

Magistrates Court (Civil) Rules, 2018

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 73 of the Magistrates Court Act [*Chapter 7:10*], made the following rules:—

ORDER 1

APPLICATION AND INTERPRETATION

Title

1. These rules may be cited as the Magistrates Court (Civil) Rules, 2019.

Date of commencement and application

2. These rules shall (unless the Chief Justice earlier by notice in the *Gazette* specifies an earlier or later date of commencement) come into operation on the 1st February, 2019, and shall have effect in relation to all civil proceedings in a court, including so as is practicable proceedings pending on the date of commencement.

Application of Orders 16 to 19

3. Orders 16 to 19 apply only if the plaintiff—
- (a) does not apply for summary judgment; or
 - (b) having applied for summary judgment, an order is made giving the defendant leave to defend.

Forms

4. (1) The forms contained in the First Schedule may be used with such variations as circumstances require.

(2) Non-compliance with subrule (1) is not in itself a ground for exception, but the clerk of the court may refuse to use any process which does not comply with the prescribed requirements.

(3) All process of the court for service or execution and all documents or copies to be filed of record shall, where practicable, be on A4 paper.

(4) All process of the court or notices or documents delivered shall be endorsed with the names and addresses of the parties and the case number.

Definitions and reckoning of time and distance

5. (1) In these rules—
- “company” means an incorporated or registered company;
 - “copy” means a true and correct copy;
 - “date of filing” means the date on which an action and pleadings thereof or an application and pleadings thereof is issued and stamped by the clerk of court;
 - “default judgment” means a judgment given in the absence of the party against whom it is made;

“deliver”, other than in Order 7, means to file of record with the clerk of the court and to serve a copy on the opposite party;

“form” means the appropriate form set out in the First Schedule;

“give security” means to give security to the satisfaction of the clerk of the court by—

- (a) payment into court of the amount in question; or
- (b) the giving of a security bond therefor, either by a party with someone as his or her surety who is approved by the clerk of the court or by two or more persons who are so approved;

“judgment debt” means a judgment of a court of law that a debt is payable to the judgment creditor which judgment allows the judgment creditor to levy execution or to enforce performance of the debt;

“money” includes all coined money, whether current in Zimbabwe or not, and all bank-notes, bank-drafts, cheques, orders, warrants or authorities for the payment of money;

“month” means a calendar month;

“notice” means notice in writing;

“owner” and other like terms, when used in relation to property or acts, include corporations of all kinds and any other associations of persons capable of owning or holding property;

“party” means any person who is a party to the proceedings;

“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 given;

“plaintiff”, “defendant”, “applicant”, “respondent” and “party” include, for the purpose of service, notice, appearance, endorsement and signature, the legal practitioner appearing for any such party;

“process of the court” means any process of a magistrate’s court which is issued by the clerk of the court;

“property” includes everything animate or inanimate, corporeal or incorporeal, which is capable of being the subject of ownership;

“shorthand-writer” includes the operator of a recording-machine;

“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) Where anything is required by these rules to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

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

Provisions for electronic communications and virtual sittings

6. (1) The Chief Magistrate may, on application being made substantially in the form prescribed in Form CIV A1, authorise (subject to this rule) a clerk of court, legal practitioner or messenger of court to use an electronic mail address, website, portal or other interactive electronic link for effecting notices, service of process, filings or other transactions with or through a magistrates court.

(2) No application under subrule (1) that is made by a legal practitioner shall be considered by the Chief Magistrate unless—

- (a) it is made in triplicate through a clerk of court who has previously been authorised by the Chief Magistrate to use an electronic mail address, website, portal or other interactive electronic link for effecting notices, service of process, filings or other transactions with or through the magistrates court in question; and
- (b) the clerk of the court in question has indicated his or her support of the application in the appropriate space in Form CIV A1.

(3) Upon receiving an application made by legal practitioner in accordance with subrule (2), the Chief Magistrate may—

- (a) remit the application back to legal practitioner through the clerk of the court in question with a request that the legal practitioner supply further particulars in support of or in connection with the application; or
- (b) refuse the application, giving reasons therefor; or
- (c) give the requested authority with or without conditions in the appropriate space in Form CIV A1, in which event the Chief Magistrate shall return two of the copies bearing the authority to the clerk of the court in question, who shall retain one copy for his or her records and return the other one to the applicant legal practitioner.

(4) Any notice or process that under these rules can be served by hand delivery or registered post can be effected by communication through an electronic mail address, website, portal or other interactive electronic link if the legal practitioners of all the parties involved in the matter concerned and the clerk of the court in question each have an electronic mail address, website, portal or other interactive electronic link that has been authorised under subrule (1).

(5) The authentication of any electronic communication shall be effected by means of electronic signatures, the keeping of certified backup copies of the communication in paper form, or by such other means as may be directed from time to time by the Chief Magistrate.

(6) The Chief Magistrate may approve any electronic platform for the payment of any fee or charge, the advertisement of any thing or matter or the conduct of any auction or sale for the purpose of these rules.

(7) The Chief Magistrate, after consulting the Judge President, may give directions of general application to magistrates—

- (a) in implementation of section 44A (“Electronic sittings of court”) of the Act;
- (b) the conditions subject to which copies of the record of a trial or review record in terms of Order 31 (“Appeals and Reviews”) be made and provided in electronic form instead of in paper form;
- (c) concerning the implementation of this rule.

(7) Every—

- (a) electronic mail address, website, portal or other interactive electronic link authorised under subrule (1);
- (b) direction concerning the authentication of electronic communications made under subrule (3);
- (c) platform approved for the purposes of subrule (4);
- (d) direction given under subrule (5);

shall be published by general notice in the *Gazette*, and no such authorisation, approval or direction shall have effect until it is so published.

(8) Directions published in terms of subrule (6) shall be supplementary to, and not in substitution of, any provision of these rules unless—

- (a) it is expressly provided that the direction substitutes the provision in question; and
- (b) the direction is followed up within 30 days by an appropriate amendment of these rules.

ORDER 2

MESSENGER OF THE COURT

Service of process through messenger

1. 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.

Duty of messenger and police

2. 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 or is reasonably anticipated, have power to call upon any police officer to protect him or her or his or her deputy as he or she serves or executes process.

Return of service

3. The messenger to whom process is entrusted for service or execution shall—

- (a) if he or she has effected the service or execution—
 - (i) in the prescribed form, notify the clerk of the court and, at the same time, 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
 - (ii) return a copy of the said process to the party who sued it out;
- (b) if he or she has not effected the service or execution—
 - (i) in the prescribed form, notify the clerk of the court and the party who sued out the process that he or she has been unable to effect service or execution, stating the reason for such inability; and
 - (ii) return the said process to such party, and keep a record of any process so returned.

ORDER 3

CLERK OF COURT

Numbering of case by clerk of court

1. (1) The summons or other document first filed in a case or in an 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 referred to in subrule (1) or (2) and all minutes made by the court shall be filed of record under the number of the respective action or application.

(4) The clerk of the court shall, upon the prepayment of such fees as may be prescribed—

- (a) obtain a transcription of any record;

- (b) furnish a copy of any record;
- (c) permit the making of any copies of any record in his or her presence.

Issue of process by clerk of court

2. It shall also be the duty of the clerk of the court to issue all such process of the court as may be sued out by any person entitled thereto.

Magistrate may perform clerk's functions

3. Any act other than taxation which is required to be done by the clerk of the court may if the clerk of the court is not available be done by a magistrate.

Magistrate and clerk not to write documents for parties

4. A clerk of the court or a magistrate shall (subject to Order 5 rule 3 and Order 28 rule 12(2)) in no case write out any affidavit, pleading or process for any party.

Clerk of court's office hours

5. The clerk of court's office shall be open to the public between 800 hours and 1300 hours, and 1400 hours and 1600 hours.

ORDER 4

REPRESENTATION OF PARTIES

Who may represent party

1. (1) A party may institute or defend and may carry to completion any legal proceedings—

- (a) in person; or
- (b) by a legal practitioner; or
- (c) in the case of a local authority, company or other incorporated body, through an officer thereof nominated by it for the purpose; or
- (d) in the case of a partnership or group of persons associated for a common purpose, through a member thereof nominated by it for the purpose; or
- (e) by any other person authorised by law.

Proof of authority to act for party

2. (1) It shall not be necessary for any person to file a power of attorney to act for a party.

(2) A legal practitioner assuming agency after another legal practitioner has filed a renunciation of agency or after pleadings or proceedings have already been commenced by a party, shall before acting for a party file an assumption of agency.

(3) The authority of any person acting for a party may be challenged by the other party—

- (a) within five days after he or she has notice that such person is so acting; or
- (b) 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 or she has satisfied the court that he or she has authority so to act, and the court may adjourn the hearing of the action or application to enable him or her to do so.

Death or incapacity of party

3. If a party dies or becomes incompetent or incapacitated to continue an action or application, the action or application shall thereby be stayed until—

- (a) such time as an executor, trustee, guardian or other competent person has been appointed in his or her place; or
- (b) such incompetence or incapacity ceases to exist.

Substitution of executor, etc

4. Where an executor, trustee, guardian or other competent person has been so appointed, the court may, on application, order that he or she be substituted in the place of the party who has so died or become incompetent or incapacitated.

ORDER 5

PROCEEDINGS IN *FORMA PAUPERIS*

Initial consultation with clerk of court

1. (1) A person normally resident within the jurisdiction of the court who desires to bring or defend proceedings in *forma pauperis* may apply to the clerk of court, who, if it appears to him or her that the applicant may be a person such as is contemplated by rule 2(1) (a), shall refer the applicant to a legal practitioner selected from a roster of names furnished to the clerk of court by the Law Society.

(2) If the clerk of court is in doubt as to whether or not an applicant may qualify in terms of rule 2(1)(a), he or she may refer the matter to a district officer of the Department of Social Services for a report on the means of the applicant.

(3) A legal practitioner to whom an applicant is referred in terms of subrule (1) shall inquire into such person's means and the merits of his or her cause, and, upon being satisfied that the matter is one in which he or she may properly act in *forma pauperis*, he or she shall proceed to take instructions from the applicant.

Instituting and defending proceedings

2. (1) If the applicant lodges with the clerk of court—

- (a) an affidavit setting forth fully such person's financial position and stating that, excepting household goods, wearing apparel, and tools of trade, he or she is not possessed of property to the value of one thousand dollars and will not be able, within a reasonable time, to provide such sum from his or her earnings;
- (b) a statement signed by the legal practitioner concerned that he or she is acting for that person gratuitously in the proceedings; the applicant shall be entitled to proceed in *forma pauperis*;

the clerk of court shall issue all documents in the proceedings for the person concerned without fee of office.

(2) All pleadings, process and documents filed of record by a party proceeding in *forma pauperis* shall be headed accordingly.

Fees and costs

3. (1) An attorney who is acting for a person in terms of this Order shall act gratuitously for that person in the proceedings, and shall not be at liberty to withdraw, settle or compromise such proceedings, or to discontinue his or her assistance, without the leave of a magistrate, who may, in the latter event, give directions as to the appointment of a substitute.

(2) If the person bringing or defending proceedings in terms of this Order is awarded costs against his or her opponent, his or her legal practitioner shall be subrogated to, and vested with, such person's right to such costs, which shall include such fees and disbursements to which such person would ordinarily have been entitled and to the right to recover such costs; and, upon recovery thereof, his or her legal practitioner shall pay out there from such fees and charges as would ordinarily have been due to the clerk of court, and the legal practitioner, *pro rata* to the respective amounts thereof, if the sum recovered is insufficient to pay such fees and charges in full.

(3) Where, in terms of these rules, any process issued on behalf of a person who is proceeding in *forma pauperis* is required to be served by a messenger of court, or where substituted service is to be effected, such person shall, prior to the institution of proceedings, deposit with the legal practitioner acting for him or her a sum sufficient to cover the costs of such service.

Rights of the other party

4. When a person sues or defends in *forma pauperis* under process issued in terms of this Order, the other party shall, in addition to any other right which he or her may have, the right at any time to make a court application for an order debarring such person from continuing in *forma pauperis*; and upon the hearing of such application, the court may make such order thereupon, including any order as to costs, as to it seems just.

ORDER 6

WHEN LEAVE OF COURT REQUIRED FOR ISSUE OF PROCESS

Application to proceed against President or judges

1. (1) No—

- (a) summons or other civil process whatsoever may be sued out against;
- (b) application whatsoever may be brought against;

the President or any of the judges of the Constitutional Court, the Supreme Court, the High Court, the Labour Court, or the Administrative Court, without the leave of the court upon application made for that purpose.

(2) An application for leave of the court referred to in subrule (1) shall be made in terms of Order 22:

Provided that, where the respondent opposes the granting of such leave, it shall not be necessary for him or her to appear.

ORDER 7

SERVICE OF PROCESS, NOTICES, ETC

Interpretation

1. (1) In this Order—

“process” means any document which is required to be served on any person in terms of these rules.

(2) Where the person upon whom any process is to be served is a minor or a person under legal disability, any reference to that person in this Order shall be construed as a reference to his or her guardian, tutor, curator or other legal representative.

Application of order

2. This Order shall apply to the service of all process within Zimbabwe except to the extent that it is inconsistent with—

- (a) any other provision of these rules relating to the service of any particular process; or
- (b) any order or direction which the court may give in relation to the service of any particular process.

Who may serve process

3. (1) Service of a summons, warrant or order of court shall be effected by the messenger.

(2) Service of any process, other than a summons, warrant or order of court, may be effected by the messenger or by the party concerned or his or her legal practitioner or agent.

(3) Any party who requires the messenger to serve any process shall deliver to him or her a copy of the process, together with as many further copies as there are persons to be served.

When process may be served

4. Service of process shall not be valid if served between 10 p.m. and 6 a.m.:

Provided that—

- (a) process for the arrest of any person; and
- (b) process served by post, telegraph, telefacsimile, courier service, electronic mail or other electronic means;

shall be valid whenever it is served.

Manner of service of process

5. (1) Process in relation to a claim for an order affecting the liberty of a person shall be served by delivery of a copy thereof to that person personally.

(2) Subject to this Order, process other than process referred to in subrule (1) may be served upon a person in any of the following ways—

- (a) by personal delivery to that person or to his or her duly authorised agent or (if applicable) through electronic mail;
- (b) by delivery to a responsible person at the residence or place of business or employment of the person on whom service is to be effected or at his or her chosen address for service;
- (c) in the case of process other than a summons or an order of court, by delivery to that person's legal practitioner of record;
- (d) in the case of process to be served on a body corporate—

- (i) by delivery to a responsible person at the body corporate's place of business or registered office; or
- (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to a director or to the secretary or public officer of the body corporate;
- (e) in the case of process to be served on a partnership—
 - (i) by delivery to a responsible person at the partnership's office or place of business; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to any of the partners;
- (f) in the case of process to be served on a syndicate, club, society, church or other unincorporated association—
 - (i) by delivery to a responsible person at the local office or place of business of the association; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to the chairperson or secretary or similar officer of the association.

Service where person to be served prevents service or cannot be found

6. Where any process is to be served, and—

- (a) the person upon whom it is to be served keeps his or her residence, place of business or employment, address for service or registered office closed and thus prevents the process from being served; or
- (b) the person seeking to effect service of any process is unable, after diligent search at the residence, place of business or employment, address for service or office of the person to be served, to find that person or a responsible person referred to in rule 5(2)(b), (d), (e) or (f);

it shall be sufficient service to leave a copy of the process in a letter-box at or affixed to or near the outer or principal door of, or in some other conspicuous position at, the residence, place of business or employment, address for service or office, as the case may be.

Service on two or more persons

7. Where two or more persons are to be served with the same process, service shall be effected upon each of them, except in the case of—

- (a) married persons who are not separated under an order of judicial separation, when service of process relating to property jointly owned or jointly held by them may be effected on either spouse; or
- (b) two or more persons sued in their capacities as joint trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected upon any one of them.

Service by registered post

8. (1) Any process, other than process referred to in rule 5(1), may be served by registered post in accordance with this rule.

(2) Where—

- (a) the party requiring service of the process, other than process referred to in rule 5(1), has given written instructions to the messenger to serve the process by registered post; or
- (b) the clerk of the court has directed that any process, other than process referred to in rule 5(1), shall be served by registered post;

the messenger shall serve the process by registered post in accordance with this rule.

(3) Process shall be served in accordance with this rule by placing a copy thereof in an addressed envelope endorsed with the words, “If delivery of this letter cannot be made within 14 days, it is to be returned to the sender” or words to the same effect, and posting it by prepaid registered post to the address of the person upon whom the process is to be served.

(4) An acknowledgement of receipt of an envelope posted in terms of subrule (3), signed by the person to whom the envelope was addressed and furnished in terms of by-laws made under the Postal and Telecommunication Services Act [*Chapter 12:02*], shall

be *prima facie* proof that the process contained in the envelope was served upon him or her.

Service of process where ejectment or payment of rent is sought

9. Service of process in proceedings in which the only relief that is claimed, apart from costs, is an order of ejectment from premises or judgment for the rent thereof may, if it cannot otherwise be effected, be made by leaving a copy of the process in a letter-box at or affixing it to or near the outer or principal door of, or in some other conspicuous position at, the premises in question.

Proof of service

10. Where service of any process has been effected by—

- (a) the messenger, proof of service shall be by return of service or by endorsement on the process concerned;
- (b) a legal practitioner or a responsible person in his or her employ, proof of service shall be by a certificate of service in Form No. CIV 6A;
- (c) a person other than the sheriff or his or her deputy or a person referred to in paragraph (a) or (b), proof of service shall be by affidavit;
- (d) post in accordance with rule 8, proof of service shall be by signed acknowledgement referred to in subrule (4) of that rule;
- (e) telefacsimile or electronic mail, proof of service shall be by affidavit, provided that if it is done by a legal practitioner it shall be by a certificate of service in Form No. CIV 6A.

Change of address for service

11. An address for service may be changed by the delivery of notice of a new address for service, and thereafter service may be effected in accordance with this Order at the new address.

Service by telegraph facsimile or electronic mail

12. Any process for service may be transmitted by telegraph, telefacsimile or electronic mail, and a telegraphic, telefacsimile or electronic mail copy that is served in any of the ways prescribed in

this Order shall be of the same effect as if the original had been so served.

Inspection of original of process

13. The original of any process which has been served on any person may be inspected by that person at the office of the clerk of the court where it is filed.

Substituted service

14. Where service cannot be effected in any manner or on any day or at any time prescribed, the court may, upon evidence of that fact and that the action is within the jurisdiction of the court, make an order allowing service to be effected in such manner or on such day or at such time as may be stated in such order, including notice by advertisement in substitution for or in addition to service.

Edictal citation

15. (1) Save as is provided in any enactment relating to the service of process on a reciprocal basis in any territory, no process or document whereby proceedings are instituted shall be served outside Zimbabwe without the leave of the court or a magistrate.

(2) Application for leave of the court or of a magistrate shall be made by application in terms of Order 22 setting out concisely—

- (a) the facts upon which the cause of action is based; and
- (b) the grounds upon which the court has jurisdiction to entertain the claim; and
- (c) the manner of service which the court or magistrate is asked to authorise, and if personal service cannot be effected the last-known whereabouts of the person to be served and the inquiries made to ascertain his or her present whereabouts.

(3) On such application the court or magistrate may make such order as to the manner of service as to it or him or her seems proper and necessary, and shall further order the time within which notice of intention to defend or any other step is to be taken by the person to be served.

(4) In all cases in which publication is directed, it shall not be necessary to publish the document or documents in *extenso* but the publication of a short form thereof to be approved and signed by the clerk of court shall be deemed to be sufficient compliance with the direction of the court or magistrate.

(5) Any process or document in such case shall be served in such a manner and subject to such conditions as the court or magistrate in each particular case directs.

Minimum time for service of process in particular cases

16. (1) Where the service to be effected is that of—

- (a) a summons for civil imprisonment; or
- (b) an order made *ex parte* which calls upon the respondent to show cause at a time stated or limited in the order; or
- (c) an interpleader summons; or
- (d) notice to a judgment debtor under subsection of section 33 (“Garnishee orders”)(2) of the Act;

service shall be effected at least seven days if the person to be served is resident within the jurisdiction of the court at which he or she has to appear, and 14 days if not so resident, before the stated or limited time for the appearance of the party served.

(2) Except where otherwise provided, notice of any application to the court shall be served at least seven days before the time appointed for the hearing of the application.

Service of process in claims against the State

17. (1) This rule shall apply to claims against the State for—

- (a) money, whether arising out of contract, delict or otherwise; or
- (b) the delivery or release of any goods; whether or not joined with or made as an alternative to any other claim, where the claims are instituted against—
 - (i) the State; or

- (ii) the President, a Vice-President or any Minister or Deputy Minister in his or her official capacity; or
- (iii) any officer or employee of the State in his or her official capacity.

(2) Where a person mentioned in the first column of the Fourth Schedule is the defendant or respondent in any proceedings to which this Order applies—

- (a) the notice of intention to bring the proceedings required by section 6 of the State Liabilities Act [*Chapter 8:14*]; and
- (b) all process of the court by which the proceedings are instituted or by which effect is given to any judgment arising out of the proceedings; shall be served upon the person specified in relation to the defendant or respondent in the second column of the Fourth Schedule, and copies of the notice and process shall be served, for information, upon the person or persons specified in relation to the defendant or respondent in the third column of that Schedule.

(3) Where process of the court instituting proceedings to which this Order applies is served on a defendant or respondent, there shall be attached to the process a copy of the notice of intention to bring the proceedings required by section 6 of the State Liabilities Act [*Chapter 8:14*].

Order not to affect jurisdiction of court

18. Nothing in this Order shall be construed as affecting the territorial jurisdiction of the court.

ORDER 8

SUMMONS COMMENCING ACTION

Issue of summons and time to enter appearance

1. (1) The process of the court for commencing an action shall be by summons—

- (a) calling upon the defendant to enter an appearance within a stated time after service to answer the claim of the plaintiff; and

- (b) warning the defendant of the consequences of failure to do so.

(2) The period referred to in subrule (1)(a) within which the defendant is called upon to enter an appearance shall be not less than—

- (a) seven days if the defendant does reside;
- (b) fourteen days if the defendant does not reside;

within the jurisdiction of the court from which the summons is issued.

(3) The summons shall be issued by the clerk of the court and shall bear the date of issue.

(4) The original of the summons shall at all times be retained of record in the office of the clerk of the court.

Contents of summons

2. (1) The particulars of the claim shall appear on the face of the summons and shall be signed by any such person as is mentioned in Order 4.

(2) The summons shall give—

- (a) subject to subrule (3), an address for service which shall be within a radius of 15 kilometres of the court-house from which it is to be issued; and
- (b) the postal address of the plaintiff; and
- (c) the facsimile or electronic mail address (if available) of the plaintiff or such other person as is mentioned in Order 4 who signed the summons;

(3) Where there are fewer than three legal practitioners practising independently of one another within 15 kilometres from the court-house from which the summons is to be issued, the address for service may be one which is farther than 15 kilometres from the court-house.

Contents of particulars of claim

3. (1) The particulars of claim shall show—

- (a) the nature and amount of the claim; and

- (b) the rate of interest and the amount thereof claimed up to the date of the summons; and
- (c) whether or not costs will be claimed, if the action is undefended; and
- (d) any abandonment of part of the claim; and
- (e) any set-off.

(2) The messenger shall endorse the amount of his or her charges for service thereof on the summons.

(3) 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.

(4) Where the particulars contain more than one hundred words, they may be contained in an annexure served with the summons, which annexure shall be taken to be part of the summons.

(5) The clerk of the court may refuse to issue a summons in which an excessive amount is claimed for legal practitioner's costs or court fees.

Other matters to be included in summons

4. The summons shall also show —

- (a) the surname of the defendant by which he or she is known to the plaintiff, his or her residence or place of business or employment and, where known, his or her first name or initials and his or her occupation; and
- (b) if the defendant is sued in a representative capacity, the capacity in which he or she is so sued; and
- (c) the first name and the surname, occupation and residence or place of business of the plaintiff; and
- (d) where the plaintiff sues as cessionary, the name, address and description of the cedent together with the deed of cession and proof of payment; and
- (e) where the plaintiff sues in a representative capacity, the capacity in which he or she sues; and
- (f) where the plaintiff sues upon an instrument presentment whereof was necessary, the fact and date of presentment.

Multiple or alternative claims in one summons

5. 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 facts.

Actions by or against partnerships, etc

6. (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 and, 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 any notice in terms of subrule (1) shall, within seven days after receipt thereof, furnish the statement required and supply a copy thereof to the clerk of the court.

(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 save where civil imprisonment proceedings are instituted in terms of Order 28 against one of the said partners, when such partner shall be specifically named in such civil imprisonment proceedings.

(4) Any person carrying on business in a name or style other than his or her 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, with necessary changes, apply to an unincorporated company, syndicate or association.

(6) When an action has been instituted by or against—

- (a) a firm in the name of the firm; or
- (b) a person carrying on a business in a name or style other than his or her own name in such name or style; or

- (c) an unincorporated company, syndicate or association in the name of the company, syndicate or association;

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, as the case may be, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2).

Amendment of summons

7. (1) Subject to this Order, a summons may, before service, be amended by the plaintiff as he or she thinks fit.

(2) Any alteration or amendment of a summons before service, and whether before or after issue, shall, before the summons is served, be initialled by the clerk of the court in the original summons and, until so initialled, such alterations and amendments shall have no effect.

(3) Subject to subrule (4), a summons may, after service, be amended as is provided in section 66 (“Amendment of plaint or summons. Costs”) of the Act, either on application on notice or at the hearing, subject to such order as to adjournment and costs as the court thinks just, and the court shall take into consideration whether adequate prior notice of intention to apply for such amendment has been served upon the other party affected.

(4) When—

- (a) neither the first name nor the initial of the defendant is shown; or
- (b) a wrongly spelt first name or not all first names appear in the summons;

but the correct first name or initial of the person on whom service of the summons has been effected is disclosed in the return of the messenger, 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.

ORDER 9

COUNTERCLAIMS

Application of rules to counterclaims

1. These rules shall, with such changes as may be needed, apply to counterclaims, except that—

- (a) it shall not be necessary to enter an appearance to defend; and
- (b) all times which, in the case of the main claim, run from the date of appearance shall, in the case of a counterclaim, run from the date of delivery of the claim.

When counterclaim to be made

2. A counterclaim shall be made by the delivery within seven days after appearance of a statement in writing giving such particulars of the counterclaim as are required with regard to the main claim.

What may be counterclaimed

3. A defendant may set up by a counterclaim any right or claim of any amount which he or she may allege against the plaintiff, whether—

- (a) liquid or illiquid; or
- (b) liquidated or unliquidated; or
- (c) it arises out of or is connected with the subject-matter of the main claim or not;

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 main claim and on the counterclaim.

(2) A defendant delivering a counterclaim may, by notice delivered therewith or within seven days thereafter, apply to the court to pronounce that the counterclaim exceeds its jurisdiction and to stay

the action under section 15 (“Counterclaim exceeding jurisdiction”) of the Act.

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

(4) 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 the counterclaim pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under section 11 (“Jurisdiction in civil cases”)(1)(h) of the Act sufficient of such claim to bring it within the jurisdiction.

Effect of counterclaim on plaintiff’s right to apply for summary or default judgment

4. A counterclaim shall not prejudice the right of the plaintiff in the main claim to apply for summary or default judgment.

Plaintiff’s claim and counterclaim may be tried separately

5. Where both the main claim and the counterclaim proceed to trial under Order 19, each action may be tried separately, but judgment shall be given on both *pari passu*.

Defendant in counterclaim may not make a counterclaim

6. A counterclaim may not be made by a defendant in a counterclaim.

Counterclaim may be proceeded with even if plaintiff’s action is withdrawn

7. Where an action is withdrawn, stayed, discontinued or dismissed, it shall nevertheless be competent to proceed separately with the counterclaim, if any.

ORDER 10

APPEARANCE TO DEFEND

Method of entering appearance

1. (1) A defendant intending to defend shall, within—

- (a) seven days after service of the summons if he or she resides within the jurisdiction of the court from which the summons was issued;
- (b) 14 days after service of the summons if he or she does not reside within the jurisdiction of the court from which the summons was issued;

or within the period limited by the summons, whichever is the longer, enter an appearance to defend by delivery of a memorandum in writing that he or she intends to defend.

(2) The clerk of court must record every entry of an appearance to defend in an appearance book.

Late appearance effective if no application for default judgment is made

2. Notwithstanding anything contained in rule 1, an appearance to defend, even though entered after the expiry of the period mentioned in rule 1, shall nevertheless be effective if a request for default judgment has not yet been made.

Contents of memorandum of intention to defend

3. (1) A memorandum referred to in rule 1 shall—
- (a) be signed by the defendant; and
 - (b) subject to subrule (2), give an address for service within a radius of 15 kilometres of the courthouse from which the summons was issued; and
 - (c) give the postal address of the defendant; and
 - (d) the facsimile or electronic mail address (if available) of the defendant or such other person as is mentioned in Order 4 who acts on behalf of the defendant.

(2) Where there are fewer than three legal practitioners practising independently of one another within a radius of 15 kilometres from the court-house from which the summons is issued the address for service may be one which is farther than 15 kilometres from the court-house.

Entry of appearance: defendant may still except to action

4. The entry of an appearance shall be without prejudice to any exception which the defendant may have.

ORDER 11

JUDGMENT BY CONSENT OR DEFAULT

Consent to judgment and effect on costs; effect of partial consent and joint consent

1. (1) A defendant may consent to judgment by delivery of a memorandum in writing stating—

- (a) that he or she so consents; and
- (b) whether his or her consent is for the full amount claimed or less.

(2) Where a defendant consents in terms of subrule (1) before instructions for service have been given to the messenger—

- (a) it shall not be necessary to serve the summons; and
- (b) the defendant shall not be chargeable with fees for service.

(3) A defendant consenting in terms of subrule (1) before the expiration of the time limited for appearance shall not be chargeable with judgment charges.

(4) If the defendant's consent is for less than the amount claimed in the summons—

- (a) he or she may enter an appearance to defend or may continue his or her defence as to the balance of the claim; and
- (b) notwithstanding a judgment upon such consent, the action may proceed as to such balance and it shall in that event be in all subsequent respects an action for such balance.

(5) If at any time after a summons is served the parties agree on the settlement of the dispute between them, they may file a deed of settlement and a draft consent order which the court may grant.

Application for default judgment

2. Where a defendant has failed to enter an appearance to defend and has not consented to judgment, the plaintiff may lodge with the clerk of the court a written request to have judgment entered, with costs, against such defendant for—

- (a) any sum, not exceeding the amount claimed in the summons; or
- (b) other relief so claimed;

together with interest from the date of the summons to the date of judgment at the rate specified in the summons, or, if no rate is so specified at the rate for the time being prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

Barring, judgment in default of plea; removal of bar

3. (1) The defendant shall be barred if he or she has failed to deliver a plea as provided by Order 16 (“Plea”)—

- (a) after delivery of written notice by the plaintiff calling upon the defendant to file his or her plea within five days of the receipt of such notice; and
- (b) on failure of the defendant to do so within that period or further time that may be agreed by the parties;

whereupon the plaintiff may lodge with the clerk of the court a written request to have judgment entered with costs and interest in the same manner as if the defendant had failed to enter an appearance to defend.

(2) Unless the plaintiff earlier withdraws a bar by filing with the clerk of court a notice of withdrawal of the bar, the defendant may apply to court for the removal of the bar.

When judgment by consent or in default may be entered

4. (1) Where a defendant—

- (a) consents to judgment in terms of rule 1; or
- (b) has failed to enter an appearance to defend and the plaintiff has requested judgment in terms of rule 2; or
- (c) has failed to deliver a plea as provided by Order 16 and the plaintiff has requested judgment in terms of rule 3;

the clerk of the court shall, subject to subrules (2), (3), (4), (5), (6), (7) and (8), enter judgment in the terms of the defendant's consent or of the plaintiff's request for judgment, as the case may be.

(2) If it appears to the clerk of the court that the defendant intends to defend the action but that his or her entry of appearance is defective, because the memorandum thereof—

- (a) has not been properly delivered; or
- (b) has not been properly signed; or
- (c) does not set out the postal address of the person signing it or an address for service as prescribed in rule 3 of Order 10 (“Appearance to Defend”); or
- (d) exhibits any two or more of such defects or any other defect of form;

he or she shall not enter judgment against the defendant unless the plaintiff has delivered written notice to the defendant that request for judgment in default of due entry of appearance is being made, and the defendant has not within five days of the receipt by him or her of such notice delivered a memorandum of entry of appearance in due form.

(3) Notice by the plaintiff referred to in subrule (2) shall clearly set out in what respect the defendant's entry of appearance is alleged to be defective.

(4) 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 with the return of service by the messenger there has been filed the certificate of the postmaster of the office of destination that the letter has been duly delivered.

(5) The clerk of the court shall refer to the court any request made for the entry of judgment on a claim for damages and—

- (a) the plaintiff shall furnish to the court evidence, either written or oral, of the nature and extent of the damages suffered by him or her;
- (b) the court shall thereupon assess the amount, if any, recoverable by the plaintiff as damages and shall give an appropriate judgment.

(6) The clerk of the court shall refer to the court any request made for the entry of judgment on a claim founded on any cause of action arising out of or based on any hire-purchase agreement governed by the Hire-Purchase Act [*Chapter 14:09*], and the court shall thereupon make such an order or give such a judgment as it thinks just.

(7) If the action is on a liquid document, the plaintiff shall, before entry of judgment, whether by consent or default, file of record the original document duly stamped, or an affidavit setting out reasons to the satisfaction of the court why the original document cannot or should not be filed.

(8) The clerk of the court may refer to a magistrate any consent to or request for judgment, and the magistrate may thereupon—

- (a) if a default judgment is sought, call upon the plaintiff to produce evidence, either written or oral, in support of his or her claim;
- (b) if (in the absence of a deed of settlement and a draft consent order filed in accordance with rule 1(5)) a judgment by consent is sought, call upon the plaintiff to produce evidence, either written or oral, that the consent has been signed by the defendant and is a consent to the judgment sought;
- (c) enter judgment in terms of the plaintiff's request or for so much of the claim as has been established to his or her satisfaction;
- (d) enter judgment in terms of the defendant's consent;
- (e) refuse judgment;
- (f) make such other order as he or she thinks just.

(9) When one or more of several defendants in an action consent to judgment or fail to enter appearance or to deliver a plea—

- (a) judgment may be entered against the defendant or defendants who have consented to judgment or are in default; and
- (b) the plaintiff may proceed on such judgment without prejudice to his or her right to continue the action against another defendant or other defendants.

ORDER 12

FURTHER PARTICULARS

Supply of copies of documents and inspection of originals

1. (1) A defendant, whether in the main claim or counterclaim, may at any time after service of summons or counterclaim, and before delivery of the plea, apply to the plaintiff by notice for copies of all or any of the accounts or documents upon which the claim is founded, and such copies shall be furnished to him or her by the plaintiff within seven days after receipt of such notice.

(2) The plaintiff shall, on notice, forthwith allow the defendant to inspect the originals of such accounts or documents.

Application for further particulars

2. (1) Any party may, by notice delivered not more than seven days after—

- (a) entry of appearance in the case of a summons; or
- (b) the delivery of any other pleading; or
- (c) judgment on any exception to such pleading has been given;

require the party delivering such pleading to deliver such further information as is reasonably necessary to enable such party to plead.

(2) The party delivering such pleading shall, within seven days after receipt of such notice, deliver the information reasonably required.

Further particulars after close of pleadings

3. (1) Any party may, by notice delivered after the pleadings are closed, require the other party to deliver such further information in respect of any pleading as is reasonably necessary to enable that party to prepare for trial.

(2) The party receiving such notice shall, within five days, deliver the information reasonably required.

Interpretation

4. For the purposes of this order—

“pleading” includes a summons, counter claim, plea, reply and the schedule of documents prescribed by Order 18.

ORDER 13

PAYMENT INTO COURT, OFFERS AND TENDERS

Payment into court of full sum claimed

1. (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 terminated, save as hereinafter provided for the recovery of any costs not included in such payment.

(2) The defendant paying money into court in terms of this rule shall at the same time deliver a notice to the plaintiff setting out that the amount claimed in the summons has been paid into court unconditionally.

(3) The clerk of the court shall pay out to the plaintiff any moneys paid into court under this rule.

(4) A plaintiff entitled to payment under subrule (3) shall, be entitled to recover from the defendant the costs incurred by him or her up to the time of payment into court, together with his or her costs of obtaining payment, in the same manner as if an order for such costs had been made by the court.

Offer in settlement

2. (1) A defendant may, without prejudice, pay an amount into court by way of offer in settlement of the plaintiff’s claim.

(2) A defendant paying money into court in terms of this rule shall at the same time deliver a notice—

- (a) to be signed by the person making or giving it or by his or her legal practitioner; and
- (b) setting out that an amount has been paid into court as an offer of settlement in terms of this rule; and
- (c) setting out all the terms and conditions (if any) under which it is made; and
- (d) stating whether or not the offer is made without prejudice; and

- (e) stating whether the offer is made in settlement of both claim and costs or of the claim only; and
- (f) stating whether or not the offer is accompanied by an offer to pay all or part of the costs of the party to whom the offer is made and, if so, any conditions subject to which the costs will be paid.

(3) Within the period prescribed in subrule (4), the plaintiff to whom an offer has been made in terms of this Order may accept it by filing with the clerk of court a written notice signed by the plaintiff or by his or her legal practitioner expressing the plaintiff's—

- (a) unqualified acceptance of the offer (thereby staying further proceedings in the matter); or
- (b) qualified acceptance of the offer (that is, acceptance without prejudice to the plaintiff's right to recover of any costs not included in such payment);

and immediately upon receipt of a notice in terms of paragraph (a) or (b) the clerk of the court shall pay out to the plaintiff any moneys paid into court under this rule.

(4) An offer shall not be capable of qualified or unqualified acceptance more than 15 days after notice of it was served on the plaintiff, unless—

- (a) the defendant gives his or her written consent to its acceptance after that period; or
- (b) the court, on application, directs that the offer may be accepted after that period, subject to such terms and conditions as it thinks fit.

(5) A plaintiff entitled to payment under this rule shall, be entitled to recover from the defendant the costs incurred by him or her up to the time of payment into court, together with his or her costs of obtaining payment, in the same manner as if an order for such costs had been made by the court.

Offers to settle by third parties (sureties, co-defendants, etc)

3. (1) In any proceedings in which a sum of money is claimed, whether alone or together with any other relief, any person who may be ordered to pay or contribute towards that sum or any part of it may

at any time make a written offer to settle the whole or any part of the claim.

(2) Without derogating from subrule (1), a person who may be ordered to contribute towards an amount for which any other person may be held liable may give a written indemnity to that other person by way of an offer of settlement.

(3) An offer made in terms of this rule, and any indemnity given in terms of subrule (2), shall be embodied in a written notice be served on the person to whom it is made and to every other party in the proceedings, which notice must—

- (a) be signed by the person making or giving it or by his or her legal practitioner; and
- (b) set out that an amount has been paid into court in terms of this rule; and
- (c) set out all the terms and conditions (if any) under which it is made or given; and
- (d) state whether or not the offer is made without prejudice; and
- (e) state whether the offer is made in settlement of both claim and costs or of the claim only; and
- (f) state whether or not the offer is accompanied by an offer to pay all or part of the costs of the party to whom the offer is made and, if so, any conditions subject to which the costs will be paid.

(4) Where the person making an offer in terms of this Order disclaims liability for the payment of costs or any part thereof, the notice given in terms of subrule (3) shall state his or her reasons for such disclaimer.

(5) Within the period prescribed in subrule (6), the plaintiff to whom an offer or tender has been made in terms of this Order may accept it by filing with the clerk of court a written notice signed by the plaintiff or by his or her legal practitioner expressing the plaintiff's—

- (a) unqualified acceptance of the offer (thereby staying further proceedings in the matter); or
- (b) qualified acceptance of the offer (that is, acceptance

without prejudice to the plaintiff's right to recover of any costs not included in such payment);

and immediately upon receipt of a notice in terms of paragraph (a) or (b) the clerk of the court shall pay out to the plaintiff any moneys paid into court under this rule.

(6) An offer shall not be capable of qualified or unqualified acceptance more than 15 days after notice of it was served on the plaintiff, unless—

- (a) the defendant gives his or her written consent to its acceptance after that period; or
- (b) the court, on application, directs that the offer may be accepted after that period, subject to such terms and conditions as it thinks fit.

(7) A plaintiff entitled to payment under this rule shall, be entitled to recover from the defendant the costs incurred by him or her up to the time of payment into court, together with his or her costs of obtaining payment, in the same manner as if an order for such costs had been made by the court.

Procedure where plaintiff fails to prove that there is more due than was offered

4. Where money has been paid into court under rule 2 or 3 as an offer of settlement and the court finds on a trial of the action that the plaintiff has failed to prove that there is any more due to him or her than the amount so paid, the court shall—

- (a) first order payment to the plaintiff of so much thereof as may be awarded to him or her, subject to any order or judgment against him or her for the defendant's costs; and
- (b) then give judgment for the defendant and order the plaintiff to pay the costs incurred by the defendant after payment into court; and
- (c) make such order as it thinks just in regard to costs previously incurred.

Payment into court of sum tendered

5. (1) A defendant pleading tender shall, on the day of filing his or her plea, pay into court the amount so tendered if such amount has not already been paid to the plaintiff.

(2) In this rule a tender means an unconditional offer to pay a certain sum accompanied by presentation for acceptance of the sum offered. Such an offer is deemed conditional where the defendant asks for an admission by the plaintiff that the sum offered is all that is due as a condition of payment.

(3) A tender made before or after action has been instituted may be pleaded and proved; in either case the sum of money alleged to have been tendered shall be paid into court.

(4) Within the period prescribed in rule 7, a person to whom a tender has been made in terms of this rule may accept it by filing with the clerk of court a written notice signed by the person accepting the tender or by his or her legal practitioner.

Tender of performance

6. (1) Subject to section 14(1)(d), of the Act in any proceedings in which the performance of some act is claimed, whether alone or together with any other relief, any person who may be ordered to perform the act may at any time make a written tender to perform it, either wholly or in part.

(2) A person who tenders performance of an act in terms of subrule (1) shall execute and deliver to the clerk of court an irrevocable power of attorney authorising its performance by the person who claims performance, unless the act is such that it can be performed only by the person making the tender.

(3) An tender made in terms of this rule shall be embodied in a written notice be served on the person to whom it is made and to every other party in the proceedings, which notice must—

- (a) be signed by the person making or giving it or by his or her legal practitioner; and
- (b) set out all the terms and conditions under which it is made; and

- (c) indicate that it is made in terms of this rule; and
- (d) state whether or not the tender is made without prejudice; and
- (e) state whether the tender is made in settlement of both claim and costs or of the claim only; and
- (f) state whether or not the tender is accompanied by an offer to pay all or part of the costs of the party to whom the tender is made and, if so, any conditions subject to which the costs will be paid.

(4) Where the person making a tender in terms of this Order disclaims liability for the payment of costs or any part thereof, the notice given in terms of rule (3) shall state his or her reasons for such disclaimer.

Acceptance of tender or tender of performance

7. (1) A tender or tender of performance shall not be capable of acceptance more than 15 days after it was served on the person to whom it was made, unless—

- (a) the person who made the tender gives his or her written consent to its acceptance after that period; or
- (b) the court, on application, directs that the tender may be accepted after that period, subject to such terms and conditions as it thinks fit.

(2) As soon as possible after filing a notice of acceptance in terms of subrule (1), the person who filed it shall serve a copy on the person who made the tender concerned, and shall file with the clerk of court proof of such service in accordance with rule 5(2) of Order 7.

(3) Where a power of attorney has been delivered to the clerk of court in terms of rule 7(2), the clerk of court, after satisfying himself or herself that, the requirements of this rule have been complied with, shall forthwith hand it over to the person accepting the tender concerned.

- (4) If a tender accepted in terms of this rule is not—
 - (a) stated to be in settlement of both the claim and the costs of the person to whom the tender is made; or

- (b) accompanied by an offer to pay all the costs of the person to whom the offer or tender is made;

the person who accepted the tender can make a court application for an order as to costs, including the costs of the application.

(5) If a person who has made a tender of performance that has been accepted in terms of this rule fails to perform in accordance with the tender within ten days of such acceptance, or within such later period as may be specified in the tender, the person who accepted the tender may make a chamber application, on not less than ten days' notice, for judgment in accordance with the tender or, in the alternative, for damages, as well as for the costs of the application.

Non-disclosure of offer or tender in specified circumstances

8. Where the claim is for damages or compensation, or where an offer or tender is made in terms of this Order without prejudice—

- (a) the amount of a tender or payment into court shall not be disclosed to the court or in the pleadings until after judgment on the claim has been given; and
- (b) the clerk of court shall ensure that, until judgment has been given in the proceedings concerned, no reference to the offer or tender appears in any file in his or her office which contains the papers in the proceedings; and
- (c) any party who, in contravention of paragraph (a), discloses to a magistrate or the court that the offer or tender has been made shall be liable to have costs awarded against him or her even if he or she is successful in the proceedings; and
- (d) the fact that an offer or tender has been made in terms of this rule may be brought to the notice of the court after judgment has been given in the proceedings concerned as being relevant to the question of costs.
- (e) the court, in awarding costs, shall proceed as provided in rule 4.
- (f) where the court has made an order as to costs in any proceedings in ignorance of an offer or tender made in terms of this rule, the court may reconsider the question of costs if any party to the proceedings makes a court

application within five days for the question of costs to be reconsidered.

Payment out: time limitation

9. (1) Save as provided in rule 1(3), 2(4) and 3(6), moneys paid into court under this Order shall be paid out only upon—

- (a) a judgment declaring who is entitled thereto; or
- (b) the written consent of the parties.

(2) Where money has been paid into court in terms of rule 1, 2, 4, 5 or 8, and has not been paid out at the time the plaintiff's summons lapses, the clerk of the court shall, unless the case has been set down for trial in terms of Order 19, return the money to the defendant and shall, at the same time, give notice to the plaintiff that he or she is doing so.

(3) If the defendant cannot be found, the money shall be paid into the Guardian's Fund to the credit of the defendant.

ORDER 14

EXCEPTIONS, MOTIONS TO STRIKE OUT AND SPECIAL PLEAS

When exception to summons may be made

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

Provided that, where the delivery of documents or information has been requested in terms of Order 12 ("Further Particulars"), particulars of the exception may be delivered within seven days after delivery of such documents or information.

(2) The plaintiff shall file his or her notice of opposition and opposing affidavit to the defendant's exception with the clerk of court, within five days of his or her being served with the exception.

(3) The defendant shall within forty-eight (48) hours after receiving the plaintiff's opposing papers, file his or her answering affidavit.

(4) If no application for summary judgment has been made by the plaintiff, either party may, on seven days' notice, set down such exception for hearing before the trial.

(5) If an application by the plaintiff for summary judgment has been made, an exception shall, if particulars thereof have been delivered before the hearing of such application, be heard and determined at the hearing of such application.

(6) A defendant failing to deliver such particulars of any exception within the period prescribed in subrule (1) may not thereafter raise any exception without leave of the court granted on application after notice to the plaintiff.

(7) Where more than one claim is made in a summons, exception may be taken to any one or more of such claims.

Grounds for excepting; when court may uphold exception

2. (1) The defendant may except to the summons on one or more of the following grounds only—

- (a) that it does not disclose a cause of action;
- (b) that it is vague and embarrassing;
- (c) that it does not comply with the requirements of Order 8 (“Summons Commencing Action”);
- (d) that it has not been properly served;
- (e) that the copy served upon the defendant differs materially from the original.

(2) The court shall not uphold any exception unless it is satisfied that the defendant would be prejudiced in the conduct of his or her defence if the summons were allowed to stand.

(3) A defendant raising an exception that the summons does not comply with the requirements of Order 8 shall set out particulars of the alleged non-compliance.

(4) 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 letter in accordance with rule 4 given the plaintiff an opportunity of removing the cause of the complaint.

Application to strike out claim or material in summons

3. (1) A defendant may move to strike out—

- (a) any 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;

- (b) any argumentative, irrelevant, superfluous or contradictory matter contained in the summons.

(2) Rule 1 shall, with necessary changes, apply to the delivery of particulars of a motion to strike out.

(3) If no application by the plaintiff for summary judgment has been made, either party may, on seven days' notice, set down such motion to strike out for hearing before the trial.

(4) If an application by the plaintiff for summary judgment has been made, a motion to strike out shall, if particulars thereof have been delivered before the hearing of such application, be heard and determined at the hearing of such application.

Complaint by letter before applying to strike out or filing exception

4. (1) Before—

- (a) applying to court to strike out any portion of a pleading on any grounds; or
- (b) filing any exception to a pleading;

the party complaining of any pleading may, or (in compliance with rule 2(3) of this Order or rule 9(5) of Order 16) shall, state by letter to the other party the nature of his or her complaint and call upon the other party to amend his or her pleading so as to remove the cause of complaint.

(2) The costs of any such necessary letter and of any matters incidental to it, including any necessary conferences with another legal practitioner, shall be allowable on taxation.

(3) In dealing with the costs of any motion to strike out or of any exception, the provisions of this rule shall be taken into consideration by the court.

Effect of successful exception or motion to strike out

5. If an exception to, or motion to strike out matter from, a summons is sustained and no application for amendment is made or, an application having been made, it is refused, the court may, on application by the defendant, dismiss the claim.

Special pleas which can be adjudicated on outside main case

6.(1) Apart from an exception or motion to strike out, a defendant may raise a special plea, that is, an objection based on a defect that does not appear on the face of the summons, or in response to the plaintiff's opposing papers referred to in rule 1(3), if that objection can be adjudicated upon without the necessity of going into the main case (such as, but not limited to, prescription, lack of jurisdiction, *lis pendens*; *locus standi*, *res judicata*, settlement; arbitration, non-joinder or misjoinder, or costs in a previous suit between the same parties still outstanding).

(2) Any other defence shall be raised by means of plea in accordance with the provisions of Order 16.

(3) If no application by the plaintiff for summary judgment has been made, either party may, on seven days' notice, set down such special plea for hearing before the trial.

(4) If an application by the plaintiff for summary judgment has been made, a special plea shall, if particulars thereof have been delivered before the hearing of such application, be heard and determined at the hearing of such application.

Procedure on filing special plea, exception or application to strike out

7. When a special plea, exception or application to strike out has been filed—

- (a) the parties may consent within seven days of the filing to such special plea, exception or application being set down for hearing in accordance with rule 1(4), 3(3) or 5(3), as the case may be;
- (b) failing consent either party may, within a further 48 hours, set the matter down for hearing in accordance with rule 1(4), 3(3) or 5(3), as the case may be;
- (c) failing such consent and such application, the party pleading specially, excepting or applying, shall within a further period of 48 hours plead over to the merits if he or she has not already done so and the special plea, exception or application shall not be set down for hearing the trial.

Special pleas, etc. to be stated or made at one time: pleading to merits

8.(1) A party shall state all his or her special pleas and exceptions and make all his or her applications to strike out at one time:

Provided that where an exception or special plea is taken or where application to strike out is made it shall not be necessary to plead to the merits of the case.

(2) A party who pleads over may be allowed the costs of such plea to the merits even where the case is disposed of without going into such merits.

Powers of court in relation to pleadings

9. At any stage of the proceedings the court may—

- (a) order to be struck out or amended—
 - (i) any argumentative or irrelevant or superfluous matter stated in any pleading;
 - (ii) any evasive or vague and embarrassing or inconsistent and contradictory matter stated in any pleading;
 - (iii) any matter stated in any pleading which may tend to prejudice, embarrass or delay the fair trial of the action;
- (b) order either party to furnish a further and better statement of the nature of his or her claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars.

ORDER 15

SUMMARY JUDGMENT

When application for summary judgment may be made

1. (1) Where a defendant has entered an appearance to defend, the plaintiff, whether in the main claim or counterclaim, may by application supported by a founding affidavit apply to the court for summary judgment on any claim in the summons which is only—

- (a) on a liquid document; or

- (b) for a liquidated amount in money; or
- (c) for the delivery of specified movable property; or
- (d) for ejectment; or
- (e) for any two or more such matters as are described in paragraph (a), (b), (c) or (d);

in addition to costs.

(2) An application in terms of subrule (1) shall be made at any time before the holding of a pre-trial conference, upon seven days' notice, and the plaintiff shall deliver with such notice—

- (a) if the claim is illiquid, a copy of an affidavit, made by himself or herself or by any other person who can swear positively to the facts—
 - (i) verifying the cause of action and the amount claimed, if any; and
 - (ii) stating that in his or her belief there is not a *bona fide* defence to the action and that appearance has been entered solely for the purpose of delay;
- (b) if the claim is liquid, a copy of the liquid document on which the claim is founded, supported by an affidavit.

Procedure on application for summary judgment

2.(1) 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
- (b) give security to satisfy any judgment which may be given against him or her in the action; or
- (c) satisfy the court by affidavit then filed, which may be supported by *viva voce* evidence or otherwise, that he or she has a good *prima facie* defence to the action.

(2) At the hearing of an application for summary judgment—

- (a) no evidence may be adduced by the plaintiff otherwise than by—

- (i) the founding affidavit of which a copy was delivered with the notice and (if submitted) the answering affidavit; or
 - (ii) production without evidence of the liquid document sued upon;
- (b) the plaintiff may not cross-examine any witness called by the defendant, but any such witness may be questioned by the court and re-examined by the defendant.

Courses open to court

3. (1) Subject to Order 14 (“Exceptions and Motions to Strike Out”), if the defendant does not so pay into court, find security or satisfy the court as provided in rule 2(1), the court may enter summary judgment for the plaintiff.

(2) If the defendant does pay into court, find security or satisfy the court as provided in rule 2(1), the court shall give leave to defend, and the action shall proceed as if no application under this Order had been made.

Use in subsequent proceedings of evidence given at application for summary judgment

4. Where leave to defend is given under rule 3(2), the evidence given on the hearing of the application for summary judgment shall not, at any subsequent hearing, be admissible, except by consent, 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.

Procedure where defendant partly successful

5. (1) If, on the hearing of an application made under this Order, it appears either that a defendant is entitled to leave to defend and another defendant is not so entitled, or that a 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 thereto and enter judgment against a defendant not so entitled;
- or

- (b) give leave to defend to the defendant as to such part of the claim and enter judgment against the defendant as to the balance of the claim; or
- (c) make both orders mentioned in paragraphs (a) and (b).

(2) The plaintiff shall be entitled to replicate in respect of the part of the claim the defendant is granted leave to defend.

ORDER 16

PLEA

When plea must be lodged; signing of plea

1. (1) The defendant shall, within seven days after—
 - (a) entry of appearance; or
 - (b) delivery of documents or particulars in terms of rule 1 or 2 of Order 12 (“Further Particulars”); or
 - (c) if application for summary judgment is made, the dismissal of such application; or
 - (d) the making of an order giving leave to defend; or
 - (e) if exception, motion to strike out or special plea is set down for hearing in terms of rule 1(4), 3(3) or 6(3) of Order 14 (“Exceptions, Motions to Strike Out and Special Pleas”), the dismissal of such exception, motion or special; or
 - (f) any amendment of the summons allowed by the court at the hearing of such exception, motion or special plea;

deliver a statement in writing to be called a plea:

Provided that, if an appeal is noted against a decision on an exception or special plea or such proceedings are brought on review, the plea shall be delivered within such time as is directed by the court of appeal or, on application, by the court.

(2) The plea shall be dated and signed by any such person as is mentioned in Order 4 (“Representation of Parties”).

Contents of plea

2. (1) The defendant, in his or her plea, shall—

- (a) admit or deny, or state that he or she has no knowledge of, or confess and avoid, every material fact alleged in the particulars to the summons; and
- (b) clearly and concisely state the nature of his or her defence and all the material facts on which it is based.

(2) For the purpose of this Order, information delivered by the defendant in terms of Order 12 (“Further particulars”) shall be deemed to be included in the plea.

Summons served on wrong defendant

3. (1) This Order shall apply to a person upon whom a summons has been served who alleges that he or she is not the defendant cited in the summons and enters appearance to defend on that ground as though he or she were a defendant, and the court may, on the hearing of any such defence, order costs to be paid to or by such person as if he or she were a party to the action.

(2) If a defence referred to in subrule (1) is 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 on the real defendant.

Bare denial or general defence not admissible

4. 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.

Plea of tender

5. Subject to Order 13 (“Payment into Court, Offers and Tenders”)—

- (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 on the delivery of the plea, if not already paid to the plaintiff, and such amount shall be paid out to the plaintiff only

on the order of the court or upon the written consent of the parties;

- (c) a tender after action is brought shall—
 - (i) unless such undertaking is expressly disavowed at the time of such tender, imply an undertaking to pay the plaintiff’s costs up to the date of the tender; and
 - (ii) be valid without a tender or payment into court of the amount at which such costs may be taxed.

Allegation in plea of payment into court

6. Where payment into court is alleged in the plea—

- (a) the particulars shall show whether the payment has been made under rule 1 or 2 of Order 13 (“Payment into Court, Offers and Tenders”) or by way of tender under rule 5 of this Order;
- (b) if the nature of the payment is not specified, it shall be deemed to be by way of tender after action is brought.

Denial or admission of plaintiff’s allegations: when presumed

7. Every allegation of fact by the plaintiff which is inconsistent with the plea shall be presumed to be denied and every other allegation which the defendant has not specifically denied, admitted or confessed and avoided shall be taken to be admitted.

Defence emerging during trial

8. 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 (whether it is such a defence as the defendant would have pleaded in terms of rule 2, or it is in the nature of an exception or special plea), the court may, on application at the trial, allow such new defence—

- (a) to be then pleaded *viva voce*; or
- (b) in the case of a defence in the nature of an exception or special plea, appoint a time for a separate hearing of the defence;

on such terms as to adjournment and costs as it thinks just.

Exception to or motion to strike out plea

9. (1) A plaintiff may, within seven days of the delivery of the defendant's plea or further particulars and with or before delivering a reply, deliver particulars of an exception to the plea, or a motion to strike out in terms of rule 10.

(2) A plaintiff may except to the plea on one or more of the following grounds only—

- (a) that it does not disclose a defence to the plaintiff's claim;
- (b) that it is vague and embarrassing;
- (c) that it does not comply with the requirements of this Order.

(3) The court shall not uphold any exception to a plea unless it is satisfied that the plaintiff would be prejudiced in the conduct of his or her case if the plea were allowed.

(4) A plaintiff raising an exception that the plea does not comply with the requirements of this Order shall set out particulars of the alleged non-compliance.

(5) Either party may, on seven days' notice, set down such exception for hearing before the trial.

(6) 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 letter in accordance with rule 4 of Order 14 given the defendant an opportunity of removing the cause of the complaint.

Motion to strike out defences

10. (1) A plaintiff may, within seven days after delivery of the defendant's plea, move to strike out—

- (a) any of two or more defences which, not being pleaded in the alternative, are mutually inconsistent;
- (b) any argumentative, irrelevant, superfluous or contradictory matter which may be stated in a plea.

(2) The defendant shall file his or her notice of opposition and opposing affidavit to the plaintiff's motion with the clerk of court, within five days of his or her being served with the motion.

(3) The plaintiff shall within forty-eight (48) hours after receiving the defendant's opposing papers, file his or her answering affidavit.

(4) Either party may, on seven days' notice, set down such motion to strike out for hearing before the trial.

Effect of successful exception or motion to strike out

11. If an exception to or motion to strike out matter from a plea is sustained and no application for amendment is made or, having been made, is refused, the court may, if the plea then discloses no defence, give judgment for the plaintiff.

ORDER 17

REPLY; CLOSURE OF PLEADINGS

Plaintiff may reply to plea

1. Where the defence is other than a bare denial of one or more of the allegations of the summons, the plaintiff may —

- (a) within seven days after the delivery of the plea; or
- (b) after delivery in terms of rule 2 of Order 12 ("Further Particulars") of further information in respect of the plea;

deliver a statement in writing to be called a reply.

Rules applicable to reply

2. The rules applicable to the plea shall, with necessary changes, apply to the reply.

Effect of failure to reply

3. Where the plaintiff does not within the time limited deliver a reply, he or she shall be taken to have denied all the allegations of fact contained in the plea.

Closure of pleadings

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.

ORDER 18

DISCOVERY AND INSPECTION OF DOCUMENTS

Application for delivery of schedule of books and documents to be used by other party

1. (1) After the close of pleadings, either party may, before the holding of a pre-trial conference, deliver a notice to the other party calling on him or her to deliver a schedule specifying the books and documents in his or her possession or under his or her control relating to the action which he or she intends to use in the action or which tend to prove or disprove either party's case.

(2) The schedule shall be delivered by the party thereto required within seven days of the delivery of the said notice.

(3) If privilege is claimed for any of the documents scheduled—

- (a) such documents shall be separately listed on the schedule; and
- (b) the ground on which privilege is claimed in respect of each shall be set out.

(4) A book or document not disclosed in terms of this rule may not be used for any purpose in 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.

Supply of documents or copies thereof

2. Each party shall—

- (a) on notice forthwith allow the other party to inspect and take copies of all books and documents disclosed in terms of rule 1 or specified in a notice delivered in terms of rule 3;
- (b) on prepayment therefor, forthwith furnish the other party with such copies thereof or extracts therefrom as may be requested.

Notice requiring other party to produce documents at trial

3. 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 any other books and documents specified in detail.

Notice of inspection, and inspection of, undisclosed documents

4.(1) If a party believes that there are, in addition to documents as disclosed under rule 1, documents (not being a privileged documents), including copies thereof, which may be relevant to any matter in question in the possession of any other party thereto, the former may give notice to the latter requiring him or her to make the same available for inspection, stating a time, within three days from the delivery of such notice, when and where such documents may be inspected:

Provided that the party receiving the notice may, within three days from the delivery of such notice, and with the consent of the notifying party, specify an alternative time and place when and where such documents may be inspected.

(2) The place for such inspection shall be—

- (a) if the person called upon is represented by a legal practitioner, the office of that legal practitioner;
- (b) in the case of a bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, their usual place of custody;
- (c) in any other case, some convenient place mentioned in the notice.

(3) The party receiving the notice under subrule (1) shall permit at the time therein stated (or at such other time as the notifying party has agreed to under that rule), and for a period of six days thereafter, during normal business hours or on any one or more of such days, the notifying party to inspect such documents and to take copies thereof.

(4) A document or copy thereof inspected as aforesaid may be used for any purpose at the trial by either party.

Failure to make discovery or permit inspection

5. If a party fails to make discovery under this Order or, having been served with a notice under rule 4 fails to permit inspection as

required or agreed in terms of that rule, the party desiring discovery or inspection may (subject to rule 6) make an application in terms of Order 33 (“General”) rule 1 subrule (3).

Court or magistrate may inspect document for which privileged claimed

6. Where on an application for an order for discovery, inspection or production privilege is claimed for any document, it shall be lawful for the court or magistrate to inspect the document for the purpose of deciding on the validity of the claim of privilege.

ORDER 19

PRE-TRIAL CONFERENCE, SETDOWN OF TRIALS AND TRIALS

Pre-trial conference

1. (1) After the close of pleadings and the making of discovery by both parties, a party who wishes to have the action brought to trial shall request the other party to attend a pre-trial conference at a mutually convenient time and place.

(2) At the pre-trial conference the parties shall attempt to reach agreement on possible ways of expediting or curtailing the duration of the trial and in particular as to all or any of the following matters—

- (a) the obtaining of admissions of fact and of documents;
- (b) the holding of any inspection or examination;
- (c) the exchange of reports of experts;
- (d) the examination of discovered documents;
- (e) the giving of any further particulars reasonably required for the purposes of trial;
- (f) the plans, diagrams, photographs, models, and the like, to be used at the trial;
- (g) the consolidation of trials;
- (h) the quantum of damages;
- (i) the definition of the real issues and the manner in which any particular issue may be proved;
- (j) an estimation of the probable duration of the trial;

- (k) the preparation of correspondence and other documents to be handed in at the trial in the form of a paged bundle with copies for the court and all parties;

and, if it is practicable to do so, the parties shall attempt to reach a settlement of all or any of the matters in dispute between them.

(3) If the parties to an action consent to such a course, a pre-trial conference in terms of subrule (1) shall be held before a magistrate, in chambers, at a date and time fixed by the clerk of court in consultation with the parties.

(4) The clerk of court, acting on the instructions of a magistrate, may at any time on reasonable notice, notify the parties to an action to appear before a magistrate in chambers, on a date and at a time specified in the notice, for a pre-trial conference with the object of reaching agreement on or settling the matters referred to in subrule (2), and the magistrate may at the same time give directions as to the persons who shall attend and the documents to be furnished or exchanged at such conference.

(5) Where the clerk of court has given notice in terms of subrule (4) to parties who have not yet held a pre-trial conference, it shall not be necessary for them to hold such a conference in terms of subrule (1).

(6) If—

- (a) a party does not accede to a request for the holding of a pre-trial conference in terms of subrule (1); or
- (b) a party refuses to consent in terms of subrule (3) to a pre-trial conference being held before a magistrate; or
- (c) the parties are unable to agree on a suitable date or venue for a pre-trial conference in terms of subrule (1) or who should attend;

any party may apply to a magistrate for directions in regard to the matter in dispute.

(7) Upon the conclusion of a pre-trial conference, other than a conference held before a magistrate, the parties shall draw up a minute of the conference proceedings and such minute shall be signed by the parties or their legal practitioners.

(8) If at a pre-trial conference, other than a conference held before a magistrate, the parties cannot agree on any matter referred to in subrule (2), any party may make an application to the magistrate for directions in regard to the matter in dispute.

(9) If at a pre-trial conference the parties agree on a settlement of any matter in dispute, a magistrate may, on application being made by the parties, make an order embodying the terms of the settlement.

(10) Upon the conclusion of a pre-trial conference held before a magistrate, the magistrate—

- (a) shall record any decisions taken at the conference and any agreements reached by the parties as to the matters to be considered; and
- (b) may make an order limiting the issues for trial to those not disposed of by admission or agreement; and
- (c) may give directions as to any matter referred to in subrule (2) upon which the parties have been unable to agree; and
- (d) shall record the refusal of any party to make an admission or reach agreement, together with the reasons therefor.

(11) A magistrate may dismiss a party's claim or strike out his or her defence or make such other order as may be appropriate if—

- (a) the party fails to comply with directions given by a magistrate in terms of subrule (4), (6), (8) or (10) or with a notice given in terms of subrule (4); and
- (b) any other party, in regard to any matter in dispute canvassed at a pre-trial conference before a magistrate, applies orally for such an order at the pre-trial conference or makes an application for such an order.

Set down of trial

2. (1) The trial of an action shall be subject to the delivery by the plaintiff after the pre-trial conference has been held of notice of trial for a day approved by the clerk of the court and if the plaintiff does not, within 14 days after the pre-trial conference, deliver notice of trial the defendant may do so.

(2) The delivery of a notice of trial shall *ipso facto* operate to set down for trial at the same time any counterclaim made by the defendant.

(3) Service of a notice of trial, including notice for reinstatement where the trial has been adjourned or postponed sine die, shall be effected at least seven days before the day approved by the clerk of the court.

Where trial to take place

3. The trial of an action shall, unless the court otherwise orders, take place at the court-house from which the summons was issued.

Magistrate may consult counsel in chambers before trial

4. Before the trial proceeds the magistrate may call into his or her chambers the legal practitioners for the parties with a view to securing agreement on any matters likely to curtail the duration of the trial.

Presence of parties and witnesses

5. (1) When a party is legally represented a trial may be commenced and continue in his or her absence if the other party consents to his or her absence being excused by the court.

(2) A witness who is not a party to the action may be ordered by the court—

- (a) to leave the court until his or her evidence is required or after his or her evidence has been given;
- (b) to remain in the court after his or her evidence has been given until the trial is terminated or adjourned.

Facts in issue, admissions and questions of fact

6. (1) The court may, having regard to the order made in terms of rule 1(10)(b), 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.

(2) Where, upon the pleadings, or having regard to the order made in terms of rule 1(10)(b), it appears to the court that there are several issues of fact and the court is of the opinion that the

determination of any one of such issues would dispose of the whole case, it may—

- (a) require the parties to deal with that issue before proceeding with the other issues; and
- (b) thereupon give final written judgment without dealing with such other issues.

(3) 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 a written judgment may be given thereon without further evidence.

(4) When a question 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 question of law only, the court may—

- (a) require the parties to argue upon the question of law only; and
- (b) give its decision thereon before taking evidence as to the issues of fact; and
- (c) give final written judgment without dealing with the issues of fact if the decision upon the question of law warrants such judgment.

Order in which evidence to be led

7. (1) If on the pleadings the burden of proof is on the plaintiff—

- (a) he or she shall first adduce his or her evidence; and
- (b) if absolution from the instance is not then decreed, the defendant shall thereafter adduce his or her evidence.

(2) If on the pleadings the burden of proof is on the defendant—

- (a) he or she shall first adduce his or her evidence; and
- (b) the plaintiff shall thereafter adduce his or her evidence.

(3) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant—

- (a) the plaintiff shall first call his or her evidence on any issues the proof whereof is upon him or her, and may

then close his or her case, and the defendant shall then call his or her evidence on all the issues;

- (b) if the plaintiff has not called any evidence (other than that necessitated by his or her evidence on the issues the proof whereof is on him or her) on any issues the proof whereof is on the defendant, the plaintiff shall have the right to do so after the defendant has closed his or her case, but if the plaintiff has called any such evidence he or she shall have no such right.

(4) In case of dispute as to the party upon whom the burden of proof rests, the court shall direct which party shall first adduce evidence.

(5) Either 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.

(6) The court may at any time before judgment, on the application of either party or of its own motion, recall any witness for further examination.

(7) Any witness may be examined by the court, as well as by the parties.

(8) After the evidence on behalf of both parties has been completed, 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.

Filing of interrogatories

8. Where the court has authorised the evidence of any witness to be taken on interrogatories—

- (a) such interrogatories shall be filed within seven days of the order; and
- (b) cross-interrogatories shall be filed within seven days thereafter.

ORDER 20

WITHDRAWAL AND DISMISSAL

Withdrawal of summons by plaintiff

1. Where—

- (a) the summons has not been served; or
- (b) the period limited for the 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.

Notice of withdrawal of action or application

2. (1) Save as provided by rule 1, a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver a notice of withdrawal with a tender of costs to the other party or parties and the clerk of the court.

(2) Any party may, by delivery of a notice of withdrawal with a tender of costs to the other party or parties and the clerk of the court, withdraw any specified claim, exception or defence pleaded by him or her and such notice shall be taken into consideration in taxing costs.

Application for dismissal of action

3. (1) A defendant may, if the plaintiff has not within 14 days after the pleadings have been closed applied to the clerk of the court for a date for a pre-trial conference in terms of Order 19, or a removal from the roll in terms of rule 4(1) of Order 33, apply to the court to dismiss the action for want of prosecution.

(2) A defendant may, if the plaintiff has not within 14 days after the pre-trial conference held in terms of Order 19 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 for want of prosecution.

(3) The court may, on application under subrule (1) or (2), either dismiss the action with costs or make such other order in regard thereto and as to the costs of the application, as it thinks just.

ORDER 21

RECORD OF PROCEEDINGS

Minutes of record

1. (1) Minutes of record shall be made of—
 - (a) any judgment given by the court; and
 - (b) any *viva voce* evidence given in court; and
 - (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*; and
 - (e) the commencement and end of each court session, including adjournments.

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

Recording in shorthand

2. (1) The court may appoint a shorthand-writer to record a note of *viva voce* evidence and the proceedings, and such appointment may be made either generally for the purposes of the court or specially for the purposes of any particular matter.

(2) Every person employed for the taking of a record in terms of subrule (1) or for the transcription of the record so taken by another person shall—

- (a) be deemed to be an officer of the court; and
- (b) before entering on his or her duties, take before a magistrate an oath that he or she will faithfully, accurately and to the best of his or her ability perform his or her duties.

(3) If an appeal is noted and set down for hearing, such record shall, so far as relevant to the appeal, be transcribed and certified by such shorthand-writer as a true record of the proceedings, and such transcript shall thereafter form part of the record.

Correction of errors in record

3. (1) Any party may, not later than seven days after judgment or, where the record has been taken in terms of rule 2(1), after the transcription thereof has been completed, apply to the court to correct any errors in the record and the court may correct any such errors.

(2) If, before the hearing of an application in terms of subrule (1), all parties affected—

- (a) file a consent to the corrections claimed, no costs of such application shall be allowed;
- (b) do not file a consent to the corrections claimed, costs shall be in the discretion of the court.

ORDER 22

APPLICATIONS

Notice to be given of application

1. (1) Except where otherwise provided, an application to the court for an order affecting any other party or persons shall be on not less than seven days' notice to such other party or person, stating shortly the terms of the order applied for and the time at which the application will be made to the court. If the applicant is represented by a legal practitioner the application shall be accompanied by a draft order.

(2) An application referred to in subrule (1) shall be supported by an affidavit.

Response to application

2. (1) The respondent may, not less than 48 hours before the time stated in such application, deliver a response in writing in which he or she either—

- (a) consents to the order mentioned in the application; or
- (b) files a notice of opposition supported by an opposing affidavit.

(2) Where the respondent consents to the order—

- (a) the order shall be deemed to be granted from the time mentioned in the application;

(b) it shall not be necessary for either party to appear.

(3) Where the respondent opposes the order, his or her opposing affidavit shall—

(a) set out the grounds on which he or she opposes the order;

(b) if he or she denies the facts set out in the application or seeks to place additional facts before the court, such denial or additional facts shall be stated in the opposing affidavit.

Counter-applications

3. (1) Where a respondent files a notice of opposition and opposing affidavit, he or she may file, together with those documents, a counter-application against the applicant in the form (with necessary changes) of a court application.

(2) This order shall apply (with necessary changes) to a counter application under subrule (1) as though it were a court application and subject to subrule (3) and (4), it shall be dealt with at the same time as the principal application unless the court or a magistrate orders otherwise on its own motion or in accordance with subrule (4).

(3) If in any application in which the respondent files a counter-application under subrule (1) the application is stayed, discontinued or dismissed, the counter-application may nevertheless be proceeded with.

(4) The court or magistrate may for good cause shown by either party order an application and a counter application filed under subrule (1) to be heard separately.

Reply by applicant to respondent's notice of opposition

4. (1) The applicant may reply by affidavit to any facts alleged in the opposing affidavit filed by the respondent and may if legally represented file together with his or her reply his or her heads of argument. If the applicant does not file any reply he or she shall (if legally represented) file his or her heads of argument within five days of the date when he or she received the respondent's notice of opposition.

(2) After the applicant's reply no further affidavit shall be filed, except with leave of the court.

(3) When both parties are not legally represented, the applicant's answering affidavit shall be delivered at least 24 hours before the time fixed for the hearing.

(4) The respondent shall if legally represented file his or her heads of argument within five days of the date when he or she received the applicant's heads of argument or if the applicant is not legally represented, within five days of the date he or she should have received or received the applicant's answering affidavit.

Orders court may make on application

5. After hearing the parties the court may —

- (a) refuse the application and give written reasons for its decision; or
- (b) grant the order applied for or any variation thereof, giving written reasons for its decision; or
- (c) order that the issue shall be tried by way of action and give such directions as it thinks just to enable such issue to be brought to trial; and make such order as to costs as it thinks just.

When appearance to defend is deemed to have been entered

6. For the purposes of the action, appearance to defend shall be deemed —

- (a) when the notice of application is ordered to stand as summons, to have been entered on the day on which such order is made;
- (b) when the applicant is ordered under rule 5 to file particulars, to have been entered on the day on which such particulars are delivered.

When ex parte application procedure can be used and the procedure to be followed

7. (1) An *ex parte* application can only be made in the following instances —

- (a) an application for an interdict, where a child is about to be removed from the court’s jurisdiction; or
- (b) for purposes of attachment to confirm jurisdiction; or
- (c) pursuant to section 33 (“Garnishee orders”) of the Act; or
- (d) where the procedure is provided for under these rules or any other enactment.

(2) An *ex parte* application shall be made in writing stating shortly—

- (a) the terms of the order applied for; and
- (b) the grounds on which the application is made;

and shall be signed by the party making the application.

(3) Except where otherwise provided, an *ex parte* application shall be supported by an affidavit.

(4) Any person affected by an order made *ex parte*, including an interdict for rent under section 38 of the Act, may apply to discharge it with costs on not less than twenty-four hours’ notice.

Interlocutory matters may be dealt with by oral application

8. All interlocutory matters may be dealt with by oral application.

General provisions re-applications

9. (1) At the hearing of the application the court may receive evidence *viva voce*.

(2) In every application the person substantially interested shall be made respondent.

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

Urgent applications

10. Subject to this Order, in an application whose urgency is supported by a certificate of a legal practitioner or in the case of an unrepresented applicant, the applicant’s affidavit, a magistrate may specify—

- (a) shorter time periods within which the respondent's opposing affidavit, applicant's answering affidavit and heads of argument may be filed;
- (b) the date on which the application can be heard.

ORDER 23

INTERDICTS AND ATTACHMENTS

Method of application

1. (1) An application to the court for an order referred to in section 12 of the Act (an order for arrest *tamquam suspectus de fuga*, an attachment, an interdict or a *mandamenten van spolie*) or for an order referred to in Order 22 rule 7(1)(a) and (b) may be made *ex parte*.

(2) An *ex parte* application referred to in subrule (1) shall be upon affidavit stating shortly the facts upon which the application is made and the nature of the order applied for.

Security for damages

2. 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 thinks fit.

Procedure where summons includes interdict; return day for ex parte orders

3. (1) Where a summons referred to in section 38 of the Act is to include an interdict in terms of that section a notice in the form prescribed in form No. CIV 8 shall be endorsed by the plaintiff on the summons.

- (2) An order made *ex parte*, other than an order;
 - (a) referred to in section 38 of the Act;
 - (b) of attachment for rent under section 34 of the Act;

shall call upon the respondent to show cause against it at a time stated in the order, which shall not be a shorter time after service than the time allowed by these rules for appearance to a summons, unless the court gives leave for shorter notice.

(3) The return day of an order made *ex parte* may be anticipated by the respondent upon 24 hours' notice to the applicant.

Service of ex parte order and discharge on cause shown

4. (1) A copy of an order made *ex parte* and of the affidavit, on which it was made shall be served forthwith on the respondent thereto.

(2) Where cause is shown against an order made *ex parte* the court may order the deponent to any such affidavit to attend for cross-examination.

(3) An 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 it thinks just.

Discharge on giving of security

5. (1) 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.

(2) 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.

Minutes of order

6. (1) The minutes of any order required for service or execution shall be—

- (a) drawn up by the party entitled thereto; and
- (b) approved by the clerk of the court.

(2) 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.

When interdict, warrant for arrest or attachment to confirm jurisdiction may be executed

7. An interdict, warrant of arrest (other than for civil imprisonment) or attachment to confirm jurisdiction may be executed on any day, at any hour and at any place.

ORDER 24

SUBPOENAS

Attendance of witnesses to be secured by subpoena

1. (1) The process of the court for compelling the attendance of any person to give evidence or to produce any books, papers or documents shall be by subpoena issued by the clerk of the court and sued out by the party desiring the attendance of such person.

(2) In the case of evidence taken on commission, such process shall be sued out by the party desiring the attendance of the witness, and issued by the commissioner.

Service of subpoena by messenger

2. (1) There shall be delivered to the messenger, if the party suing out the subpoena desires it to be served through the messenger, together with the subpoena—

- (a) so many copies thereof as there are witnesses to be summoned; and
- (b) such sum or sums of money as the party for whom they are to be summoned intends that the messenger shall pay or offer to the witnesses respectively for their expenses.

(2) The court may set aside the service of any subpoena if it appears that the witness served was not given reasonable time to enable him or her to appear in pursuance of the subpoena.

Person failing to appear

3. (1) If any person, being duly subpoenaed to give evidence, fails to appear when required during the proceedings, the court, upon being satisfied upon oath or by the return of the messenger that—

- (a) such person has been duly subpoenaed; and
- (b) his or her reasonable expenses have been paid or offered to him or her;

may issue a warrant for his or her apprehension in order that he or she may be brought before the court to give evidence.

(2) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his or her possession or

under his or her control, which the party requiring his or her attendance desires to show in evidence fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena, the court may, if satisfied as referred to in subrule (1), impose a penalty not exceeding \$20,00, for his or her default.

ORDER 25

INTEREST

Interest from date of issue of summons

1. Where 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 no such rate is claimed, at the rate for the time being prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

Interest from date of judgment

2. A judgment for payment of money shall bear interest from the date of judgment until payment at the rate for the time being prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*] or at such other rate as may be adjudged.

ORDER 26

EXECUTION

Warrant for execution of judgment

1. (1) The process for the execution of any judgment for—
 - (a) the payment of money; or
 - (b) the delivery of goods or premises; or
 - (c) ejection;

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 has been given if such judgment is not then been 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.

(4) A request in writing made from time to time by such person to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

(5) Any alterations in such process shall be initialled by the clerk of the court before such process is issued by him or her.

(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, execution shall not be issued before the day following that on which the judgment is given without special leave of the court, applied for at the time of granting the judgment.

Furnishing of security by judgment creditor

2. (1) Where the messenger is in doubt as to the validity of any attachment or contemplated attachment, he or she may require the party suing out the process to give security to indemnify him or her.

(2) Unless the summons commencing action has been served upon the defendant personally or he or she has entered appearance to defend or notice of attachment has been given to him or her personally—

- (a) if any property, corporeal or incorporeal, is attached in execution, the execution creditor shall, at least seven days before the day appointed for the sale of such property, give security to the satisfaction of the messenger for the payment to the execution debtor, if such attachment be set aside, of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon (and if such security is not given the attachment shall cease to have effect):

Provided that the execution debtor may by endorsement to that effect on the writ 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 or she has given security for the restitution of the full amount received by the messenger if the attachment thereof is set aside:

Provided that the execution debtor may in writing over his or her 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 within a period of three months after the date of execution by the execution debtor without formal transfer thereof to him or her.

Cost of execution; order of execution by warrants; withdrawal of attachment; accounting for proceeds of sale in execution

3. (1) Unless otherwise ordered by the court, the costs and expenses of issuing and levying execution—

- (a) shall be a first charge on the proceeds of the property sold in execution; and
- (b) 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, subject to rule 8(25), rank *pro rata* in the distribution of the proceeds of the goods sold in execution.

(3) Withdrawal of attachment shall be effected by endorsement of a note made and signed by the messenger on the writ of execution

that the attachment is withdrawn, stating the time and date of the making of such note.

(4) 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 or her.

(5) Property shall not be released from attachment so long as an unsatisfied warrant of execution lodged under subrule (2) remains in the hands of the messenger.

(6) If any property taken in execution is claimed by any third party as his or her property, the messenger shall on receipt of the claim forthwith give notice thereof to the execution creditor.

(7) If the execution creditor gives the messenger notice within seven days thereafter that he or she admits the claim, he or she shall not be liable for any costs, fees or expenses afterwards incurred, and the messenger may withdraw from possession of the property claimed.

(8) On completion of any sale in execution of property, whether movable or immovable, the messenger shall attach to his or her return—

- (a) a statement showing details of the property sold, the prices realised and the names and addresses of the purchasers; and
- (b) a statement showing the distribution of the proceeds of the sale and of any deposit paid to the messenger.

(9) A messenger shall not at a sale in execution purchase any of the property offered for sale either for himself or herself or for another person.

(10) If after a sale in execution of property, whether movable or immovable, there remains any surplus with the messenger—

- (a) it shall be liable to attachment for any other unsatisfied judgment debt;
- (b) if there is no unsatisfied judgment debt, the messenger shall pay such surplus to the judgment debtor if he or she can be found and, if he cannot be found, into court.

(11) The clerk of the court shall, as soon as is practicable after the 2nd January in each year, pay into the Guardian's Fund to the credit of the judgment debtor any moneys paid into court in terms of subrule (10)(a) at any time prior to the 1st October of the preceding year.

Judgment debtor a firm or member of a firm

4. (1) Where a judgment debtor is a partner in a firm and the judgment is against him or her for a separate debt, the court may, after notice to the judgment debtor and to his or her firm, appoint the messenger as receiver to receive any moneys payable to the judgment debtor in respect of his or her interests in the partnership.

(2) An appointment in terms of subrule (1) shall, until the judgment debt is satisfied, operate as an attachment of the interests 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.

Notice to debtor of proposed execution

5. (1) Upon receiving—

- (a) a warrant of execution against property; or
- (b) a warrant of ejection and execution against property;
or
- (c) a warrant of delivery and execution against property;

the messenger shall, within 24 hours or as soon as circumstances permit, go to the house or place of business of the execution debtor and deliver to the debtor or leave at the house or place of business a notice warning the debtor of the date of the proposed execution of the warrant, which date shall not be sooner than 48 hours after the notice was so delivered or left:

Provided that the messenger need not deliver or leave such a notice in any case in which he or she has reasonable grounds for believing that immediate execution of the warrant is necessary in order to prevent the execution debtor from concealing or disposing of any property in order to avoid its attachment.

(2) An inadvertent failure by the messenger to deliver or leave a notice in terms of subrule (1) shall not invalidate any attachment, sale in execution or ejection effected in accordance with a warrant.

Execution of warrant; attachment of goods and sale in execution

6. (1) The messenger shall, upon receiving a warrant directing him or her to levy execution on movable property—

- (a) go to the house or place of business of the execution debtor at the time and on the date specified in the notice served in terms of Rule 5;
- (b) there demand payment of the judgment debt and costs or else require that so much movable property be pointed out as the messenger's valuation deems sufficient to satisfy the warrant;
- (c) if the judgment debt and costs, or part of the costs, are paid, 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 or her and countersigned by the debtor or his or her representative;
- (d) if the judgment debt and costs are not paid in full, make an inventory and valuation of the property pointed out to him or her or, if the debtor does not point out property, make an inventory and valuation of so much of the movable property belonging to the debtor as he or she thinks sufficient to satisfy the warrant.

(2) If necessary for the execution of any such warrant the messenger may open any door on any premises or of any piece of furniture, if opening is refused or if there is no person there who represents the person against whom such warrant is to be executed, and the messenger may, if necessary, use reasonable force to that end.

(3) The messenger shall exhibit the original warrant of execution and shall deliver to the 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 or her shall be deemed to be judicially attached.

Magistrates Court (Civil) Rules, 2019

(5) The messenger shall deliver a copy of the inventory signed by himself for herself to the debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.

(6) The messenger shall deliver a copy of the inventory, signed by himself or herself to the clerk of court.

(7) Where—

- (a) money is found and attached, the number and kinds thereof shall be specified in the inventory;
- (b) any documents are attached they shall be specified in the inventory; and any such money or documents shall be sealed up and conveyed to the office of the messenger.

(8) Where any movable property has been attached in terms of this rule, the messenger shall remove the goods attached to some convenient place of security unless—

- (a) the person whose movable property has been so attached undertakes in writing, together with some sufficient surety, unless the judgment creditor, in writing, dispenses with the joinder of surety, that the same shall be produced on the day appointed for its sale if the judgment creditor is not sooner satisfied in respect of his or her judgment debt, in which case the messenger shall leave the property so attached and inventoried, other than money or documents, upon the premises where the same was found;
- (b) the goods consist of property inconvenient to remove, in which case the messenger may leave the same upon the premises and, unless an undertaking with or without surety, as the case may be, in terms of paragraph (a) is given, in the charge and custody of some person for him or her until the day appointed for the sale thereof;
- (c) the messenger is instructed by the judgment creditor, in writing, to leave the goods on the premises, in which case the messenger shall leave the goods, which shall remain subject to attachment, on such premises until he or she is instructed by the judgment creditor to remove the goods and on being so instructed he or she shall, unless

an undertaking with or without surety, as the case may be, in terms of paragraph (a) is given, remove the goods as soon as is reasonably possible in the circumstances.

- (9) A custodian appointed in terms of subrule (8) may not—
- (a) use, let or lend the attached goods;
 - (b) permit the attached goods to be used, let or lent;
 - (c) in any way do anything which will decrease the value of the attached goods;

and, if the attached goods produce any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he or she is responsible for the goods originally attached.

(10) If such custodian makes a default in his or her duty he or she shall not be entitled to recover any remuneration for his or her charge and custody.

(11) Any movable property sold in execution of the process of the court shall be sold—

- (a) publicly and for cash to the highest bidder;
- (b) by the messenger or, with the approval of a magistrate, by an auctioneer or other person appointed by the messenger.

(12) The place where a sale in terms of subrule (11) is held shall be the place where the property was taken or to which it was removed or such other place as may be advantageous for the sale thereof.

(13) The messenger, if in his or her opinion the value of the attached goods exceeds five hundred dollars, shall publish notice of the sale on an electronic platform approved in terms of Order 1 rule 6(4) or in a local newspaper circulating in the district.

(14) Subject to subrule (16), at least seven days before the day appointed for the sale the messenger shall affix a notice—

- (a) on the door of the court-house or of some other public building in the place where the court is held; and
- (b) at or as near as may be to the place where the sale is actually to take place;

and such notice shall set out the day and place where such sale is to be held.

(15) Subject to subrule (16), the day appointed for the sale shall be not less than 14 days after the time of seizure or attachment.

(16) Where the attached goods are of a perishable nature or the execution debtor consents, the court may, on application, reduce either or both of the periods mentioned in subrules (14) and (15) to such extent and on such conditions as it thinks just.

(17) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the warrant and the costs of the sale.

Attachment of leases, negotiable instruments, etc

7. (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, the attachment—

- (a) 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; and
- (b) 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, 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—

- (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;
- (b) the messenger may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller, enter upon the premises where such property is and make an inventory and valuation of the property.

(3) The method of attachment of property attached under section 34 of the Act shall, with such changes as may be necessary, be the same as that of attachment in execution.

Execution against immovable property

8. (1) A warrant of execution against immovable property shall state the situation and nature of the immovable property sought to be attached sufficiently to enable it to be identified.

(2) The mode of attachment of immovable property shall be by notice by the messenger served in like manner as a summons, together with a copy of the warrant of execution, upon—

- (a) the execution debtor as owner thereof; and
- (b) the Registrar of Deeds or other officer charged with the registration of such immovable property; and
- (c) all registered holders of bonds registered against the property attached; and
- (d) if the property is in the occupation of some person other than the execution debtor, such occupier; and
- (e) the local authority in whose area the property is situated.

(3) After attachment the messenger shall—

- (a) ascertain and record whether the property is subject to any claim ranking in priority to that of the execution creditor; and
- (b) thereupon notify the judgment creditor of the existence of any such claim to enable the latter to proceed in terms of section 20(2) of the Act.

(4) The messenger may by notice, served in like manner as a summons, require the execution debtor to deliver up to him or her forthwith all documents in his or her possession or under his or her control relating in any way to his or her title to the property.

(5) Where the property is situated in some province other than that in which the judgment was given, the messenger of the court of the latter province shall forward the writ to the messenger of the court of the province in which the property is situated, who shall proceed to attach the property in the manner provided in this rule.

(6) Subject to rule 9, the messenger shall—

- (a) appoint a day and place for the sale of the property, such day being, except by special leave of the court, not less than one month after service of the notice of attachment;
- (b) cause the sale to be advertised on an electronic platform approved in terms of Order 1 rule 6(4) or at least twice in some local or other newspaper circulating in the area by an advertisement containing a short description of the property and its situation, the time and place for the holding of the sale and the material conditions thereof;
- (c) when the advertisement is first forwarded for publication, also serve a copy thereof to—
 - (i) every judgment creditor who has caused the property to be attached; and
 - (ii) every mortgagee thereof whose address is reasonably ascertainable.

(7) The conditions of sale shall be prepared by the execution creditor who shall, not less than 28 days prior to the proposed date of the sale, deliver—

- (a) two copies thereof to the messenger; and
- (b) one copy thereof to each person who is entitled to notice of the sale.

(8) Any interested party may, not less than 21 days prior to the proposed date of the sale, upon 24 hours' notice to such other persons as have received a copy of the conditions of sale prepared in terms of subrule (7) and to the execution creditor, apply to a magistrate for any modification of such conditions of sale and the magistrate may make such order on the application as he or she thinks just.

(9) The execution creditor may appoint the conveyancer for the purposes of sale and transfer.

(10) The execution creditor or any person having an interest in the due and proper realisation of the property may, by notice given to the messenger within 14 days after attachment, but subject to subrules (11) and (12)—

- (a) require that such property shall be sold by an auctioneer in the ordinary course of business; and
- (b) nominate the auctioneer to be employed.

(11) Where a person other than the execution creditor gives the notice mentioned in subrule (10)—

- (a) he or she shall at the same time deposit with the messenger a sufficient sum to cover the additional expense of a sale by an auctioneer in the ordinary course of business;
- (b) if the deposit in terms of paragraph (a) is not made the notice shall be void;
- (c) if the services of an auctioneer are not obtainable the notice shall lapse;
- (d) where the sale takes place the auctioneer's fees and expenses shall be met in the first place from the surplus which remains after the execution creditor has been satisfied:

Provided that if this surplus is insufficient or if there is no surplus, then the auctioneer's fees and expenses shall be met from the deposit;

- (e) after the auctioneer has been satisfied the messenger shall return the deposit, or so much of it as remains, to the depositor.

(12) If two or more notices in terms of subrule (10) are given the first shall have the preference.

(13) The sale shall be by public auction without reserve and the property shall, subject to the conditions of sale, be sold to the highest bidder.

(14) If no notice is given in terms of subrule (10), the sale shall be conducted by an auctioneer, with the approval of a magistrate, or by the messenger himself or herself if—

- (a) there is no auctioneer carrying on business in the area in which the messenger operates; or
- (b) it is expedient, where a magistrate has so directed, that the messenger should conduct the sale.

(15) The sale shall be held in the presence of a magistrate who shall certify to a provincial magistrate, if that is the case, that the sale was duly and properly conducted and, in his or her certificate, the magistrate shall state the name of the execution debtor, the amount of the purchase price and the name of the purchaser.

(16) If the provincial magistrate is satisfied that the highest price offered is reasonable, having regard to the circumstances of time and place and to the state of the property market, he or she shall within seven days from the date of the sale declare the highest bidder to be the purchaser, subject to confirmation under subrule 19.

(17) The following provisions ((a) or (b)) apply to a sale otherwise than by public auction—

- (a) where all persons interested including the judgment debtor consent thereto, or otherwise with the consent of a provincial magistrate, the messenger may sell immovable property attached in execution otherwise than by public auction, if he or she is satisfied that the price offered is fair and reasonable and that the property is unlikely to realise a larger sum by a sale at a public auction;
- (b) if, after a sale by public auction, a provincial magistrate is not satisfied that the highest price offered is reasonable as provided in subrule (16), the provincial magistrate may direct that the property be sold by private treaty for such price, being greater than the highest offer made at the public auction, as he or she deems fair and reasonable:

Provided that if the messenger is unable to sell the property by private treaty at a price greater than the highest offer, the property shall again be offered for sale by public auction.

(18) Any person having an interest in a sale may apply to court to have it set aside on the ground that the sale was improperly conducted or that the property was sold for an unreasonably low sum or on any other reasonable ground:

Provided that, any person making such application shall give due notice of the application to the messenger stating the grounds of his or her objection to the confirmation of the sale.

(19) If no objection is made to court within seven days of service of the provincial magistrate's declaration of the highest bidder to be the purchaser in terms of subrule (16) or from the date of a sale otherwise than by public auction or by private treaty in terms of subrule (17), as the case may be, the provincial magistrate shall confirm the sale.

(20) Where the property is situated in a province other than that in which the judgment was given, the sale of the property shall be effected by the messenger of the court of the province in which it is situated in the manner provided by this rule.

(21) Upon confirmation of the sale in terms of subrule (19), the messenger shall give transfer of the property to the purchaser against payment of the purchase price and upon performance of the conditions of sale.

(22) The messenger shall not pay out the purchase money until transfer has been given to the purchaser.

(23) The messenger shall forthwith deposit all moneys received by him or her in respect of the purchase price into his or her trust account.

(24) The messenger shall immediately after the sale prepare in order of preference as provided in this rule, a plan of distribution of the purchase money received and—

- (a) the plan shall lie in his or her office for a period of 14 days for inspection by persons having an interest therein, unless they have signified in writing their agreement to the plan;
- (b) a copy of the plan shall be lodged with the clerk of the court.

(25) After deduction from the purchase money of the costs of execution, the following shall be the order of preference—

- (a) the claims of any creditors ranking in priority to the judgment creditor in their legal order of preference;
- (b) the claims of the judgment creditor secured to the extent of his or her judgment and costs;

- (c) the claims of other creditors secured in respect of that property in their legal order of preference.

(26) If any person having an interest in such plan objects thereto he or she shall, within 14 days, give notice in writing to the messenger, clerk of the court and all other persons having an interest therein, of the particulars of his or her objection and may bring such plan before the court for review and—

- (a) such review shall be on seven days' notice to the said messenger, clerk of the court and other interested persons; and
- (b) the court, on review, may hear and determine the matter in dispute in a summary way and may thereafter amend or confirm the plan of distribution or may make such order as it thinks just.

(27) If—

- (a) no objection is lodged to such plan; or
- (b) the persons having an interest in such plan signify their concurrence therewith; or
- (c) such plan is confirmed on review;

the messenger shall pay out the money deposited into his or her trust account in accordance with the plan of distribution.

(28) The messenger shall, when endorsing or on annexing to the warrant the result of the execution required by rule 3 of Order 2, show also the disposal of the amount recovered by him or her, supported by the receipts of the judgment creditor and of the person entitled to the balance, if any.

Attachment of dwelling

9. (1) In this rule—

“dwelling” means a building or part of a building, including a flat, designed as a dwelling for a single family and includes the usual appurtenances and outbuildings associated with such a building;

“Secretary” means the Secretary of the Ministry responsible for the administration of the Housing and Building Act [*Chapter 22:07*].

(2) Whenever a dwelling is attached under rule 8, the messenger shall forthwith send the provincial magistrate or magistrate of the court from which the warrant of execution was issued, as the case may be, written notification that the dwelling has been attached and is to be sold in execution, and the messenger shall take no further steps in regard to the sale of the dwelling for a period of 40 days, pending notification by the magistrate concerned in terms of subrule (4).

(3) Upon receiving notification of the attachment of a dwelling in terms of subrule (2), the magistrate shall forthwith send the Secretary—

- (a) written notification that the dwelling has been attached under this Order and is to be sold in execution; and
- (b) copies of all documents and particulars relating to its attachment.

(4) If, within 30 days after being sent notification under subrule (3), the Secretary notifies the magistrate in writing that he or she proposes to satisfy or settle the judgment creditor's claim from the National Housing Fund established by section 14 of the Housing and Building Act [*Chapter 22:07*], the magistrate shall, without undue delay, notify the messenger in writing.

(5) On receiving notification under subrule (4), the messenger shall—

- (a) inform the judgment creditor of the Secretary's proposal; and
- (b) take no further steps in regard to the sale of the dwelling concerned until a period of sixty days has elapsed from the date on which he or she received such notification.

(6) For the purpose of calculating any time-limit under this Order, any period during which the messenger is required by subrule (2) or (5) to take no steps in regard to the sale of any dwelling shall be disregarded.

ORDER 27

INTERPLEADER

When interpleader relief may be claimed, commencement of interpleader, etc.

1. (1) Relief by way of interpleader may be granted in the following cases—

- (a) where the person seeking relief (in this Order called the applicant) is under any liability for debt, money or movable property, for or in respect of which he or she is or expects to be sued by two or more parties (in this Order called the claimants) making adverse claims thereto; or
- (b) where the applicant is the messenger of the court—
 - (i) claim is made to any property attached by the messenger in execution under any process of the court or to the proceeds or value of any such property by any person other than the person against whom the process issued; and
 - (ii) the execution creditor has not after notice admitted the claim as provided in Order 26 rule 3(7).

(2) An applicant may take out a summons in Form No. CIV 33, calling upon the claimants to appear and state the nature and particulars of their claims and either to maintain or relinquish them.

(3) An applicant other than the messenger shall annex to the summons sued out in terms of subrule (2) an affidavit setting out that—

- (a) he or she claims no interest in the subject matter in dispute other than for charges or costs; and
- (b) he or she does not collude with any of the claimants; and
- (c) he or she will comply with rule 2 concerning the payment into court or transfer or disposal of the subject matter in dispute.

Duties of applicant

2. (1) Where the claims relate to money the applicant shall be required, on delivering the summons mentioned in rule 1(2) to pay the money to the clerk of court who shall hold it until the conflicting claims have been decided.

(2) Where the claims relate to a thing capable of delivery the applicant shall tender the subject matter to the clerk of court when delivering the interpleader notice or take such steps to secure the availability of the thing in question as the clerk of court may direct.

(3) Where the conflicting claims relate to immovable property the applicant shall place the title deeds thereof, if available to him or her, in the possession of the clerk of court when delivering the interpleader notice and shall at the same time hand to the clerk of court an undertaking to sign all documents necessary to effect transfer of such immovable property in accordance with any order which the court may make or any agreement of the claimants.

Orders which court may make

3. (1) If a claimant—

- (a) does not appear in response to the summons; or
- (b) having appeared, neglects or refuses to comply with any order made after his or her appearance;

the court may make an order declaring him or her and all persons thereafter claiming under him or her barred against the applicant, but the order shall not affect the right of the claimants between themselves.

(2) If one or more claimants appear in pursuance of the summons the court may take one or more of the following steps—

- (a) order any such claimant to state, orally or in writing, on oath or otherwise, as to the court may seem expedient, the nature and particulars of his or her claim;
- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose;
- (c) order which of the claimants shall be plaintiff and which the defendant for the purpose of trial;
- (d) try the matters in dispute in a summary manner.

Procedure where matters in issue are tried

4. Where the matters in issue are tried, whether summarily or otherwise, the provisions of Order 19 (“Pre-Trial Conference, Setdown of Trials and Trials”) as to the trial of an action shall, with such changes as may be necessary, apply.

Orders as to costs

5. The court may, in and for the purpose of any interpleader proceedings, make—

- (a) all such orders as to any additional expenses of execution occasioned by the claim as it thinks just; and
- (b) such order as it thinks just as to the payment of costs incurred by the applicant.

ORDER 28

CIVIL IMPRISONMENT

Process to be signed by clerk of court

1. (1) The process of the court for summoning any person for civil imprisonment shall be signed and issued by the clerk of the court, and shall also be signed by the party suing out the same.

(2) When the judgment or order in respect of which proceedings for civil imprisonment are taken was given in any other court, the clerk of the court shall not issue any process until there has been lodged with him or her a copy of the judgment or order in such other court duly certified by the clerk of such court.

Inquiry into judgment debtor’s failure to pay

2. (1) Where the judgment debtor has not paid the amount due, on the return day of the summons or any adjournment thereof the court shall inquire, in accordance with subrule (2) and in the presence of the judgment debtor or his or her legal practitioner, into the question of the judgment debtor’s failure to pay the amount due:

Provided that, if the judgment debtor has failed to appear, either in person or represented by a legal practitioner, the court may make a decree of civil imprisonment against him or her and authorise the issue of a warrant for his or her arrest, if the court is satisfied that the summons was served upon him or her personally.

- (2) In an inquiry in terms of subrule (1), the court shall—
- (a) call upon the judgment debtor to adduce evidence as to his or her financial position; and
 - (b) receive any evidence that may be adduced by or on behalf of the judgment debtor or the judgment creditor in regard to the judgment debtor's financial position and his or her ability to pay the amount due, whether such evidence is adduced orally or by affidavit or in any other manner that the court considers appropriate; and
 - (c) where evidence is adduced orally, permit the cross-examination of the witness concerned.

When court may issue decree of civil imprisonment

3. (1) After an inquiry in terms of rule 2, the court—
- (a) may issue a decree of civil imprisonment against the judgment debtor and authorise the issue of a warrant for his or her arrest, if the court is satisfied, having taken into account the matters referred to in subrule (2) and in section 27 of the Act, that the judgment debtor has the means to pay or the ability to earn the amount of the judgment debt, and that his or her failure or refusal to satisfy the judgment debt is wilful;
 - (b) shall not issue a decree or authorise the issue of a warrant referred to in paragraph (a), if the court is not satisfied as provided in that paragraph, or if the judgment debtor proves, in terms of proviso (ii) to section 27 of the Act, that he or she has no means of satisfying the judgment debt.

- (2) In determining the ability of a judgment debtor to pay the amount due, the court shall take into account the following matters—
- (a) the nature and extent of his or her income and assets; and
 - (b) the amounts needed by him or her for his or her necessary expenses and those of his or her dependants; and
 - (c) any amounts needed by him or her to make payments in terms of any court order or agreement; and

- (d) if he or she is unemployed, the reason therefor; and
- (e) if he or she is employed, whether a garnishee order would be appropriate, in which event the court may adjourn the inquiry to enable proceedings for such an order to be instituted in terms of Order 29.

Additional powers of court

4. (1) In proceedings under this Order the court may—
- (a) limit the judgment debtor’s term of imprisonment;
 - (b) suspend, on such terms and conditions as the court thinks fit, the execution of an order for the personal attachment and imprisonment of a judgment debtor;
 - (c) direct that the order may be reviewed on a specified date or after a specified period;
 - (d) grant such order, including an order as to costs, and give such directions, as the court thinks appropriate.

(2) For the avoidance of doubt, the power of the court under subrule (1)(a) is subject to the limitation provided in section 31 of the Act, namely that no warrant for the arrest of a judgment debtor issued in connection with a decree of civil imprisonment may authorise imprisonment for any continuous period longer than a month, and that the totality of the warrants issued in connection with the same decree may not result in the imprisonment of the judgment debtor for an aggregate period of more than three months.

Warrant to be signed by clerk of court

5. (1) The warrant of the court for the civil imprisonment of any person shall be signed and issued by the clerk of the court, and shall be addressed to the messenger of the court and to the keeper of a specified prison.

(2) A warrant for civil imprisonment shall bear on its face the date when the decree was made and, if any payments have been made under the decree, the date of the last payment.

Debtor failing to pay instalments

6. Where an order is made for civil imprisonment to be suspended so long as certain instalments are paid, the clerk of the court may,

before issuing a warrant for civil imprisonment, require the party applying therefor to satisfy him or her by affidavit that the debtor has failed in due payment of any such instalment.

Effect of multiple orders for civil imprisonment

7. Where there are two or more orders for civil imprisonment against the same debtor, such orders shall be cumulative with effect according to priority of issue of the respective warrants unless otherwise directed by the court.

When warrant for civil imprisonment may be executed

8. (1) A warrant for civil imprisonment may be executed—
- (a) at any hour on any day except a public holiday; and
 - (b) at any place except within the residence of the person to be imprisoned or the precincts thereof:

Provided that a magistrate may, on good cause shown, grant leave for a warrant for civil imprisonment to be executed on a public holiday or to be executed within the residence of the person to be imprisoned or the precincts thereof, as the case may be.

- (2) A warrant for civil imprisonment may not be executed against—
- (a) a member of Parliament or an officer of Parliament as defined in section 2 of the Privileges, Immunities and Powers of Parliament Act [*Chapter 2:08*] while such member or officer is in actual attendance on Parliament or any committee thereof; or
 - (b) a person entitled to immunity from personal attachment under the Privileges, Immunities and Powers of Parliament Act [*Chapter 10*]; or
 - (c) a person upon whom immunity from personal attachment is conferred by any other law.

(3) When executing a warrant for civil imprisonment, the messenger of court, shall ensure that the judgment debtor is given a copy of the warrant.

Clerk of court may release debtor from prison in certain circumstances

9. The clerk of court may release a judgment debtor from prison whenever it is shown to the clerk's satisfaction that the judgment debtor has paid the judgment debt and all the costs which judgment debtor has been ordered to pay, or where the judgment creditor has failed to pay for the judgment debtor's maintenance, or where the judgment creditor consents to his or her release.

Release of debtor by court

10. (1) The court may grant the release of a judgment debtor for good cause shown by him or her in a court application.

(2) The clerk of court and the officer in charge of the prison in which a judgment debtor is kept shall afford the judgment debtor every facility to enable him or her to make an application under subrule (1), including where necessary, providing, preparing and delivering documents and serving process on his or her behalf.

ORDER 29

GARNISHEE ORDERS

How application to be made

1. (1) Application for a garnishee order may be made *ex parte* by lodging such application with the clerk of the court.

(2) Not later than 14 days before applying for a garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor, the applicant shall cause written notice of the application, together with the supporting documents that will be filed with the application, including a copy of the judgment that created the judgment debt concerned and the judgment creditor's affidavit setting forth the amounts still due to him or her in terms of the judgment to be served on—

- (a) the Director of the Salary Service Bureau and the head of the Ministry, department or force in which the judgment debtor is employed, where the judgment debtor is employed by the State otherwise than in the Zimbabwe National Army or in Parliament; or

- (b) the Chief Paymaster of the Zimbabwe National Army and the Commander of the Army, where the judgment debtor is employed in the Zimbabwe National Army; or
- (c) the Director of the Salary Service Bureau and the Secretary to Parliament, where the judgment debtor is a member of the staff of Parliament or is a Senator or member of the House of Assembly.

(3) A notice in terms of subrule (2) shall set forth the date on which the application for the garnishee order is to be made and sufficient information to identify the judgment debtor, including—

- (a) his or her full names; and
- (b) his or her employee code number or force number; and
- (c) the Ministry, department, force or institution in which he or she is employed, as appropriate.

(4) As soon as possible after receiving a notice in terms of subrule (2), the Director of the Salary Service Bureau or the Chief Paymaster of the Zimbabwe National Army, as the case may be, shall send the applicant for the garnishee order and the judgment debtor a notice setting forth—

- (a) the amount of any money that is or will be payable to the judgment debtor by way of salary or wages; and
- (b) the amount and nature of any deductions required to be made from such salary and wages by the Director or the Chief Paymaster; and
- (c) the earliest date from which any payment may be made in terms of a garnishee order.

(5) An application in terms of subrule (1) shall be supported by an affidavit setting forth—

- (a) that the applicant has obtained judgment against the judgment debtor in a magistrates court; and
- (b) that such judgment is still unsatisfied, naming the amount still payable thereunder; and
- (c) that the garnishee resides, carries on business or is employed within the province and is or will be indebted

to the judgment debtor, setting out, so far as is known to the applicant—

- (i) the cause of the debt; and
- (ii) whether or not it is for salary or wages; and
- (iii) the amount of the debt or that such amount is not known to the deponent;

and

- (d) if the debt is in respect of salary or wages, that upon the facts known to the applicant, which shall be stated in the affidavit, the judgment debtor will, after the execution of the order, have a sufficient balance of income to maintain himself or herself and those dependent upon him or her.

(6) Where an application for a garnishee order is made to a court other than that in which judgment was given, there shall be annexed to the affidavit referred to in subrule (5) a certified copy of the judgment.

(7) Where an application for a garnishee order is made against the State for the attachment of salary or wages owed by the State to a judgment debtor, there shall be annexed to the affidavit referred to in subrule (5) a copy of the notice sent by the Director of the Salary Service Bureau or the Chief Paymaster of the Army, as the case may be, in terms of subrule (4).

(8) The clerk of the court shall, as soon as possible, lay the papers referred to in subrules (1), (2), (3), (4), (5) and (6) before a magistrate, who may refuse or grant the application in whole or in part:

Provided that—

- (i) the magistrate before whom such papers are laid may require that the applicant appear in support of his or her application in open court and the court may thereafter refuse or grant the application in whole or in part;
- (ii) in the case of an application for a garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor, the magistrate before

whom such papers are laid shall direct that service of the order shall not restrain the alienation of any debt relating to such salary or wages until the date specified by the Director of the Salary Service Bureau or the Chief Paymaster of the Zimbabwe National Army in terms of subrule (4)(c).

(9) If in open court the judgment debtor admits sufficient of the facts set out in subrules (5) and (6) to warrant an attachment being granted, such admission shall be recorded and application for a garnishee order may be made orally without an affidavit.

(10) On any application in terms of this rule the court may require such further evidence as it thinks fit.

Notes to appear on order

2. (1) The clerk of the court shall note upon the face of an order made under section 33(1) of the Act the day and hour at which it was made.

(2) An order referred to in subrule (1) shall bear on its face the following note in bold type—

- (a) **“TO THE ABOVE-NAMED GARNISHEE. If the debt due by you to the above named judgment debtor was not owing both at the day and hour abovementioned and at the time when this order was served upon you, or if the debt is alleged to be in respect of future salary or wages and such debt will not become due or is subject to any set off or lien of some other person, you should appear at the court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over”;**
- (b) **“TO THE ABOVE-NAMED JUDGMENT DEBTOR. If the judgment against you has been satisfied, or is, for any reason, no longer operative against you, or if the debt is due to you or to become due to you for salary or wages and its attachment will not leave you sufficient means to enable you to maintain yourself and those dependent on you, you should appear at the court and prove the facts; but you cannot be heard on any other point”.**

Garnishee order against the State

3. (1) In the case of a garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor, the order made under section 33(1) of the Act shall be served on the judgment debtor and upon the persons specified in paragraph (a), (b) or (c), as the case may be, of rule 1(2).

(2) In the case of a garnishee order against the State, other than a garnishee order referred to in subrule (1), the order made under section 33(1) of the Act shall be served on the head of the Ministry, department or force that is responsible for holding the moneys or paying the debt, as the case may be, that is to be attached.

Opposition by judgment debtor

4. (1) The judgment debtor may appear on the return day and shall have a *locus standi* to oppose the confirmation of the order, but only on the ground that—

- (a) the judgment had been satisfied otherwise than under the garnishee order or was for some other reason not operative against him or her at the time when he or she received notice of the garnishee application; or
- (b) the debt sought to be attached is for salary or wages and its attachment will not leave him or her a sufficient amount to maintain himself or herself and those dependent on him or her.

(2) If, on the return day, the judgment debtor satisfies the court that the judgment was not so operative, the order shall be set aside, and all the subsequent rules of this Order shall be read subject to this provision.

(3) If it is shown to the court that—

- (a) the debt is due for salary or wages; and
- (b) its attachment, in whole or in part, will not leave the judgment debtor a sufficient amount to maintain himself or herself and those dependent upon him or her;

the order shall be set aside as to such amount and shall only apply to the balance above such salary or wages, and all the subsequent rules of this Order shall be read subject to this provision.

Garnishee to pay money to messenger

5. If the garnishee pays any money pursuant to the order of the court he or she shall pay it to the messenger who shall retain the amount until the return day and shall thereafter deal with it in accordance with the order made by the court.

Allegation by judgment debtor that debt satisfied

6. (1) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him or her, rules 3(2) and (3), 4 and 5 of Order 27 shall apply to the subsequent proceedings in the matter as if—

- (a) the garnishee had taken out an interpleader summons under that Order; and
- (b) the judgment creditor and the judgment debtor were claimants within the meaning of that Order.

(2) After hearing the parties or such of them as appear the court may—

- (a) order execution against the garnishee:

Provided that no garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor shall require any payment to be made by the State before the date specified by the Director of the Salary Service Bureau or the Chief Paymaster of the Army in terms of rule 1(4)(c); or

- (b) declare the claims of any person to the debt attached to be barred; or
- (c) dismiss the application; or
- (d) make such other order as it thinks just.

Judgment debtor ceasing to be employed by garnishee

7. Where a garnishee order has been made for the attachment of salary or wages to be earned in the future and thereafter the judgment debtor ceases to be employed by the garnishee, the latter shall immediately give notice to the judgment creditor or his or her legal practitioner.

ORDER 30

RESCISSION, VARIATION OR CORRECTION OF JUDGMENTS AND ORDERS

Application for rescission or variation of default judgment

1. (1) Any party against whom a default judgment is given may, not later than one month after he or she has knowledge thereof, apply to the court to rescind or vary such judgment.

(2) Any application in terms of subrule (1) shall be on affidavit stating shortly—

- (a) the reasons why the applicant did not appear or file his or her plea; and
- (b) 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 pauper under Order 5, no application in terms of subrule (1) shall be set down for hearing until the applicant has paid into court, to abide the directions of the court—

- (a) the taxed amount of the costs awarded against him or her under such judgment; and
- (b) the sum of fifty dollars as security for the costs of the application.

(4) Unless the applicant proves to the contrary, it shall be presumed that he or she had knowledge of such judgment within two days after the date thereof.

(5) Where money has been paid into court under subrule (3) and has not been paid out after two years of the date on which it was paid into court, the clerk of the court shall return the money to the applicant and shall, at the same time, give notice to the respondent that he or she is doing so.

(6) If the applicant cannot be found, the money referred to in subrule (5) shall be paid into the Guardian's Fund to the credit of the applicant.

Orders which court may make

2. (1) On hearing an application in terms of rule 1 and being satisfied that—

- (a) the applicant was not in wilful default; and
- (b) there is a good prospect that the proffered grounds of defence or the proffered objection may succeed in reversing the judgment;

the court may—

- (c) rescind or vary the judgment in question; and
- (d) give such directions and extensions of time as necessary for the further conduct of the action or application.

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

(3) If an application in terms of rule 1 is dismissed the default judgment shall become a final judgment.

Application of Order to rescission of other judgments

3. The rules contained in this Order shall, with such changes as may be needed, apply to any judgment which may, under section 39 (“Rescission and alteration of judgment”) of the Act, be rescinded, varied or corrected by the court.

Application for rescission by person affected by judgment

4. (1) 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 seven days after he or she has knowledge thereof, be so rescinded, varied or corrected by the court.

(2) Rules 1 and 2 shall, with such changes as may be needed, apply to any application referred to in subrule (1).

ORDER 31

APPEALS AND REVIEWS

Method of noting appeal or cross-appeal

1. (1) An appeal may be noted within twenty-one days after the date of the judgment appealed against.

(2) A statement delivered in terms of subrule (1) shall become part of the record.

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

Time within which to prosecute appeal

3. (1) The party noting an appeal or cross appeal shall prosecute the same within such times as may be prescribed by rules of the High Court.

(2) In default of prosecution in terms of subrule (1), the appeal or cross-appeal shall be deemed to have lapsed, unless the High Court sees fit to make an order to the contrary.

Record of trial

4. (1) The clerk of the court shall, as soon as reasonably possible after the date of noting an appeal; lodge with the Registrar of the High Court the original record together with four typed copies, which copies shall be certified as true and correct copies.

(2) The copies of the record shall be—

- (a) clearly typed with double or one and a half linear spacing in black record ink and on one side of the paper only;
- (b) paginated from the first to the last page, whether the pages contain evidence or not, and at the top of each page containing evidence the name of the witness giving such evidence shall appear.

(3) Every tenth line on each page of the copies of the record shall be numbered in the left hand margin.

(4) The evidence in the original record shall be paginated from the first to the last page.

(5) All records shall contain a complete and correct index of the evidence and of all documents and exhibits in the case, the nature of the exhibits being briefly stated in the index.

(6) All records shall be securely bound in stout covers disclosing—

- (a) the names of the parties; and

(2) An appeal shall be noted by—

- (a) the delivery of notice; and
- (b) unless the court of appeal otherwise directs, giving security for—
 - (i) the respondent’s costs of appeal to the amount of one hundred dollars;
 - (ii) the costs of the preparation of a copy of the record to the amount estimated by the clerk of the court:

Provided that a clerk of the court may, in his or her discretion, accept a written undertaking from the appellant to pay for the costs of the preparation of the record.

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

(4) A notice of appeal or of cross-appeal shall state—

- (a) whether the whole or part only of the judgment or order is appealed against and, if part only, then what part; and
- (b) in the grounds of appeal, concisely and clearly the findings of fact or rulings of law appealed against; and
- (c) the nature of the relief sought; and
- (d) the date of judgment and name of the court against whose judgment the appeal is noted.

Magistrate’s comments to grounds of appeal

2. (1) Upon the delivery of a notice of appeal the magistrate shall within 14 days deliver to the clerk of the court his or her comments in writing showing, so far as may be necessary, having regard to the written judgment already delivered by him or her—

- (a) the facts he or she found to be proved; and
- (b) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and
- (c) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

- (b) the court appealed from; and
- (c) the names of the legal practitioners of the parties.

(7) Bulky records shall be divided into separate conveniently sized volumes numbered consecutively.

(8) Merely formal documents shall be omitted from the records, and no document shall be included more than once.

(9) Subject to subrule (10), the clerk of the court, after consultation with the magistrate, shall omit from the record—

- (a) all documents which are not relevant to the appeal; and
- (b) the evidence of any witness, or any part of such evidence, which is not relevant to the appeal.

(10) The magistrate may, on application by either party, order the clerk of court to include any document or evidence in the record.

Abandonment by respondent of judgment

5. 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 or she abandons the whole or, if part only, what part of such judgment.

Agreement by parties that court's decision shall be final

6. Where the parties agree, under section 40(1) of the Act, that the decision of the court shall be final—

- (a) either party may lodge the memorandum of such agreement with the clerk of the court; and
- (b) such memorandum shall thereupon become part of the record in the action or matter.

Preparation and lodging of review record and fees

7. (1) The clerk of the court whose proceedings are being brought on review, shall, within twelve days of the date of service of the application for review, lodge with the Registrar of the High Court, the original record, together with two typed copies, which copies shall be certified as true and correct copies. The parties to the review requiring copies of the record for their own use shall obtain them from the clerk of court.

(2) Each copy of the record shall be clearly typed on A4 size double spaced in black record ink and on one side of the paper only. The copies of the record shall be paginated from the first to the last page whether the pages contain evidence or not, and at the top of each page containing evidence the name of the witness giving such evidence shall appear.

(3) Every tenth line of each page of the copies of the record shall be numbered in the left hand margin.

(4) The evidence in the original record shall be paginated from the first to the last page.

(5) Every record shall contain a complete and correct index of the evidence and of all documents and exhibits in the case, the nature of the exhibits being briefly stated in the index.

(6) Every record shall be securely bound in stout covers disclosing the names of the parties, the court whose proceedings are being brought on review and the names of the attorneys of the parties.

(7) Bulky records shall be divided into separate conveniently sized volumes numbered consecutively.

(8) Merely formal documents shall be omitted, and no document shall be set forth more than once.

(9) The clerk of court shall charge a prescribed fee for the preparation of the record.

(10) Any fees or charges incurred by a party in obtaining copies of the record under subrule (9) of this rule shall form part of the costs of review.

Omission of exhibits and portions of documents by consent

8. By consent of the parties exhibits having no bearing on the point at issue in the review and the immaterial portions of lengthy documents may be omitted. Such consent, setting out that part of documents have been omitted, shall be signed by the parties or their legal practitioners and be made part of the review record.

ORDER 32

COSTS AND MESSENGER'S FEES

Orders as to costs

1. (1) The court, in giving judgment or making any order, including therein adjournment and amendment, may make such order as to costs as it thinks just.

(2) The costs of any application or order or issue raised by pleadings may be—

- (a) awarded by the court irrespective of the judgment in the action; or
- (b) made costs in the action; or
- (c) 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 for good cause orders otherwise—

- (a) costs of interim orders shall not be taxed until the conclusion of the action;
- (b) a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.

(4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

Costs which may be allowed on taxation

2. (1) The scale of fees to be taken by legal practitioners as between party and party shall be that set out in Table A of the Second Schedule, in addition to necessary expenses:

Provided that the taxing officer, may in exceptional cases and for good and sufficient reason depart from any of the provisions of Table A of the Second Schedule where strict adherence to such provisions would be inequitable.

(2) Such fees shall be allowable whether the work has been done by the legal practitioner or by his or her clerk, but shall be allowable only in so far as the work to which they have been allocated has in fact and necessarily been done.

(3) The clerk of the court shall on every taxation allow all 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 the same, no costs shall be allowed which appear to the clerk of the court to have been incurred or increased through over caution, negligence or mistake.

(4) Where an action is defended and it is impossible for a party to obtain the services of a local legal practitioner, he or she may employ some other legal practitioner, and upon proof thereof the court may, if costs are awarded to him or her, order that such costs shall include the reasonable travelling and subsistence expenses of such legal practitioner.

(5) 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 or her legal practitioner.

(6) Where the costs in respect of the claim and counterclaim are awarded against different parties, the court may award part of the hearing fee to one party and the remainder to the other party.

(7) Where costs in respect of the claim and counterclaim are awarded to different parties—

- (a) they shall on taxation be, as far as possible, apportioned to the respective claims; and
- (b) any such costs which cannot be so apportioned shall be costs in the main claim.

(8) 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.

Taxation of bill of costs

3. (1) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's 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 five days' notice of taxation to the other party.

(2) The clerk of the court shall thereupon in accordance with the provisions of Table A of the Second Schedule, tax and allow the costs and expenses so awarded, but witness fees shall not be allowed in taxation unless properly vouched for.

(3) 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.

(4) Where a bill of costs as between legal practitioner and client is required to be taxed, taxation shall take place on at least five days' notice thereof to the legal practitioner or client, whether an action therefor is pending or not.

Messenger's fees and charges

4. (1) The fees and charges to be taken by the messenger of the court shall be those prescribed by Table B of the Second Schedule.

(2) An account of fees or charges furnished by the messenger shall contain the following note—

“You may require this account to be taxed and vouched before payment.”.

(3) Any party having an interest may, by notice in writing, require the fees, charges or expenses claimed by or paid to the messenger to be taxed by the clerk of the court, and may attend on such taxation.

(4) Upon taxation in terms of subrule (3) or in any other case where the clerk of the court so requires the messenger shall vouch to the satisfaction of the clerk of the court all expenses claimed by him or her.

(5) Where the messenger's fees or charges are taxed and passed in full the messenger shall be allowed an additional fee of ten dollar for attending the taxation.

Review of costs and taxation

5. (1) Any party having an interest may, within seven days after he or she has knowledge thereof, bring before a magistrate for review —

- (a) the costs and expenses claimed in any undefended action;
- (b) the assessment by the clerk of the court of any costs and expenses;
- (c) the taxation by the clerk of the court of any costs awarded in any action or matter;
- (d) the taxation by the clerk of the court of any fees or charges of the messenger.

(2) A review in terms of subrule (1) shall be on five days' notice to the party entitled to receive or liable to pay such costs or expenses, or to the messenger, as the case may be.

(3) Any party dissatisfied with the decision of the magistrate as to any item or part of any item which was objected to before the clerk of the court may, after notice to the other party, within five days of the decision require the magistrate to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the magistrate:

Provided that, save with the consent of such magistrate, no case shall be stated where the total of the amount which he or she has disallowed or allowed as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than twenty dollars.

(4) Either party may within a further seven days submit contentions in writing to the magistrate.

(5) The magistrate shall lay the case forthwith, but no later than 14 days after receipt of such contentions, together with the contentions submitted and his or her own report before a judge who may —

- (a) decide the matter upon the case and contentions so submitted, together with any further information which he may require from the magistrate; or
- (b) if he or she thinks fit, decide the matter after hearing the parties or their legal practitioners in chambers; or

(c) refer the case for decision to the High Court.

(6) The judge or the court deciding a matter in terms of subrule (5) may make such order as he or she or it thinks fit, including an order that the unsuccessful party pay the opposing party a sum fixed by the judge or the court as costs.

Fees payable to clerk of court

6. The fees to be taken by the clerk of the court shall be those prescribed by Table C of the Second Schedule.

ORDER 33

CONSTITUTIONAL APPLICATIONS, REFERRALS AND APPEALS

Applications for determination of constitutional issue

1. (1) A party who intends to raise a civil constitutional issue before a magistrate shall file a court application with the clerk of court.

(2) The court application shall—

- (a) be supported by an affidavit deposed to by a person who can swear positively to the facts, which details the facts and the basis on which the applicant seeks relief; together with any supporting documents which are relevant; and
- (b) state a physical address within a fifteen-kilometre radius from the court house, at which the applicant will accept service of all process and documents in the proceedings; and
- (c) be addressed to the clerk of court and served on the respondent and all interested parties; and
- (d) request the respondent to file and serve his or her notice of opposition within ten days of being served with the application; and
- (e) be signed by the party making it or his or her legal practitioner.

Notice of opposition

2. (1) The respondent shall, within the time stipulated in the application, file with the clerk of court and serve on the other parties a notice of opposition in form CIV 43.

(2) The notice of opposition shall be supported by affidavit deposed by a person who can swear positively to the facts, which details the facts and the basis on which the respondent opposes the application, together with any supporting documents which are relevant.

(3) The notice shall provide an address for service within a radius of fifteen kilometres from the court house.

(4) As soon as possible after filing a notice of opposition and opposing affidavit in terms of subrules (1) and (2), the respondent shall serve copies upon the applicant and thereafter file proof of such service with the clerk of court within two days of such service.

(5) A respondent who fails to file a notice of opposition in terms of subrules (1) and (2) shall be barred and the clerk of court shall require the applicant to file heads of argument and proceed to set down the application for hearing.

(6) The court may require the applicant to address it on the merits notwithstanding that the respondent has been barred.

Answering affidavit

3.(1) The applicant may file with the clerk of court an answering affidavit together with any supporting documents, within ten days of service upon him or her of the notice of opposition.

(2) As soon as possible after filing an answering affidavit in terms of subrule (1), the applicant shall serve a copy of it upon each respondent and file with the clerk of court proof of such service within two days of the service.

Set down of applications

4. (1) Where the respondent has been barred in terms of subrule (5) of rule 2, the applicant may, without notice to the respondent, request the clerk of court in writing, to set the matter down for hearing.

(2) Where the respondent has filed a notice of opposition and an opposing affidavit and the applicant has filed an answering affidavit, the applicant may request the clerk of court in writing, to set the matter down for hearing.

(3) Where the respondent has filed a notice of opposition and an opposing affidavit and, within ten days thereafter the applicant has not filed an answering affidavit, the respondent, on notice to the applicant may either—

- (a) request the clerk of court, in writing to set the matter down for hearing; or
- (b) make a chamber application to dismiss the application for want of prosecution.

(4) Where the respondent has neither requested that the application be set down nor applied for it to be dismissed for want of prosecution, the clerk of court shall set the application down for hearing and notify the parties accordingly.

Referrals to the Constitutional Court

5. (1) Where a magistrate wishes to refer a matter to the Constitutional Court *mero motu* in terms of section 175(4) of the Constitution, he or she shall—

- (a) request the parties to make submissions on the constitutional issue or question to be referred for determination; and
- (b) state the specific constitutional issue or question he or she considers should be resolved by the Constitutional Court.

(2) Where a magistrate is requested by a party to the proceedings before him or her, to refer the matter to the Constitutional Court and he or she is satisfied that the request is not frivolous and vexatious, he or she shall refer the matter to the Constitutional Court.

(3) A referral under subrule (1) and (2) shall be in Form CCZ 4 and be accompanied by a copy of the record of proceedings and of affidavits or statements from the parties setting out the arguments they seek to make before the Constitutional Court.

(4) Where there are any factual disputes involved, the court seized with the matter shall hear evidence from the parties and determine the factual issues:

Provided that where there are no disputes of fact, the parties shall prepare a statement of agreed facts.

(5) The record of proceedings referred to in subrule (3) shall contain the evidence led by both sides and where applicable, specific findings of fact by the magistrate and the issue or question for determination by the Constitutional Court.

(6) Where parties have in terms of the proviso to subrule (4) prepared a statement of agreed facts, that statement shall be incorporated into the record in the place of evidence and specific findings of fact.

(7) The magistrate shall direct the clerk of court to prepare and transmit the record referred to in subrules (3) and (5) to the Registrar of the Constitutional Court within 14 days of the date of such direction:

Provided that before transmitting the record the clerk of court shall ensure and certify that it is correct and accurate and in the case of a referral in terms of subrule (2), that it contains an appropriate draft order.

Referral for confirmation of Constitutional invalidity

6. Where a magistrate declares any law constitutionally invalid the clerk of court shall comply with the provisions of rule 31(1) of the Constitutional Court Rules, 2016 (Statutory Instrument 61 of 2016).

Appeals to the Constitutional Court

7. Any party who wishes to appeal against the decision of a magistrate on a constitutional matter shall comply with the procedure laid out in rules 32 to 39 of the Constitutional Court Rules, 2016 (Statutory Instrument 61 of 2016).

ORDER 34

GENERAL

Effect of failure to comply with rules

1. (1) Except as is otherwise provided in these rules, failure to comply with these rules or with any request made in pursuance thereof shall not be a ground for 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 made in terms of subrule (2) is not fully complied with within the time stated, the court may on application—

- (a) forthwith enter judgment in the action or dismiss the action against the party so in default; or
- (b) adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as it thinks just.

(4) The court may on an application in terms of subrule (2) or (3) order such stay of proceedings as it thinks necessary.

Extension of prescribed time limits

2. (1) Any time limit prescribed by these rules, other than the period within which an appeal must be noted, may be extended—

- (a) by any party with the written consent of the opposite party; or
- (b) by the court on application and on such terms as to costs and otherwise as it thinks just.

(2) Where there has been short service without leave the court may, instead of dismissing the application, adjourn it until, at the earliest, the expiration of the period required for full service and thereupon any objection to short service shall lapse.

Adjournment or postponement of case

3. (1) The trial of an action or the hearing of an application

or matter may be adjourned or postponed, by the court, either on application or of its own motion.

(2) Where an adjournment or postponement of a trial or hearing is made *sine die*—

- (a) the further hearing of the action, application or matter shall be subject to the same notice as was required for the trial of the action or for the hearing of the application or matter;
- (b) the notice in such case may be given by either party to the action or application.

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

Failure by party to appear

4. (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 removed from the roll with costs and the plaintiff shall reset the case down in terms of rule 2 of Order 19, failing which the defendant may apply for the dismissal of the plaintiff's claim in terms of rule 3(3) of Order 20.

(2) If a defendant or respondent does not appear a judgment against him or her, not exceeding the relief claimed, may be given with costs [after consideration of such evidence, either oral or by affidavit, as the court deems necessary].

Effect of withdrawal or dismissal of action or decree of absolution

5. (1) The withdrawal or dismissal of an action [on technicalities] or a decree of absolution from the instance shall not be a defence to any subsequent action.

(2) 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 [on technicalities] or decree of absolution, the court may on application, if it thinks fit and if the costs have been taxed and payment thereof has been demanded, order—

- (a) a stay of such subsequent action until such costs are paid; and

- (b) that the plaintiff shall pay the costs of such application to stay the proceedings.

Validity of process and pleadings

6. (1) Every process, notice or pleading shall be legibly written or typed.

(2) No process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.

(3) If any party has in fact been misled by any error referred to in subrule (2) in any process or notice served on him or her, the court may on application grant him or her such relief as may be just and may for that purpose set aside the process or notice and rescind any default judgment given thereon.

Records, etc., of previous trials

7. (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.

Joinder third party

8. (1) The court may, on application by a person desiring to intervene in an action and having an interest therein, grant leave to such party to intervene on such terms as it thinks just.

(2) The court may, on application by any party to an action, order that another person shall be added either as a plaintiff or as a defendant, on such terms as it thinks just.

When defendant may require plaintiff to provide security for costs

9. (1) Where a plaintiff—

- (a) is not resident within Zimbabwe; or
- (b) is an unrehabilitated insolvent; or

(c) has no substantial interest in the cause of action; the defendant may, unless the plaintiff has obtained leave to sue as a pauper, after service of the summons and before close of the pleadings require him or her to give security for the costs of the action, not including the costs of any counterclaim made by the defendant:

Provided that if the fact relied upon first came to the knowledge of the defendant after the close of pleadings the defendant may within seven days after such fact has come to his or her knowledge require that such security be given.

(2) If a request in terms of subrule (1) is not complied with within five days, the court may on application either stay the proceedings until such request is complied with or dismiss the action.

Lapsing of summons

10. If the summons in an action is not served within two years of the date of its issue or, having been served, the plaintiff has not within that time 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 debtor an extension of time in which to pay the debt claimed or any portion thereof has been granted to him or her; and
- (b) that in terms of the agreement judgment cannot, save in case of default, be sought within a period of two years from the issue of the summons; and
- (c) the period of the extension; the summons shall not lapse until twelve months after the expiration of the period of extension.

Practice directions

11. The Chief Justice may in appropriate circumstances issue practice directions.

Directions

12. (1) The Chief Justice, as head of the judiciary may, after consulting the Judge President, give practice directions of general application to magistrates.

(2) The Judge President may, with the leave of the Chief Justice and after consulting with the Chief Magistrate, may give practice directions of general application to magistrates.

(3) The Chief Magistrate may, with the leave of the Judge President, give practice directions of general application to magistrates.

(4) In the event of inconsistency, the practice directions of the Chief Justice shall prevail over those of the Judge President and Chief Magistrate, and the practice directions of the Judge President shall prevail over those of the Chief Magistrate.

(5) Directions published in terms of this rule shall be supplementary to, and not in substitution of, any provision of these rules unless—

- (a) it is expressly provided that the direction substitutes the provision in question; and
- (b) the direction is followed up within 30 days by an appropriate amendment of these rules, in default of which the direction shall cease to be effective.

Repeals

13. The rules specified in the Third Schedule are repealed.

FIRST SCHEDULE (*Order 1 Rule 4(1)*)

FORMS

Form

- CIVA1 Application for Authority to Use an Electronic Mail Address etc.
- CIV1 General headings.
- CIV2 General conclusions.
- CIV3 Notice of application.
- CIV4 Summons commencing action.
- CIV5 Particulars of claim.
- CIV6 Conclusion to particulars of claim.

- CIV6A Certificate of service.
- CIV7 Notice under rule 14 of Order 7.
- CIV8 Interdict in terms of section 38 of the Act.
- CIV9 Request for default judgment.
- CIV10 Notice of withdrawal.
- CIV11 Notice of application for summary judgment.
- CIV12 Affidavit in support of application for summary judgment.
- CIV13 Affidavit under section 34 of the Act.
- CIV14 Security for rent attachment.
- CIV15 Order for rent attachment.
- CIV16 Consent to sale of attached goods.
- CIV17 Forms as to inspection and production of documents.
- CIV18 Certificate of record.
- CIV19 Order obtained *ex parte*.
- CIV20 Order for arrest of person.
- CIV21 Warrant for fine or arrest of a witness in default.
- CIV22 Warrant for the apprehension of a witness in default.
- CIV23 Security on orders of attachment or interdict made *ex parte*.
- CIV24 Subpoena.
- CIV25 Security for stay of execution.
- CIV26 Security when execution is allowed pending appeal.
- CIV27 Warrant of ejection and execution against property.
- CIV28 Warrant of delivery and execution against property.
- CIV29 Warrant of execution against property.
- CIV29A Notice of removal.
- CIV30 Notice of attachment in execution
- CIV31 Security bond on attachment.
- CIV32 Interpleader summons.
- CIV33 Interpleader summons.
- CIV34 Security under rule 2 of Order 26.
- CIV35 Summons for civil imprisonment.
- CIV36 Warrant for civil imprisonment.
- CIV37 Affidavit in support of application for garnishee order.
- CIV38 Garnishee order.
- CIV39 Agreement not to appeal.
- CIV40 Notice of abandonment of part of claim, *et cetera*.
- CIV41 Commission *de bene esse*.
- CIV41A Instruction for immediate service of process.
- CIV42 Notification by messenger.
- CIV43 Notice of Opposition.

Magistrates Court (Civil) Rules, 2019

FORMS

Form CIV A1

APPLICATION FOR AUTHORITY TO USE AN ELECTRONIC MAIL ADDRESS, WEBSITE,
PORTAL OR OTHER INTERACTIVE ELECTRONIC LINK (Order 1 Rule 6(1))

To: The Chief Magistrate

I,.....
apply for authority use an electronic mail address, website, portal or other
interactive electronic link for effecting notices, service of process, filings or
other transactions with or through a magistrates court.

The following are relevant particulars of the electronic mail address, etc.:

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

Declarations

I/We, the undersigned do hereby certify and undertake—

- (a) that no person other than the Signatory/Signatories or his or her authorised agents (whose names and other relevant particulars shall be notified in advance to the Clerk of the Court concerned) shall use or have access to the electronic mail address, website, portal or other interactive electronic link;
- (b) that every precaution shall be taken to ensure against unauthorised use of the electronic mail address, website, portal or other interactive electronic link in connection with any legal proceedings;
- (c) to comply promptly with any direction referred to in Order 1 Rules 6(6) and (7).

Breach and termination of Authority

Any violation of the terms of this authority shall be grounds for its immediate termination.

The Clerk of the Court concerned Registrar shall determine, on reasonable grounds—

- (a) whether the Applicant has violated any condition subject to which this authority is granted;
- (b) whether the Applicant has not honoured his or her above declared undertakings;
- (c) what actions, if any, are necessary to remedy a breach of this authority, and the Applicant shall comply with pertinent instructions from Clerk.

Material changes

Any material changes to the particulars furnished by a Applicant in the particulars furnished below shall be promptly notified the Clerk, and in any event within seven days from the change having occurred or been made.

Signed:
Date:
Print or Type Name:
Title:
Firm/Organisation:
Phone (land and/or cell): Fax:
E-mail:

Application received by the Clerk of the..... Magistrates Court on.....(Signature of Clerk:

Authority of Chief Magistrate:

GIVEN under hand, at.....this..... day of 20..... subject to the following conditions:

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

Form CIV 1

General Headings

(1) IN ACTIONS

In the Magistrates Court for the Province of held at

No. of 20

Between A B, Plaintiff
and
CD, Defendant,

(2) IN APPLICATIONS

In the Magistrates Court for the Province of held at

No. of 20

In the matter of the application of—

Magistrates Court (Civil) Rules, 2019

AB, applicant
against
CD, Respondent,

(3) IN GARNISHEE MATTERS

In the Magistrates Court for the Province of
held at
No. of 20

In the matter of—
AB, Judgment Creditor
CD, Judgment Debtor
EF, Garnishee

Form CIV 2

General Conclusions

(1) PROCESS FOR SERVICE

Dated at, thisday of, 20.....
.....
Clerk of Court

(2) PROCESS FOR EXECUTION

And return as required by law what you have done by virtue hereof, for which shall be your warrant.

Dated at, thisday of, 20.....
.....
Clerk of Court

By Order of the Court

.....
(Legal Practitioner for) Execution Creditor

(3) NOTICE

Dated at, thisday of, 20.....
.....
Legal Practitioner for

the.....

(4) SECURITY BOND

In witness whereof the said and at
..... thisday of, 20.....

As witnesses:

1. (*Signature and address*)
.....
.....

2. (*Signature and address*)
.....
.....

(5) AGREEMENT

Witness our hand this day of, 20.....

.....
Plaintiff or Plaintiff's Legal Practitioner

.....
Defendant or Defendant's Legal Practitioner

As witnesses:

1. (*Signature and address*)
.....
.....

2. (*Signature and address*)
.....
.....

(6) AFFIDAVIT

Sworn at, thisday of20

Before me,

Signed
Justice of the Peace
(or Commissioner of Oaths)

General Form of Notice of Application

(Heading)

TAKE notice that application will be made to this Court on
....., the day of20....., at..... m,
for an order that (*state shortly terms of order applied for*).

(Conclusion)

Summons Commencing Action

No.

Issued by

Clerk of the Court

MAGISTRATE'S COURT: PROVINCE OFHELD
AT

PLAINTIFF:

TO: DEFENDANT:

.....

You are hereby summoned that you do within.....days after the service of the Summons upon you, enter or cause to be entered with me, and also the plaintiff or his or her legal practitioner at the address specified herein an appearance (i.e. file a notice of intention to defend) to answer

the claim of: the plaintiff herein for

\$......and costs, particulars whereof are endorsed hereon.

TAKE NOTICE THAT:

1. In default of your doing so 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, but that, on payment of the said claim and costs to me within the said time, judgment will not be given against you herein; and that if, before the expiration of the said time you so pay lodge with me and

the plaintiff or his or her legal practitioner a consent to judgment, you will save judgment charges.

2. If you allege any exception, defence or counter-claim you must within seven days after appearance, deliver to me and to the plaintiff within seven days after appearance, deliver to me and to the said plaintiff or his or her legal practitioner a statement in writing of the nature and grounds thereof.

PARTICULARS:

PLAINTIFF'S LEGAL PRACTITIONER ADDRESS

Costs, if the action is undefended:
 Legal practitioner's Summons Charges
 Court fees
 Messenger's Fees on Re-issue _____
 SUB-TOTAL
 Legal practitioner's Judgment Charge _____
 TOTAL _____

Messenger's Fees

.....
(Endorsement on back of summons)

CONSENT TO JUDGEMENT

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

Dated thisday of 20.....

.....
Defendant

APPEARANCE TO DEFEND To: (1) THE CLERK OF COURT
 (2) PLAINTIFF OR PLAINTIFF'S
 LEGAL PRACTITIONERS

Enter an appearance for the Defendant who intends to defend action.

Magistrates Court (Civil) Rules, 2019

Dated thisday of 20.....

Defendant or Defendant’s Legal practitioner

Address for service:

Postal Address

Note 1: In terms of the Rules where Defendant wishes to consent to judgment or to enter an Appearance to Defend, a notice in the appropriate form shown above must be filed of record with the clerk of court and a copy served on the Plaintiff.

Note 2: In terms of the rules, the plaintiff and the defendant are required to give an address for service within a radius of fifteen kilometres of the court -house from which the summons is issued.

Form CIV 5

Particulars of Claim

(Note—These forms are examples only)

(1) The plaintiff’s claim is for the cost of goods sold and delivered.

Particulars:	\$ c
2016 – 1st January:	
Balance of account for butcher’s meat to this date	40 00
2016 – 1st January to 31st March:	
Butcher’s meat	40 00
Total	80 00
2016 – 1st February–Paid	<u>30 00</u>
Balance	50 00

with costs, if the action is undefended, as follows:

S.I. 11 of 2019

	Summons	Judgment
	\$ c	\$ c
Legal practitioner's charges	3 00	2 00
Court fees	2 00	
Messengers fees	95	
Total	5 95	<u>2 00</u>
Total	7 95	

(Conclusion)

- (2) The plaintiff's claim is against the defendant, as maker of a promissory note for fifty dollars, dated the 1st January, 2016, payable four months after this date to AB, of which the plaintiff is now the holder, which note was, on the 1st May, 2016, duly presented to the Standard Bank, First Street, Harare, where the same was payable, and was dishonoured.

Particulars:	\$ c
Principal	50 00
Interest <i>per centum</i>	<u>2 00</u>
Amount due	52 00

with costs, etc,

- (3) The plaintiff's claim is for money lent to the defendant.

Particulars:	\$ c
1st January, 2016	100 00
1st June, 2016 –Paid	50 00
Balance	50 00
Interest at <i>per centum</i>	<u>10 00</u>
Total	60 00

with costs, etc,

- (4) The plaintiff's claim is

- (1) for arrears of rent due in respect of the defendant's monthly tenancy of 5 Third Street.

Where the summons contains an order interdicting the removal of goods *pendent lie*, add –

Magistrates Court (Civil) Rules, 2019

“and for confirmation of the order appearing on the face of this summons”.

Particulars:	\$ c
1st January, 2016–Rent due for the month of January, 2016	20 00
1st February, 2016–Rent due for the month of February, 2016	20 00
1st March, 2016–Rent due for the month of March, 2016	<u>20 00</u>
Total	60 00
15th February, 2016 – Paid	<u>10 00</u>
Balance	50 00

with costs, etc,
and (2) for ejectment,

Particulars:

The plaintiff, on the 29th February, 2016, gave the defendant one month’s notice to leave the said premises.

- (5) The plaintiff’s claim is for arrears of wage (or salary) as a
at
dollars. cents per.....

Particulars:	\$ c
January, 2016	100 00
February, 2016 –Paid	50 00
Balance	50 00
15th February, 2016 – Paid	<u>10 00</u>
Balance	60 00

with costs, etc,

- (6) The plaintiff’s claim is for the delivery to him of movable property or damages in lieu of the delivery thereof, and for damages for the past non-delivery thereof, and for confirmation of the order of court, dated the
day of, 20....., interdicting the disposal of such movable property.

Particulars:

1. On the 18th March, 2016, the plaintiff lent to the defendant a mahogany table and three bentwood chairs, value.....fifty-four dollars, to be returned on demand.
2. On the 27th August, 2016, the plaintiff demanded the return of the said table and chairs.
3. The defendant refused, and still refuses, to return the said table and chairs.
4. The reasonable hire of such table and chairs is one dollar a month.

Whereof the plaintiff claims

(1) Return of the said table and chairs;	
(2) Damages –	\$ c
in addition to delivery	3 00
in lieu of delivery	54 00

with costs, etc.

-
- (7) The plaintiff's claim is for damages for personal injuries caused by the defendant's negligence.

Particulars:

1. On the 14th October, 2016, at about 10 a.m., the plaintiff was crossing Main Street, Bulawayo from east to west.
2. At the same time, the defendant was driving a motor-car along the said street from north to south.
3. The defendant, by negligent driving, struck the plaintiff and threw him to the ground, inflicting the following injuries:—left arm broken; three ribs broken; face severely cut; coat torn.
4. The plaintiff, by reason of the above injuries was unable to pursue his occupation as miner for seven weeks and incurred the following damages—

	\$ c
medical attendance, etc.....	34 00
loss of earnings.....	120 00
damage to coat.....	3 00
pain and suffering.....	<u>500 00</u>
Total.....	657 35

Magistrates Court (Civil) Rules, 2019

5. The plaintiff admits that he is indebted to the defendant in the sum of the two hundred dollars as damages for breach of contract to deliver to the defendant one thousand tonnes of coal, entered into between the parties verbally on the 12th September, 2016.

\$ c

And sets off— 200 00

Balance..... 457 35

6. In order to bring the claim within the jurisdiction of the court, the plaintiff abandons fifty-seven dollars thirty-five cents and claims four hundred dollars, with costs, etc
-

- (8) The plaintiff’s claim is as cessionary of a claim by JK, of 444 Station Street, Gweru, Legal practitioner, for professional services rendered, ceded to the plaintiff by the said JK in writing, dated the 11th August, 2016. (Attach the deed of cession and proof of payment.)

Particulars:

1st and 8th March 2016

Agreed fee for defence in S v CD, forty-two dollars, with costs, etc.

Form CIV 6

Conclusion to Particulars of Claim

.....
Plaintiff or Plaintiff’s Legal practitioner.

Address:.....

Postal Address:.....

Form CIV 6A

Certificate of service

(Heading)

I,....., the legal practitioner of record/an employee of the legal practitioner of record for the hereby certify that at.....(state precisely where service was effected) on theday of,20..... at.....(time), I served the following documents..... by(describe method of service).

Dated at thisday of, 20.....

Signature.....

Form CIV 7

Notice under Order 7, Rule 14, for Service by Notice in Newspaper

(Heading)

To:
CD of

TAKE notice that summons has been issued against you in this court by
AB, of

for the sum of \$..... for goods sold and delivered (or as the
case may be), and that an order has been made that the publication of notice of
such summons shall be deemed to be and sufficient service of the summons on you.

You are required to enter an appearance to the summons on or before the
.....day of....., 20.....; and if you do
not do so, judgment may be given against you in your absence.

(Conclusion No. (1) in Form CIV 2)

Form CIV 8

Interdict in terms of Section 38 of the Act

TAKE notice that—

You the defendant and all other persons are hereby interdicted from removing
or causing or suffering to be removed any of the furniture or effects in or the
property described in the particulars of the claim here on the property described
in the particulars of the claim entered herein which are subjected to the plaintiff's
hypothecc to rent until an order relating thereto has been made by the court.

Form CIV 9

Request for Default Judgment

(Heading)

The plaintiff hereby applies that—

- (1) the defendant having been duly served;
- (2) the time for appearance by the defendant having expired; and
- (3) the defendant not having entered an appearance to defend;

Magistrates Court (Civil) Rules, 2019

Judgment may be entered against the defendant as claimed in the summons,
together with costs \$.....

for interest at per cent, from the date of summons

Dated thisday of 20.....

.....
Plaintiff or Plaintiff's Legal practitioner.

Form CIV 10

Notice of withdrawal

(Heading)

TAKE notice that the above-named plaintiff hereby withdraws the above
mentioned action and tenders costs.

(Conclusion)

Form CIV 11

Notice of Application for Summary judgment

(Heading)

TAKE notice that application will be made to this court on the
..... day of, 20....., at.....m, for
leave to enter judgment against you in this action of \$..... and costs.

And further take notice that the affidavit of
....., of which a copy is served
herewith, will then be used in support of such application, and that you may
reply thereto by affidavit.

(Conclusion)

Form CIV 12

Affidavit in Support of Application for Summary Judgment

(Heading)

I,

Address:

.....
Occupation:.....

Make oath and say as follows:—

1. 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.
2. The defendant is indebted to the plaintiff in the sum of \$..... on the grounds stated in the summons.
3. I verily believe that the defendant has not a *bona fide* defence to this action and that appearance has been entered solely for purpose of delay.

(Conclusion)

Form CIV 13

Affidavit under Section 34 of the Act

(Heading)

I,

Address:

Occupation:.....

Make oath and say as follows:—

1. I am the landlord (or, the agent of the landlord, naming him) of premises situate and being (describe the premises).
2. A.....B....., of (describe the tenant) is justly and truly indebted to me (or, to my said principal) in the sum of \$..... for rent of the said premises, accrued from theday of....., 20....., to theday of....., 20.....
3. The said sum of \$ became due and payable upon the day of....., 20.....
4. The said rent has been demanded from the said A B on theday of , 20 , but has not yet been paid; or

Magistrates Court (Civil) Rules, 2019

5. I am informed and believe that the said A..... B.....
..... is about to remove certain movables, now upon the said
premises, from such premises in order to defeat and avoid the payment of
the said rent.

(Conclusion)

Form CIV 14

Security for rent attachment under Section 34 of the Act

(Heading)

WHEREAS X.....Y of
(describe the landlord), has applied for the issue of an order to seize and arrest
the movable property in or upon.....
.....(describe the leased premises) for the sum of \$.....
for rent due by A..... B..... of
(describe the tenant), and \$ for costs;

NOW, THEREFORE, the said X..... Y..... and P
..... Q..... of..... (describe the surety), as
surety and co-principal debtor for him the said X..... Y..... hereby
undertake and bind themselves jointly and severally that the said X.....
Y..... and P..... Q..... or
either of them shall pay, satisfy and make good to the said A..... B.....
..... or whom else it may concern, all damage, costs and charges which
he or they may sustain by reason of the seizure or arrest of the said immovable
property in case the said seizure or arrest is set aside.

(Conclusion)

Form CIV 15

Order for rent attachment Section 34 of the Act

IT is ordered:—

1. That the messenger of the court do seize and arrest so much of the
..... (describe the movable) in the
.....(house, store, or as the case may be), situate and being No.
..... (describe the premises), as shall be sufficient to satisfy
the sum of \$..... rent and \$..... costs

(Conclusion)

Consent to sale of attached goods

(Heading)

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

Dated at thisday of, 20.....

.....
Respondent

As witness:

.....

Forms as to inspection and production of documents

(1) Schedule of Documents

The intends to use the following documents at the trial of this action: —

Date of document	Description of document

(2) Notice to deliver Schedule of Documents

TAKE notice that the requires you within seven days after receiving this notice to deliver a schedule specifying the books and documents in your possession or under your control which you intend to use in the above action.

Magistrates Court (Civil) Rules, 2019

(3) Notice to produce Documents for Inspection

TAKE notice that the requires you to produce for his or her inspection at your office on..... at..... a.m., the documents specified in your schedule of documents (or, the accounts and documents upon which the action is founded).

(4) Notice to produce (General Form)

TAKE notice that you are hereby required to produce and show to the court, at the trial of this action, all books and documents disclosed in your schedule of documents, and also (specify documents):—

Note.— The foregoing notices are to be headed in the action and dated and signed by the party or his legal practitioner, and are to be addressed to the party or his legal practitioner, and are to be addressed to the party or his legal practitioner, if he has one.

Form CIV 18

Certificate of record

(Heading)

I,, clerk of the court (or, shorthand writer of this court), do hereby certify and declare that the foregoing record is a true record of the proceedings in this action and of all evidence received by the said court.

Dated at thisday of , 20.....

.....
Clerk of the Court
(or Shorthand Writer)

Form CIV 19

Order obtained *ex parte*

(Heading)

IT IS ORDERED:—

1. That a rule *nisi* be, and it is hereby, granted calling upon (respondent), of(respondent's address), to show cause, if any, to this court on the day of , 20..... at in the noon, or so soon thereafter as he or she can be heard, why..... shall not be interdicted from(set out the acts from which respondent or any other person is restrained) pending the

S.I. 11 of 2019

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 commenced within days.
3. That this rule operate as an interim interdict.

Dated at, thisday of, 20.....

By order of the Court,

.....
Clerk of the Court

.....
Applicant's Legal practitioner

Address:

Form CIV 20

Order for arrest of person

(Heading)

IT IS ORDERED:—

1. That the messenger of the court do take
(respondent) and safely keep him or her and cause him or her to appear
before this court at o'clock in the noon
on theday of, 20....., then and there to show
cause why he or she should not be detained to abide the judgment of this
court in an action for the sum of \$..... to be instituted
against him or her by the applicant.
2. That the said action be instituted within 48 hours from the date of this order.

Dated at thisday of, 20.....

By order of the Court,

.....
Clerk of the Court

.....
Applicant's Legal practitioner

Address:

Form CIV 21

Warrant for fine or arrest of a witness in default

(Heading)

To the Messenger of the Court and to the Officer-in-charge of the Prison.

WHEREAS AB, 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 m, on the day of, 20....., and has made default;

And whereas this court has imposed on the said AB for his or her said default a fine of..... dollars and for none payment has committed him or her to prison at for a period of

This is therefore to authorise and require you, the said messenger of court, to take the body of the said AB, and, unless he or she shall pay to you the said sum of dollars, to deliver him or her to the officer-in-charge of the prison at together with this warrant, there to be safely kept until he or she shall have paid the said sum of dollars or until the expiration of the said period of, from the day on which the said AB 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 AB shall be otherwise legally discharged.

And this is to command you, the said officer-in-charge of the said prison, to receive and safely keep the said AB as foresaid.

(Conclusion)

Form CIV 22

Warrant for apprehension of a witness in default

(Heading)

To the Messenger of the Court

WHEREAS A..... B....., 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 m on theday of, 20....., and has made default.

This is therefore to authorise and require you to take the body of the said

A B..... and have him or her before the court ata.m. on theday of20.....,

Then and there to give his or her evidence and to be otherwise dealt with according to law.

(Conclusion)

Form CIV 23

Security on attachment or interdict

(Heading)

WHEREAS A..... B of, has applied for the issue of a warrant of arrest against C..... D..... of (or, an arrest or interdict against the goods of C..... D..... at), and the court has fixed the security to be given by the said AB at the sum of \$.....

NOW, THEREFORE, the said A.....B and E..... F....., of..... as surety and co-principal debtor for him or her, the said A..... ..B.....hereby undertake and bind themselves jointly and severally to answer any claim for damages to a sum not exceeding the said sum of \$..... in case the said arrest (or, interdict) may be set aside or shall be reversed on appeal.

(Conclusion)

Form CIV 24

Subpoena

(Heading)

To:—

- (1) A..... B....., of.....
- (2) C..... D....., of.....
- (3) E..... F....., of.....
- (4) G..... H....., of.....

Magistrates Court (Civil) Rules, 2019

You are hereby required to appear in person before this court at on the.....day of.....
....., 20, at the hour of in the
.....noon, and so from day to day until this action is tried, to give evidence
in this action on behalf of the

(Where documents are required to be produced, add)

1. And to bring with you and then produce to the court the several documents in the list hereunder:—

(Conclusion)

2. List of documents to be produced—

Date	Description	Original Copy

Form CIV 25

Security for stay of execution

(Heading)

WHEREAS the said A..... B..... by judgment of this court on theday of
..... 20 recovered against the said C..... D
..... the sum of \$....., together with the sum of \$..... for costs;

AND WHEREAS the said C..... D..... has applied to the court for a stay of execution pending appeal (or, pending the

hearing of an application to review and reverse the said judgment) and the court has directed that execution be stayed accordingly subject to the said C.....
.....D..... giving security withindays:

NOW, THEREFORE, the said C.....
D..... and E..... F....., of..... as surety and co-principal debtor for him or her, the said C
D....., hereby undertake and bind themselves jointly and severally to satisfy the said judgment and any further liability which may arise by way of damages or otherwise by reason of such suspension, so far as such judgment may not be reversed or varied on such appeal (or, review).

(Conclusion)

Form CIV 26

Security when execution is allowed pending appeal

(Heading)

WHEREAS the said A.....B..... on the
.....day of 20..... recovered by judgment of this court against the said C.....D..... the sum of \$....., together with the sum of \$..... for costs;

AND WHEREAS the said court has directed the said judgment, notwithstanding the said C D..... has noted an appeal against the same, to be carried into execution upon security being given for restitution:

NOW, THEREFORE, the said A.....B..... and L..... M..... of as surety and co-principal debtor for him/her the said A..... B..... and L.....M....., hereby undertake and bind themselves jointly and severally to refund and make restitution of the above several sums of \$..... and \$..... should the judgment of the said court be reversed, and further severally to conform to and execute such judgment, order or decree as shall be given and pronounced upon or in respect of such appeal.

(Conclusion)

Warrant of ejectment and execution against property

(Heading)

TO: The messenger of court

Amount to be levied

(With costs of ejectment and execution)

Judgment debt	
Costs	
Costs of issuing warrant	
Costs of appeal	
Subtotal	
Messenger's fees for ejectment execution	
Total	

WHEREAS in this section and on the day of20.....
.....the court granted judgment in favour of the plaintiff against the said defendant—

(a) for the ejectment of the said defendant from
.....;
.....; and

(b) authorising the said plaintiff to recover from the said defendant the several sums set out in the margin hereof, amounting in all to the sum of \$.....

This is therefore to authorise and require you to put the said plaintiff in possession of the said premises by removing there from the said defendant and to cause to be levied from the property of the said defendant the said sums set out in the margin hereof together with your costs of this ejectment and execution, and to pay the said sum to the said plaintiff, for which this shall be your warrant.

(Conclusion)

Note—

- (1) If the judgment debtor pays the amounts specified in the margin hereof with the messenger's charges of \$.....within half an hour after the entry of the messenger, he will not be required to pay any further costs of execution.
- (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) Security for restitution to be required unless it is dispensed with the judgment debtor or notice of attachment is given to him personally.

Form CIV 28

Warrant of delivery and execution against property

(Heading)

TO: the messenger of court

*Amounts to be levied
(with costs of ejection and execution)*

Judgment debt		<p>WHEREAS in this section and on the day of 20.....the court granted judgment in favour of the plaintiff against the said defendant —</p> <p>(a) for the ejection of the said defendant from; and</p> <p>(b) authorising the said plaintiff to recover from the said defendant the several sums set out in the margin hereof, amounting in all to the sum of \$.....</p>
Costs		
Costs of issuing warrant		
Costs of appeal		
Subtotal		
Messenger's fees for ejection execution		
Total		

This is therefore to authorise and require you take the said (describe the thing) from the said defendant and place the said plaintiff in possession thereof and to cause to be levied from the property of the said sums set out in the margin hereof together with your costs of this delivery and execution, and to pay the sum to the said plaintiff, for which this shall be your warrant.

(Conclusion)

Note—

- (1) If the judgment debtor pays the amounts specified in the margin hereof with the messenger's charges of \$.....within half an hour after the entry of the messenger, he will not be required to pay any further costs of execution.
- (2) This execution may be paid out before sale, subject to the payment of messenger's fees and charges of execution, which may be required to be taxed.

Magistrates Court (Civil) Rules, 2019

- (3) The only immovable property upon which this warrant may be executed (*set out its situation and nature sufficiently to enable it to be identified*).
 - (4) Security for restitution to be required unless it is dispensed with by the judgment debtor or notice of attachment is given to him personally.
-

Form CIV 29

Warrant of execution against property

(Heading)

TO: The Messenger of Court

Amounts to be levied:

WHEREAS in this section the said plaintiff on theday of
..... 20..... by the judgment of the court recovered
against the said defendant the several sums set out in the margin hereof, amounting
in all to the sum of \$.....
(with costs of execution)

Judgment debt	
Costs	
Costs of issuing warrant	
Costs of appeal	
Total	

This is therefore to authorise and require you that you cause to be levied from the property of the said defendant the said sums set out in the margin hereof together with your costs of this execution and pay the said sum to the said plaintiff for which this shall be your warrant.

(Conclusion)

Note—

- (1) If the judgment debtors pays the amount specified in the margin hereof with the messenger's charges of \$.....within half an hour after the entry of the messenger, he will not be required to pay any further costs of execution.
- (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.

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- (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) Security for restitution to be required unless it is dispensed with by the judgment debtor or notice of attachment is given to him or her personally.
-

Form CIV 29 A

Notice of removal

Date.....20.....

TO: Mr/Mrs/Miss.....

In the matter of:
(*Judgment creditor*)
And
(*Judgment debtor*)

Case No.....of 20.....

This is to advise you that in respect of the above case, a warrant of execution/ejectment/delivery has been issued at the instance of the judgment creditor, represented by legal practitioners:

Messrs.....
.....

Execution of this warrant will take place at..... (*place*) on the
.....20.....(*date*)

It is in your own interest to be present on the above date, especially in the case of eviction, to enable you to take possession of your personal belongings. Should you fail to be present we shall proceed to execute the warrant in your absence.

The amount required on the warrant is \$..... to be paid in cash to the messenger of the court, at the latest by the day before execution.

Deputy Court Messenger

Form CIV 30

Notice of attachment in execution

(*Heading*)

To: C.....D....., Judgment Debtor

Magistrates Court (Civil) Rules, 2019

TAKE notice that I have this day seized and laid under judicial attachment the articles comprised in the above inventory in pursuance of a warrant to them directed under the hand of the clerk of court for the province of whereby I am required to cause to be levied and raised of your property in this province the sum of \$.....and \$.....costs, recovered against you by the judgment of the said court in this action, and also for any charges in and about the said warrant.

Dated, thisday of, 20.....

.....
Messenger of Court

Form CIV 31

Security bond on attachment

(Heading)

WHEREAS the said AB on theday of last, by judgment of this court recovered against the said CD the sum of \$....., together with the sum of \$.....for costs, whereas by virtue of a certain warrant under the hand of the clerk of the said court bearing date, etc, directed to EF, messenger of he said court, the said EF has seized and laid under attachment in respect of the said judgment and in respect to the execution thereof the under mentioned articles, viz:.....

(Conclusion)

Form CIV 32

Interpleader Summons

(Heading)

WHEREASof has interpleaded in this court as to the subject matter following—

(state subject matter)

which is adversely claimed byof andof hereinafter called the claimants:

Summon the said claimants that they severally appear before this court, to be held at ontheday of, 20....., at o'clock noon, and that they do then severally

state the nature and particulars of their several claims and whether they will maintain or relinquish the same.

(Conclusion)

Form CIV 33

Interpleader Summons

(Heading)

TO: AB *(describing the execution creditor)* and CD *(describing the claimant)*

You are hereby summoned to appear before this court on theday of 20.....ato'clock in thenoon, to have it determined and declared whether certain movable property to wit.....attached on theday of, 20....., by the messenger of the court by virtue of a warrant of execution issued by this court on theday of....., 20....., in the action in which you, the said AB, obtained judgment in the sum of \$..... against EF *(describing the execution debtor)*, and which said property is claimed by you, the said CD, as being your property, is or is not your property.

Dated at, thisday of, 20.....

.....
Clerk of the Court

Form CIV 34

Security under order no 26, Rule 2

(Heading)

WHEREAS the said plaintiff on theday of 20..... recovered judgment in this court against the said defendant for the sum of \$....., together with the sum of \$..... for costs. And whereas under the said judgment execution has been issued and property has been attached:

NOW, THEREFORE, the said plaintiff and LM, of..... as surety for him or her the said plaintiff, hereby severally undertake and bind themselves jointly and severally to the said judgment

(c) any other liabilities to which you may be subject.

The court will conduct an inquiry into your financial position and, depending on the circumstances, it may not commit you to prison but instead give you further time to pay the sum due or direct you to pay it in instalments over a specified period.

You are at liberty to approach the judgment creditor before the date of the hearing and to make an offer of settlement of the sum due.

III: FAILURE TO ATTEND

Unless you pay the judgment creditor the sum specified in section I above, unless the judgment creditor accepts an offer of settlement which you have made to him you must appear before the Magistrates court on the date and at the time specified above in section II. If you do not do so, a warrant for your arrest may be issued and you may be committed to prison.

(Conclusion)

Form CIV 36

Warrant for civil imprisonment

(Heading)

TO: the Messenger of Court and to the Officer-in-charge of the prison at.....
.....

These are to command you, the said messenger of the court, to take CD, of (*describe as in form Form CIV 35*), and deliver him to the Officer –in-charge of the said prison, together with this warrant, there to be safely kept until he shall have paid to EF, of..... (*describe the judgment creditor as in form Form CIV 35*), the sum of \$.....(*parcel of the sum of \$.....*), which the said EF recovered for his debt and costs by judgment of this court, bearing date theday of, 20.....or until the expiration offrom the day on which the said CD 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 CD shall be otherwise legally discharged.

(Conclusion)

Date decree made:.....

Date last payment made:.....

Magistrates Court (Civil) Rules, 2019

debtor that if the said judgment is hereafter reversed they will pay to the said judgment debtor such amount as may be ascertained to be the damage caused to him or her by the said judgment and execution, but not exceeding twice the gross proceeds of the sale of such goods in execution.

(Conclusion)

Note.— Where the security is for the repayment of moneys attached by garnishee proceedings, a similar form should be used, the words, “refund and make restitution of the gross amount paid by the garnishee” being substituted for the words “ pay to the said judgment debtor such amount, etc”.

Form CIV 35

Summons for civil imprisonment

(Heading)

TO: CD, *(Describing the judgment debtor)*

I: NOTICE TO DEFENDANT

You, the Defendant, are called upon to pay E.F. *(describing the judgment creditor)* the sum of, with interest thereon at the rate of..... per cent per annum from the date of payment. You are required to pay this sum by virtue of a judgment obtained against you in the Magistrates Court aton the20....., under which you were ordered to pay the sum of You were also ordered to pay the costs of that case, which amount to.....

II: WHAT DEFENDANT MUST DO

If you fail to pay the sum specified above, you must appear before the Magistrates Court aton the20..... at a.m./p.m. to explain why you have not paid it and to show cause why an order for your imprisonment should not be made on account of your failure to pay. You should bring with you evidence of your financial position, and it will be in your own interests to give the court evidence of—

- (a) your income from wages, salary or other earnings and any other income you may receive from any other source (you should bring pay slips or other proof of your income);
- (b) your expenses for yourself and any dependants (bring documentary proof such as rent receipts, water and light accounts, accounts for school fees, insurance policies, etc);

Form CIV 37

Affidavit in support of application for garnishee order

(Heading)

A.....B....., of..... duly sworn, states:

1. That he or she is the above-named judgment creditor (or, that he is duly authorised by the above named judgment creditor to act for him in this matter).
2. The judgment creditor has obtained judgment against the judgment debtor in this court (or, in the magistrate's court for the province of..... a certified copy of which judgment hereto annexed marked "A") on the.....day of, 20....., in an action numbered.....for the sum of \$..... and costs amounting to \$.....
3. The said judgment is still unsatisfied to the amount of \$.....
4. The garnishee resides (*or carries on business address* or, *is employed as*.....) at No.....street,within the province of this court, and is indebted to the judgment debtor in the sum of \$.....(or in an amount to the petitioner unknown) for(set out the cause of debt) (not) being for salary and wages.
5. The judgment debtor will, after the execution of the order herein sought, have a sufficient income, i.e., \$..... per month, arising from (set out the source of such income) to maintain himself and those dependent upon him, i.e. (set out the numbers and relationship to the judgment debtor of his dependents).

(Conclusion)

Form CIV 38

Garnishee order

(Heading)

WHEREAS it has been made to appear to the above court that the garnishee is indebted to the judgment debtor and that the debt is now due and is not for salary wages (or, that the debt is now due and to maintain himself and those dependent upon him):

IT IS ORDERED:—

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That all debts owing by the garnishee to the judgment debtor to an amount not exceeding \$..... be attached to answer a judgment recovered against the judgment debtor by the judgment creditor in the court on the day of 20..... for the sum of \$....., of which judgment the sum of \$..... remains due and unpaid.

That the garnishee do pay to the messenger of this court the said sum of \$..... together with \$....., the cost hereof (but not exceeding in all the sum of \$.....) out of his said debts to the judgment debtor, or failing such payment, that the garnishee appear before this court on theday of 20..... ato'clock in thenoon, then and there to show cause why he/she should not pay the same.

Dated at this day of 20....., at hours minutes in thenoon.

By order of the court

.....
Clerk of Court

.....
Legal practitioner for judgment creditor

TO: The above-named garnishee:

If the debt due by you to the above-named judgment debtor was not owing both at the day and hour above mentioned and at the time when this order was served upon you, or if the debt is alleged to be in respect of future salary or wages and such debt will not become due or is subject to any set off or lien or some other person, you should appear at the court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over.

TO: the above-named Judgment Debtor:

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

Form CIV 39

Agreement not to appeal

(Heading)

We,and..... (the respective legal practitioners of) the above named plaintiff and defendant, do hereby agree, under

Magistrates Court (Civil) Rules, 2019

the provisions of section 40 of the Magistrates Court Act [*Chapter 7:10*], that the decision of the above-named court in the above-named action shall be final.

(Conclusion)

Form CIV 40

Notice of abandonment of claim, et cetera

(Heading)

TAKE notice that the plaintiff (*or defendant*) hereby abandons the under-mentioned claim (*or, objection, exception, defence, as the case may be*), set up by him in his summons (*or plea, reply, et cetera, as the case may be.*)

(Conclusion)

Form CIV 41

Commission de bene esse

TO:

of

(Heading)

Greeting

Under and by virtue of the authority vested in me by section 68 of the Magistrates Court Act [*Chapter 7:10*]. I do hereby commit to you full power and authority as a commissioner of this court to examine G.....H....., 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.....,thisday of,
20.....

.....
Magistrate

Form CIV 41 A

Instruction for immediate service of process

In the matter of:(*Plaintiff applicant*)

and

.....(*defendant/respondent*)

S.I. 11 of 2019

Case No.....of 20.....

It is necessary to serve the following process immediately:
 (state nature of process)

In consideration for immediate service or attempted service of the above process, I/We undertake to pay the messenger of the court at the appropriate rates per kilometre specified in or calculated in accordance with paragraph 13 or 14, as the case may be, of Table B of the Second Schedule to the Magistrates Court (Civil) Rules, 2019.

Signature:.....

Date:.....

Capacity in which signatory signs this form (i.e. as plaintiff, applicant, defendant, respondent or legal practitioner for a party):.....

Form CIV 42

Notification by Messenger

Messenger		Book number	Advise		
Date and time taken		Issuing court	Case number		
Plaintiff			Defendant		
Summons	Summons CI	Warrant of execution	Warrant of arrest	Others	Charges \$ c
Address of service of execution or attempt			Km at 14c*		
		Km at 19c*			

Magistrates Court (Civil) Rules, 2019

*For the rates at which the messenger is currently allowed to charge for distance travelled, see paragraphs 3 and 14 of Table B of the Second Schedule

				Charges \$ c
Rule – 5(2)(a) served on – of order 7	(a) the person to be served.....			
	(b) authorised agent (named and described below).....			
Rules – 6 and 9 of order 7 – served by affixing to outer principal door after unsuccessful diligent search	A. place of residence/business			
	B. <i>domicilium citandi</i>			
Rules – 5(2)(b) served on a responsible person (named and described below)	A. at defendant’s residence.			
	B. at defendant’s place of business/employment.....			
	c. at defendant’s <i>domicilium citandi</i>			
Rule – 5(2)(d)(i) of order 7	served at local office of corporation/company.			
Rule 8 of order 7	served by registered post (delivery card completed and attached)			
Rule 14 of order 7	served in terms of court order (see remarks)			
Attempt: service execution (see remarks):.....				
Execution withdrawn/stopped/deemed suspended.....				
Warrant for delivery/ejectment executed.....				

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Warrant of arrest executed—	A. paid in full.....			
	B. debtor lodged in prison.....			
Warrant of attachment enforced. Debtor present/absent. Goods attached/Inventoried and valued. Not removed/removed for sale.....				
Warrant of attachment executed—debtor seen; no property pointed out seen: <i>Nulla bona</i>				
Remarks	Cartage.....			
	Advertising.....			
	Locksmith.....			
	Notice.....			
	Inventories.....			
	Security.....			
	Commission			
Plaintiff/Legal practitioner	Deputy/ Messenger	Escort..... Postage..... Other, specify.		
You may require these charges to be taxed before payment	Certified true and correct return	Total		

Magistrates Court (Civil) Rules, 2019

Form CIV 43

Notice of Opposition

IN THE MAGISTRATES COURT CASE No. MC.....

HELD AT

IN THE MATTER BETWEEN

----- APPLICANT

AND

----- RESPONDENT

NOTICE OF OPPOSITION

TAKE notice that the respondent intends to oppose the application on the grounds set out in the affidavit/s annexed to this notice, and that his address for service is specified below.

The application was served on the respondent on theday of....., 20.....

Dated at..... this.....day of.....,20.....

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

Respondent's address service
(which must be a physical address within a radius of 15 kilometres
from the court house in which the notice is to be filed):

TO: The Clerk of Court

X Magistrate Court

AND TO:

Respondent/Respondent's legal practitioners

SECOND SCHEDULE (*Order 32*)

TARIFF OF FEES

TABLE A

[Order 32, rules 2(1) and 3(2)]

TARIFF OF LEGAL PRACTITIONERS' FEES

1. In the taxation of party and party bills of costs, this tariff shall be adhered to save that the taxing officer may in exceptional cases and for good and sufficient reason depart from any of the provisions of this tariff where strict adherence to such provisions would be inequitable.
2. In the taxation of practitioner and client bills of costs the taxing officer shall be guided by this tariff but shall have regard to all the circumstances of the case, and, where the costs are payable by the practitioner's own client out of funds belonging entirely to the client, to the following matters—
 - (a) the complexity of the matter or the difficulty or novelty of the questions raise; and
 - (b) the place where, the time at which and the circumstances in which the work has been done; and
 - (c) where money or property is involved, its amount or value; and
 - (d) the importance of the matter to the client.
3. In order to diminish as much as possible the costs arising from copying of documents to accompany a brief to another legal practitioner, the taxing officer shall not allow the costs of any unnecessary duplication in such brief.
4. Where, in the opinion of the taxing officer, more than one legal practitioner has been necessarily engaged in the performance of any of the work covered by this tariff, each such legal practitioner shall be entitled to be remunerated on the basis set out in this tariff for the work necessarily done by him.
5. The taxing officer shall allow such just and reasonable charges and expenses as may, in the opinion of the taxing officer, have been properly incurred in procuring the evidence and attendance of witnesses, provided that qualifying expenses of a witness shall not be allowed without an order of court.
6. A folio shall consist of one hundred words or part thereof, and, for the purposes of this provision, four figures shall count as a word.

Magistrates Court (Civil) Rules, 2019

PART 1

UNDEFENDED ACTIONS FOR LIQUIDATED CLAIMS INITIATED BY SUMMONS, AND CIVIL IMPRISONMENT AND GARNISHEE PROCEEDINGS

	\$
1. Demand	5,00
2. Summons commencing action where particulars of claim do not exceed One folio.....	10,00
Where particulars of claim exceed one folio, an additional amount per folio after the first folio	1,50
3. Applying for and obtaining default judgment	5,00
4. Warrant of execution, ejection or arrest and civil imprisonment summons	5,00
5. Applications for garnishee order, including affidavit	10,00
6. Attending court in civil imprisonment and garnishee proceedings and in Applications for suspension of warrant of arrest – each attendance, per quarter-hour, excluding waiting time	5,00
7. Any application not elsewhere provided for in this Part or in Part II.....	8,00

Note I: The amounts specified in respect of items 1, 2, 3, 4 and 5 shall include, where appropriate, charges for taking instructions, drafting all documents and documents and notices required, making copies of such documents and notices, writing letters, attendances to file, issue, serve or deliver and attendances on messenger and perusals of all returns of service, but shall not include attendances in court and subsequent attendances and writing letters occasioned by any such subsequent attendances and writing letters occasioned by any postponement or holding over of warrants, which shall be charged for under the appropriate item in Part II.

Note II: The charges in items 2, 3, 4 and 5 shall be shown on the documents to which they relate, and shall be recoverable without taxation. When summons is issued after demand, the fee in item 1 shall be added to the summons fee for the purpose of item 2. And shall likewise be recoverable without taxation.

Note III: If any charges are claimed, other than those in item 2, 3, 4 and 5, they shall be shown on the appropriate document, taxed *ex parte* by the clerk of court without payment of taxation fee, and the document shall be endorsed with the following certificate:

TAKE note that, if you object to any of the costs or messenger's fees hereby claimed, you must give notice of your objection to the clerk of court within forty-eight hours after service of this document. If you give such notice, the costs will be taxed after service of this document. If you give such notice, the costs will be taxed after notice to you; if you do not give such notice, the costs will be recoverable without taxation." Note IV:

The amount specified in respect of item 7 shall include charges for taking instructions, drafting all documents and notices required, making copies of such documents and notices, writing letters, attendances to file, issue, serve or deliver and returns and attendances in court.

PART II

DEFENDANT ACTIONS, UNLIQUIDATED CLAIMS, APPLICATIONS AND ALL MATTERS,
INCLUDING *EX PARTE* MATTERS NOT FALLING
UNDER PART I

SECTION A

ATTENDANCES

"Attendances" comprise—

- (a) the taking of instruction, whether in person or by telephone, to send a demand or to institute or demand any proceedings, whether by way of application or action, including the perusal of documents during the course of such instructions; and
- (b) consulting with witnesses and taking statements; and
- (c) interviewing officials; and
- (d) carrying out inspections and making searches in offices of record;
- (e) conducting any necessary business with Government, Municipal, local or parastatal authorities (other than formal attendances); and
- (f) sorting out, arranging and paginating papers for pleadings, advice, briefs, discovery, trial and records on appeal; and
- (g) giving or making disclosure; and
- (h) spending time on research into the law, occasioned by the consideration of any letter or document, which the taxing officer may consider necessary; and
- (i) perusing and considering relevant documents (including attending on receipt of the document concerned).

"Formal attendances" comprises all matters of an administrative nature including, without derogating from the generality of the expression—

Magistrates Court (Civil) Rules, 2019

- (a) telephone calls received and made; and
- (b) issuing out, service and delivery of process, documents, briefs or letters; and
- (c) making appointments; and
- (d) setting down matters for hearing; and
- (e) settling witnesses and court official's expenses and charges; and
- (f) arranging for the signature of documents; and
- (g) the swearing of oaths.

	\$
1. For each quarter hour or part thereof spent in attendances by a legal practitioner	5,00
2. Formal attendances by a legal practitioner	2,00
3. Formal attendance by a legal practitioner's employee	1,00

SECTION B

ATTENDANCE AT COURT

1. For each quarter-hour or part thereof spent by a legal practitioner in necessarily Incurred travelling or waiting time prior to, during or after attendance in court.....	4,00
2. For each quarter-hour spent by a legal practitioner appearing in court or at an Inspection in loco during a trial or at a pre-trial conference or on taxation	7,00

SECTION C

DRAFTING

Drafting any process, pleading, application, affidavit, instructions to another Legal Practitioner, statement of witness, letter, bill of costs or any other document—

per folio3,00

Subject to the following minima—

(a) Summons 12,00

(b) Plea or claim in reconvention 10,00

Note.—In computing the number of folios of any document, the taxing officer shall deduct, but treat as material copied, any portions consisting of quotations from other documents or papers, formal headings and endings and such matter as is available by reference to the forms prescribed in these rules.

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SECTION D

COPYING

	\$
1. Typing or printing a document with up to three carbon or computer printed copies	1,00
2. Additional carbon or computer printed copies –per folio	0,50
3. Copying letter or document per page	0,10

SECTION E

TRAVELLING

For necessary attendance on a party or witness or for trial, pre-trial or other necessary attendance at court in another town or place, such expenses and allowances as may be claimed by a Messenger in terms of Table B.

PART III

WITNESS WS'S EXPENSES

1. Save as herein otherwise specially provided, a witness attending court on subpoena and a witness, though not subpoenaed, giving material evidence or warned to attend court to give such evidence in any civil proceedings shall be paid an allowance towards subsistence at the following rates—
 - (a) in the case of a professional witness or person required to give professional or expert evidence, five dollars for each hour or part thereof any such witness is necessarily detained;
 - (b) in the case of any witness whose annual income is more than one thousand five hundred dollars, one dollar fifty cents for each hour or part thereof such witness is necessarily detained, up to a maximum of twelve dollars in respect of any one day;
 - (c) in the case of any witness whose annual income is not less than six hundred dollars and not more than one thousand five hundred dollars, seventy-five cents for each hour or part thereof any such witness is necessarily detained, up to a maximum of six dollars in respect of any one day;
 - (d) in the case of any witness whose annual income is below six hundred dollars, twenty-five cents for each hour or part thereof any such witness is necessarily detained, up to a maximum of two dollars in respect of any one day.
2. Where the expenses of overnight accommodation has been necessarily incurred by a witness, an additional amount shall be payable to such a witness at the following rates—

Magistrates Court (Civil) Rules, 2019

- (a) to a witness falling within paragraphs (a) and (b) of item 20, eight dollars a night;
 - (b) to a witness falling with paragraph (c) of item 20, four dollars a night;
 - (c) to a witness falling within paragraph (d) of item 20, one dollar a night.
3. For the purpose of payments under this tariff, a married woman shall be regarded as earning the income earned by her husband, or, if she is earning herself, her income shall be deemed to be whichever is the higher of her own income or that earned by her husband.
- 4.—
- (1) Where a witness resides or is employed more than three kilometres from the court and uses any means of transport (including his own), the following travelling allowances shall be payable to such a witness—
 - (a) a witness travelling by rail or other public conveyances shall be refunded the amount of the actual fare paid;
 - (b) a witness using his own transport shall, provided that the journey could not have been more economically performed by rail or other public conveyances, receive payment for the distance of the journey and the return between the court and his place of residence or employment at the following rate—
 - (i) seven cents per kilometre for motor-car transport;
 - (ii) three cents per kilometre for motor-bicycle transport;
 - (iii) two cents per kilometre for bicycle transport;
 - (iv) if any other form of transport is used, a fee at the discretion of the taxing officer;
 - (c) a witness travelling by air or hired transport may be refunded that actual fare paid, provided that the taxing officer is satisfied that such mode of transport was reasonable in the circumstances.
 - (2) No travelling allowances shall be paid to any witness who is conveyed as a passenger to and from the court by any other witness.
 - (3) When two or more modes or routes of transport rate are reasonably available, the one entailing the least expense shall be allowed, subject, however, to due regard being had to the convenience of witness in respect of alternative modes or routes of transport.
 - (4) When a journey is performed by rail, a refund shall only be made of a fare of such class as witness might ordinarily be expected to travel by.
5. Allowances in connection with inspections in loco shall be paid on the same basis as for court attendance.

6. Notwithstanding anything to the contrary in this tariff contained, it shall be in the discretion of the taxing officer to vary the provisions of the tariff in extraordinary or exceptional cases where the strict application of the tariff would operate as a hardship upon a witness, and to allow any necessary and out-of-pocket expenses proved, to the satisfaction of the taxing officer, to have been incurred by a witness.

PART IV

INTERPRETERS' FEE

	\$
7. Employment of an interpreter, per day	5,00

TABLE B

[Order 32, rules 4 (1)]

TARIFFS FOR MESSENGERS OF COURT

1. Service, or attempted service, of summons, subpoena, notice, order or other document, whether by registered post or otherwise, including notification in accordance with Order 2, rule 3, to a party who has sued out process \$12,00
2. Service of warning of impending execution or eviction or eviction in terms of Order 26 Rule 5 \$12,00
- 3.—
 - (1) Execution, or attempted execution, including necessary service of any copy of any warrant, interdict or garnishee order \$40,00
 - (2) Attempted execution 12,00
 - (3) This fee shall, in all cases, include registration and return and notice to the party issuing and shall—
 - (a) be payable by the execution creditor or the lodging of the process with the messenger;
 - (b) not be recoverable by him from the messenger if the process is withdrawn or stopped or proves abortive.
 - (4)—
 - (a) where the process is one of arrest or ejection 50,00
For an attempted arrest or ejected 20,00
 - (b) a further fee shall be paid after execution for—

Magistrates Court (Civil) Rules, 2019

- (i) each person beyond one named in the process
and in fact, arrested 15,00
- (ii) each person beyond one named or referred to in
process of ejection and, in fact, ejection from
separate premises 20,00
- (c) an escort fee of ten dollars shall be paid in respect of each person
escorted and detained:

Provided that, where the person is arrested by the Messenger of the Court, Harare, within a zone referred to in paragraph 14, an escort fee of twelve dollars shall be paid.

- (5) Where the process is one of arrest, ejection or execution and it is necessary for the messenger or his deputy to wait at any place or abode in order to execute the process, a waiting fee of twelve dollars for each hour or part thereof shall be paid:

Provided that—

- (i) no charge shall be made if the period during which the messenger or his deputy is required to wait is less than half an hour;
- (ii) a waiting fee shall not be paid without the production by the messenger of a certificate explaining the circumstances and the need to wait for the purpose of executing the process.

4.—

- (1) Inventory, per hundred words or portion thereof, per copy 20,00
- (2) Where the time reasonably and necessarily spent by the messenger in making an inventory exceeds half an hour, a fee of four dollars per half-hour or part thereof in excess of half an hour shall be paid.

5. Security bond 20,00

6.—

- (1) For the purposes of this paragraph—

“possession” means actual physical possession by a person employed and paid by the messenger—

- (a) Whose sole work for the time being is to remain on the premises where the goods have been attached; and
- (b) Who, in fact, remains in possession for the period for which possession is charged.

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- (2) Possession of goods, per day or part thereof reckoned from the hour at which the attachment actually took place to the hour at which possession was given up or the goods removed.....10,00
- (3) If livestock is attached, the necessary expenses of herding and preserving the stock.
- (4) if goods are removed and stored—
 - (a) the amount actually and necessarily disbursed in removing the goods;
 - (b) if storage is provided by a person other than the messenger, the amount actually and necessarily paid for such;
 - (c) if storage is provided by the messenger, the amount which would reasonably be allowed be in the ordinary course of business if the goods were stored by a third party.
- (5) Where the messenger is in possession under more than one warrant of execution—
 - (a) he or she may charge for only one possession, which shall, as soon as possible, be apportioned *pro rata* to the warrants;
 - (b) each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding that which would have been due under his execution if it had stood alone.
- 7. Drawing advertisements for sale12,00
- 8.—
 - (1) Where, upon the execution of a warrant of arrest, warrant of execution or garnishee order, the amount due is paid in full or in part on presentation there of5%
 - (2) Where money or property, whether movable or immovable, is attached in execution, on the value of property or on the amount (or balance thereof) owing under the writ at the time of attachment which ever is the lesser5% when the fee is calculated on the value of the money or property attached, the value shall be as assessed by the messenger at the time of making the attachment:

Provided that, if such property should be sold in execution for an amount less than the assessed value, the fee shall be reduced to five *per centum* on the gross proceeds realized by such sale.
- 9. Where the warrant of execution against movables is completed by sale—

Magistrates Court (Civil) Rules, 2019

- (a) if an auctioneer is employed, ten *per centum* of the amount realized, not exceeding the amount of the judgment debts and costs;
 - (b) if the messenger acted as auctioneer, ten *per centum* of the amount realized, not exceeding the amount of the judgment debts and costs.
10. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or the estate of the execution debtor having been sequestered, the expenses in connection with the attempted sale and the sum of twenty five dollars shall be payable to the messenger or to the person authorised to act as auctioneer, as the case may be.
11. When an execution against immovable property is completed by sale, the following auctioneer's fees shall be allowed on the proceeds of the sale—
- (a) if the messenger acted as auctioneer, ten *per centum* of the amount realized;
 - (b) to the auctioneer, five *per centum* to the first hundred million dollars of the amount realized, and two comma five *per centum* on the balance thereof;
 - (c) to the messenger, a fee of twenty-five dollars.
12. In addition to the fees allowed by item 8 to 11, there shall be allowed the sum actually and reasonably paid by the messenger or auctioneer employed for printing, advertising and giving publicity to any sale or intended sale in execution.
13. For any necessary letter written.....5,00
14. In respect of journeys undertaken by a messenger, other than the Messenger of Court, Harare—
- (a) no travelling allowance shall be payable for any journey undertaken within a radius of one kilometre from the court- house;
 - (b) where a journey is required beyond a radius of one kilometre from the court-house, the messenger shall be paid for every kilometre or portion of a kilometre travelled in going from and returning to the court-house while using his own transport—
 - (i) Where a motor-cycle is used, one dollar;
 - (ii) Where a motor-cycle is not used—
 - A. On a bituminous road, including a strip road, two dollars;
 - B. On other roads, two dollars and fifty cents;
 - (c) when two or more summonses for defendant or witnesses, whether at the instance of the same plaintiff or different plaintiff, have been served

or, in the opinion of the magistrate, ought to have been served by one and same journey, the charge for travelling expenses for performing the round of services shall be fairly and equitably apportioned amongst the several cases, regard being had to the distance at which the persons summoned respectively reside from the court-house, but the fee for service shall be payable for every service performed as if there had been none other.

15.—

(1) In this paragraph—

“court-house “means the Provincial Magistrates Court, Rotten Row, Harare “specified kilometre rate”, in relation to a zone listed in the first Colum of the following table, means the member specified opposite thereto in the second column—

Zone	specified kilometre rate
A	0
B	1
C	2
D	4
E	6
F	8
G	10
H	12
Z	24
CHIT	6;

“zone “means any one of the zones listed in the first column of the following table, determined according to the distances from the court-house specified opposite thereto in the second column, in the case of zones A-Z, or, in the case of zone CHIT, according to the description specified opposite thereto in the second column of the table-Zone distance from court-house/Description of area:

- A up to and including 1 kilometres
- B more than 1 kilometres but not exceeding 3 kilometres
- C more than 3 kilometres but not exceeding 6 kilometres
- D more than 6 kilometres but not exceeding 9 kilometres
- E more than 9 kilometres but not exceeding 12 kilometres
- F more than 12 kilometres but not exceeding 15 kilometres
- G more than 15 kilometres but not exceeding 18 kilometres
- H more than 18 kilometres but not exceeding 21 kilometres
- Z more than 21 kilometres

Magistrates Court (Civil) Rules, 2019

The area of Chitungwiza Town Council as described in Proclamation 35 of 1981, Published in Statutory Instrument 910 of 1981.

- (2) Subject to subparagraph (3), for any journey undertaken within a zone using his own transport, the Messenger of Court, Harare, shall be paid a zonal charge calculated as follows—
 - (a) where a motor-cycle is used, one dollar multiplied by the specified kilometre rate for the zone concede;
 - (b) where a motor- vehicle other than a motor-cycle is used, two dollars multiplied by the specific kilometre rate for the zone concerned.
 - (3) Where the Messenger of the Court, Harare, performs or attempts to perform a service within a zone at the request of a party who specifies, in writing, substantially in Form CIV 41A, that the service is to be performed immediately, he shall be paid for every kilometre or portion of a kilometre travelled in going form and returning to the court- house at the rates set out in subparagraph (b) of paragraph 13.
16. Where a journey necessitates a messenger obtaining overnight accommodation at an hotel, a motel, a boarding- house or other such place, he shall be paid the costs reasonably and necessarily incurred by him in obtaining such accommodation.
 17. 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 in so far as they are in excess of the amount of the warrant.
 18. In addition to the fees prescribed, the messenger shall be entitled to charge the amount of postage, including registration and acknowledgement of receipt fees, paid by him and the costs of necessary telephone trunk –calls incurred by him.
 19. The messenger’s fees and expenses of executing any process shall be added to the amount to be recovered under such process, if any, any shall be chargeable against the person against whom judgment was obtained.

TABLE C

[Order 32, rules 6]

TARIFF OF COURT FEES

<i>Item</i>	<i>Fee</i> \$
1. Certification of documents, per page	0,50
2. Commissioning of affidavits.....	1,00

Magistrates Court (Civil) Rules, 2019

<i>Item</i>	<i>Fee</i> \$
3. Notice of appeal	10,00
4. Request for default judgment.....	2,00
5. Notice of pre-trial conference	2,00
6. Warrant of execution against property	4,00
7. Warrant of Civil Imprisonment.....	10,00
8. Search fee for a record	1,00
9. Transcription of record per page.....	1,00
10. Application for peace order	1,00
11. Substituted service	5,00
12. Application for rescission of judgment.....	4,00
13. Inspection of records.....	2,00
14. Pre-trial conference.....	2,00
15. Notice of set down	4,00
16. Inter-pleader summons	5,00
17. Summons/Application commencing.....	5,00
18. Ex-parte application.....	10,00
19. Security of costs	5,00
20. Registration of estates	1,00
21. Copying of letter or document (photocopying), per page	0,20
22. interpreter's fees, per day.....	5,00
23. Request for extract	2,00
24. Consent of transfer	2,00
25. Consent of sale.....	5,00
26. Local court appeal.....	5,00
27. Taxation	10,00
28. Request for typed judgment, per page	1,00
29. Liquor licence application (Bulawayo and Harare districts)—	
(a) temporary application	350,00
(b) late opening	500,00

Magistrates Court (Civil) Rules, 2019

<i>Item</i>	<i>Fee</i>
	\$
30. Application for summary judgment.....	5,00
31. Application on notice.....	5,00
32. Application for custody	5,00
33. Application for guardianship	5,00
34. Application for stay of execution	10,00
35. Application for civil imprisonment	20,00
36. Notice to plead	5,00
37. Registration of consent orders by court.....	5,00
38. Application for absolution from the instance	5,00
39. Application for garnishee orders	5,00
40. Notice of withdrawal	2,00
41. Appearance to defend	2,00

THIRD SCHEDULE (*Order 34 Rule 12*)

REPEALS

<i>Rules</i>	<i>Statutory Instrument</i>
Magistrates Court (Civil) Rules, 1980	290 of 1980
Magistrates Court (Civil) (Amendment) Rules, 1983 (No. 4)	289 of 1983
Magistrates Court (Civil) (Amendment) Rules, 1984 (No. 6)	15 of 1984
Magistrates Court (Civil) (Amendment) Rules, 1985 (No. 9)	162 of 1985
Magistrates Court (Civil) (Amendment) Rules, 1986 (No. 10)	61 of 1986
Magistrates Court (Civil) (Amendment) Rules, 1986 (No. 11)	152 of 1986
Magistrates Court (Civil) (Amendment) Rules, 1987 (No. 13)	211 of 1987
Magistrates Court (Civil) (Amendment) Rules, 1988 (No. 14)	200 of 1988
Magistrates Court (Civil) (Amendment) Rules, 1990 (No. 17)	346 of 1990
Magistrates Court (Civil) (Amendment) Rules, 1990 (No. 18)	367 of 1990
Magistrates Court (Civil) (Amendment) Rules, 1992 (No. 21)	218 of 1992
Magistrates Court (Civil) (Amendment) Rules, 1993 (No. 24)	248 of 1993

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<i>Rules</i>	<i>Statutory Instrument</i>
Magistrates Court (Civil) (Amendment) Rules, 1993 (No. 25)	345 of 1993
Magistrates Court (Civil) (Amendment) Rules, 1994 (No. 27)	122 of 1994
Magistrates Court (Civil) (Amendment) Rules, 1994 (No. 28)	165 of 1994
Magistrates Court (Civil) (Amendment) Rules, 1995 (No. 29)	162 of 1995
Corrected by	183 of 1995
Magistrates Court (Civil) (Amendment) Rules, 1995 (No. 30)	363 of 1995
Magistrates Court (Civil) (Amendment) Rules, 1996 (No. 32)	307 of 1996
Magistrates Court (Civil) (Amendment) Rules, 1997 (No. 33)	136 of 1997
Magistrates Court (Civil) (Amendment) Rules, 1998 (No. 35)	308 of 1998
Magistrates Court (Civil) (Amendment) Rules, 2001 (No. 40)	304 of 2002
Corrected by	182 of 2004
Magistrates Court (Civil) (Amendment) Rules, 2004 (No. 43)	198 of 2004
Magistrates Court (Civil) (Amendment) Rules, 2005 (No. 45)	65 of 2005
Magistrates Court (Civil) (Amendment) Rules, 2007 (No. 51)	50 of 2007
Magistrates Court (Civil) (Amendment) Rules, 2007 (No. 52)	163 of 2007
Magistrates Court (Civil) (Amendment) Rules, 2008 (No. 53)	130 of 2008
Magistrates Court (Civil) (Amendment) Rules, 2009 (No. 54)	36 of 2009
Magistrates Court (Civil) (Amendment) Rules, 2009 (No. 55)	37 of 2009
Magistrates Court (Civil) (Amendment) Rules, 2011 (No. 56)	2 of 2011
Magistrates Court (Civil) (Amendment) Rules, 2011 (No. 56)	57 of 2011
Magistrates Court (Civil) (Amendment) Rules, 2011 (No. 52)	110 of 2012

