled to charge the following:

1.	For drawing up the bill of costs, making necessary copies and attending settlement per folio .....	90.00
2.	For receiving, perusal and considering of the bill of costs, as submitted for taxation, including preparation for taxation per folio .....	90.00
3.	(a) For attending taxation in an opposed bill of costs per half-hour or part thereof .....	300.00 to 600.00
	(b) For attending an unopposed bill of costs per half-hour or part thereof: 5 per cent on fees appearing in the bill of costs as submitted before taxation.	

(Note – The minimum fee under item 3(b) must be N\$75.00).

4.	Before the taxing master taxes the bill of costs, he or she must be convinced that the party who has to pay the account, or his or her legal representative, was properly notified of the time and place of such taxation and of his or her right to be present: except that such notice is unnecessary where the person liable for payment of costs has consented, in writing, to taxation in his or her absence.	
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#### Section H. – GENERAL

1.	An all-inclusive fee for making payments into court by way of bank guaranteed cheques, cash or otherwise per attendance .....	100.00 to 130.00
2.	Any other fee not otherwise provided for per attendance .....	100.00 to 130.00

(Note I. – With a view to affording the party who has been awarded an order for costs full indemnity for all costs reasonably incurred by him or her in relation to his or her claim or defence and to ensure that all such costs must be borne by the

party against whom such order has been made, the taxing master must on every taxation allow such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred them, no costs must be allowed which appear to the taxing master to have been incurred or increased through over caution, negligence or mistake, or by payment of a special fee to an instructed legal practitioner or by other unusual expenses).

(Note II. – The taxing master is entitled in his or her discretion at any time to depart from any of the provisions of this tariff in extraordinary or exceptional circumstances where the strict execution thereof will be unjust, and in this regard must take into account the time necessarily taken, the complexity of the matter, the nature of the subject-matter in dispute, the amount in dispute and any other factors he or she considers relevant).

(Note III. – In order to diminish as much as possible the costs arising from the copying of the record or of documents to accompany the briefs of instructed legal practitioner, the taxing master must not allow the costs of any unnecessary duplication).

(Note IV. – Where in the opinion of the taxing master more than one instructing legal practitioner has been necessarily engaged in the performance of any of the work covered by this tariff, each such instructing legal practitioner must be entitled to be remunerated, on the basis set out in this tariff, for the work necessarily done by him or her and in each such instance the bills of costs must be taxed jointly and at the same time).

(Note V. – A folio must contain 100 words, four figures to be counted as a word, and any fraction of less than 25 words must not be allowed as an additional folio).

(Note VI. – A page must consist of at least 250 words and any fraction of less than 250 words must have not be allowed as an additional page but that this provision bears no relevance to a document which in totality consist of less than 250 words).

(Note VII. – When the services of a cost consultant are used to draft the bill of costs, a certificate from the instructing legal practitioner must accompany the bill of costs and must indicate –

- (a) that the bill was properly perused and found correct after receipt thereof;
- (b) that each description therein with reference to work, time and numbers is in concurrence with what was necessarily done by him or her; and
- (c) that the items and tariff are drafted and claimed strictly according to party-and-party practice rules, and the taxing master may, where it is evident from the bill of costs that the requirements of paragraph (a) or (b), or parts thereof, are not complied with, refuse to tax such bill, and the taxing master may also, when her or she is convinced that a party-and-party bill of costs is claimed for work not done, or for work which belongs in legal practitioner-and-client bill of costs or that excessive fees are being charged, deny the instructing legal practitioner the remuneration mentioned in section G1 if more than 30 per cent of the number of items or the total of fees of the bill are taxed off).



## Section I. – FACSIMILE AND COURIER COSTS

The taxing master may allow the following items in a bill of costs on a party and party basis -

- (i) The costs to send a facsimile N\$5.00;
- (ii) The costs in receiving a facsimile N\$2.00 per page;
- (iii) Upon proof, the full amount incurred in respect of courier charges.

**ANNEXURE B  
COURT FEES  
(Rule 27)**

	NS
Lodging any petition, including verifying affidavits .....	200.00
Lodging notice of appeal or cross-appeal .....	200.00
Order of court granting leave to appeal .....	200.00
Order of court determining appeal .....	200.00
Certified copy of any order .....	200.00
Lodging any affidavit .....	100.00
Taxing fee in appeals .....	200.00
Taxing fee in petition .....	200.00