

THE HIGH COURT RULES  
(under section 10)

*Date of commencement: 7th February, 1969.*

*Arrangement of Rules*

1. Citation.
2. Interpretation.
3. Registrar's Office Hours and Sessions of the Court.
4. Service.
5. Edictal Citation.
6. Applications.
7. Power of Attorney.
8. Provisional Sentence.
9. Arrest.
10. Joinder of Parties and Causes of Action.
11. Consolidation of Actions.
12. Intervention of Persons as Plaintiffs or Defendants.
13. Third Party Procedure.
14. Proceedings by and against Partnerships, Firms and Associations.
15. Change of Parties.
16. Representation of Parties.
17. Summons.
18. Rules relating to Pleading generally.
19. Notice of Intention to Defend.
20. Declaration.
21. Further Particulars.
22. Plea.
23. Exception and Application to Strike Out.
24. Claim in Reconvention.
25. Replication and Plea in Reconvention.
26. Failure to Deliver Pleadings — Barring.
27. Extension of Time and Removal of Bar and Condonation.
28. Amendments to Pleadings and Documents.
29. Close of Pleadings.
30. Irregular Proceedings.
31. Judgment on Confession and by Default.
32. Summary Judgment.

33. Special Cases and Adjudication upon Points of Law.
- 33bis. Rule 33bis.
34. Offer to Settle.
- 34A. Interim Payments.
35. Discovery, Inspection and Production of documents and tape recordings.
36. Inspections, Examinations and Expert Testimony.
37. Pre-trial Conference.
38. Procuring Evidence for Trial.
39. Trial.
- 39A. (Repealed L.N.38/1990.)
40. *In Forma Pauperis*.
41. Withdrawal, Settlement, Discontinuance, Postponement, and Abandonment.
42. Variation and Rescission of Orders.
43. Matrimonial Matters.
44. Restitution of Conjugal Rights.
45. Execution — General and Movables.
46. Execution — Immovables.
47. Security for Costs.
48. Review of Taxation.
49. Certificate for Leave to Appeal.
50. Civil Appeals from Subordinate Courts.
51. Criminal Appeals from Subordinate Courts.
52. Certificate for Leave to Appeal (Criminal).
53. Reviews.
54. Criminal Proceedings.
55. The Court Roll.
- 55A. Allocation of hearing dates.
56. Set Down.
57. *De Lunatico Inquirendo*, Appointment of Curators in respect of Persons under Disability and Release from Curatorship.
58. Interpleader.
59. Sworn Translators.
60. Translation of Documents.
61. Interpretation of Evidence.
62. Filing, Preparation and Inspection of Documents.
63. Destruction of Documents.
64. Superannuation.
65. Commissions Rogatoire and Letters of Request.

66. Tariff of Court Fees.
67. Tariff for the Sheriff and Deputy Sheriff.
68. Taxation and Tariff of Fees of Attorneys and Advocates.

First Schedule — Forms

1. Edictal Citation: Short Form of Process.
2. Notice of Motion. (Rule 6(5))
3. Notice of Motion. (Rule 6(9))
4. Summons: Provisional Sentence.
5. Writ of Arrest.
6. Arrest: Bail Bond.
7. Assignment of Bail Bond.
8. Notice to Third Party.
9. Notice to Alleged Partner.
10. Summons.
11. Combined Summons.
12. Discovery — Form of Affidavit.
13. Notice in terms of Rule 35(6).
14. Discovery — Notice to Produce.
15. Discovery — Notice to Inspect Documents and Tape Recordings.
16. Discovery — Notice to Produce Documents and Tape Recordings in Pleadings, etc.
17. Subpoena.
18. Notice in terms of Rule 43.
19. Restitution of Conjugal Rights.
20. Writ of Execution.
21. Form of Security under Rule 45(6).
22. Writ of Attachment — Immovable Property.
23. Conditions of Sale in Execution of Immovable Property.
24. Notice of Trial.
25. Request for Date of Hearing.

Second Schedule — Court Fees.

Third Schedule — Tariff for Sheriff and Deputy Sheriffs.

Fourth Schedule — Tariff of Fees of Attorneys and Advocates.

*Citation.*

1. These rules may be cited as the High Court Rules.

*Interpretation.*

2. In these rules and attached forms, unless the context otherwise indicates —

“action” means a proceeding commenced by summons or by writ in terms of rule 9;

“advocate” means a person duly admitted, enrolled and entitled to practise as such in terms of the Legal Practitioners Act, No. 15 of 1964;

“attorney” means a person duly admitted, enrolled and entitled to practise as such in terms of the Legal Practitioners Act No. 15 of 1964;

“civil summons” means any summons whereby civil proceedings are commenced, and includes any rule *nisi*, notice of motion or petition the object of which is to require the appearance before the court of any person against whom relief is sought in such proceedings or of any person who is interested in resisting the grant of such relief;

“combined summons” means a summons with a statement of claim annexed thereto in terms of rule 17(2);

“court” means the High Court;

“court day” means any day other than a Saturday, Sunday or Public Holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of court;

“counsel” means an advocate or an attorney;

“deliver” means serve copies on all parties and file the original with the Registrar;

“Deputy Sheriff” means a Deputy Sheriff appointed in terms of the Sheriffs Act No. 17 of 1902;

“Judge” means a Judge sitting otherwise than in open court;

“Magistrate’s Court Act” means the Magistrates Courts Act, No. 66 of 1938;

“party” or any expressed reference to a plaintiff or other litigant shall include his attorney with or without an advocate as the context may require;

“Registrar” includes the Deputy Registrar and Assistant Registrar of the Court; and

“Sheriff” means the Sheriff of Swaziland appointed in terms of the Sheriffs Act No. 17 of 1902.

*Registrar’s Office Hours and Sessions of the Court.*

3. (1) Except on Saturdays, Sundays and Public Holidays the offices of the Registrar shall be open to the public from 8.30 a.m. to 1.00 p.m. and from 2.00 p.m. to 4.30 p.m. The Registrar may in exceptional circumstances issue, process and accept documents at any time, and shall do so when directed by a Judge.

(2) Notice of the dates and times of sessions of the court, determined by the Chief Justice in terms of Section 7 of the High Court Act, 1954 shall be published by being affixed to the public notice board at the office of the court, and the Registrar shall post a copy of every such notice to every attorney or firm of attorneys, who have notified the Registrar that he or they have opened and maintained an office in Swaziland.

(3) The periods between such sessions shall be vacations during which subject to the provisions of sub-rule (4), the ordinary business of the court shall be suspended, but at least one Judge shall be available on such days to perform such duties as the Chief Justice may direct.

(4) During and out of session such Judges shall sit on such days for the discharge of such business as the Chief Justice may direct.

(5) If it appears convenient to the presiding Judge, the court may sit at any place or at any time other than a time prescribed in terms of these Rules and may sit at any time during vacation.

(Amended L.N.17/1971; L.N.38/1990.)

#### *Service.*

4. (1) Service on the person to be served of any process of the court directed to the Sheriff and any documents instituting application proceedings shall be effected by the Sheriff or Deputy Sheriff or in the case of a document instituting application proceedings by an attorney or any person in his employ:

Provided that where the Registrar is satisfied that the Sheriff or Deputy Sheriff has failed to effect service within twenty-one days from receipt by him of such process or document he may authorise in writing any person to effect service.

(2) Service under sub-rule (1) shall be effected in one or other of the following manners:

(a) by delivering a copy thereof to such person personally:

Provided that where such person is a minor or a person under legal disability, service shall be effected upon the guardian, tutor, curator or the like of such minor or person under disability;

(b) by leaving a copy thereof at the place of residence or business of such person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery, being a person apparently not less than sixteen years of age. For the purposes of this paragraph when a building other than a hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, "residence" or "place of business" means that portion of the building occupied by the persons upon whom service is to be effected;

(c) by delivering a copy thereof at the place of employment of such person, guardian, tutor, curator or the like to a person apparently not less than sixteen years of age and apparently in authority over him;

(d) if the person to be serviced has chosen *domicilium citandi*, by delivering or leaving a copy thereof at the *domicilium* so chosen;

(e) in the case of a corporation or company, by delivering a copy to a responsible person at its registered office or a responsible employee thereof at its principal place of business within Swaziland, or if there is no such person willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;

- (f) by delivering a copy thereof to an agent who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected;
- (g) where any partnership, firm or voluntary association is to be served, service shall be effected in the manner referred to in paragraph (b) at the place of business of such partnership, firm, or voluntary association, and if such partnership, firm or voluntary association has no place of business, service shall be effected on a partner, the proprietor or the chairman or secretary of the committee, or other managing body of such association, as the case may be, in one of the manners set forth in this rule;
- (h) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the town clerk or assistant town clerk of such local authority or to the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law;
- (i) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon at least one of them in any manner set forth in this rule;
- (j) where the process or application to the court is for an order affecting the liberty of the respondent, or is for an order for dissolution of a marriage, restitution of conjugal rights, judicial separation or nullity of marriage, the process or application therefor shall be served by delivery of a copy thereof to the respondent personally, unless the court for good cause shown gives leave for such process or application to be served in some other specified manner.

(3) Where the person to be served with any document initiating application proceedings is already represented by an attorney of record, such document may be served upon such attorney by the party initiating such proceedings.

(4) Service shall be effected as near as possible between the hours of 7.00 a.m. and 7.00 p.m.

(5) It shall be the duty of the Sheriff or other person serving the process or documents to explain the nature and contents thereof to the person upon whom service is being effected and to state in his return that he has done so.

(6) No service of any civil summons, order or notice and no proceedings or act required in any civil action, except the issue or execution of a warrant of arrest, shall be validly effected on a Sunday unless the court or a Judge otherwise directs.

(7) If it is not possible to effect service in any manner prescribed in sub-rule (2) the court may, upon the application of the person wishing to cause service to be effected, give directions in regard thereto.

(8) Where such directions are sought in regard to service upon a person known or believed to be within Swaziland, but whose whereabouts therein cannot be ascertained, the provisions of rule 5(2) shall, *mutatis mutandis*, apply.

(9) Service of any process of the court of any document in a foreign country shall be effected in such manner as the court may direct.

(10) In every proceeding in which the Government is defendant or respondent the summons or notice instituting such proceeding shall be served at the office of the Attorney-General, Mbabane.

(11) Whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it seems fit.

(Amended L.N.102/1979; L.N.38/1990.)

*Edictal Citation.*

5. (1) Where an order is sought or process or document whereby proceedings are required to be instituted is required to be issued against a person resident outside Swaziland, application must be made to the Court, in order that the Court may cite that person to appear and may give directions as to service.

(2) Any person desiring to obtain such leave shall make application to the court setting forth concisely the nature and extent of his claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim and also the manner of service which the court is asked to authorize. If such manner be other than personal service, the application shall further set forth the last known whereabouts of the person to be served and the inquiries made to ascertain his present whereabouts. Upon such application the court may make such order as to the manner of service as to it seems meet and shall further order the time within which notice of intention to defend is to be given or any other step is to be taken by the person to be served. Where service by publication is ordered, it may be in a form as near as may be in accordance with Form 1 of the First Schedule, approved and signed by the Registrar.

(3) Any person desiring to obtain leave to effect service outside Swaziland of any document other than one whereby proceedings are instituted, may either make application for such leave in terms of sub-rule (2) or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request, and the court may act upon such information as may be given from the bar or given in such other manner as it may require, and may make such order as to it seems meet.

*Applications.*

6. (1) Save where proceedings by way of petition are prescribed by law, every application shall be brought on notice of motion supported by an affidavit or affidavits as to the facts upon which the application relies for relief.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the Registrar and such person, otherwise it shall be addressed to the Registrar only.

(3) Every petition shall conclude with the form of order prayed for and be verified upon oath by or on behalf of the petitioner.

(4) Every application brought *ex parte* by way of petition or notice of motion shall, save in matters of urgency, be filed with the Registrar and set down not later than midday on the court day preceding the day on which the application is to be heard.

(5) If such application is brought upon notice to the Registrar, it shall set forth the form of order sought, specify the affidavit or affidavits filed in support thereof, request him to place the matter on the Roll for hearing, and be as near as may be in accordance with Form 2 of the First Schedule.

(6) All documents for use in the Motion Court, including returns of service, affidavits of non-return in matrimonial matters, but excluding such original documents as are handed

into court from the bar, shall likewise be filed with the Registrar not later than midday on the court day preceding the day on which the matter is to be heard.

(7) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application by him for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he desires to be heard, whereupon the Registrar shall set such application down for hearing at the same time as the application brought *ex parte*.

(8) At the hearing the court may grant or dismiss either of or both such applications or may adjourn the same upon such terms as to the filing of further affidavits or otherwise as to it seems fit.

(9) Every application other than one brought *ex parte* shall be brought on notice of motion as near as may be in accordance with Form 3 of the First Schedule and true copies of the notice, the supporting affidavit or affidavits and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.

(10) In such notice the applicant shall appoint an address within five kilometres of the office of the Registrar at which he will accept notice and service of all documents in such proceedings, and shall set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant in writing whether he intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than seven days after service on the respondent of the notice.

(11) If the respondent does not, on or before the day specified for that purpose in such notice, notify the applicant of his intention to oppose, the applicant may place the matter on the Roll for hearing by giving the Registrar notice of set down not later than two court days preceding the day assigned by the Registrar or directed by the Chief Justice upon which the same is to be heard.

(12) Any person opposing the grant of an order sought in the notice of motion shall:

- (a) within the time stated in the notice, give the applicant notice in writing that he intends to oppose the application, and in the notice appoint an address within five kilometres of the office of the Registrar at which he will accept notice and service of all documents;
- (b) within fourteen days of notifying the applicant of his intention to oppose the application, deliver his answering affidavit, if any, together with any relevant documents; and
- (c) if he intends to raise a question of law only he shall deliver notice of his intention to do so, within the time prescribed in paragraph (b) stating such question.

(13) Within seven days of the service upon him of the affidavit and documents referred to in sub-rule (12)(b) the applicant may deliver a replying affidavit but the court may in its discretion permit the filing of further affidavits.

(14) Where:

- (a) no answering affidavit, or notice, in terms of sub-rule (12)(b) is delivered within the period referred to in that sub-rule, the applicant may within four days of the expiry thereof apply to the Registrar to allocate a date for the hearing of the application;



- (b) an answering affidavit or notice is delivered, the applicant may apply for such allocation within four days of the delivery of his replying affidavit or if no replying affidavit is delivered, within four days of the expiry of the period referred to in sub-rule 13.

(15) If the applicant fails to apply within the appropriate period specified in sub-rule (14), the respondent may do so immediately upon the expiry of such period.

(16) Notice in writing of the date allocated by the Registrar shall forthwith be given by applicant or respondent, as the case may be, to the opposite party.

(17) Where an application cannot properly be decided on affidavit, the court may dismiss the application or make such order as to it seems fit with a view to ensuring a just and expeditious decision.

(18) Without prejudice to the generality of sub-rule (17), the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.

(19) The provisions of sub-rule (11) and (14) shall *mutatis mutandis* apply to petitions.

(20) The court, after hearing an application whether brought *ex parte* or otherwise, may make no order thereon (save as to costs, if any) but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

(21) (a) Any party to any application proceedings may bring a counter-application or may join any party to the same extent as would be competent if the party wishing to bring such counter-application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event rule 10 shall apply *mutatis mutandis*.

(b) The periods prescribed for applications under this rule shall apply *mutatis mutandis* to counter-applications; but the court may on good cause shown postpone the hearing of the application.

(22) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice.

(23) A copy of every application to court in connection with the estate of a deceased person or a person alleged to be a prodigal, or under a legal disability, mentally or otherwise, shall, before such application is filed with the Registrar, be submitted to the Master for consideration and report; and if a person is to be suggested to the court for appointment as curator to property, such suggestion shall likewise be submitted to the Master for report:

Provided that the provisions of this sub-rule shall not apply to an application under rule 57 except where that rule otherwise provides.

(24) Notwithstanding the foregoing sub-rules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the Registrar or as directed by a Judge.

(25) (a) In urgent applications, the court or Judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and

in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as to the court or Judge, as the case may be, seems fit.

(b) In every affidavit or petition filed in support of an application under paragraph (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.

(26) In an application against the Government, or against any officer or servant thereof in his capacity as such, the respective periods referred to in sub-rule (10), or for the return of a rule *nisi*, shall be not less than fourteen days after the service of the notice of motion, or the rule *nisi*, as the case may be, unless the court has specially authorised a shorter period.

(27) Rules 10, 11 and 12 shall *mutatis mutandis* apply to all applications.

(28) The court may on application, order to be struck out from an affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client, but the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in his case if it is not granted.

(Amended L.N.9/1974; L.N.38/1990.)

#### *Power of Attorney.*

7. (1) Subject to the provisions of sub-rules (2) and (3), a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within ten days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfies the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

(2) The Registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the Registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.

(3) An attorney instructing an advocate to appear in an appeal on behalf of any party other than a party who has caused the appeal to be set down shall, before the hearing thereof, file with the Registrar a power of attorney authorising him so to act.

(4) Every power of attorney filed by an attorney shall be signed by or on behalf of the party giving it, and shall otherwise be duly executed according to law; provided that where a power of attorney is signed on behalf of the party giving it, proof of authority to sign on behalf of such party shall be produced to the Registrar who shall note that fact on such power of attorney.

(5) No power of attorney shall be filed by the Attorney-General or any attorney instructed in writing or telegram by him.

(Amended L.N.38/1990.)

#### *Provisional sentence.*

8. (1) Where by law any person may be summoned to answer a claim made for provisional sentence, proceedings shall be instituted by way of a summons as near as may be in accordance with Form 4 of the First Schedule, calling upon such person to pay the amount claimed or failing such payment to appear personally or by counsel upon a day named in the

summons not being less than seven days after the service upon him of such summons, to admit or deny his liability.

(2) Such summons shall be issued by the Registrar and the provisions of rule 17(3) and (4) shall *mutatis mutandis* apply.

(3) Copies of all documents upon which the claim is founded shall be annexed to the summons and served with it.

(4) The plaintiff shall set down the case for hearing not later than two court days preceding the day assigned by the Registrar upon which it is to be heard.

(5) Upon the day named in the summons the defendant may appear personally or by counsel to admit or deny his liability and may, not later than noon of the court day but one preceding the day upon which he is called upon to appear in court, deliver an affidavit setting forth the grounds upon which he disputes liability and in such event the plaintiff shall be afforded a reasonable opportunity of replying thereto.

(6) If at the hearing the defendant admits his liability or if he has previously filed with the Registrar an admission of liability signed by himself and witnessed by an attorney acting for him and not acting for the opposite party, or, if not so witnessed, verified by affidavit, the court may give final judgment against him.

(7) The court may hear oral evidence as to the authenticity of the defendant's signature, or that of his agent, to the document upon which the claim for provisional sentence is founded, or as to the authority of the defendant's agent.

(8) Should the court refuse provisional sentence it may order the defendant to file a plea within a stated time and may make such order as to the costs of the proceedings as to it may seem just. Thereafter the provisions of these rules as to pleading and the further conduct of trial actions shall *mutatis mutandis* apply.

(9) The plaintiff shall on demand furnish the defendant with security *de restituendo* to the satisfaction of the Registrar, against payment of the amount due under the judgment.

(10) Any person against whom provisional sentence has been granted may enter into the principal case only if he has satisfied the amount of the judgment for provisional sentence and taxed costs, or if the plaintiff on demand fails to furnish due security in terms of sub-rule (9).

(11) A defendant entitled and wishing to enter into the principal case shall, within forty-five days of the grant of provisional sentence, deliver notice of his intention to do so, in which event the summons shall be deemed to be a combined summons and he shall deliver a plea within seven days thereafter. Failing such notice or such plea the provisional sentence shall *ipso facto* become a final judgment and the security given by the plaintiff shall lapse.

(Amended L.N.38/1990.)

#### *Arrest.*

9. (1) No civil process whereby any person may be arrested or held to bail in order to compel his appearance to answer any claim and to abide the judgment of the court thereon shall be sued out against any person where the cause of action is of a value of less than E400, exclusive of costs.

(2) In all cases where a person may be arrested or held to bail, the process shall be by writ of arrest addressed to the Sheriff or his deputy and to the officer commanding the gaol

and signed as is required in the case of a summons and shall, as near as possible, be in accordance with Form 5 of the First Schedule.

(3) The writ of arrest when delivered to the Registrar for signature shall be accompanied by an affidavit sworn by the plaintiff or his agent.

(4) The affidavit shall:

- (a) contain a true description of the person making the same, setting forth his place of residence, and a statement of the sum due to the plaintiff, and the cause of the claim and where incurred, or in the case of the unlawful detention of any movable property, the value and description thereof:

Provided that if the plaintiff sues as executor or administrator of a deceased person, or as a trustee of an insolvent estate, or in a similar representative capacity, it shall be sufficient in any such affidavit to aver that the defendant is indebted as stated, as appears by the books or documents in the possession of the deponent and as the deponent verily believes;

- (b) further contain an allegation that the plaintiff has no or insufficient security for his demand, specifying the nature and extent of the security, if any, and that a sum or value of E400 or more remains wholly unsecured; and if the claim is one for damages, that the plaintiff has sustained damage to an amount of E400 or more.

(5) In all cases the affidavit shall contain an allegation that the deponent believes that the defendant is about to depart, or is making preparations to depart from Swaziland and shall state fully the grounds for such belief.

(6) The writ of arrest and affidavit shall be filed by the Registrar, and the defendant or his attorney shall be at liberty at all reasonable times and without charge to peruse and copy them.

(7) Where a sum of money or a specific thing is claimed, it shall be set forth in the writ of arrest.

(8) The costs of issuing such writ shall be endorsed thereon by the Registrar, and the Sheriff or his deputy shall, upon arrest made by virtue thereof, give to the defendant a copy of the writ, together with copies of the affidavit and any documents upon which the claim is founded, which copies shall be furnished by the plaintiff:

Provided that where a warrant of arrest has been telegraphically transmitted the original warrant shall be sent by the first post to the place where the person has been arrested or detained and shall be accompanied by a copy thereof and a copy of the affidavit in terms of sub-rules (4) and (5).

(9) After the arrival of the warrant at the place where such person has been arrested or detained, a copy of the original warrant and affidavit shall forthwith be served upon him.

(10) If on arrest, the defendant or anyone on his behalf gives to the Sheriff or his deputy adequate security by bond or obligation of the defendant and of another person residing and having sufficient means within Swaziland that the defendant will appear according to the exigency of the writ, and will abide the judgment of the court thereon, or if the defendant pays or delivers to the Sheriff or his deputy the sum of money or thing mentioned in the writ, together with the costs endorsed thereon and costs of the execution of the writ as prescribed, the Sheriff or his deputy shall permit the defendant to go free of the writ of arrest.

(11) The bond or obligation to be given to the Sheriff or his deputy under this rule shall be as near as may be in accordance with Form 6 of the First Schedule:

Provided that the personal bond of the defendant without a surety shall be sufficient for the purpose of this rule if accompanied by a deposit of the amount or thing claimed and such costs as mentioned in sub-rule (10), such deposit being referred to in the bond as one of the conditions thereof.

(12) If the defendant at any time after his arrest satisfies the claim contained in the writ, including the costs and charges endorsed thereon, and the costs of the execution of the writ or if he gives a bond or obligation in terms of sub-rule (10) or (11), he shall be entitled to immediate release.

(13) If a bond or obligation has been given by or on behalf of the defendant, in terms of sub-rule (10) or (11) the plaintiff shall proceed with his action as if there had been no arrest, and save in those cases where summons has already been issued, the writ of arrest and affidavit shall stand as a combined summons in the action.

(14) Any person arrested shall be entitled to anticipate the day of appearance and to apply to the court for his release, upon giving notice to the plaintiff and to the Registrar.

(15) If the Sheriff or his deputy takes from the party arrested any bond or obligation by virtue of any writ, he shall, as soon as practicable, assign to the plaintiff such bond or obligation, by an endorsement thereon under his hand, as near as may be in accordance with Form 7 of the First Schedule.

(16) If on the return day or anticipated return day the defendant admits the whole or a part of the plaintiff's claim, the court may hear the parties and in its discretion give final judgment against him for the amount admitted, whereupon he shall be released.

(17) If the defendant has not satisfied or admitted the plaintiff's claim and has not given security as required in terms of this rule, the plaintiff may, on the return or anticipated return day, apply for confirmation of the arrest, whereupon the court, unless sufficient cause to the contrary is shown, shall confirm such arrest and order the return of the defendant to prison, and shall make such further order as to it seems fit for the speedy termination of the proceedings.

(18) If in any such proceedings judgment is given against the defendant, he shall be entitled to his release.

(Amended L.N.38/1990.)

#### *Joinder of Parties and Causes of Action.*

10. (1) Any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiffs depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise in each action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing.

(2) A plaintiff may join several causes of action in the same action.

(3) Several defendants may be sued in one action either jointly, jointly and severally, separately or in the alternative, whenever the question arising between them or any of them

and the plaintiff or any of the plaintiffs depends upon the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) In any action in which any causes of action or parties have been joined in accordance with this rule, the court at the conclusion of the trial shall give such judgment in favour of such of the parties as shall be entitled to relief, or grant absolution from the instance, and shall make such order as to costs as shall to it seem to be just, provided that without limiting the discretion of the court in any way —

- (a) the court may order that any plaintiff who is unsuccessful shall be liable to any other party, whether plaintiff or defendant, for any costs occasioned by his joining in the action as plaintiff;
- (b) if judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may order:
  - (i) the plaintiff to pay such defendant's costs, or
  - (ii) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that, if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the unsuccessful defendants.
- (c) if judgment is given in favour of the plaintiff against more than one of the defendants, the court may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

(5) Where there has been any joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties; and the court may on such application make such order as to it seems meet.

#### *Consolidation of Action.*

11. Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon —

- (a) the said actions shall proceed as one action;
- (b) the provisions of rule 10 shall *mutatis mutandis* apply with regard to the action so consolidated; and

- (c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.

*Intervention of Persons as Plaintiffs or Defendants.*

12. Any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to the further procedure in the action as to it may seem meet.

*Third Party Procedure.*

13. (1) Where a party in any action claims —
- (a) as against any other person not a party to the action (in this rule called a “third party”) that such party to any action is entitled, in respect of any relief claimed against him, to a contribution or indemnity from such third party, or
  - (b) any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between such party and the third party, and should properly be determined not only as between any parties to the action but also as between such parties and the third party or between any of them,

such party may issue a notice, hereinafter referred to as a third party notice, as near as may be in accordance with Form 8 of the First Schedule, which notice shall be served by the Sheriff.

(2) Such notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed. Insofar as the statement of the claim and the question or issue are concerned, the rules with regard to pleadings and to summonses shall *mutatis mutandis* apply.

(3) The third party notice shall be served before the close of pleadings or thereafter only by leave of the court and shall be accompanied by a copy of all pleadings filed in the action up to the date of service.

(4) If the third party intends to contest the claim set out in the third party notice he shall deliver notice of intention to defend, as if to a summons. Immediately upon receipt of such notice, the party who issued the third party notice shall inform all other parties accordingly.

(5) The third party shall, after service upon him of a third party notice, be a party to the action and, if he delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.

(6) The third party may plead or except to the third party notice as if he were a defendant to the action. He may also, by filing a plea or other proper pleading contest the liability of the party issuing the notice on any ground notwithstanding that such ground has not been raised in the action by such latter party:

Provided however that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice save to the extent that he would be entitled to do so in terms of rule 24.

(7) The rules with regard to the filing of further pleadings shall apply to third parties as follows:—

- (a) insofar as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant.
- (b) insofar as the third party's plea relates to the plaintiff's claim, the third party shall be regarded as a defendant and the plaintiff shall file pleadings as provided by the said rules.

(8) Where a party to an action has against any other party (whether either such party became a party by virtue of any counter-claim by any person or by virtue of a third party notice or by any other means) a claim referred to in sub-rule (1), he may issue and serve on such other party a third party notice in accordance with the provisions of this rule. Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to such notice and they shall be subject to the same rights and duties as if such other party had been served with a third party notice in terms of sub-rule (1).

(9) A party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice and the Court may upon such application make such order as to it seems meet, including an order for the separate hearing and determination of any issue on condition that its decision on any other issue arising in the action either as between the plaintiff and the defendant or as between any other parties, shall be binding upon the applicant.

*Proceedings by and against Partnerships, Firms and Associations.*

14. (1) In this rule —

“association” means any unincorporated body of persons not being a partnership;

“firm” means a business, including a business carried on by a body corporate or carried on by the sole proprietor thereof under a name other than its own;

“partnership” includes a business carried on by more than one proprietor under a name other than the names of the proprietors;

“plaintiff” and “defendant” include applicant and respondent;

“relevant date” means the date of accrual of the cause of action; and

“sue” and “sued” are used in relation to actions and applications.

(2) A partnership, a firm or an association may sue or be sued in its name.

(3) A plaintiff suing a partnership need not allege the names of the partners but if he does, any error of omission or inclusion shall not afford a defence to the partnership.

(4) Sub-rule (3) shall apply *mutatis mutandis* to a plaintiff suing a firm.

(5) (a) A plaintiff suing a firm or a partnership may at any time before or after judgment deliver to the defendant a notice calling for particulars as to the full name and residential address of the proprietor or of each partner, as the case may be, as at the relevant date.



(b) The defendant shall within ten days deliver a notice containing such information.

(c) Concurrently with such notice the defendant shall serve upon the persons referred to in paragraph (a) a notice as near as may be, *mutatis mutandis*, in accordance with Form 9 of the First Schedule and deliver proof by affidavit of such service.

(d) A plaintiff suing a firm or a partnership and alleging in the summons or notice of motion that any person was at the relevant date the proprietor or a partner, shall notify such person accordingly by delivering a notice as near as may be, *mutatis mutandis*, in accordance with Form 9 of the First Schedule.

(e) Any person duly served with a notice in terms of paragraph (c) or (d) shall be deemed to be a party to the proceedings, with the rights and duties of a defendant.

(f) Any party to such proceedings may aver in the pleadings or affidavits that such person was at the relevant date the proprietor or a partner or that he is estopped from denying such status.

(g) If any party to such proceedings disputes such status, the court may at the hearing decide that issue *in limine*.

(h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof and, after such execution, against the private assets of any person held to be, or held to be estopped from denying his status as, a partner, as if judgment had been entered against him.

(6) The provisions of sub-rule (5) shall apply *mutatis mutandis* to a defendant sued by a firm or a partnership.

(7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, at the relevant date as if sued individually.

(8) Sub-rule (7) shall apply *mutatis mutandis* where it appears that a firm has been discontinued.

(9) (a) A plaintiff suing an association may at any time before or after judgment deliver a notice to the defendant calling for a true copy of its current constitution and a list of the names and addresses of the office-bearers and their respective offices as at the relevant date.

(b) Such notice shall be complied with within ten days after the notice has been delivered.

(c) Paragraphs (a) and (b) shall apply *mutatis mutandis* to a defendant sued by an association.

(10) Paragraphs (d) to (h) of sub-rule (5) shall apply *mutatis mutandis* when —

(a) a plaintiff alleges that any member, servant or agent of the defendant association is liable in law for its alleged debt;

(b) a defendant alleges that any member, servant or agent of the plaintiff association is responsible in law for the payment of any costs which may be awarded against the association.

(11) Sub-rule (7) shall apply *mutatis mutandis* in regard to the continuance of the proceedings against any member, servant or agent referred to in paragraph (a) of sub-rule (10).

(12) Sub-rule (6) of rule 21 shall apply *mutatis mutandis* in the circumstances set out in sub-rule (5)(a) and (b) and sub-rule (9) of this rule.

(Amended L.N.38/1990.)

*Change of Parties.*

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

(2) Whenever by reason of an event referred to in sub-rule (1) it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party and to the Registrar, add or substitute such further person as a party thereto, and subject to any order made under sub-rule (4), such proceedings shall thereupon continue in respect of the person thus added or substituted as if he had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect:

Provided that save with the leave of the court granted on such terms (as to adjournment or otherwise) as to it may seem meet, no such notice shall be given after the commencement of the hearing of any opposed matter: and

Provided further that the copy of the notice served on any person joined thereby as a party to the proceedings shall (unless such party is represented by an attorney who is already in possession thereof), be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered, and in trial matters by copies of all pleadings and like documents already filed of record.

(3) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator, trustee or similar legal representative, may by notice to all other parties and to the Registrar intimate that he desires in his capacity as such thereby to be substituted for such party, and unless the court otherwise orders, he shall thereafter for all purposes be deemed to have been so substituted.

(4) The court may upon notice of application delivered by any party within twenty-one days of service of notice in terms of sub-rule (2) or (3), set aside or vary any addition or substitution of a party thus effected or may dismiss such application or confirm such addition or substitution, on such terms, if any, as to the delivery of any affidavits or pleadings, or as to postponement or adjournment, or as to costs or otherwise, as to it may seem meet.

*Representation of Parties.*

16. (1) If an attorney acts on behalf of any party in any proceedings, he shall notify all other parties of his name and address.

(2) (a) Any party represented by an attorney in any proceedings may at any time, subject to the provisions of rule 40, terminate such attorney's authority to act for him, and thereafter act in person or appoint another attorney to act for him therein, whereupon he shall forthwith give notice to the Registrar and to all other parties of the termination of his former attorney's authority and if he has appointed a further attorney so to act for him, of the latter's name and address.

(b) If such party does not appoint a further attorney, such party shall in the notice of termination of his former attorney's authority also notify all other parties of an address within five kilometres of the court for the service on him of all documents in such proceedings.

(3) Upon receipt of a notice in terms of sub-rules (1) and (2) the address of the attorney or of the party as the case may be, shall become the address of such party for the service upon him of all documents in such proceedings, but any service duly effected elsewhere before receipt of such notice shall, notwithstanding such change, for all purposes be valid, unless the court otherwise orders.

(4) (a) Where an attorney acting in any proceedings for a party ceases so to act, he shall forthwith deliver notice thereof to such party, the Registrar and all other parties: provided that notice to the party for whom he acted may be given by registered post.

(b) After such notice, unless the party formerly represented within ten days after the notice, himself notifies all other parties of a new address for service as required under sub-rule (2), it shall not be necessary to serve any documents upon such party unless the court otherwise orders:

Provided that any of the other parties may before receipt of the notice of his new address for service of documents, serve any documents upon the party who was formerly represented.

(c) The notice to the Registrar shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them.

(d) The notice to the party formerly represented shall inform that party of the provisions of paragraph (b).

(Amended L.N.38/1990.)

#### *Summons.*

17. (1) Every person making a claim against any other person may, through the office of the Registrar, sue out a summons or a combined summons as near as may be in accordance with Form 10 or Form 11 of the First Schedule addressed to the Sheriff directing him to inform the defendant, *inter alia*, that, if he disputes the claim, and wishes to defend he shall —

(a) within the time stated therein, give notice of his intention to defend;

(b) thereafter, if the summons is a combined summons, within twenty-one days after giving such notice, deliver, with or without a claim in reconvention, a plea, exception, or application to strike out.

(2) In every case where the claim is not for a debt or liquidated demand there shall be annexed to the summons a statement of the material facts relied on by the plaintiff in support of his claim which statement shall, *inter alia*, comply with rules 18 and 20.

(3) Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's address within five kilometres of the seat of the court, or if no attorney is acting, it shall be signed by the plaintiff, who shall in addition append an address within five kilometres of the seat of the court at which he will accept service of all subsequent documents in the suit, and shall thereafter be signed and issued by the Registrar and made returnable by the Sheriff, or such other person who serves the same, to the court through the Registrar.

(4) Every summons shall set forth —

- (a) the name (including where possible the first name or initial) by which the defendant is known to the plaintiff, his residence or place of business and, where known, his occupation and, if he is sued in any representative capacity, such capacity, and it shall also state the defendant's sex and, if female, her marital status;
- (b) the full names, sex and occupation and the residence or place of business of the plaintiff, and where he sues in a representative capacity, such capacity, and if the plaintiff is a female the summons shall state her marital status.

(Amended L.N.38/1990.)

*Rules relating to Pleading generally.*

18. (1) A combined summons, and every other pleading, shall be signed by the advocate or attorney acting for the party, or if a party sues or defends personally, by such party.

(2) The title of the action describing the parties thereto and the number assigned thereto by the Registrar, shall appear at the head of each pleading: provided that where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it shall be so abbreviated.

(3) Every pleading shall be divided into paragraphs (including sub-paragraphs) which shall be consecutively numbered and shall, as nearly as possible, each contain a distinct averment.

(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

(5) When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the point of substance.

(6) A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading.

(7) It shall not be necessary in any pleading to state the circumstances from which an alleged implied term can be inferred.

(8) Where a party suing for restitution of conjugal rights, divorce or judicial separation has been guilty of adultery he shall state the time and place of such adultery in his summons and pray for condonation thereof.

(9) A party to matrimonial proceedings relying on constructive desertion, shall in his pleading set out the particulars thereof.

(10) A plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof:

Provided that a plaintiff suing for damages for personal injury shall specify his date of birth, the nature and extent of the injuries, and the nature, effects and duration of the disability alleged to give rise to such damages, and shall as far as practicable state separately what amount, if any, is claimed for —

- (a) medical costs, and hospital and other similar expenses, and how these costs and expenses are made up;

- (b) pain and suffering, stating whether temporary or permanent and which injuries caused it;
- (c) disability in respect of —
  - (i) the earning of income, stating the earnings lost to date and how the amount is made up and the estimated future loss and the nature of the work the plaintiff will in future be able to do;
  - (ii) the enjoyment of amenities of life, giving particulars and stating whether the disability concerned is temporary or permanent; and
- (d) disfigurement, with a full description thereof and stating whether it is temporary or permanent.

(11) A plaintiff suing for damages resulting from the death of another shall state the date of birth of the deceased as well as that of any person claiming damages as a result of the death.

(12) If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.

(Amended L.N.38/1990.)

#### *Notice of Intention to Defend.*

19. (1) Subject to any direction given by the court, the defendant in every civil action shall be allowed at least ten days after service of summons on him (and where he resides more than eighty kilometres from the seat of the court at least fourteen days) within which to deliver a notice of intention to defend, either personally or through his attorney.

(2) In actions against the Government, or against any office or servant thereof in his capacity as such, the time to be allowed for delivery of notice of intention to defend shall be not less than twenty days after service of summons, unless in any case the court has specially authorised a shorter period.

(3) When a defendant delivers notice of intention to defend, he shall therein appoint an address, not being a post office box or *poste restante*, within five kilometres of the court for the service on him thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required.

(4) A party shall not by reason of his delivery of notice of intention to defend be deemed to have waived any right to object to the jurisdiction of the court or to any irregularity in the proceedings.

(Amended L.N.38/1990.)

#### *Declaration.*

20. (1) In all actions in which the plaintiff's claim is for a debt or liquidated demand and the defendant has delivered notice of intention to defend, the plaintiff shall except in the case of a combined summons, within fourteen days of his receipt thereof, deliver a declaration.

(2) The declaration shall set forth the nature of the claim, the conclusions of law which the plaintiff shall be entitled to deduce from the facts stated therein, and a prayer for the relief claimed.

(3) Where the plaintiff seeks relief in respect of several distinct claims founded upon separate and distinct facts, such claims and facts shall be separately and distinctively stated.

*Further particulars.*

21. (1) The court may order a party to deliver to any other party further particulars of any claim, defence, or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be on such terms as the court thinks just.

(2) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of sub-rule (1) the court may, on such terms as it thinks just, order that party to serve on any other party —

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(3) An order under this rule shall not be made before delivery of the plea unless, in the opinion of the court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(4) Where the applicant for an order under this rule did not apply by letter for the further particulars he requires, the court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(5) Where further particulars are given pursuant to a request, or order of the court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

(6) Where a party fails to comply with any order for further particulars, the court may, on application, order that the action be dismissed, or the defence be struck out or that the allegation of which particulars were ordered be struck out from the pleading.

(Amended L.N.38/1990.)

*Plea.*

22. (1) Where the defendant has delivered notice of intention to defend, he shall within twenty-one days after the service upon him of a declaration or within fourteen days after the due delivery of further particulars, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out.

(2) The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of those facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.

(3) Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be not admitted, shall be deemed to be admitted, and if any explanation or qualification of any denial is necessary, it shall be stated in the plea.

(4) If by reason of any claim in reconvention the defendant claims that on the giving of judgment on such claim, the plaintiff's claim will be extinguished either in whole or in part, the defendant may in his plea refer to the fact of such claim in reconvention and request that judgment in respect of the claim or any portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention.

(5) Judgment on such claim shall, either in whole or in part, thereupon be so postponed unless the court, upon the application of any person interested, otherwise orders, but if no other defence has been raised, the court may give judgment for such part of the claim as would not be extinguished, as if the defendant were in default of filing a plea in respect thereof, or may, on the application of either party, make such order as to it seems fit.

(6) If the defendant fails to comply with any of the provisions of sub-rules (2) and (3), such plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

(Amended L.N.38/1990.)

*Exception and Application to strike out.*

23. (1) Where any pleading is vague and embarrassing or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period provided for filing any subsequent pleading, deliver an exception thereto and may set it down for hearing in terms of rule 6(14):

Provided that where a party intends to take an exception that a pleading is vague and embarrassing he shall, within the period allowed under this sub-rule, by notice afford his opponent an opportunity of removing the cause of complaint within fourteen days:

Provided further that the party excepting shall within seven days from the date on which a reply to such notice is received or from the date on which such reply is due deliver his exception.

(2) Where any pleading contain averments which are scandalous, vexatious, or irrelevant, the opposite party may, within the period allowed for filing any subsequent pleading, apply for the striking out of such matter, and may set such application down for hearing in terms of rule 6(14), but the court shall not grant the same unless it is satisfied that the applicant will be prejudiced in the conduct of his claim or defence if it be not granted.

(3) Where an exception is taken to any pleading, the grounds upon which the exception is founded shall be clearly and concisely stated.

(4) Where any exception is taken to any pleading or an application to strike out is made, no plea, replication or other pleading over shall be necessary.

(Amended L.N.38/1990.)

*Claim in Reconvention.*

24. (1) A defendant who counterclaims shall, together with his plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 18 and 20 unless the plaintiff agrees, or if he refuses, the court allows it to be delivered at a later state.

(2) The claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed "Claim in Reconvention". It shall be unnecessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

(3) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly, jointly and severally, separately or in the alternative, he may with the leave of the court proceed in such action by way of a claim in reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.

(4) A defendant who has been given leave to counterclaim under sub-rule (3), shall add to the title of his plea a further title corresponding with what would be the title of any action instituted against the parties against whom he makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to sub-rule (2) of rule 18.

(5) A defendant may counterclaim conditionally upon the claim or defence in convention failing.

(6) If the defendant fails to comply with any of the provisions of this rule, the claim in reconvention shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

(Amended L.N.38/1990.)

*Replication and Plea Reconvention.*

25. (1) Within fourteen days of the service upon him of a plea, and subject to sub-rule (2), the plaintiff shall where necessary deliver a replication to the plea and a plea to any claim in reconvention, which plea shall comply with rule 22.

(2) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary, and issue shall be deemed to be joined and pleadings closed in terms of rule 29(b).

(3) Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading. To such extent as he has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined.

(4) A plaintiff in reconvention shall, subject to the provisions *mutatis mutandis* of sub-rule (2), within fourteen days from the delivery of the plea in reconvention deliver a replication in reconvention.

(5) Further pleadings may, subject to the provisions *mutatis mutandis* of sub-rule (2), be delivered by the respective parties within eight days of the previous pleading delivered by the opposite party. Such pleadings shall be designated by the names by which they are customarily known.

*Failure to Deliver Pleadings — Barring.*

26. Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 25 shall be *ipso facto* barred. If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may by notice served upon him require him to deliver such pleading within three days after the day upon which the notice is delivered. Any party failing to deliver the pleading referred to in the notice within the time therein required or within such further period as may be agreed between the parties, shall be in default of filing such pleading, and *ipso facto* barred:

Provided that for the purposes of this rule the days between 16 December and 7 January both inclusive shall not be counted in the time allowed for the delivery of any pleading.



*Extension of Time and Removal of Bar and Condonation.*

27. (1) In the absence of agreement between the parties, the court may upon application on notice and on good cause shown, make an order extending or abridging any time prescribed by these rules or by an order of court or fixed by an order extending or abridging any time for doing any act or taking any step in connection with any proceedings of any nature whatsoever upon such terms as to it seems fit.

(2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the court ordering any such extension may make such order as to it seems fit as to the recalling, varying or cancelling of the results of the expiry of any time so prescribed or fixed, whether such results flow from the terms of any order or from these rules.

(3) The court may, on good cause shown, condone any non-compliance with these rules.

(4) After a rule *nisi* has been discharged by default of appearance by the applicant, the court or a Judge may revive the rule and direct that the rule so revived need not be served again.

(Amended L.N.38/1990.)

*Amendments of Pleadings and Documents.*

28. (1) Any party desiring to amend any pleading or document other than an affidavit, filed in connection with any proceedings, may give notice to all other parties to the proceedings of his intention so to amend.

(2) Such notice shall state that unless objection in writing to the proposed amendment is made within ten days the party giving the notice will amend the pleading or document in question accordingly.

(3) If no objection in writing be so made, the party receiving such notice shall be deemed to have agreed to the amendment.

(4) If objection is made within the period prescribed in sub-rule (2) which objection shall clearly and concisely state the grounds upon which it is founded, the party wishing to pursue the amendment shall within ten days after the receipt of such objection, apply to court on notice for leave to amend and set the matter down for hearing, and the court may make such order thereon as to it seems fit.

(5) Whenever the court has ordered an amendment or no objection has been made within the time prescribed in sub-rule (2), the party amending shall deliver the amendment within the time specified in the court's order or within five days after the expiry of the time prescribed in sub-rule (2), as the case may be.

(6) When an amendment to a pleading has been delivered in terms of this rule, the other party shall be entitled to plead thereto or amend consequentially any pleading already filed by him within fourteen days of the receipt of the amended pleading.

(7) A party giving notice of amendment shall, unless the court otherwise orders, be liable to pay the costs thereby occasioned to any other party.

(8) The court may during the hearing at any stage before judgment grant leave to amend any pleading or document on such terms as to costs or otherwise as to it seems fit.

(9) Where any amendment is made it shall be made on a separate page to be added in an appropriate place to the pleading or the document amended.

(Amended L.N.38/1990.)

*Close of Pleadings.*

29. Pleadings shall be considered closed if —

- (a) either party has joined issue without alleging any new matter, and without adding any further pleading;
- (b) the last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;
- (c) the parties agree in writing that the pleadings are closed and such agreement is filed with the Registrar; or
- (d) the parties are unable to agree as to the close of pleadings, and the court upon the application of a party declares them closed.

*Irregular Proceedings.*

30. (1) A party to a cause in which an irregular step or proceeding has been taken by any other party may, within fourteen days after becoming aware of the irregularity, apply to court to set aside the step or proceeding:

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

(2) Application in terms of sub-rule (1) shall be on notice to all parties specifying particulars of the irregularity alleged.

(3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems fit.

(4) Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

(5) Where a party fails to comply timeously with a request made or notice given pursuant to these Rules the party making the request or giving the notice may notify the defaulting party that he intends, after the lapse of seven days to apply for an order that such notice or request be complied with, or that the claim or defence be struck out. Failing compliance within the seven days, application may be made to court and the court may make such order thereon as to it seems fit.

(Amended L.N.38/1990.)

*Judgment on Confession and by Default.*

31. (1) Save in actions for divorce, restitution of conjugal rights, judicial separation or nullity of marriage, a defendant may at any time confess in whole or in part the claim contained in the summons.

(2) Such confession shall be signed by the defendant personally and his signature shall either be witnessed by an attorney acting for him, not being the attorney acting for the

plaintiff, or be verified by affidavit, and furnished to the plaintiff, whereupon the plaintiff may apply in writing through the Registrar to a Judge for judgment according to such confession.

(3) (a) Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (5) for default judgment and the court may, where the claim is for a debt or liquidated demand, without hearing evidence, oral or documentary, and in the case of any other claim, after hearing such evidence as the court may direct, whether oral or documentary, grant judgment against the defendant or make such order as to it seems fit.

(b) A defendant may, within twenty-one days after he has had knowledge of such judgment, apply to court upon notice to the plaintiff to set aside such judgment and the court may upon good cause shown and upon the defendant furnishing to the plaintiff security for the payment of the costs of the default judgment and of such application to a maximum of E200, set aside the default judgment on such terms as to it seems fit.

(4) Where a plaintiff has been barred from delivering a declaration the defendant may set the action down as provided in sub-rule (5) and apply for absolution from the instance or, after adducing evidence, for judgment, and the court may make such order thereon as to it seems fit.

(5) The proceedings referred to in sub-rules (3) and (4) shall be set down for hearing not less than two court days preceding the day assigned by the Registrar or as directed by a Judge on which the matter is to be heard upon not less than three court days notice to the party in default; provided that notice of set down need not be given to any party in default of delivery of notice of intention to defend by such party.

(Amended L.N.38/1990.)

#### *Summary judgment.*

32. (1) Where in an action to which this rule applies and a combined summons has been served on a defendant or a declaration has been delivered to him and that defendant has delivered notice of intention to defend, the plaintiff may, on the ground that the defendant has no defence to a claim included in the summons, or to a particular part of such a claim, apply to the court for summary judgment against that defendant.

(2) This rule applies to such claims in the summons as is only —

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- (c) for delivery of specified movable property; or
- (d) ejectment;

together with any other claims for interest and costs.

(3) (a) An application under sub-rule (1) shall be made on notice to the defendant accompanied by an affidavit verifying the facts on which the claim, or the part of the claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, and such affidavit may in addition set out any evidence material to the claim.

(b) Unless the court otherwise directs, an affidavit for the purposes of this sub-rule may contain statements of information or belief with the sources and grounds thereof.

(c) The notice of application, a copy of the affidavit in support and any annexures thereto shall be delivered to the defendant not less than ten court days before the date of the hearing.

(4) (a) Unless on the hearing of an application under sub-rule (1) either the court dismisses the application or the defendant satisfies the court with respect to the claim, or the part of the claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

(b) The court may order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any claim in reconvention made or raised by the defendant in the action.

(5) (a) A defendant may show cause against an application under sub-rule (1) by affidavit or otherwise to the satisfaction of the court and, with the leave of the court, the plaintiff may deliver an affidavit in reply.

(b) Sub-rule (3)(b) applies for the purposes of this sub-rule as it applies for the purposes of that sub-rule.

(c) The court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(d) On the hearing of such an application the court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity —

(i) to produce any document;

(ii) if it appears to the court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

(6) (a) Where a defendant to an action has delivered a claim in reconvention, then, subject to paragraph (c) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the court for summary judgment against the plaintiff on that claim or part.

(b) Sub-rule (3), (4) and (5) shall apply in relation to an application under this sub-rule as they apply in relation to an application under sub-rule (1) but with the following modifications:

(i) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;

(ii) the words in sub-rule (4)(b) “any claim in reconvention made or raised by the defendant in” shall be omitted; and

(iii) the reference in sub-rule (5)(c) to the action shall be construed as a reference to the claim in reconvention to which the application under this sub-rule relates.

(c) This sub-rule shall apply only to a claim in reconvention which is a claim as referred to sub-rule (2).

(7) If the plaintiff makes an application under sub-rule (1) where the case is not within this rule or if it appears to the court that the plaintiff knew that the defendant relied on

a contention which would entitle him to unconditional leave to defend, then, without prejudice to any other powers, the court may dismiss the application with costs and may require the plaintiff to pay the costs forthwith.

(8) The court shall have the same power to dismiss an application under sub-rule (6) as it has under sub-rule (7) to dismiss an application under sub-rule (1), and sub-rule (7) shall apply accordingly with the necessary modifications.

(9) Where on an application under sub-rule (1) the plaintiff obtains judgment on a claim or part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(10) Where on an application under sub-rule (6) a defendant obtains judgment on a claim in reconvention or part of such a claim against the plaintiff, he may proceed with the claim in reconvention as respects any other claim or as respects the remainder of the claim or against any other defendant to the claim in reconvention.

(11) Any judgment given against a party who does not appear at the hearing of an application under sub-rule (1) or sub-rule (6) may be set aside or varied by the court on such terms as it thinks just.

(Amended L.N.38/1990.)

*Special cases and adjudication upon Points of Law.*

33. (1) The parties to any dispute may, after institution of proceedings, agree upon a written statement of facts in the form of a special case for the adjudication of the court.

(2) (a) Such statement:

- (i) shall set forth the facts agreed upon, the questions of law in dispute between the parties and their contentions thereon;
- (ii) shall be divided into consecutively numbered paragraphs;
- (iii) there shall be annexed thereto copies of documents necessary to enable the court to decide upon such questions; and
- (iv) shall be signed by counsel on behalf of each party or, where a party sues or defends personally, by such party.

(b) Such special case shall be set down for hearing in the manner provided for trials or opposed applications, whichever may be more convenient.

(c) If a minor or person of unsound mind is a party to such proceedings the court may, before determining the questions of law in dispute, require proof that the statements in such special case so far as concerns the minor or person of unsound mind are true.

(3) At the hearing thereof the court and the parties may refer to the whole of the contents of such documents and the court may draw any inference of fact or of law from the facts and documents as if proved at a trial.

(4) If it appears to the court *mero motu* or on the application of any party that there is, in any pending action, a question of law or fact which it would be convenient to decide either before any evidence is led or separately from any other question, the court may make an order directing the trial of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of.

(5) When giving its decision upon any question in terms of this rule the court may give such judgment as may upon such decision be appropriate and may give any direction

with regard to the hearing of any other issues in the proceeding which may be necessary for the final disposal thereof.

(6) If the question in dispute is one of law and the parties are agreed upon the facts, the facts may be admitted and recorded at the trial and the court may give judgment without hearing any evidence.

(7) The provisions of this rule in so far as they relate to adjudication on any question of law, shall *mutatis mutandis* apply, whenever by virtue of any law a tribunal or public officer, or any party to any matter before a tribunal or public officer, is required or entitled to submit a stated case to the court for decision on any question of law.

(Amended L.N.38/1990.)

*Rule 33bis.*

33bis. (1) At any time after notice of intention to defend shall have been given in any action, a party thereto may, through the Registrar, apply to the Chief Justice, or any other Judge designated by the Chief Justice to deal with the application, to have the case declared to be one which, on account of its commercial or other importance, or which because there has been undue delay in it coming to trial, should be dealt with in accordance with special procedures.

(2) The Chief Justice or the Judge designated by the Chief Justice shall, on receipt of the application, summon the parties to the action or their attorneys, to a conference to be held in the Judge's chambers at a time appointed by the Judge at which the application can be considered.

(3) Where the Judge accedes to the application, the Judge may in consultation with the party, then prescribe —

- (a) the procedures and steps to be taken to prepare for trial, including, but not confined to —
  - (i) the filing of pleadings;
  - (ii) the making of discovery and the production of documents;
  - (iii) the exchange of summaries of expert evidence;
  - (iv) any other matters whether provided for in the rules or not;

Provided that if no specific prescription is made in respect of any matter the provisions of these rules shall apply;

- (b) the time limits for all the steps to be taken in the litigation, provided for in these rules; and
- (c) the date for trial on which the matter is to be heard.

(4) In the absence of agreement, only in exceptional circumstances and for good reason shall failure to comply with the times prescribed in terms of this rule be condoned, and only in exceptional circumstances shall applications, made at the hearing of the trial for postponement of the hearing, otherwise than by agreement of the parties, be entertained.

(5) The trial may be heard by the Judge to whom the matter is allocated in terms of above, but should circumstances so require, a Judge other than such Judge may hear the trial.

(Added L.N.102/1998.)

*Offer to Settle.*

34. (1) In any action in which a sum of money is claimed, either alone or with any other relief, the defendant may at any time unconditionally or without prejudice make a written offer to settle the plaintiff's claim, and such offer shall be signed either by the defendant himself or by his attorney if the latter has been authorised thereto in writing.

(2) Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender, either unconditionally or without prejudice to perform such act, and unless such act must be performed by the defendant personally, he shall execute an irrevocable power of attorney authorising the performance of such act which he shall deliver to the Registrar together with the tender.

(3) Any party to an action who may be ordered to contribute towards an amount for which any party to the action may be held liable, or any third party from whom relief is being claimed in terms of rule 13, may, either unconditionally or without prejudice, by way of an offer of settlement —

- (a) make a written offer to that other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or
- (b) give a written indemnity to such other party, the conditions of which shall be set out fully in the offer of settlement.

(4) One of several defendants, as well as any third party from whom relief is claimed, may, either unconditionally or without prejudice, by way of an offer of settlement make a written offer to settle the plaintiff's or defendant's claim or tender to perform any act claimed by the plaintiff or defendant.

(5) Notice of any offer or tender in terms of this rule shall be given to all parties to the action and shall state —

- (a) whether the same is unconditional or without prejudice as an offer of settlement;
- (b) whether it is accompanied by an offer to pay all or only part of the costs of the party to whom the offer or tender is made, and further that it shall be subject to such conditions as may be stated therein;
- (c) whether the offer or tender is made by way of settlement of both claim and costs or of the claim only;
- (d) whether the defendant disclaims liability for the payment of costs or for part thereof, in which case the reasons for such disclaimer shall be given, and the action may then be set down on the question of costs alone.

(6) A plaintiff or party referred to in sub-rule (3) may within fourteen days after the receipt of the notice referred to in sub-rule (5), or thereafter with the written consent of the defendant or third party or order of court, on such conditions as may be considered to be fair, accept any offer or tender, whereupon the Registrar, having satisfied himself that the requirements of this sub-rule have been complied with, shall hand over the power of attorney referred to in sub-rule (2) to the plaintiff or his attorney.

(7) In the event of a failure to pay or to perform within seven days after delivery of the notice of acceptance of the offer or tender, the party entitled to payment or performance may, on five days' written notice to the party who has failed to pay or perform, apply through

the Registrar to a Judge for judgment in accordance with the offer or tender as well as for the costs of the application.

(8) If notice of the acceptance of the offer or tender in terms of sub-rule (6) or notice in terms of sub-rule (7) is required to be given at an address other than that provided in rule 19(3), then it shall be given at an address, which is not a post office box or *poste restante*, within five kilometres of the court.

(9) If an offer or tender accepted in terms of this rule is not stated to be in satisfaction of a plaintiff's claim and costs, the party to whom the offer or tender is made may apply to the court, after giving notice of not less than five days, for an order for costs.

(10) No offer or tender in terms of this rule made without prejudice shall be disclosed to the court at any time before judgment has been given, and no reference to such offer or tender shall appear on any file in the office of the Registrar containing the papers in connection with the case.

(11) The fact that an offer or tender referred to in this rule has been made may be brought to the notice of the court after judgment has been given as being relevant to the question of costs.

(12) If the court has given judgment on the question of costs in ignorance of the offer or tender and it is brought to the notice of the Registrar, in writing, within five days after the date of judgment, the question of costs shall be considered afresh in the light of the offer or tender:

Provided that nothing contained in this sub-rule shall affect the court's discretion as to an award of costs.

(13) Any party who, contrary to this rule, personally or through any person representing him, discloses such an offer or tender, to the Judge or the court shall be liable to have costs given against him even if he is successful in the action.

(Amended L.N.38/1990.)

#### *Interim Payments.*

34A. (1) In an action for damages for personal injuries or the death of a person, the plaintiff may, at any time after the expiry of the period of the delivery of the notice of intention to defend, apply to the court for an order requiring the defendant to make an interim payment in respect of his claim for medical costs and loss of income arising from his physical disability or the death of a person.

(2) Subject to the provisions of rule 6, the affidavit in support of the application shall contain the amount of damages claimed and the grounds for the application, and all documentary proof or certified copies thereof on which the applicant relies shall accompany the affidavit.

(3) Notwithstanding the grant or refusal of an application for an interim payment, further such applications may be brought on good cause shown.

(4) If at the hearing of such an application, the court is satisfied that —

- (a) the defendant against whom the order is sought has, in writing, admitted liability for the plaintiff's damages; or
- (b) the plaintiff has obtained judgment against the respondent for damages to be determined,



the court may, if it thinks fit but subject to the provisions of sub-rule (5), order the respondent to make an interim payment of such amount as it thinks just, which amount shall not exceed a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff taking into account any contributory negligence, set off or counterclaim.

(5) No order shall be made under sub-rule (4) unless it appears to the court that the defendant is insured in respect of the plaintiff's claim or that he has the means at his disposal to enable him to make such a payment.

(6) The amount of any interim payment ordered shall be paid in full to the plaintiff unless the court otherwise orders.

(7) Where an application has been made under sub-rule (1), the court may prescribe the procedure for the further conduct of the action and in particular may order the early trial thereof.

(8) The fact that an order has been made under sub-rule (4) shall not be pleaded and no disclosure of that fact shall be made to the court at the trial or at the hearing of questions or issues as to the quantum of damages until such questions or issues have been determined.

(9) In an action where an interim payment or an order for an interim payment has been made, the action shall not be discontinued or the claim withdrawn without the consent of the court.

(10) If an order for an interim payment has been made or such payment has been made, the court may, in making a final order, or when granting the plaintiff leave to discontinue his action or withdraw the claim under sub-rule (9) or at any stage of the proceedings on the application of any party, make an order with respect to the interim payment which the court may consider just and the court may in particular order that:

- (a) the plaintiff repay all or part of the interim payment;
- (b) the payment be varied or discharged; or
- (c) a payment be made by any other defendant in respect of any part of the interim payment which the defendant, who made it, is entitled to recover by way of contribution or indemnity or in respect of any remedy or relief relating to the plaintiff's claim.

(11) The provisions of this rule shall apply *mutatis mutandis* to any claim in reconvention.

(Added L.N.38/1990.)

*Discovery, Inspection and Production of documents and Tape recordings.*

35. (1) Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within twenty-one days of all documents and tape recordings relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of that other party, and such notice shall not, save with the leave of a Judge, be given before the close of pleadings.

(2) The party required to make discovery shall within twenty-one days or within the time stated in any order of a Judge make discovery of such documents and tape recordings on

affidavit as near as may be in accordance with Form 12 of the First Schedule, specifying separately —

- (a) such documents and tape recordings in his possession or that of his agent other than the documents and tape recordings mentioned in paragraph (b);
- (b) such documents and tape recordings in respect of which he has a valid objection to produce;
- (c) such documents and tape recordings which he or his agent had but no longer has in his possession at the date of the affidavit.

(3) A document shall be deemed to be sufficiently specified if it is described as being one of a bundle of documents of a specified nature, which have been initialled and consecutively numbered by the deponent but statements of witnesses taken for purposes of the proceedings, communications between attorney and client and between attorney and advocate, pleadings, affidavits and notices in the action shall be omitted from the Schedules.

(4) If any party believes that there are, in addition to documents or tape recordings disclosed as required under sub-rule (2) other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection in accordance with sub-rule (6), or to state on oath within fourteen days of the notice that such documents or tape recordings are not in his possession, in which event he shall state their whereabouts, if known to him.

(5) A document or tape recording not disclosed as required under sub-rule (2) may not, save with the leave of the court granted on such terms as to it may seem fit, be used for any purpose at the trial by the party who was obliged but failed to disclose it, provided that any other party may use such document or tape recording.

(6) (a) Where an authorised insurer as defined in the Compulsory Motor Vehicle Insurance Order, 1973 is a party to any action by virtue of the provisions of that Order, any party thereto may obtain discovery in the manner provided in paragraph (d) of this sub-rule against the driver or owner (as defined in that Order) of the vehicle insured by the insurer.

(b) The provisions of paragraph (a) shall apply *mutatis mutandis* to the driver of a vehicle owned by a person, state, government, authority or body of persons referred to in subsection (1) of section 4 of that Order.

(c) Where the plaintiff sues as a cessionary the defendant shall *mutatis mutandis* have the same rights under this rule against the cedent.

(d) The party requiring discovery in terms of paragraph (a), (b) or (c) shall do so by notice as near as may be in accordance with Form 13 of the First Schedule.

(7) Any party may at any time by notice as near as may be in accordance with Form 14 of the First Schedule require any party who has made discovery to make available for inspection any documents or tape recordings disclosed in terms of sub-rules (2) and (3).

(8) Such notice shall require the party to whom the notice is given to deliver to that other party within five days a notice as near as may be in accordance with Form 15 of the First Schedule, stating a time within five days from the delivery of such latter notice when such documents or tape recordings may be inspected at the office of his attorney or, if he is not represented by an attorney, at some convenient place mentioned in the notice, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade, business or undertaking, at their usual place of custody.

(9) The party receiving such latter notice referred to in sub-rule (8) shall be entitled at the time therein stated, and for a period of seven days thereafter, during normal business hours and on any one or more of such days, to inspect such documents or tape recordings and to take copies or transcriptions thereof.

(10) A party's failure to produce any such document or tape recording for inspection shall preclude him from using it at the trial, save where the court on good cause shown otherwise allows.

(11) If any party fails to give discovery as required under sub-rule (2) or, having been served with a notice under sub-rule (7), omits to give notice of a time for inspection as required under sub-rule (8) or fails to give inspection as required by sub-rule (10), the party desiring discovery or inspection may apply to a court, which may order compliance with this rule and, failing such compliance, may dismiss the claim or strike out the defence.

(12) Any party to an action may after the close of pleadings give notice to any other party to specify in writing particulars of dates of, and parties to, any document or tape recording intended to be used at the trial of the action on behalf of the party to whom notice is given.

(13) The party receiving such notice shall not less than twenty-one days before the date of trial deliver a notice —

- (a) specifying the dates of, and parties to, and the general nature of, any such document or tape recording which is in his possession; or
- (b) specifying such particulars as he may have to identify any such document or tape recording not in his possession, at the same time furnishing the name and address of the person in whose possession such document or tape recording is.

(14) Any party proposing to prove documents or tape recordings at a trial may give notice to any other party requiring that other party within ten days after the receipt of such notice to admit that those documents or tape recordings were properly executed and are what they purported to be.

(15) If the party receiving the notice referred to in sub-rule (14):

- (a) does not within the period specified in that notice so admit the documents or tape recordings in accordance with that sub-rule, then as against such party, the party giving the notice shall be entitled to produce the documents or tape recordings specified at the trial without proof other than proof (if it is disputed) that the documents or tape recordings are the documents or tape recordings referred to in the notice and that the notice was duly given;
- (b) states that the documents or tape recordings are not admitted as required under that sub-rule they shall be proved by the party giving the notice before he is entitled to use them at the trial, but the party not admitting them may be ordered to pay the costs of their proof.

(16) Any party may give to any other party who has made discovery of a document or tape recording notice to produce at the hearing the original of such document or tape recording, not being a privileged document or tape recording, in such party's possession.

(17) The notice referred to in sub-rule (16) shall be given not less than four days before the hearing but may, if the court so allows, be given during the course of the hearing.

(18) If any such notice is so given, the party giving the notice may require the party to whom notice is given to produce such document or tape recording in court and shall be entitled, without calling any witness, to hand in such document or tape recording which shall be receivable in evidence to the same extent as if it had been produced in evidence by the party to whom notice is given.

(19) The court may, during the course of any proceedings, order the production by any party thereto under oath of such documents or tape recordings in his power or control relating to any matter in question in such proceeding as the court may think fit, and the court may deal with such documents or tape recordings, when produced, as it thinks fit.

(20) Any party to any proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 16 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription thereof.

(21) Any party failing to comply with such notice shall not, save with the leave of the court, use such document or tape recording in such proceeding but any other party may use such document or tape recording.

(23) The provisions of this rule relating to discovery shall *mutatis mutandis* apply, in so far as the court may direct, to applications.

(Amended L.N.38/1990.)

*Inspections, Examinations and Expert Testimony.*

36. (1) Subject to the provisions of this rule, any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed shall have the right to require any party claiming such damages or compensation, whose state of health is relevant for the determination thereof to submit to medical examination.

(2) Any party requiring another party to submit to medical examination under sub-rule (1) shall deliver a notice:

- (a) specifying the nature of the examination required, the person or persons by whom, the place where and the date (being not less than fourteen days from the date of such notice) and time when it is desired that such examination shall take place; and
- (b) requiring such other party to submit himself for examination then and there.

(3) The notice referred to in sub-rule (2) shall state that such other party may have his own medical adviser present at such examination, and shall be accompanied by a remittance in respect of the reasonable expense to be incurred by such other party in attending such examination, and such expense shall be tendered on the scale as if such person were a witness in a civil suit before the court:

Provided that —

- (a) if such other party is immobile, the amount to be paid to him shall include the cost of his travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him;
- (b) where such other party will actually lose his salary, wage or other remuneration during the period of his absence from work, he shall in addition

to the expenses mentioned in sub-rule (3) be entitled to receive an amount not exceeding E10 per day in respect of the salary, wage or other remuneration which he will actually lose;

- (c) any amounts paid by a party under paragraphs (a) and (b) shall be costs in the cause unless the court otherwise directs.

(4) The person receiving the notice referred to in sub-rule (2) shall within seven days after the service thereof notify the person delivering it in writing of the nature and grounds of any objection which he may have in relation to —

- (a) the nature of the proposed examination;
- (b) the person or persons by whom the examination is to be conducted;
- (c) the place, date or time of the examination;
- (d) the amount of the expenses tendered to him;

and shall further —

- (i) in the case of his objection being to the place, date or time of the examination, furnish an alternative date, time or place, as the case may be; and
- (ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required.

(5) If the person —

- (a) receiving the notice does not deliver such objection within the period of seven days, he shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice;
- (b) giving the notice regards the objection raised by the person receiving it as unfounded in whole or in part he may on notice make application to a Judge to determine the conditions upon which the examination, if any, is to be conducted.

(6) Any party to such an action may at any time by notice in writing require any person claiming such damages to make available in so far as he is able to do so to such party within ten days any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages, and to provide copies thereof upon request.

(7) If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a Judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

(8) If any party claims damages resulting from the death of another person, he shall undergo a medical examination as prescribed in this rule if this is requested and it is alleged that his own state of health is relevant in determining the damages.

(9) If it appears that the state or condition of any property of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision of any matter at issue in any action, any party may at any stage give notice requiring the party relying upon the existence of such state or condition of such property or having such property in his possession or under his control to make it available for inspection or examination in terms of this sub-

rule, and may in such notice require that such property or a fair sample thereof remain available for inspection or examination for a period of not more than ten days from the date of receipt of the notice.

(10) The party called upon to submit such property for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted and shall not be bound to submit such property to such examination if this will materially prejudice such party by reason of the effect thereof upon such property.

(11) In the event of any dispute as to whether the property should be submitted for examination as required under sub-rule (9), such dispute shall be referred to a Judge on notice delivered by either party stating that the examination is required and that objection is taken in terms of this sub-rule, and in considering any such dispute the Judge may make such order as to him seems fit.

(12) Any party causing an examination to be made in terms of sub-rules (1) and (9) shall —

- (a) cause the person making the examination to give a full report in writing of the results of his examination and the opinion that he formed as a result thereof on any relevant matter;
- (b) after receipt of such report and upon request, furnish any other party with a complete copy thereof; and
- (c) bear the expense of the carrying out of any such examination: provided that such expense shall form part of such party's costs.

(13) No person shall, save with the leave of the court or the consent of all parties to the action, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he has —

- (a) not less than fourteen days before the hearing, delivered notice of his intention so to do; and
- (b) not less than ten days before the trial, delivered a summary of such expert's opinion and his reasons therefor.

(14) (a) No person shall, save with the leave of the court or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless he has, not less than fourteen days before the hearing, delivered a notice stating his intention to do so, offering inspection thereof and requiring the party receiving the notice to admit the same within seven days after receipt of the notice.

(b) If the party receiving the notice fails within the period of seven days so to admit, such plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof, but if such party states that he does not admit such plan, diagram, model or photograph it may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of such proof.

(Amended L.N.38/1990.)

#### *Pre-Trial Conference.*

37. (1) An attorney desirous of having an action placed on the roll as referred to in rule 55 shall as soon as possible after the close of pleadings and before delivering a notice in terms of rule 55A (1) and (2), in writing request the attorneys acting for all other parties to such action to attend a conference on a date and at a time stated in the request, being not less than five or more than ten days after delivery of the request, with the object of reaching agreement as to

possible ways of curtailing the duration of such trial and in particular as to all or any of the following matters:

- (i) the possibility of obtaining admissions of fact and of documents;
- (ii) the holding of an inspection or examination;
- (iii) the making of discovery of documents;
- (iv) the exchange between parties of the reports of experts;
- (v) the plans, diagrams, photographs, models, and the like, to be used at the trial;
- (vi) the consolidation of trials;
- (vii) the quantum of damages;
- (viii) the preparation and handing in at the trial of copies of correspondence and other documents in the form of a paged bundle with copies for the Judge and all parties.

(2) The attorney or attorneys to whom the request is made may within three days of receipt of the request suggest not more than two alternative dates for the holding of the conference, being not less than five nor more than ten days after receipt of the request.

(3) If no agreement can be reached upon a date for the holding of the conference as set out in sub-rules (1) and (2) the party desirous of having the action placed on the roll may apply to the Registrar to fix such a date and the Registrar shall fix such a date and may make such order as to the costs of the application as he may deem fit.

(4) Where a conference has been held as required under sub-rule (1) the attorneys shall at the conclusion thereof draw up and sign a minute of the matters on which they are agreed.

(5) An attorney requesting that an action be placed on the roll shall at the time of the request file with the Registrar the minute referred to in sub-rule (4) or, if no conference has been held, a statement to that effect and setting out the reasons therefor. The Registrar shall not place the action on the roll until the provisions of this sub-rule have been complied with.

(6) At the commencement of the trial counsel for the respective parties shall report to the court whether such conference has been duly held and, if so, shall hand in the signed minute referred to in sub-rule (4).

(7) Before the trial proceeds the Judge may call into his chambers counsel for the parties with a view to securing agreement on any matters likely to curtail the duration of the trial.

(8) When giving judgment in the action the court may make an order for the payment by a party of portion of the costs when the attorney for such party has failed to attend a conference in terms of sub-rule (1).

(Amended L.N.38/1990.)

#### *Procuring Evidence for Trial.*

38. (1) Any party, desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the Registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than four persons, and service thereof upon any person therein named shall be effected by the Sheriff or his Deputy, in the manner prescribed by rule 4, and the process for

subpoenaing such witnesses shall be as near as may be in accordance with Form 17 in the First Schedule.

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

(3) Unless a witness who has been required to produce any deed, document, instrument, writing, tape recording or thing at the trial claims that the deed, document, instrument, writing, tape recording or thing is privileged, such witness shall hand it over to the Registrar as soon as possible and thereafter the parties may inspect such deed, document, instrument, writing, or tape recording or thing and make copies or transcriptions thereof, after which the witness shall be entitled to its return.

(4) The witness at the trial of any action shall be examined *viva voce*, but a court may at any time, for sufficient reasons, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing on such terms and conditions as to it may seem fit:

Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.

(5) A court may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial before a commissioner of the court, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems fit, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

(6) Where the evidence of any person is to be taken on commission before any commissioner within Swaziland, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

(7) Unless the court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under sub-rule (5), shall be adduced upon oral examination in the presence of the parties, their counsel, and the witness concerned shall be subject to cross-examination and re-examination.

(8) A commissioner shall not decide upon the admissibility of evidence tendered, but shall note any objections made and such objections shall be decided by the court hearing the matter.

(9) Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court and the transcript of any shorthand record or record taken by mechanical means duly certified by the person transcribing the same and by the commissioner shall constitute the record of the examination:

Provided that the evidence before the commissioner may be taken down in narrative form.

(10) The record of the evidence shall be returned by the commissioner to the Registrar with his certificate to the effect that it is the record of the evidence given before him, and shall thereupon become part of the record in the case.



(Amended L.N.38/1990.)

*Trial.*

39. (1) If when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, insofar as he has discharged such burden, but where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.

(2) When a defendant has by his default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interests of justice may otherwise order, be permitted, either personally or by counsel, to appear at the hearing.

(3) If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant shall be entitled to an order granting absolution from the instance with costs, but may lead evidence with a view to satisfying the court that final judgment should be granted in his favour and the court, if so satisfied, may grant such judgment.

(4) The provisions of sub-rules (1) and (2) shall apply to any person making any claim (whether by way of claim in reconvention or third party notice or by any other means) as if he were a plaintiff, and the provisions of sub-rule (3) shall apply to a person against whom such a claim is made as if he were a defendant.

(5) Where the burden of proof is on the plaintiff, he or one counsel for the plaintiff may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.

(6) At the close of the case for the plaintiff, the defendant may apply for absolution from the instance, in which event the defendant or one counsel on his behalf may address the court and the plaintiff or one counsel on his behalf may reply. The defendant or one counsel on his behalf may thereupon reply on any matter arising out of the address of the plaintiff or his counsel.

(7) If absolution from the instance is not applied for or has been refused and the defendant has not closed his case, the defendant or one counsel on his behalf may briefly outline the facts intended to be proved and the defendant may then proceed to the proof thereof.

(8) Each witness shall, where a party is represented, be examined, cross-examined or re-examined as the case may be by only one (though not necessarily the same) counsel for such party.

(9) If the burden of proof is on the defendant, he or his counsel shall have the same rights as those accorded to the plaintiff or his counsel by sub-rule (5).

(10) Upon the cases on both sides being closed, the plaintiff or one or more of the counsel on his behalf may address the court and the defendant or one or more counsel on his behalf may do so, after which the plaintiff or one counsel only on his behalf may reply on any matter arising out of the address of the defendant or his counsel.

(11) Either party may apply at the opening of the trial for a ruling by the court upon the onus of adducing evidence, and the court after hearing argument may give a ruling as to the party upon whom such onus lies:

Provided that such ruling may thereafter be altered to prevent injustice.

(12) If there be one or more third parties or if there be defendants to a claim in reconvention who are not plaintiffs in the action, any such party shall be entitled to address the court in opening his case and shall lead his evidence after the evidence of the plaintiff and of the defendant has been concluded and before any address at the conclusion of such evidence. Save insofar as the court shall otherwise direct, the defendants to any counterclaim who are not plaintiffs shall first lead their evidence and thereafter any third parties shall lead their evidence in the order in which they became third parties. If the onus of adducing evidence is on the claimant against the third party or on the defendant to any claim in reconvention, the court shall make such order as may seem convenient with regard to the order in which the parties shall conduct their cases and address the court, and in regard to their respective rights of reply. The provisions of sub-rule (11) shall *mutatis mutandis* apply with regard to any dispute as to the onus of adducing evidence.

(13) Where the onus of adducing evidence on one or more of the issues is on the plaintiff and that of adducing evidence on any other issue is on the defendant, the plaintiff shall first call his evidence on any issues in respect of which the onus is upon him, and may then close his case. The defendant, if absolution from the instance is not granted, shall, if he does not close his case, thereupon call his evidence on all issues in respect of which such onus is upon him.

(14) After the defendant has called his evidence, the plaintiff shall have the right to call rebutting evidence on any issues in respect of which the onus was on the defendant:

Provided that if the plaintiff shall have called evidence on any such issues before closing his case he shall not have the right to call any further evidence thereon.

(15) Nothing in sub-rule (13) or (14) shall prevent the defendant from cross-examining any witness called at any stage by the plaintiff on any issue in dispute, and the plaintiff shall be entitled to re-examine such witness consequent upon such cross-examination without affecting the right given to him by sub-rule (14) to call evidence at a later stage on the issue on which such witness has been cross-examined. The plaintiff may further call the witness so re-examined to give evidence on any such issue at a later stage.

(16) A record shall be made of —

- (a) a judgment or ruling given by the court;
- (b) the evidence given in court;
- (c) any objection made to the evidence received or tendered;
- (d) the proceedings of the court generally (including any inspection *in loco* and any matter demonstrated by any witness in court); and
- (e) any other portion of the proceedings which the court may specifically order to be recorded.

(17) Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical and/or electrical means.

(18) The shorthand notes so taken or any mechanical and/or electrical record shall be certified by the person taking the same to be correct and shall be filed with the Registrar. It shall not be necessary to transcribe them unless the court or a Judge so directs or a party appealing so requires. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical and/or electrical record shall be filed with the Registrar. The transcript of the shorthand notes or mechanical and/or electrical record certified as correct shall be deemed to be correct unless the court otherwise orders.

(19) A party to any matter in which a record has been made in shorthand or by mechanical and/or electrical means may apply in writing through the Registrar to a Judge to have the record transcribed if an order to that effect has not already been made. Such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.

(20) If it appears convenient to do so, the court may at any time make any order with regard to the conduct of the trial as to it seems meet, and thereby vary any procedure laid down by this rule.

(21) Every stenographer employed to take down a record and every person employed to make a mechanical and/or electrical record of any proceedings shall be deemed to be an officer of the court and shall, before entering on his duties, take the following oath/affirmation

I, A. B. do swear/affirm that I shall faithfully, and to the best of my ability, record in shorthand, or cause to be recorded by mechanical means, as directed by the Judge, the proceedings in any case in which I may be employed as an officer of the court, and that I shall similarly, when required to do so, transcribe the same or, as far as I am able, any shorthand notes, or mechanical and/or electrical record, made by any other stenographer or person employed to make a mechanical and/or electrical record.

(22) By consent the parties to a trial shall be entitled, at any time before trial, on written application to a Judge through the Registrar, to have the cause transferred to the subordinate court, but the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise.

(23) The Judge may, at the conclusion of the evidence in trial actions, confer with counsel in his chambers as to the form and duration of the addresses to be submitted in court.

(24) Where the court considers that the proceedings have been unduly prolonged by the successful party by the calling of unnecessary witnesses or by excessive examination or cross-examination, or by over-elaboration in argument, it may penalize such party in the matter of costs.

#### *In Forma Pauperis.*

40. (1) (a) A person who desires to bring or defend proceedings *in forma pauperis*, may apply to the registrar who, if it appears to him that he is a person such as is contemplated by sub-rule (2)(a), shall refer him to an attorney.

(b) Such attorney shall thereupon inquire into such person's means and the merits of his cause and, upon being satisfied that the matter is one in which he may properly act *in forma pauperis*, he shall act therein. Should such attorney at any stage during the course of the proceedings consider that the matter is one which justifies the instructing of an advocate he shall furnish a certificate to the registrar to that effect and the registrar may authorise the attorney to engage an advocate who shall act *in forma pauperis*:

Provided that if such advocate is subject to the rules of any society of advocates the procedure, if any, required by such society shall be followed in his appointment.

(c) Should such attorney or advocate thereafter become unable so to act, the Registrar or the said attorney, as the case may be, may, upon request, nominate another practitioner to act in his stead.

(2) If when proceedings are instituted there be lodged with the Registrar on behalf of such person —

- (a) an affidavit setting forth fully his financial position and stating that, excepting household goods, wearing apparel and tools of trade, he is not possessed of property to the amount of R200 and will not be able within a reasonable time to provide such sum from his earnings;
- (b) a statement signed by the above-mentioned attorney, or attorney and advocate as the case may be, that being satisfied that the person concerned is unable to pay fees he or they are acting for the said person in their respective professional capacities gratuitously in the proceedings to be instituted by him; and
- (c) a certificate of *probabilis causa* by the said attorney, or attorney and advocate, as the case may be, the Registrar shall issue all process and accept all documents in the said proceedings for the aforesaid person without fee of office.

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

(4) The Registrar shall maintain in his office a roster of attorneys, and in referring persons desirous of bringing or defending proceedings *in forma pauperis* to practitioners in terms of sub-rule (1), he shall do so as far as possible in rotation, but having regard to the circumstances of the case in question.

(5) The said attorney or attorney and advocate shall thereafter act gratuitously for the said person in their respective capacities in the said proceedings, and shall not be at liberty to withdraw, settle or compromise such proceedings, or to discontinue their assistance, without the leave of the Chief Justice, who may in the latter event give directions as to the appointment of substitutes.

(6) When a person sues or defends *in forma pauperis* under process issued in terms of this rule, his opponent shall, in addition to any other right he might have, have the right at any time to apply to the court on notice for an order dismissing the claim or defence or for an order debarring him from continuing *in forma pauperis*; and upon the hearing of such application the court may make such order thereon, including any order as to costs, as to it seems meet.

(7) If upon the conclusion of the proceedings a litigant *in forma pauperis* is awarded costs, his attorney may include in his bill of costs such fees and disbursements to which he would ordinarily have been entitled, and upon receipt thereof, in whole or in part, he shall pay out in the following order of preference: first, to the Registrar, such amount in revenue stamps as would have been due in respect of his fees of office; second, to the Deputy Sheriff, his charges for the service and execution of process; third, to himself and the advocate, their fees as allowed on taxation, *pro rata* if necessary.

#### *Withdrawal, Settlement, Discontinuance, Postponement and Abandonment.*

41. (1) (a) A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody

in such notice a consent to pay costs; and the Taxing Master shall tax such costs on the request of the other party.

(b) A consent to pay costs referred to in paragraph (a), shall have the effect of an order of court for such costs.

(c) If no such consent to pay costs is embodied in the notice of withdrawal, the other party may apply to court on notice for an order for costs.

(2) Any party in whose favour any decision or judgment has been given, may abandon such decision or judgment either in whole or in part by delivering notice thereof and such judgment or decision abandoned in part shall have effect subject to such abandonment.

(3) The provisions of sub-rule (1) relating to costs shall *mutatis mutandis* apply in the case of a notice delivered in terms of sub-rule (2).

(4) If in any proceedings a settlement or agreement to postpone or withdraw is reached, it shall be the duty of the attorney for the plaintiff or applicant immediately to inform the Registrar accordingly.

(5) Unless such proceedings have been withdrawn, any party to a settlement which has been reduced to writing and signed by the parties or their counsel but which has not been carried out, may apply for judgment in terms thereof on giving at least five days' notice to all interested parties.

(Amended L.N.38/1990.)

#### *Variation and Rescission of Orders.*

42. (1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) an order or judgment erroneously granted in the absence of any party affected thereby;

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.

(Amended L.N.38/1990.)

#### *Matrimonial Matters.*

43. (1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) maintenance *pendent lite*;

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of any child;

(d) interim access to any child.

(2) The applicant shall deliver a sworn statement in the nature of a declaration setting out the relief claimed and the grounds therefor, together with a notice to the respondent, the statement and notice to be served on the attorney of record of the respondent or on the respondent personally, unless the court for good cause shown grants leave for such statement and notice to be served in some other specified manner, and such notice is to be as near as may be in accordance with Form 18 of the First Schedule.

(3) The statement and notice referred to in sub-rule (2) —

(a) shall be signed by the applicant or his attorney;

(b) shall give an address for service within five kilometres of the court; and

(c) shall unless delivered, be served by the Sheriff.

(4) The respondent shall, within seven days of receiving the statement, deliver a sworn reply in the nature of a plea, signed and giving an address for service as required under sub-rule (3), and in default of which he shall be *ipso facto* barred.

(5) Unless the respondent is in default in terms of sub-rule (4), the Registrar shall as soon as reasonably possible after the reply, bring the matter before the court for summary hearing on giving seven days' notice to the parties.

(6) The court may hear such evidence, (documentary or oral or both) as it considers necessary and may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.

(7) The court may, on the same procedure, vary its decision in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

(Amended L.N.38/1990.)

#### *Restitution of Conjugal Rights.*

44. (1) (a) In an action for the restitution of conjugal rights the plaintiff may in the alternative claim a decree of divorce.

(b) Upon the hearing of the action for restitution of conjugal rights the court may upon proof of the malicious desertion of plaintiff by defendant order restitution of such rights (which order shall, unless the court otherwise directs, be served on the defendant personally), and may further direct the defendant to show cause on a day to be named in such order why a decree of divorce should not be granted.

(2) If upon such return day it is proved by affidavit or otherwise that the defendant has failed to comply with the order for restitution of conjugal rights, the court may grant a decree of divorce or make such other order as to it may seem just.

(3) When the court grants leave to the plaintiff to publish a restitution order it shall be as near as may be in accordance with Form 19 of the First Schedule.

#### *Execution – General and Movables.*

45. (1) The party in whose favour any judgment of the court has been pronounced may at his own risk, sue out of the office of the Registrar one or more writs for execution thereof as near as may be in accordance with Form 20 of the First Schedule:

Provided that except where by judgment of the court immovable property has been specially declared executable, no such process shall issue against the immovable property of any person until a return has been made of any process which may have been issued against his movable property, and the Registrar perceives therefrom that such person has not sufficient movable property to satisfy the writ.

(2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the Taxing Master or agreed to in writing by the party concerned or by the party's attorney of record of a fixed sum:

Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter:

Provided further that if such costs have not been taxed and the original bill of costs, duly allocated, has not been lodged with the Deputy Sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution.

(3) Whenever by process of the court the Deputy Sheriff is commanded to levy and raise any sum of money upon the goods of a person, he shall forthwith himself or by his assistant proceed to the dwelling house or place of employment or business of such person, unless the judgment creditor gives different instructions regarding the situation of the assets to be attached, and there —

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

(4) Any such property shall be immediately inventoried and shall, unless the execution creditor otherwise directs, and subject to the provisions of sub-rule (6), be taken into the custody of the Deputy Sheriff:

Provided that —

- (a) if there is any claim made by any other person to any such property seized or about to be seized by the Deputy Sheriff, then, if the plaintiff gives the Deputy Sheriff an indemnity to his satisfaction against any loss or damage by reason of the seizure thereof, the Deputy Sheriff shall retain or seize, as the case may be, and shall make an inventory of and keep such property; and
- (b) if satisfaction of the writ was not demanded from the judgment debtor personally, the Deputy Sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown; and
- (c) any person in whose charge or custody movable property which has been attached, has been left, shall not use, dispose, let or lend such property, or permit it to be used, let or lent, nor shall he in any way do anything which will decrease its value and if the property attached shall have produced any profit or increase, the custodian shall be responsible for any such profit or in like manner as he is responsible for the property originally attached. (Added L.N.65/2005.)

(5) The Deputy Sheriff shall file with the Registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

(6) Where movable property has been attached by the Deputy Sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the Deputy Sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the attachment shall sooner have been legally removed, whereupon the Deputy Sheriff shall leave such property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with Form 21 of the First Schedule.

(7) If the judgment debtor does not, together with a surety, give an undertaking as required in terms of sub-rule (6), then, unless the execution creditor otherwise directs, the Deputy Sheriff shall remove such property to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

(8) Where under sub-rules (4) and (6):

- (a) any movable property is attached, the Deputy Sheriff shall where practicable and subject to rule 59 sell it by public auction to the highest bidder after due advertisement by him in one or more newspapers and after the expiration of not less than fourteen days from the time of seizure thereof and not less than seven days after the first publication of such advertisement; or
- (b) perishables are attached, they may with the consent of the execution debtor or upon the execution creditor indemnifying the Deputy Sheriff against any claim for damages which may arise from such sales, be sold immediately by the Deputy Sheriff concerned in such manner as to him seems expedient.

(9) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the following manner:

- (a) where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be completed only when —
  - (i) notice has been given by the Deputy Sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be, and
  - (ii) the Deputy Sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond or other security as the case may be, and
  - (iii) in the case of a registered lease or any registered right, notice has been given to the Registrar of Deeds;
- (b) where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the Deputy Sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution. The Deputy Sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of such interest;
- (c) in the case of the attachment of all other incorporeal property or incorporeal rights in property —
  - (i) the attachment shall only be completed when:



- (a) notice of the attachment has been given in writing by the Deputy Sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, such notice has also been given to the Registrar of Deeds in whose deeds registry the property or right is registered, and
- (b) the Deputy Sheriff has taken possession of the writing or document evidencing the ownership of such property or right, or has certified that he has been unable, despite diligent search, to obtain possession of the writing or document;
- (ii) the Deputy Sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

(10) Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub-rule (9)(b).

(11) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he otherwise agrees.

(12) (a) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with the Deputy Sheriff before the day of the sale in execution shall rank *pro rata* in the distribution of proceeds of the goods sold, in the order of preference referred to in rule 46(15)(c).

(b) If there should remain any surplus, the Deputy Sheriff shall pay it over to the judgment debtor; and the Deputy Sheriff shall make out and deliver to him an exact account in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the Deputy Sheriff shall refund such sum to the judgment debtor.

(13) (a) Whenever it is brought to the knowledge of the Sheriff that there is any debt which is subject to attachment, and is owing or accruing from a third person to the judgment debtor the Sheriff may, if requested by the judgment creditor, attach such debt, and shall thereupon serve a notice on such third person (hereinafter called "the garnishee"), requiring payment by him to the Sheriff of so much of the debt as may be sufficient to satisfy the writ, and the Sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached.

(b) In the event of the garnishee refusing or neglecting to comply with any such notice, the Sheriff shall forthwith notify the judgment creditor, and the judgment creditor may call upon the garnishee to appear before the court to show cause why he should not pay to the Sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due or claimed to be due by him to the party against whom execution is issued, or he does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

(c) If the garnishee disputes his liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner *mutatis mutandis* in which any issue or question in any action may

be tried or determined; or the court may make any such other order in the premises as may be just.

(d) Nothing in these rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference, or retention claimed by any third person in respect of such debts.

(e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.

(f) If the Sheriff is of the opinion that applications to the court or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he may sell such debt, after attachment, by auction, in the same way as any other movable property, or may cede it at the nominal amount thereof to the judgment creditor with his consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(h) Whenever a court gives judgment for payment of a sum of money against a party (hereinafter called "the debtor") the court may forthwith investigate whether the debtor is able to satisfy the judgment and for that purpose may require the debtor's attendance to give evidence on oath, and to produce such documents as the court may direct, and allow the judgment creditor to adduce such evidence as the court may think fit.

(i) Whenever a return has been made to a writ of execution, where the officer charged with the execution has been unable to find sufficient property subject to attachment to satisfy the amount of the writ or whenever a judgment debt remains wholly or in part unsatisfied after the expiration of twenty-one days from the date of the judgment, the judgment creditor may by notice call upon the judgment debtor or, where the judgment debtor is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity, to appear before the court on a day fixed by such notice, and to produce such documents as may reasonably be necessary, in order that the court may investigate the financial position of the judgment debtor.

(j) Any such person who, having been served with such notice under paragraph (i) fails without good cause to appear, may be personally attached for contempt of court; and whenever such person appears pursuant to such notice the court may proceed as set forth in paragraph (h).

(k) Whenever the court is of the opinion that the debtor is able to satisfy a debt by instalments out of his earnings, it may make an order for payment of such debt by instalments.

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

(m) Any writ issued for the attachment of salary, earnings, or emoluments shall remain in force and may be executed periodically as such salary, earnings, or emoluments accrue to the debtor, until it is satisfied.

(Added L.N. 13/1976; amended L.N.38/1990.)

*Execution. — Immovables.*

46. (1) A writ of execution against immovable property shall contain a full description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the Deputy Sheriff; and shall be accompanied by sufficient information to enable him to give effect to sub-rule (3).

(2) An attachment shall be made by the Sheriff or Deputy Sheriff of the district in which the property is situate upon a writ as near as may be in accordance with Form 22 of the First Schedule. (Amended L.N.36/1982; L.N.65/2005.)

(3) The mode of attachment of immovable property shall be by notice in writing prepared by the Deputy Sheriff and served upon the owner thereof, and upon the Registrar of Deeds or other officer charged with the registration of such immovable property, and if the property is in the occupation of some person other than the owner, also upon such occupier. Any such notice shall be served as provided in rule 4 of these rules upon the owner and occupier and in any other case by registered letter, duly prepaid and posted addressed to the person intended to be served. The Deputy Sheriff shall notify the Registrar and the execution creditor of the attachment as soon as it has been effected. (Amended L.N.36/1982; L.N.65/2005.)

(4) After attachment, any sale in execution shall take place in the district in which the attached property is situate and be conducted by the Deputy Sheriff of such district:

Provided that the Registrar in the first instance and subject to the provisions of sub-rule 9(b) may on good cause shown authorize such sale to be conducted elsewhere and by another Deputy Sheriff. (Amended L.N.65/2005.)

(5) Upon receipt of written instructions from the execution creditor to proceed with such sale, the Sheriff or Deputy Sheriff shall ascertain and record what bonds or other encumbrances are registered against the property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly. (Amended L.N.65/2005.)

(6) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless —

- (a) the execution creditor has caused notice, in writing, of the intended sale to be served by registered post upon the preferent creditor, if his address is known and, if the property is rateable, upon the local authority concerned calling upon them to stipulate within ten days of a date to be stated a reasonable reserve price or to agree in writing to a sale without reserve; and has provided proof to the Sheriff that the preferent creditor has so stipulated or agreed; or
- (b) the Sheriff or Deputy Sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice. (Amended L.N.65/2005.)

(7) The Sheriff or Deputy Sheriff may by notice served upon any person require him to deliver up to him, but without prejudice to any such person's claim to such documents, forthwith all documents in his possession or control relating to the debtor's title to the said property. (Amended L.N.65/2005.)

(8) (a) The Sheriff or Deputy Sheriff who made the attachment shall appoint a day and place for the sale of such property. (Amended L.N.65/2005.)

(b) The execution creditor shall, after consultation with the Sheriff or Deputy Sheriff, prepare a notice of sale containing a short description of the property, its situation and street number, if any, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the Sheriff, and he shall furnish the Sheriff or Deputy Sheriff with as many copies of the notice as the latter may require.

(c) The Sheriff or Deputy Sheriff shall indicate a suitable newspaper circulating in the district in which the property is situated and require the execution creditor to publish the said notice once in the said newspaper and in the Gazette not less than five and not more than 15 days before the date appointed for the sale and to furnish him, not later than the day prior to the date of the sale, with one copy of the said newspaper and with the number of the Gazette in which the notice appeared: (Amended L.N.65/2005.)

Provided that the Sheriff or Deputy Sheriff may, if he deems fit, order such further publication or advertisement, as he may deem necessary in the circumstances, and require the judgment creditor to provide such proof of such publication or advertisement as he may deem necessary. (Amended L.N.65/2005.)

(d) Not less than ten days prior to the date of the sale, the Sheriff or Deputy Sheriff shall forward by registered post a copy of the notice of sale referred to in paragraph (b) to every judgment creditor who had caused the immovable property to be attached and to every mortgagee thereof whose address is known. (Amended L.N.65/2005.)

(e) Not less than ten days prior to the date of the sale, the Sheriff or Deputy Sheriff shall affix one copy of the notice on the notice-board of the court and of the subordinate court of the district in which the property is situate, and one copy at or as near as may be to the place where the said sale is actually to take place. (Amended L.N.65/2005.)

(9) (a) The conditions of sale shall, not less than twenty-eight days prior to the date of the sale, be prepared by the execution creditor as near as may be in accordance with Form 23 of the First Schedule, and the said conditions shall be submitted to the Sheriff or Deputy Sheriff to settle them. The execution creditor shall thereafter supply the Sheriff or Deputy Sheriff with four copies of the conditions of sale, one of which shall lie for inspection by interested parties at his office. (Amended L.N.65/2005.)

(b) An interested party may, not less than seven days prior to the date of the sale, upon twenty-four hours' notice to the execution creditor and any mortgagee apply to a Judge for any modification of the conditions of sale and the Judge may make such order thereon including an order as to costs, as to him may seem meet.

(10) The execution creditor may appoint an attorney to attend to the transfer of the property when sold in execution.

(11) Immovable property attached in execution shall be sold by the Sheriff or the Deputy Sheriff by public auction.

(12) If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a Judge summarily on the report of the Sheriff or the Deputy Sheriff who sold the property after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the Sheriff's or the Deputy Sheriff's distribution account, be recovered from him under judgment of the Judge pronounced summarily on a written report by the Sheriff or Deputy Sheriff, after such purchaser shall have received notice in writing that such report will

be laid before the Judge for such purpose; and, if he is already in possession of the property, the Sheriff may, on seven days' notice, apply to a Judge for an order ejecting him or any person claiming to hold under him therefrom. (Amended L.N.65/2005.)

(13) Subject to the provisions of sub-rule (6), the sale shall be without reserve and upon the conditions stipulated under sub-rule (7), and the property shall be sold to the highest bidder.

(14) The Sheriff or Deputy Sheriff who sold the property shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him shall be as valid and effectual as if he were the owner of the property. (Amended L.N.65/2005.)

(15) (a) The Sheriff or Deputy Sheriff shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, upon receipt thereof he shall forthwith pay the moneys received in respect of the purchase price to the relevant parties. (Amended L.N.65/2005.)

(b) The Sheriff or Deputy Sheriff shall as soon as possible after the sale prepare in order of preference, as hereinafter provided, a plan of distribution of the proceeds and shall forward a copy of such plan to the Registrar of the court. Immediately thereafter the Sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for fourteen days from a date mentioned at his office and at the office of the Registrar, and unless such parties shall signify, in writing, their agreement to the plan, such plan shall so lie for inspection. (Amended L.N.65/2005.)

(c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference —

- (i) the claims of preferent creditors ranking in priority in their legal order of preference; and thereafter
- (ii) the claims of other creditors whose writs have been lodged with the Deputy Sheriff in the order of preference appearing from sections 97 and 100 to 103 (inclusive) of the Insolvency Act, No. 81 of 1955.

(d) An interested person objecting to such plan shall, within four days of the expiry of the period referred to in paragraph (b) give notice in writing to the Sheriff or Deputy Sheriff and all other interested persons of the particulars of his objection and shall bring such objection before a Judge for review on ten days' notice to the Sheriff and the said persons. (Amended L.N.65/2005.)

(e) The Judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as to him seems meet.

(f) If —

- (i) no objection be lodged to such plan; or
- (ii) the interested parties signify their concurrence therein; or
- (iii) the plan is confirmed or amended on review,

the Sheriff or Deputy Sheriff shall, on production of a certificate from the conveyancer attending to the registration of transfer which has been given to the purchaser, pay out in accordance with the plan of distribution. If the address of a payee is not known the amount

due to him shall be paid into the Guardian's Fund established under any law relating to the Administration of Estates. (Amended L.N.65/2005.)

*Security for Costs.*

47. (1) A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded.

(2) If the amount of security only is contested the Registrar shall determine the amount to be given.

(3) If the party from whom security is demanded contests his liability to give security or if he fails or refuses to furnish security in the amount demanded or the amount fixed by the Registrar within ten days of the demand or the Registrar's decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

(4) The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet.

(5) Security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the Registrar.

(6) The Registrar may, upon the application of the party in whose favour security is to be provided and on notice to interested parties, increase the amount thereof if he is satisfied that the amount originally furnished is no longer sufficient.

*Review of Taxation.*

48. (1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within fourteen days of the *allocatur* require the taxing master to state a case for the decision of a Judge, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any relevant findings of fact by the taxing master:

Provided that, save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed respectively, is less than E50.

(2) The taxing master shall supply a copy of the case to each of the parties, who may within ten days of the receipt of the copy submit contentions in writing thereon, including grounds of objection not advanced at the taxation in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.

(3) The taxing master shall thereafter make his report and supply a copy thereof to each of the parties who may within seven days of the receipt thereof submit contentions in writing thereon to the taxing master who shall forthwith lay the case together with the contentions of the parties thereon, his report and any contentions thereon before a Judge, who may then decide the matter upon the case and contentions so submitted, together with any further information which he may require from the taxing master, or may decide it after

hearing, if he deems fit, the parties or their advocates or attorneys in his chambers or he may refer the case for decision to the court.

(4) Any further information to be supplied by the taxing master to the Judge under sub-rule (3) shall be supplied by him to the parties who may within seven days of the receipt thereof submit contentions in writing thereon to the taxing master who shall forthwith lay such further information together with any contentions of the parties thereon before the Judge.

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

(Amended L.N.38/1990.)

#### *Certificate for Leave to Appeal.*

49. (1) Where the certificate of the Judge who heard the appeal is sought for leave to appeal to the Court of Appeal from a decision of the court in its civil appellate jurisdiction is required, application shall be made by the delivery within fourteen days after the date of the judgment sought to be appealed against of a notice stating that the applicant desires leave to appeal and setting forth the grounds upon which such leave is sought. The application shall be set down on a date to be arranged with the Registrar.

(2) Sub-rule (1) shall not apply to an application for such certificate made at the time of giving judgment.

#### *Civil Appeals from Subordinate Courts.*

50. (1) An appeal to the court against the decision of a subordinate court in a civil matter shall be prosecuted within six weeks, or within such extended period as the court on due application by any of the parties may allow, after noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.

(3) If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse, unless application for a date of hearing for such cross-appeal is made to the Registrar within three weeks of the date of the lapse for such appeal.

(4) The appellant may, within four weeks after noting the appeal, apply in writing to the Registrar on notice to all other parties for a date of hearing, and shall at the same time make available to the Registrar in writing his full residential and postal addresses and the address of his attorney, if he is represented. If he fails to do so, the respondent may at any time before the expiry of the period of six weeks apply for a date of hearing in like manner. Upon such application, an appeal or cross-appeal shall be deemed to have been duly prosecuted.

(5) Upon receipt of such an application for a date of hearing for an appeal or a cross-appeal, the Registrar shall allocate a date for hearing and thereafter it shall be set down as provided in rule 57.

(6) A notice of set down of a pending appeal shall *ipso facto* operate as a set down of any cross-appeal and vice versa.

(7) (a) The party who has applied for a date of hearing shall prepare and lodge with the Registrar two copies of the record as soon as is reasonably possible after applying for a

date but in any event not less than fourteen days prior to the date of the hearing, except with the leave of a Judge.

(b) Such copies shall be clearly typed on foolscap paper in double spacing, and the pages thereof shall be consecutively numbered. In addition every tenth line on each page shall be numbered.

(c) The record shall contain a correct and complete copy of the pleadings, evidence and all other documents necessary for the hearing of the appeal, together with an index thereof, and the copies lodged with the Registrar shall be certified as correct by the attorney or party lodging the same or by the clerk of the subordinate court appealed from.

(d) The party lodging the copies of the record shall also furnish each of the other parties with two copies thereof, certified as required in terms of paragraph (c).

(8) (a) Save in so far as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature shall be omitted from the copies of the record prepared in terms of sub-rule (7), and a list thereof shall be included in the record.

(b) By consent of the parties, exhibits having no bearing on a point at issue in an appeal and immaterial portions of lengthy documents may likewise be omitted from such copies in which event a written consent, setting forth what documents, or portions thereof, as the case may be, have been omitted and signed by or on behalf of the parties shall be filed with the Registrar when such copies are lodged:

Provided that the court hearing the appeal may at all times refer to the original record and take cognisance of all matters appearing therein.

(9) Not less than five days before the appeal is heard the appellant, if represented, shall deliver one copy of a concise and succinct statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of the authorities to be tendered in support of each point, and not less than two days before the appeal is heard the respondent, if represented, shall deliver a similar statement.

(10) Notwithstanding the provisions of this rule the Chief Justice may, in consultation with the parties concerned, direct that a contemplated appeal be dealt with as an urgent matter and order that it be disposed of, and the appeal be prosecuted, at such time and in such manner as to him seems fit.

(Amended L.N.38/1990.)

#### *Criminal Appeals from Subordinate Courts.*

51. (1) Upon receipt by the Registrar of the record of the case and copies thereof furnished to him by the Clerk of the court in accordance with the provisions of Order XXXVI Rule 2 of the Magistrates' Court Rules the Registrar, subject to such directions of a specific or general nature as he may receive from the Chief Justice, shall appoint a day for the hearing of the appeal and give not less than ten days written notice to the Director of Public Prosecutions and to the other parties to the case advising them of the day so appointed.

(2) Upon receipt of a case stated from a Magistrate in terms of section 86 of the Magistrates' Court Act, 1938 the Registrar upon being requested in writing by the Director of Public Prosecutions, his representative or other prosecutor, shall, subject to such direction of a specific or general nature as the Registrar may receive from the Chief Justice, appoint a day for the hearing of the appeal and the Registrar shall thereupon give not less than ten days'



written notice to the Director of Public Prosecutions and to the other parties to the case which is the subject of the appeal advising them of the day so appointed.

(3) For the purposes of this rule, written notice shall be deemed to have been properly given to any party if it is served upon his attorney or, if he is unrepresented, if it is served upon him personally or sent by registered post accompanied by an advice-receipt card to him at the address stated by him in the notice of appeal to be his address.

(4) The ultimate responsibility for ensuring that all copies of the record on appeal are in all respects properly before the court shall rest on the appellant, or his attorney if he is represented by an attorney.

(5) Not less than five days before the appeal is heard the appellant, if represented, shall deliver a concise statement of the main points (without elaboration) which he intends to argue on appeal, as well as a list of authorities to be tendered in support of each point, and not less than three days before the appeal is heard the respondent shall deliver a similar statement.

(Amended L.N.27/1969; L.N.6/1970; L.N.38/1990.)

*Certificate for Leave to Appeal (Criminal).*

52. The provisions of rule 49 shall apply whenever the certificate of a Judge is required for leave to appeal to the Court of Appeal from the decision of the court in its original appellate jurisdiction in a criminal matter.

*Reviews.*

53. (1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected —

- (a) calling upon such persons to show cause why such decisions or proceedings should not be reviewed and corrected or set aside, and
- (b) calling upon the magistrate, presiding officer, chairman or officer as the case may be, to despatch, within fourteen days of the receipt of the notice of motion, to the Registrar the record of such proceedings sought to be corrected or set aside together with such reasons as he is by law required or desires to give or make, and to notify the applicant that he has done so.

(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.

(3) The Registrar shall make available to the applicant the record despatched to him as aforesaid upon such terms as the Registrar thinks appropriate to ensure its safety but in no case shall the Registrar permit the record to leave his offices save as may be directed by the court. The applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the Registrar with two copies and each of the other parties with one copy thereof. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

(4) The applicant may within seven days after the Registrar has made the record available to him, by notice and accompanying affidavit amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit or affidavits, and shall deliver the said notice and affidavit or affidavits.

(5) Should the presiding officer, chairman, or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he shall —

(a) within fourteen days of the receipt by him of the notice of motion or any amendment thereof deliver notice to the applicant that he intends so to oppose and shall in such notice appoint an address within two miles of the office of the Registrar at which he will accept notice and service of all process in such proceedings, and

(b) within twenty-one days of the expiry of the time referred to in sub-rule (4) hereof, deliver any affidavits he may desire in answer to the allegations made by the applicant.

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications and sub-rule (11) thereof shall *mutatis mutandis* apply to the set down of review proceedings.

#### *Criminal Proceedings.*

54. (1) When an accused has been committed for trial or when the Chief Justice has directed that an accused shall be tried summarily, and an indictment has been lodged with the Registrar, the Registrar shall issue a notice of trial substantially in accordance with Form 24 of the First Schedule and shall cause such notice to be served upon the Director of Public Prosecutions or other prosecutor or his attorney and the accused.

(2) The Director of Public Prosecutions or other prosecutor or his attorney shall deliver to the Registrar the original and two copies of the indictment and, if there is more than one accused, as many additional copies as there are accused persons.

(3) The Registrar shall cause a copy of the indictment to be served upon the accused.

(4) When any person is committed for sentence to the court by a Magistrate's court under the provisions of section 292(1) of the Criminal Procedure and Evidence Act, 1938 the Registrar shall set the matter down for hearing as soon as may be possible and shall cause the notice of hearing to be served upon the Director of Public Prosecutions and the person committed and his attorney, if known to the Registrar, at least ten days before the date for hearing.

(5) The subpoena or process for procuring the attendance of any person before the court to give evidence in any criminal case or to produce any books documents or things, shall be sued out of the office of the Registrar by the Director of Public Prosecutions or other prosecutor or his attorney or, in the case of a defence witness, by the accused, or his attorney.

(6) The subpoena shall be served upon the witness personally unless the court otherwise directs, but if the person to be served with a subpoena though present in such building keeps his residence or place of business closed so as to prevent the service of the subpoena, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(7) The person serving the subpoena shall, if required by the person on whom it was served, exhibit to him the original.

(8) When a court imposes upon any person whatsoever a fine for contempt of court for default in appearance or otherwise, and such fine is not duly paid, the Registrar of the court shall furnish the Deputy Sheriff with particulars of such fine and deliver to him a completed warrant. The Deputy Sheriff immediately on such warrant being delivered to him, shall execute it.

(9) Any process or document referred to in this rule may be served by a police officer or such other person authorised by the Registrar.

(10) (a) It shall be lawful for the Judge presiding at any sitting of the court to direct that the pleas or statements of accused persons, the evidence orally given, the rulings or judgment of the court, and any exception taken thereto by counsel, and such portion of the proceedings as the Judge may specially indicate, be taken down in shorthand, either verbatim or in narrative form, at the discretion of the Judge, or be recorded by mechanical or electrical means.

(b) Any shorthand writer employed for the above purpose or any person entrusted with the recording of the proceedings by mechanical or electrical means, hereinafter called "the recorder", shall be deemed to be an officer of the court, and shall before entering on his duties take before the Judge an oath in the form prescribed in paragraph (f).

(c) Where shorthand notes are taken under paragraph (a), such notes shall be certified by the shorthand writer as correct, and shall be filed with the Registrar. It shall not be necessary to transcribe them, unless the Judge or the Registrar acting under the authority of the Judge, so directs. If and when transcribed, then the transcript of such notes shall be certified as correct by the transcribing shorthand writer, and the transcript shall be filed with the Registrar in lieu of the shorthand notes.

(d) The shorthand notes so certified as correct, or the transcripts similarly certified, as the case may be, shall be deemed to be correct unless the court otherwise orders, and they shall constitute a part of the records of the court.

(e) Any party to a matter in which the services of a shorthand writer have been utilised may apply through the Registrar to have the shorthand notes transcribed, if an order to that effect has not already been given and he shall be entitled to a copy of any transcript ordered to be made, upon payment of such fees and upon compliance with such terms as the Registrar may, with the approval of the Judge, require.

(f) The oath to be taken by a shorthand writer shall be in the following form:

"I, ..... A .B., do swear that I will faithfully, accurately, and to the best of my ability, take down in shorthand, as directed by the Judge, the proceedings in any case in which I may be employed as an officer of the court, and that I will similarly, when required to do so, transcribe the same or any other notes taken by an officer of the court."

(11) (a) Where the proceedings of the court are recorded by mechanical or electrical means, the recorder shall file the records of each case with the Registrar in a package endorsed with the name and number of such case. It shall not be necessary to transcribe such records, unless the Judge or the Registrar acting under the authority of the Judge, so directs. If and when transcribed, the transcript of such records shall be certified as correct by the recorder who shall supervise the transcription thereof, and the transcript shall be filed with the Registrar in lieu of such records.

(b) The records so recorded, or the transcript certified in terms of paragraph (a) shall be deemed to be correct, unless the court otherwise orders, and they shall constitute a part of the records of the court.

(c) Any party to a matter in which proceedings have been mechanically or electrically recorded may apply through the Registrar to have the records transcribed, if any order to that effect has not already been made, and he shall be entitled to a copy of any transcript ordered to be made upon payment of such fees and upon compliance with such terms as the Registrar may, with the approval of the Judge require.

(d) The oath to be taken by a recorder shall be in the following form:

“I, ..... A.B., do swear that I will faithfully, accurately and to the best of my ability record the proceedings in any case in which I am required to do so by the Judge, and that I will similarly, when required to do so, take steps to have the records made by me or by any other officer of the court, transcribed and will certify the same.”

(Amended L.N.17/1971; L.N.38/1990.)

#### *The Court Roll.*

55. (1) Prior to each session of the court the Registrar, after consultation with the Chief Justice, shall prepare and publish a roll of cases for hearing during the next session.

(2) The roll shall contain all criminal trials for which a notice of trial has been issued and all civil causes for which a date of hearing has been allocated and it shall make provision for the hearing of appeals, committals for sentence, applications and any other business of the court.

(3) Cases may be added to the roll during each session as the Registrar, after consultation with the Chief Justice, may deem fit.

(Amended L.N.38/1990.)

#### *Allocation of hearing Dates.*

55A. (1) After the close of pleadings in an action, and subject to rule 37, any of the parties thereto may deliver a notice requesting the Registrar to allocate a date of hearing.

(2) The notice shall be as near as may be in accordance with Form 25 in the First Schedule and shall contain —

(a) an estimate of the anticipated duration of the hearing, as agreed between the parties, or in the absence of agreement, the duration as estimated by the party making the request;

(b) the period of notice of set down which the parties have agreed shall be given of the date of the hearing, or if no agreement has been reached, a statement to that effect; provided always that such period where so agreed shall be not less than ten days.

(3) This rule and rule 56 shall apply to the following causes —

(a) All defendant actions;

(b) any proceedings, instituted by way of notice of motion or petition, including proceedings for review, in which the court has ordered that evidence shall be heard, unless the court otherwise directs;

(c) any matter which the court may specifically direct to be listed for hearing.

(4) Within a reasonable time of receipt of such notice the Registrar shall allocate a date for hearing.

(Added L.N.38/1990.)

*Set Down.*

56. (1) (a) When the Registrar has allocated a date of hearing of a civil cause in terms of rule 55A he shall notify the party who made the request in writing of the date and time of the hearing and that party shall deliver a notice of set down accompanied by one set of copy pleadings and all other documents to be used by the court, the pages of which shall be numbered *seriatim*, bound bookwise and have attached thereto an index showing the title of every pleading included in the set and the page number thereof:

Provided that, where the circumstances so require, the notification by the Registrar may be verbal, or by telephone or telegram or telex and subsequently confirmed in writing:

Provided further that such notification shall be given at such time as will enable the party notified to give the period of notice of set down between the parties or in the absence of such agreement not less than ten days notice.

(b) If such notice of set down or book of pleadings is not received by the Registrar not less than ten days before the date allocated for hearing of the matter, the allocation shall no longer be of force or effect and the matter shall be deleted from the roll.

(2) A matter which is not reached on the date on which it was set down for hearing shall be heard at the conclusion of the hearing of the matter immediately preceding such matter, or on a date to which it is ordered by the court or by the Registrar on the instruction of the court, or a Judge, to be postponed.

(3) (a) A matter which has been set down may, with the consent of all parties, be withdrawn from the roll by notice in writing addressed to the Registrar.

(b) Except as provided in paragraph (a) and subject to sub-rule (1)(b), no case shall be withdrawn from the roll save, on cause shown, with the consent of the court and on such terms as to the court may seem just.

(c) A matter which has been withdrawn from the roll may subsequently be reinstated thereon *mutatis mutandis* in terms of rule 55A, without prejudice however to the provisions of rule 41.

(Amended L.N.38/1990.)

*De Lunatico Inquirendo, Appointment of Curators in Respect of Persons under Disability and Release from Curatorship.*

57. (1) Any person desirous of making application to the court for an order declaring another person (hereinafter referred to as “the patient”) to be of unsound mind and as such incapable of managing his affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

(2) Such application shall be brought *ex parte* and shall set forth fully —

(a) the grounds upon which the applicant claims *locus standi* to make such application;

- (b) the grounds upon which the court is alleged to have jurisdiction;
  - (c) the patient's age and sex, full particulars of his means, and information as to his general state of physical health;
  - (d) the relationship (if any) between the patient and the applicant, and the duration and intimacy of their association (if any);
  - (e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his affairs;
  - (f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem*, and subsequently as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.
- (3) The application shall, as far as possible, be supported by —
- (a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponent's own knowledge concerning the patient's mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in his affidavit; and
  - (b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be an alienist, who have conducted recent examinations of the patient with a view to ascertaining and reporting upon his mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions found by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same and whether the patient is in their opinion incapable of managing his affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without personal interest in the terms of any order sought.
- (4) Upon the hearing of the application referred to in sub-rule (1), the court may appoint the person suggested or any other suitable person as curator *ad litem*, or may dismiss the application or make such further or other order thereon as to it may seem meet and in particular on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.
- (5) Upon his appointment the curator *ad litem* (who shall if practicable be an advocate, or failing such, an attorney), shall without delay interview the patient, and shall also inform him of the purpose and nature of the application unless after consulting a medical practitioner referred to in sub-rule (3)(b) he is satisfied that this would be detrimental to the patient's health. He shall further make such inquiries as the case appears to require and thereafter prepare and file with the Registrar his report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In his report the curator *ad litem* shall set forth such further facts (if any) as he has ascertained in regard to the patient's mental condition, means and circumstances and he shall draw attention to any consideration which in his view might influence the court in regard to the terms of any order sought.

(6) Upon receipt of the said report the applicant shall submit the same, together with copies of the documents referred to in sub-rules (2) and (3) to the master of the High Court having jurisdiction for consideration and report to the court.

(7) In his report the master shall, as far as he is able to comment upon the patient's means and general circumstances, and the suitability or otherwise of the person suggested for appointment as curator to the person or property of the patient, and he shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator as the facts of the case appear to him to require. The curator *ad litem* shall be furnished with a copy of the said report.

(8) After the receipt of the report of the master, the applicant may, on notice to the curator *ad litem* (who shall if he thinks fit inform the patient thereof), place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and as such incapable of managing his affairs and for the appointment of the person suggested as curator to the person or property of the patient or to both.

(9) At such hearing the court may require the attendance of the applicant, the patient, and such other person as it may think fit, to give such evidence *viva voce* or furnish such information as the court may require.

(10) Upon consideration of the application, the reports of the curator *ad litem* and of the master and such further information or evidence (if any) as has been adduced *viva voce*, or otherwise, the court may direct service of the application on the patient or may declare the patient to be of unsound mind and incapable of managing his own affairs and appoint a suitable person as curator to his person or property or both on such terms as to it may seem meet, or it may dismiss the application or generally make such order (including an order that the costs of such proceedings be defrayed from the assets of the patient) as to it may seem meet.

(11) Different persons may, subject to due compliance with the requirements of this rule in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his own affairs.

(12) The provisions of sub-rules (1), (2) and (4) to (10) inclusive shall in so far as the same are applicable thereto, also apply *mutatis mutandis* to any application for the appointment by the court of a curator under the provisions of section 22 of the Mental Disorders Act (No. 48 of 1963), to the property of a patient detained as or declared mentally disordered in terms of that Act.

(13) Save to such extent as the court may on application otherwise direct, the provisions of sub-rules (1) to (11) shall, *mutatis mutandis*, apply to every application for the appointment of a *curator bonis* to any person on the ground that he is by reason of some disability, mental or physical, incapable of managing his own affairs.

(14) Every person who has been declared by a court to be of unsound mind and incapable of managing his affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that he is no longer of unsound mind and incapable of managing his affairs or for release from such curatorship, as the case may be, shall give fourteen days' notice of such application to such curator and to the master.

(15) Upon receipt of such notice and after due consideration of the application and such information as is available to him, the master shall, without delay, report thereon to the

court, at the same time commenting upon any aspect of the matter to which, in his view, its attention should be drawn.

(16) The provisions of sub-rules (14) and (15) hereof shall also apply to any application for release from curatorship by a person who has been discharged under section 26 of the Mental Disorders Act (No. 48 of 1963), from detention in an institution, but in respect of whom a *curator bonis* has been appointed by the court under section 22 of the said Act.

(17) Upon the hearing of any application referred to in sub-rules (14) and (16) the court may declare the applicant as being no longer of unsound mind and as being capable of managing his affairs, order his release from such curatorship, or dismiss the application, or *mero motu* appoint a curator *ad litem* to make such enquiries as it considers desirable and to report to it, or call for such further evidence as it considers desirable and postpone the further hearing of the matter to permit of the production of such report, affidavit or evidence, as the case may be, or postpone the matter *sine die* and make such order as to costs or otherwise as to it may seem meet.

#### *Interpleader.*

58. (1) Where any person, in this rule called “the applicant”, alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, in this rule referred to as “the claimants”, in respect thereto, the applicant may deliver a notice, in terms of this rule called an “interpleader notice”, to the claimants. In regard to conflicting claims with respect to property attached in execution, the Deputy Sheriff shall have the rights of an applicant and an execution creditor shall have the rights of a claimant.

(2) (a) Where the claims relate to money the applicant shall be required, on delivering the notice mentioned in sub-rule (1) hereof, to pay the money to the Registrar who shall hold it until the conflicting claims have been decided.

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

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

(3) The interpleader notice shall —

- (a) state the nature of the liability, property or claim which is the subject matter of the dispute;
- (b) call upon the claimants within the time stated in the notice, not being less than fourteen days from the date of service thereof, to deliver particulars of their claims; and
- (c) state that upon a further date, not being less than fourteen days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his liability or the validity of the respective claims.

(4) There shall be delivered together with the interpleader notice an affidavit by the applicant stating that —



- (a) he claims no interest in the subject matter in dispute other than for charges and costs;
- (b) he does not collude with any of the claimants;
- (c) he is willing to deal with or act in regard to the subject matter of the dispute as the court may direct.

(5) If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject matter of the dispute.

(6) If a claimant delivers particulars of his claim and appears before it, the court may —

- (a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;
- (b) order that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant;
- (c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;
- (d) if it considers that the matter is not a proper matter for relief by way of interpleader notice, dismiss the application;
- (e) make such order as to costs, and the expenses (if any) incurred by the applicant under sub-rule (2)(b), as to it may seem meet.

(7) If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon an application made by any other party to the action otherwise orders.

#### *Sworn Translators.*

59. (1) Any person of full age may be admitted and enrolled by the court as a sworn translator in English and in any foreign language, or in siSwati, upon satisfying the court as to his competency.

(2) No person shall be admitted and enrolled as a sworn translator unless his proficiency in the language which he intends to translate has been duly certified in writing, after examination, held not more than six months before the date of his application by a competent sworn translator of not less than seven years' standing:

Provided that, if there be no sworn translator of sufficient standing within Swaziland, the Chief Justice may appoint as an examiner any person whom he considers to be duly qualified to hold such examination.

(3) (a) Any person admitted and enrolled under sub-rule (1) shall before commencing to exercise the functions of his office take an oath or make an affirmation which shall be subscribed by him, in the form set out below, namely —

“I (full name) do hereby swear/solemnly and sincerely affirm and declare that I will in my capacity as a translator of the High Court of Swaziland faithfully and correctly

translate, to the best of my knowledge and ability, any document into English from any other language in respect of which I have been admitted and enrolled as a translator.”.

(b) Any such oath or affirmation shall be taken or made before the Judge admitting and enrolling the translator and the Judge concerned shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

#### *Translation of Documents.*

60. (1) If any document in a language other than English is produced in any proceedings, it shall be accompanied by a translation certified to be correct by a sworn translator, or in contested proceedings by a translation admitted by all the parties to the proceedings as being correct.

(2) A translation so certified or admitted shall be deemed *prima facie* to be a correct translation and admissible as such upon its production.

(3) If no sworn translator is available or if, in the opinion of the court, it would not be in the interests of justice to require a sworn translation, whether by reason of the expense, inconvenience or delay involved, the court may, notwithstanding the provisions of sub-rule (1), admit in evidence a translation certified to be correct by any person who it is satisfied is competent to make such translation.

#### *Interpretation of Evidence.*

61. (1) Where evidence in any proceedings is given in any language with which the court or a party or his representative is not sufficiently conversant, such evidence shall be interpreted by a competent and impartial interpreter, sworn to interpret faithfully and to the best of his ability in the languages concerned.

(2) When any person is employed as an interpreter, the court may, if in its opinion it is expedient to do so, or if any party on reasonable grounds so desires, satisfy itself as to the competence, integrity and impartiality of such person after bearing evidence or otherwise.

(3) Where the services of an interpreter are employed in any proceedings, the costs (if any) of interpretation shall, unless the court otherwise orders, be costs in the cause.

#### *Filing, Preparation and Inspection of Documents.*

62. (1) Where a matter has to be heard by more than one Judge, or by a Judge and assessors, a copy of all pleadings and all other documents to be used by the court shall be filed for the use of each additional Judge or assessor.

(2) All documents filed with the court, other than exhibits or facsimiles thereof, shall be clearly and legibly printed or typewritten in permanent black or blue-black ink on one side only of paper of good quality and of A4 standard size.

(3) A document shall be deemed to be typewritten if it is reproduced clearly and legibly on suitable paper by a duplicating, lithographic, photographic or any other method of reproduction.

(4) Stated cases, petitions, affidavits, grounds of appeal and the like shall be divided into concise paragraphs which shall be consecutively numbered.

(5) Every affidavit filed with the Registrar by or on behalf of a respondent shall, if he is represented, on the first page thereof bear the name and address of the attorney filing it.

(6) The Registrar may reject any document which does not comply with the requirements of this rule.

(7) Any party to a cause, and any person having a personal interest therein, with leave of the Registrar on good cause shown, may at his office, examine and make copies of all documents in such cause.

(Amended L.N.38/1990.)

#### *Destruction of Documents.*

63. In any matter which has not been adjudicated by the court or a Judge, and has not been withdrawn, the Registrar may, after the lapse of five years from the date of the filing of the last document therein and upon giving notice to the parties at their last known address, authorise the destruction of the documents filed in his office relating to such matter.

(Amended L.N.38/1990.)

#### *Superannuation.*

64. (1) After the expiration of three years from the day whereon a judgment has been pronounced, no writ of execution may be issued unless the debtor consents to the issue of the writ or unless the judgment is revived by the court on notice to the debtor, but in such case no new proof of the debt shall be required, and in the case of judgment for periodic payments, the three years shall run, in respect of any payment, from the due date thereof.

(2) Writs of execution of a judgment once issued remain in force and may at any time be executed without being renewed until judgment has been satisfied in full.

(Amended L.N.38/1990.)

#### *Commissions Rogatoire and Letters of Request.*

65. (1) When a *commission rogatoire* or letter of request is transmitted by the Attorney-General, accompanied, if the original be in a foreign language, by a translation in English, to the court with an intimation that it is desirable that effect should be given the same without requiring an application to be made to such court by the agents of any of the parties to the action or matter in the foreign country, the Registrar shall take such steps as may be necessary to submit the same to a Judge in order to give effect to such *commission rogatoire* or letter of request.

(2) The Registrar shall, after effect has been given to any such *commission rogatoire* or letter of request, return all relevant documents, duly verified in accordance with the rules of court, to the Attorney-General for transmission.

(3) No fees other than disbursements shall be recovered from any State, territory or court on whose behalf any service such as is referred to in this section has been performed.

*Tariff of Court Fees.*

66. (1) Save as provided in this rule, and subject to rule 40, the court fees prescribed in the Second Schedule shall be paid and such fees shall be collected by means of adhesive stamps duly approved as revenue stamps for use under the Stamp Duty Act, 1970.

(2) Every such stamp shall be affixed to the document in respect of which the court fee is payable and shall be defaced by the public officer responsible for so affixing it.

(3) Every such stamp shall be defaced by writing or impressing in ink on or across the stamp the name or initials of the public officer affixing it to the document together with the true date of defacement in such manner as effectually and permanently to render the stamp incapable of being used for stamping any other document.

(4) In the circumstances and subject to the conditions mentioned in section 33 of the Stamp Duty Act, 1970 the Accountant-General with the approval of the Registrar, may make a refund of any court fee payable under this rule, as if such court fee was a duty payable under the Stamp Duty Act, 1970.

(5) No fee shall be payable in respect of any matter where such fee would be payable by the Government.

(Amended L.N.17/1971; L.N.38/1990.)

*Tariff for the Sheriff and Deputy Sheriffs.*

67. (1) The fees and charges contained in the Third Schedule shall be chargeable by and allowed to the Sheriff and Deputy Sheriffs, provided that no fees may be charged for the service of process *in forma pauperis* proceedings (but the necessary disbursements for the purpose of such service may be recovered).

(2) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.

(3) Where any dispute shall arise as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing officer of the court whose process is in question.

*Taxation and Tariff of Fees of Attorneys and Advocates.*

68. (1) Subject to sub-rule (2), the scale of fees payable to attorneys and advocates shall as far as possible be in accordance with the tariff contained in the Fourth Schedule to these Rules (hereinafter referred to as the "tariff").

(2) Where the court or the Judge is satisfied, on application being made, that having regard to the nature of the case or any exceptional circumstance the costs allowable under section H of the tariff (costs of counsel) may be inadequate, the court or Judge may direct that the taxing master on taxation is not to be bound by the amounts set out in that section, and where such a direction is given the taxing master may, if he thinks fit, allow on taxation such larger sums as he thinks reasonable.

(3) It shall be competent for any taxing master to tax all bills of costs for services actually rendered by an attorney in his capacity as such; whether in connection with litigation

or not. In the latter event the taxing master shall nevertheless be guided as far as possible by the scale of fees fixed by the tariff:

Provided that the taxing master shall not tax costs in instances where some other official is empowered so to do; for example he shall not tax such costs as are referred to in section 73(2) of the Insolvency Act of 1955, in so far as these do not relate to litigation to which a trustee is a party.

(4) At the taxation of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his opinion are necessary to enable him properly to determine any matter arising upon such taxation.

(5) With a view to affording the party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by him in relation to his claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been awarded, the taxing master shall, on every taxation, allow all such costs, charges and expenses as appear to him 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 taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges and expenses to witnesses or to other persons or by other unusual expenses.

(6) (a) The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he is entitled to be present thereat, but such notice shall not be necessary —

- (i) if the party against whom costs have been awarded has not appeared at the hearing either in person or by his counsel;
- (ii) if the person liable to pay costs has consented in writing to taxation in his absence; and
- (iii) for the taxation of writ and postwrit bills.

(b) In all cases where a notice of taxation is necessary, such notice shall be delivered, together with a copy of the bill of costs to be taxed, not less than four clear days before the date of taxation.

(7) The taxing master shall be entitled in his discretion, at any time, to depart from any of the provisions of the tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

(8) (a) In order to diminish as much as possible the costs arising from the copying of documents to accompany the briefs of advocates, the taxing master shall not allow the cost of any unnecessary duplication in briefs.

(b) No fees shall be allowed by the taxing master as between party and party for the copying of any document not used at the hearing, unless the court otherwise directs.

(9) Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, hire-purchase agreements or other documents.

(10) Where in the opinion of the taxing master, more than one attorney has been necessarily engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.

(11) Save where the court authorises fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between party and party.

(12) Where fees in respect of more than one advocate are allowed in a party and party bill of costs, the fees to be permitted in respect of any additional advocate shall not exceed two-thirds of those allowed in respect of the first advocate.

(13) A folio shall contain one hundred words or part thereof; four figures shall count as a word.

(Amended L.N.38/1990.)

FIRST SCHEDULE

(Amended L.N.38/1972; replaced L.N.38/1990.)

FORM 1

(Rule 5(2))

EDICTAL CITATION:

SHORT FORM OF PROCESS IN THE HIGH COURT OF SWAZILAND

CASE NO:.....

In the matter between:

Plaintiff

and

Defendant

TO:

A ..... B ..... (sex),  
.....(occupation) formerly residing  
at .....but whose present  
whereabouts are unknown.

Take notice that by Summons sued out of this court, you have been called upon to give notice, within .....days after publication hereof, to the Registrar and to the plaintiffs attorney of your intention to defend (if any) in an action wherein C.....  
D ..... claims:

(a) .....

(b) .....

(c) .....

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

Dated at ..... this .....day of ..... 20.....

.....  
Registrar of the High Court

Plaintiffs Attorney

(Address for service)

.....  
.....

FORM 2  
(Rule 6(5))

NOTICE OF MOTION  
(To Registrar)

IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter of

Take notice that application will be made on behalf of the above-named applicant on the ..... day of ..... at 9.30 a.m. or as soon thereafter as counsel may be heard for an order in the following terms:

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

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

Kindly place the matter on the roll for hearing accordingly.

Dated at ..... this ..... day of ..... 20.....

.....  
Applicant's Attorney

To the Registrar of the above named Court

FORM 3  
(Rule 6(9))

NOTICE OF MOTION  
(To Registrar and Respondent)

IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Applicant

and

Respondent

Take notice that.....

(hereinafter called the applicant) intends to make application to this Court for an order  
(a) ..... (b) ..... (c) ..... (here set forth the form  
of order prayed) and that the accompanying affidavit of .....  
(or petition where required by law) will be used in support thereof.

Take notice further that the applicant has appointed .....  
(here set forth an address which must be within five kilometres of the office of the Registrar)  
at which he will accept notice and service of all process in these proceedings.

Take notice further that if you intend opposing this application you are required:

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

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

Dated at ..... this ..... day of ..... 20 .....

.....  
Applicant or his Attorney

To: (1) C.D.

(Address)

RESPONDENT

(2) The Registrar of the above Court

FORM 4  
(Rule 8(1))

SUMMONS:  
PROVISIONAL SENTENCE  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

To the Sheriff or his Deputy:

Inform (A) ..... (B) ..... (sex),  
..... (occupation), of .....  
..... (residence or place of business) and hereinafter  
called the defendant:



- (1) that he is hereby called upon immediately to pay to (C) .....  
 (D) .....(sex).....  
 (occupation), of ..... (residence or place  
 of business)..... (hereinafter called  
 the plaintiff) an amount of ..... together with  
 interest thereon at the rate of ..... per annum as from .....  
 claimed by the plaintiff.....(here set out the cause of action).....  
 .....and a copy of which document is annexed hereto;
- (2) that failing such payment, he is hereby called upon to appear before this Court personally  
 or by counsel at.....on ..... the .....  
 day of..... 20..... at ..... o'clock in the forenoon  
 (or as soon thereafter as the matter can be heard) to admit or deny his liability for the  
 said claim, (and to state why the mortgaged property should not be declared  
 executable.)\*
- (3) that if he denies liability for the same, he may not later than noon on the.....  
 .....day of ..... 20..... file an  
 affidavit with the Registrar of this court, and serve a copy thereof on plaintiff's attorney,  
 which affidavit shall set forth the grounds of his defence to the said claim, and in  
 particular state whether he admits or denies his signature to the said .....  
 or whether he admits or denies the signature or authority of his agent.

AND INFORM the said defendant further that in the event of his not paying the amount  
 and interest above-mentioned to the plaintiff immediately and if he (the said defendant)  
 further fails to file an affidavit as aforesaid, and to appear before this Court at the time above-  
 stated, provisional sentence may forthwith be granted against him with costs, and the  
 mortgaged property may be declared executable, but that against payment of the said amount,  
 interest and costs, he will be entitled to demand security for the restitution thereof if the said  
 sentence should thereafter be reversed.

AND SERVE a copy of this Summons and of the said.....  
 on the said defendant and then return this Summons to the Registrar with your return of what  
 you have done thereon.

Dated at ..... this .....day of ..... 20.....

.....  
 Registrar of the High Court

Plaintiff's Attorney  
 (Address for service)

.....  
 .....

---

\* Delete if not applicable.

WRIT OF ARREST:  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

(1) To: The Sheriff or his Deputy:

You are hereby commanded to apprehend (A).....

(B).....(sex) .....(occupation), of  
.....(residence or place of business)  
in the district of.....(hereinafter called the defendant) and  
to detain him and bring him before this Court on the ..... day of.....  
20..... at ..... o'clock in the forenoon to answer (C) .....

.....(D).....  
(sex) .....(occupation), of.....  
(residence or place of business) in the district of.....  
(hereinafter called the plaintiff) in an action wherein the plaintiff claims:

(1) .....(2).....  
and (3).....from defendant, and to abide  
the judgment of this Court thereon:

(or if writ issued after institution or proceedings, to show cause why he should not be ordered  
to abide the judgment of the Court or furnish security for his further presence within its  
jurisdiction until its judgment has been delivered in the action instituted therein, by  
(C).....(D).....

(sex) .....(residence or place of business),  
in the district of.....(hereinafter called the plaintiff),  
and in which the said plaintiff claims

(1) .....(2)..... and  
(3) ..... from defendant, or failing  
the due provisions of such security, why he should not be committed to prison and detained  
pending the judgment of this Court in the said action.

(2) To the Officer Commanding the Prison to whom the Deputy Sheriff presents this writ.

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

Dated at ..... this .....day of ..... 20.....

.....  
Registrar of the High Court

Plaintiff's Attorney.

Address or service:

NOTE: The costs of this writ have been taxed and allowed at .....

exclusive of the Sheriff's caption fee of .....

.....  
Registrar of the High Court

FORM 6  
(Rule 9(11))

ARREST — BAIL BOND

We, the undersigned, (C) ..... (D) .....  
of..... and (L) ..... (M).....  
of.....hereby acknowledge ourselves to be firmly  
bound to the Sheriff of Swaziland (or the Deputy Sheriff) for the district of .....  
in the amount of .....to be paid to the said Sheriff (or Deputy Sheriff)  
or his cessionaries or assigns, for which payment we bind ourselves jointly and severally, and  
our respective executors and administrators in like manner, the condition of this bond being  
that if the said (C) ..... (D).....  
duly appear before the High Court of Swaziland at ..... on the  
..... day of..... 20..... at..... o'clock in  
the forenoon to answer (A) ..... (B) .....  
of..... in the district of .....  
(hereinafter called the plaintiff) in an action wherein the said plaintiff claims  
(1) ..... (2).....  
(3) ..... from the said (C) .....  
(D) ..... and thereafter remain within the jurisdiction  
of this court until its judgment has been delivered in the said action, and abides such  
judgment, this bond shall be void; otherwise it shall be of full force and effect.

Signed by us in the presence of the subscribing witnesses at.....  
on this the ..... day of ..... 20.....

.....  
C.D. Defendant

.....  
L.M. (Surety)

As Witnesses:

1. ....  
2. ....

FORM 7  
(Rule 9(15))

ASSIGNMENT OF BAIL BOND

I, .....in my capacity as Sheriff  
of Swaziland (or Deputy Sheriff for the district of .....)

hereby cede, assign and make over him all my right, title and interest in the foregoing Bail Bond to (A).....  
(B)..... the above-named plaintiff.

Signed by me in the presence of the subscribing witnesses at .....  
..... on this the ..... day of..... 20.....

.....  
Sheriff/Deputy Sheriff

As Witnesses:

1. ....  
2. ....

FORM 8  
(Rule 13(1)(b))

NOTICE TO THIRD PARTY  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

and

Third Party

TO THE ABOVE-NAMED THIRD PARTY:

Take notice that the above-named plaintiff has commenced proceedings against the above-named defendant for the relief set forth in the summons, a copy of which is herewith served upon you.

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

If you dispute those grounds or if you dispute the claim of the plaintiff against the defendant you must give notice of your intention to defend, within..... days. Such notice must be in writing and filed with the Registrar and a copy thereof served on the above-named defendant at the address set out at the foot of this notice. It must give an address (not being a post office box or *poste restante*) within five kilometres of the Court for the service upon you of notices and documents in the action. Within fourteen days of your giving such notice you must file a plea to the plaintiff's claim against the defendant or a plea to the defendant's claim against you, or both such pleas.

Dated at ..... this ..... day of ..... 20.....

.....

Defendant's Attorney (address)

To: .....  
and to Plaintiffs Attorney  
(address)

FORM 9

(Rule 14(5)(c) and (d))

NOTICE TO ALLEGED PARTNER  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

To: (A) ..... (B) .....

Take notice that action, details of which appear from the copy of the summons attached hereto, has been instituted by the above-named plaintiff against the above-named defendant and that the plaintiff alleges that the above-named defendant is a partnership of which you were from ..... to ..... a partner.

If you dispute that you were a partner or that the above-mentioned period is in any way relevant to your liability as a partner, you must within eight days of the service of this notice give notice of your intention to defend. Upon your giving such notice a copy of the summons served upon the above-named defendant will be served upon you.

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

Thereafter you should file a plea in which you may dispute that you were a partner or that the period alleged above is relevant or that the defendant is liable, or all three of these matter.

If you do not give such notice you will not be at liberty to contest any of the above issues. If the above-named defendant is held liable you will be liable to have execution issued against you, should the defendant's assets be excused in execution and be insufficient.

Dated at ..... this ..... day of ..... 20.....

.....  
Attorney for.....

.....  
(address)

(N.B. In application proceedings this form should be appropriately altered.)

FORM 10  
(Rule 17(1))

SUMMONS

(Claim in respect of debt or liquidation demand)

IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

and

Plaintiff

Defendant

To the Sheriff, his Deputy or other authorised person:

Inform A.B., of..... (state sex and occupation)  
.....(hereinafter called the defendant), that  
C.D., of .....(state sex, occupation and, if  
female, marital status).....(hereinafter  
called the plaintiff), hereby institutes action against him in which action the plaintiff claims:  
(here set out in concise terms plaintiff's cause of action)

Inform the defendant further that if he disputes the claim and wishes to defend the  
action he shall within ..... days of the service upon him of this summons  
file with the Registrar of this court at his office at the High Court, Mbabane notice of his  
intention to defend and serve a copy thereof on the plaintiff's attorney, which notice shall give  
an address (not being a post office box or *poste restante*) within five kilometres of the court  
for the service upon the defendant of all notices and documents in action.

Inform the defendant further that if he fails to file and serve notice as aforesaid,  
judgment as claimed may be given against him without further notice to him.

And immediately thereafter serve on the defendant a copy of this summons and return  
the same to the Registrar with whatsoever you have done thereupon.

Dated at ..... this ..... day of ..... 20.....

.....  
Registrar of the High Court

.....  
Plaintiff's Attorney  
(address)

Form 11  
(Rule 17(1))

COMBINED SUMMONS

IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

To the Sheriff, his Deputy or other authorised person:

Inform A.B. of..... (state sex and occupation)  
.....(hereinafter called the defendant),  
that C.D., of..... (state sex, occupation and, if  
female, marital status).....  
(hereinafter called the plaintiff), hereby institutes action against him in which action the  
plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

Inform the defendant further that if he disputes the claim and wishes to defend the  
action he shall —

- (i) within..... days of the service upon him of this summons file with  
the Registrar of this court at his office at the High Court, Mbabane notice of  
his intention to defend and serve a copy thereof on the plaintiff's attorney,  
which notice shall give an address (not being a post office box or *poste  
restante*) within five kilometres of the court for the service upon the  
defendant of all notices and documents in the action;
- (ii) thereafter, and within twenty-one days after filing and serving notice of  
intention to defend as aforesaid, file with the Registrar and serve upon the  
plaintiff a plea, exception, notice to strike out with or without a counterclaim.

Inform the defendant further that if he fails to file and serve notice as aforesaid  
judgment as claimed may be given against him without further notice to him, or if, having  
filed and served such notice, he fails to plead, except, make application to strike out or  
counterclaim, judgment may be given against him. And immediately thereafter serve on the  
defendant a copy of this summons and return the same to the Registrar with whatsoever you  
have done thereupon.

Dated at ..... this ..... day of ..... 20.....

.....  
Registrar of the High Court

ANNEXURE

Particulars of Plaintiff's Claim

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

.....  
Plaintiffs Attorney

Address of Plaintiffs Attorney

.....  
Plaintiffs Advocate

FORM 12  
(Rule 35(2))

DISCOVERY — FORM OF AFFIDAVIT  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

A.B.	Plaintiff
and	
C.D.	Defendant

I, C.D., the above-named defendant make oath and say:

- (1) I have in my possession or power the documents and tape recordings relating to the matters in question in this cause set forth in the first and second part of the First Schedule hereto.
- (2) I object to produce the said documents and tape recordings set forth in the second part of the said Schedule hereto.
- (3) I do so for the reason that ... (here state upon what grounds the objection is made, and verify the fact as far as may be).
- (4) I have had, but have not now in my possession or power, the documents and tape recordings relating to the matters in question in this action, set forth in the Second Schedule hereto.
- (5) The last-mentioned documents and tape recordings were last in my possession or power .....(state when).
- (6) The..... (here state what has become of the last-mentioned documents and tape recordings, and in whose possession they are now).
- (7) According to the best of my knowledge and belief, I have not now, and never had in my possession, custody, or power of my attorney, or agent, or any other person on my behalf, any document or copy of, or extract from any document and tape recordings, relating to any matters in question in this cause, other than the documents and tape recordings set forth in the First and Second Schedules hereto.

Dated at ..... this .....day of ..... 20.....

.....  
Defendant



FORM 13  
(Rule 35(6)(d))

NOTICE IN TERMS OF RULE 35 (6)  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

A.B.  
and  
C.D.

Plaintiff  
  
Defendant

To.....

PLEASE TAKE NOTICE that the above-named Plaintiff requires you within fourteen days to deliver to the under-mentioned address a written statement setting out what documents and tape recordings of the following nature you have presently or had previously in your possession:

- (a) .....
- (b) .....
- (c) .....
- (d) .....

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

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

.....  
Plaintiffs Attorney  
(Address)

FORM 14  
(Rule 35(7))

DISCOVERY - NOTICE TO PRODUCE  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

and

Plaintiff  
  
Defendant

TAKE NOTICE that the ..... (plaintiff or defendant) requires you to produce within seven days for his inspection the following documents or tape recordings referred to in your affidavit, dated the ..... day of .....  
20 ..... (Describe documents or tape recordings required).

Dated at ..... this ..... day of ..... 20.....

.....  
Attorney for.....  
(Address)

To:

.....  
Attorney for the .....  
(Address)

FORM 15  
(Rule 35(8))

DISCOVERY - NOTICE TO INSPECT DOCUMENTS AND TAPE-RECORDINGS  
IN THE HIGH COURT OF SWAZILAND

CASE No:.....

In the matter between:

Plaintiff

and

Defendant

TAKE NOTICE that you may inspect the documents and tape-recordings mentioned in your notice of the ..... day of ..... 20 ..... at my office, or at ..... and between the hours of ..... and ..... on the following days.  
(or)

That the (plaintiff or defendant) objects to giving you inspection of the documents and tape-recordings mentioned in your notice of the ..... day of ..... 20 ..... on the grounds that ..... (State the grounds)

Dated at ..... this ..... day of ..... 20.....

.....  
Attorney for.....  
(Address)

To:

.....  
Attorney for the .....  
(Address)

FORM 16  
(Rule 35(20))

DISCOVERY - NOTICE TO PRODUCE DOCUMENTS AND TAPE RECORDINGS

IN PLEADINGS, ETC. IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

TAKE NOTICE that the plaintiff (or defendant) requires you to produce for his inspection the following documents and tape recordings referred to in your..... (declaration or plea, or affidavit).

(Describe documents required)

.....  
Attorney for.....

(Address)

To:

.....

Attorney for the .....

(Address)

FORM 17

(Rule 38(1))

SUBPOENA

IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

To: the Sheriff or his Deputy:

INFORM:

- (1) (State names, sex, occupation and
- (2) place of business or residence of each
- (3) witness)

that each of them is hereby required to appear in person before this court at .....  
..... on.....the..... day of.....

20..... at..... o'clock in the forenoon and thereafter to remain in attendance until excused by the said court, in order to testify on behalf of the above-named plaintiff/defendant in regard to all matters within his knowledge relating to an action now pending in the said court and wherein the plaintiff claims (1).....(2).....

..... (3) ..... from the defendant.

AND INFORM him that he is further required to bring with him and produce to the said court.....(here describe accurately each deed, document, instrument, tape recording, writing or other thing to be produced).....

AND INFORM each of the said person further that he should on no account neglect to comply with this subpoena as he may thereby render himself liable to arrest for contempt of court.

Dated at ..... this .....day of ..... 20.....

.....  
Registrar of the High Court

.....  
Plaintiff's/Defendant's Attorney

FORM 18  
(Rule 43(2))

NOTICE IN TERMS OF RULE 43  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

and

Applicant

Respondent

TO: the above-named respondent:

TAKE NOTICE that if you intend to defend this claim you must, within seven days, file a sworn reply with the Registrar of this court, giving an address for service within five kilometres, of the court, and serve a copy thereof on the applicant's attorney. If you do not do these things you will be automatically barred from defending, and judgment may be given against you as claimed. Your reply must indicate what allegations in the applicant's statement you admit or deny and must concisely set out your defence.

Dated at ..... this .....day of ..... 20.....

.....  
Applicant's Attorney

FORM 19  
(Rule 44(3))

RESTITUTION OF CONJUGAL RIGHTS IN THE HIGH COURT  
OF SWAZILAND

CASE No: .....

To:

AB., formerly of..... but whose present address is unknown;

Take Notice that by Order of court dated the ..... , day of ..... 20.....  
you are required to return, and restore conjugal rights, to C.D., your.....(wife/husband) on or  
before the .....day of ..... 20.....

Should you fail to do so, and not show cause to the contrary before the above-  
mentioned court at 9.30 a.m. on the..... day of .....20 ....., an order of divorce may  
be granted against you, with costs, and your (wife/husband) may be granted custody of the  
minor child(ren) of the marriage, and you maybe ordered to pay maintenance for ..... at the  
rate of.....

Dated at ..... this .....day of ..... 20.....

.....  
Registrar of the High Court

.....  
Plaintiff's/Defendant's Attorney

FORM 20  
(Rule 45(1))

WRIT OF EXECUTION  
IN THE HIGH COURT OF SWAZILAND

CASE No: .....

In the matter between:

Plaintiff

and

Defendant

To: the Deputy Sheriff for the district of.....

You are hereby directed to attach and take into execution the movable goods of..... ,  
the above-mentioned defendant of.....(address)..... and  
of the same to cause to be realized by public auction the sum of ..... together with interest  
thereon at the rate of ..... per centum per annum from the..... day of  
..... 20..... and the sum of ..... for the taxed costs and charges of the said  
.....which he recovered by judgment of this Court dated the .....  
..... day of ..... 20..... in the above-mentioned case, and also all other costs and charges of the  
plaintiff in the said case to be hereafter duly taxed according to law, besides all your costs  
thereby incurred.

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

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

Dated at ..... this .....day of ..... 20.....

.....  
Registrar of the High Court

Plaintiff's Attorney  
Address

FORM 21  
(Rule 45(6))

FORM OF SECURITY UNDER RULE 45 (6)  
IN THE HIGH COURT OF SWAZILAND

CASE NO: .....

In the matter between:

Plaintiff

and

Defendant

WHEREAS by virtue of certain writ of the High Court of Swaziland, dated the .....  
day of ..... 20 ....., issued at the instance of A.B. against C.D. of  
..... the Deputy Sheriff has seized and laid under attachment the under-mentioned articles,  
namely:

- 10 oxen
- 1 plough
- 1 harrow, etc.

Now, therefore, we, the said C.D. and G.H. of ... a ... (occupation), as surety for him,  
bind ourselves severally and *in solidum*, hereby undertaking to the said Deputy Sheriff or his  
cessionaries, assigns or successors in office, that the said goods shall not be made away with  
or disposed of, but shall remain in possession of the said C.D. under the said attachment, and  
be produced to the said Deputy Sheriff (or other person authorized by him to receive the  
same) on the ..... day of ..... 20 ..... (the day appointed for the sale), or any other  
day when the same may be required in order to be sold, unless the said attachment shall  
legally be removed, failing which I, the said G.H. hereby bind myself, my person, goods and  
effects to pay and satisfy the sum of ... (estimated value of the effects seized) to the said  
Deputy Sheriff, his cessionaries, assigns or successors in office, for and on account of the said  
A.B.

In witness whereof, we, the said C.D. and G.H. have hereunto set our hands on this .....  
..... day of ..... 20 .....

C.D.

.....  
Judgment Debtor

.....  
Deputy Sheriff

.....  
Surety

DEPUTY SHERIFF

ASSIGNMENT OF SURETY BOND

I, .....in my capacity as Deputy Sheriff for the district of .....hereby cede, assign and make over to A.B. all my right, title and interest in the foregoing surety bond.

Signed by me in the presence of the subscribing witnesses at .....  
this .....day of ..... 20.....

As Witnesses:

1. .... Deputy Sheriff
2. ....

FORM 22  
(Rule 46(2))

WRIT OF ATTACHMENT — IMMOVABLE PROPERTY  
IN THE HIGH COURT OF SWAZILAND

CASE NO:.....

In the matter between:

Plaintiff

and

Defendant

To; the Sheriff of Swaziland and to the

Deputy Sheriff for the district of.....

WHEREAS you were directed to cause to be realised the sum of ..... in satisfaction of a judgment debt and costs obtained by A.B. against the said C.D. in this Court on the ..... day .....20.....

AND WHEREAS the return of the Deputy Sheriff stated .....  
(here quote the Deputy Sheriff's return on the writ against movables).

Now, therefore, you are directed to attach and take into execution the immovable property of the said C.D., being ..... (here give the description of the property) to cause to be realized therefrom the sum of ..... together with the costs hereof and of the prior writ amounting to ..... and your charges in and about the same, and thereafter to dispose of the proceeds thereof in accordance with Rule 46.

FOR WHICH this shall be your warrant.

Dated at ..... this .....day of ..... 20.....

.....  
Registrar of the High Court

.....  
Plaintiff's Attorney

Address

FORM 23  
(Rule 46(9)(a))

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

In re:

Plaintiff

and

Defendant

The property which will be put up to auction on the..... day of  
..... 20 ....., consists of:

The sale shall be subject to the following conditions:

1. The property shall be sold by the Deputy Sheriff of ..... at .....  
to the highest bidder without reserve/with a reserve price of.....
2. The sale shall be for Emalangeneni, and no bid for less than one Lilangeni shall be accepted.
3. If any dispute arises about any bid the property may be again put up to auction.
4. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately be again put up to auction.
5. The purchaser shall, as soon as possible after the sale, and immediately on being requested by the ....., sign these conditions, and if he has bought *qua qualitate*, state the name of his principal.
6. (a) The purchaser shall pay a deposit of ten per cent of the purchase price in cash on the day of sale, the balance against transfer to be secured by a bank building society guarantee, to be approved by plaintiffs attorney, to be furnished to the Deputy Sheriff within .....days after the date of sale.  
(b) If transfer of the property is not registered within one month after the sale, the purchaser shall be liable for payment of interest to the plaintiff at the rate of ..... per cent per annum and to the ..... bondholder at the rate of ..... per cent per annum on the respective amounts of the award to the plaintiff and the ..... bondholder in the plan of distribution as from the expiration of one month after the sale to date of transfer.
7. If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a Judge summarily on the report of the Sheriff or Deputy Sheriff after due notice to the purchaser, and the property may again be put up for sale, and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the Sheriff's or Deputy Sheriff's distribution account, be recovered from him under judgment of the Judge pronounced summarily on a written report by the Sheriff or Deputy Sheriff, after such



purchaser shall have received notice in writing that such report will be laid before the Judge for such purpose, and if he is already in possession of the property, the Sheriff or Deputy Sheriff may, on seven days' notice, apply to a Judge for an order ejecting him or any person claiming to hold under him therefrom.

8. The purchaser shall pay auctioneer's charges on the day of sale and in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer upon request by the attorney for the execution creditor.

9. The property may be taken possession of immediately after payment of the initial deposit, and shall after such deposit be at the risk and profit of the purchaser.

10. The purchaser may obtain transfer forthwith if he pays the whole price and complies with condition 8, in which case any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 6 and 8 hereof;

11. The Deputy Sheriff may demand that any building standing on the property sold shall be immediately insured by the purchaser for the full value of the same, and the insurance policy handed to him and kept in force as long as the whole price has not been paid: and if he does not do so, the Deputy Sheriff may effect the insurance at the purchaser's expense.

12. The property is sold as represented by the title deeds and diagram, the Deputy Sheriff not holding himself liable for any deficiency that may be found to exist and renouncing all excess. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.

13. The execution creditor shall be entitled to appoint an attorney to attend to transfer.

At ..... this ..... day of ..... 20.....

.....  
Sheriff/Deputy Sheriff

I certify hereby that today the ..... in my presence  
the hereinbefore-mentioned property was sold for .....  
to .....  
I, the undersigned ..... residing at .....  
in the district of ..... do hereby bind myself as the purchaser  
of the hereinbefore-mentioned property to pay the purchase price and to perform all and  
singular the conditions mentioned above.

FORM 24  
(Rule 54(1))

CASE NO: .....

IN THE HIGH COURT OF SWAZILAND

THE KING

against

(the accused)

NOTICE OF TRIAL

TAKE NOTICE that you will be tried before the High Court at ..... on the ..... day of ..... 20 ..... or so soon thereafter as your case can conveniently be heard.

TAKE FURTHER NOTICE to make immediate arrangements for legal representation on the above appointed date of trial if you intend to be represented.

Dated at ..... this ..... day of ..... 20 .....

.....  
Registrar of the High Court

High Court of Swaziland,  
P.O. Box 19,  
MBABANE.

To: The Commissioner of Police

Please cause a copy of this notice to be served on the above-named accused and return it to me with your return of service.

Return of Service

.....  
Registrar of the High Court

FORM 25  
(Rule 55A(2))

IN THE HIGH COURT OF SWAZILAND  
REQUEST FOR DATE OF HEARING

CASE NO: .....

In the matter between:

and

Plaintiff

Defendant

Sir,

Be pleased to allocate a hearing date for the above matter, the pleadings having been closed.

The ..... hereby furnishes the following information in terms of Rule 55A of the Rules of Court:

Estimated time required for hearing ..... (State whether this estimate is as agreed or whether it is the party's own estimate).

Period of Notice of Set Down (as agreed between the parties) .....

NOTE:—If no agreement has been reached insert "No agreement reached".

Dated at ..... this ..... day of ..... 20 .....

.....  
Attorney for.....

To: The Registrar of the above Honourable  
Court and to:  
.....

SECOND SCHEDULE  
(Amended L.N.63/1972; replaced L.N.38/1990.)

COURT FEES

1. For every power of attorney to sue or defend.....	E 4-00
2. For every summons, notice of motion, petition or application .....	E 15-00
3. For every plea or other pleading (excluding request for the provision of further particulars).....	E 5-00
4. For every notice.....	E 3-00
5. For every subpoena - each witness .....	E 6-00
6. For every original affidavit.....	E 2-00
7. For every liquid document upon which provisional sentence is prayed .....	E 2-00
8. For every writ.....	E 8-00
9. For every recognisance or bond of security for restitution (other than a recognisance in a criminal manner).....	E 8-00
10. Request for a copy of any record, or part thereof, prepared by the Registry, for each folio of 100 words or part thereof.....	E 2-00
11. For certifying any document as a true copy - for the first four folios of 100 words each, minimum fee of .....	E 2-00
For each folio of 100 words or part thereof, thereafter.....	E -50
12. For every decree, order or other rule of court.....	E 6-00
13. For every certificate made under the hand of the Registrar, not being a certified copy.....	E 2-00
14. For every civil appeal from the Swazi Higher Court of Appeal or the Judicial Commissioner .....	E 15-00
15. For every application to search, for any entry or document or a record, except a judgment —	
(a) if the number of the record is given .....	E -50
(b) if the number of the record is not given for every month required to be searched.....	E -50
16. For all bills of costs - one per cent of the amount allowed .....	E —
17. Filing a certificate of service .....	E 2-00
18. On entering or sealing an order made in chambers.....	E 3-00
19. On settling, or approving, an advertisement, or other document, or deed, except a judgment or order .....	E 3-00
20. On entering, or setting down a cause or matter for hearing in Court.....	E 6-00

- |                                                                                                                                                 |         |
|-------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 21. On entering, or sealing, a judgment, decree, or order, given, directed or made in the trial, or hearing of a cause or matter in court ..... | E 6-00  |
| and if the trial, or hearing, occupies more than one day, for each additional day, or part of a day .....                                       | E 6-00  |
| 22. On filing a case stated .....                                                                                                               | E 5-00  |
| 23. On hearing any appeal other than a criminal appeal.....                                                                                     | E 10-00 |

#### THIRD SCHEDULE

(Amended L.N.102/1979; L.N.53/1985; Replaced L.N.38/1990; Amended L.N.102/1998; Replaced L.N.65/2005.)

#### TARIFF'S FOR THE SHERIFF AND DEPUTY SHERIFFS

The fees and charges set forth in this Schedule shall be received by the Sheriff or Deputy Sheriffs.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. For registration of any document for service or execution upon receipt thereof .....                                                                                                                                                                                                                                                                                                                                                                       | E 6.00                       |
| 2. (a) For service (including attempted service) of summons, writs, petitions, together with notice of motion or notice of set down, and any other annexure thereto: a composite fee of .....                                                                                                                                                                                                                                                                 | E 40.00                      |
| (b) For any subsequent service in the same case: a composite fee of .....                                                                                                                                                                                                                                                                                                                                                                                     | E 10.00                      |
| 3. Travelling allowance—<br>For the distance actually and necessarily travelled by the Deputy Sheriff or his officer, reckoned from the office of the Magistrate of his district, both on the forward and return journey, per kilometre or part thereof, where more than one matter is dealt with by the same Sheriff or Deputy Sheriff at the same place and time, the travelling allowance shall be apportioned equally between the different matters ..... | E 3.00                       |
| 4. The Deputy Sheriff shall be entitled to payment of all postage stamps and telephone calls and faxes made by him and necessary for the discharge of his duties .....                                                                                                                                                                                                                                                                                        | E 6.00<br>(Plus actual cost) |
| 5. For all necessary letters, or memoranda, in connection with any writ or other process .....                                                                                                                                                                                                                                                                                                                                                                | E 15.00                      |
| 6. For making a return of service including copies thereof .....                                                                                                                                                                                                                                                                                                                                                                                              | E 15.00                      |
| 7. Execution of writs—<br>The fees shall be as follows—                                                                                                                                                                                                                                                                                                                                                                                                       |                              |
| (1) For personal arrest, including conveying the person arrested to court, to the applicant's attorney's office or to a person, per person .....                                                                                                                                                                                                                                                                                                              | E 75.00                      |
| (2) For conveying the person arrested from place of custody on any day subsequent to the date of arrest and attending court, E60.00 per hour or part thereof but not exceeding .....                                                                                                                                                                                                                                                                          | E 180.00                     |
| (3) For ejectment – E90.00 per hour or part thereof exclusive of traveling time subject to a minimum fee of .....                                                                                                                                                                                                                                                                                                                                             | E 90.00                      |
| (4) Inventory per hour .....                                                                                                                                                                                                                                                                                                                                                                                                                                  | E 60.00                      |

(5) Against movable property—

- (a) If a writ is paid on presentation 9% of the amount so paid subject to a maximum fee of E350.00 and minimum fee of E35.00.
- (b) For an abortive attempt at attachment, not due in any way to the fault of the Deputy Sheriff, including search and inquiry ..... E 45.00
- (c) (i) If a writ is withdrawn or the debtor's estate is placed under sequestration or liquidation, before any attachment is made .... E 15.00
  - (ii) If a Deputy Sheriff is instructed to withdraw his attachment, or the debtor's estate is sequestrated or put into liquidation after attachment, but before sale, 3% of the amount of the writ, or the value of the goods attached, whichever is the lesser subject to a maximum fee of ..... E 300.00
- (d) For making an attachment, including search and inquiry ..... E 90.00
- (e) (i) Necessary notice of attachment to one person ..... E 12.00
  - (ii) For each necessary copy thereof ..... E 5.00
- (f) If the amount of the writ is paid to the Deputy Sheriff after attachment, but before sale 9% on the amount so paid subject to a maximum Fee of ..... E 500.00
- (g) For drawing up advertisements of goods attached (plus reasonable costs of actual advertisements) .....

*Editorial Note: Amount to be included by a corrigendum*

- (h) For drawing up posters advertising a sale in execution, per necessary copy thereof ..... E 5.00
- (i) For making an inventory of the goods attached, per 100 words ..... E 75.00
  - For each necessary copy thereof ..... E 5.00
- (j) For selling in execution including distribution of the proceeds, 9% on the first E15,000 and 6% thereafter to a maximum of ..... E 5,000.00
- (k) The Deputy Sheriff himself shall sell movable property in execution, but he shall engage the services of an auctioneer if directed thereto in writing by the judgment creditor in which case the judgment creditor shall bear the additional commission.
- (l) Commission shall not be chargeable as against a judgment debtor on the value of movables attached and subsequently claimed by a person other than the judgment debtor, and released in consequence of such claim unless such property has been attached at the express direction of the judgment creditor in writing in which event the judgment creditor shall be liable to the Deputy Sheriff for the commission as determined under Item (5)(j).
- (m) For insuring movable property attached when it is considered necessary, and when the Deputy Sheriff is directed thereto in writing by the judgment creditor, in addition to the premium paid, an inclusive fee of ..... E 15.00

(6) For keeping possession of property, (money excluded)—

(a)	For placement of security officers to secure possession. Tariff in accordance with subparagraph (4)(a) of this paragraph.	
(b)	For removal and storage, the reasonable and necessary expense for such removal and storage. If an animal or animals are to be stabled and fed the reasonable charges, for such stabling and feeding (including grazing).	
(c)	For herding and preserving livestock, including dipping, the reasonable and necessary expenses for herding and preserving.	
(d)	When no officer is left in a place to protect possession of the property, and no security bond is taken, but movable property attached remains under the supervision of the Deputy Sheriff, fee per day .....	E 2.00
(7)	Against Immovable	
(a)	For ascertaining and recording what bonds or other encumbrances are registered against immovable property attached .....	E 60.00
(b)	For notifying execution creditor of such bonds or other encumbrances .....	E 10.00
(c)	For consideration of proof that a preferment creditor has complied with the requirements of Rule 46(5)(a) and 46(6)(a) .....	E 10.00
(d)	For consideration of notice of sale of immovable property prepared by execution creditor .....	E 60.00
(e)	For forwarding a copy of the notice of sale of immovable property to every judgment creditor who had caused the property to be attached and to every mortgage where the address is known, for each copy .....	E 10.00
(f)	For considering the conditions of sale of immovable property prepared by the execution creditor .....	E 60.00
(g)	For any report referred to in Rule 46(11) and 46(12), if submitted by the Sheriff .....	E 10.00
(h)	For preparing a plan of distribution referred to in Rule 46(15)(b) .....	E 60.00
(i)	Affixing Notice of Sale on Notice board at High Court .....	E 20.00
(j)	For a watchman necessarily left to guard attached property. Tariff in accordance with the Wages Act 1964 (The Regulation of Wages (Watching and Protective Services Industry) Order, 1990. Group A or any later Order replacing the same)	
(k)	For service of notice of attachment upon the owner and/or tenant and the Registrar of Deeds of the immovable property concerned ....	E 15.00
(l)	All necessary copies thereof .....	E 5.00
(m)	If the amount of the writ is paid to the Deputy Sheriff after attachment, but before sale, 7.5% of the amount so paid. Minimum E30.00 and maximum E300.00.	
(n)	If the writ is stayed or withdrawn by the judgment creditor or the judgment debtor's estate is sequestrated, or put into liquidation	

before attachment, 1% of the amount of the writ.

- (o) Where the writ is stayed or withdrawn, or the proposed sale in execution is deferred indefinitely or the judgment debtor's estate is sequestrated, (in the case of a company if it is placed in liquidation) after attachment but before sale, 3% of the amount of the writ or the value of the property, which ever be the lesser, up to but not exceeding E500 on each occasion of the deferment of the sale.
  - (p) Where an attachment has been withdrawn, for each necessary notice of withdrawal ..... E 12.00
  - (q) For the sale of the immovable property attached by the Deputy Sheriff, 5% of the amount for which the property is sold up to a maximum of E30,000 and thereafter 3,5% on the balance unlimited and minimum of E300.00.
  - (r) Giving of transfer to buyer ..... E 12.00
  - (s) Considering conditions of sale ..... E 60.00
  - (t) Bank charges: Actual costs incurred regarding Bank charges. ....
  - (u) For drawing up posters advertising a sale in execution, per necessary copy thereof ..... E 5.00
  - (v) For drawing up advertisement (plus reasonable costs of actual advertisements) for sale of property attached ..... E 40.00
- (8) Every Return filed by a Sheriff or Deputy Sheriff shall be endorsed in bolded type with the words—

“ANY INTERESTED PARTY MAY REQUIRE THAT THIS ACCOUNT BE TAXED BY THE REGISTRAR OR TAXING MASTER AND VOUCHED BEFORE PAYMENT”—

**see forms 10A and 20A.”**

#### FORM 10A



IN THE HIGH COURT OF SWAZILAND

Case No.....

veen:

Plaintiff

Defendant

RETURN: SERVICE OF SUMMONS

**CERTIFIED:**

at [time] I served this process upon [{Person} {Upon Someone else}], defendant type] at the [Defendant's] place of [{residence} {business} {or other}], ostensibly responsible and not less than 16 years of age, at [ADDRESS], [{district of Manzini,} {Hhohho,} {other}], by handing to the abovementioned a copy thereof after exhibiting the original and explaining the nature and exigency of the said provisions of Rule 4(2)[{(a)}{(b)} {or other}] Act 20/1954.

**ARGES / EXPENSES:**

party may require that this account be taxed by the Registrar and vouched before payment)

Tariff	QTY	Amount	Description	Tariff	QTY	Amount
Return						
Advance						

OFF OF THE HIGH COURT

Zero rated items

Sub-total

VAT

TOTAL

ATTORNEY

000

E

.....

MR. NAME OF DEPUTY – Deputy Sheriff

(Properly appointed in terms of Section 6(1) of the Sheriffs Act No. 90/ 1986) Signed at [{Manzini} {or other}] on 18/01/05 (date)

My Reference: 2005 / 00 / 03079.03 / REF

Deputy Sheriff – [Manzini/or other] – Name of Deputy

P.O. Box 0000, Mbabane, H100 (or other)

Tel: +268 000 0000

Fax: +268 000 0000

FORM 20A





IN THE HIGH COURT OF SWAZILAND

Case No. ....

In the matter between:

Plaintiff

And

Defendant

**RETURN: EXECUTION OF WARRANT OF EXECUTION**

**IT IS HEREBY CERTIFIED:**

That on [date] at [time] I served this process upon [{Person} {Upon Someone else}], defendant type] at the [Defendant's] place of [{residence} {employment} {business} {or other}], ostensibly responsible and not less than 16 years of age, at [ADDRESS], [{district of Manzini,} {Hhohho,} {Lubombo} {or other}], by handing to the abovementioned a copy thereof after exhibiting the original and explaining the nature and exigency of the said process under the provisions of Rule 4(2)[{(a)} {(b)} {or other}] Act 20/1954.

Hereafter payment of the judgment debt was demanded from the Defendant. As he was unable to pay the judgment debt and costs in full or in part, the property described in the inventory contained in the attached notice of attachment, were left in the defendant's possession.

**REMARK(S):**

Attached please find Notice of Attachment and Inventory, Ref. No. 000

**SHERIFF CHARGES/EXPENSES:**

(Any interested party may require that this account be taxed by the Registrar and vouched before payment)

Description	Tariff	QTY	Amount	Description	Tariff	QTY	Amount
Registration & Return				Notice of Attachment			
Service				Copy of Attachment			
Traveling				Attachment			
Post and Petty				Copy of Inventory			

Subsistence Allowance Execution	Inventory
---------------------------------------	-----------

TO: THE SHERIFF OF THE HIGH COURT		Zero rated items
		Sub-total
		VAT
		TOTAL

  

**TO: NAME OF ATTORNEY**  
P.O. BOX 000

BBABANE

Your Reference: .....

**MR. NAME OF DEPUTY – Deputy Sheriff**  
(Properly appointed in terms of Section 6(1) of the Sheriffs Act No. 90/ 1986) Signed at [{Manzini} {or other}] on 18/01/05 (date)  
My Reference: 2005 / 00 / 03079.03 / REF

Deputy Sheriff – [Manzini/or other] – Name of Deputy  
P.O. Box 0000, Mbabane, H100 (or other)  
Tel: +268 000 0000  
Fax: +268 000 0000

FOURTH SCHEDULE

(Amended L.N. 63/1972; L.N.102/1979; L.N.26/1980; replaced L.N.38/1990.)

TARIFF OF FEES OF ATTORNEYS AND ADVOCATES

(THIS TARIFF ONLY APPLIES TO PROCEEDINGS INSTITUTED  
ON OR AFTER 1ST AUGUST, 1990.)

A. TAKING INSTRUCTIONS

1. To institute or defend any proceedings..... E20-00 – E150-00
2. For advice on evidence or on commission .....E20-00 - E100-00
3. For case on opinion, or for advocate's guidance in preparing pleadings, including exceptions.....E20-00 - E50-00  
per half hour of part thereof.
4. For statement of witness.....E20-00 - E50-00  
per half hour or part thereof.
5. To set down cause, issue subpoena or writ or any other simple instruction ..... E5-00
6. To draft a petition or affidavit .....E20-00 - E50-00  
per half hour or part thereof.
7. To note an appeal ..... E7-50

8. To prosecute or defend an appeal (exclusive of the perusal of the record .E20-00 - E50-00  
per half hour or part thereof.

**B. ATTENDANCE AND PERUSAL.**

1. Attending the receipt of and perusal and considering —  
(a) Any summons, petition, affidavit, pleading, advocate's advice and drafts, report and important notice or document ..... E 2-50 per folio  
(b) Any letter, record, stock sheets in voluntary surrenders, judgments or any other material document not elsewhere specified ..... E 1-50 per folio
2. Attending the receipt of and considering any plan or exhibit or other material document in respect of which the basis of remuneration set out in Item 1 of this section cannot be applied .....E 2-50 - E50-00  
per document.
3. Making searches in offices of record ..... E 7-50  
per half hour or part thereof.
4. Sorting out, arranging and paginating papers for pleadings, advice on evidence or brief on trial or on appeal..... E 7-50  
per half hour or part thereof.
5. Attending to give or take disclosure ..... E 7-50  
per half hour of part thereof.
6. Attendances (other than formal) including telephone calls other than formal telephone calls .....E20-00 – E50-00  
per half hour or part thereof.

**NOTE:**

The fees allowed under this section, shall be in addition to such fees as may be allowed for instructions under section A. In computing the fees chargeable for perusal of documents in connection with instructions under Items A.1 and A.6, the number of words in all documents to be perused, shall be added together and the total divided by 100.

**C. ATTENDANCE (FORMAL)**

1. To serve or deliver (other than by post) any necessary document or letter, or despatch any telegram ..... E 2-50
2. To sue out any process or file any document..... E 2-50
3. To set down causes for trial..... E 2-50
4. To search for any return or appearance ..... E 2-50
5. On receipt of notice of appearance ..... E 2-50
6. On advocate, e.g. with brief or to make appointment ..... E 2-50
7. On signature of powers of attorney to sue or defend ..... E 2-50

8. On jurat..... E 2-50
9. Other formal attendances, including telephone calls ..... E 2-50
10. Attending receipt of a formal acknowledgement..... E 2-50

**D. DRAFTING AND DRAWING.**

1. Drafting instructions for case on opinion, for advocate's guidance in preparing pleadings (including further particulars and requests for same) including exceptions (per folio)..... E3-50
2. Drafting instructions to advocate for advice on evidence, for brief on trial or on commission (per folio) ..... E3-50
3. Drafting instructions to advocate for argument in respect of all classes of pleadings, provided that a fee for drafting instructions on motion, petition, exception or appeal shall only be allowed in the discretion of the taxing master (per folio) ..... E3-50
4. Drafting statements of witnesses (per folio) ..... E3-50
5. Drawing subpoenas, powers of attorney to sue or defend, formal notices (per folio) E3-50
6. Drafting a petition, affidavit, any notice, except formal notice, summons, further particulars and requests for same, writs of execution, arrest or attachment and any other important document not otherwise provided for (per folio) ..... E3-50
7. Letters or telegram (per folio) ..... E2-50  

Letters to be charged by way of composite fee for all letters sent.

Copy to keep (per folio) ..... E0-50
8. Drawing index to brief (per folio) ..... E2-50
9. Drawing short brief ..... E3-50

**NOTE:**

The charges allowed in this section for drafting and drawing, do not, save in the case of items numbers 6, 8 and 10, include making the first fair copy, which shall be charged for under Item 1 of section F.

**E. APPEARANCE, CONFERENCE AND INSPECTION.**

1. Attendance by attorney in court or before a Judge in chambers or before an arbitrator, commissioner, referee or at an inspection directed by the court: If advocate employed .....E15-00 -E35-00  

per half hour or part thereof.

If advocate not employed ..... E20-00 – E50-00  

per half hour or part thereof.

Time spent in travelling and waiting time necessarily spent to be allowed at the same rate. In addition the taxing master shall also allow a reasonable amount to cover the cost of necessary conveyance, and where applicable, subsistence and accommodation.

2. Attendance of attorney's articled clerk to assist at contested proceedings ..... E150-00  
per half hour or part thereof.
  3. Any conference or consultation with advocate with or without witnesses and on pleadings including exceptions and particulars to pleadings, applications, petitions, affidavits, testimony and on any other matter which the taxing officer may consider necessary .....E20-00 - E50-00  
per half hour or part thereof.
  4. (a) Any conference or consultation with client, witness, opposite party, and any other conference or consultation which the taxing officer may consider necessary .....E 20-00 - E50-00  
per half hour or part thereof.  
(b) Attending conference in terms of rule 37 .....E 20-00 - E50-00  
per half hour or part thereof.
  5. Any inspection *in situ*, or otherwise, including travelling time .....E 20-00 - E50-00  
per half hour or part thereof.
- The taxing master shall also allow a reasonable amount to cover the costs of necessary conveyance.
6. Evidence: such just and reasonable charges and expenses as may, in the opinion of the taxing master, have been properly incurred in procuring the evidence and attendance of witnesses whose fees have been allowed on taxation provided that the qualifying expenses of a witness shall not be allowed without an order of court or the consent of all interested parties.
- F. MISCELLANEOUS.
1. Briefing and copying:  
For making copies for the court, for advocate or for service or for any other necessary purpose, the charge shall be, for each copy at the rate of 50c per folio (including the first copy of any document drafted in respect of which a charge is recoverable under Items 2, 3, 4, 5, 7, and 9 of Section D of this Tariff)
  2. Drawing insolvency schedules, including petition, affidavits and relative attendance per folio ..... E1-00  
and all other copies per folio ..... E0-50
  3. For giving a verbal or written opinion (as between attorney and client..E 70-00 - E150-00
  4. For making copies of the record in a civil appeal from the subordinate court the charge shall be for each copy per folio ..... E0-50
  5. General: Inclusive fee for consultation and discussions with client and/or advocate not otherwise provided for or specially charged.....E 20-00 E50-00  
per half hour or part thereof.
  6. Preparing for trial or hearing when advocate not employed .....E20-00 - E 50-00  
per half hour or part thereof.

G. BILL OF COSTS.

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

1. For drawing the bill of costs, making necessary copies and attending settlement, five per cent (5%) on total fees allowed.
2. For arranging and attending taxation: five per cent (5%) on total fees allowed:  
Provided that if more than 25 per cent of the fee is taxed off this fee shall be disallowed.

H. COSTS OF COUNSEL

<i>Motions</i>	<i>Senior</i>	<i>Junior</i>
Motions (unopposed including provisional sentence).....	E 35-00	E 25-00
	to	to
	E75-00	E 50-00
 Motions opposed (including provisional sentence, reviews and arguments on pleadings and exceptions) .....	 E100-00	 E75-00
	to	to
	E600-00	E400-00
 Refresher .....	 Two-thirds of fee on brief.	
 Consultations.....	 E50-00	 E35-00
	to	to
	E250-00	E175-00
 Drawing and settling notice of motion or affidavits .....	 E50-00	 E35-00
	to	to
	E150-00	E100-00
 Postponements agreed beforehand .....	 E40-00	 E25-00
	to	to
	E100-00	E50-00
 <i>Pleadings</i>		
 Drawing summons, combined summons, declaration or plea .....	 E50-00	 E35-00
	to	to
	E150-00	E100-00
 Drawing exception .....	 E50-00	 E35-00
	to	to
	E150-00	E100-00

Drawing replication, rejoinder, surrejoinder or further pleadings.....	E40-00 to E100-00	E25-00 to E75-00
Drawing request for further particulars .....	E40-00 to E100-00	E25-00 to E75-00
Drawing further particulars .....	E 40-00 to E100-00	E25-00 to E75-00
Drawing or settling discovery affidavit .....	E50-00 to E150-00	E35-00 to E100-00
Advice on evidence .....	E100-00 to E300-00	E50-00 to E150-00

#### *Trials*

Defended trials .....	E100-00 to E600-00	E75-00 to E400-00
Refreshers.....	Two thirds of fee on brief.	
Un defended trials .....	E75-00 to E250-00	E50-00 to E150-00

#### *Appeals*

Appeals.....	E150-00 to E600-00	E75-00 to E400-00
Refresher for each day/Term refresher .....	Two-thirds of fee on brief.	
Drawing or settling grounds of appeal or cross appeal ....	E50-00 to E150-00	E35-00 to E100-00

#### *Miscellaneous*

Commissions .....	As in High Court trial matters.	
Noting judgment.....	E35-00 to	E25-00 to

	E75-00	E50-00
Where argument of any question arising out of judgment, including leave to appeal .....	E50-00	E35-00
	to	to
	E100-00	E75-00
Inspection in loco .....	As for consultations	

H. TRAVELLING AND SUBSISTENCE ALLOWANCES

1. A travelling allowance for advocates and attorneys where their office is not within five kilometres of the seat of the High Court shall be allowed at the rate of 42c per kilometre, where the advocate or attorney travels to court by car or the actual cost of travel where another mode of conveyance is used whichever is less.
2. A subsistence allowance for advocates and attorneys shall be allowed at the rate of E75 00 for every night it is reasonably necessary for the advocate or attorney employed to remain at the place where the courthouse is situated for the hearing of any appeal, cause or matter.