LESOTHO
Government Gazette

Vol. 69	Friday – 21st June, 2024	No. 46

CONTENTS

No. **Page**

LEGAL NOTICE

65 High Court Civil Litigation Rules, 2024 859

Published by the Authority of His Majesty the King

Price: M388.00

LEGAL NOTICE NO. 65 OF 2024

High Court Civil Litigation Rules, 2024

High Court Civil Litigation Rules
(Prescribed by the Chief Justice under sections 22(6), 69(5) and 131(a) of the Constitution of Lesotho, 1993 read with section 16 of the High Court Act No. 5 of 1978.

1. The attached Rules of the High Court shall come into operation on the date of publication in the Government Gazette.

S.P. SAKOANE
Chief Justice
Palace of Justice
Maseru.

HIGH COURT CIVIL LITIGATION RULES, 2024

ARRANGEMENT OF RULES

PART 1

INTRODUCTION

RULE

1. Citation, commencement and application of rules
2. Objects
3. Interpretation
4. Rules and practice directions

PART 2

SESSIONS, VACATIONS AND COURT DAYS

5. Sessions and vacations
6. Court days
7. Registrar's office hours
8. Report of court work by the Registrar

PART 3

COURT PROCESS

9. Documentation, filing, numbering and access to records
10. Declaration by cedent in any cause or matter
11. Particulars of litigant to be provided
12. Registration and electronic filing
13. Availability of e-justice system
14. Service of process
15. Proof of service
16. Deemed service
17. Service of process emanating from outside Lesotho
18. Service of process outside Lesotho
19. Edictal citation
20. Substituted service
21. Issuance of subpoena

22. Attachment of property to found or confirm jurisdiction
23. Arrest to secure fulfilment of an obligation imposed by law

PART 4

AUDIENCE AND LEGAL REPRESENTATION

24. Audience in court
25. Admission of legal practitioners
26. Representation of parties
27. Power of attorney
28. Withdrawal of legal representatives
29. Appearance of business partners
30. Power to require appearance of certain persons
31. Parties to appear at the hearing
32. Effect of striking off
33. Subsequent appearance
34. Several parties failing to appear
35. Setting aside of an order made in default of appearance

PART 5

ASSISTANCE TO POOR LITIGANTS

36. Permission to sue as a pauper
37. Pro deo fees

PART 6

COURT-ANNEXED MEDIATION PROGRAM

38. Court-annexed mediation
39. Mediation report

PART 7

JUDICIAL CASE MANAGEMENT

40. Court's duty to manage cases
41. Obligations of the parties and legal practitioners in relation to case man

agement
42. Judicial case management procedure until trial
43. Case planning conference
44. Proposal by parties in participation of case management conference
45. Case management conference
46. Pre-trial conference
47. Status hearing, further case management conference and relaxation of rules and orders
48. Interlocutory matters and applications for directions
49. Protective costs orders in cases of public interest
50. Discovery
51. Plans, photos, diagrams and models
52. Expert witness in general
53. Content of expert report
54. Order of hearing expert evidence
55. Appointment of court expert
56. General provisions relating to court expert
57. Medical examination in matters involving death or bodily injury
58. Examination or inspection of property
59. Furnishing of examination or inspection reports

PART 8

PROCEDURAL STEPS IN RESPECT OF CAUSES

60. Joinder of parties and causes of action
61. Consolidation of originating applications and intervention of persons as applicants or respondents
62. Proceedings by and against partnerships, firms and associations
63. Change of parties

PART 9

APPLICATIONS-GENERAL

64. Judicial case management in applications
65. Application procedure
66. Form of affidavit
67. Contents of an affidavit
68. Filing of further affidavits and hearing of oral evidence

69. Referral of applications for evidence or to trial
70. Counter applications
71. Default of appearance at application hearing
72. Urgent applications
73. Exparte applications
74. Contempt of court applications
75. Applications in connection with estate of deceased persons and persons with disability
76. Variation and rescission of orders and judgments
77. Miscellaneous matters relating to applications
78. Review applications
79. Opposition of review application
80. Applications in terms of the Prevention of Corruption and Economic Offences Act (DCEOA)and Money Laundering and Proceeds of Crime Act (MLPCA)
81. Applications for appointment of curator
82. Appointment of curator ad litem
83. Appointment of curator by court
84. Release from curatorship

PART 10

CONSTITUTIONAL APPLICATIONS

85. General duties of the Registrar
86. Service of process
87. Procedure in respect of constitutional applications
88. Amicus curiae submissions
89. Argument
90. Referral of Constitutional questions in cases before subordinate courts and tribunals

PART 11

QUESTIONS AS TO MEMBERSHIP OF PARLIAMENT

Determination of validity of Membership of Parliament and Election Petitions

91. Service of process

92. Contents of a petition
93. Annexures to the petition and answer
94. Unopposed petition
95. Opposed petition
96. Judicial case management in petitions
97. Allegations of corrupt or illegal practices
98. Security by petitioner
99. Consolidation of petitions
100. Trial of election petitions
101. Scrutiny of votes
102. Costs
103. Format of documents
104. Matters for investigation by referee
105. Examination by interrogatories
106. Documents lodged to canvass factual material
107. Models, diagrams and exhibits

PART 12

ORIGINATING APPLICATIONS-GENERAL

108. Filing and registration of originating application
109. General requirements for pleadings
110. Annexes to originating application
111. Power of the Registrar to reject originating application
112. Admission of the originating application by the Registrar
113. Frame of the originating application
114. Notice to answer
115. Contents of an answer
116. Annexes to an answer
117. Replication
118. Claim in reconvention/counterclaim
119. Answer to claim in reconvention/counterclaim
120. Close of pleadings
121. Amendment of pleadings
122. Third party procedure

PART 13

MATRIMONIAL CAUSES AND MATTERS

123. Service of process
124. Restitution order
125. Annexes in matrimonial proceedings
126. Judicial case management in matrimonial proceedings
127. Interlocutory applications in matrimonial proceedings
128. Undefended divorce

PART 14

COMMERCIAL MATTERS

129. Business of the commercial division
130. Designation of cases as commercial actions
131. Preparation of court bundles
132. Heads of argument

PART 15

APPLICATIONS FOR SPECIFIC ORDERS OR JUDGMENTS

133. Security for costs
134. Search and preservation of material evidence
135. Freezing orders
136. Judgment by consent
137. Summary judgment
138. Offer to settle
139. Default judgment
140. Rescission of default judgment

PART 16

TRIALS

141. Assignment of trial dates
142. Postponements
143. Preliminary objections
144. Decision on objection

145. Special case and adjudication on points of law and facts
146. Evidence taken on commission
147. Commissioners of the court
148. Use of witness' statements at trial
149. Evidence by video and audio link
150. Withdrawal, abandonment and settlement
151. Non-appearance of a party or a legal representative at trial
152. Onus of proof and procedure at trial
153. Absolution from the instance, closing address and judgment
154. Variation of procedure, transfer of cases and costs

PART 17

HEADS OF ARGUMENT AND DELIVERY OF JUDGMENTS

155. Heads of argument and citation of foreign authority
156. Delivery of rulings and judgments

PART 18

COMPILATION OF RECORDS

157. Record of proceedings
158. Lost record

PART 19

POST-TRIAL PROCEEDINGS

159. Variation and rescission of orders or judgments
160. Execution: General
161. Execution against movable property in general
162. Execution against incorporeal property, liens and real rights
163. Attachment of debt held by garnishee
164. Conditions precedent to execution against immovable property and transfer of judgments
165. Execution against immovable property
166. Procedure for sale of immovable property
167. Transfer of property and distribution of proceeds from sale
168. Superannuation

169. Interpleader

PART 20

APPEALS AND REVIEWS

170. Appeals from Subordinate Courts and tribunals
171. Contents of record
172. Heads of argument and citation of foreign authority
173. Appeals to the Court of Appeal
174. Leave to appeal
175. Reviews

PART 21

NON-COMPLIANCE AND EXCUSE FROM COMPLIANCE WITH RULES OF COURT, PRACTICE DIRECTIONS OR COURT ORDERS

176. Sanctions for failure to comply with rules, practice direction, court order or direction
177. Sanctions for non-compliance in absence of defaulting party obtaining relief, relaxation, extension or condonation
178. Extension of time, relaxation or condonation
179. Relief from sanctions or adverse consequences
180. Excused from compliance with the rules
181. Dismissal for want of prosecution

PART 22

TARIFFS AND TAXATION

182. Tariff of court fees
183. Tariff of deputy-sheriffs
184. Tariff of fees for attorneys
185. Tariff of fees for advocates
186. Application in respect of review of taxation of costs

PART 23

MISCELLANEOUS AND GENERAL

187. Lapse of cases and inactive cases
188. Dismissal of cases for lack of progress
189. Concurrent civil and criminal proceedings
190. Translation of documents
191. Interpretation of oral evidence into official language
192. Sworn translators or interpreters
193. Authentication of documents executed outside Lesotho for use within Lesotho
194. Destruction of documents
195. Savings and transitional provisions
196. Repeal

PART 24

FIRST SCHEDULE: Forms A to W1

PART 25

SECOND SCHEDULE: Forms 1-12

PART 26

THIRD SCHEDULE: Annexures A-G

PART 1

INTRODUCTION

Citation, commencement and application of rules

Rule 1

(1) These rules may be cited as the High Court Civil Litigation Rules 2024 and shall come into operation on the date of publication in the Gazette.

(2) These rules shall apply to the administration of civil, commercial, matrimonial proceedings as well as to constitutional proceedings, election petitions and questions of membership to Parliament.

Objects

Rule 2

(1) The purpose and overriding objective of these rules is to enable Judges to manage cases and facilitate the resolution of the real issues in dispute justly, speedily, efficiently and cost effectively as far as practicable.

(2) To ensure that litigation is not conducted by ambush or surprise.

(3) Dealing with cases justly includes, so far as is practicable:

(a) ensuring that the parties are on an equal footing;

(b) saving costs by, among others, limiting interlocutory proceedings to what is strictly necessary in order to achieve a fair and timely disposal of a matter;

(c) dealing with the case in ways which are proportionate -

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that cases are dealt with expeditiously and fairly;

(e) recognising that judicial time and resources are limited and therefore allotting to each case an appropriate share of the court's time and resources, while taking into account the need to allot resources to other cases; and

(f) considering the public interest in limiting issues in dispute and in the early settlement of disputes by agreement between the parties.

(4) The court shall seek to give effect to the objects by:

(a) exercising any power given to it under these rules; or

(b) interpreting any other rule of procedure or practice direction applicable in a purposive manner.

(5) It is the primary responsibility of the court to manage and control cases and the parties and their legal representatives shall cooperate with the court and strictly comply with the rules to achieve the objects.

Interpretation

Rule 3

Any word or expression to which a meaning has been given in the Act bears that meaning and, unless the context otherwise indicates -

"Act" means the High Court Act No. 5 of 1978 with all amendments thereto;

"action" means a proceeding commenced by originating application or by writ issued in terms of Parts 12 - 14;

"advocate" means a person admitted and enrolled as such in terms of section 6 of the Legal Practitioners' Act No. 11 of 1983 or any Act that

may substitute it;

“affidavit” includes a declaration, deposition or other document containing a statement of facts the truth of which the deponent swears or affirms in terms of Regulation 2 of the Oaths and Declarations Regulations, 1964;

“association” means any unincorporated body of persons other than a partnership;

“attorney” means a person admitted and enrolled as such in terms of section 7 of the Legal Practitioners’ Act No. 11 of 1983 or any Act that may substitute it;

“application” means an application on notice of motion as contemplated in Part 9;

“case management conference” means a conference called by a Judge in terms of rule 45;

“case management day” means at least one day per week, other than during vacation, on which a Judge conducts case management under Part 7 and the dates of each Judge’s case management days should be published by the Registrar at least two months in advance of the earliest such date;

“case plan” means the plan submitted by the parties or their legal representatives, before the case planning conference or as directed by the Judge at such conference in terms of rule 43;

“case plan order” means the order made by the presiding Judge after the case planning conference in terms of rule 43;

“case planning conference” means the initial case management conference called by the presiding Judge in terms of rule 43;

“cause or matter” includes action, suit or other originating process or application;

“clerk” means the Judges’ clerk;

"claim for personal injuries" means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death, and "personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"Constitution" means the Constitution of Lesotho, 1993;

"court" means the High Court of Lesotho constituted and sitting in terms of the Lesotho Constitution, 1993 and the High Court Act No. 5 of 1978;

"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, fixed by order of court, stipulated in any case plan order, case management order or pre-trial order;

"court-annexed mediation" referred to in these rules as 'CAM' means mediation conducted by mediators of the court;

"Chief Justice" means Chief Justice of Lesotho;

"Criminal Procedure and Evidence Act" means the Criminal Procedure and Evidence No.7 of 1981 with all amendments thereto;

"day" means a court day;

"deliver" means to serve copies on all parties and filing of the original with the Registrar and the service or filing could be by electronic means;

"directions" mean such prescriptions or directives given by a Judge;

"docket allocation" refers to the process of the allocation of a docket or file of a case to a designated Judge;

"document" includes a handwritten or typed document, a computer print-out, a pleading, photograph, film, recording of sound, plan, record of a permanent or semi-permanent character and information recorded or stored electronically or by means of any other device;

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

"electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetical or other intangible form or similar capabilities;

"file" means to file with the Registrar;

"firm" means a business, including a business carried on by a body corporate;

"judicial case management" referred to in these rules as 'JCM', means the judicial management of cases for attaining the objectives set out in Part 7;

"judicial year" means from the first working day in February to 15th December, but where the 15th of December falls on a weekend, then the Friday preceding the 15th of December shall be the last day of the judicial year;

"Legal Practitioners Act" means the Legal Practitioners Act No. 11 of 1983;

"legal practitioner" means a person who, in terms of the Legal Practitioners Act, 1983 has been admitted and authorised to practice as a legal practitioner or is deemed to have been so admitted and authorised and practises for personal gain or is in the service of a law centre or the Crown;

"Master" means the Master of the High Court appointed in terms of section 13 of the Administration of the Judiciary Act No. 16 of 2011 and includes a deputy master and an assistant master;

"matrimonial cause" means an action for divorce, annulment of marriage or any interlocutory process related to a matrimonial cause;

"month" referred to in any judgment, order, direction or other document, means a calendar month;

"motion court" means a session of the court for the hearing of unopposed matters and in respect of a cause or matter not allocated to a presiding Judge and set down by a party to a date fixed by the Registrar;

"originating application" means an originating application together with annexes contemplated in Parts 12-14;

"party" means applicant, respondent or any litigant in terms of these rules and where context requires otherwise, includes his legal representative;

"practice directions" mean the directions issued by the Chief Justice;

"pre-trial conference" means the final case management conference held in terms of rule 46 before hearing or trial;

"presiding Judge" means the Judge who presides at a trial or the hearing of an application under these rules;

"process" includes any official court document and pleadings;

"registered user" means an individual in his or her capacity as sheriff or a legal practitioner or a firm of legal practitioners to whom or which has been issued a login password by the Registrar for e-justice to electronically generate, deliver and file process and maintain court case files in the court;

"Registrar" means the Registrar appointed in terms of the Administration of the Judiciary Act No. 16 of 2011 and includes Deputy Registrar and Assistant Registrar duly appointed as such;

"service" means the service of a court process or document for which service is required by these rules in any manner referred to in rules 14, 15, 16, 17, 18, 19 and 20;

"set down" means the set down of a defended action or opposed motion;

"sheriff" means the Registrar and shall include persons appointed by the Registrar as deputy-sheriffs;

"status hearing" means an enquiry conducted by the presiding Judge in terms of rule 47 to determine the position of affairs at a particular time in respect of a case;

"third party" means a person referred to in rule 122 against whom a third-party claim is pursued;

(1) In these rules, unless the context otherwise indicates:

(a) words having a singular meaning shall include the plural and words having a plural meaning shall include the singular.

(b) words in the masculine shall include the feminine meaning.

Rules and practice directions

Rule 4

(1) These rules and any practice directions made thereunder provide for a court driven process for the conduct of proceedings.

(2) Where there is a conflict between a rule and a practice direction, the rule takes precedence.

(3) The Chief Justice may, for the orderly conduct of proceedings in any cause or matter, issue or cause to be issued practice directions or repeal and replace the practice directions or amend a provision of a practice direction.

(4) The Chief Justice shall publish in the Gazette any practice direction made or amendment made to a practice direction under sub-rule (3) above.

(5) Legal representatives and litigants shall comply with all practice directions issued under this rule and failure to do so may attract sanctions.

PART 2

SESSIONS, VACATIONS AND COURT DAYS

Sessions and vacations

Rule 5

(1) For the dispatch of civil and criminal business, there shall be two sessions in every year which shall commence on 01st February and 01st August.

(2) Notwithstanding the provisions of sub-rule (1), if the date of commencement of any session falls on a day which is not a court day, that term shall commence on the next court day thereafter.

(3) There shall be four vacations in every year as follows:

(a) The first vacation shall commence on Wednesday preceding Good Friday and terminate on the second Tuesday after Easter Monday; the second vacation shall commence on 16th June and terminate on 31st July; the third vacation shall commence on 30th September and terminate on 14th October; the fourth vacation shall commence on 16th December and terminate on 31st January.

(4) Notwithstanding the provisions of sub-rule (3), if the day fixed for the end of session is not a court day, that session shall end on the immediately preceding court day.

(5) During and out of sessions one Judge per Division of the court shall sit in such days for the discharge of court business as the Chief Justice shall direct.

(6) The court shall not sit during vacations except for the -

(a) dispatch of bail applications;

(b) dispatch of business certified by counsel as being urgent;

(c) the management of cases under Part 7; or

(d) as the Chief Justice may direct or allow.

(7) No civil or criminal trial shall be set down for trial on the last week of a session.

(8) For the dispatch of civil and criminal business, the court shall sit at such places other than Maseru and on such dates as the Chief Justice may, by notice published in the Gazette, appoint.

(9) Subject to the provisions of section 9 of the High Court Act, any sitting of the court may be held by a Judge in chambers.

Court days

Rule 6

(1) The court shall be open to the public on every court day from 09:30a.m until 16:30p.m except any other day which the court is closed by the direction of the Chief Justice.

(2) In respect of hearing specific cases that merit urgent attention, the court may sit on any day other than a court day and at any time other than 09:30a.m to 16:30p.m at the discretion of the presiding Judge.

(3) Any sitting and hearing in any application or proceeding shall be postponed or adjourned to a fixed day.

Registrar's office hours

Rule 7

(1) The offices of the Registrar shall be open on a court day from 08:30 to 12:45 and from 14:00 to 15:30 for the purpose of issuing any process or filing of any document, except that for the purposes of filing a notice to answer or notice of intention to oppose, the offices shall be open from 08:30 to 12:45 and from 14:00 to 16:00.

(2) Despite sub-rule (1) above, the Registrar may in exceptional cir-

cumstances issue process and accept documents at any time before or after working hours.

Report of court work by the Registrar

Rule 8

(1) The Registrar shall at the end of every judicial year, compile and submit to the Chief-Justice a report containing the following information about the work of all courts in the judicial year:

(a) all cases, according to type of case, registered at the registry of the seat of the division of the court;

(b) the number of cases and their status;

(c) the number of reserved judgments and duration thereof.

(2) After verifying the report referred to in sub-rule (1), the Registrar shall publish the verified report.

(3) Nothing in this rule shall be interpreted to be in conflict with the provisions of the Administration of the Judiciary Act, 2011.

PART 3

COURT PROCESS

Documentation, filing, numbering and access to records

Rule 9

(1) The Registrar shall keep a book to be called the Civil Record Book and shall be both in manual and electronic format and shall enter therein forthwith at each successive stage of the action:

(a) the number of the action; to include the full citation

(b) the full names and addresses and identity document numbers of the parties and their attorneys, if any;

(c) the date and hour of issue of originating application or filing of an application;

(d) the judgment, the date of the judgment, and costs when these have been taxed or fixed by the Registrar

(e) any remarks required by these rules or by the special circumstances of the case.

(2) The originating application or other first document filed in a case or any application not relating to a then pending case shall be numbered by the Registrar with a consecutive number for the year during which it is filed, and the action or application shall be entered in the Civil Record Book in its manual and electronic format under that number.

(3) Every document afterwards served or delivered in such case or application or in any subsequent case in continuation of any such application shall be marked with such number by the party delivering it and shall not be received by the Registrar until so marked.

(4) All documents delivered to the Registrar to be filed on record and any minutes made by the court shall be filed on record under the number of the respective action or application.

(5) Copies of records shall, upon pre-payment of the prescribed fees, be made and issued by the Registrar to any person applying there for and entitled thereto, or copies may be made by such a person in the presence of the Registrar.

(6) All process of the court for service or execution and all documents or copies to be filed of record other than documents or copies filed of record as documentary proof shall be on paper known as A4 standard paper of a size of approximately 210 mm by 297 mm.

(7) Any process sued out or notices or documents issued or delivered shall be endorsed with the name and address of the party issuing or delivering the same.

Declaration by cedent in any cause or matter

Rule 10

(1) Where a person has acquired a right of action through a cession, that person (hereafter called "the cessionary") may not act on his own behalf in any cause or matter in the court under that cession, unless when he, for the first time lodges any process in the cause or matter with the Registrar, he at the same time files with the Registrar a sworn declaration by the person who ceded the right of action to him (thereafter called "the cedent").

(2) The declaration referred to in sub-rule (1) shall be in such form as the Chief Justice may prescribe in a practice direction and the cedent shall declare that:

(a) the cession is a genuine transaction in terms of which he truly intends to cede his rights in the claim to the cessionary;

(b) he has not ceded the claim to the cessionary to enable the cessionary to act on his behalf in the legal proceedings in return for payment made, to be made or promised to be made to the cessionary;

(c) the cession is not for any purpose that defeats any law; and

(d) the cessionary has not held himself out as a person qualified to represent a member of the public in legal proceedings contrary to any law.

(3) A declaration referred to in sub-rule (1) shall be made by the cedent before a member of the Lesotho Mounted Police Service holding the rank of Superintendent or above who shall, before administering the oath or affirmation, explain to the declarant that if the declaration is false, the cedent is liable for perjury or any other competent verdict and may, on conviction, be liable for any criminal sanction.

(4) This rule does not apply to a cause or matter in which a person is represented by a legal representative.

Particulars of litigant to be provided

Rule 11

(1) In every action or application, a legal representative shall file with the Registrar a return containing the particulars set out in sub-rule (4) in such form as may be prescribed and published by the Registrar with the approval of the Chief Justice.

(2) If any party to the proceedings is not represented by a legal representative, that party shall file the return referred to in sub-rule (1) together with the issue of the originating application, application, notice of intention to defend or notice of intention to oppose.

(3) The requirement to file a return in terms of this rule does not apply to the Attorney General, except that the Attorney General shall file such return on withdrawing as legal representative of record of a party in terms of rule 26.

(4) The return required to be filed in terms of sub-rule (1) shall contain the following information about the party, whether the party is represented by a legal representative or not -

(a) in the case of a natural person, his or her full names, identity number where available and if a Mosotho citizen or any other person ordinarily resident in Lesotho, his

physical address and where available, his telephone or cellular phone number or both, workplace telephone number, facsimile number and personal or workplace email address or both;

(b) in the case of a company, its name and registration number and registered office referred to in section 83 of the Companies Act No. 18 of 2011 and the particulars referred to in paragraph (a) of at least one director and secretary referred to in section 59 of the Companies Act including all particulars referred to in section 84 of that Act and, in case of the officer or secretary of any other body corporate, the particulars referred to in section 60 of that Act;

(c) in the case of any other juristic person, the particulars referred to in paragraph (a) of at least one officer or secretary or a person, by whatever name called, running its affairs;

(d) in the case of a registered society, its name and registration number and registered address referred to in sections 9 and 13 of the Societies Act No. 20 OF 1966; and

(e) in the case of a trust which is duly authorised to litigate, the particulars referred to in paragraph (a) of all the trustees and a reference number given by the Master to the trust deed registered with the Master.

(5) The particulars provided in terms of sub-rule (4) remain binding on the party to whom they relate and may be used by the court or by the other party to effect service of any notice or document on that party or give notice to that party, in case of his legal representative of record withdrawing and it becomes necessary for the court or any party to require the presence of that party before the court in relation to the action or application to which the return relates.

(6) A party shall, if no longer represented by a legal representative or if there is a change in the particulars of that party required by sub-rule (1), as soon as practicable deliver within five days, a notice to the Registrar and to all

the other parties informing them that he is no longer represented by a legal representative or of the change in his particulars.

(7) If, within five days of the withdrawal of the legal representative of record or change in particulars, the new particulars are not so delivered as contemplated in sub-rule (6) the old particulars remain binding as contemplated in sub-rule (5).

Registration and electronic filing

Rule 12

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

(2) As from the date determined under sub-rule (1), every legally represented party to a constitutional or civil matter shall file the original of any court process, notice or document electronically with the Registrar by making use of the e-justice made available by the court.

(3) The filing of any court process, notice or document referred to in sub-rule (2) shall be done by a registered user on the e-justice, unless the Judge on duty or the Registrar directs otherwise.

(4) The legal representative representing a firm of legal practitioners which practises in the court may cause the firm to register as user of the e-justice system by making the necessary application.

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

(6) Where service is by e-justice, it is deemed to have been done latest on the second day after the day of transmission.

(7) Service of any process, notice or document of the court other than service by the deputy-sheriff, to be effected by or on a party or legal representative who is not a registered user of the e-justice shall be done personally

and the original proof of service shall be filed with the Registrar simultaneously with the original process, notice or document so served.

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

(9) The process filed and kept in terms of sub-rule (8) shall be available for the duration of the matter in which it has been so filed and shall be kept for a period of at least five years after the matter is considered finalised in terms of these rules.

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

Availability of e-justice system

Rule 13

(1) In case of a process, notice or document of court being filed after the hours provided for in rule 6, the date and time of filing of the document is considered to have been filed at 08:30a.m on the first court day following the date of actual filing.

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

Service of process

Rule 14

(1) Service of any process of the court shall be directed to the Registrar and the Registrar shall deliver to the deputy sheriff the original of any process, notice or other document to be served, with as many copies as there are persons to be served including copies for the court and the Registrar.

(2) The deputy sheriff may, where resistance to the due service or execution of judicial process is experienced or is reasonably expected, call upon

any member of the Lesotho Police Service for assistance.

(3) Service of any process referred to in sub-rule (1) shall be effected by the deputy sheriff in one or other of the following manners:

(a) by delivering a copy of the process personally to the person to be served and where personal service is not possible, by leaving a copy of such process at the residence or place of business of such a person;

(b) where such person to be served is a child or a person under legal disability, service shall be effected upon the guardian, tutor or' curator of such child or person under legal disability;

(c) in the case of a child or person with legal disability where the guardian, tutor or curator aforesaid is unavailable, with the person who is apparently in charge of the residence at the time of delivery and who is apparently of the age of 16 years or above:

(d) for purposes of sub-rule (2)(c), where such residence is a building other than a hotel, boarding house, hostel or similar residential building, is occupied by more than one person or family, "residence" means that portion of the building occupied by the person who is to be served;

(e) by delivering a copy of the process at the place of employment of the person, guardian, tutor or curator to be served to some person who is apparently of the age of 16 years or above and who is apparently in authority over the person to be served or over the guardian, tutor or curator of such person;

(f) where the person to be served is a company or other corporate body or registered society, service shall be effected by delivering a copy of the process, to some responsible employee thereof at the registered offices or its principal place of business of such company, corporate body or registered society within the court's juris-

diction: Provided that if there is no such employee willing to accept service, by affixing a copy of the process to the main door or under such door of such office or place of business or by addressing a registered copy of such process to the registered office or principal place of business of such company, corporate body or registered society or in any other manner provided by any law or statute;

(g) if the person to be served has chosen a domicilium citandi, by delivering or leaving a copy of the process at the domicilium so chosen; or

(h) by delivering a copy thereof to any agent who is duly authorised in writing to accept service on behalf of the person to be served;

(i) where any partnership or firm is to be served, by delivering a copy of the process to a partner or to the proprietor of the firm at the place of business of the partnership or firm in one of the manners set out in this rule;

(j) where a church or a voluntary association is to be served, by delivering a copy of the process to the chairperson or secretary of the committee or other managing body of such church or association in one of the manners set out in this rule;

(k) where a local authority or other statutory body is to be served by delivering, a copy of the process to the secretary or member of the board or committee of such body, or in any manner provided by any law;

(l) where the party to be served is the Crown, the Government of Lesotho, any Minister, the Attorney- General or any official of the Government of Lesotho in his official capacity, service shall be effected at the office of the Attorney-General:

Provided that where such service has been effected in the manner prescribed by

paragraphs (c), (d),or (f) and (k), the deputy sheriff shall indicate in the return of service of the process the name of the person to which such person stands in relation to the person, company, body corporate, registered society or institution affected by the process; and

(m) where such service has been effected in the manner prescribed by paragraphs (c), (d) or (e) the court or Registrar, as the case may be, may treat such service as invalid, if there is reason to doubt that the process served has come to the actual knowledge of the person to be served, and in he absence of satisfactory evidence showing that it has come to the knowledge of such person.

(4) If two or more persons are served in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set out in this rule.

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

(6) No service of any process or notice in any proceedings in constitutional and civil matter, other than the issue or execution of a warrant of arrest, shall be effected on a Sunday or public holiday unless the Registrar authorises such service.

(7) (a) if service is effected by the deputy sheriff, it is his duty to explain the nature and contents of the process or documents served to the person upon whom service is effected and to state in his return that he has done so;

(b) if service is effected by a person other than the deputy sheriff it shall be the duty of such person to explain the nature and contents of the documents served and he shall in an affidavit state that he has done so;

(c) the person must be asked to acknowledge receipt of process or documents by signing.

(8) If it is not possible to effect service in any manner aforesaid, the

court may, upon the application of the person wishing to cause service to be effected give directions for such service.

(9) If the person on whom service is to be effected is known or believed to be in Lesotho but his address is unknown, the application shall set out such person's last known whereabouts and shall set out fully what enquiries have been made to ascertain his whereabouts. If the court orders service by publication such publication may be in accordance with Form "A" of the First Schedule hereto, approved and signed by the Registrar. If the person on whom service is to be effected is not within Lesotho the provisions of Rule 18 shall apply.

Proof of service

Rule 15

(1) Service of any process of the court is proved:

(a) where service has been effected by the deputy sheriff, by the return of service of the deputy sheriff;

(b) where service has been effected by electronic means with e-justice, by an e-justice electronic print-out of such service;

(c) where service has not been effected by the deputy sheriff or in terms of paragraph (b) above, by an affidavit of the person who effected service or in the case of service on a legal representative or a member of his staff, the Crown or any minister, deputy minister or any other official of the Crown, in his capacity as such, by the production of a signed receipt from the person on whom the process was served.

(2) The document which serves as proof of service shall, together with the served process or document, be filed with the Registrar within two days by the person who effected service.

Deemed service

Rule 16

(1) A document which is served in accordance with these rules or any relevant practice direction shall be deemed to be served on the day shown as follows:

(a) if the document has been by delivering that document to or leaving it at a permitted address, deemed service shall be the day after it was delivered to or left at the permitted address;

(b) if the document has been served by fax; if that fax is transmitted on a court day before 4p.m, deemed service shall be on that day; or in any other case, deemed service shall be on the court day after the day on which it is transmitted;

(c) if the document has been served by any other electronic method; deemed service shall be on the second day after the day on which it is transmitted;

Service of process emanating from outside Lesotho

Rule 17

(1) Whenever a request for service on a person in Lesotho is received from a territory recognised by Lesotho as a foreign state or court and is transmitted to the Registrar, the Registrar shall transmit to the deputy sheriff two copies of the process or citation to be served: Provided that the process or citation is authenticated in accordance with Rule 194.

(2) If such process or citation is in any language other than English, the Registrar shall request the foreign state or court to furnish two copies in English translation. When such are furnished the Registrar shall transmit to the deputy sheriff two copies of the process to be served together with the copies of the English translation.

(3) Service shall be effected by delivering to the person to be served one copy of the process or citation.

(4) After service has been effected, the deputy sheriff shall return to the Registrar one copy of the process or citation together with proof of service. Proof of service shall be by affidavit made before a magistrate or commissioner of oaths and verified by the seal of office of the Registrar.

(5) Particulars of charges for the costs of effecting service shall be transmitted to the Registrar who shall certify the correctness of such charges.

(6) The Registrar shall transmit to the Principal Secretary for Justice the request for service, proof of service, and particulars of charges together with a certificate in accordance with Form "B" of the First Schedule hereto.

(7) Service of any process or citation received from outside Lesotho may be effected by an attorney practising as such in Lesotho.

Service of process outside Lesotho

Rule 18

(1) Service of process or any document in a foreign country shall be effected:

(a) where there is no law in that country prohibiting such service or the authorities of that country have not interposed any objection to such service by -

(i) any diplomatic or consular officer in the service of the Government of Lesotho serving as such in the foreign country concerned;

(ii) any official authorised by the law of the country concerned to effect service;

(iii) any foreign diplomatic or consular officer of the foreign country to Lesotho who attends to the service of process or documents on behalf of Lesotho in that foreign country;

(iv) an official signing as or on behalf of the head of the department dealing with the administration

of justice in that foreign country and is authorised under the law of that country to serve process or document; or

(b) where the foreign country is a designated country in terms of legislation which provides for the reciprocal service of civil process in terms of that legislation.

(2) Any process of court or document to be served in a foreign country shall, unless the official language or one of the official languages is English, be accompanied by a sworn translation thereof into an official language of that country together with a certified copy of the process or document and the translation.

(3) Any process of court or document to be served as provided by sub-rule (1) herein shall be delivered to the Registrar together with revenue stamps in terms of the prescribed fees fixed thereto and such sum of money the Registrar considers for the cost of service; provided that no revenue stamps shall be required where service is to be effected on behalf of the Government of Lesotho.

(4) Any process of court or document delivered to the Registrar aforesaid shall, after defacement of the revenue stamps affixed thereto, be transmitted by him, together with the translation to the Principal Secretary for Foreign Affairs or to a destination indicated by the Permanent Secretary for Foreign Affairs, for service in the foreign country concerned.

(5) In the case of a foreign country, personal service may be effected by an attorney practising as such in that country or the deputy sheriff and proof of service shall be by a certificate duly authenticated in terms of the law of that country of the person effecting service.

(6) In all cases there shall be provided proof to the satisfaction of the court that the person who effected service was entitled to do so in terms of the law of that country.

Edictal citation

Rule 19

(1) Except by leave of the court no process or any document whereby proceedings are instituted shall be served outside Lesotho.

(2) Any person wishing to obtain such leave shall make application to the court setting out concisely the nature and extent of his claim, the grounds upon which it is based, the grounds upon which the court has jurisdiction to adjudicate on the claim and also the manner of service which the court is asked to authorise.

(3) If there cannot be personal service, the application shall also set out details of the last known whereabouts of the person to be served and of the enquiries which were made to ascertain his present whereabouts.

(4) Upon such application the court may make such order as to the manner of service as it seems appropriate and shall further order the time upon which notice of entry of appearance is to be given or any further steps to be taken by the person to be served. Where service by publication is ordered it may be in a form as may be in accordance with **Form "A"** of the First Schedule hereto, approved and signed by the Registrar, except that the word "citation," should appear whenever the word "originating application" occurs. And such publication shall be made within thirty days of the order.

(5) Where personal service is effected on the person to be served the form of citation shall be as near as possible in accordance with **Form "C"** of the First Schedule hereto and it shall be effected within sixty days.

(6) In the case of a foreign country, personal service may be effected by an attorney practising as such in the country concerned or by any diplomatic or consular officer in the service of the Government of Lesotho serving as such in the foreign country concerned, or by any official authorised by the law of that country to effect service.

(7) In all cases service shall be effected within sixty days of the order.

(8) (a) any process of court or document to be served in a for-

eign country shall be accompanied by a sworn translation thereof into an official language of that country together with a certified copy of the process or document and such translation;

(b) any process of court or document to be served as provided by sub-rule (6) herein shall be delivered to the Registrar together with revenue stamps in terms of the prescribed fees fixed thereto and such sum of money the Registrar considers for the cost of service; provided that no revenue stamps shall be required where service is to be effected on behalf of the Government of Lesotho.

(9) Any process of court or document delivered to the Registrar as aforesaid shall, after defacement of the revenue stamps affixed thereto, be transmitted by him, together with the translation, to the Principal Secretary for Foreign Affairs or to a destination indicated by the Principal Secretary for Foreign Affairs, for service in the foreign country concerned.

Substituted service

Rule 20

(1) Where it is impossible to effect service within Lesotho in terms of rule 14 or where a person desires to effect service but the address of the person to be served is unknown, the person desiring to effect service shall make an application on **Form "D"** of the First Schedule hereto, setting out all relevant information and in that case rule 19(2) shall apply with necessary modifications required by the context of the application.

(2) Notwithstanding the provisions of sub-rule 1, a person desiring to obtain leave of court to effect service in Lesotho by way of publication, may make an application for such leave from the bar or request such leave at any stage of case management conference or pre-trial conference and no papers need to be filed in support of such application and the court may if satisfied, act on such information given from the bar or given in any other manner as the court may require or order.

Issuance of subpoena

Rule 21

(1) Any party to an action who requires the attendance of any person to give evidence at a trial may as of right, without any prior proceeding, sue out of the office of the Registrar one or more subpoenas for that purpose.

(2) A subpoena shall contain the names of not more than four persons, and service thereof upon any person named therein shall be effected by the deputy sheriff in the manner prescribed by rules 13 and 16 and the process of subpoenaing witness shall be on **Form "E"**.

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

Attachment of property to found or confirm jurisdiction

Rule 22

(1) The court may on application grant leave for property of a *peregrinus* which is in Lesotho to be attached in order to give the court jurisdiction in an action which the applicant intends to bring against such *peregrinus*.

(2) The applicant shall satisfy the court:

(a) that he has a prima facie cause of action against the *peregrinus*;

(b) that the property sought to be attached is the property of the peregrinus or that the *peregrinus* has some right in the property;

(c) that the applicant himself is an *incola* and that the respondent is a *peregrinus*; and

(d) the applicant may in the same application apply for leave

to serve the respondent by edictal citation.

(3) Such application shall be made *ex parte* but if the court grants the order such order shall be served on the *peregrinus* within such time as the court deems fit.

(4) If the application for attachment is granted the court shall order the citation to be issued within such time as prescribed in rule 19 (4) – (5).

(5) The *peregrinus* may at any time before judgment apply to court on notice to the applicant to set aside the attachment on good cause shown and the court may make any order it deems just.

(6) If any person can show that the property attached is his property and not that of the *peregrinus* such person may apply to court on notice to the applicant to set aside the attachment and the court may make such order as it deems just.

(7) If it is alleged by the applicant that the property of the *peregrinus* sought to be attached, is in the possession of a third party or is a debt owing by a third party to the *peregrinus*, such third party shall have notice of the application: Provided that if it appears to the court to be just the court may, if notice of the application has not been given to the third party, issue a *rule nisi* calling upon the third party to show cause on a specified date, why such property or debt shall not be attached. Such rule may, at the discretion of the Judge hearing the application, operate as an interim interdict preventing such third party from parting with the property or from paying the debt to the *peregrinus*, as the case may be .

(8) If the court orders attachment of goods of a *peregrinus*, it shall order a warrant to be issued which shall as near as possible be in accordance with **Form "F"** of the First Schedule hereto.

Arrest to secure fulfilment of an obligation imposed by law

Rule 23

(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 therein shall be sued out against any person except in terms of this rule.

(2) In all cases where any person may be arrested to secure fulfilment of an obligation imposed by law shall be by writ of arrest addressed to the deputy sheriff for assistance by the police and to the officer commanding the prison and signed as is required in the case of originating application and shall as near as may be, be in accordance with **Form "G"** of the First Schedule hereto.

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

(4) (a) the affidavit shall contain a true description of the person making it, setting forth his place of residence, and a statement due to the applicant, the details of the obligation imposed by law and when and where it is being imposed;

(b) the affidavit shall show that the deponent has personal knowledge of the facts stated, provided, however, that if applicant sues as Executor or Administrator of a deceased person or as a Trustee of an insolvent estate or as a curator bonis or in any similar representative capacity it shall be sufficient to aver in the affidavit that the respondent is indebted as stated, as appears from the books and documents in the possession of the deponent and that the deponent verily believes that the debt is due; and

(c) the affidavit in all cases shall contain an allegation that the respondent has knowledge or awareness of the obligation and is able but unwilling to fulfil it.

(5) The writ of arrest and affidavit shall be filed with the Registrar, and the respondent or his attorney shall be allowed reasonable time to peruse and to copy them without charge.

(6) The costs of issuing any such writ of arrest shall be endowed thereon by the Registrar, and the deputy sheriff shall upon any arrest made by virtue thereof, give the respondent a copy of such writ, together with copies of the affidavit aforesaid and any documents upon which the claim is founded. All such copies shall be furnished by the applicant.

(7) If on arrest the respondent or anyone on his behalf gives to the

Registrar adequate security by bond or obligation of the said respondent and of another person residing and having sufficient means within Lesotho that the respondent will appear according to the exigency of the said writ and will fulfil the obligation imposed by law, or if the said respondent pays to the Registrar the sum of money or delivers to the sheriff the thing mentioned on the said writ together with the costs and charges endorsed thereon and a further sum prescribed in the "general schedule" as costs for the execution of the writ, the court shall permit the respondent to go free of the said writ of arrest. The bond or obligation to be given to the Registrar under this rule shall be as near as may be in accordance with **Form "H"** of the First Schedule hereto: Provided that the personal bond of the respondent without a surety shall be sufficient for the purposes of this rule if accompanied by a deposit of the amount or a thing claimed and costs as aforesaid, such deposit being referred to in the bond as one of the conditions thereof.

(8) If the respondent at any time after his arrest fulfils the obligation contained in the writ, including the costs and charges endorsed thereon, and the costs of execution of the writ or if he gives a bond or obligation in terms of sub-rule (7) herein, he shall be entitled to immediate release.

(9) If a bond or obligation has been given on behalf of the respondent in terms of sub-rule (8) the applicant shall proceed with his action as if there had been no arrest, and save in those cases where originating application has already been issued the writ of arrest and affidavit shall stand as a combined originating application and declaration in the action.

(10) Any person arrested shall be entitled to anticipate the day of appearance and to apply to the court for his release upon giving at least 24 hours' notice to the applicant (or his attorney) and to the Registrar.

(11) If the Registrar takes from the party arrested any bond or obligation by virtue of any writ, he shall, as soon as practicable and on request by the applicant or his attorney, assign to the applicant such bond or obligation, by an endorsement thereon made by the Registrar. Such assignment shall be as near as may be in accordance with **Form "I"** of the First Schedule hereto.

(12) If on the return day or anticipated return day the respondent admits the applicant's claim, the respondent shall be jailed until he fulfils the obligation imposed by law.

(13) If the respondent has not satisfied or admitted the applicant's claim and has not given security as aforesaid, the applicant 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 respondent to prison and shall make such further order as to it seems just for the speedy termination of the proceedings, the writ and affidavit standing as a combined originating application and declaration in such proceedings.

(14) If in any such proceedings judgment is given against the respondent he shall be entitled to his release and discharge from such arrest, provided that such discharge shall not free him from liability under the judgment.

PART 4

AUDIENCE AND LEGAL REPRESENTATION

Audience in court

Rule 24

The following persons are entitled to an audience in the court:

(1) a litigant in person or his duly authorised representative;

(2) a party's family member including spouse, child, brother, sister and parent or guardian;

(3) an executor, trustee or curator;

(4) a legal practitioner duly admitted to practice in the courts of Lesotho.

Admission of legal practitioners

Rule 25

(1) A person applying to be admitted and authorised to practice as a legal practitioner shall, not less than thirty days before the day on which his application is to be heard by the court -

(a) give written notice to the Registrar of the date on which the application is to be made being a date for the holding of the motion court roll as published by the Registrar from time to time;

(b) deliver to the Registrar both the original and a copy of every document in support of the application and an affidavit stating whether he has at any time been struck off the roll kept in relation to legal representatives or suspended by the court in Lesotho or by a court or other authority in a foreign country; and

(c) serve a copy of the documents and affidavit referred to in paragraph (b) on the secretary of the Law Society of Lesotho.

(2) If the applicant at any time before the hearing of the application delivers to the Registrar any document or declaration other than the documents or affidavit referred to in sub-rule (1)(b), he shall immediately serve the copies of that document or declaration on the secretary of the Law Society of Lesotho.

Representation of parties

Rule 26

(1) Except where the court directs otherwise, no legal practitioner shall be entitled to appear on behalf of any party at any proceedings of the court unless the legal practitioner is admitted to practice in courts of Lesotho.

(2) If a party dies or becomes incompetent to continue any proceedings, the proceedings shall be stayed until such time as an executor, curator, trustee, guardian or other competent person is appointed in the party's place, or until such incompetence ceases to exist.

(3) Where an executor, curator, trustee, guardian or other competent person is appointed, the court may, on application, order that the appointed person be substituted for the party who has so died or become incompetent.

Power of attorney

Rule 27

(1) The authority of legal practitioner to act on behalf of any party may be disputed by notice within twenty-one days after it has come to the notice of any party that the legal practitioner is so acting, or with the leave of the court on good cause shown at any time before judgment.

(2) If the power of attorney is disputed, the legal practitioner may no longer act on behalf of the party, unless a power of attorney is lodged with the Registrar within twenty-one days of the notice under sub-rule (1).

(3) A power of attorney or authorization to act lodged under sub-

rule (3) shall be signed by or on behalf of the party giving it and duly executed in accordance with the law.

(4) No power of attorney or authorization to act shall be required to be lodged by an advocate or attorney instructed by the Attorney-General, the Director of Public Prosecutions or a *pro-deo* counsel appointed by the court.

Withdrawal of legal representatives

Rule 28

(1) Where a legal practitioner ceases to represent a party, he shall inform the client and forthwith deliver notice of withdrawal from the proceedings to such client, the other parties and the Registrar.

(2) The notice to the Registrar must state the names, address of the other parties notified and the date on which and the manner in which the notice was sent to them.

(3) If the legal practitioner withdraws due to insufficient funds, he may withdraw not later than fourteen days before the date of set down or commencement of proceedings.

(4) The legal practitioner must forthwith inform the client of the withdrawal and make him aware of the date of set down or hearing and specifically advise client to engage another lawyer to act on his behalf.

(5) If the client does not have financial means to engage another legal practitioner, the client must be advised to apply for legal aid or represent himself.

(6) A legal practitioner who fails to withdraw as stated in this rule is deemed to have agreed to represent the client regardless and, therefore, requires leave of court on good cause shown, in order to withdraw from the case.

Appearance of business partners

Rule 29

(1) Where an application is filed against business partners in the

name of their firm, at the case management conference, they shall appear individually in their own names.

(2) All subsequent proceedings shall continue in the name of the firm.

Power to require appearance of certain persons

Rule 30

(1) The court may, at any stage of the proceedings, require the personal appearance of any official, director, or other officer of a Government Ministry or body corporate who may be able to answer material questions pertaining to the case.

Parties to appear at the hearing

Rule 31

(1) On the fixed hearing day, the parties shall be in attendance in court in person or through their agents or legal representatives and the matter shall then be heard.

(2) Where neither party appears when the matter is called for hearing, the court shall make an order that the matter be struck off or in cases of appeal, that the appeal be dismissed.

Effect of striking off

Rule 32

(1) Where an application is struck off or an appeal is dismissed in terms of rule 30(2), the applicant may apply in writing for reinstatement of the application or appeal.

(2) Where the applicant satisfies the court that there was a good reason for his non-appearance, the court may make an order to appoint a day for proceeding with the application or appeal.

Subsequent appearance

Rule 33

Where the court has adjourned the hearing of the application ex-parte, and the respondent appears at or before the hearing and shows good cause for his previous non-appearance, he may, upon such terms as to costs or otherwise as the court may direct, be heard in answer to the application as if he was heard on the day fixed for his appearance.

Several parties failing to appear

Rule 34

(1) Where one or more of multiple applicants fail to appear, the court may, at the request of the applicant or applicants appearing, allow the application to proceed in the same manner as if all the applicants had appeared, or in respect of the absent parties make such order as it thinks just.

(2) Where one or more of several respondents duly served fail to appear, the proceeding shall continue by default in respect of those respondents who failed to appear.

Setting aside of an order made in default of appearance

Rule 35

(1) Any respondent against whom an order made in his absence or in default may, within one month of the day when he became aware of such order, apply to the court that made the order to rescind it or set it aside.

(2) If the respondent satisfies the court that the notice was not duly served, or that he was disabled by a good cause from appearing when the matter was called on the hearing or from filing his answer, the court shall, after notice of the application has been served on the opposite party, make an order setting aside the previous order or otherwise as it thinks just, and shall appoint a day for proceeding with the application or re-hearing the appeal.

(3) Where the judgment or order is such that it cannot be set aside as against such respondent only, it may be set aside as against all or any of the other respondents also.

PART 5

ASSISTANCE TO POOR LITIGANTS

Permission to sue as a pauper

Rule 36

(1) If any person writes to the Registrar requesting permission to sue or defend as a pauper and alleges that he is unable to pay fees of the action, the Registrar shall enquire into the means of that person and for that purpose may require the person to give evidence on oath, either in person or by affidavit.

(2) The decision of the Registrar shall be final as to whether the person has sufficient means to finance his action or not. If the Registrar is satisfied as to the person's lack of means, he shall refer the case to a legal practitioner for consideration.

(3) If the legal practitioner certifies that he has considered the case and he believes that the person has a *bona fide* claim or defence, as the case may be, which claim or defence has a reasonable prospect of success:

(a) the Registrar shall grant the person permission to sue or defend without any payment of fees either to the court or to the deputy sheriff;

(b) the Registrar shall thereupon assign the certifying legal practitioner to the person;

(c) such legal practitioner shall not take any fees from the person for anything done in the conduct of the case;

(d) save as is provided in this rule no legal practitioner shall be entitled to any fees from the person and may not be at liberty to withdraw from the matter until the conclusion of the proceedings without leave of court, which may give directions as to the appointment of substitutes;

(e) no proceedings in which a person sues or defends as a poor litigant may be withdrawn, settled or compromised

without the leave of court;

(f) if the person succeeds in the prosecution or defence of the action and such success results in an order for payment to him of any sum of money or delivery to him of any property from any other party, whether by way of damages, costs or otherwise, the Judge may order that the fees under rule 182(2) shall be a first charge on any value recovered under such order and, from the balance of such value recovered, the legal practitioner for the person shall be entitled to such costs as may be allowed on taxation.

(4) Notwithstanding anything in this rule, the Registrar may, if he thinks the person is likely to be eligible for legal aid in terms of the Legal Aid Act No. 19 of 1978, instead of referring the person to a legal practitioner, refer him to the Chief Legal Aid Counsel.

(5) Whenever the Chief Legal Aid Counsel has undertaken the legal representation of any person in terms of the Legal Aid Act, it shall not be competent for such person to make a request under this rule, and if such request has been made it shall be dismissed.

Pro deo fees

Rule 37

(1) If in the course of legal proceedings a litigant becomes unable to proceed by reason of a deteriorating financial position, his legal representative may apply for a *pro deo* facility.

(2) The presiding Judge may, at his discretion and depending upon the importance and complexity of the case, recommend to the Chief Justice for approval of payment of fees to be determined by the Chief Justice.

PART 6

COURT ANNEXED MEDIATION PROGRAM

Court-annexed mediation

Rule 38

(1) As soon as pleadings are closed, the Registrar shall refer the matter to the Mediation Administrator to allocate to a mediator.

(2) If during court proceedings, the presiding Judge is requested by the parties to refer a matter or an aspect thereof for mediation or if the presiding Judge of his own initiative refers a matter or aspect thereof to mediation, court proceedings shall be postponed to a date after mediation is completed and a mediation report shall be filed within five days after completion of mediation.

(3) The mediation shall be held at the court facility, unless for good cause, the Chief Justice directs otherwise.

(4) Upon receipt of a matter, the Mediation Administrator must:

(a) enter the particulars of a case in a mediation register;

(b) assign a sequential mediation number to the matter; and

(c) open a separate mediation file bearing the mediation case number, names of the parties and their legal representatives.

(5) The mediation file must contain the following:

(a) referral memo of the Registrar;

(b) mediation referral order by the presiding Judge; and

(c) all mediation briefs.

(6) The format of the mediation brief shall be in accordance with **Form "J"** of the First Schedule hereto.

(7) Mediation briefs must be filed with the office of the Mediation Administrator no later than ten court days before the scheduled mediation session.

Mediation report

Rule 39

(1) At the conclusion of the mediation session, a mediation report must be filed within a period of five court days stating whether the mediation proceedings failed or whether it resulted in a settlement agreement.

(2) The mediation report may include recommendations, which recommendations include but are not limited to -

(a) a request for extension of time for mediation on good cause shown;

(b) a request for assistance by a person with specific expertise.

(3) The mediation report must contain;

(a) any evidence of harm or threat of harm;

(b) any evidence of gender-based violence;

(c) any evidence of child abuse.

(4) The mediation report may not disclose any information about -

(a) the mediation proceedings;

(b) reasons for failure of mediation; Provided that the mediation report must disclose failure of mediation as a result of wilful non-attendance or non-cooperation with the process.

(5) Where mediation has failed as a result of wilful non-attendance or non-cooperation with the process, the court may deprive the guilty party of

costs or part thereof if successful at the end of the proceedings.

(6) Where the guilty party is unsuccessful, the court may order it to pay the other party's wasted costs for attendance.

(7) Where the mediation procedure has been successful and the parties have signed a settlement agreement, the Registrar shall enrol the matter on the motion roll and the Judge on duty may grant an order in terms of the settlement agreement.

(8) Where mediation procedure has not been successful, the Registrar shall allocate the matter to a presiding Judge who shall manage it to conclusion.

(9) If for any reason the presiding Judge is unable to manage or continue with a case under this part which is not part-heard, the Registrar shall, immediately on that inability being known to him and with the concurrence of the Chief Justice, allocate the case to another Judge and advise all parties of such allocation and that other Judge may, of his own initiative or on good cause shown, alter any order regarding case management given by the previous presiding Judge.

(10)The Registrar may not, without leave of the presiding Judge, set down for hearing before another Judge or in another court any proceedings related to a case allocated to a presiding Judge.

PART 7

JUDICIAL CASE MANAGEMENT

Court's duty to manage cases

Rule 40

(1) (a) The court shall further the objective of these rules by actively managing cases.

(b) Active case management includes -

(i) encouraging the parties to co-operate with each other in the conduct of the proceedings;

(ii) identifying the issues at an early stage;

(iii) deciding promptly which issues need full investigation and trial and accordingly disposing of summarily other issues;

(iv) deciding the order in which issues are to be resolved;

(v) directing the parties to use court-annexed mediation procedure if the court considers that appropriate and referring the matter to the use of such procedure;

(vi) helping the parties to settle the whole or part of the case;

(vii) fixing timetables or otherwise controlling the progress of the case;

(viii) considering whether the likely benefits of taking a particular step justify the cost of taking it;

(ix) dealing with as many aspects of the case as it can

on the same occasion;

(x) dealing with the case without the parties having to attend court;

(xi) making use of technology including teleconferencing, videoconferencing or any other alternative electronic means; and

(xii) giving directions to ensure that the hearing and trial of a case proceeds quickly and efficiently.

Obligations of the parties and legal practitioners in relation to case management

Rule 41

(1) Every party to proceedings before court is obliged:

(a) to cooperate with the court and presiding Judge to achieve the overriding objective;

(b) to assist the court in curtailing proceedings;

(c) to act promptly and minimise delay;

(d) to disclose the critical documents to each other at the earliest reasonable time after a person becomes aware of the existence or on receipt of a document and not to use a document for any other purpose than in connection with the civil proceedings;

(e) to limit interlocutory proceedings to what is strictly necessary in order to achieve a fair and expeditious disposal of a matter;

(f) to use court annexed mediation procedure to resolve a dispute by agreement between the parties;

(g) to attend all case management conferences, status and

informal hearings arranged by the court;

(h) to comply with deadlines provided for the taking of any steps under these rules, practice directions and any applicable law with diligence and promptitude;

(i) to comply with any order or direction given by the court at any stage of the proceedings; and

(j) to ensure that costs are reasonable and appropriate.

Judicial case management procedure until trial

Rule 42

(1) The control and management of a case vests in the court and not the parties.

(2) From docket allocation of a case until the trial or hearing, the presiding Judge controls and manages the procedure and processes relating to the case.

(3) The procedure includes the following steps:

(a) Issuing notice calling a case planning conference and directing the parties to present a case plan for such conference;

(b) holding of a case planning conference at which a case plan is finalised, and a case plan order made;

(c) finalising all pleadings in terms of the case plan order and filing a report for the case management conference;

(d) holding of a case management conference and the issuing of an order specifying the issues determined at that conference;

(e) holding of a pre-trial conference and the issuing of an order in respect of issues determined at the pre-trial con-

ference; and

(f) holding of a status hearing or further case management conference as directed by the presiding Judge.

Case planning conference

Rule 43

(1) As soon as the docket of a case has been allocated to a Judge, he shall inform the parties of the time and date, being a date not more than thirty days from the date of docket allocation, that a case planning conference shall be held for the purpose of considering a case plan and in that regard the Judge shall direct the parties to submit a case plan for consideration at the case planning conference. The direction to the parties shall be in accordance with **Form "K"** of the First Schedule hereto.

(2) Whether or not the parties submit a case plan before the case planning conference, the Judge shall at that conference determine what should be included in the case plan and make it an order of court.

(3) The case plan shall address the following:

(a) whether the applicant intends to apply for summary judgment and the proposed dates for filing the necessary papers in respect thereof, the proposed date of hearing of the summary judgment and the proposed dates for filing of heads of argument;

(b) whether the respondent intends to raise a preliminary objection and if so, the basis of the objections and a proposed date for the hearing of that objection, the dates for filing all the necessary papers in respect of the objection, as well as the dates for filing heads of argument;

(c) whether or not there will be notice given of any security for costs sought;

(d) dates for the filing of the replication and in case of a counterclaim, applicant's plea thereto;

(e) any issue that may be appropriately dealt with at that early stage or on which the discretion of the Judge is sought by the parties.

(4) If a party intends to exercise any of the procedural remedies provided for under sub-rule 3(a), (b) and (c) above, the parties shall submit to the presiding Judge a case plan dealing solely with the manner on which they propose the matter to be dealt with, after which the presiding Judge shall give directions and proceed in terms of sub-rule (5) below.

(5) Where a party wishes to proceed in terms of either sub-rule 3(a),(b) or (c), the case planning conference shall only take place after a ruling on the application has been granted by the Judge on a date determined by him, but in any event not more than fourteen days from the date on which such ruling is given and if such application or process fails the parties shall comply with sub-rule 3(d) and (e).

(6) The Judge shall give a ruling on any application or process referred to in sub-rule (4) within twenty-one days of hearing of the application, unless the application involves a complex question of law in which case a ruling shall be given within thirty days.

(7) If no indication is given that an application or proceedings in terms of sub-rule 3(a), (b) or (c) will be made or initiated, the party failing to do so is precluded from bringing such proceeding unless -

(a) it is an application seeking security for costs; or

(b) the Judge on good cause shown determines otherwise.

(8) If the parties fail to submit a case plan the Judge shall make any appropriate order in accordance with Part B of **Form "K"**.

Proposal by parties in participation of case management conference

Rule 44

(1) On the date determined by an order of the presiding Judge, but not later than thirty days after closing of pleadings, the parties shall submit a case management report to the Judge which they jointly prepared in respect of

issues they agree on. The parties may submit individual reports on issues they do not agree, and where they have done so, they shall also clearly show issues they agree on.

(2) A report referred to in sub-rule (1) shall contain all the proposals by the parties in respect of the issues set out in rule 46 and shall be submitted to the Judge not less than four days before the date referred to in sub-rule (1).

Case Management Conference

Rule 45

(1) The presiding Judge shall, within fourteen days after the case management report referred to in rule 44 has been submitted by the parties, call a case management conference on **Form "L"** of the First Schedule hereto, to be attended by all parties.

(2) Issues which shall be considered at the case management conference are as follows -

(a) whether there is a need for joinder of parties and dates for such joinder;

(b) whether there is a need for consolidation of actions;

(c) dates for filing any further pleadings or amendment of pleadings if any;

(d) dates for filing interlocutory applications, if any and proposed dates for hearing those applications;

(e) whether expert witness is to be called and adjudication of the qualifications of experts, if they are disputed, and determining the dates for any further expert summaries;

(f) the determination of any preliminary objections on points of law, if raised;

(g) suggestions for narrowing the field of disputes between expert witnesses;

(h) giving orders or directions for a separate hearing in respect of any relevant issue;

(i) settlement of claims, enquiries and accounts;

(j) securing a statement for a special case of law or facts;

(k) whether the parties would agree to dispense with evidence in-chief of a witness and substituting it with an affidavit;

(l) an estimate of the number of days required for trial;

(m) any other issues that are likely to facilitate the just and speedy disposal of a case; and

(n) the date of any additional case management conference if considered necessary and the date for a final pre-trial procedure.

(3) The Judge may give such directions or prescriptions in respect of any issue discussed at the case management conference as he deems fit.

(4) As soon as possible after concluding the case management conference but not more than fifteen days thereafter, the Judge shall issue a case management order on **Form "M"** of the First Schedule hereto.

(5) Case management conference shall, save in exceptional circumstances, be completed in a single conference and may not be adjourned.

(6) Case management order shall -

(a) address the issues set out in sub-rule (2) and other issues that are relevant to the case and shall establish the time schedule for all relevant events; and

(b) set out the subsequent course of the proceedings.

(7) The **Form "M"** order may, for good cause, be altered by the Judge.

Pre-Trial Conference

Rule 46

(1) The Judge shall hold a pre-trial conference before the trial or hearing of any matter.

(2) A pre-trial conference shall be held at a time and date determined by the presiding Judge on notice given to the parties in accordance with **Form "N"**.

(3) The parties shall jointly submit a proposed pre-trial order to the presiding Judge at least four days before the pre-trial conference.

(4) The applicant shall initiate communication with the respondent and shall prepare the initial draft of the order referred to in sub-rule (3) for discussion and consideration with the defendant at the parties' case management meeting.

(5) The pre-trial conference shall address the issues set out in their proposed final pre-trial order-which order shall include the following issues and any other issue which may promote a fair and speedy trial:

(a) prospects for settlement of the case and whether the parties have participated in court annexed mediation procedure;

(b) time limits for the delivery by the applicant of indexed and paginated pleadings and notices as well as documentary exhibits for use at the trial;

(c) whether there is a need for transfer of the case from one division to another;

(d) all issues of law and fact to be resolved during the trial;

(e) all relevant facts not in dispute in a form of a statement of agreed facts;

(f) names of all witnesses who will be called to testify at

the trial and the proposed dates for the filing of further witness statements where such are needed;

(g) names of witnesses to be called by subpoena to testify;

(h) evidence taken on commission in terms of rule 146;

(i) a list of all exhibits intended to be introduced as evidence during the trial;

(j) all plans, photos, diagrams and models to be introduced as evidence or referred to in rule 50(1) as well as plans, photos, diagrams and models to be provided at the trial;

(k) the anticipated length of the trial;

(l) particulars required and necessary for trial and the party giving trial particulars shall identify by name, job title, address and telephone number of all factual witnesses who assisted in the preparation of the particulars and further identify and describe all documents that the receiving party has relied on to assist him in preparing the particulars.

(m) any proposal for expediting the trial or hearing.

(6) The Judge shall, immediately after and in any case within fifteen days after the completion of the pre-trial conference, issue a pre-trial order in **Form "O"** in such form as meets the circumstances of the case.

(7) The Registrar shall provide the parties with the pre-trial order referred to in sub-rule (6), but the Judge may amend the pre-trial order if in the opinion of the Judge such amendment is necessary to avoid manifest injustice.

(8) The pre-trial order referred to in sub-rule (6) shall be based on the parties' proposed pre-trial order and the order shall -

(a) specify the issues set out in sub-rule (5);

(b) set firm dates for trial; or

(c) direct the transfer of the case from one division to another.

(9) Issues not set out in the pre-trial order shall not be raised by the parties at the trial, except with leave of the presiding Judge granted on good cause shown.

(10)A pre-trial conference shall be completed in a single day and may not be adjourned, save in exceptional circumstances.

Status hearing, further case management conference and relaxation of rules and orders

Rule 47

(1) Where deadlines are not met or the matter stalls for any reason, the presiding Judge may schedule a status hearing on **Form "P"** and may, after hearing the parties, make such order for the purposes of just and speedy disposal of the case, including the imposition of sanctions inclusive of costs against the guilty party.

(2) The Judge may schedule, or a party may on notice to the other party in writing request, additional case management conference for the sole purpose of facilitating the continuing judicial control of the case and may address any of the issues set out in rule 45(2) or any other issues relevant to the management or fair and speedy resolution of the case.

(3) In order to expedite the determination of real issues between the parties, the presiding Judge may, for good cause, at any status hearing, case management conference, pre-trial conference or at the trial -

(a) condone technical irregularities where these do not prejudice the other party or the administration of justice;

(b) vary or relax time limits set by these rules, a practice direction, case plan order, case management order or pre-trial order;

(c) order or allow amendments to the pleadings to be filed so that only real issues and not mere technicalities are

determined at the trial; or

(d) on application, transfer the case from one division to another.

Interlocutory matters and applications for directions

Rule 48

(1) The presiding Judge shall give directions in respect of an interlocutory proceeding which a party has initiated or intends to raise with regard to the date of hearing of that matter, times for filing of heads of argument and generally speeding the finalisation thereof.

(2) The Judge shall hear the interlocutory proceedings within thirty days of the interlocutory matter being instituted.

(3) The Judge shall, after hearing of the interlocutory matter, give a ruling there and then or within twenty-one days thereafter, except that if the interlocutory matter involves a complex question of law, the ruling shall be given within forty-five days after the hearing.

(4) In any cause or matter, any party may make an application for directions in respect of an interlocutory matter on which a decision may be required, either by notice on a presiding Judge's weekly roll or at a case management conference, status hearing or pre-trial conference.

(5) The party making an application under sub-rule (4) shall give notice of the application to the other party of not less than four days.

(6) The party applying for directions shall, in his notice set out the issues in respect of which he intends to ask directions and the issues may include generally the proceedings to be taken in the cause and costs of the application.

(7) Despite sub-rule (6), specific directions shall be sought on the proposed dates for the exchange of further pleadings in so far as intervening circumstances or the direction applied for on being granted, may necessitate variation of the case plan in case of an action and due dates for the delivery of affidavits in case of application proceedings.

(8) No affidavit may be used in the hearing of an application for directions except by leave of court and the court shall give an order ex tempore on the direction sought and, in any event, nor more than three days after hearing.

(9) In relation to any proceedings referred to in this rule, a party wishing to bring such proceeding shall, before instituting it, seek an amicable resolution thereof with the other party or parties and only after the parties have failed to resolve their dispute may such proceedings be instituted and be brought for adjudication by the court.

(10) The party bringing any proceedings contemplated in this rule shall, before instituting the proceeding, file with the Registrar details of the steps taken to have the matter resolved amicably as contemplated in sub-rule (9), without disclosing privileged information.

(11) Despite anything to the contrary in these rules, whether or not instructing and instructed legal practitioners are engaged in the matter, the taxed costs on a party to party scale that may be awarded to a successful party in any interlocutory proceeding may not exceed M30,000.00

Protective costs orders in cases of public interest

Rule 49

(1) Any party to the proceedings may on notice to the other party, make an application for a protective costs order and the court may grant such order if the court is satisfied that:

(a) the issues raised in the case are of general public importance and it is a first impression case;

(b) the public interest requires that those issues be resolved; and

(c) having regard to the financial resources of the parties and to the amount of costs that are likely to be involved, it is fair and just to make the order, as long as the conduct of the parties in the case is not frivolous or vexatious.

(2) A protective costs order may:

(a) prescribe in advance that there will be no order as to costs in the substantive proceedings whatever the outcome of the case;

(b) prescribe in advance that there will be no adverse costs order against the party requesting the protective costs order in the event that case of that party is unsuccessful in the substantive proceedings; or

(c) cap the maximum liability for costs against the party requesting the protective costs order in the event that such party becomes unsuccessful in the main action.

(3) If a litigant covered by the order referred to in this rule refuses an offer of settlement and fails in the event to be awarded more than the offered amount or remedy, the protective costs order shall not apply only with respect to the proceedings up to the date of the offer of settlement.

(4) The court may make any award regarding costs that it considers fit in respect of an application for a protective costs order under this rule.

Discovery

Rule 50

(1) When filing the originating application and an answer thereto, a party shall identify, describe and attach the witness statements, all the necessary documents, analogues or digital recordings and reports that are relevant to the matter in question and that are appropriate to the needs of the case and in respect of which no privilege may be claimed and state that he intends or expects to rely on as part of his evidence at the trial.

(2) A statement of a witness, a document, analogue or digital recording and report that has not been disclosed and attached in terms of this rule may not be used for any purpose at the trial by the party who failed to disclose and attach them , except with the leave of the presiding Judge granted on such terms as he may determine.

(3) For the purposes of this rule, a statement of a witness and a document is considered to be sufficiently specified if it is described as being one of

the documents attached to the pleadings which have been initialled and consecutively numbered by the deponent.

(4) When parties prepare a case management report referred to in rule 43 for the purpose of the case management conference:

(a) unless a document, analogue or digital recording and report attached to the pleadings is specifically disputed for whatever reason, it must be regarded as admissible without further proof, but not that the contents thereof are true;

(b) if the admissibility of a document, analogue or digital recording and report is disputed, the party disputing it must briefly state the basis for the dispute in the case management report.

(5) If a party believes that there are, in addition to documents, analogues or digital recordings and reports, other documents including copies thereof or analogues or digital recordings which may be relevant to any matter in question in the possession of any other party and which are not repetitive or a duplication of those documents, analogues or digital recordings and reports already attached -

(a) the first named party must refer specifically to those documents, analogues or digital recordings and reports in the case management report in terms of rule 44 on **Form "Q"**; and

(b) the presiding Judge shall at the case management conference give any direction as he considers reasonable and fair, including an order that the party believed to have such documents, analogues or digital recordings in his possession must -

(i) deliver the documents, analogues or digital recordings and reports to the party requesting them within a specified time; or

(ii) state on oath or by affirmation within ten days

of the order that such documents, analogues or digital recordings and reports are not in his possession, in which case he must state their whereabouts, if known to him.

(6) If a party believes that the reason given by the other party as to why any documents, analogue or digital recording and report is protected from discovery is not sufficient, that party may apply in terms of rule 48(4) to the presiding Judge for an order that such a document must be discovered.

(7) The presiding Judge may inspect the document, analogue or digital recording and report referred to in sub-rule (6) to determine whether the party claiming the document to be protected from discovery has a valid objection and may make any order he considers fair and just in the circumstances.

(8) If the party ordered by the presiding Judge to comply in terms of sub-rule (6) fails to do so, the presiding Judge may dismiss that party's claim or strike out its defence.

(9) On application by a party the Judge may, at any case management conference or pre-trial conference or during the course of any proceeding, order on **Form "R"** the production by another party thereto under oath or affirmation of any document or recording in his possession or under his control relating to any matter in question in that proceeding and the Judge may deal with the document or recording that is produced in any manner he considers proper.

(10) A recording includes a soundtrack, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.

Plans, photos, diagrams and models

Rule 51

(1) A party who desires to tender in evidence any plan, diagram, model or photograph must attach same to the originating application or answer.

(2) The plans, diagrams, models or photographs admitted in evidence as well as those not admitted, must be listed and recorded in the pre-trial order issued in terms of rule 46(6).

Expert witness in general

Rule 52

(1) A party may not call as a witness any person to give evidence as an expert on any matter in respect of which evidence of an expert witness may be received unless:

(a) the name of the expert, his field of expertise and qualifications are included in the case management report in terms of rule 44;

(b) a summary of that expert's opinion and reason therefor are included in the report required in terms of rule 44; and

(c) the expert has made a signed declaration that he honestly believes that the facts stated in his report are true in terms of **Annexure "A"** of the Third Schedule hereto.

(2) The parties shall propose in the report to be submitted to the Judge in terms of rule 44, the date on which the particulars referred to in sub-rule (1) will be delivered.

(3) If there is no dispute as to the relevant qualifications of the expert witness and the Judge is satisfied in that regard after the report in terms of rule 44 has been submitted to him, the Judge may, at the case management conference held in terms of rule 45, accept and order that the person in question qualifies as an expert.

(4) The Judge shall, at the case management conference held in terms of rule 45, give directions pertaining to the evidence of such expert as he deems fit or appropriate.

(5) The Judge may, in any matter before him, direct that there be a meeting 'without prejudice' of the parties' experts after their expert summaries have been filed for the purpose of identifying those parts of their evidence which are in issue.

(6) Where a meeting in terms of sub-rule (5) takes place, the experts

shall prepare a joint report indicating those parts of their evidence on which they are in agreement and those on which they are not.

Content of expert report

Rule 53

(1) An expert report shall be addressed to the court and not to the party from whom the expert has received instructions.

(2) An expert report shall contain a statement to the effect that the expert understands his duty to the court and that he has complied with that duty.

(3) An expert report shall contain a statement setting out the substance of all material instructions (whether written or oral). The statement shall summarise the facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based.

(4) An expert report shall:

(a) give the full details of the expert's qualifications;

(b) give details of any literature, references or other material which the expert has relied on in making the report;

(c) say who carried out any test or experiment which the expert has used for the report and whether or not the test or experiment has been carried out under the expert's supervision; and

(d) give the qualifications of the person who carried out any such test or experiment.

(5) Where there is a range of opinions on the matters dealt with in the report, the expert shall:

(a) summarise the range of opinions; and

(b) give reasons for his own opinion.

(6) An expert report shall contain a summary of the conclusions reached.

(7) The report shall be accompanied by the expert's signed declaration as provided for in **Annexure "A"** to the Third Schedule hereto of his understanding of his duty to the court, of the truthfulness of the statements and correctness of opinion expressed in the report.

(8) In carrying out their duties, experts shall at all times conduct themselves in accordance with the Code of Practice in **Annexure "B"** of the Third Schedule hereto.

Order of hearing expert evidence

Rule 54

(1) At the conclusion of all the evidence (other than the evidence of the experts) and before the commencement of addresses, each expert is sworn immediately after the other.

(2) Each expert in turn gives an oral exposition of his opinion with respect to the relevant issues arising from the evidence.

(3) Each expert then in turn expresses his opinion about the opinions expressed by the other experts.

(4) Counsel the cross-examines the experts, being at liberty to cross-examine on the basis:

(a) either that questions could be put to each expert in the customary fashion one after the other, completing the cross-examination of one before proceeding to the next or,

(b) that questions may be put to all or any of the experts, one after the other, in respect of a particular subject; then proceeding to the next subject.

(5) Re-examination is conducted on the same basis.

Appointment of court expert

Rule 55

(1) The court may, on application by any party to the proceedings, appoint an expert referred to in this rule and rule 56 as 'court expert' to report on certain matters in which case the provisions of this rule shall apply.

(2) If after an application has been made in terms of sub-rule (1) the court is satisfied that in any cause or matter, a question that requires the services of an expert witness arises, the court may appoint an independent person as a court expert or if more than one question arises, two or more experts to inquire into and report on any question of fact or opinion not involving questions of law or interpretation of a contract.

(3) A court expert in a case shall, where possible, be a person accepted as such by the parties and failing such acceptance, is nominated by the court.

(4) A question to be submitted to the court expert and an instruction, if any, to be given to the expert witness shall, failing agreement between the parties in respect thereof, be settled by the court.

General provisions relating to court expert

Rule 56

(1) The court expert shall send his report together with any number of copies that the court may direct to the Registrar who shall provide copies of the said report to the parties or their legal representatives if represented and another copy shall be provided to the court. The court may direct the court expert to make a further or supplementary report if necessary.

(2) Any part of a court expert's report which is not accepted by all parties to the proceedings in which it is made, shall be treated as information furnished to the court and be given such weight as the court deems fit.

(3) Where the court expert is of the opinion that an experiment, test or inspection of any kind of a significant character which is necessary to enable him to make a satisfactory report, he shall:

(a) inform the parties or their legal representatives of record;

(b) if possible and applicable, make arrangements with them as to the expenses involved; and

(c) invite them to attend at the experiment, test or inspection.

(4) If the parties fail to agree on any of the matters set out in sub-rule (3), the disagreement shall be settled by the court.

(5) A party may, within fifteen days or such shorter period as the court may direct after receiving a copy of the court expert's report, apply to the court on notice to any other party for leave to cross-examine the court expert on his report.

(6) Where a court expert is appointed in a matter:

(a) any party may, before trial, give a reasonable notice to the other party, of his intention to call one expert witness to give evidence on the question reported on by the court expert;

(b) no party may call more than one expert witness without leave of court and the court may grant leave if the court considers the circumstances of the case to be exceptional.

(7) The fees of the court expert are fixed by the court and include a fee for his report and reasonable amount for each day during which he is required to be present in court.

(8) Without prejudice to any order providing for payment of the court expert's fees as part of the costs of the cause or matter, the parties are jointly and severally liable to pay the amount fixed by the court for expert's fees, but where the appointment of the court expert is opposed, the court may as a condition of making the appointment, require the party applying for the appointment to give such security for the fees of the expert as the court may determine
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Medical examination in matters involving death or bodily injury

Rule 57

(1) A party sued for:

(a) compensation or damages in respect of alleged bodily injury;

(b) damages resulting from the death of another person;

is entitled to require the party claiming such damages or compensation and whose own state of health is relevant for the determination thereof to submit to a medical examination.

(2) A party requiring another party to submit to a medical examination shall deliver a notice:

(a) specifying the nature of the examination required, the person by whom the examination will be conducted, the place where the examination is to take place and the date, being not less than fourteen days from the date of such notice, and the time when it is desired that such examination is to take place;

(b) requiring that other party to submit himself for exami nation there and then; and

(c) informing the other party that he may have his own medical adviser present at the examination.

(3) The notice referred to in sub-rule (2) shall be accompanied by a remittance in respect of reasonable expenses to be incurred by the other party in attending the examination and the expense shall be tendered on the scale as if that person were a witness in a civil suit before court, except that:

(a) where the other party is immobile, the amount to be paid to him shall include the cost of his travelling by motor vehicle or any reasonable means of transportation and, where required, the reasonable cost of a person attending on him;

(b) where the other party will actually lose his salary or other remuneration during the period of his absence from work, in addition to the expenses referred to in this sub-rule, is entitled to receive an amount not exceeding 80% per day in respect of the salary or other remuneration which he has actually lost; and

(c) any amount paid by a party in terms of this sub-rule are costs in the cause unless the court directs otherwise.

(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 the -

(a) nature of the proposed examination;

(b) place, date and time of the examination;

(c) person or persons by whom the examination is to be conducted;

(d) amount of the expenses tendered to him.

(5) If an objection is raised in relation to the:

(a) place, date or time of the examination, the person so objecting shall provide an alternative date, time or place; or

(b) amount of the expenses tendered, the person so objecting shall provide particulars of such increased amount as he requires.

(6) If the person who:

(a) receives a notice given under sub-rule (2) fails to deliver an objection within a period of seven days from delivery of the notice, he is considered to have agreed to the examination on the terms proposed by the person giving

the notice; and

(b) has given notice in terms of sub-rule (2) regards the objection raised by the person receiving the notice as unfounded in whole or in part, he may on notice to that other person, make an application to the Judge to determine the conditions on which the examination, if any, is to be conducted.

(7) If it appears from any medical examination carried out either by agreement between the parties or under any notice given in terms of this rule or by order of court that a 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 compensation or damages referred to in sub-rule (1), any party may require a second and final medical examination in accordance with this rule.

Examination or inspection of property

Rule 58

(1) If it appears to a party that the state or condition of any property of any nature, whether movable or immovable, may be relevant to the decision of a matter at issue in any cause or matter that party may:

(a) at any stage give notice requiring the party relying on the existence of the state or condition of that property or having that property in his possession or under his control to make it available for examination or inspection in terms of this rule; and

(b) in the notice referred to in paragraph (a) require that the property or a fair sample of it, if it is not perishable, remain available for examination or inspection for a period of not more than ten days from the date of receipt of the notice.

(2) The party called on to submit the property referred to in sub-rule (1) for examination or inspection may require the party requesting it to specify the nature of the examination or inspection to which it is to be subjected and

that party is not bound to subject the property to examination or inspection if this will materially prejudice that party because of the effect the intended examination or inspection may have on the property.

(3) In case of a dispute as to whether the property should be submitted for examination or inspection, either party may refer the dispute to the presiding Judge by way of notice delivered to the Judge stating that the examination or inspection is required and that objection is taken in terms of this rule.

(4) After considering the matter the Judge may make any order as he considers proper and suitable.

Furnishing of examination or inspection reports

Rule 59

(1) A party causing an examination or inspection to be made in terms of rules 57 or 58 shall:

(a) cause the person making the examination or inspection to give a full report in writing of the results of his examination or inspection and the opinions that he formed on any relevant matter as a result of the examination or inspection;

(b) after receipt of the report furnish any other party with a complete copy of the report;

(c) bear the expense of carrying out such examination or inspection: Provided that such expense shall form part of that party's costs, if costs are awarded to it at the trial.

PART 8

PROCEDURAL STEPS IN RESPECT OF CAUSES

Joinder of parties and causes of action

Rule 60

(1) All persons in whom any right to relief in respect of or arising from the same conduct, transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, may be joined in one application or action as respondents.

(2) Joinder may be allowed by the court on condition that failure of the claim of one applicant does not by that very fact extinguish the claims of the other applicants.

(3) The applicant may join several causes of action in the same action.

(4) All persons against whom the right of any relief is alleged to exists, whether jointly, severally or in the alternative, may be joined as respondents where, if separate claims were brought against such persons, any common question of law or fact would arise.

(5) Where there has been a 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 it considers just or appropriate.

(6) Any party who seeks a joinder of parties or causes shall apply for such joinder to the Judge for directions.

(7) If under this rule the Judge orders joinder to be effected, he shall simultaneously give directions as regards the time within which it should be done, service of it and further affidavits, pleadings or amendment of pleadings.

Consolidation of originating applications and intervention of persons as applicants or respondents

Rule 61

(1) Where separate applications or actions have been instituted, the Judge may on application of any party after notice to all interested parties and if it appears to the Judge convenient to do so, make an order consolidating the applications, after which:

(a) The applications proceed as one application;

(b) rule 60 applies with necessary modifications required by the context to the application so consolidated; and

(c) the court may make any order it considers just and appropriate with regard to the further conduct of the matter and may give one judgment disposing of all matters in dispute in the applications.

(2) Any person entitled to join as applicant or liable to be joined as respondent, may on notice to all parties, at any stage in the proceedings before judgment, apply to the Judge for leave to intervene as applicant or respondent.

(3) The Judge may on application made under sub-rule (2) make such order including an order as to costs and give such directions as to further procedure in the application which he considers just and appropriate.

(4) Any party to an application may at any stage in the proceedings before judgment apply to the Judge, on notice to all parties and to the respondent, for leave to join another person (referred to as the respondent) as applicant or respondent. The Judge may on such application, make any order including any order as to costs and give directions as to further procedure in the proceedings which he considers just and appropriate.

Proceedings by and against partnerships, firms and associations

Rule 62

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

(2) An applicant who sues a partnership need not allege the names of the partners, but should he allege any name, any error of omission or inclusion shall not constitute a defence to the partnership.

(3) The provisions of sub-rule (2) apply mutatis mutandis to an applicant who sues a firm.

(4) An applicant suing a firm, or a partnership may at any time before or after judgment deliver to the respondent a notice calling for particulars as to the full names and residential address of the proprietor or of each partner as at the relevant date.

(5) The respondent shall within ten days deliver a notice containing the information referred to in sub-rule (4).

(6) Concurrently with the statement referred to in sub-rule (4) the respondent shall serve upon the persons referred to in that sub-rule a notice on **Form "S"** with reasonable adaptations and modifications and deliver proof by affidavit of such service.

(7) The applicant suing a firm or a partnership and alleging in the originating application that a person was at the relevant date the proprietor or a partner, shall notify that person accordingly by delivering a notice on **Form "S"** with reasonable adaptations and modifications.

(8) Any person served with a notice in terms of sub-rule (6) or (7) shall be deemed to be a party to the proceedings, with the rights and duties of a respondent.

(9) Any party to such proceedings may aver in the pleadings or affidavits that the person referred to in sub-rule (8) was at the relevant date a partner or the proprietor, or that he is estopped from denying such status.

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

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

(12) The provisions of sub-rules (1) to (11) shall apply *mutatis mutandis* to a respondent sued by a partnership or by a firm.

(13) 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 applicant or stated by the partnership to be partners as if sued individually.

(14) The provisions of sub-rule (13) shall apply *mutatis mutandis* where it appears that a firm has been discontinued.

(15) The applicant suing an association may at any time before judgment deliver a notice to the respondent 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.

(16) The respondent shall comply with the notice referred to in sub-rule (15) within ten days of receipt of the notice.

(17) Sub-rules (15) and (16) shall apply with necessary modifications required by the context to a respondent sued by an association.

(18) Sub-rules (7) to (11) shall apply with necessary modifications required by the context when:

(a) the applicant alleges that a member, employee or agent of the respondent association is liable in law for its alleged debt; or

(b) the respondent alleges that any member, employee or agent of the applicant association is responsible in law for the payment of any costs which may be awarded against the association.

(19) Sub-rule (13) shall apply with necessary modifications required by the context to the continuance of the proceedings against a member, employee or agent referred to in sub-rule (18)(a).

Change of parties

Rule 63

(1) No proceedings shall terminate merely 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 death or any change of status it becomes necessary or proper to introduce a further person as a party in the proceedings, either in addition to or in substitution for the party to whom such proceedings relate, any party to such proceedings shall forthwith by notice to that further person and to every other party and to the Registrar, add or substitute such further person as a party to the proceedings, and subject to any order made under sub-rule (8), such proceedings shall thereupon continue in respect of the party thus added or substituted as if he had been a party from the commencement thereof. All steps validly taken before such addition or substitution shall be of full force and effect.

(3) After a party has been added or substituted under sub-rule (2), the proceedings shall, subject to an order made under sub-rule (8), thereupon continue in respect of the party 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 be of full force and effect.

(4) Notwithstanding anything in sub-rule (2) no notice as provided thereon shall be given after the commencement of the hearing of any opposed matter unless the court hearing such matter grants leave for such notice to be given.

(5) A copy of the notice served on any person joined as a party to the proceedings shall be accompanied:

(a) in motion proceedings by copies of all notices, affidavits and material documents previously delivered; and

(b) in action proceedings, by copies of all pleadings and material documents already filed on record, unless that party is represented by a legal representative who is already in possession of copies of the documents referred

to in paragraphs (a) or (b).

(6) A notice referred to in sub-rule (2) shall be served by the deputy sheriff unless the notice is directed to the Registrar alone.

(7) Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator, trustee, spouse, child, guardian or similar lawful representative, may by notice to all other parties and to the Registrar indicate that he desires, in his capacity as such to be substituted for such party in the proceedings, unless the court on application by any other party to the proceedings, orders otherwise. Absent any adverse application, the party is thereafter for all purposes deemed to have been so substituted.

(8) The Judge may, on notice of application delivered by any party within fourteen days of service of notice in terms of sub-rules (2), (4) and (7), at a case management or pre-trial conference set aside or vary any addition or substitution of a party thus affected or may dismiss the application or confirm the addition or substitution.

PART 9

APPLICATIONS-GENERAL

Judicial case management in applications

Rule 64

(1) As soon as practicable after an application has been placed before a Judge, excluding an urgent application, the Judge shall give directions through the Registrar to all parties in respect of the date determined by the Judge for the holding of a case management conference.

(2) The parties shall, within fourteen days before the holding of the case management conference referred to in sub-rule (1), hold a case management meeting in order to:

(a) discuss the nature and basis of the respective relief and opposition;

(b) consider reasonable ways in which the application may be determined promptly; and

(c) set out concisely and clearly the issues they jointly and severally wish to be addressed during the case management conference.

(3) At the conclusion of the parties' case management meeting, the parties themselves or their legal representatives shall draw up and sign a report containing -

(a) matters they have discussed and agreed on;

(b) matters they have discussed and not agreed on; and

(c) issues referred to in sub-rule (2);

and submit the report to the Judge two days before the holding of the case management conference.

(4) The following issues shall be addressed at the case management conference:

(a) any proposal regarding issues referred to in sub-rule (2), whether agreed by the parties or not;

(b) reasonable ways in which issues may be limited and admissions and concessions be recorded that may lead to the narrowing of the issues to be adjudicated;

(c) the hearing and determination of any preliminary objection on points of law;

(d) indexing, pagination and binding of the record of all the pleadings and documents filed of record;

(e) determining the time for the filing of heads of argument;

(f) determining the date of the hearing of the application;

(g) any issues which, in the opinion of the presiding Judge, may facilitate the just and speedy determination of the application; and

(h) identification of issues for referral for oral evidence and cross-examination.

(5) Where it is shown by a party at the case management conference that a referral application in sub-rule (4)(h) is intended:

(a) the application shall be heard within ten days after conclusion of the case management conference;

(b) heads of argument, and if that party is not represented by a legal representative and he wishes to file heads of argument, shall be filed by all parties not more than three days before the hearing of the interlocutory application; and

(c) a ruling shall be made at any time before the hearing of

the merits of the application.

(6) If, in the opinion of the Judge, it is necessary to hold a further case management conference, such further conference shall be held so soon after the conclusion of the case management conference in question and in any case not more than five days before the hearing of the application.

(7) A case management conference proceeding shall be recorded and held in court or in chambers as the Judge may think fit and shall be attended by legal representatives of the parties, but if one or more unrepresented parties are involved, the conference shall be held in open court.

(8) The Judge shall make an order in respect of any issue determined by him during the case management conference.

(9) Where the issues are not complex, the Judge may dispense with the case management conference and assign a date for hearing of the application giving such directions for the conduct of that hearing as he thinks fit.

(10) The Judge may from time to time hold a status hearing in respect of any application allocated to him.

(11) From docket allocation of an application until the hearing of such application, the presiding Judge controls, monitors and manages the procedure and processes relating to the application.

Application procedure

Rule 65

(1) Unless otherwise provided, in all civil matters in which an application is necessary for any purpose, including the obtaining of directions from court, the application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief sought and shall:

(a) state an address within 10 kilometres from the office of the Registrar at which the applicant will accept notice and service of all documents in the proceedings;

(b) set forth a day, not less than seven days after service of

the application on the respondent, on or before which the respondent is required to notify the applicant in writing whether the respondent intends to oppose the application;

(c) in every application against a Minister or other officer or servant of the Crown in his capacity as such, the respective periods referred to in (b) above shall not be less than fourteen days after the service of notice of motion unless the court shall have specially authorised a shorter period or the application is brought on an urgent basis. The same period of fourteen days shall apply to the return of a *rule nisi* after service of such rule; and

(d) state that, if no such notification is given, the Registrar will be requested to place the matter before the Court to be dealt with under sub-rule (7).

(2) The notice of motion shall be in such form as specified in **Form "T"** of the First Schedule hereto.

(3) When a relief is claimed against any person, authority or organ of government, and where it is necessary or proper to give any person, authority or government notice shall be addressed to the Registrar, person, authority or organ of government in accordance with **Form "T"**.

(4) A person opposing the granting of an order sought in the notice of motion shall:

(a) within the time specified in the notice of motion, notify the applicant and the Registrar, in writing, of his intention to do so;

(b) state an address within 10 kilometres of the office of the Registrar at which the respondent will accept notice and service of all documents in the proceedings; and

(c) within fourteen days of notifying the applicant of his intention to oppose the application, lodge an answering affidavit, if any, together with any relevant documents

which may include supporting affidavits. Where the Government is the respondent, the time limit may not be less than twenty-one days.

(5) The applicant may lodge a replying affidavit within fourteen days of the service upon him of the affidavit and documents referred to under sub-rule (4) (c).

(6) Where notice of opposition is not given or where an answering affidavit under sub-rule (4) (c) is not lodged within the time referred to, the applicant may, within five days of the expiry time for the notice or answering affidavit, request the Registrar to allocate a date for the hearing of the application.

(7) Where an answering affidavit is lodged, the applicant may request the Registrar to allocate a date for the hearing of the application within five days of the lodging of the applicant's replying affidavit or, if a replying affidavit is not lodged, within five days of the expiry of the time specified under sub-rule (4).

(8) If the applicant fails to request the Registrar to allocate a date for the hearing of the application within the time specified under sub-rule (6), the respondent may do so immediately upon the expiry of the time specified.

(9) The presiding Judge may, when giving directions, permit the lodging of further affidavits.

(10) Where pleadings are considered to be closed because the last day allowed for delivery of a replying affidavit or further affidavits has lapsed and the replying affidavit or further affidavits have not been delivered, the Registrar shall allocate the file to a presiding Judge and the management of the application and its hearing shall vest with the court until conclusion.

(11) The presiding Judge shall give directions for dealing with the application and state whether the application can be set down for oral hearing or whether the application shall be dealt with on the basis of written argument or summarily on the basis of the information contained in the affidavit.

Form of affidavit

Rule 66

(1) An affidavit filed in support or opposition of an application shall be in the form provided for in the Oaths and declaration Regulations, 1964.

(2) An affidavit shall be deemed defective if:

(a) it is not signed by the deponent;

(b) it is not completed and signed by the person before whom the affidavit was sworn or affirmed;

(c) it does not contain the full name, address and qualification of the person before whom it was sworn or affirmed; or

(d) it does not contain a declaratory/verification or contains a defective declaration/verification.

(3) Where the court is of the opinion that an affidavit contravenes the Oaths and Declarations Regulations, 1964, it may dismiss the application or its opposition or order that proper affidavits be filed.

Contents of an affidavit

Rule 67

(1) The affidavits filed in support of applications shall contain only material relevant to the issues and not stray into extraneous matters or contain emotive or pejorative allegations and abusive language.

(2) Where allegations are based on hearsay, a verifying affidavit by a person who is the source of information is necessary.

(3) Full disclosure of facts in support and against the granting of an order sought in an ex parte application must be made.

(4) The court may, on application made, order to be struck out from

an affidavit any matter which is scandalous, vexatious, abusive language or irrelevant, with an appropriate order as to costs, including costs on the scale as between attorney and client, but the court may not grant the application unless it is satisfied that the applicant shall be prejudiced in his case it the application is not granted.

Filing of further affidavits and hearing of oral evidence

Rule 68

(1) No further affidavits may be filed by any party without the permission of the court.

(2) If in the opinion of the court the application cannot properly be decided on affidavit, the court may dismiss the application or make an order as to it seems appropriate with a view to ensuring a just and expeditious decision. In particular, but without limiting its discretion, the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact in them and to that end may order any deponent to appear personally or grant leave to be examined and cross-examined as a witness, or it may order that the application be converted into a trial with appropriate directions that the affidavits stand as pleadings or definition of issues.

Referral of applications for evidence or to trial

Rule 69

(1) If in the opinion of the court an application brought under these rules cannot properly be decided on affidavit, the court may dismiss the application or may make such order as to it seems" appropriate with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, the court may:

(a) 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

(b) refer the matter to trial with appropriate directions as to pleadings, definition of issues or any other relevant matter as the court may deem just.

(2) After hearing an application, the court may make no order, except an order for costs, if any, but may grant leave to the applicant to renew the application on the same papers, supplemented by such further affidavits as the case may require or allow.

Counterapplications

Rule 70

(1) Any party to an application 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 respondent in an action and the other parties to the application were parties to such action and in which case rules 60 and 118 apply with necessary modifications required by the context.

(2) The periods prescribed with regard to applications apply with necessary modifications required by the context in counterapplications, except that the court may, on good cause shown, postpone the hearing of a counterapplication.

Default of appearance at application hearing

Rule 71

(1) If on the date set down for hearing of an application:

(a) the applicant does not appear, the court shall grant an order dismissing the application and may, in its discretion, make such order as to costs as the court considers reasonable and fair; or

(b) the respondent does not appear, the court may grant relief against the respondent if the circumstances justify granting such relief, with appropriate order as to costs and may proceed to hear the application as between the

applicant and such of the respondents as are present and wish to oppose the relief sought.

(2) Where a rule nisi has been discharged because of default of appearance of the applicant, the court may, on application by a party with an interest in the matter and on notice to all interested parties, revive the rule and may direct that the rule so revived need not be served again.

Urgent applications

Rule 72

(1) In urgent applications, the presiding Judge may:

(a) dispense with the forms and service provided for in these rules; and

(b) give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall as far as practicable be in accordance with these rules.

(2) An application made under sub-rule (1) shall be on notice of motion accompanied by an affidavit stating explicitly the circumstances which justify a departure from the procedure in rule 65.

(3) Unless an application is brought *ex parte* in terms of rule 73, every urgent application shall be served upon every party to whom notice thereof is to be given at-least 48 hours before the matter is placed before the presiding Judge, unless the urgency of the matter warrants a shorter period of notice to the respondent and such urgency and shorter period shall be determined by the presiding Judge.

(4) An urgent application shall be heard by the Judge on call on a court day at 09:30a.m, unless a legal practitioner certifies in a certificate of urgency that the matter is so urgent that it should be heard at any other time on any other day.

(5) The Judge may, in addition to dismissing an application made under sub-rule (3) for lack of urgency, make a special order of costs against the

applicant if the Judge is satisfied that the matter is not so urgent that it could not be heard on a court day.

(6) Every urgent application shall be supported by an affidavit in which affidavit the applicant shall set out explicitly:

(a) the circumstances which he avers render the matter urgent;

(b) the reasons why he claims he could not be afforded substantial redress at a hearing in due course; and

(c) be accompanied by a certificate of an advocate or attorney which sets out that he has considered the matter and for stated reasons *bona fide* believes it to be a matter for urgent relief

(7) Where an urgent application is dismissed for lack of urgency or for non-compliance with the rules of court, and the applicant wishes to continue to prosecute the application on the merits, the court can strike it off the urgent roll and order the applicant to set down the application in the normal course as an opposed motion and in that case the procedure in rule 65 will apply.

(8) Every Judge is responsible for hearing any interlocutory application filed with the Registrar on an expedited basis in a matter which has been allocated to him, except that if the presiding Judge due to absence or for a reason to the satisfaction of the Chief Justice is not available on the date and time specified in the application, the Judge on call or any other Judge designated by the Chief Justice can hear the interlocutory application if the order sought will not affect or pre-empt the outcome of other issues in the matter.

(9) An urgent application referred to in sub-rule (6) which for any reason cannot be finalised when first called and requires to be postponed to another date and time for continued hearing, shall be postponed to a specific date by the Judge who hears the matter when called: Provided that the time and date of postponement does not render the application academic or moot.

Ex parte applications

Rule 73

(1) Every application brought ex parte shall be on notice to the Registrar and filed before noon on two court days preceding the day on which it is to be set down for hearing. Such notice shall set forth the form of order sought, specifying the affidavit filed in support thereof and request the Registrar to place the matter on the roll for hearing. Such notice shall be as near as may be in accordance with **Form "U"** of the First schedule hereto.

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

(3) On the hearing, the court may grant or dismiss either of or both such applications as the case may require or may adjourn both upon such terms as to the filing of further affidavits by either applicant or otherwise as to it seems fit.

(4) The court may refuse to make an order in an *ex parte* application but may grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case or the court may require.

(5) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 48 hours' notice.

Applications for contempt of court

Rule 74

(1) A party instituting proceedings for contempt of court shall do so by way of application on notice of motion to the person against whom the contempt of court is alleged.

(2) The applicant shall in a founding affidavit distinctly set out the grounds and facts of the complaint on which the applicant relies for relief in his

application for contempt of court.

(3) In a case of contempt proceedings commenced on a reference by a subordinate court, a copy of a reference shall specify contempt of which a person is alleged to be guilty.

(4) In a case of proceedings for contempt in court or around its premises, the presiding judge may deal with the matter summarily, subject to the following requirements:

(a) a person accused of contempt be told quickly and in detail what they are accused of doing;

(b) the accused person be allowed time to think about their behaviour and to apologize; and

(c) the accused person be afforded an opportunity to prepare a defence and access to a lawyer.

(5) Notwithstanding anything contained in sub-rue (4), where a person charged with contempt under that sub-rule applies, whether orally or in writing, to have the charge against him tried by some other Judge in whose presence or hearing the offence is alleged to have been committed, and the court is of the opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(6) In any trial of a person charged with contempt under sub-rule (4) which is held in pursuance of a direction given under sub-rule (5), by a Judge other than the Judge in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-rule (4) shall be treated as evidence in the case.

(7) The party cited for contempt has the right to provide a written response to the allegations or verbal explanation to the Judge.

(8) The court may determine the matter of the charge either on the

affidavits filed or after taking such further evidence as may be necessary.

Application in connection with estate of deceased persons and persons with disability

Rule 75

(1) When an application is made to court whether *ex parte* or otherwise in connection with the estate of any deceased person or alleged to be a prodigal or under any intellectual disability or otherwise, a copy of such application, must, before the application is filed with the Registrar, be submitted to the Master for his consideration and report. If any person is to be suggested to the court for appointment as curator to the property, a person who makes an application for the appointment of administrators or trustees under deeds or contracts relating to trust funds or to the administration of trusts set out by a testamentary disposition or will shall, before the application is filed with the Registrar:

(a) submit the application to the Master for his consideration and report; and

(b) likewise submit any suggestion to the Master for a report, if any person is to be proposed to the court for appointment as curator to property.

Variation and rescission of orders and judgments

Rule 76

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

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

(b) an order or judgment in which there is an ambiguity or such ambiguity, error or omission; or

(c) an order or judgment granted as a 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.

(4) Nothing in this rule shall affect the rights of the court to rescind any judgment on any ground on which a judgment may be rescinded at common law.

Miscellaneous matters relating to applications

Rule 77

(1) Despite rules 65, 69, 70 and 71, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and, if the application is contemplated in a case management report referred to in rule 44, it shall be heard as directed by the Judge.

(2) Rules 60, 61, 118, 122 and 138 will apply by necessary modification required by the context to all applications.

(3) The provisions relating to discovery apply to applications subject to such modifications required by the context or may apply to such an extent as the court may direct.

Review applications

Rule 78

(1) In all proceedings to bring under review decisions or proceedings of a subordinate or inferior court, court martial, tribunal, board or officer exercising quasi-judicial or public administrative functions, an application should be directed and delivered by the party seeking to review such decision or proceedings to the presiding judicial officer of that subordinate or inferior court, court martial, the chairperson of the tribunal, the chairperson of the administrative body and to all other parties affected.

(2) An application referred to in sub-rule (1) shall call on the person referred to in that sub-rule to:

(a) show cause why such decision or proceedings should not be reviewed and corrected or set aside; and

(b) within fourteen days after receipt of the application, serve on the applicant a copy of the complete record and file with the Registrar the original record of such proceedings sought to be corrected or set aside together with reasons for the decision and to notify the applicant that he has done so.

(3) The application shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds, the facts and circumstances on which the applicant relies to have the decision or proceedings set aside or corrected.

(4) The applicant shall verify the correctness of the copy served on him by comparing it with the original filed with the Registrar and:

(a) cause copies of only such portions of the record that are relevant for the purposes of the review to be made; and

(b) furnish the Registrar with two (2) copies and each of the parties with one copy thereof, in each case certified by the applicant as true copies.

(5) The costs of transcription of the record or portion thereof, is borne by the applicant and such costs are costs in the cause.

(6) If the applicant believes there are documents in possession of the respondent which are relevant to the decision or proceedings sought to be reviewed, he shall within fourteen days from receiving copies of the record, give notice to the respondent that such are sought and the identified documents shall be discovered within five days after the date that notice is delivered to the other party.

(7) The party receiving a notice in terms of sub-rule (6) shall make copies of such additional documents available to the applicant for inspection and

copying and the respondent shall supplement the record filed with the Registrar within three days after the applicant is given access to the additional documents.

(8) If a dispute arises as to whether any further documents should be discovered, the parties may approach the Judge in chambers who shall give directions for the dispute to be resolved.

(9) The applicant may, within ten days after the record has been served on him or within ten days after the processes contemplated in sub-rules (6), (7), and (8) have been completed, by delivery of a notice and accompanying affidavit, amend, add or vary the terms of his application and supplement the supporting affidavit.

Opposition to review application

Rule 79

(1) Any affected party that desires to oppose the granting of the order prayed for review in the application, shall:

(a) within five days after receipt by him of the application or any amendment thereof deliver notice to the applicant that he intends to oppose and shall in such notice appoint an address within ten (10) kilometres of the office of the Registrar at which he will accept notice and service of all process in those proceedings; and

(b) within twenty days after the expiry of the time referred to in rule 78(9), deliver any affidavits he may desire in answer to the allegations made by the applicant.

(2) The set down of applications in terms of rule 65 applies with necessary modifications required by the context to the set down of review proceedings brought in terms of rule 78.

Applications in terms of the Prevention of Corruption and Economic Offences Act (DCEOA)and Money Laundering and Proceeds of Crime Act (MLPCA)

Rule 80

(1) This rule applies to applications brought in terms of section 47 of the Prevention of Corruption and Economic Offences Act No. 5 of 1999 as amended and the relevant provisions of the Money Laundering and Proceeds of Crime Act No. 4 of 2008.

(2) An application referred to in sub-rule (1) shall comply with rule 65 (1) as well as section 47 of the DCEOA and the relevant sections of the MLPCA.

(3) The court may grant an order without requiring that notice of the application be given to any other person if in the circumstances the giving of such notice will defeat the purpose of the order.

Applications for appointment of curator

Rule 81

(1) A person who intends to make application to court for an order:

(a) declaring another person to be mentally incapacitated and as such incapable of managing his affairs; and

(b) appointing a curator to the person or property and business of such person, shall in the first instance apply to court, with notice to the affected person, for the appointment of a curator *ad litem* to that person.

(2) In the founding affidavit, the applicant shall, set out fully -

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

(b) the grounds upon which the court is alleged to have jurisdiction;

(c) the person's age and sex, full particulars of his means and information as to his mental incapacity;

(d) the relationship, if any, between the person and the applicant and the duration and intimacy of their association;

(e) the facts and circumstances relied on to show that the person is mentally incapacitated and is incapable of managing his affairs; and

(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 person or property and business and a statement that the suggested 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 person is well known and containing such facts and information as are within the deponent's personal knowledge about the person's mental condition and if that person is related to the person or has any personal interest in terms of any order sought, full details of such relationship or interest shall be set out in the affidavit; and

(b) affidavits by at least two medical practitioners one of whom is, where practicable, a psychiatrist, who have conducted recent examinations of the person with a view to ascertaining and reporting on his mental condition and stating -

(I) all such facts as were observed by them at such examinations in regard to such condition;

(II) the opinions found by them in regard to the nature, extent and probable duration of any mental

incapacity or defect observed and their reasons for the opinions; and

(III) whether the person is in their opinion incapable of managing his affairs.

(4) Those medical practitioners shall, as far as possible, be persons unrelated to the person in any capacity whatsoever and without personal interest in the terms of the order sought.

(5) The affected person has the right to participate in the proceedings to oppose the application.

Appointment of curator *ad litem*

Rule 82

(1) At the hearing of the application referred to in rule 81(1) the court may:

(a) appoint the person proposed or any other suitable person as curator *ad litem*;

(b) dismiss the application; or

(c) make such further other order as the court may consider suitable or appropriate and in particular on good cause shown by reason of urgency or special circumstances, dispense with any of the requirements of this rule.

(2) On appointment, the curator *ad litem* so appointed shall without delay interview the person and inform him of the purpose and nature of the application, unless after consulting a medical practitioner referred to in rule 81(3)(b) he is satisfied that this would be detrimental to the person's health.

(3) The curator *ad litem* shall further make such inquiries as the case appears to require and thereafter:

(a) prepare and file his report on the matter with the Registrar;

(b) at the same time furnish the applicant with a copy of the report; and

(c) in the report -

(i) set out such further facts, if any, as he ascertained in regard to the person's mental condition, means and circumstances; and

(ii) draw attention to any consideration which in his view may assist the court in formulating the terms of any order sought.

(4) On receipt of the report referred to in sub-rule (3) the applicant shall submit a copy of the report, together with copies of the documents referred to in rule 81(2) and (3) to the Master for his consideration and report to the court.

(5) In his report the Master shall:

(a) as far as he is able, comment on the person's means and general circumstances and the suitability or otherwise of the person proposed for appointment as curator to the person or property and business of the person; and

(b) 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.

(6) The Master shall furnish the curator *ad litem* with a copy of the Master's report referred to in sub-rule (5).

Appointment of curator by court

Rule 83

(1) After receipt of the report of the Master the applicant may, on notice to the curator *ad litem*, place the matter on the roll for hearing on the same papers for an order declaring the person to be mentally incapacitated and as such incapable of managing his affairs and for the appointment of the person proposed

as curator to the person or property and business of the person or to both.

(2) Before placing the matter on the roll in terms of sub-rule (1) the applicant shall, if he thinks fit, inform the affected person about the application and the Master's report.

(3) At the hearing the court may require the attendance of the affected person and any other person as it may think fit to give such oral evidence or furnish such information as the court may require.

(4) After consideration of the application, the reports of the curator ad litem and the Master and any further information or evidence as has been adduced orally or otherwise, the court may:

(a) declare the person to be mentally incapacitated and incapable of managing his affairs and appoint a suitable person as curator to his person or property and business or both on such terms as the court may consider suitable or appropriate; or

(b) dismiss the application.

(5) Different persons may, subject to due compliance with the requirements of this rule in regard to each of them, be proposed and separately appointed as curator to the person or curator to the property and business or both of any person found to be mentally incapacitated and incapable of managing his own affairs.

(6) Rules 81(1) and (2), 82, and 83 (1) to (4) apply with necessary modifications required by the context to an application for the appointment of a curator by the court to the property and business of a person found mentally disabled or incapacitated who is incapable of managing his own affairs.

(7) Rules 81, 82 and sub-rules (1) to (5) apply, except to the extent that the court may on application otherwise direct, with necessary modifications required by the context to an application for the appointment of a curator bonis to any person on the ground that he is, because of some mental incapacity, incapable of managing his own affairs.

Release from curatorship

Rule 84

(1) A person who has been found by the court to be mentally incapacitated and incapable of managing his affairs and to whose person or property and business a curator has been appointed and who intends applying to the court for a declaration that he is no longer mentally incapacitated and incapable of managing his affairs or for release from the curatorship, shall give fifteen days' notice of the application to the curator and the Master.

(2) On receipt of the notice referred to in sub-rule (1) and after due consideration of the application and such information as is available to him, the Master shall, without delay, report on the application to the court and at the same time comment on any aspect of the matter which in his view ought to be brought to the attention of the court.

(3) Sub-rules (1) and (2) shall apply with necessary modifications required by the context to an application for release from curatorship by a person who has been legally discharged from a mental hospital, but in respect of whom a curator bonis has been appointed by the court.

(4) After the hearing of an application referred to in sub-rule (1) or (3) the court may:

(a) declare the applicant to be no longer having a mental incapacity and to be capable of managing his affairs and order his release from curatorship;

(b) dismiss the application;

(c) of its own initiative appoint curator ad litem to make such enquiries as it considers desirable and to report to it;

(d) call for such further evidence as it considers desirable and, in that event, postpone the further hearing of the matter to permit the production of such report, affidavit or evidence; or

(e) make such order as to costs as it considers suitable or proper.

PART 10

CONSTITUTIONAL APPLICATIONS

General duties of the Registrar

Rule 85

(1) The Registrar shall number:

(a) the notice of application;

(b) an order of court referring any matter to the court by another court;

(c) a document by which proceedings are initiated in the court under these rules, with a consecutive number for the year during which it is filed.

(2) The Registrar shall not receive any document lodged in a case or in a subsequent case in continuation of the case unless the document is marked with a number referred to under sub-rule (1) by the party lodging it.

(3) The Registrar shall file all documents delivered in a case file under the number of such case.

(4) Any document referred to under sub-rule (1) shall be subject to the payment of court fees in the form of a revenue stamp.

(5) The Registrar shall waive the payment of court fees referred to under sub-rule (4) and make a note to that effect on the first page of the document, if satisfied that a party to the case -

(a) is indigent; or

(b) is represented by -

(i) the Human Rights Commission;

(ii) the Chief Legal Aid Counsel;

(iii) a law clinic; or

(iv) *pro-deo* counsel.

(6) A party who:

(a) desires to initiate or oppose proceedings in the court; and

(b) is of the opinion that he is indigent; or

(c) is acting on behalf of such party, shall satisfy the Registrar that, except for household goods, wearing apparel and tools of trade, the party does not possess property to the amount of M50,000.00 and will not be able, within a reasonable time, to provide such sum from his earnings.

(7) A person may make copies of the record in the presence of the Registrar.

(8) The Registrar shall, at the request of a party, make a copy and certify that copy of a court order, settlement, judgment or order relating to costs on payment of court fees with revenue stamps of M20.00 for every 100 typed words or part of a court order, settlement or order relating to costs on payment of court fees.

(9) The Registrar shall sign, (manually, electronically or by machine) a facsimile of his signature, date and issue all process as sued out by a party.

(10) The Registrar shall, after the court has made an order declaring or confirming any law to be inconsistent with the Constitution, cause the order to be published in the Gazette not later than fifteen days of the making of the order.

(11) The Registrar shall publish and affix to the notice board at the court building a hearing list (court roll) not less than fifteen days before each term for the convenience of the legal representatives and the information to the public.

(12) The Registrar shall furnish directions to the parties to the proceedings within five days after the directions have been given by the court.

(13) The Registrar shall maintain the court's record and shall not permit any of them to be removed from the building.

(14) The Registrar shall ensure that any document lodged and made part of the court's record is not withdrawn permanently from the court files.

(15) The Registrar shall, after the conclusion of the proceedings in the court, return any original records and papers transmitted to the court from which they were received.

(16) If it appears to the Registrar that a party is unrepresented, the Registrar shall refer such party to the nearest office of the Chief Legal Aid Counsel, a law clinic, Law Society or such other appropriate body or institution that may be willing and in a position to assist the party.

(17) If no assistance is rendered by any of the institutions referred to in sub-rule (16), the Registrar shall, if so directed by the Chief Justice, appoint a legal practitioner to assist the unrepresented party.

(18) The Crown or the Registrar shall not be liable for any loss or damage resulting from -

(a) assistance given in good faith by the legal practitioner appointed by the Registrar in terms of sub-rule (17); or

(b) in the enforcement of an order under these rules in the form of -

(i) legal advice; or

(ii) in the compilation or preparation of any process or document.

Service of process

Rule 86

(1) Unless the court directs otherwise, all process of the court, at the request of any party, shall be served or executed through the Registrar or deputy sheriffs.

(2) The sheriff or his deputy shall not be under an obligation to effect service if the party who desires the service has not remunerated the sheriff for the service referred to under sub-rule (1) in accordance with the tariff for sheriffs set out in the Third Schedule to these rules.

(3) The sheriff shall, after payment of the remuneration, effect service or execution of judicial process without delay.

(4) The sheriff may, where resistance to the due service or execution of judicial process is experienced or is reasonably expected, call upon any member of the Lesotho Mounted Police Service for assistance.

(5) In any matter where there is -

(a) a dispute over the constitutionality of any executive or administrative act or conduct;

(b) threatening executive or administrative act or conduct; or

(c) an inquiry into the constitutionality of any law where the authority responsible for the executive or administrative act or conduct or the threatening executive or administrative act or conduct or responsible for the administration of the impugned law is not a party to the case, the party challenging the constitutionality of the act, conduct or law shall, within five days of lodging with the Registrar a document in which such contention is raised for the first time in the proceedings before court, serve on the authority a copy of the document and lodge proof of service with the Registrar.

(6) The court in a matter referred to under sub-rule (5) shall not make an order declaring the act, conduct or law to be unconstitutional unless the provisions of these rules have been complied with.

Procedure in respect of constitutional applications

Rule 87

(1) Unless otherwise provided, in any matter in which an application is necessary for any purpose, including in respect of matters referred to under section 22 of the Constitution, the application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief and shall -

(a) state an address within 10 kilometres from the office of the Registrar at which the applicant will accept notice and service of all documents in the proceedings;

(b) set forth a day, not less than five days or not more than fifteen days after service of the application on the respondent, on or before which the respondent is required to notify the applicant in writing whether the respondent intends to oppose the application;

(c) state that, if no such notification is given, the Registrar will be requested to place the matter before the court to be dealt with under sub-rule (7).

(2) The notice of motion shall be in such form as specified in **Form "V"** and **Form "V1"** of the First Schedule hereto and these copies of the notice and amendments thereto served upon all parties.

(3) When a relief is claimed against any person, authority or organ of government, and where it is necessary or proper to give any person, authority or government notice, the notice shall be addressed to the Registrar, person, authority or organ of government in accordance with **Form "V1"**, otherwise the notice shall be addressed to the Registrar and shall as near as possible be in accordance with **Form "V"**.

(4) In every application against a Minister or other officer or servant

of the Crown in his capacity as such, the respective periods referred to in sub-rule (1) (b) shall not be less than fourteen days after the service of notice of motion unless the court shall have specially authorised a shorter period. The same period of fourteen days shall apply to the return of a rule nisi after service of such rule.

(5) A person opposing the granting of an order sought in the notice of motion shall -

(a) within the time specified in the notice of motion, notify the applicant and the Registrar, in writing, of his intention to do so;

(b) state an address within 10 kilometres of the office of the Registrar at which the respondent will accept notice and service of all documents in the proceedings;

(c) within ten days of notifying the applicant of his intention to oppose the application, lodge an answering affidavit, if any, together with any relevant documents which may include supporting affidavits.

(6) The applicant may lodge a replying affidavit within ten days of the service upon him of the affidavit and documents referred to under sub-rule (5)(c).

(7) Where notice of opposition is not given or where an answering affidavit under sub-rule (5)(c) is not lodged within the time referred to, the applicant may, within five days of the expiry time for the notice or answering affidavit, request the Registrar to place the application before the presiding Judge.

(8) Where an answering affidavit is lodged, the applicant may request the Registrar to place the application before the Judge within five days of the lodging of the applicant's replying affidavit or, if a replying affidavit is not lodged, within five days of the expiry of the time specified under sub-rule (5).

(9) If the applicant fails to request the Registrar to submit the application before the presiding Judge, within the time specified under sub-rule (8), the respondent may do so immediately upon the expiry of the time specified.

(10) The presiding Judge may, when giving directions under sub-rule (8), permit the lodging of further affidavits.

(11) When an application is placed before the presiding Judge, under sub-rules (7), (8) and (9), the presiding Judge shall give directions in dealing with the application and state whether the application can be set down for hearing or whether the application shall be dealt with on the basis of written argument or summarily on the basis of the information contained in the affidavit.

(12) The provisions of rule 72 shall apply with necessary modifications according to context in respect of urgent applications brought under Part 9.

(13) The judicial case management procedure in rule 64 applies under this rule.

(14) The provisions of rules 102 to 107 apply to applications brought under this Part with necessary modifications as required by the context.

Amicus curiae submissions

Rule 88

(1) Subject to these rules, any person interested in any matter before the court may, with the written consent of all parties in the matter before the court and given not later than the time so specified in sub-rule (5), be admitted in court as an *amicus curiae* upon such terms and conditions and with such rights and privileges as may be agreed upon, in writing, with all the parties before the court or as may be directed by the presiding Judge.

(2) The written consent referred to under sub-rule (1) shall, within five days of it having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision, comply with the time agreed upon for the lodging of a written argument.

(3) The presiding Judge may amend the terms, conditions, rights and privileges agreed upon under sub-rule (1).

(4) If the written consent referred to under sub-rule (1) is not secured, any person or body who has an interest in any matter before the court may apply to the presiding Judge to be admitted therein as an *amicus curiae*,

and the presiding Judge may grant such application upon the terms and conditions and with such rights and privileges as he may determine.

(5) The application made under sub-rule (4) shall be made -

(a) in the case of an application to the court, and in any case where a referral from a subordinate court or tribunal is involved, within ten days after the application or referral is lodged with the Registrar;

(b) in any other matter, not later than ten days after the lodging of the submissions has expired.

(6) The application to be admitted as an *amicus curiae* shall -

(a) briefly describe the interest of the *amicus curiae* in the proceedings;

(b) briefly identify the position to be adopted by *amicus curiae* in the proceedings;

(c) set out the submissions to be advanced by the amicus curiae, their relevance to the proceedings and *amicus curiae's* reasons for believing that the submissions will be useful to the court and different from those of the other parties.

(7) An *amicus curiae* shall have the right to lodge written argument, if the written argument raises new contentions which may be useful to the court and does not repeat any matter set forth in the argument of the other parties.

(8) Unless otherwise ordered by the court, an *amicus curiae* shall be limited to the record of the application or the facts found proved in the referral proceedings and shall not present oral argument.

(9) An order granting leave to be admitted as an *amicus curiae* shall specify the date of lodging the written argument of the *amicus curiae* or any other relevant matter.

(10) An order of court dealing with costs may make provision for the

payment of costs incurred by or as a result of the intervention of an *amicus curiae*.

(11) The provisions of sub-rule (3) shall be applicable, with such modifications as may be necessary, to an *amicus curiae*.

Argument

Rule 89

(1) A written argument shall be filed strictly in compliance with rule 155 and within the period stipulated in the directions given by the presiding Judge.

(2) An oral argument shall not be necessary if directions to that effect are given by the presiding Judge.

(3) An oral argument shall be relevant to the issues before the court and its duration shall be subject to such time limits as the presiding Judge imposes.

(4) The parties shall assume that the Judges have read the written arguments and that there is no need to repeat what is stated in the written argument.

(5) An argument may be addressed to the court in any official language other than English by an unrepresented party and the party to the case shall not be responsible for the provision of an interpreter.

(6) Where a person wishes to address the court in an official language other than the language in which the person's written argument is couched, the person shall, within seven days prior to the hearing of the matter, give written notice to the Registrar of that person's intention to use another official language.

(7) The court may, on its own motion or on the application of one or more parties, order that two or more cases, involving the same or related question, be argued together as one case or on such other terms as may be prescribed.

Referral of Constitutional questions before subordinate courts and tribunals

Rule 90

(1) Where a presiding officer of a subordinate court or a chairperson of a tribunal wishes to refer a question as to the interpretation of the Constitution to the High Court mero motu or on request by a party in terms of subsection (1) of section 128 of the Constitution, he shall:

(a) request the parties to make submissions on the constitutional issue or question to be referred for determination; and

(b) state the specific constitutional issue or question he considers should be resolved by the High Court.

(2) A referral under subrule (1) shall be in **Form "V2"** and be accompanied by a copy of the record of proceedings and of the affidavits or statements from the parties setting out the arguments they seek to make before the High Court.

(3) Where there are factual issues involved, the subordinate court or tribunal seized with the matter shall hear evidence from the parties and determine the factual issues:

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

(4) The record of proceedings referred to in subrule (2) shall contain the evidence led by both sides and where applicable, specific findings of fact by the presiding officer or a chairperson and the question for determination by the Court.

(5) Where there is a statement of agreed facts in terms of the proviso to subrule (3), it shall suffice for the statement to be incorporated in the record in place of the evidence and specific findings of fact.

(6) The presiding officer of a subordinate court or chairperson of a tribunal shall direct the clerk of court or secretary as the case may be to prepare

and transmit the record so prepared to the High Court within fourteen days of the date, such direction:

Provided that, before transmission, the clerk of the referring court or secretary of the tribunal shall ensure and certify that the record is correct and accurate and that it contains an appropriate draft order.

(7) Where the Registrar receives a referral in terms of this rule, he shall call upon the parties to file their heads of argument within ten days.

PART 11

QUESTIONS AS TO MEMBERSHIP OF PARLIAMENT AND ELECTION PETITIONS

Determination of validity of Membership of Parliament and Election Petitions

Service of process

Rule 91

(1) Service of process shall be in accordance with the provisions of rule 86(1) to (4) with necessary modifications as may be required by the context.

(2) A petition brought in terms of section 69 of the Constitution and Chapter 9 of the National Assembly Electoral Act No. 14 of 2011 shall be lodged with the Registrar and served on:

(a) in the case of the National Assembly, the Speaker of the National Assembly;

(b) in the case of the Senate, the President of the Senate;

(c) a political party and its candidate whose seat or membership of the National Assembly is being challenged;

(d) an independent candidate whose seat or membership is being challenged;

(e) a person whose membership of the Senate is being challenged;

(f) the Independent Electoral Commission; and

(g) the Attorney-General, if not the petitioner, who may become a respondent by giving notice to the Registrar of his wish to do so at any time before the trial of the petition begins.

(3) Upon service of a petition the Speaker of the National Assembly and the President of the Senate shall bring the petition to the attention of all members in the relevant Houses of Parliament, in writing, within five days of the service on the Speaker of the National Assembly and the President of the Senate.

(4) After service of the notice of the petition, the petition shall be dealt with in accordance with rule 96.

Contents of a petition

Rule 92

(1) A petition shall be signed by the petitioner and be addressed to the Chief Justice and other Judges of the High Court

(2) A petition shall be in accordance with **Form "W"** and shall therein be in numbered paragraphs -

(a) disclose fully and clearly the nature of the complaint, the reason for the complaint and the material facts relied upon;

(b) state details of the holding and result of the election in the particular constituency with which the petition is concerned;

(c) details of the vacancy of the seat;

(d) details of the nomination or designation;

(e) details of the allocated proportional representation seat;

(f) details of the standing of the petitioner;

(g) full particulars of all material facts and grounds required by law and these rules, or otherwise relied upon to sustain the petition, or which might affect the granting or otherwise of the petition;

(h) annexures referred to in rule 93; and

(i) the order or orders prayed for, as the case may be.

(3) The petition shall be signed by the petitioner in the presence of a witness who shall by his signature attest the petition, writing thereon his occupation and address.

(4) The petition shall be verified upon oath by the petitioner, as near as may be in accordance with **Form "W1"** Of the Second Schedule to these rules.

(5) The petitioner shall:

(a) appoint an address within 10 kilometres of the office of the Registrar, at which the petitioner shall accept notice and service of all process in such proceedings.

(b) state that the respondent, if he intends opposing the petition, is required -

(i) to notify the Registrar and the petitioner, or his legal representatives, in writing of such intention, on or before a specified day, being not less than five days after service of the petition on the respondent, appointing in such petition an address within 10 kilometres of the office of the Registrar at which the respondent will accept notice and service of all process in such proceedings; and

(ii) within ten days of the service of the petition upon the respondent, to file his answering affidavit, together with any annexures thereto;

(c) specify a day, not being less than ten days after service of the petition on the respondent, on which day, if the respondent does not notify his intention to oppose, the petition shall be set down for hearing.

(6) Where an application is brought by way of petition, such petition shall conclude with the form of order sought and be signed by the petitioner and be verified upon oath by or on behalf of petitioner.

Annexures to the petition and answer

Rule 93

(1) The petitioner and the respondent shall attach to the petition and answer respectively:

(a) lists of witnesses to be called with their full names and addresses and the purpose for which they are called as well as their statements;

(b) all exhibits intended to be introduced in evidence;

(c) certified copies of any documentary evidence in their possession on which they rely;

(d) all reports, photos, diagrams and models to be introduced in evidence; and

(e) if they have no witnesses or documents to produce, statements to that effect.

Unopposed petition

Rule 94

(1) If the respondent does not on or before the day stated for such purpose in the petition, notify the petitioner of his intention to oppose, the petitioner shall place the matter on the roll for hearing by giving the Registrar notice of set-down before noon on the court day but one preceding the day upon which the petition is to be heard.

Opposed petition

Rule 95

(1) A respondent opposing the petition shall:

(a) on or before the day stated in the petition, file with the Registrar and serve on the petitioner or legal representative, notice in writing that he intends to oppose the petition, and in such notice appoint an address within 10 kilometres of the office of the Registrar at which he will accept notice and service of all process in the proceedings;

(b) within ten days of the service on him of the petition, file with the Registrar and serve on the petitioner or legal representative, answering affidavits, if any, together with annexures referred to under rule 93; and

(c) if he intends to raise a question of law only, without any answering affidavit, he shall, within the time stated in paragraph (b), file with the Registrar and serve on the petitioner or his legal representative, a notice of his intention to do so, setting forth such question.

Judicial case management in petitions

Rule 96

(1) As soon as practicable after the petition has been placed before him, the Chief Justice shall appoint a presiding Judge to manage the petition until a panel is appointed to try the petition.

(2) At least two days before the holding of a case management conference, the parties shall hold a parties' case management meeting and:

(a) discuss the nature and basis of their respective claims and defences;

(b) consider reasonable ways in which the petition may be

determined promptly; and

(c) set out concisely and clearly the issues they jointly and severally wish to be addressed during the case management conference.

(3) At the conclusion of the parties' case management meeting the parties by themselves or by their legal representatives shall draw up and sign a report containing:

(a) matters they have discussed and agreed on and matters they have not agreed on; and

(b) issues referred to in sub-rule (2); and submit the report to the presiding Judge at least one day before the holding of a case management conference.

(4) The case management conference shall be held not more than three days after the close of pleadings and the following issues shall be addressed at the conference:

(a) any proposal regarding an issue referred to in sub-rule (2), whether agreed to by the parties or not;

(b) reasonable ways in which issues may be limited and admissions and concessions made which may lead to the narrowing of the issues to be adjudicated;

(c) the need for interlocutory applications and the date for the hearing of such applications by the court;

(d) the hearing and determination of any preliminary objection on points of law;

(e) indexing, pagination and binding of all pleadings and documents filed of record;

(f) determining the date of the hearing of the petition;

(g) determining the time for the filing of heads of argument; and

(h) any other issues which, in the opinion of the presiding Judge may facilitate the just and speedy determination of the petition.

(5) Where it is shown by a party at the case management conference that an interlocutory application referred to in sub-rule (4)(c) is intended:

(a) the application shall be heard within five days after the conclusion of the case management conference;

(b) heads of argument of all parties shall be filed not more than two days before the hearing of any interlocutory application; and

(c) a ruling shall be made not more than three days before the trying of the petition.

(6) Where an interlocutory application is heard and concluded in terms of sub-rule (5), the petition shall be heard within ten days after the judgment or ruling in the said interlocutory application.

(7) A petition may be heard by a court consisting of the presiding Judge alone or by any number of Judges as the Chief Justice may consider necessary.

(8) Where there are no pre-hearing interlocutory applications, the petition shall be heard within ten days after the conclusion of the case management conference, where only one case management conference is held or ten days after the last case management conference where more than one case management conference is held.

(9) An application, other than an election petition, irrespective of whether such application concerns a matter connected with or incidental to an election held or to be held in terms of the National Assembly Electoral Act, 2011, is governed by the rules regulating application proceedings generally under Part 9.

Allegations of corrupt or illegal practices in election petitions

Rule 97

(1) The petition and answering affidavits shall state, whenever possible, the full names and address of any person alleged therein to be guilty of a corrupt or illegal practice.

(2) The petition and answering affidavits shall, whenever possible, not less than five days before the day of hearing, be served, by the respective parties, in the same manner as originating application, on any person alleged therein to be guilty of a corrupt or illegal practice and who is not a party to the proceedings. Where the petition is unopposed by the respondent, the petitioner shall serve the petition, in the same manner aforesaid, on any such person aforesaid, not later than the court day but one preceding the day set down for the hearing.

(3) A person alleged to be guilty of a corrupt or illegal practice may, not later than the court day before the day of hearing, file with the Registrar and serve on the parties to the petition, an affidavit containing his answer to the allegations made against him and at the hearing he shall be entitled to appear in person or by legal representative, to be heard and to give or call evidence in the matter.

Security by petitioner

Rule 98

(1) As soon as may be after receiving a petition, the Registrar shall place the petition before a Judge who shall fix the amount of security not exceeding One Thousand Maloti (M1,000.00) as security for costs of trying an election petition to be furnished by the petitioner.

(2) The Registrar shall notify the petitioner of the amount of the security fixed by the Judge, and the petitioner shall furnish such security within five days of such notification.

(3) Where petitioner fails to furnish the stipulated security within the time specified in sub-rule (2), the election petition shall be deemed to have been withdrawn, upon such terms as to costs or otherwise as the court may find just.

(4) Security for payment of costs payable by the petitioner may be drawn upon from time to time by order of the court for the purposes for which security is required by these rules.

Consolidation of petitions

Rule 99

(1) Where separate petitions have been brought in respect of the same election and it appears to the court convenient to do so, the court may on application of any party to the trying of the petition or of its own motion, and after notice to all interested parties, make an order consolidating such petitions, whereupon:

(a) the said petitions shall proceed as one petition; and

(b) the court may make any order which to it seems just with regard to the further procedure to be followed in such proceedings.

(2) At the conclusion of the trial, the court may give one judgment disposing of all matters disputed in the said petitions.

Trial of election petitions

Rule 100

(1) Whether or not respondent files an answering affidavit or a notice under rule 95 (1)(a) as the case may be, within the period stated in rule 95 (1)(b), as soon as may be after the expiry of the said period, the Registrar shall fix a date of trial of the petition and shall cause the notice to be given to the parties not less than seven days before the day appointed for the trial.

(2) The court shall conduct the trial of the petition in open court.

(3) In determining petition, the court shall be guided by the substantial merits of the case without regard to legal form or technicalities and shall not be bound by the rules of evidence.

(4) The court may also determine the petition on the basis of a stated

case by the parties.

(5) At the trial, the court has the power to:

(a) compel the attendance of witnesses and the production of documents;

(b) examine witnesses on oath; and

(c) punish a contempt of its authority by fine or imprisonment.

(6) The court shall take all reasonable steps to ensure that:

(a) petition proceedings begin within four-teen days after the application is lodged; and

(b) the court's final order in relation to a petition shall be given within thirty days after the day of the hearing.

(7) At the trial of the petition, the court may order a scrutiny of the ballot papers used during the elections and may make such other ancillary orders for the determination of the petition as it deems just.

Scrutiny of votes

Rule 101

(1) Where the court has ordered scrutiny of votes, all constituency ballot papers used at the elections shall be scrutinised and at the scrutiny, the court may enquire as to whether:

(a) the names of persons who voted appeared on the electoral list for the constituency in respect of which they were entitled to vote or were registered for that constituency;

(b) during the counting or recounting of ballot papers, any ballot papers were incorrectly allowed or rejected; and

(c) any tendered ballot paper is a valid vote and should be

added to the vote and counted.

(2) The court may carry out any scrutiny of votes itself in the presence of the parties to the petition or may order:

(a) the Registrar of the High Court or any other person, to carry out the scrutiny in the presence of those parties; and

(b) that the results of that scrutiny be reported to the court.

Costs

Rule 102

(1) Costs of and incidental to the trying of the petition shall be paid by the parties in such manner and in such proportions as the court may determine.

(2) In making an order as to costs, the court may:

(a) order any unsuccessful party to pay the costs of any other party or parties to the trying of the petition; or

(b) order any unsuccessful parties to pay jointly or severally, the costs of any other party or parties, the one paying the other or others to be absolved, and that if one of the unsuccessful parties pays more than his pro rata share of the costs, he shall be entitled to recover from the other unsuccessful party or parties his or their pro rata share of such excess.

(3) For purposes of sub-rule (2) of this rule, the words “party” or “parties”, shall include any person alleged in the petition or opposing affidavit to be guilty of a corrupt or illegal practice who has appeared in person, or by a legal representative in such proceedings.

(4) Costs shall be taxed by the taxing master in the same manner as costs are taxed in a civil matter, but subject to any general or specific directions given by the court. Costs when taxed may be recovered in the same manner as

the costs in a civil matter.

Format of documents

Rule 103

(1) A document which exceeds five pages shall, regardless of the method of duplication, contain a table of contents and a table of authorities with correct references to the pages in the document on which they are cited.

(2) A body of a document at its close shall bear the name of the party or the party's attorney, if applicable, and the original document shall be signed by the party or the party's attorney.

(3) The Registrar shall not accept, for lodging, any document presented in a form not in compliance with this rule.

(4) The Registrar shall return the documents referred to under sub-rule (3) to the defaulting party indicating the instance where the document failed to comply.

(5) Where a new and proper copy of the document referred to under sub-rule (3) is resubmitted within five days of receiving written notification, such lodging shall not be deemed late.

(6) If the court finds that the provisions of this rule have not been complied with, it may impose, in its discretion, appropriate sanctions.

Matters for investigation by referee

Rule 104

(1) The court may, with the consent of the parties, refer for inquiry and report to a referee -

(a) any matter that requires extensive examination of documents or scientific, technical or local investigation which in its opinion cannot conveniently be conducted by it;

(b) any matter that relates wholly or in part to accounts;

(c) any other matter arising in the proceedings.

Examination by interrogatories

Rule 105

(1) The court may order that evidence of a witness who:

(a) resides within the jurisdiction of the court but for the time being resides outside its jurisdiction; or

(b) is unable to attend proceedings, upon application made by a party to a case, be taken by means of interrogatories.

(2) The party referred to under sub-rule (1) shall prepare and lodge with the court, a copy of the interrogatories and cross-interrogatories to be put to the witness.

(3) A copy of the interrogatories and cross-interrogatories document lodged under sub-rule (2) shall be accompanied by a translation of the official language of the country in which the examination by an interrogatory is taken.

(4) Evidence elicited by means of interrogatories shall be certified in accordance with the Authentication of Documents Proclamation No. 2 of 1964.

Documents lodged to canvass factual material

Rule 106

(1) A party to the proceedings before the court and an amicus curiae shall be entitled to documents lodged with the Registrar under this Part and to canvass factual material which is relevant to the determination of the issues before the court and which do not specifically appear on the record if such facts -

(a) are common cause or otherwise incontrovertible; or

(b) are of an official, scientific, technical or statistical nature capable of easy verification.

Models, diagrams and exhibits

Rule 107

(1) Models, diagrams and exhibits of material forming part of the evidence in a case referred to the court shall be kept in the custody of the Registrar at least ten days before the case is heard.

(2) Exhibits of material kept in the custody of the Registrar shall be removed by the parties within forty days after the case is decided.

(3) Where the parties have not removed the exhibits under sub-rule (2), the Registrar shall notify the party concerned to remove the exhibits within six months of the notification and if they are not removed, dispose them in an appropriate manner.

PART 12

ORIGINATING APPLICATIONS-GENERAL

Filing and registration of originating application

Rule 108

(1) The originating application shall be instituted in accordance with Form "1" of the Second Schedule hereto.

(2) The originating application is considered as having been properly instituted when the Registrar signs and date-stamps it with the official court stamp and uniquely numbers it for identification purposes.

(3) In the originating application the respondent shall be informed that he is given a specified time to file notice to answer and it shall be stated how he should do so.

(4) The respondent shall be allowed not less than seven days to file notice to answer if he resides within 20 kilometres from the office of the Registrar and shall be allowed one extra day for every 20 kilometres his residence is distant from such office, provided that the maximum time to be allowed is one month, unless the court on application otherwise provides.

(5) Where the applicant seeks relief in respect of several distinct claims founded on separate and distinct facts, such claims shall be separately and distinctly stated.

(6) The originating application shall be signed by the Registrar and the applicant and shall disclose the attorney's address within 10 kilometres from the office of the Registrar at which he will accept service if he is legally represented. Where the applicant represents himself, he shall sign the originating application and disclose his address which shall be within, 10 kilometres from the office of the Registrar at which he will accept service of all documents.

(7) In every action against the Crown or any Minister or official of the Government the time for filing notice to answer shall not be less than one month.

(8) No originating application may be issued against a Judge of the High Court or of the Court of Appeal without the leave of the High Court.

(9) (a) In every case where the claim is not for a debt or liquidated demand the originating application shall be as near as in accordance with, **Form "1"** of the Second Schedule hereto.

(b) In every case where the claim is for a debt or liquidated demand, the originating application shall be in accordance with, **Form "2"** of the Second Schedule hereto.

General requirements for pleadings

Rule 109

(1) Every originating application and answer shall be signed personally by the party.

(2) The Division of the court from which the originating application is issued, 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. Where the parties are numerous or the title lengthy and abbreviation is reasonably possible, it may be so abbreviated.

(3) Every pleading shall be divided into paragraphs which may include sub-paragraphs. Each paragraph shall be consecutively numbered and shall, as near as possible contain a clear and concise separate averment of the material facts on which the pleader relies for his claim or defence, with sufficient particularity to enable the opposite party to reply and in particular set out:

(a) the nature of the claim, including the cause of action; or

(b) the nature of the defence; and

(c) such particulars of any claim, defence or other matter pleaded by the party as are necessary to enable the opposite party to identify the case that the pleading requires him to meet.

(4) 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 issuably and to the point.

(5) Where a party, in its pleading, relies upon a contract, it shall state whether the contract was verbal or in writing, where and when 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 originating application or answer as the case may be.

(6) A party suing for damages for personal injury shall specify 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;

(b) pain and suffering;

(c) disability in respect of -

(i) the earning of income stating the earnings lost to date of originating application and estimated future loss;

(ii) prospects for earnings that might be recovered and prospects for earnings he would have had but for the disability; and

(iii) the enjoyment of amenities of life (full particulars to be given).

(7) Where a party in matrimonial proceedings sues for restoration of conjugal rights, divorce or judicial separation or relies on desertion, he shall state the particulars of the desertion or adultery by reference to date and place if known. The same particulars must be provided on an application for condonation of adultery.

Annexes to originating application

Rule 110

(1) The applicant shall attach to his originating application:

(a) a list of the witnesses to be called at the hearing, with their full names and addresses, their statements and the purpose for which they are called;

(b) all exhibits intended to be introduced in evidence;

(c) all reports, plans, photos, diagrams and models to be introduced in evidence;

(d) any documentary evidence in his possession upon which he relies for his claim; and

(e) where he has no witnesses or documents to produce, a statement to that effect.

(2) All documents in any language other than English filed in court shall be duly translated into English.

(3) Enough copies of the application with annexes shall be filed for the purposes of serving notice on all respondents named therein.

(4) Where the applicant is represented by a legal representative, a signed and witnessed power of attorney shall be annexed.

(5) Notwithstanding the provisions of sub-rule (1), further documents may be filed with leave of court or by consent of the parties, under exceptional circumstances, a list of witnesses may be amended.

Power of the Registrar to reject originating application

Rule 111

(1) An originating application shall be rejected by the Registrar where it is not in accordance with the provisions of rules 108 and 110.

(2) The rejection of the originating application by the Registrar shall not prevent the applicant from bringing a new or amended application on the same claim.

Admission of the originating application by the Registrar

Rule 112

(1) Where there are no reasons for rejecting the application under rule 111, the Registrar shall make the entry required by rule 108(2) and submit it to the court and service of the application be effected in terms of rules relating to service of process under these rules.

Frame of the originating application

Rule 113

(1) An originating application shall be framed in accordance with the provisions of rules 108 to 110.

(2) An application shall include the whole of the claim which the applicant is entitled to make with respect to the cause of action.

(3) An applicant who negligently omits to include in his originating application, or intentionally relinquishes, any portion of his claim shall not afterwards file another application with respect to the portion so omitted or relinquished.

(4) A person entitled to more than one relief with respect to the same cause of action may file an originating application for all or any of such reliefs, but if he omits to apply for all such reliefs, he shall not afterwards file another application for any relief so omitted, except with the leave of court.

Notice to answer

Rule 114

(1) The respondent is allowed seven days after service of the originating application upon him within which to deliver a notice to answer either personally or through his legal representative, by giving such notice at the office

of the Registrar.

(2) A copy of such notice shall be served on the applicant's attorney or applicant at the address referred to in the originating application.

(3) In actions against the Crown, any Minister, Deputy Minister or any person in the public service of the Crown in his official capacity, the time allowed for delivery of notice to answer is not less than twenty days after service of the originating application, unless the court has specifically authorised a period less than twenty days.

(4) The respondent or his attorney shall in his notice:

(a) give his full residential or business address within 10 kilometres of the Registrar's office at which he will accept all documents and processes in the action and the postal address of the person signing the notice;

(b) indicate if he is represented by a registered user and he chooses to be served by e-justice, his legal representative's e-justice address and in that case, service given at that address is valid and effectual, except whereby any order or practice of court personal service is required.

(5) A respondent shall not, merely by filing his notice to answer, be deemed to have waived his right to object to the jurisdiction of the court or to any irregularity or any other special pleas in the proceedings.

(6) Notwithstanding the provisions of sub-rule (1) and (2), notice to answer, even though filed after the expiry of the period mentioned in the originating application shall be effective: Provided that the applicant shall be entitled to costs if the notice to answer is filed after the applicant has lodged an application for default judgment and judgment has not been given.

Contents of an answer

Rule 115

(1) Where the respondent has filed notice to answer, he shall within twenty-one days deliver an answer on **Form "3"** of the Second Schedule an-

nexed hereto, with or without a counterclaim/claim in reconvention or a notice of intention to note a preliminary objection with or without application to strike out.

(2) The respondent shall, deliver a preliminary objection or application to strike out at the same time of delivering his answer stating that the answer should be considered only in the event of the preliminary objection or application to strike out not succeeding.

(3) The answer shall comply with the requirements of rule 109 for pleadings.

(4) Every answer shall:

(a) deal with every allegation made by the applicant in the originating application;

(b) clearly state which allegations made by the applicant are admitted;

(c) clearly and concisely state all material facts on which he relies in his defence or answer to the applicant's claim.

(5) Every allegation of fact in the application, which is not stated in the answer to be denied or admitted, shall be deemed to be admitted. If any explanation or qualification of any denial or admission is necessary, it shall be stated in the answer.

(6) If by reason of any claim in reconvention, the respondent claims that on the giving of judgment on such claim in reconvention, the applicant's claim will be extinguished wholly or in part, the respondent may:

(a) in his answer refer to the fact of such claim in reconvention and request that judgment in respect of applicant's claim, or such portion thereof which would be extinguished by such claim in reconvention, be postponed until judgment on the claim in reconvention;

(b) in such a case the respondent shall, together with his answer, deliver full particulars of the claim in reconvention

on which he relies;

(c) judgment on the claim shall either wholly or in part thereupon be postponed unless the court, on the application of any party interested, otherwise orders and if no other defence is raised, the court may give judgment on such part of the claim as would not be extinguished, as if the respondent was in default of filling an answer in respect thereof, or may, on the application of either party, make such order as to it seems just including an order as to costs; and

(d) on the application of either party, make such order as to it seems suitable and proper.

Annexes to answer

Rule 116

(1) The requirements of rule 110 dealing with annexes to an originating application shall apply by analogy to the answer.

Replication

Rule 117

(1) Within fourteen days of the service upon him of an answer, the applicant may deliver a reply to the answer.

(2) Where the applicant does not within the time specified in subrule (1) deliver a reply, he shall be taken to have denied all the allegations of fact contained in the answer.

(3) When a replication or subsequent pleading is necessary and such is delivered, a party may thereupon join issue on the allegations in the previous pleading and to such extent as he has not dealt specifically with the allegations in the answer or such other previous pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading on which issue is joined.

(4) Where there is an answer by the applicant to a claim in reconvention, the respondent may within fourteen days file a replication in reconvention to such an answer. The provisions of this rule shall *mutatis mutandis* apply.

(5) No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading is necessary, and in that event, an issue is considered as joined and pleadings are considered as closed in terms of rule 120.

(6) No further pleadings shall be filed after replication save with leave of court. Pleadings subsequent to a replication if delivered shall be delivered by the parties within eight days of the previous pleading delivered by the opposite party. Such pleadings shall be destined by the names by which they are customarily known such as rejoinder, surrejoinder etc.

Claim in reconvention/counterclaim

Rule 118

(1) (a) The respondent may, together with his answer deliver a claim in reconvention.

(b) If not filed together with his answer, the respondent may, before pleadings are closed, except in circumstances set out in rule 115(6), deliver a claim in reconvention.

(c) If not delivered before pleadings are closed, a claim in reconvention cannot be delivered unless the court grants leave on such terms as to the court seems just.

(2) A claim in reconvention shall be in a separate document from the answer and shall be headed **"Respondent's Claim in Reconvention"** or **"Respondent's Counterclaim"** and it is necessary to repeat therein the names or descriptions of the parties to the proceedings in the counterclaim.

(3) If the respondent is entitled to take action against the applicant and any other person whether jointly, jointly and severally, separately or in the alternative, the court may grant him leave to take such action by way of a claim in reconvention against the applicant and such other persons in such manner and on such terms as the court, in its discretion, may direct.

(4) All claims in reconvention shall comply *mutatis mutandis* with the provisions of rules 109 and 110.

(5) Where both the claim in convention and the claim in reconvention proceed to trial, each action may be tried separately but judgment shall be given on both pari passu.

(6) A claim in reconvention may not be made by a respondent in reconvention where an action is withdrawn; stayed, discontinued or dismissed but it shall nevertheless be competent to proceed separately with the claim in reconvention.

(7) A respondent may claim in reconvention conditionally upon the claim or defence in convention failing.

Answer to claim in reconvention/counterclaim

Rule 119

(1) The applicant shall, when there is a claim in reconvention, file an answer to such claim within four-teen days of the service to him of such claim.

(2) The answer referred to in sub-rule (1) shall conform, with necessary adaptations and modifications to rule 115(4) and (5).

Closing of pleadings

Rule 120

(1) Pleadings shall be closed:

(a) upon the delivery of a reply to respondent's answer or, where no reply is delivered, upon the expiration of the period limited for reply to an answer; or

(b) where either party has joined issue without alleging any new matter and without adding any further pleading.

Amendment of pleadings

Rule 121

(1) The court may at any time before judgment, of its own motion, or upon written or oral application by any party, make an order to allow either party to alter or amend his pleading in such manner as to costs and time as may be just and all such amendments shall be made as may be necessary for the determination of the real issues in dispute.

(2) Where a party who has secured leave to alter or amend his pleading fails within the time fixed by the court, he shall be disallowed to alter or amend thereafter, unless the court extends the time.

(3) The court may at any time before judgment, in the exercise of its discretion, make an order to strike out any matter in any pleading which is unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the case.

(4) Where pleadings are altered or amended as to give the effect of bringing the application within the jurisdiction of another court, the court shall transfer the file to such appropriate court for trial.

(5) If the amendment of a pleading affects any deadline set in a case plan order, the presiding Judge or the court shall give appropriate directions as to new dates for the taking of such steps as remain unfinished in terms of the case plan order.

Third party procedure

Rule 122

(1) The court may, upon application by a person having interest therein, and if it finds it necessary in the interests of justice and for the proper hearing of any proceedings, allow such a person to intervene as a party thereto at any time before judgment.

(2) In so far as notification, pleadings, production of evidence and other matters related to court proceedings are concerned, the provisions of these rules with respect to applicants and respondents shall apply with necessary modifications as may be required by the context.

PART 13

MATRIMONIAL CAUSES AND MATTERS

Service of process

Rule 123

(1) Service of all process and documents initiating proceedings in matrimonial matters shall be served on a party personally.

(2) Where personal service of originating application has been effected more than three months before the matter is set doing for trial on an unopposed basis, the originating application shall be re-served, otherwise the trial may not proceed.

(3) If no appearance to defend has been entered within the prescribed time, the matter may be set down in the motion court at least two days before the date of hearing.

Restitution order

Rule 124

(1) An order of restitution of conjugal rights shall be served personally on the party against whom it is granted not less than four-teen days before the restoration date.

(2) Where the court makes an order to extend the return date of a restitution order or *rule nisi*, it shall extend the date to a fixed date which falls on a date to be published by the Registrar as the date for the hearing of unopposed divorce matters.

(3) If the restitution order has been properly served, but the *rule nisi* cannot be confirmed on the return date, an application may be made from the bar to extend the rule to a subsequent motion court day.

(4) If no service has been effected, an application shall be made on or before the return date of the *rule nisi* for new dates.

(5) If applicant's legal representative has withdrawn and there is no appearance by the applicant or his new legal representatives on the return date or on the extended return date of a restitution order -

(a) the court shall on its own initiative extend the return date; and

(b) the Registrar shall address a letter to the applicant, to be sent by registered post or any other convenient means, at an address contained in the parties' particulars filed in terms of rule 11.

(6) If there is no appearance by the applicant or his legal representatives on the extended date referred to in sub-rule (5)(a), the *rule nisi* shall be discharged.

(7) If on the return date or extended return date of a *rule nisi* a matter is removed from the roll for any reason, no further steps can be taken in that matter unless the court, on good cause shown, reinstates the *rule nisi*.

(8) Where the court reinstates a *rule nisi*, it may -

(a) grant new dates; or

(b) extend the rule if the court is satisfied that the rule has been served.

Annexes in matrimonial proceedings

Rule 125

(1) In any originating application instituting proceedings in a matrimonial matter, the following must be annexed:

(a) a certified copy of the marriage certificate of the parties and the original presented through evidence;

(b) a full list of the matrimonial property and its value; and

(c) documents of the respective parties' earnings.

Judicial case management in matrimonial proceedings

Rule 126

(1) Part 6 applies to defended matrimonial proceedings except that in addition to the requirements of rule 43 (2), the parties shall also address the issues contained in sub-rule (2) of this rule.

(2) The additional requirements to be addressed at the case management conference shall include the following:

(a) where applicable, proposals to be made in a report for the custody and maintenance of and access to minor children;

(b) proposals for the maintenance of either spouse and the children who are still dependent on them; and

(c) proposals for the division of matrimonial property including, where necessary, the commissioning of a social welfare report.

(3) In case of division of property, each party shall file the list of property in terms of **Annexure C** to the Third Schedule hereto.

(4) Rules 45 (4) and (5), 46 and 47 (1) apply with necessary modifications required by the context to divorce proceedings, but the Judge may at any time dispense with any of them if he considers it reasonable to do so in order to curtail the proceedings or to save costs.

Interlocutory applications in matrimonial proceedings

Rule 127

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

(a) maintenance *pendente lite*;

(b) a contribution towards the costs of a pending matrimo-

nial action;

(c) interim custody of the children;

(d) interim access to the children;

(e) an order that none of the spouses may damage, transfer, encumber, conceal or otherwise dispose of any joint estate while the matrimonial matter is pending;

(f) an order that a spouse may not commit any act of domestic violence against the other, which may include an order requiring a spouse to stay away from a specific residence or workplace of the other spouse.

(2) The applicant shall deliver a sworn statement of claim setting out the relief sought and the grounds therefor, together with a notice to the respondent in accordance with **Form "4"** of the Second Schedule hereto.

(3) The statement and notice shall be signed by the applicant and shall give an address for service within 10 kilometres of the office of the Registrar, and be served by the deputy sheriff on the respondent's legal representative if he is legally represented.

(4) The respondent shall within ten days after receiving the application, deliver a sworn reply in the nature of an answer. The reply shall be signed by the respondent and shall give an address for service within 10 kilometres of the office of the Registrar and if he fails to do so, he is by that very fact barred.

(5) As soon as possible after the acts referred to in sub-rule (4) have been carried out the Judge shall inform the parties through his clerk that the application will be dealt in a summary hearing within ten days.

(6) If the respondent is in default, the Judge shall inform the applicant of his decision without conducting a hearing.

(7) The Judge may hear such evidence as he considers necessary and may dismiss the application or make such order as he thinks fit to ensure a just and expeditious decision.

(8) The Judge may, on application made to him, vary his decision in the event of a material change taking place in the circumstances of either party or child or the contribution towards costs proving inadequate.

Undefended divorce

Rule 128

(1) When an undefended originating application for divorce is postponed, it may be continued before another Judge notwithstanding that evidence has been given.

PART 14

COMMERCIAL MATTERS

Business of the commercial division

Rule 129

(1) The business of the commercial court shall comprise of all matters arising out of or connected with any relationship of a commercial or business nature in the private or public sectors whether contractual or not.

(2) The business of the court shall include, but not be limited to:

(a) banking, negotiable instruments, international credit and similar financial services;

(b) insurance and re-insurance excluding damages for motor vehicle accidents;

(c) agency and partnership;

(d) suretyship and security over movable and immovable property;

(e) building and engineering construction;

(f) intellectual property;

(g) restraint of trade and licensing;

(h) unfair competition;

(i) business contracts;

(j) the export or import of goods;

(k) the carriage of goods by land, sea, air or pipeline;

(l) the exploitation of minerals, hydroelectricity and water resources or other natural resources;

(m) matters involving business trusts;

(n) matters arising from the application of the Companies Act, 2011 and the Insolvency Act No. 9 of 2022;

(o) arbitration

(p) winding up or liquidations; or

(q) delicts committed in a commercial context.

(3) Applications and originating applications in the commercial court shall be instituted, processed and prosecuted in terms of these rules.

Designation of cases as commercial actions

Rule 130

(1) The head of the commercial court shall designate the cause or matter as a commercial action.

(2) Where it is not clear whether an action is a commercial matter or not, or where a party has on notice requested that an action be designated as a commercial action, the head of the commercial court shall hear the parties in chambers before giving a direction.

(3) The notice made in terms of sub-rule (2) shall be in writing.

Preparation of court bundles

Rule 131

(1) In all commercial actions, the following shall be adopted with regard to the preparation of court bundles:

(a) the applicant shall, in consultation with the respondent's attorney, prepare a court bundle;

(b) all documents included in a court bundle shall be fully legible and complete;

(c) a court bundle shall contain only documents strictly relevant to the issues to be dealt with in evidence and shall be separately paginated and indexed according to the issues;

(d) all documents in a court bundle shall be arranged in a chronological order;

(e) each court bundle shall contain an index which shall indicate the status of the documents and whether the documents have been admitted or are subject to proof;

(f) the status of the documents in a court bundle shall be agreed upon by the parties at the pre-trial conference; and

(g) where photocopying has been used, the party filing photocopies shall ensure that documents so filed are legible.

Heads of argument

Rule 132

(1) The applicant shall, at least seven days before the date of hearing, serve and deliver to the Judge's clerk, two copies of its heads of arguments.

(2) The respondent shall in response to the applicant's heads of argument serve and deliver to the Judge's clerk, two copies of its heads of argument at least three days before the date of hearing.

(3) In the instance of interlocutory hearing, delivery of all heads of argument shall be three days before the date of hearing.

(4) Heads of argument must strictly comply with rule 155.

PART 15

APPLICATIONS FOR SPECIFIC ORDERS OR JUDGMENTS

Security for costs

Rule 133

(1) Where the applicant:

(a) is not resident within Lesotho;

(b) is an unrehabilitated insolvent;

(c) is a registered or incorporated company which is being wound up;

(d) or for any other reason has no substantial interest in the cause of action -

the respondent may (unless the applicant has obtained leave to sue as a poor litigant in terms of rule 36 or is a department of the Government of Lesotho) after service of the originating application and before closure of pleadings, require the applicant to provide security for the costs of the action in a form which is acceptable to the Registrar (excluding the principal or costs of any claim in reconvention made by the respondent): Provided that if the fact relied upon first came to the knowledge of the respondent after closure of pleadings, the respondent may within seven days after such fact has come to his knowledge require that such security be given.

(2) If a party contests the amount of security only, that party so objecting shall, within three days after the notice contemplated in sub-rule (1) is received, give notice to the requesting party to meet the objecting party at the office of the Registrar on a date pre-arranged with the Registrar and that notice shall state the date of the meeting and the date shall not be more than three days after the notice of objection to the amount of security is delivered to the party requesting the security.

(3) The Registrar shall determine the amount of security to be given.

(4) 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 the Judge on notice for an order that such security be given and that the proceedings be stayed until the order is complied with.

(5) The Judge may, if security is not given within the time referred to in sub-rule (4), dismiss the proceedings instituted or strike out any pleadings filed by the party in default or make any order that he deems just and proper.

(6) Security for costs is, unless the presiding Judge otherwise directs or the parties otherwise agree, given in the form, amount and manner directed by the Registrar.

(7) The Registrar may, on the application by the party in whose favour security is to be given and on notice to interested parties, increase the amount originally furnished if he is satisfied that the previous amount is no longer sufficient, and his decision is final.

Search and preservation of material evidence

Rule 134

(1) The applicant may, without notice to the respondent and before service of the originating application, apply for an order to search for and preserve evidence.

(2) The court may grant the order if the following requirements are met:

(a) the applicant has a strong *prima facie* case on an accrued cause of action;

(b) the potential or actual loss or damage to the applicant will be serious if the order is not made; and

(c) there is sufficient evidence that:

(I) the respondent possesses specific documents and/or things which constitute material evidence

to substantiate the accrued cause of action; and

(II) there is a reason to believe that the respondent might hide or destroy such material by the rime the case comes to trial.

(3) In exercising its discretion to grant the order, the court should balance the following factors:

(a) the strength of the case;

(b) the seriousness of the damage;

(c) the gravity of the risk of destruction or hiding of the material or its unavailability; and

(d) the potential injury to the respondent.

(4) Premises may not be searched and things removed except in the presence of the respondent or any person acting on the respondent's behalf or instructions.

Freezing Orders

Rule 135

(1) A person may apply for the grant of a freezing order with or without notice to the intended respondent to prevent the frustration or defeat of the applicant's claim by secreting or dissipating assets.

(2) The applicant must:

(a) prove that it has a good arguable case on an accrued or prospective cause of action or that it has a judgment given in its favour;

(b) prove that there is a danger that the judgment or prospective judgment will be wholly or partially unsatisfied because the judgment debtor or prospective judgment debtor might abscond or remove, deal with or di-

minish the value of the assets of such judgment;

(c) Prove that the value of assets restrained does not exceed the maximum amount of the claim inclusive of interest and costs;

(d) Undertake to make good any damage suffered by the respondent arising from the order.

(3) The order sought should exclude dealing by the respondent with its assets for payment of ordinary personal and family living expenses, business expenses, reasonable legal and medical expenses and dispositions in discharge of obligations bona fide and properly incurred under a contract or arising from a legal duty in existence before the order is made.

(4) A person having an interest which may be affected by an order may deliver a notice supported by an affidavit setting out the nature of the interest and grounds of opposition.

(5) Where the application is brought ex parte, the opposition to the grant of the order shall be set down for hearing at the same time of hearing the ex parte application.

(6) The court has the power to make ancillary orders as appear to the court to be just and convenient to ensure that the exercise of the jurisdiction to make freezing orders is effective to achieve its purpose and does not prejudice the rights of third parties.

Judgment by consent

Rule 136

(1) Except in actions for divorce and other matrimonial matters and matters affecting the status or legitimacy of any person, a respondent may at any time consent in whole or in part to judgment being granted on a claim contained in the originating application.

(2) The respondent shall personally sign the consent referred to in sub-rule (1) and his signature shall either be witnessed by an attorney acting for him, not being the attorney acting for the applicant, or be verified by affidavit.

(3) The written consent so signed and witnessed shall be furnished to the applicant who in turn shall then apply to court without notice to the respondent for judgment in terms of such consent.

(4) If the respondent's consent is for less than the amount claimed in the originating application, he may enter an appearance to defend or may continue his defence as to the balance of the claim. Notwithstanding a judgment upon such consent, the action may proceed as to such balance, and it shall be in all subsequent respects of an action for such balance.

Summary judgment

Rule 137

(1) The applicant may, after the respondent has delivered an answer, apply to court for summary judgment on each of such claims in the originating application as is only:

(a) on a liquid document;

(b) for a liquidated amount in money;

(c) for delivery of specified movable property; or

(d) for ejectment together with any claim for interest and costs.

(2) The applicant shall:

(a) within four-teen days after the date of delivery of an answer, deliver a notice of application for summary judgment, together with an affidavit made by the applicant or by any other person who can swear positively to the facts;

(b) the affidavit referred to in subrule (2)(a) shall verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the applicant's claim is based, and explain briefly why the answer does not raise any issue for trial;

(c) if the claim is founded on a liquid document a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than four-teen days from the date of the delivery thereof.

(3) The respondent may:

(a) give security to the applicant to the satisfaction of the Registrar for any judgment including costs which may be given; or

(b) satisfy the court by affidavit (which shall be delivered five days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such respondent or any other person who can swear positively to the facts that the respondent's answer discloses a bona fide defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor.

(4) No evidence may be adduced by the applicant otherwise than by the affidavit referred to in subrule (2), nor may either party cross-examine any person who gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.

(5) If the respondent does not find security or satisfy the court as provided in paragraph (a) of subrule (3), the court may enter summary judgment for the applicant.

(6) If on the hearing of an application made under this rule it appears:

(a) that any respondent is entitled to defend and any other respondent is not so entitled; or

(b) that the respondent is entitled to defend as to part of the

claim, the court shall -

(i) give leave to a respondent so entitled thereto and give judgment against the respondent not so entitled; or

(ii) give leave to the respondent as to part of the claim and enter judgment against such respondent as to the balance of the claim, unless such balance has been paid to the applicant;

(iii) make both orders mentioned in subparagraphs (I) and (II).

(7) If the respondent gives security or satisfies the court as provided in subrule (3), the court shall give leave to defend and the originating application shall proceed as if no application for summary judgment has been made.

(8) The court may further order that such costs be taxed as between attorney and client.

(9) If:

(a) the applicant makes an application under this rule, where the case is not within the terms of subrule (1) or where;

(b) in any case in which summary judgment was refused and in which the court after trial grants the originating application as substantially prayed for, and the court finds that summary judgment would have been granted had the respondent not raised a defence which in its opinion was unreasonable, the court may order the applicant's costs of the action to be taxed as between attorney and client.

Offer to settle

Rule 138

(1) Where a sum of money is claimed, either alone or with other relief, the respondent may at any time unconditionally or without prejudice make a written offer to settle the applicant's claim and the offer shall be signed either by the respondent or by his legal representatives if the latter has been duly authorised to sign.

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

(3) A party who may be ordered by court to contribute towards an amount for which a party may be held liable or any third party from whom relief is being claimed in terms of rule 122 may, either unconditionally or without prejudice by way of an offer of settlement:

(a) make a written offer to the other party to contribute either a specific sum or in a specific proportion towards the amount to which the applicant may be held entitled in the action;

(b) give a written indemnity to that other party, the conditions of which shall be set out fully in the offer of settlement.

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

(5) Notice of an offer or tender in terms of this rule shall be given to all parties to the originating application and it shall state whether:

(a) the offer or tender is unconditional or without prejudice

as an offer of settlement;

(b) the offer or tender is accompanied by an offer to pay all or any part of the costs of the party to whom the offer or tender is made and further whether it is subject to conditions stated in the offer or tender;

(c) the offer or tender is made by way of settlement of both the claim and costs or of the claim only; and

(d) the respondent 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) The applicant or party referred to in sub-rule(3) may within ten days after the receipt of the notice referred to in sub-rule (5) or thereafter with the written consent of the respondent or third party or on the order of the court given on such conditions as the court may consider to be fair, accept an offer or tender, after which 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 applicant or to his legal representatives.

(7) In case of a failure to pay or to perform within ten 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 to the presiding Judge for judgment in accordance with the offer or tender as well as for the costs of the application or if the matter has not yet been allocated to a Judge, give notice to the Registrar to set the matter down before the motion court.

(8) Where notice of the acceptance of an 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 114(4), the notice shall be given at an address, which is not a post office box or poste restante, within 10 kilometres of the office of the Registrar at which the notice shall be delivered.

(9) Where an offer or tender accepted in terms of this rule is not stated to be in satisfaction of applicant's claim and costs, the party to whom the offer or tender is made may apply to the Judge, after notice of not less than five

days to the other party for an order for costs.

(10) An offer or tender in terms of this rule made ‘without prejudice’ shall not be disclosed to the court at any time before judgment has been given and a reference to such offer or tender shall not appear on any file in the office of the Registrar containing the papers in the cause or matter.

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

(12) Where 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, except that this sub-rule does not affect the court’s discretion as to making an award of costs.

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

(14) This rule applies with necessary modifications required by the context where relief is claimed on an application, a counterclaim in terms of rule 118 or in third party proceedings in terms of rule 122.

Default judgment

Rule 139

(1) Without prejudice to the provisions on service of notice and non-appearance on court date, where the respondent fails to appear, without good cause at the set date of hearing or thereafter as the court may direct, the court may enter judgment for the applicant.

(2) When the respondent is in default of filing notice to answer, no notice to him of the notice of set-down of an unanswered matter shall be necessary.

(3) The court may grant judgment without hearing evidence where

the claim is for a liquidated debt or a liquidated demand. In the case of any other claim the court shall hear evidence before granting judgment or may make such order as it seems just.

(4) The default judgment shall be in the following terms: the applicant may lodge with the Registrar a written request, in duplicate, together with the original originating application and return of service, for judgment against such respondent for:

(a) any sum not exceeding the sum claimed in the originating application or for other relief so claimed;

(b) the costs of the matter; and

(c) interest which shall accrue as follows -

(i) In a liquidated claim, either from the date of the issue of the originating application or from when the respondent was in mora to the date of payment; and

(ii) in the case of unliquidated claim, from the date of judgment at the rate specified in the originating application or, if no rate is specified, at the rate to be determined by the court.

(5) Notwithstanding the above sub-rules, the court may make such other order as it considers appropriate.

Rescission of default judgment

Rule 140

(1) Where judgment has been granted against respondent in terms of rule 139(4), he may within twenty-one days after his knowledge or where absolution from the instance has been granted to a respondent, the respondent or applicant, as the case may be, may within twenty-one days after he has knowledge of such judgment apply to court, on notice to the other party, to rescind such judgment.

(2) On good cause shown by the party so applying and upon furnishing of security for costs of the default judgment to the satisfaction of the Registrar and of the application for rescission of such judgment, the court may set aside the default judgment on such terms as to it seems reasonable and fair, except that:

(a) the party in whose favour default judgment has been granted may, by consent in writing lodged with the Registrar, waive compliance with the requirement for security; or

(b) in the absence of the written consent referred to in paragraph (a), the court may on good cause shown dispense with the requirement for security.

(3) A person who applies for rescission of a default judgment as contemplated in sub-rule (1) shall:

(a) make application for such rescission by notice of motion, supported by an affidavit as to the facts on which the applicant relies for relief, including the grounds, if any, for dispensing with the requirement for security;

(b) give notice to all parties whose interests may be affected by the rescission sought.

(4) The provisions of rule 65 apply with necessary modification required by the context to an application brought in terms of this rule.

PART 16

TRIAL

Assignment of trial dates
Rule 141

(1) The assignment of trial or hearing dates is done by order of the presiding Judge either at:

(a) the case planning conference in terms of rule 43;

(b) the case management conference in terms of rule 45;

(c) a status hearing in terms of rule 47; or

(d) the pre-trial conference in terms of rule 46.

(2) Where a party or his legal representative is present when the date is assigned no further notice of set down need be served, and where a party or his legal representative is absent, the party present shall serve the notice to the absent party.

(3) When a matter has been set down for hearing a party may on good cause shown, apply to the Judge not less than ten court days before the date of hearing to have the set down changed or set aside and fresh dates allocated.

(4) Where the postponement of a case is sought on the ground that the instructed legal representative could not be engaged in time to act in the matter on behalf of a party while such party is represented by an admitted instructing legal representative of record, the party seeking a postponement shall clearly set out in a sworn statement why such instructing legal representative cannot personally act in the matter.

Postponements

Rule 142

(1) Applications for postponements must be accompanied by proper and compelling reasons as stated.

(2) A postponement may be granted on grounds of ill-health or disappearance of a witness.

(3) The court granting a postponement shall record the reasons submitted for such an application and the factors that have persuaded the court to grant the postponement.

(4) No postponement shall be granted because of general congestion of the docket of the court, double-booking by counsel, lack of diligent preparation and failure to subpoena and obtain witness.

(5) The court shall not postpone a case because the date of hearing may cause personal inconvenience to the presiding Judge, lawyer, litigants and witnesses.

(6) In considering whether to grant a postponement, prejudice to the opposing party is not the only consideration. Convenience of the court and the interests of the administration of justice are also relevant considerations.

Preliminary objections

Rule 143

(1) Before proceeding to trial, the court shall decide on such objections as may be made by the parties by way of special answer.

(2) Any party may make an objection on the following grounds:

(a) that the court has no jurisdiction;

(b) that there is a final and binding decision by a competent court over the same matter;

(c) that the suit is pending in another court;

(d) that the other party is not qualified for acting in the proceedings;

(e) that the action or matter is barred by prescription;

(f) that the claim has previously been made the subject of a compromise or other agreement; or

(g) that the action be stayed in lieu of an arbitration agreement or mediation.

(3) Where more than one objection is made under this rule, they shall all be taken together and any objection not made at the case planning conference in terms of rule 43(3)(b) and in terms of these rules, shall be considered to have been waived, unless the ground of objection is such as to prevent a valid judgment from being entered.

Decision on objection

Rule 144

(1) The court shall decide any objection made under this rule after hearing the opposite party and ordering the production of such evidence as may be appropriate for the decision to be made.

(2) Where the court is satisfied that the objection is well founded, the court shall, in the case of an objection under rules 143 (2) (a) and (f) dismiss the application and in case of objections under rule 143(2)(b), (c) and (d), strike out the originating application or make such other order as it thinks fit.

(3) With respect to an objection made under rule 143(2)(g), the court may grant or refuse a stay.

(4) When striking out the originating application, the court shall, in appropriate cases, inform the applicant that he may sue in the court in which previously instituted proceedings are pending.

(5) Where an application is dismissed, the prescribed portion of the

court fee paid on the filing of the action shall not be refunded.

(6) Any decision passed under this rule shall be recorded together with the reasons for such decision.

Special case and adjudication on points of law and facts

Rule 145

(1) The parties to any civil action may, after institution of proceedings agree upon a written statement of facts in the form of a special case for adjudication by the court and it shall be filed with the Registrar.

(2) The statement referred to in sub-rule (1) shall set forth the facts which parties have agreed upon and shall also set out the questions of law in dispute between the parties and the respective contentions of each party and the statement shall be:

(a) divided into consecutively numbered paragraphs and accompanied by copies of documents necessary to enable the presiding Judge to decide on the questions; and

(b) signed by the parties personally or by an attorney on behalf of each party or by an attorney and an advocate duly instructed by such attorney on behalf of a particular party.

(3) The presiding Judge shall set down a special case for hearing.

(4) Where a minor, a person of unsound mind or other person under any legal disability is a party to the proceedings, the court may, before determining the questions of law in dispute, require proof that the statements in the special case are true in so far as it affects the interests of the person under legal disability as aforesaid.

(5) At the hearing of a special case the presiding Judge and the parties may refer to the whole of the contents of the statement referred to in sub-rule (2) including the contents of the documents annexed and the court may draw any inference of fact or of law from the facts and documents as if proved at a trial.

(6) 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 just and may order that all further proceedings be stayed until such question is disposed of.

(7) If a cause or matter referred to in sub-rule (6) involves a claim for damages the court may on application of a party order that questions of liability and the amount of damages be decided separately unless it appears to the court that the questions cannot conveniently be so decided.

(8) 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 proceedings which may be necessary for the final disposal thereof.

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

Evidence taken on commission

Rule 146

(1) A Judge may, on application made on notice to all parties in any matter, in a period not less than thirty days before the date of trial, where it appears convenient or necessary for the purposes of attaining justice, make an order for taking the evidence of a witness before or during the trial before a commissioner appointed by the court. The court may permit any party to any such matter to use such deposition in evidence on such terms, if any, as the court deems just.

(2) Where the evidence of any person to be taken on commission as contemplated in sub-rule (1) is by any commissioner within Lesotho, such person may be subpoenaed to appear before the commissioner not less than four-teen days before trial to give evidence as if he is at the trial.

(3) 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 a commissioner in terms of an order granted under

sub-rule (1) shall be adduced on oral examination in the presence of the parties and their legal representatives, if any, and the witness concerned shall be subject to cross-examination and re-examination.

(4) 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 Judge hearing the matter.

(5) Evidence taken on commission shall be recorded in such manner as evidence is recorded in a court and the transcript of any shorthand record or record taken by mechanical means shall be duly certified by the person transcribing the same and by the commissioner of such shall constitute the record of examination, except that evidence before the commissioner may be taken down in narrative form.

(6) The commissioner shall return the record of the evidence to the Registrar with the commissioner's certificate to the effect that it is the record of evidence given before him and that evidence then becomes part of the record of proceedings in the case.

Commissioners of the court

Rule 147

(1) A person duly appointed as a commissioner of the court for taking affidavits in any place outside Lesotho is, by virtue of such appointment, a commissioner of the court.

(2) A commissioner of oaths duly appointed as such in terms of the law of the foreign country at a place outside Lesotho where affidavits are taken is considered as duly appointed commissioner of the court for the taking of affidavits or solemn or attested declarations within his area of appointment in that foreign country.

Use of witness' statements at trial

Rule 148

(1) If a party has served a witness statement and wishes to rely on the evidence of that witness at the trial, he shall call the witness to give oral evidence.

(2) Where a witness is called to give evidence under this rule, his witness statement shall stand as his oral evidence-in-chief unless the court orders otherwise.

(3) A witness giving oral evidence at the trial may, with the leave of court, amplify his witness statement and give evidence in relation to new matters which have arisen since the witness statement was served on the other party, except that the court may give such leave only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(4) Before the witness reads his witness statement into the record, the presiding Judge shall admonish the witness in the following terms:

"The oath you have just taken or the affirmation you have just made requires you to tell the truth, the whole truth and nothing but the truth.

Do you confirm that the statement annexed to the papers was prepared to constitute your evidence in-chief in this case?

Do you also confirm that the information contained in the statement was provided by you to your legal representatives and that it is information of which you bear personal knowledge?

Because of the oath you have taken or affirmation you have made, I want you to understand that once you have read the statement into the record, that statement is your evidence given under oath or affirmation in the proceedings and that if anything in it is not true and you are aware of such fact, you may be liable for perjury. Therefore, if anything in the statement is not true or is inaccurate, it is your duty to tell me so and to state the true or correct facts. Do you understand?"

(5) If a witness statement for use at the trial is not annexed to the papers, the witness may not be called to give oral evidence, unless the court on good cause shown permits such witness to give oral evidence.

(6) Where a witness is called to give evidence at trial, he may be cross-examined on his witness statement only and not on the statement of any other witness who has been called to testify for the party who called him to testify: Provided that the statement of the other witness who has testified for the party who called him refers to the witness being cross-examined.

(7) A party may request the court to direct that a witness statement is not open for inspection by the public or is not available to persons not acting as professional advisors of the party in possession of the statement for the following reasons -

(a) the interest of justice;

(b) public interest; or

(c) the need to protect the interests of a child, patient, a person with disability or any vulnerable witness.

Evidence by video and audio link

Rule 149

(1) The court may, on application by a party, allow a witness to give evidence without being present in court, through a video or audio link at the cost of the applicant.

(2) In deciding whether or not to grant the application, the court must consider the following factors:

(a) effectiveness of any relevant sanctions for giving false evidence;

(b) complexity of the issues which are to be the subject of the evidence;

(c) any necessity for examination of voluminous quantities of documents;

(d) importance of the evidence in the proceedings;

(e) the extent to which a party may be deprived of relevant evidence if video or audio link is not utilized;

(f) inconvenience or difficulty to any prospective witness who is required to travel to court;

(g) compellability or lack of compellability of a prospective witness;

(h) the relative costs of video or audio link and any alternative method of taking the evidence;

(i) availability of possible alternatives, such as taking evidence on commission.

Withdrawal, abandonment and settlement

Rule 150

(1) A person instituting proceedings may at any time before the matter has been set down for hearing or at any stage of the proceedings, by consent of the parties or leave of court, withdraw such proceedings. The person shall deliver a notice of withdrawal and may include in that notice a consent to pay costs and the taxing master shall tax such costs on the request of the other party.

(2) A consent to pay costs referred to in sub-rule (1) has the effect of an order of court for such costs.

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

(4) A party in whose favour judgment or order has been given may abandon the judgment or order either in whole or in part by delivering a notice to that effect and that judgment or order or part thereof shall be considered as abandoned and sub-rules (1), (2) and (3) relating to costs applies with the necessary modifications required by the context to a notice delivered.

(5) If in proceedings a settlement or an agreement to withdraw is reached, it is the duty of the applicant or his legal representative to immediately inform the Registrar accordingly.

(6) A party to a settlement which has been reduced to writing and signed by the parties or their legal representatives, but which has not been carried out may, unless those proceedings have been withdrawn, apply for an order in terms of the settlement on at least five days' notice to all interested parties.

Non-appearance of a party or a legal representative at trial

Rule 151

(1) If when the matter is called the applicant appears and the respondent does not appear in person or by his legal representative, the applicant may prove his claim insofar as the burden of proof lies on him and judgment shall be granted accordingly insofar as he has discharged such burden, but if the claim is for a liquidated debt or liquidated demand, no evidence is necessary unless the presiding Judge orders otherwise.

(2) If a trial is called and the respondent appears and the applicant does not appear in person or his legal representative, the respondent is entitled to an order granting absolution from the instance with costs, but he may lead evidence with a view to satisfying the presiding Judge that the final judgment should be granted in his favour and the presiding Judge if so satisfied may grant such judgment.

(3) Sub-rules (1) and (2) apply to a person making a claim either by way of counter-claim or a third party notice or by any other means as if he were the applicant and sub-rule (2) applies to any person against whom such a claim is made as if he were the respondent.

(4) A party against whom a judgment is granted in its absence or in default may, within one month of the day when it became aware of such judgment, apply to the court to rescind it: Provided that it satisfies the court that it or its legal representative was disabled by good cause from appearing when the matter was called.

(5) The court may make an order rescinding its judgment and appoint a day for the hearing of the matter.

Onus of proof and procedure at trial

Rule 152

(1) Where the onus of proof is on the applicant, he may briefly outline the facts intended to be proved and he may then proceed to the proof thereof.

(2) If the onus is on the respondent, he is entitled to the same rights

as those accorded to the applicant by sub-rule (1).

(3) Either party may apply at the opening of the trial for a ruling by the presiding Judge on the onus of adducing evidence and the presiding Judge after hearing argument may give a ruling as to the party on whom such onus lies, but that ruling may thereafter be altered to prevent injustice.

(4) Where the onus of adducing evidence on one or more of the issues is on the applicant and that of adducing evidence on any other issue is on the respondent:

(a) the applicant shall first call his evidence on any issues in respect of which the onus is on him and may then close his case; and

(b) if absolution from the instance has not been granted, the respondent may, if he does not close his case thereafter, call his evidence on all issues in respect of which the onus is on him.

(5) If there is one or more third parties or if there are respondents to a counterclaim who are not applicants in the action, the following shall be followed:

(a) any such third party is entitled to address the presiding Judge in opening his case and shall lead his evidence after the evidence of the applicant and of the respondent has been concluded and before any address at the conclusion of that evidence;

(b) the respondents to a counterclaim who are not applicants shall, unless the presiding Judge orders otherwise, first lead their evidence and thereafter any third party may lead his evidence in the order in which he became a third party;

(c) if the onus of adducing evidence is on the claimant against the third party or on the respondent to any coun terclaim, the presiding Judge may make such order as he considers convenient with regard to the order in which

the parties shall conduct their cases and address the court; and

(d) with regard to their respective rights of reply, sub-rule (3) applies with the necessary modifications required by the context to any dispute as to the onus of adducing evidence.

(6) After the respondent has called his evidence, the applicant has the right to call rebutting evidence on any issue in respect of which the onus was on the respondent, except that if the applicant has called evidence on any such issues before closing his case, he is not entitled to call any further evidence.

(7) Where a party is or parties are otherwise represented by more than one legal representative:

(a) a witness called by that party may be examined by only one of the legal representatives representing that party, but the same witness may be re-examined by a different legal representative representing that party; and

(b) a witness of that party may be cross-examined by only one of the legal representatives representing the other party.

(8) Despite sub-rule (4) or (6), a respondent is not prevented form cross-examining a witness called at any stage by the applicant on any issue in dispute and the applicant is entitled to re-examine such witness consequent on such cross-examination without affecting the right given to him by sub-rule (6) to call evidence at a later stage on the issue on which such witness has been cross-examined and the applicant may further call the witness so re-examined to give evidence on any such issue at a later stage.

Absolution from the instance, closing address and judgment

Rule 153

(1) At the close of the case for the applicant, the respondent may apply for absolution from the instance in which case:

(a) the respondent may address the court;

(b) the applicant may answer; and

(c) the respondent may thereafter reply to any matter arising out of the address of the applicant.

(2) If absolution from the instance is not applied for or has been refused and the respondent has not closed his case, the respondent may briefly outline the facts intended to be proved and he may then proceed to the proof thereof.

(3) The presiding Judge may, at the conclusion of the evidence in trial proceedings, confer with the legal representatives in his chambers as to the form and duration of the addresses to be submitted in court.

(4) After the cases are closed on both sides, the applicant may address the court and the respondent may do likewise after which the applicant may reply to any matter arising out of the address of the respondent.

(5) In an action in which any causes of action or parties have been joined in accordance with these rules, the presiding Judge may, at the conclusion of the trial give such judgment in favour of such of the parties as is or are entitled to relief or grant absolution from the instance.

Variation of procedure, transfer of cases and costs

Rule 154

(1) Where it appears convenient so to do, the presiding Judge may thereby make variations in the trial procedure as to him deems just.

(2) The parties may at any time before trial, on written application to the presiding Judge, consent to have the matter transferred to a subordinate court, so long as the matter falls within the jurisdiction of the latter court.

(3) Where the presiding Judge considers that the proceedings have been unduly prolonged by the successful party by calling unnecessary witnesses, excessive examination or cross-examination or by over-elaboration in argument, the Judge may penalise such party with regard to costs.

(4) The presiding Judge may make such order as to costs as to him deems just, and without limiting the discretion of the court in any way:

(a) the court may order that an applicant who is unsuccessful is liable to any other party, whether respondent or other applicant, for any costs occasioned by his joining in the action as applicant;

(b) if judgment is given in favour of a respondent or if the respondent is absolved from the instance, the court may order:

(i) the applicant to pay the respondent's costs;

(ii) the unsuccessful respondents to pay the costs of the successful respondent jointly and severally the one paying the other to be absolved and that if one of the unsuccessful respondents pays more than his pro rata share of the costs of the successful respondent, he is entitled to recover from the other unsuccessful respondents their prorata share of the excess; or

(iii) that if the successful respondent is unable to re cover the whole or part of his costs from the unsuccessful respondents, he is entitled to recover from the applicant such part of his costs as he cannot recover from the unsuccessful respondents;

(c) if judgment is granted in favour of the applicant against more than one of the respondents, the court may order those respondents against whom judgment is granted to pay the applicant's costs jointly and severally the one paying the other to be absolved and that if one of the un successful respondents pays more than his pro rata share of the costs of the applicant, he is entitled to recover from the other unsuccessful respondents their pro rata share of the excess.

PART 17

HEADS OF ARGUMENT AND DELIVERY OF JUDGMENTS

Heads of argument and citation of foreign authority

Rule 155

(1) Where a legal representative in his heads of argument or any other written or oral submissions relies on foreign authority in support of a proposition of law:

(a) he shall certify that he is unable, after diligent search, to find Lesotho authority on the proposition of law under consideration; and

(b) he shall certify that he has satisfied himself that there is no Lesotho law, including the Constitution of Lesotho, that precludes the acceptance by the court of the proposition of law that the foreign authority is said to establish.

(2) A legal representative who provides a false certificate is liable to be mulcted with punitive costs payable by him.

(3) The practice directions pertaining to heads of argument apply in all circumstances.

Delivery of rulings and judgments

Rule 156

(1) In any matter or cause, including an application for leave to appeal or any appeal or review, unless a judgment is delivered immediately after the trial or hearing, the court shall pronounce or inform the parties of the intended time and date of delivery of judgment and postpone the matter to such date and time.

(2) If for any reason whatsoever the delivery of a judgment is to be postponed on the date set for its delivery to a new date and time, the postpone-

ment shall be in open court and the presiding Judge should provide a reason for not delivering the judgment on the set date.

(3) The time and date referred to in sub-rule (1) shall be within ninety days in the case of judgments and thirty days in the case of rulings.

(4) Where a Judge fails to comply with the provisions of sub-rule (3), he shall state in the court record the reason for such failure and avail same to the Chief Justice.

(5) Clerical mistakes in judgments or orders or errors arising therein from any accidents, slips or omission may at any time be corrected by the Judge mero motu or on application.

PART 18

COMPILATION OF RECORDS

Record of proceedings

Rule 157

(1) The record of proceedings is made up of:

(a) a judgment or ruling given by the court;

(b) evidence given in court or considered to have been given in court;

(c) in the case of an application, affidavits and other supporting documents filed in the case;

(d) objection made to any evidence received or tendered;

(e) the proceedings of the court generally including an inspection in loco and a matter demonstrated by a witness in court;

(f) any other portion of the proceedings which the court may specifically order to be recorded.

(2) The record referred to in sub-rule (1) shall be kept by such means as the court deems just and appropriate and may in particular be taken down in shorthand or recorded by mechanical means.

(3) The person taking the shorthand notes or mechanical record shall certify the notes or record as correct and file them with the Registrar.

(4) It is not necessary to transcribe the shorthand notes or mechanical record unless the presiding Judge so directs or a party appealing so requires.

(5) If the shorthand notes or mechanical record are transcribed, the person transcribing them shall certify the transcript of such record notes as correct and file the transcript, notes and record with the Registrar and the transcript

of the notes or record certified as correct is considered to be correct unless the presiding Judge orders otherwise.

(6) A party to a cause or matter in which a record has been made in shorthand or by mechanical means may apply in writing through the Registrar to the presiding Judge to have the record transcribed, if an order to that effect has not been made and that party is entitled to a copy of any transcript ordered to be made on payment of the fees set out in Annexure D to the Third Schedule hereto.

(7) Any stenographer employed to take down shorthand notes or any person employed to make a mechanical record of proceedings is considered to be an officer of the court and he shall, before entering on his duties, take the following oath and make the following affirmation:

“ I ___________ ,do swear or affirm that I will faithfully, and to the best of my ability, record in shorthand or cause to be recorded by mechanical means, as directed by the court, 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 same or, as far as I am able, any shorthand notes or mechanical record made by any other stenographer or person employed to make such mechanical record.”

Lost record

Rule 158

(1) Where the record of proceedings goes missing in part-heard cases, the Registrar, under the supervision of the presiding Judge shall reconstruct the record from the best secondary evidence.

(2) The best evidence includes notes of the presiding Judge, lawyers and affidavits from witnesses.

(3) The witnesses who have previously given evidence can be recalled and examined in order to ascertain whether they agree that the version of their testimony in the record is correct.

(4) Where the record goes missing in completed cases, the Registrar shall by affidavit state that the record has been lost and proceed to reconstruct the record by obtaining notes of the presiding Judge and affidavits from lawyers and witnesses as to its contents.

(5) Parties and their witnesses should be given an opportunity to peruse the reconstructed record and to give their versions.

PART 19

POST-TRIAL PROCEEDINGS

Variation and rescission of orders or judgments

Rule 159

(1) In addition to any other powers it may have, the court may of its own initiative or on application brought within a reasonable time by an affected party, vary or rescind any order or judgment:

(a) erroneously sought or erroneously granted in the absence of any party affected thereby;

(b) in respect of interest or costs granted without being argued;

(c) in which there is an ambiguity or a patent error or omission, but only to the extent of that error, ambiguity or omission; or

(d) an order granted as a result of a mistake common to the parties.

(2) A party who intends to apply for relief under this rule may make an application on notice to all parties whose interests may be affected by the variation or rescission sought, and the provisions of rule 65 shall apply, with necessary modifications required by the context.

(3) The court may not make an order rescinding or varying an order or judgment unless it is satisfied that all parties whose interests may be affected have been served with the proposed order.

(4) Nothing in this rule shall affect the rights of the court to rescind any judgment on any ground on which a judgment may be rescinded at common law.

Execution: General

Rule 160

(1) The party in whose favour a judgment of the court has been given may, at his own risk, subject to rule 163 (1) sue out of the office of the Registrar one or more writs for execution thereof as near as may be in accordance with **Form "5"** of the Second Schedule hereto, except that no writ may be issued in respect of the salary, earnings or emolument or any part thereof due to the judgment debtor.

(2) Despite sub-rule (1), a judgment creditor who wishes to lay claim to the earnings, salary or emoluments or any part thereof due to the judgment debtor shall do so by way of an order of attachment of salary, earnings or emoluments and in that case, he shall proceed in terms of rule 164(6).

(3) The Registrar may not issue process of execution for the levying and raising of any costs awarded by the court to a party, unless the costs have been taxed by the taxing master or agreed to in writing by the parties concerned in a fixed sum.

(4) Despite sub-rule (3), it is 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 the due taxation thereafter, except that if those 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, those costs shall be excluded from his account and plan of distribution.

(5) If by any process of the court the deputy-sheriff is directed to levy and raise a sum of money on the goods of a person, the deputy-sheriff or his assistant shall, unless the judgment creditor gives in writing different instructions regarding the situation and/or location of the assets to be attached, without delay proceed to the dwelling- house or place of employment or business of that person and at that house or place:

(a) demand satisfaction of the writ and failing satisfaction;

(b) demand that so much movable and disposable property be pointed out as he may consider sufficient to satisfy the writ; and

(c) failing such pointing out, search for that property.

(6) The deputy-sheriff shall immediately make an inventory of any property referred to in sub-rule (5) and, unless the execution creditor has in writing directed otherwise and subject to rule 161 (1), the deputy-sheriff shall take that property into his custody, except that if:

(a) there is any claim made by any other person to any of the property seized or about to be seized by the deputy-sheriff then, if the judgment creditor in writing gives the deputy-sheriff an indemnity to the satisfaction of the deputy-sheriff to make him harmless from any loss or damage because of the seizure thereof, the deputy-sheriff shall retain or seize and make an inventory of and keep that property; and

(b) satisfaction of the writ 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 the whereabouts of the judgment debtor are unknown.

(7) The deputy-sheriff shall file with the Registrar any process with a return of what he has done in respect thereof and shall furnish a copy of that return and inventory to the party who caused the process to be issued.

(8) All writs of execution lodged with the deputy-sheriff before the day of the sale in execution, rank, subject to any hypothec existing before the attachment, pro rata in the distribution of proceeds of the goods sold in the order of preference referred to in rule 167(5).

(9) If a surplus remains after the distribution of proceeds, the deputy-sheriff shall pay it over to the judgment debtor.

Execution against movable property in general

Rule 161

(1) 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 in accordance with **Form "6"** of the Second Schedule hereto, that they will produce that property on the day appointed for the sale thereof, unless the attachment is sooner legally removed and thereafter the deputy-sheriff shall leave the property attached and inventoried on the premises where it was found with the deed of suretyship.

(2) If the judgment debtor together with the surety do not give the undertaking referred to in sub-rule (1) then, unless the judgment creditor directs otherwise, the deputy-sheriff shall remove that property to some convenient place of security or keep possession of the property on the premises where it was seized and the expense involved shall be recovered from the judgment debtor and defrayed out of the proceeds from the sale of the property.

(3) If the property to be attached and removed consists of livestock, the deputy-sheriff may in writing demand from the judgment creditor, payment of a deposit equal to the amount indicated on a quotation obtained for two month's water and grazing for keeping of the livestock so to be removed.

(4) Where movable property is attached in terms of sub-rule (1), the deputy-sheriff shall, where practicable and subject to rule 168, sell it by public auction to the highest bidder after:

(a) due advertisement by him in a suitable newspaper circulating in the district in which the property has been attached; and

(b) within a period of not less than fifteen days from the time of seizure of the property.

(5) Where perishables are attached, the deputy-sheriff may, with the consent of the judgment debtor or after the judgment creditor has in writing indemnified the deputy-sheriff against any claim for damages which may arise from such sale, sell the goods immediately and in such manner as the deputy-sheriff considers practicable and reasonable.

(6) The advertisement referred to in sub-rule (4) shall be placed not more than twenty days and not less than five days before the scheduled date for the sale in execution and each subsequent sale in execution due to the cancellation of a previous sale in execution shall be re-advertised in accordance with the

provisions of sub-rule (4) and this sub-rule with the necessary modifications where necessary.

Execution against incorporeal property, liens and real rights

Rule 162

(1) If incorporeal property, whether movable or immovable, is available for attachment, it may, without the necessity of a prior application to court, be attached in the manner prescribed in this rule.

(2) Where the property or right to be attached is a lease, bill of exchange, promissory note, bond or other security for the payment of money, the attachment is complete only when:

(a) 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 other security;

(b) the deputy-sheriff has taken possession of the writing, if any, evidencing the lease, bill of exchange, promissory note, bond or other security; and

(c) in the case of a registered lease or any registered right, notice has been given to the land Registrar.

(3) 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 is 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 and the deputy-sheriff may, on exhibiting the original of such warrant of execution of the pledgee, lessor, lessee, purchaser or seller, enter on the premises where such property is and make an inventory and valuation of that interest.

(4) Where the property attached consists of all other incorporeal property or incorporeal rights in property referred to in sub-rules (2) and (3):

(a) the attachment is complete only when -

(i) the deputy-sheriff has in writing given notice of the attachment to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, the deputy-sheriff has also given notice to the land Registrar in whose deeds registry the property or right is registered; and

(ii) the deputy-sheriff has taken possession of the writing or document evidencing the ownership of the property or right or has certified that he has been unable, despite diligent search, to obtain possession of the writing or document; and

(b) the deputy-sheriff may, on exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter the premises where the property is and make an inventory and valuation of the right attached.

(5) Attachment of property subject to a lien is effected in accordance with sub-rule (3) with the necessary modifications required by the context.

(6) Where property which is subject to a real right of any third person is sold in execution, the sale is subject to the rights of that third person unless the third party agrees otherwise.

Attachment of debt held by garnishee

Rule 163

(1) Where it is brought to the knowledge of the deputy-sheriff that there are debts which are subject to attachment and are owing or accruing from a third person to the judgment debtor, the deputy-sheriff may, if requested by the judgment creditor, attach those debts and thereafter shall serve notice on the third person (hereinafter called “the garnishee”) requiring payment by him to the deputy-sheriff of so much of the debt as may be sufficient to satisfy the writ.

(2) If the garnishee pays over the debt as required under sub-rule (1), the deputy-sheriff shall give a receipt to the garnishee which constitutes a

discharge to the extent of the portion of the attached debt held by the garnishee of the debt attached.

(3) If the garnishee refuses, neglects or fails to comply with the notice given under sub-rule (1), the deputy-sheriff shall without delay notify the judgment creditor and the judgment creditor may by notice served on all the parties call on the garnishee to appear before the court to show cause why he should not pay to the deputy-sheriff the debt due or so much thereof as may be sufficient to satisfy the writ.

(4) If the garnishee does not dispute the debt due or claimed to be due from him to the party against whom execution is issued or fails to appear to answer to the notice, the court may accordingly order execution to issue without any previous writ or process for the amount due from that garnishee or so much of the amount as may be sufficient to satisfy the writ.

(5) 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 liability is not admitted, the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in a similar manner as an issue or question in an action may be tried or determined or the court may make such other order in the circumstances as may be just.

(6) Nothing in these rules as to the attachment of debts in the hands of a garnishee affects a cession, preference or retention claimed by any third person in respect of those debts.

(7) The costs connected with an application for the attachment of debts and the proceedings arising from or incidental thereto are in the discretion of the court.

(8) Where the deputy-sheriff is of the opinion that an application to the court or an order with respect to a garnishee will probably cost more than the amount to be recovered, he may, after attachment and with the judgment creditor's consent, sell the debts by auction in the same way as any other movable property or may cede the debts at the nominal amount thereof of the execution creditor.

(9) A person who has paid the amount due, including all costs and other incidental expenses, under and in respect of a writ of execution is entitled

to a withdrawal of the writ.

Conditions precedent to execution against immovable property and transfer of judgments

Rule 164

(1) The Registrar may not issue out a writ of execution against the immovable property of an execution debtor or of any other person unless:

(a) a return has been made of any process which may have been issued against the movable property of the execution debtor from which it appears that such execution debtor or person has insufficient movable property to satisfy the writ; and

(b) subject to sub-rule (2), the immovable property has, on application made to the court by the execution creditor, been declared to be specially executable.

(2) If the immovable property sought to be attached is the primary home of the execution debtor or is leased to a third party as a home, the court may not declare that property to be specially executable unless:

(a) the execution creditor has by means of personal service effected by the deputy-sheriff given notice on **Form "7"** of the Second Schedule hereto, to the execution debtor that an application will be made to the court for an order declaring the property executable and calling on the execution debtor to provide reasons to the court why such an order should not be granted;

(b) the execution creditor has caused the notice referred to in paragraph (a) to be served personally on any lessee of the property so sought to be declared executable; and

(c) the court so orders, having considered all the relevant circumstances with specific reference to less drastic alternative measures than sale in execution of the primary home under attachment, which measures may include

attachment of an alternative immovable property to the immovable property serving as the primary home of the execution debtor or any third-party making claim thereto.

(3) The deputy-sheriff shall file with the Registrar a return referred to in sub-rule (1)(a) together with a copy of the writ under which it was issued.

(4) The execution creditor shall make an application in terms of sub-rule (1)(b) within thirty days from the date on which:

(a) the return referred to in sub-rule (1)(a) has been filed by the deputy-sheriff in terms of sub-rule (3); or

(b) if the application as provided for in sub-rule (1)(b) has been made and that application is dismissed by the court, the date on which the application is dismissed by the court.

(5) A further application may not be made in respect of the same immovable property which previously formed the subject matter of any earlier application made in terms of sub-rule (1)(b) or (4)(b), unless the immovable property which previously formed the subject matter of the application is no longer the primary home of the execution debtor or is no longer leased to a third party as a home.

(6) An execution creditor who fails to apply to the court as provided for in sub-rule (1)(b) or (4)(b) and who wishes to enforce such judgment by way of an order for payment in instalments or by way of an emolument attachment order, shall transfer the judgment to the Subordinate Court for the district in which the execution debtor resides or conducts business or is employed and for that purpose comply with the provisions of the relevant statute on enforcement of judgments.

(7) If, within the time provided for in sub-rule (4), a party in whose favour judgment has been granted fails to:

(a) submit to the Registrar, for issuance of a writ as provided for in rule 160(1) or any further writ as provided for by that rule;

(b) apply to the court as provided for in sub-rule (1)(b); or

(c) comply with the provisions of sub-rule (6), the Registrar shall transfer such judgment to the Subordinate Court for the district in which the person against whom such judgment was granted resides, conducts business or is employed.

(8) When transferring a matter to a Subordinate Court under sub-rule (7), the Registrar shall:

(a) submit to the clerk of court a certified copy of -

(i) the judgment or order issued against the judgment debtor;

(ii) duly taxed bill of costs; and

(iii) the writ of execution which accompanied the return provided for in sub-rule (1)(a); and

(b) notify the execution creditor in writing that the judgment has been transferred.

(9) On receipt by the clerk of a Subordinate Court of the documents referred to in sub-rule (8), the provisions of the statute on enforcement of judgments in the Subordinate Court do apply to the transferred judgment and the execution creditor shall comply with those provisions, except that the provisions of such statute do not apply to any return issued in terms of sub-rule (1)(a).

Execution against immovable property

Rule 165

(1) A writ of execution against immovable property shall contain a full description of the nature, situation and address of the immovable property to enable it to be traced and identified by the deputy-sheriff and it shall be accompanied by sufficient information to enable the deputy-sheriff to give effect to sub-rule (3) hereof.

(2) An attachment shall be made by the deputy-sheriff of the district in which the property is situated or the deputy-sheriff of the district in which the office of the land Registrar or other officer charged with the registration of that property is situated. The writ of attachment shall be in accordance with **Form "8"** of the Second Schedule hereto.

(3) The mode of attachment of immovable property shall be by notice in writing by the deputy-sheriff served upon the owner thereof, and upon the land Registrar or other officer charged with the registration of such immovable property and, if the property is in occupation of some person other than the owner, also upon such occupier. Any such notice as aforesaid shall be served to the person intended to be served.

(4) After attachment, the deputy-sheriff of the district in which the attached property is situated shall conduct the sale in execution and the sale shall take place in that district, except that the Registrar in the first instance and subject to rule 166(1) may on good cause shown authorise the sale to be conducted elsewhere and by another deputy-sheriff.

(5) Upon receipt of written instructions from the execution creditor to proceed with such sale the deputy-sheriff shall ascertain and record what bonds or other encumbrances are registered against the property together with the names and addresses of the person or persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(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 or such other method of communication that will expedite service, upon the preferent creditor, if his address is known, and if the property is rateable, upon the local authority concerned calling on either or all of 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 deputy-sheriff that the preferent creditor or local authority concerned has so stipulated or agreed; or

(b) the deputy-sheriff is satisfied that it is impossible to notify any preferent creditor in terms of this rule of the proposed sale, or the preferent creditor or local authority concerned, having been duly 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) of this sub-rule within the time stated in such notice.

(7) The deputy-sheriff shall, by notice served on any person require that person to deliver to him within three days of receipt of notice, all documents in his possession or under his control relating to the debtor's title to any immovable property attached under this rule.

Procedure for sale of immovable property

Rule 166

(1) The Registrar shall open and keep a trust account with a banking institution in which monies received in public auctions of the immovable property, be it as purchase price or deputy sheriffs' commission, shall be deposited and kept and subsequently distributed in terms of the distribution plan and account after transfer of the property into the names of the purchaser has been completed. The Registrar shall operate the account and effect the necessary payments.

(2) The deputy-sheriff shall appoint a day and place for the sale of the property, such day being, except by special leave of the court, not less than one month after service of the notice of attachment.

(3) The execution creditor shall, after consultation with the deputy-sheriff:

(a) prepare a notice of sale containing a short description of the property, where situated 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 deputy-sheriff, and he shall furnish the deputy-sheriff, with as many copies of the notice as the latter may require; and

(b) if the site of such property is under the control of a land allocating authority, this fact shall be stated in the notice

and the name of such land allocating authority shall be stated.

(4) The deputy-sheriff shall indicate a suitable newspaper circulating in the district in which the property is situated and require the execution creditor to:

(a) publish the notice referred to in sub-rule (2)(a) in the said newspaper and in the Government Gazette, not less than fourteen days before the date appointed for the sale;

(b) furnish the deputy-sheriff not later than the day prior to the date of the sale, with a copy of the said newspaper and with the number of the Gazette in which the notice is published; and

(c) if the site on which the property is situated is under the control of a land allocating authority, the notice referred to in sub-rule (3) shall be in both English and the Sesotho languages.

(5) However, a new notice shall be published in respect of each subsequent sale re-scheduled after the initial publication.

(6) Not less than ten days prior to the date of the sale, the deputy-sheriff shall forward by registered post or any other means of communication which may expedite service a copy of the notice of sale referred to in sub-rule (2)(a) to every execution creditor who has caused the said immovable property to be attached and to every mortgagee thereof whose address is known. If the site on which the property is situated is under the control of a land allocating authority, notice shall also be transmitted to such authority.

(7) Not less than ten days prior to the date of sale, the deputy-sheriff shall:

(a) affix one copy of the notice on the notice board of the relevant Division of the High Court, or the Subordinate Court of the district in which the property is situated, or

(b) affix one copy on a visible structure at or as near as may be possible to the place where the property to be sold is

situated if such sale does not take place at the court house.

(8) The execution creditor shall, not less than thirty days before the date of the sale:

(a) in consultation with the deputy-sheriff prepare the conditions of sale in accordance with **Form "9"** of the Second Schedule hereto or as approved by the Registrar;

(b) submit the conditions of sale to the deputy-sheriff to confirm them; and

(c) thereafter supply the deputy-sheriff with two copies of the conditions of sale, one of which shall lie for inspection by interested parties at the office of the Registrar.

(9) Any interested party may, not less than ten days prior to the appointed date of sale, upon three days' notice to the execution creditor and the bondholders, approach the Registrar for a modification of such conditions of sale and the Registrar's decision shall be final.

(10) The deputy-sheriff shall sell by public auction, any immovable property attached in execution and shall be entitled to ten per cent (10%) of the purchase price as commission which shall be paid by the purchaser on the day of the sale and this amount shall be paid on top of the purchase price.

(11) After sale, the deputy-sheriff shall prepare a certificate of sale in accordance with **Form "10"** of the Second Schedule hereto.

(12) The sale of the property in execution shall, subject to rule 165(6), be with a reserve price, which shall be a fair market value of the property to be sold in execution and be on the conditions stipulated under sub-rules (7) and (8) and the property shall be sold to the highest bidder, except that if a primary home of a person is being sold in execution, the highest bid shall:

(a) not be less than 75% of the valuation of the property done in terms of the Valuation and Ratings Act No. 10 of 1980; and
(b) In the absence of the valuation made in terms of the Val-

uation and Ratings Act, 1980, not be less than 75% of a sworn valuation.

(13) 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 deputy-sheriff after seven days' notice to the purchaser and the property may be put up for sale again.

(14) The purchaser is responsible for any loss sustained as a result of his default under sub-rule (13) and any aggrieved creditor whose name appears on the distribution account, may on application to the Judge who summarily cancelled the sale, recover the loss from the purchaser.

(15) Any monies paid by the purchaser including the ten per cent paid to the deputy-sheriff as commission and a ten per cent deposit shall be summarily forfeited by the purchaser upon cancellation of the sale in terms of subrule (13), if such cancellation is as the result of the purchaser's default or failure to comply with the conditions of sale.

(16) If an application has been made under sub-rule (13), the deputy-sheriff shall prepare a written report on the circumstances surrounding the cancellation of the sale and:

(a) in writing notify the purchaser that the report will be placed before the Judge who is hearing the application; and

(b) place the written report before the Judge to assist the Judge in determining the application.

(17) On receipt of the report referred to in sub-rule (16), the Judge may summarily pronounce judgment based on the written report of the deputy-sheriff.

(18) If the purchaser is already in possession of the property, the deputy-sheriff shall, in his report in terms of sub-rule (16) include a prayer for an order ejecting the purchaser or any other person claiming to hold under him from the property.

Transfer of property and distribution of proceeds from sale

Rule 167

(1) The purchaser shall appoint a legal practitioner, notary public or conveyancer to execute the transfer of property into his names.

(2) The deputy-sheriff shall give transfer to the purchaser against payment of the purchase price and upon performance of the conditions of sale and may for that purpose engage the purchaser's legal practitioner, notary public or conveyancer to do all that is necessary to effect registration of transfer into the names of the purchaser, and anything so done by the deputy-sheriff for that purpose shall be as valid and effectual as if he were the owner of the property.

(3) The Registrar shall not pay out to any creditor any portion of the purchase price until transfer has been given to the purchaser, but upon receipt thereof, the deputy-sheriff shall forthwith pay such monies to the Registrar of the Court.

(4) The deputy-sheriff shall as soon as possible after the sale:

(a) prepare a plan of distribution of the proceeds showing the order of preference, as provided in sub-rule (5);

(b) forward a copy of such plan to the Registrar for confirmation;

(c) immediately thereafter give notice by registered post or by any means of communication which may expedite service 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 in the notice, at the office of the Registrar; and

(d) and unless all the parties have signified in writing their agreement to the plan, such plan shall so lie for inspection at the office of the Registrar.

(5) After deduction from the proceeds of sale of the costs and charges of execution, the order of preference shall be as follows:

(a) the claims of preferent creditors ranking in priority in their legal order of preference; and

(b) thereafter the claims of other creditors whose writs have been lodged with the deputy-sheriff in the order of preference as appearing in the relevant provisions of the Insolvency Act No. 9 of 2022 or any other insolvency law in force.

(6) Any interested person objecting to the plan referred to in sub-rule (4) shall, within five days of the expiry of the period and time referred to in that sub-rule, give notice in writing to the Registrar and all other interested parties of the particulars of his objection and shall bring such objection before a Judge for review on ten days' notice to the Registrar and all interested persons.

(7) The Judge 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 just.

(8) If no objection is lodged to the plan referred to in sub-rule (4) or if all interested parties signify their agreement to such plan or if the plan is confirmed or amended on review, the Registrar shall, on production of a certificate from the legal practitioner, notary public or conveyancer that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.

Superannuation

Rule 168

(1) After the expiration of three years from the day on which a judgment or order has been pronounced, no writ of execution may be issued pursuant to such judgment or order unless:

(a) the debtor consents to the issuance of the writ of execution; or

(b) the judgment is revived by the court on notice to the judgment debtor

and in any application for revival of any judgment, the court shall not require

new proof of the debt on which the judgment is based.

(2) Where a judgment has been given for periodical payments the three years referred to in sub-rule (1) herein shall begin to run, in respect of any payment, from the due date of such payment.

(3) Once a writ of execution of a judgment has been issued, it remains in force and may be executed at any time without being renewed until the judgment has been satisfied in full.

(4) Nothing in this rule shall be interpreted as in any way affecting laws relating to prescription.

Interpleader

Rule 169

(1) Where any person, (hereinafter called “the applicant”):

(a) does not have beneficial interest in respect of property in his possession or under his control; and

(b) is sued or expects to be sued in respect of that property or its proceeds; or

(c) receives a claim in respect of that property or its proceeds, by or from two or more persons in this rule called “claimants”, the applicant may apply to the court for interpleader relief.

(2) Where there are conflicting claims as regards property attached in execution, the sheriff or the deputy-sheriff shall have the rights of an applicant and the execution creditor involved shall have the rights of a claimant.

(3) Where sub-rule (1) applies, the applicant may deliver notice called an “interpleader notice” to the claimants.

(4) Where the claims relate to money the applicant shall be required, on delivering the notice referred to in sub-rule (3) to pay the money to the Registrar who shall hold it until the conflicting claims have been decided, and the

notice referred to shall state that the money has been so paid.

(5) Where the claims relate to a thing capable of being delivered, the applicant shall tender the subject matter to the Registrar when delivering the interpleader notice or take such steps as are necessary and required to secure the availability of the thing in question as the Registrar may direct. The notice shall state whether the thing has been delivered to the Registrar or describe what steps had been taken with regard to securing its availability.

(6) 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 and to do all things necessary to effect transfer of such immovable property in accordance with an order which the court may make or as to any agreement between the claimants. The interpleader notice shall state that the applicant has complied with the terms of this paragraph.

(7) The interpleader notice shall:

(a) state the nature of the liability and the nature of the property claimed which is the subject matter of the dispute;

(b) call upon the claimants to give notice, within five days of service of the interpleader notice on them, of their intention to deliver particulars of claim in regard to the subject matter of the dispute and in such notice to appoint an address within 10 kilometres from the office of the Registrar at which they will accept notice and service of all documents;

(c) call on the claimants within the time stated in the notice, not being less than fourteen days from the date of service of the notice, to deliver particulars of their claim with all documentary evidence and exhibits relied upon; and

(d) state that on a further date, not being less than fifteen 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 on which hearing date the claimants are also called upon to appear in support of their claims.

(8) There shall be delivered together with the interpleader notice on affidavit by the applicant stating that:

(a) he claims no interest in the subject matter of the 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.

(9) If a claimant to whom an interpleader notice and affidavit have been delivered:

(a) fails to deliver particulars of his claim with all documents and exhibits to be relied upon within the time stated; or

(b) having delivered such particulars, documents and exhibits, 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.

(10) If a claimant delivers particulars of his claim with all necessary annexures and appears before the court, the court may:

(a) there and then adjudicate on each claim after hearing such evidence as it deems just;

(b) order that a claimant be made a respondent in an action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant;

(c) order that an 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 applicant and which the respondent; or

(d) if it considers that the matter is not a proper matter for relief by way of interpleader notice, dismiss the application; and

(e) make such order as to costs and the expenses (if any) incurred by the applicant under sub-rule (5) as the court considers fair and reasonable.

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

PART 20

APPEALS AND REVIEWS

Appeals from Subordinate Courts and tribunals

Rule 170

(1) An appeal against the decision of a Subordinate Court or tribunal to the High Court shall be prosecuted within sixty days after the noting of the appeal and unless so prosecuted it is without further notice, considered to have lapsed.

(2) The prosecution of an appeal automatically operates as the prosecution of any cross-appeal which has been duly noted.

(3) Where a cross-appeal has been noted and the appeal lapsed, the cross-appeal also lapses unless application for a date of hearing for the cross-appeal is made to the Registrar within twenty days after the date of the lapse of the appeal and served on any interested parties.

(4) An interested party served with an application under sub-rule (3) and who desires to oppose the application shall within twenty days of that service deliver a notice to oppose the application and at the same time make available to the Registrar in writing his full residential and postal addresses and if represented, the address of his legal representatives which shall be within 10 kilometres from the office of the Registrar.

(5) The appellant shall, within thirty days of noting an appeal, request from the Registrar in writing and on notice to all other parties for the assignment of a date for the hearing of the appeal and shall at the same time make available to the Registrar in writing his full residential and postal addresses and if represented, the address of his legal representatives which shall be within 10 kilometres from the office of the Registrar.

(6) A party who receives a notice under sub-rule (5) and desires to oppose the appeal, shall file a notice to oppose within twenty days after receipt of the notice of appeal and shall at the same time make available to the Registrar in writing his full residential and postal addresses and if represented, the address of his legal representatives which shall be within 10 kilometres from the office

of the Registrar.

(7) If the appellant fails to apply for a date of hearing within thirty days as provided for in sub-rule (5), the respondent may at any time before the expiration of sixty days referred to in sub-rule (1), request a date of hearing in like manner.

(8) When the Registrar receives a request from either party in terms of sub-rules (5) or (7), the appeal is considered to have been duly prosecuted.

(9) On receipt of the request for assignment of a date, the Registrar shall forthwith assign a date of hearing, which date shall be at least forty days after the receipt of the application for the assignment of a date of hearing, unless all parties consent in writing to an earlier date but the Registrar may not assign a date of hearing until the provisions of sub-rule (12) have been complied with.

(10) The applicant shall without delay, deliver a notice of set down and in writing give notice thereof to the clerk of court from which the appeal emanated and to all other interested parties, and he shall file same with the office of the Registrar.

(11) A notice of set down of a pending appeal operates automatically as a set down of any cross-appeal and vice versa.

(12) The appellant shall simultaneously with delivery of the application for a date of hearing of the appeal referred to in sub-rule (5):

(a) obtain a copy of the record from the clerk of the Subordinate Court or chairman of a tribunal in question and deliver copies of the record to the respondent and the Registrar, which record shall comply with the requirements provided for in rule 171;

(b) where the same legal representative represents more than one respondent, it shall suffice for one copy of the record to be served on such legal representative; and

(c) if the appeal is to be heard by more than one Judge, the appellant shall lodge a further copy of the record for each additional Judge.

(13) Despite this rule, the Chief Justice may, after consultation with the parties concerned, direct that an appeal be dealt with on an urgent basis.

Contents of record

Rule 171

(1) The record shall contain a correct and complete copy of all matters and documents with translations necessary for the hearing of the appeal together with an index and pagination thereof.

(2) The record shall have the following:

(a) a judgment or ruling given by the court or tribunal;

(b) evidence given or considered to have been given in court or tribunal;

(c) in the case of an application, affidavits and other supporting documents filed in the case;

(d) objection made to any evidence received or tendered;

(e) the proceedings of the court or tribunal generally including an inspection in loco and a matter demonstrated by a witness in court; and

(f) any other portion of the proceedings which the court may specifically order to be recorded.

(3) The copies of the record shall be in English and clearly typed on A4 standard paper in double-spacing on one side of the paper only.

(4) Legible documents that were typed or printed in the original, including all process in the lower court forming part of the record on appeal, and documents such as typed or printed contracts and cheques (whether hand-written, typed or printed) shall not be retyped and a clear photocopy shall be provided instead.

(5) The record delivered shall be divided into separate and conve-

niently sized volumes, containing not more than 100 pages per volume and each volume shall be certified as complete and correct by the clerk of the court aquo or secretary of the tribunal.

(6) The pages shall be numbered clearly and consecutively, and every tenth line on each page shall be numbered and the pagination used in the lower court be retained where possible.

(7) At the top of each page containing evidence, the name of the witness and, at the top of each page containing exhibits, the number of the exhibit shall appear.

(8) All references in the appeal record to page numbers of exhibits in the original record shall be transposed to reflect the page numbers of such exhibit in the appeal record.

(9) The record shall be divided into separate conveniently sized volumes of approximately hundred pages each.

(10) The record shall be securely bound in suitable covers disclosing:

(a) the case number;

(b) the names of the parties;

(c) the volume number and the numbers of the pages contained in that volume;

(d) the total number of volumes in the record;

(e) the lower court from where the case originates; and

(f) the names and addresses of all the parties for service.

(11) The volume number and the numbers of the pages contained in a volume shall also appear on the upper third of the spine of the volume.

(12) Each volume shall be so bound that when opened it will lie flat without restraint and when being so opened and thereafter repeatedly closed the

binding shall not fail, except that plastic covers with holes on the binding edge with spiral plastic rings or metal rings which bind the contents may not be used under any circumstances.

(13) Where the record consists of more than one volume, the following documents shall be contained in a separate volume:

(a) the judgment and order appealed against;

(b) the judgment and order giving leave to appeal; and

(c) the notice of appeal.

(14) The record, shall in the first or in a separate volume, contain a correct and complete index of the evidence, documents and exhibits in the case, the nature of the documents and exhibits being briefly stated therein.

(15) Unless it is essential for the determination of the appeal and the parties agree in writing, the record shall not contain:

(a) argument and opening addresses;

(b) formal documents;

(c) discovery affidavits and similar documents;

(d) identical duplicates of any document;

(e) documents not proved or admitted;

(f) subpoenas; or

(g) contents of postponements.

(16) A separate core bundle of documents shall:

(a) be prepared if to do so is appropriate to the appeal; and

(b) consist of the material documents of the case in a proper, preferably chronological sequence.

(17) Documents contained in the core bundle shall be omitted from the record, but the record shall indicate where each such document is to be found in the core bundle.

(18) 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 the copies and in that case a written consent setting out what documents or portions thereof have been omitted and signed by the parties or on behalf of the parties by their legal representatives shall be filed with the Registrar when the copies are lodged, but the court hearing the appeal may at all times refer to the original record and take cognisance of all matters appearing therein.

(19) Compliance with sub-rules (3) to (18) may be excused in relation to litigants who appear in person and do not have resources to enable compliance therewith.

Heads of argument and citation of foreign authority

Rule 172

(1) The appellant shall, not less than fifteen days before the appeal is heard, deliver heads of arguments, which he intends to argue on appeal as well as a list of all authorities to be tendered in support of each point.

(2) The respondent shall, not less than ten days before the appeal is heard, likewise deliver heads of arguments, which he intends to argue on appeal as well as a list of all the authorities to be tendered in support of each point.

(3) The heads of argument must strictly comply with rule 155.

Appeals to the Court of Appeal

Rule 173

(1) Notice of appeal to the Court of Appeal against a judgment or order of the High Court shall be filed in accordance with the rules of the Court of Appeal.

(2) The noting of an appeal to the Court of Appeal does not operate

as a stay of execution of the judgment appealed from.

Leave to appeal

Rule 174

(1) When leave to appeal from a judgment or order of the court is required, the person seeking leave to appeal shall, on a statement of the grounds for leave to appeal, request for leave to appeal at the time of the judgment or order.

(2) When leave to appeal from a judgment or order of the court is required and it has not been requested at the time of the judgment or order, an application for such leave shall be made together with the grounds for leave to appeal within fifteen days after the date of the order or judgment appealed against.

(3) If the reasons for the court's judgment or order are given on a later date and the court may, on good cause shown, extend the period of fifteen days.

(4) If when giving an order the court declares that the reasons for the order will be furnished to any of the parties on request, that request shall be delivered to the Registrar within ten days after the date of the order.

Reviews

Rule 175

(1) Notice of a review of the decision of a Subordinate Court, court-martial, tribunal or any statutory body shall, unless otherwise provided in an applicable law, be delivered within thirty days after the date of such decision, but where the reasons for the decision are given on a later date, the notice may be delivered within thirty days of the giving of the reasons.

(2) The time limits set out in sub-rule (1) apply only where the applicable legislation does not prescribe time limits.

(3) The clerk of court or any secretary or person authorised so to do shall, within twenty days after a notice of application for review has been filed,

deliver to the Registrar a hard copy of the record of proceedings if such record exists and lodge a further copy of the record for each additional Judge.

(4) The applicant shall, within twenty-five days of the delivery of the record of proceedings, request from the Registrar in writing and with notice to all other parties for the assignment of a date for the hearing of the application for review and shall at the same time make available to the Registrar in writing his full residential and postal addresses and, if represented, the address of his legal representative.

(5) A party that receives the notice referred to sub-rule (4) and desires to oppose the application for review, shall file a notice to oppose within twenty days and shall at the same time make available to the Registrar in writing, his full residential and postal address and if represented, the address of his legal representative.

(6) The respondent may, in the absence of an application referred to in sub-rule (3), at any time after the expiration of the period mentioned in that sub-rule but within thirty days after the delivery of the record of proceedings, apply for a date of hearing in like manner and with notice to all other parties.

(7) A respondent who makes an application under sub-rule (6) shall make available to the Registrar in writing his full residential and postal addresses and if represented, the address of his legal representative.

(8) On the expiry of the period mentioned in sub-rule (6) and unless a hearing date has been applied for within the period stated in that sub-rule, the application for review is considered to have lapsed.

(9) The Registrar may not set down a review under this rule at the instance of a legal representative unless that legal representative has filed with the Registrar a power of attorney authorising him to file the review and that power of attorney shall be filed together with the application for a date of hearing.

PART 21

NON-COMPLIANCE AND EXCUSE FROM COMPLIANCE WITH RULES OF COURT, PRACTICE DIRECTIONS OR COURT ORDERS

Sanctions for failure to comply with rules, practice direction, court order or direction

Rule 176

(1) If a party, without reasonable explanation, fails to:

(a) attend a case planning conference, case management conference, a status hearing, an additional case management conference or a pre-trial conference;

(b) participate in the creation of a case plan, a joint case management report or parties' proposed pre-trial order;

(c) comply with a case plan order, case management order, a status hearing order or the presiding Judge's pre-trial order;

(d) participate in good faith in a case planning, case management or pre-trial process;

(e) comply with a case plan order or any direction issued by the presiding Judge; or

(f) comply with deadlines set by any order of court, the Judge may enter any order that is just and fair in the circumstances including any of the orders set out in subrule (2).

(2) Without derogating from any power of the court under these rules, the court may:

(a) refuse to allow the non-compliant party to support or oppose any claims or defences;

(b) strike out pleadings or part thereof, including any defence or objection;

(c) dismiss the claim or enter a final judgment; or

(d) direct the non-compliant party or his legal representative to pay the opposing party's costs occasioned by the non-compliance.

Sanctions for non-compliance in absence of defaulting party obtaining relief, relaxation, extension or condonation

Rule 177

(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect and consequences for such failure follow, unless the party in default applies for and is granted relaxation, extension of time or relief from sanction.

(2) Where a rule, practice direction or court order requires a party to do something within a specified time or specifies the consequences of failure to comply, the time for doing the act in question may not be extended by agreement between the parties.

(3) Where a party fails to deliver a pleading within the time stated in the case plan order or within any extended time allowed by the Judge, that party is in default of filing such pleading and is by that fact barred.

Extension of time, relaxation or condonation

Rule 178

(1) The presiding Judge may, on application on notice to all the parties and on good cause shown, make an order extending or shortening a time prescribed by these rules for doing an act or taking a step in connection with proceedings of any nature whatsoever, on such terms as the presiding Judge deems just and appropriate.

(2) An extension of time may be ordered although the application

is made before the expiry of the time prescribed or fixed and the presiding Judge ordering the extension may make any order he considers suitable as to the recalling, varying or cancelling of the consequences of default, whether such consequences flow from the terms of any order or from these rules.

Relief from sanctions or adverse consequences

Rule 179

(1) On application for relief from a sanction imposed or adverse consequence arising from a failure to comply with a rule, practice direction or court order, the court shall consider all the circumstances, including-:

(a) whether the application for relief has been made promptly;

(b) whether the failure to comply is intentional;

(c) whether there is sufficient explanation for the failure;

(d) the extent to which the party in default has complied with other rules, practice directions or court orders;

(e) whether the failure to comply is caused by the party or by his legal representative;

(f) whether the trial date or the likely trial date can still be met if relief is granted;

(g) the effect which the failure to comply has or is likely to have on each party; and

(h) the effect which the granting of relief would have on each party and the interests of the administration of justice.

(2) An application for relief shall be supported by evidence.

(3) The Judge may, on good cause shown, condone non-compliance with these rules, practice direction or court order.

Excused from compliance with rules

Rule 180

(1) The court may, on good cause shown:

(a) excuse the parties from compliance with any of the provisions of these rules; and

(b) give such directions in matters of practice and procedure as it may consider just and expedient.

Dismissal for want of prosecution

Rule 181

(1) Where in any case no step has been taken by either party for three months or more, a party may apply for the dismissal of the action or, failing such application by a party, the Registrar shall list the matter before the presiding Judge for dismissal for want of prosecution.

(2) The Registrar shall notify the parties by way of a dismissal roll which shall be published on the notice boards in the court premises and/or through electronic means.

(3) On the case being called the Judge shall dismiss the action with costs unless sufficient reason is shown to the contrary.

(4) If the Judge decides not to dismiss the case, he shall impose conditions for the future conduct of the proceedings and give directions for the expeditious disposal of the case.

(5) Where at a roll-call or status hearing initiated by the Judge on notice to the parties in terms of rule 47, it appears that no step has been taken by either party for three months or more, the Judge may dismiss the main claim and/or any counterclaim with costs.

PART 22

TARIFFS AND TAXATION

Tariff of court fees

Rule 182

(1) The court fees payable in respect of the court are contained in Annexure D of the Third Schedule hereto and shall be paid to the Registrar.

(2) No court fees shall be payable by any party who has been given leave to appear as a poor litigant in terms of rule 36 unless the court otherwise orders.

Provided that if the pauper is awarded costs in an action or on appeal the provisions of rule 36 (3) (f) shall apply.

(3) Court fees shall be paid by means of revenue stamps affixed to the document unless another method is provided in the Third Schedule hereto.

(4) Sub-rule (3) is subject to the provisions of Stamp Duties Act No. 5 of 1972 and any amendments or substitutions thereof.

(5) When any document not requiring to be stamped is inadvertently stamped or when stamps in excess of the value required are inadvertently affixed or such document is not presented to or is not accepted for filing by the Registrar, the document may at the instance of the party by whom it was so stamped, be cancelled and substituted by one bearing the correct value of stamps.

(6) Refunds to the value of the stamps affixed to any document cancelled under the provisions of sub-rule (5) may be made by the Registrar to the party responsible for the stamping thereof provided that:

(a) a request is made to Registrar within thirty days of the date of cancellation of such document; and

(b) the request is accompanied by the cancelled document which shall be attached by the Registrar to the voucher in support of the refund and shall thenceforth be the

property of the Government of Lesotho.

Tariff of deputy-sheriff

Rule 183

(1) The fees and charges contained to be allowed to the sheriff or deputy-sheriffs in respect of executing the process of the court shall be as set forth in Annexure E of the Third Schedule hereto.

(2) Despite what is contained in sub-rule (1) above, no fees may be charged for the service of process in respect of rule 36 except that necessary disbursements for the purpose of such service may be recovered.

(3) Where there are many ways 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 and so long as the other way is reasonable and fair.

(4) Where a dispute arises as to the validity or amount of any fees or charges or where necessary work is done and necessary expenditure is incurred but for which no provision is made in Annexure E, the matter shall be determined by the taxing master of the court.

Tariff of fees for attorneys

Rule 184

(1) It shall be competent for the 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 scales of fees fixed by the appended tariff.

(2) The taxing master shall not tax costs in instances where some other official is empowered by statute to do so.

(3) At the taxation of any bills of costs, the taxing master may call for such books, documents, papers or accounts or any other form of proof as in

his opinion, are necessary to enable him properly to determine any matter arising upon such taxation.

(4) The taxing master shall:

(a) allow such costs, charges, expenses, and disbursements as, in his opinion appear to him to have been proper or necessary for the attainment of justice or for defending the rights of any party;

(b) save as against the party who has incurred the same, no costs shall be allowed which, in the opinion of the taxing master, were incurred through over caution, negligence or by mistake or by unusual disbursements.

(5) 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 seven days' notice as to the time and place of such taxation and is notified that he is entitled to be present thereat except that such notice shall not be necessary in the following instances:

(a) if the person liable to pay costs has consented in writing to taxation in his absence;

(b) for the taxation of writ and post-writ bills.

(6) The tariff of fees for attorneys where costs have been awarded to a party on a party and party basis shall be as set out in **Annexure F** of the Third Schedule hereto. The taxing master shall be entitled in his discretion to depart from any of the provisions of the tariff in exceptional circumstances, where adherence to such provisions would be inequitable.

(7) Where:

(a) the taxing master considers there has been unnecessary copying of documents, he shall not allow the costs of such unnecessary copies;

(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 of a trial or other proceedings, unless the court otherwise directs.

(8) 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.

(9) A folio, as referred to in the tariff shall contain 100 words or part thereof.

Tariff of fees for advocates

Rule 185

(1) The tariff of fees for advocates or instructed legal representatives when costs are awarded as between party and party are as set out in Annexure G of the Third Schedule hereto.

(2) Where the tariff of fees provides for varying amounts, the taxing master may award such amount as he considers reasonable and fair in the circumstances.

(3) The attorney who claims fees disbursed to advocates shall produce to the taxing master the marked brief of the advocate in each case.

(4) Fees of only one advocate shall be allowed unless the court otherwise directs.

(5) Where a case is settled before the hearing in court on the basis that one party shall pay the costs, the fees for the advocate appearing for the party in whose favour costs are to be paid shall not be allowed unless the advocate has been briefed not more than twenty-one days before the date of hearing.

(6) Where the court awards the costs of two advocates in any matter the fees allowed for the junior advocate on a party and party basis shall not exceed one-half of the fees allowed for the senior advocate.

(7) Where costs are awarded to a party on an attorney and client basis, the taxing master shall allow such fees of an advocate as he considers rea-

sonable having regard to all the circumstances including the fee the advocate has marked on his brief.

Application in respect of review of taxation of costs

Rule 186

(1) A party dissatisfied with the ruling of the taxing master as to any item or part thereof which was objected to or disallowed *mero motu* by the taxing master may, within fourteen days after the allocatur is issued, require the taxing master to state a case for the decision before a Judge.

(2) The case referred to in sub-rule (1) shall set out each item or part thereof together with the grounds of objection advanced at the taxation and shall include any finding of fact by the taxing master.

(3) A case may not be stated under sub-rule (1) where the amount or the total of the amounts which the taxing master has disallowed and which the party dissatisfied seeks to have allowed or disallowed respectively is less than M5,000.00 unless the taxing master consents to the stating of the case.

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

(5) On receipt of the contentions referred to in sub-rule (4), the taxing master shall compile his report and shall supply a copy thereof to each of the parties who may, within ten days after receipt of that report, submit their further contentions if any, in writing to the taxing master.

(6) On receipt of the parties' contentions in terms of sub-rule (5), the taxing master shall without delay lay the case together with the contentions of the parties and his report and any further contentions thereon before a Judge.

(7) On receipt of a case submitted to him under sub-rule (6), the Judge may decide the matter -

(a) on the case and contentions so submitted together with

any further information which he may require from the taxing master; or

(b) after a hearing in his chambers if he considers it appropriate.

(8) On receipt of the submissions referred to in sub-rule (4), the taxing master may, instead of compiling a report as contemplated in sub-rule (5) refer the case for decision to the court and any further information to be supplied by the taxing master to the Judge and such information shall also be supplied to the parties who may within fourteen days after receipt thereof submit contentions in writing thereon to the taxing master.

(9) On receipt of the parties' contentions in terms of sub-rule (8), the taxing master shall without delay lay such further information together with any contentions of the parties before the Judge.

(10) The Judge deciding a case referred in terms of this rule may make such order as to costs of suit as he considers just and fair, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the Judge as to costs.

PART 23

MISCELLANEOUS AND GENERAL

Lapse of cases and inactive cases

Rule 187

(1) If an originating application in an action for payment of a debt is not served within three months of the date of issue or having been served the applicant has not within that time after service, taken further steps in the prosecution of the action the originating application lapses.

(2) Despite sub-rule (1), if the applicant or his attorney or his legal representative files an affidavit with the Registrar before the expiry of that period, setting out:

(a) that at the request of the respondent an extension of time in which to pay the debt claimed or any portion thereof has been granted by the respondent;

(b) that in terms of the agreement judgment cannot, except in cases of default, be sought within a period of three months from the issue of originating application; and

(c) the period of extension, the originating application does not lapse until six months after the expiry of the period of extension.

(3) Where there is no activity in a case filed in court for three months:

(a) after date of filing of the case;

(b) after the date of filing of any pleading, notice, request or other court document; or

(c) if the case has been allocated to a presiding Judge, from the time that any activity is to be carried out in terms of Part 7, that case is considered inactive.

(4) The Registrar shall, after consultation with the Chief Justice, allocate any inactive case that has not been allocated to a Judge.

(5) The Judge to whom an inactive case has been allocated in terms of sub-rule (4) shall deal with it as if the case had originally been allocated to him.

(6) The presiding Judge shall give notice on Form "11" of the Second Schedule hereto, to the parties or their legal representatives as appear in pleadings or other documents filed of record to appear before him on a date specified in the notice and the case shall be called on that day to be dealt with in the same way as in a status hearing in terms of rule 47.

(7) Where a party or his legal representatives appears on that day, the presiding Judge shall enquire as to why there is no activity on the case and if the presiding Judge is satisfied with the reason, he shall make such order that he may consider deem and just and give appropriate directions for the speedier conduct of the proceedings.

Dismissal of cases for lack of progress

Rule 188

(1) If the applicant thereafter does not prosecute the case with due dispatch, after appropriate directions by the Judge under rule 187(7), the court may, mero motu or on application, order that the case be dismissed or make such other order as it deems just.

(2) If the respondent does not conduct the defence with due dispatch, the court may, mero motu or on application, strike out the defence wholly or partly or make such other order it deems fit.

(3) In making a decision, the court should consider -

(a) sufficiency of any explanation or excuse offered for the delay;

(b) any prejudice to the opposing party caused by the delay.

Concurrent civil and criminal proceedings

Rule 189

(1) Where a respondent in civil proceedings also faces criminal proceedings in relation to the subject matter of the dispute, applies for a stay or adjournment, the court must balance the prejudice claimed by such party to be created by the continuation of the litigation against the interference which would be caused to the applicant's rights to have his case heard without delay.

(2) The kinds of prejudice that may arise are:

(a) the premature disclosure of the respondent's defence in the criminal proceedings;

(b) the possibility of interference with the respondent's witnesses prior to the commencement of the criminal proceedings;

(c) the effect of publicity given to the civil proceedings upon assessors in the criminal trial.

Translation of documents

Rule 190

(1) Where a document is in a language other than English in any proceedings, it shall be accompanied by a translation certified to be correct by a sworn translator before being admitted as evidence before the court.

(2) A translation so certified by a sworn translator shall be considered prima facie to be a correct translation and admissible as such on 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 because of the expense, inconvenience or delay involved, the court may, despite sub-rule (1), admit in evidence a translation certified to be correct by any person who the court considers competent to make such translation.

(4) Where a document in an official language other than English is produced in any proceedings, it shall be accompanied by fair translation certified to be correct by a legal practitioner or any person who the court considers competent to make that translation.

Interpretation of oral evidence into official language

Rule 191

(1) Where evidence in proceedings is given in a language other than in English, that evidence shall be interpreted into English by a competent interpreter, sworn to interpret faithfully and to the best of his ability.

(2) If such interpreter is not a sworn translator admitted as such by the court, he must before interpreting the evidence take an oath that he will faithfully and to the best of his ability interpret the evidence into English from the language in which the evidence is given.

(3) Before a person is employed as an interpreter, the court may, if in its opinion it is expedient to do so or if a party on reasonable grounds so desires, satisfy itself as to the competence and integrity of that person after hearing evidence, if the hearing of evidence is reasonable and practicable.

(4) Where the services of an interpreter are employed in any proceedings to interpret any language other than an official language of Lesotho, the costs of that interpretation shall be costs in the cause, unless the court orders otherwise.

(5) In cases where the interpretation of that other language other than an official language of Lesotho is requested by the legal representative of a party, such costs shall be at that party's expenses.

Sworn translators or interpreters

Rule 192

(1) Every interpreter shall upon entrance into office, in writing, take oath or make an affirmation subscribed by him before a judicial officer in the form set out in terms of **Form "12"** of the Second Schedule hereto.

(2) Whenever a casual interpreter is appointed to interpret in a particular case, he shall be required to take an oath or truly affirm before a Judge in terms of sub-rule (1) above.

(3) The fact that the oath has been taken or affirmation made by such casual interpreter shall be endorsed on the court record.

(4) Whenever a casual interpreter is employed on a daily basis for a certain period to interpret, it shall not be necessary to administer an oath to him in every case or to require him to affirm in every case but he shall be required to take an oath or truly affirm in writing, before a Judge that he will truly and correctly to the best of his ability interpret from the language he may be called upon to interpret in any proceedings in the High Court into English and vice versa for the period he is employed as a casual interpreter.

(5) Such oath or affirmation in terms of this rule shall be taken or made or administered in the manner prescribed for the taking or making or administration of an oath or affirmation.

Authentication of documents executed outside Lesotho for use within Lesotho

Rule 193

(1) In this rule unless the context indicates otherwise:

"document" means any deed, contract, power of attorney, an affidavit, a solemn or attested declaration or other writing; and

"authentication" means in relation to a document, the verification of any signature thereon.

(2) A document executed in any country outside Lesotho is considered to be sufficiently authenticated for the purpose of use in Lesotho if it is duly authenticated in that foreign country by:

(a) a government authority of that country charged with the authentication of documents under the laws of that country; or

(b) a person authorised to authenticate documents in that foreign country, and a certificate of authorisation issued by a competent authority in that foreign country to that effect accompanies the document.

Destruction of documents

Rule 194

(1) In a matter which has not been adjudicated by a Judge and has not been withdrawn, the Registrar may, subject to the provisions of the Archives Act No. 42 of 1967, after the lapse of three years from the date of the filing of the last document therein, authorise the destruction of the documents filed in his office relating to such matter.

(2) Records of minutes of evidence and proceedings in criminal proceedings shall be transferred to an archives depot as contemplated in section 7 of the Archives act 1967, thirty years after disposal of such cases.

(3) Any matter other than a criminal matter which has been adjudicated on by the court, shall be transferred to an archives depot as contemplated in section 7 of the Archives Act, 1967, thirty years after disposal of such case.

Savings and transitional provisions

Rule 195

(1) Despite the repeal of the rules listed under rule 196:

(a) anything done under the repealed rules and which could have been done under a corresponding rule of these rules, is deemed to have been done under such corresponding rule;

(b) a case that has been filed in the registry or has been allocated to a presiding Judge under the repealed rules continues under these rules, but if there is any uncertainty in this regard, the presiding Judge may direct the appropriate procedure to be followed after considering representations from the parties; and

(c) the delivery of process, notices or documents continues to be effected by filing of original documents and service of copies thereof until there is in operation an electronic filing system referred to under rule 12.

Repeal

Rule 196

(1) The following rules are repealed upon coming into effect of these rules:

(a) High Court Rules 1980 published per Legal Notice No. 9 of 1980 (inclusive of all amendments).

(b) Commercial Court Rules 2011 published per Legal Notice No. 159 of 2011.

(c) High Court Mediation Rules 2011 published per Legal Notice No. 61 of 2011.

(d) Constitutional Litigation Rules 2000 published per Legal Notice No. 194 of 2000.

(e) National Assembly Election Petition Rules, 1993 published per Legal Notice No. 54 of 1993.

DATED:

SAKOANE PETER SAKOANE
CHIEF JUSTICE OF LESOTHO

NOTE

1. Constitution of Lesotho 1993
2. Act No. 5 of 1978
3. Act No. 16 of 2011
4. Act No. 20 of 1966
5. Act. No 42 of 1967
6. Act No. 5 of 1972
7. Act No. 19 of 1978
8. Act No. 11 of 1983
9. Act No. 5 of 1999
10. Act No. 4 of 2008
11. Act No. 14 of 2011
12. Act No. 18 of 2011
13. Act No. 9 of 2022
14. Proc. No. 2 of 1964

PART 24

INDEX OF FIRST SCHEDULE FORMS

FORM A	Rule 14(9) and 19(4)	Substituted service and edictal citation
FORM B	Rule 17(6)	Certificate of service of foreign process
FORM C	Rule 19(5)	Edictal citation
FORM D	Rule 20(1)	Substituted service
FORM E	Rule 21(2)	Subpoena
FORM F	Rule 22(8)	Writ of attachment of property to found or confirm jurisdiction
FORM G	Rule 23(2)	Writ of arrest of the respondent
FORM H	Rule 23(7)	Arrest or bail bond or obligation
FORM I	Rule 23(11)	Assignment of bail bond
FORM J	Rule 38(6)	Mediation brief
FORM K	Rule 43(1)	Case planning conference notice
FORM L	Rule 45(1)	Case management conference notice
FORM M	Rule 45(4)	Case management order
FORM N	Rule 46(2)	Pre-trial conference notice
FORM O	Rule 46(6)	Pre-trial order
FORM P	Rule 47(1)	Notice of status hearing
FORM Q	Rule 50(5)(a)	Discovery: Additional documents to be disclosed
FORM R	Rule 50(9)	Discovery- Order to produce documents
FORM S	Rule 62(6) and (7)	Notice to alleged partner or proprietor of a firm
FORM T	Rule 65(2) and (3)	Notice of motion to Registrar and Respondent
FORM U	Rule 73(1)	*Exparte* applications
FORM V	Rule 87(2) and (3)	Notice of motion to the Registrar in constitutional applications
FORM V1	Rule 87(2) and (3)	Notice of motion to the Registrar and Respondent in Constitutional applications
FORM V2	Rule 90(2)	Referral of Constitutional matter in proceedings before a Court or tribunal
FORM W	Rule 92(2)	Petitions
FORM W1	Rule 92(4)	Verifying affidavit

Form A

Substituted service in accordance with rule 14(9)

Edictal citation in accordance with rule 19(4)

IN THE HIGH COURT OF LESOTHO

Case No…………………..

In the matter between

……………………………………………… Applicant

And

……………………………………………… Respondent

To(Respondent)……………………(Sex)…………………….(occupation)……
…………………………

formerly residing at………………………………………but whose present whereabouts are unknown;

Take Notice that by originating application (or citation) sued out of the court, you have been called upon to give notice within………days after publication hereof, to the Registrar and to the Applicant's attorney of your intention to defend (if any) in an action wherein the applicant claims:

(a)

(b)

(c)

etc.

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

Dated at ……………………………………the ……………….…….day of …
…………………..……….20…………….

……………………………………………
Registrar

Applicant's attorney
Address of service;
……………………………………………
……………………………………………

Form B

Certificate of service of foreign process in terms of rule 17(6)

I……………………………..Registrar of the High Court of Lesotho hereby certify that the following documents are annexed:-

(1) The original request for service of process or citation received from (state, territory, country or court)
In the matter between…………………………………..and……………………
………………………;

(2) The process received with such request.

(3) The proof of service upon ………………………………………
……………. The person named in such request for service, together with the certificate of verification of ………………………………………………
………………………………………………………………………..

I also certify that the service so proved and the proof thereof are such as are required by the Rules of the High Court of Lesotho. I further certify that the cost of effecting service, duly certified by the taxing officer of this Court, amounts to the sum of M……………………………………
Given under my hand and seal of office at Maseru this ………. Day of ………
………………… 20……..

……………………………………......
Registrar of the High Court of Lesotho

Seal.

Form C

Edictal citation in accordance with rule 19(5)

Whereas by order of the High Court of Lesotho, ………………. (name) the applicant herein was on the ………………. Date) granted leave to issue a citation against you ………………………………………. Name) of (address) in an action, in which the applicant claims:

(here set out the claims)

Now therefore you are called upon to give notice of your intention to defend the above claims or any of them if you wish to do so by entering appearance to defend by notice given to the Registrar of the High Court of Lesotho and to applicant's attorney within ……….. days of service of this citation upon you.

Further take notice that if you intend to defend, you must when entering appearance give an address in Lesotho within ten kilometres of the office of the Registrar at which you will accept notice and service of all documents in these proceedings. Further take notice that if you fail to enter appearance to defend within the period aforesaid judgment may be granted against you without further notice.

Signed: ………………………
Registrar of the High Court

Signed: ………………………………………………..
Applicant's attorney

Form D

Substituted service in accordance with rule 20(1)

IN THE HIGH COURT OF LESOTHO

Case No…………………

In the matter between:

……………………………………………………

Applicant

And

……………………………………………………

Respondent

To:

(respondent)…………………………(sex)…………………………….………(occupation)

………………………….. formerly residing at ……………………………………
but whose present whereabouts are unknown:

Take Notice that by the originating application sued out of this court, you have been called on to give notice, within ………….days after the publication of this notice, to the Registrar and to the applicant's attorney of your intention to defend (if any) in an action wherein applicant claims:

(a) ………

(b) ………

(c) ……… etc

Take Notice Further that in the event of you defending the action, you are also to deliver a notice of intention to defend which must therein give your full residential or business address, and must also appoint an address, not being a post office box or poste restante, for service on you of all documents in this action within ten kilometres from the office of the Registrar or if you elect to be served

by electronic means indicate your electronic address and in that case service thereof at the address so given is valid and effectual, except where by any order or practice of the court personal service is required.

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

Take Notice Further that simultaneously with the delivery of the notice of intention to defend, the respondent must deliver the return in terms of rule 10(4), which contains the following information about the respondent:

(a) in the case of a natural person, his or her full names, national identity number where available and if a Mosotho citizen or any other person ordinarily resident in Lesotho, his or her physical address and where available, his or her telephone or cellular phone number or both, workplace telephone number, facsimile number and personal or workplace email address or both;

(b) in the case of a company, its name and registered number, postal address and registered office referred to in section 83 of the Companies Act 2011 (Act No. 18 of 2011) and the particulars of least one director and the secretary referred to in section 58 and 60 of that Act;

(c) in the case of any other juristic person, the particulars referred to in paragraph (a) of at least one officer or secretary or a person, by whatever name called, running its affairs; and

(d) in the case of a trust which is duly authorised to litigate, the particulars referred to in paragraph (a) of all trustees and a reference number given by the master to the trust deed registered with the master.

The particulars so provided remain binding on the party to which they relate and may be used by the court or by the other party to effect service of any notice or document on such party or to give notice to such party.

Take Further Notice that as soon as the presiding Judge has given notice of a case planning conference in terms of rule 44(1), you as respondent will be required to meet with the applicant in order to agree to a case plan in terms of rule

44(3) for submission to the presiding Judge for the exchange of pleadings and the time within which you will deliver your answer and counterclaim if any will be determined by the court having regard to such plan and if you fail to cooperate in submitting such a plan, the court will determine the time within which you must deliver your answer and counterclaim, if any, and you as respondent shall comply with such order.

Dated at………………………………… on the……………… day of ……… ………………………….20……….

………………………………………………

Applicant/ Applicant's attorney
Name of signatory
Address:………………………………….

………………………………………………

……………………………………………….
Registrar of the High Court

Form E

Subpoena in terms of rule 21(2)

IN THE HIGH COURT OF LESOTHO

Case No…………………

In the matter between:

……………………………………………

Applicant

And

……………………………………………

Respondent

To the Sheriff or his deputy:
Inform: (1)
(2)
(3)
(state the names, sex, occupation and place of business or residence of each winess)
that each of them is hereby required to appear in person before this Court at … ……………. On ……….. day of ……………………. 20……., at ……….. ….. o'clock in the forenoon and thereafter remain in attendance until excused by the Court, in order to testify on behalf of the abovenamed applicant/respondent in regard to all matters within his knowledge relating to an action now pending in the said Court and wherein the applicant claims:

(1) ………..

(2) ……….. etc. from the abovementioned respondent.

And inform him that he is further required to bring with him and to produce to the said Court ……………………………….. (describe accurately each document, book or thing to be produced)
And to inform each of the said persons further that he should on no account neglect to comply with this subpoena and if he does so he may thereby render himself liable to a fine of M10,000.00 or to three months imprisonment.
Dated at …………………….. the ………… Day of ………………………… .. 20……………..

…………………..................................

Registrar of the High Court

……………………………………………………………..
Applicant's attorney/ or Respondent's attorney
………………………………………….. (address)

Form F

Writ of attachment to found or confirm jurisdiction in terms of rule 22(8)

IN THE HIGH COURT OF LESOTHO

Case No………………

In the matter between

……………………………………………………..

Applicant

And

………………………………………………………

Respondent

To the Sheriff or his deputy:

You are hereby directed pursuant to an order of the High Court of Lesotho, dated the ……. Day of …………………… 20…….., forthwith to attach…………… …………………………..(here set out the property) present at ……………… …………….(address) …………………… to found or confirm jurisdiction of the said court in an action by ……………………………….. (applicant) against ……………………(respondent) of ………………………………(address of respondent) for ……………………………………….(here set out cause of action); and for so doing this shall be your warrant.

…………………………………………

(Signed by Registrar)

(Date)

……………………………………………..

(Applicant's attorney)

(address)

Form G

Writ of arrest of the respondent in terms of rule 23(2)

IN THE HIGH COURT OF LESOTHO

Case No………………

In the matter between
……………………………………………………..
Applicant
And
………………………………………………………
Respondent

1. To the Sheriff

You are hereby commanded to apprehend (name)……………………………… ……. (sex)………………… (occupation)…………………… Of ……… …………………(address) (hereinafter called the respondent) and to detain him and bring him before this court on the ………day of ……………………. 20… ….. at ……..O'clock to answer (name)…………………… (sex)……… (occupation)………………..of (address)…………………………… (hereinafter) called the applicant in action wherein the applicant claims:

(a) …………….

(b) …………….

(c) ……………. etc.

from the respondent and to abide the judgment of the court thereon or to show cause why he should not be committed to prison and detained pending the fulfilment of an obligation imposed by law.

2. To the officer commanding the gaol to whom the Sheriff presents this writ:-

You are hereby commanded and required to receive the said ………………… ………………… and 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.

…………………………………………
Registrar of the High Court

………………………………………………..
Applicant's attorney
Note: The costs of this writ have been taxed and allowed at …………………
……………… exclusive of the Sheriff's caption fees of ………………………

(Signed)..……………………………
(Registrar)

Form H

Arrest- Bail bond in terms of rule 23(7)

We the undersigned…………………………………of……………………… . and ……………………………………… Of ………………………………… …… hereby acknowledge ourselves to be firmly bound to the Sheriff of the High Court of Lesotho in an amount of ………………….. to be paid to the 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 ……………………………… duly appear before the High Court of Lesotho on the ……… day of ……………… 20…….. at ……………………………… O'clock in the forenoon to answer … ……………………………… of …………………………… (hereinafter called applicant) in an action wherein the applicant claims…………………………… ………………………………………………………… from the said……… ………………………… And thereafter remains within the jurisdiction of the 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 the ……… day of ………………………… 20…….

……………………......................

(Signed by respondent and Surety)

(Witnesses).

Form I

Assignment of bail bond in terms of rule 23(11)

I, ……………………………………. In my capacity as Sheriff or deputy sheriff of the High Court of Lesotho hereby assign and make over to all my right, title and interest in the aforegoing bail bond.

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

………………………………………

Sheriff or Deputy- Sheriff

Witnesses:

Form J

Mediation brief in terms of rule 38(6)

IN THE HIGH COURT OF LESOTHO

MEDIATOR	(Names of Mediator)
MEDIATION DATE	(Date)

Mediation No………………. 20……

IN THE MEDIATION BETWEEN:
…………………………………………………………

APPLICANT

Represented by …………………………………………… (in cases involving body corporate or government)
AND
………………………………………………………..

RESPONDENT

Represented by ………………………………………….. (in cases involving body corporate or government)

TO:…………………………………………………… Respondent or his legal practitioner
………………………………………………….. (address)

AND TO: Registrar of the High Court
……………………………………. (address)

APPLICANT'S / RESPONDENT'S MEDIATION BRIEF

APPLICANT'S MEDIATION BRIEF

1. Brief summary of evidence

2. Brief summary of legal principles, if any

3. Brief explanation of why, in the opinion of the Applicant, the relief claimed would succeed at the trial

4. An itemization of the damages and other relief the Applicant believes can be established at the trial

5. A brief summary of the evidence and legal principles supporting the damages or other relief

6. Concise settlement proposal

RESPONDENT'S MEDIATION BRIEF

1. Points in the Applicant's brief to which the Respondent agrees

2. Points in the Applicant's brief to which the Respondent disagrees and reasons thereof

3. Concise counter-settlement proposal

Signed and dated at ………………………………….. on the ………….. day of ………………………….. 20…….
Name & Surname of Applicant: ………………………………………………………..…………
Signature: ………………………………………………….

Name & Surname of Respondent: ………………………………………………………………
Signature: ………………………………………………….

Form K

Case planning conference notice in terms of rule 43(1)

IN THE HIGH COURT OF LESOTHO

Case No………………

In the matter between:

…………………………………………..

Applicant

And

…………………………………………..

Respondent

Part A. NOTICE TO LEGAL PRACTITIONERS- CASE PLANNING CONFERENCE

The presiding Judge hereby calls on the parties or their legal practitioners to attend a case planning conference to be held at (place) …………………………
at (time)………….. on………………(date)
The parties or their legal practitioners are directed to submit a joint case plan in terms of rule 43(2) and (3) at least three days before the case planning conference to the presiding Judge.

Take further notice that whether a case plan has been submitted or not, an order in terms of this rule may be made as the presiding Judge considers just and on failure to submit a joint case plan the parties will be barred from applying for summary judgment or filling notice to except or strike.

Part B.PROFORMA ORDER

Despite being invited to submit a case plan in terms of rule 46(1), no case plan has been submitted and the following order is hereby made:

1. The respondent's answer and counterclaim, if any, must be filed on or before…………. (date)

2. The applicant's replication, if any, must be files on or before… ………………. (date)

3. In the case of a counterclaim by the respondent, an answer to the counterclaim must be filed on or before …………………….. (date)

4. In the case of an answer to counterclaim, if any, that answer must be filed on or before………………. (date)

5. In the case of replication (a reply) to an answer to a counter-claim, if any, that reply must be filed on or before …………… ………………. (date)

[Note: No date given by the presiding Judge in respect of 1-5 shall be a date exceeding fifteen days from the date of the previous pleading.]
Dated at……………………… on the …….. day of ………………………… …………… 20………..

BY ORDER OF COU

JUDGE	REGISTRAR

To:

…………………………………….. (Names of Applicant or His Attorneys)
………………………………………. (Address)

And To:
……………………………………….. (Names of Respondent or His Attorneys)
…………………………………………….. (Address)

Form L

Case management conference notice in terms of rule 45(1)

IN THE HIGH COURT OF LESOTHO

Case No………………

In the matter between:

…………………………………

Applicant

And

…………………………………

Respondent

The presiding Judge hereby directs the parties or their legal practitioners to attend a case management conference to be held at ………………… on this………… .. day of ……………..………… 20……….

The court record and documents shall be clearly indexed, paginated and translated.

All the issues listed in rule 44(2), as well as issues not listed therein but indicated in the report, shall be considered by the parties at the parties' case management meeting and directions shall be given by the presiding Judge based on the report.

An order shall be made by the presiding Judge in terms of rule 45(4).
Dated at ……….…………………… on the ………………….day of …… ……………..……..………… 20…………

BY ORDER OF COURT

____________________ ____________________

JUDGE REGISTRAR

To:

…………………………………….(Names of Applicant or his attorneys)

……………………………………… (Address)

And To:
……………………………………….(Names of Respondent or his attorneys)
………………………………………. (Address)

Form M

Case management order in terms of rule 45(4)

IN THE HIGH COURT OF LESOTHO

Case No…………………

In the matter between:

……………………………………………

Applicant

And

……………………………………………

Respondent

On ……………………………………… a case management conference was held pursuant to rule 45. The parties met before the conference and submitted a report prepared by them in terms of rule 44.

Having considered the report and submissions of the parties or their legal practitioners during the case management conference -

It is hereby ordered that the following be done (state the timeline where necessary):

1. Joinder of parties, consolidation of actions, change of parties, etc.

2. Filing of further pleadings, amendments to pleadings, filing of further statements and deadlines therefor.

3. Filing of interlocutory applications.

4. Filing of preliminary objections

5. Additional discovery as requested

6. Expert evidence:

   (a) Qualification of experts who submitted summaries.

(b) Deadlines for any further expert summaries.

7. Recording of any admission of fact or evidence.

8. Dispensing with oral evidence and submission of affidavits in lieu thereof.

9. Disposal of interlocutory applications and preliminary objections.

10. Exploration of possible alternative dispute resolution.

11. Exploration of settlement of issues or accounts.

12. Hearing of the matter as a stated case.

13. Any directions by the presiding Judge, whether sought by a party or not.

14. Any application for the transfer of the case from one division to another.

15. An estimate of the number of days required for the trial.

16. Trial date allocated where possible.

Dated at ……………………………… on the ……………. Day of ………… ……………………. 20 …………

BY ORDER OF COURT

______________________ ______________________

JUDGE REGISTRAR

To:

……………………………………….. (Name of the applicant or his attorneys)

……………………………………….. (Address)

And To:
………………………………………. (Name of the respondent or his attorneys)
………………………………………. (Address)

Form N

Pre-trial conference notice in terms of rule 46(2)

IN THE HIGH COURT OF LESOTHO

Case No……………………….

In the matter between:
…………………………………………
Applicant

And
…………………………………………
Respondent

On ……………………………………….. at …………………….. a pre-trial conference will be held before the presiding Judge and all parties or their legal practitioners are required to attend such conference where issues set out in rule 46(6) will be determined taking into consideration the joint report submitted to the presiding Judge in advance. The pre-trial conference will be held before this court on the………day of……………………… at 09:30a.m.

Dated at ………………………….. on the …………. Day of ……………………….. 20……..

BY ORDER OF COURT

JUDGE REGISTRAR

To:
…………………………………… (Applicant or His Attorney)
…………………………………… (Address)

And To:
…………………………………… (Respondent or His Attorney)
…………………………………… (Address)

Form O

Pre-trial order in terms of rule 46(6)

IN THE HIGH COURT OF LESOTHO

Case No……………………..

In the matter between:

………………………………………

Applicant

And

……………………………………….

Respondent

On ……… day of ……………………… 20…….. a pre-trial conference was held under rule 46 whereat the parties submitted a proposed pre-trial order prepared by them in terms of rule 46(4) and (5). After considering the proposed pre-trial order, it is hereby ordered that: (the specific directions to be inserted e.g)

1. Issues of fact to be resolved at the trial.

2. Issues of law to be resolved at the trial.

3. The facts that are not in dispute.

4. The list of each party's witnesses expected to be called to testify and who among them their statements will stand in lieu of oral testimony.

5. State whether any exhibits will be introduced at the trial, their description (e.g. documents, DNA, footprints, cell-phone records, video/ audio recordings or weapons) and when notice thereof shall be given by a party.

6. All plans, photos, diagrams and models admitted or disputed.

7. The trial dates.

8. The date for filing of index by the applicant.

9. Any further direction which the presiding Judge considers necessary to achieve the overriding objective.

Dated at ……………………… on the …………. Day of …………………… ……………………… 20…….

BY ORDER OF COURT

______________________	______________________
JUDGE	REGISTRAR

To:
………………………………………………. (Applicant or his attorney)
………………………………………………. (Address)

And To:
……………………………………………… (Respondent or his attorney)
……………………………………………… (Address)

Form P

Notice of status hearing in terms of rule 47(1)

IN THE HIGH COURT OF LESOTHO

Case No…………………………….

In the matter between

…………………………………………………

Applicant

And

…………………………………………………

Respondent

1. The presiding Judge hereby schedules a status hearing in terms of rule 47(1) in the above matter for the purpose of making such orders as are appropriate for the just and speedy disposal of the case.

2. The status hearing shall be held at ……………………… on the………..day of ………………………. 20……….. before the Honourable ……………………………………………and the parties are obliged to attend either personally or by legal rep resentation.

Dated at ……………………………….. on the …………….. day of ……………………………… 20…………

BY ORDER OF COURT

______________________ ______________________

JUDGE REGISTRAR

To:

…………………………………………… (Applicant or his attorney)
…………………………………………… (Address)

And To:

…………………………………………… (Respondent or his attorney)
…………………………………………… (Address)

Form Q

Discovery: Additional documents to be disclosed in terms of rule 50 (5)(a)

IN THE HIGH COURT OF LESOTHO

Case No…………………

In the matter between:

……………………………………………

Applicant

And

……………………………………………

Respondent

Please take note that the above named applicant/respondent requires you within fifteen days to deliver to the under-mentioned address a written statement setting out what documents, analogues or digital recordings and reports of the following nature you have presently or had previously in your possession:

(a) ………………………………………………………………
………………………………………………………………..

(b) ………………………………………………………………
………………………………………………………………..

(c) ………………………………………………………………
………………………………………………………………..

In such statement you must specify in detail which documents are still in your possession. If you no longer have any such documents which were previously in your possession you must state in whose possession they are now.

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.

……………………………………………………

Applicant/respondent's Attorneys

(Address)

To:	And To:
………………………………	………………………………
Applicant/respondent or his attorneys	Registrar of the High Court
(Address)……………………………	(Address)…………………………

Form R

Discovery – Order to produce documents in terms of rule 50(9)

IN THE HIGH COURT OF LESOTHO

Case No…………………

In the matter between:

……………………………………………

Applicant

And

……………………………………………

Respondent

TAKE NOTICE that the ……………………………… (applicant or respondent) is hereby ordered to produce within ten days for inspection the following documents referred to in his affidavit:
(describe the documents)

Dated at ……………………………… on the …………… day of ……………
……………………… 20 ………..

BY ORDER OF COURT

______________________	______________________
JUDGE	REGISTRAR

To: ……………………………………………. party or his attorney
……………………………………………… (address)

And To: ……………………………………………… party or his attorney
………………………………………………………….. (address)

Form S

Notice to alleged partner or proprietor of a firm in terms of rule 62 (6) & (7)

IN THE HIGH COURT OF LESOTHO

Case No……………

In the matter between

………………………………………

Applicant

And

……………………………………….

Respondent

Take Notice that action has been instituted by the above named applicant against the above named respondent for the sum of ……………………………………… ……….. and that the applicant alleges that the above named respondent is a partnership or firm at which you were from …………… to ………………….. a partner.

If you dispute that you were a partner/proprietor or that the above-mentioned period is in any way relevant to your liability as a partner/proprietor, you must within eight days of the service of this notice give notice of your intention to defend. Upon giving such notice a copy of the originating application served upon the above-named respondent will be served upon you.

To give such notice you must file with the Registrar and serve a copy thereof upon the applicant at the address set out at the foot thereof a notice stating that you intend to defend. Your notice must give an address (which must not be a post office box or poste restante) within 10 kilometres of the office of the Registrar for the service upon you of notices and documents in the application. Unless you do all these things your notice will be invalid.

Thereafter you should file an answer within seven days after you have filed such notice with the Registrar in which you may dispute that you were a partner/proprietor or that the period alleged above is relevant or that the respondent is liable on all or any of such matters or any defence you may have. If you do not give such notice you will not be liable to contest any of the above issues or to contest your liability to the applicant in any way and if the above named applicant obtains a judgment against the above named respondent, you will be

liable to have execution issued against you, should the named respondent's assets be executed and be insufficient to satisfy the judgment.

Dated at ………………………….. This ………… day of …………………… …… 20……………

……..………………………………………
Applicant's/Respondent's attorney

Form T

Application: Notice of motion in terms of rule 65(2) & (3)

(To Registrar and Respondent)

IN THE HIGH COURT OF LESOTHO

Case No………………

In the matter between:

…………………………………………….

Applicant

And

……………………………………………..

Respondent

Take Notice that ……………………………………………………. (hereinafter named the applicant) intends to make application to this Court for an order in the following terms:-

(a) ……………..

(b) ………………

(c) ………………

and that the accompanying affidavit of …………………………………… will be used in support of such application.

Take Notice further that the applicant has appointed ………………………… ………….. (here set forth an address which must be within 10 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 such notification, to file your answering affidavits if any; and further take notice that you are required to appoint in such notification an address within 10 kilometres of the office of the Registrar at which you will accept notice and service of all documents in these proceed-

ings.

If no such notice of intention to oppose be given, the application will be made on the ……… day of …………………. 20……. at ……..a.m.
Dated at ……………………… this ……… day of ……………………….. 20…….

……………………………………………………
…………………………………………………….
Applicant's attorney (address)

To:
……………………………………… (name of respondent)
…………………………………………
(Address of respondent or his attorney)

And To: Registrar of the High Court
(Address)

Form U

Applications: Exparte applications in terms of rule 73(1)

IN THE HIGH COURT OF LESOTHO

Case No………………

In the matter of:

……………………………………….

Applicant

Take notice that application will be made on behalf of the above named applicant on the ………… day of ……………………….. 20……. At 09:30a.m. as soon thereafter as the matter may be heard for an order in the following terms:-

(a) ………….

(b) …………..

(c) ………….. etc.

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

Please place the matter on the roll for hearing accordingly.

Dated at ………………………… on this the ………….. day of ……………… …….. 20………

……………………………………………

Applicant's attorney

To:

Registrar of the High Court

………………………….. (Address)

Form V

Notice of motion to the Registrar in terms of rule 87 (2) & (3) respectively in constitutional applications

IN THE HIGH COURT OF LESOTHO

In the matter of: Constitutional Case No……………….

………………………………………. (Applicant)

Take notice that the above-named applicant applies to the court for an order in the following terms:

(a) ……………

(b) ……………

(c) …………… etc.

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

Kindly place the matter before the Honourable Chief Justice to be dealt with in terms of rule 87(10).
Dated at ……………………….. this …………. Day of …………………… 20………

…..……..………………………………………

Applicant or his attorney

To: The Registrar of the High Court

Form V1

Notice of motion to the Registrar and Respondent in terms of rule 87(2) & (3) respectively in constitutional applications

IN THE HIGH COURT OF LESOTHO

In the matter between: Constitutional Case No…………….

…………………………………

Applicant

And

…………………………………

Respondent

Take notice that …………………………………………… (hereinafter called the applicant) intends to make application to the court for an order:

(a) ………………

(b) ……………..

(c) …………….. etc.

(here set forth the form of order prayed) and that the accompanying affidavit of …………………………………… will be used in support thereof.

Take notice further that the applicant has appointed …………………………… ………… (here set forth an address) as the address 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 or his legal representative in writing on or before …………………… (date); and

(b) within ten days after you have so given notice of your intention to oppose the application to file your answering affidavit, if any; and further that you are required to appoint in such notification an address within 10 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 is given, the applicant will request the Registrar to place the matter before the presiding Judge to be dealt with under rule 87(10).
Dated at ………………….. this …….. day of ………………… 20………

……………………………………………………
Applicant or his attorney

To:
……………………………………. (Name of Respondent)
……………………………………. (address of Respondent)

And To:
The Registrar of the High Court
………………………………….. (address)

Form V2

Referral of Constitutional questions in cases before subordinate courts and tribunals in terms of rule 90(2)

IN THE HIGH COURT OF LESOTHO

Case No……………………

A REFERRAL FROM

(Name of the court or tribunal)………………………………….. in terms of section 128(1) of the Constitution
In the matter between:
…………………………………

Applicant

And
…………………………………

Respondent

Date of referral ………………………………………………………………

Constitutional questions referred ……………………………………………
……………………………………………
……………………………………………………………………………
……………………………………………………………………………
……………………………………………………………………………
……………………………………………………………………………
……………………………………………………………………………
…………………………………

I, …………………………………………………………… do hereby certify that the record attached hereto is correct and accurate.
This record contains ……………… pages and the following items:

(a) ……………………………………………………………………
……………………………………………………………………

(b) ……………………………………………………………………
……………………………………………………………………

(c) ……………………………………………………………………
……………………………………………………………………etc

Signed ……………………………………………………………………
Presiding Judicial Officer /Chairperson
COURT STAMP:

Form W

Petitions in terms of rule 92(2)

IN THE HIGH COURT OF LESOTHO

In the matter between:

……………………………………

Petitioner

And

……………………………………

Respondent

TO THE HONOURABLE THE CHIEF JUSTICE OF LESOTHO AND THE OTHER HONOURABLE JUDGES OF THE ABOVE HONOURABLE COURT.

THE HUMBLE PETITION OF

………………………………………………………………………………
………………………………………

SHEWETH THAT

1. Your Petitioner is (names in full) ………………………………… ….………………………………………… a ……………… …………………………………………………. (state capacity conferring standing to present the petition).

2. On the …………….. day of ……………….. 20…….. an election was held in (state constituency) …………………………. for the election of a member of the National Assembly.

3. The result of the said election was that (give a brief particulars of the result) ………………. ………………………………… ………………………….………………………………………… ……………………………………..

   Or

4. On the ………….. day of ………………… 20….. a vacancy oc-

curred in a seat in the Senate/ National Assembly (state details of vacancy of the seat or nomination/resignation) ……………
…………………………………………………………………
…………………………………………………………

5. Your Petitioner avers that: (state full particulars of all material facts and grounds relied upon to sustain the petition or which might affect the granting or otherwise of the petition)…………
…………………………………………………………………
………………….. as will more fully appear from the affidavit of ……………………………………………………………
…. dated the ……… day of …………………… 20……..
which is annexed hereto and marked "………" for purposes of identification (repeat if more than one affidavit) to which your petitioner begs to refer this Honourable Court and prays that it be regarded as having been specifically set out herein.

WHEREFORE your petitioner prays that it may please the above Honourable Court to grant an Order in the following terms: (specify the particular order or orders sought) …………………
…………………………………………………………………
…………………………………………………...

AND YOUR PETITIONER AS IS DUTY BOUND WILL FOREVER PRAY.

Dated at ……………………………. this the ………… day of ………………
…………………. 20………..

………………………………………..
Petitioner's Signature

Form "W1"

Verifying affidavit in terms of rule 92(4)

IN THE HIGH COURT OF LESOTHO

In the matter between:

………………………………………………..

Petitioner

And

………………………………………………..

Respondent

VERIFYING AFFIDAVIT

I, the undersigned (names in full)……………………………………………

Do hereby make oath and say -

1. I am the petitioner in the foregoing petition.

2. I have read my petition and say that all the facts and allegations set out therein are to the best of knowledge and belief true and correct.

3. The matters contained in the foregoing petition are based on facts within my knowledge, save where it manifestly otherwise appears, and from information received which I verily believe.

………………………………………………..

Petitioner's Signature

SWORN TO AND SIGNED AT ……………………………… on the ……… ……... day of …………………… 20…… the deponent having acknowledged that he knows and understands the contents of this affidavit.

BEFORE ME

____

Print Full Names

Signature
COMMISSSIONER OF OATHS

PART 25

INDEX OF SECOND SCHEDULE FORMS

FORM 1	Rule 108(1) and (9)(a)	Originating application
FORM 2	Rule 108(9)(b)	Originating application for a liquidated claim or debt
FORM 3	Rule 115(1)	Respondent's answer
FORM 4	Rule 127(2)	Notice to respondent in inter-locutory matrimonial proceedings
FORM 5	Rule 160(1)	Writ of execution-general
FORM 6	Rule 161(1)	Form of security
FORM 7	Rule 164(2)(a)	Notice by judgment creditor to judgment debtor
FORM 8	Rule 165(2)	Writ of attachment- Immovable property
FORM 9	Rule 166(8)(a)	Conditions of sale in execution of immovable Property
FORM 10	Rule 166(11)	Deputy-Sheriff's certificate of sale
FORM 11	Rule187(6)	Lapse of cases and inactive cases
FORM 12	Rule 192(1)	Oath or affirmation of translators or interpreters

Form 1

Originating application in terms of rule 108(1) and (9)(a)

Case No………………

IN THE HIGH COURT OF LESOTHO
HELD AT ………………………………

In the matter between:
…………………………………………..

Applicant

And
…………………………………………..

Respondent

To the Sheriff or his Deputy,

Inform (name of respondent) …………………………………… (sex, status and occupation of respondent) …………………………………………… … of (residential address of Defendant) …………………………... that (name of applicant) ………………………………… (sex, status and occupation of applicant) …………………………… Of (address of plaintiff) ………… …………………………… hereby institutes an originating application against him in which the applicant claims: -

(1) Here set out the nature of relief sought, or reference or question for determination by the court:
…………………………………………………………………………
…………………………………………………………………………
……………………………………………………………………
…………………………………………………………………………
…………………………………………………………………………
…………………………………………………………………….

(2) Here set out the grounds on which relief is sought, giving a clear and concise statement of material facts, in sub-paragraphs, each containing, as near as possible, a distinct averment:
…………………………………………………………………………
…………………………………………………………………………
………………………………………………………………………

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

(3) Here set out the following:

(a) a list of the witnesses to be called at the hearing, with their full names and addresses, their statements and the purpose for which they are called;

(b) all exhibits intended to be introduced in evidence;

(c) all reports, plans, photos, diagrams and models to be introduced in evidence;

(d) any documentary evidence in his possession upon which he relies for his claim; and

(e) where he has no witnesses or documents to produce, a statement to that effect.

Inform the respondent further that if he wishes to answer the originating application:

(1) He must within .... days after service of the application, file with the Registrar a notice stating his intention to answer the originating application and that he must serve a copy of such notice on the applicant's attorney at the address given below which notice shall give an address (which must not be a post office box or a poste restante) within 10 kilometres of the office of the Registrar for the service upon the respondent of all notices and documents in the action.

(2) If he fails to file a notice of his intention to answer as aforesaid, judgment as claimed may be given against him without further notice.

(3) If he pays the said claim and costs within the said period, judgment will not be given against him herein and he will save judgment charges. The respondent will also save judgment charges if, within the said period, he lodges with the Registrar a consent to judgment as outlined below.

(4) If he admits the claim and wishes to consent to judgment or wishes to undertake to pay the claim in instalments or otherwise, the respondent may approach the applicant or his attorney at the address below.

Signature of the applicant ________________
Capacity________________
Place __________________
Date ___________________
Applicant's/applicant's attorney address___________________________

……………………………………………
Registrar

WITNESSETH THE HONOURABLE CHIEF JUSTICE

Consent to Judgment:

I admit that I am liable to the applicant as claimed in this originating application (or in the amount of M…………………and costs to date) and I consent to judgment accordingly.

Dated at…………/……… this………….. day of……………………..20……

____
Respondent's Signature

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

Form 2

Originating application for a liquidated claim or debt in terms of rule 108(9)(b)

IN THE HIGH COURT OF LESOTHO

HELD AT…………………….   Case No…………………

In the matter between:
…...

Applicant

And
…..

Respondent

HIS MAJESTY THE KING, by the Grace of God, King of Lesotho

To the sheriff or his deputy:

INFORM ……………………………….............(name of the respondent) … ……………….................... (sex, status and occupation of respondent) of … .... (address of respondent) (hereinafter called the respondent), that
….......................................(name of applicant) ….................................... (status, sex and occupation) of …...................................(address of applicant) (hereinafter called the applicant), hereby institutes an originating application against him in which the applicant claims:
Here set out the nature of relief sought, or reference or question for determination by the court:
……………………………………………………………………………
……………………………………………………………………………
…………………………………………………………………
……………………………………………………………………………
……………………………………………………………………………
…………………………………………………………………
……………………………………………………………………………
……………………………………………………………………………
…………………………………………………………………
Here set out the grounds on which relief is sought, giving a clear and concise

statement of material facts, in sub-paragraphs, each containing, as near as possible, a distinct averment:

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

INFORM the respondent further that if he wishes to answer the originating application:

(1) He must within 10 days of the service upon him of the application file with the Registrar at …...................(set out the address of the Registrar) notice of his intention to answer and serve a copy thereof on the applicant's attorney, which notice shall give an address (not being a post office box or poste restante) within 10 kilometres from the office of the Registrar for the service upon the respondent of all notices and documents in the action; thereafter, and within 21 days after filing and serving notice of intention to answer as aforesaid, file with the Registrar and serve upon the applicant an answer.

(2) 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 file an answer, judgment may be given against him.

(3) If the respondent pays the said claim and costs within the said period judgment will not be given against him herein and he will save judgment charges. The respondent will also save judgment charges if, within the said period, he lodges with the Registrar a consent to judgment as outlined below.

(4) If the respondent admits the claim and wishes to consent to judgment or wishes to undertake to pay the claim in instalments or otherwise, the respondent may approach the applicant or his attorney.

Signature of the applicant ________________
Capacity________________
Place __________________
Date ___________________
Applicant's/ applicant's attorney's address_____________________

……………………………………
Registrar

WITNESSETH THE HONOURABLE CHIEF JUSTICE

Consent to Judgment

I admit that I am liable to the applicant as claimed in this originating application (or in the amount of M……..............and costs to date) and I consent to judgment accordingly.

AND immediately thereafter serve on the respondent a copy of this originating application and return the same to the Registrar with whatsoever you have done thereupon.
Dated at…………this…………..day of…………………..

____
Respondent's Signature

Form 3

Respondent's answer in terms of rule 115(1)

IN THE HIGH COURT OF LESOTHO

HELD AT…………………….   Case No…………………

In the matter between:
…...

Applicant

And
…..

Respondent

To: The Registrar
High Court

And To: The above-named Applicant(s)
(address)
Name and description of the Respondent (e.g: individual, firm, body corporate, Government etc.):
…………………………………………………………………………
…………………………………………………………………………
……………………………………………………………..

Residential or physical address of the Respondent ……………………………
…………………………………………………
…………………………………………………………………………
……………………………………………………………….
The above-named Respondent herein answers the applicant's originating application as follows:

(1) Here set out in numbered paragraphs and clear concise statement of material facts, each containing, as near as possible, a distinct averment:
…………………………………………………………………………
…………………………………………………………………………
…………………………………………………………….
…………………………………………………………………………
…………………………………………………………………………
…………………………………………………………….

…………………………………………………………………………………
…………………………………………………………………………………
……………………………………………………………….

(2) Here set out the following:

(a) a list of the witnesses to be called at the hearing, with their full names and addresses, their statements and the purpose for which they are called;

(b) all exhibits intended to be introduced in evidence;

(c) all reports, plans, photos, diagrams and models to be introduced in evidence;

(d) any documentary evidence in his possession upon which he relies for his answer; and

(e) where he has no witnesses or documents to produce, a statement to that effect.

Signature of the Respondent ……………………………………………
Capacity ……………………………………………………...
Place ………………………………………………………....
Date ………………………………………………………...

Form 4

Notice of interlocutory matrimonial proceedings in terms of rule 127(2)

IN THE HIGH COURT OF LESOTHO

HELD AT……………………….

In the matter between:
……………………………………
Applicant
And
……………………………………
Respondent

To the above-mentioned respondent:

TAKE NOTICE that if you intend to oppose this claim you must, within ten days, file a sworn reply in the form of an answer with the Registrar, giving an address for service and serve a copy thereof on the applicant's legal practitioner. If you fail to do that, you will be automatically barred from opposing the application and judgment may be granted against you as claimed.

Your answer must indicate what allegations in the applicant's statement you admit or deny and must concisely set out your defence.

Dated at ………………………… on this …………… day of ………………… ……………. 20…………...

….……………………………………………
Applicant's attorney

Address for service: ……………………………………………
To:
……………………………………………………..
Respondent or his attorney

And To:
The Registrar of the High Court
(Address) ……………………………….

Form 5

Writ of execution- General in terms of rule 160(1)

IN THE HIGH COURT OF LESOTHO

HELD AT ………………………...   Case No………………

In the matter between:

………………………………………

Applicant

And

……………………………………….

Respondent

To the Sheriff or his deputy:

For the district of …………………………………

You are hereby directed to attach and take into execution the movable goods of ………………………………………, the abovenamed respondent of ………………………………… (address) and of the same to cause to be realised by pubic auction the sum of ………………………….. together with interest thereon at the rate of ………….. per cent 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…………………… ………… in the abovementioned case, and also all other costs and charges of the applicant/respondent in the said case to be hereafter duly taxed according to law, besides al your costs hereby incurred.

Further pay to the said ………………………………….. or his attorney the sum or sums due to him with costs as above mentioned, and for so doing this shall be your warrant.

And return you this writ with what you have done there upon.

Dated at ………………………. this ……. Day of …………………………… 20………

(signed) ……………………………………………

Registrar of the High Court

(signed) …………………………………………….
Applicant/respondent's attorney
(address)……………………………………………

Form 6

Form of security in terms of rule 161(1)

IN THE HIGH COURT OF LESOTHO

HELD AT …………………… Case No………………

In the matter between:
………………………………….

Applicant

And
………………………………….

Respondent

WHEREAS by virtue of certain writ of the High Court of Lesotho dated …… …………………………… issued at the instance of ………………………… ………... (name of judgment creditor) against ………………………………… ……. (name of judgment debtor) of ………………………………… (address of judgment debtor) the deputy sheriff has seized and laid under attachment the undermentioned articles, namely:

1. …………………………………………….

2. ……………………………………………. etc.

Now, therefore, the said ……………………………………………(name of the judgment debtor) and …………………………………… (name of surety) of … …………………………………….. (address of surety and his 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 way with or disposed of, but shall remain in the possession of said ……………………………… (name of judgment debtor), under the said attachment, and be produced to the said deputy sheriff (or other person authorised by him to receive such goods) on the ………… ……………… (the day appointed for sale) or any other day when the same may be legally removed, failing which I, the said ………………………… (name of surety) hereby bind myself, my person, goods and effects, to pay and satisfy the sum of …………………………………………… (estimated value of the goods seized) to the said deputy-sheriff, his cessionaries, assigns or suc-

cessors in office, for and on account of the said ………………………………
…………. (judgment creditor).
As witness………………………………………………………………….

Form 7

Notice by judgment creditor to judgment debtor in terms of rule 164(2)(a)

IN THE HIGH COURT OF LESOTHO

HELD AT ………………………...   Case No…………………...

In the matter between:
………………………………………

Applicant

And
………………………………………

Respondent

TAKE NOTICE THAT ………………………………………… (applicant/respondent's names) (hereinafter called the judgment creditor) has obtained judgment against ……………………………………………… (names of the applicant/respondent) (hereinafter called the judgment debtor) on ……………………………… (date of judgment) in this court.

TAKE FURTHER NOTICE THAT the judgment creditor has applied in terms of rule 164(1)(b) for an order declaring the property specially executable and the judgment debtor is hereby called to provide reasons to this honourable court within ten days why such an order may not be granted.

Dated at ……………………………… on this ……… day of ………………… …………………...20………...

…………………………………………
Judgment creditor's attorney
………………………………………….. (address)

To: Registrar of the High Court
……………………………………..... (address)

Form 8

Writ of attachment- Immovable property in terms of rule 165(2)

IN THE HIGH COURT OF LESOTHO

HELD AT ……………………….. Case No…………………...

In the matter between:
………………………………………
Applicant
And
……………………………………….
Respondent

To the Sheriff or his deputy 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 the above-mentioned applicant/respondent against the above-mentioned applicant/respondent on the ……………………………… (date)and whereas your return 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 applicant/respondent being ……………………………… ………….. (here give full description of the property) to cause to be realised therefrom by public auction the sum of ………………………….. together with costs hereof and the costs 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 the provisions of rule 167.

For which this shall be your warrant.

Dated at ………………………. this ……. Day of ……………………………
20………

(signed) …………………………………………….
Registrar of the High Court

(signed) …………………………………………….

Applicant/respondent’s attorney
(address)…………………………………………….

Form 9

Conditions of sale in execution of immovable property in terms of rule 166(8)(a)

IN THE HIGH COURT OF LESOTHO

In the matter between: Case No. ……..…………………

…………………………………….

Applicant

And

…………………………………….

Respondent

The property which will be put up for auction on (date)……………………… consists of (description of the property)………………………………………… ……………………………………………………….

The sale will be subject to the following conditions: -

1. The property shall be sold by the deputy-sheriff of (place and time) ……………………………………………… to the highest bidder with a reserve price of …………………………………………

2. The sale shall be for maloti, and no bid that is less than the reserve price determined in terms of rule 166(11) shall be accepted unless where the property in dispute has failed to be sold in auction for 2 times.

3. If any dispute arises about any bid, the property may be again put up for auction.

4. If the deputy sheriff makes a mistake in selling, the mistake is not binding on any of the parties but may be rectified. If the deputy sheriff suspects that a bidder is unable to pay either the deposit referred to in condition 6 of the balance of the purchase price, he may refuse to accept the bid of that bidder or accept it provisionally until that bidder has satisfied him that he is in a position to pay the balance of the purchase price. On the refusal of a bid under such circumstances, the property may immediately be put up for auction.

5. The purchaser shall as soon as possible after the sale and immediately on being requested by the deputy sheriff, sign these conditions, and if he has bought as agent for the principal, state the name of the principal.

6. The purchaser shall pay a deposit of ten per cent of the purchase price in cash or by electronic funds transfer on the day of the sale, the balance against transfer, to be secured by a bank or building society guarantee, to be approved by execution creditor's attorney, to be furnished to the deputy sheriff within …….…. days after the date of sale.

7. If transfer of the property is not registered within two months after the sale, the purchaser shall be liable for payment of interest to the execution creditor at the rate of ……… % if non-registration is as a result of the purchaser's delay or fault.

8. 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 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 deputy-sheriff's distribution account, be recovered from him under judgment of the Judge pronounced summarily on a written report by the deputy-sheriff, after such purchaser has received notice in writing that such report will be laid before the Judge for such purpose.

9. If the purchaser is already in possession of the property, the deputy-sheriff shall cause the execution creditor to, on seven days' notice, apply to a Judge for an order ejecting him or any person claiming to hold under him therefrom.

10. The purchaser shall pay auctioneer's charges (deputy-sheriffs commission) on the day of sale and in addition, transfer dues, costs of transfer, and arrears rates, taxes and other charges necessary to effect transfer, on request by the legal practitioner for the execution creditor.

11. The property may be taken possession of immediately after payment of the initial deposit and is, after such deposit, at the risk and profit of the purchaser.

12. The purchaser may obtain transfer of the property forthwith if he pays the whole price and complies with condition 11, I which case any claim for interest lapses, otherwise transfer may be passed only after the purchaser has complied with the provisions of conditions 6, 7 and 11.

13. The deputy-sheriff may demand that any buildings standing on the property sold must be immediately insured by the purchaser for the full value of same and the insurance policy handed to him and kept in force as long as the whole price has not been paid but if he does not do so, the deputy-sheriff may effect the insurance at the purchasers expense.

14. The property is sold as represented by the title deeds and diagram annexed thereto, and the deputy-sheriff does not hold himself liable for any deficiency that may be found to exists and renouncing all excess.

15. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.

16. The purchaser is entitled to appoint a legal practitioner to attend to transfer.

At ……………………………… this ………… day of ……………………… ………..……… 20……..

……………………………………….
Deputy-sheriff

I hereby certify 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.

………………………………………………..
The Purchaser

FORM 10

Deputy-Sheriff's certificate of sale in terms of rule 166(11)

Whereas in (insert case number)……………………………………… wherein (insert names and identity number)……………………………………………………
………………..was the applicant, and (insert names and identity number) ……
…………………………………….. was the respondent, the following property (insert particulars of title) ……………………………………………………
Registered in the names of the said (insert the names of the respondent)………
……………………………………… was by virtue of a writ issued by the Registrar of the High Court, attached and sold by the undersigned deputy-sheriff for an amount of (insert the purchase price)…………………………………………
………at (insert district and place) ………………………………… on (insert day, month and year) …………………………………… to (insert names and identity number of the purchaser) ……………………………………………..
as the transferee for an amount of (insert the amount the p.

Prepared by me: ……………………………………………………
Full names and identity number of the Deputy-Sheriff

……………………………………………………
Signature

……………………………………………………
Date

Countersigned by me: ……………………………………………………
Full names of the Registrar

……………………………………………………
Signature

……………………………………………………
Date Stamp

Form 10

Lapse of cases and inactive cases in terms of rule 187(6)

IN THE HIGH COURT OF LESOTHO

HELD AT…………………………...

In the matter between:

……………………………………….

Applicant

And

……………………………………….

Respondent

Notice to all parties and legal practitioners of record:

TAKE NOTICE that you are called to attend a hearing before the presiding Judge, Justice……………………. at (time)…………... on (date)…………… …………… in the High Court of Lesotho to show cause to the satisfaction of the presiding Judge why there has been no activity in this case for three months since it being filed and why the case shall not be struck from the roll and not to be enrolled again.

TAKE FURTHER NOTICE that the presiding Judge may make an appropriate order of costs.

TAKE FURTHER NOTICE that failing to attend this hearing may result in the case being struck from the roll and not being enrolled again.

Dated at……………………………. On this ………… day of ……………… …………… 20……...

BY ORDER OF COURT.

.... ……....................................

Judge Registrar of the High Court

To:

………………………………………….. (name of applicant or his attorney)

………………………………………….. (address)

And To:
………………………………………… (name of respondent or his attorney)
………………………………………… (address)

Form 11

Oath or affirmation of translators or interpreters in terms of rule 192(1)

Before ……………………………….. Judge of the High Court of Lesotho:

I ………………………………….. (full names) do hereby swear / solemnly affirm and declare that I will in my capacity as an interpreter/translator of the High Court of Lesotho faithfully and correctly translate, to the best of my knowledge and ability, any language which I am competent to translate into English language and any document written in any language other than English which I am also competent to translate into English language.

Signature:…………………………….

Registrar of the High Court	Judge of the High Court of Lesotho

Dated at ………………….. on this………..day of ……………………………. 20……..

PART 26

INDEX OF THIRD SCHEDULE: ANNEXURES

ANNEXURE A	Rule 52(1)(c) and 53(7)	Expert's declaration
ANNEXURE B	Rule 53(8)	Code of practice for experts
ANNEXURE C	Rule 126(3)	List of property in matrimonial matters
ANNEXURE D	Rule 182(1)	Tariff of court fees
ANNEXURE E	Rule 183(1)	Tariff of fees for deputy-sheriffs
ANNEXURE F	Rule 184(6)	Tariff of fees for attorneys
ANNEXURE G	Rule 185(1)	Tariff of fees for advocates

Annexure A

Expert's Declaration (in terms of rules 52(1)(c) and 53(7))

I,….. DECLARE THAT:

1. I understand that my primary duty in providing a written report and giving evidence is to the court, rather than the party who has engaged me.

2. I have endeavoured in my report and in my opinion to be accurate and to have covered all relevant issues concerning the matters stated which I have been asked to address.

3. I have endeavoured to include in my report those matters which I have knowledge of or of which I have been made aware, that might adversely affect the validity of my opinion.

4. I have indicated the sources of all information I have used.

5. I have not without forming an independent view, included or excluded anything which has been suggested to me by others (in particular my instructing lawyer).

6. I will notify those instructing me immediately and confirm in writing if for any reason, my existing report requires any correction or qualification.

7. I understand that:

   (a) My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath or affirmation;

   (b) I may be cross-examined on my report by a cross-examiner assisted by another expert;

   (c) I am likely to be subject of public adverse criticism by the Judge if the court concludes that I have not taken reasonable care in trying to meet the standards set out above.

8. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.

9. I believe that the facts I have in this report are true and that the opinions I have expressed are correct.

Signed on this…........day of…........................20….
Signature…..

PRINT FULL NAMES…...

Annexure B

Code of Practice for Experts (in terms of rule 53(8))

(1) Expert evidence presented to the court shall be and shall be seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.

(2) Independent assistance shall be provided to the court by way of objective, unbiased opinion regarding matter within the expertise of the expert witness. An expert witness shall never assume the role of counsel.

(3) Facts or assumptions upon which the opinion is based shall be stated together with material facts which can detract from the concluded opinion.

(4) An expert witness shall make it clear when a question or issue falls outside the area of his expertise.

(5) If the opinion was not properly researched because it was considered that sufficient data was unavailable, that has to be stated with an indication that the opinion is provisional.

(6) If after exchange of reports an expert witness changes his mind on a material matter, then the change of view shall be communicated to the other side or their legal representatives if represented, without delay and when appropriate, to the court.

(7) Photographs, plans, diagrams, sketches, survey reports and other documents referred to in that expert evidence have to be produced to the other side at the same time as the exchange of reports.

(8) If the witness cannot assert that the report contains the truth, the whole truth and nothing but the truth, then that qualification shall be stated in the report.

Annexure C

List of property in matrimonial matters in terms of rule 126(3)

IN THE HIGH COURT OF LESOTHO

HELD AT…………………………...

In the matter between:
……………………………………….

Applicant

And
……………………………………….

Respondent

Applicant/Respondent

PART 1- SUMMARY OF FACTS

- Date of filing of originating application:
- Applicant's Date of Birth:
- Respondent's Date of Birth:
- Children's Names and Dates of Birth:
  (name) (date of birth)
  (name) (date of birth)
- Date of Marriage (if any)
- Date of Cohabitation commenced (if not married):
- Date of Separation:
- History of Agreements and Court Orders (in chronological order):
- (date) (summarize agreement or court order)
- Applicant's Current Income: Annual: Monthly:
- Respondent's Current Income: Annual: Monthly:
- Amount of Child Maintenance:
- Spousal Maintenance:
- Anticipated Changes (in the means, needs or circumstances of the parties and children)
- Settlement (offers and counter-offers)

PART 2- SUMMARY OF ISSUES

The following are the outstanding issues for which relief is being requested: (select the applicable issues)

- Divorce
- Spousal Support
- Custody and Access
- Child Maintenance
- Division of Property
- Provision of Home for Children
- Other: (briefly describe)

PART 3- LIST OF PROPERTY

(complete where division of property is in issue)

A. PROPERTIES

	Applicant	Respondent	Tab/Note See note below
Real Property: (List by civic address/ land location and title deed)			
House Goods: (List general household goods, Appliances, furniture and electronics)			
Livestock: (List nature and number)			
Vehicles and Recreational Vehicles: (List cars, trucks, boats, trailers, motorcycles, SUVs, tractors, and other vehicles by make, model, year and registration number)			

Other Personal Property:

(List jewellery, works of art,
collections, tools, sports,
hobby equipment, books etc.)

Bank Accounts, Savings and Investments:

(List by name of financial institution,
account number and amounts)

Income:

(Provide source, nature and amounts)

Pensions and Retirement:

Savings Plans
(List by name of pension, plan
and account number)

Securities:

(List shares, bonds, mutual funds,
warrants, options, debentures,
notes and any other securities)

Insurance Policies:

(List by name of insurer,
type of policy and set out
cash surrender value, if any)

Business Interests:

(List any interest either spouse holds
in any privately held corporation and
any unincorporated business, including
proprietorships, trusts and joint ventures.)

Accounts Receivable:

(List money owned to either spouse
whether from business or personal dealings,
court judgments, amounts loaned to family
members or estate money owned.)

Other Property:

(List any other property owned by
a spouse not identified above.)

B. VALUE OF ALL PROPERTY

C. DEBTS AND OTHER LIABILITIES

D. VALUE OF ALL DEBTS AND OTHER LIABILITIES

E. EXEMPTIONS

(List any exemption claimed.)

F. VALUE OF EXEMPTION CLAIMED

G. TOTAL NET PROPERTY (B-(D+F) =G)

H. PROPOSED DISTRIBUTIONS:

(Based on the above, identify your proposal for the division of family property or its value and allocation of debts and liabilities.)
*Proposals to be in point form showing all calculations.
*Proposals to be in point in points form showing all calculations.
* Tab Notes: (Use tab notes to describe exemptions claimed, relevant changes in value of property, positions on the appropriate valuation date and where parties do not agree the basis of valuation/ and any income tax consequences or anticipated disposition costs.)

Applicant's proposal Respondent's proposal

OATH/AFFIRMATION

I, ____ hereby declare under oath/ hereby truly affirm* that to the best of my knowledge and belief the aforegoing statements are true, complete and correct.

____
SIGNED

I, certify that before administering the oath*, I asked the deponent the following questions and wrote down his answers in his presence:

1. Do you know and understand the contents of the above declaration?

Answer:________________

2. Do you have any objection to taking the prescribed oath?

Answer: ________________

3. Do you consider the prescribed oath to be binding on your conscience?

Answer: ________________

I, certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to/ affirmed * before me, and the deponent's signature was placed thereon in my presence.

____
COMMISSIONER OF OATHS

____
FULL NAMES

____
DESIGNATION (RANK) AND AREA FOR WHICH APPOINTED

ADDRESS: _______________________________

DATE: ______________________________

Name and address of Applicant's Attorney, if applicable: ______________________________
____

Name and address of Respondent's Attorney, if applicable: ______________________________
____

Received a copy hereof on the following date: ______________________________

Annexure D

Tariff of Court Fees

(i) All court fees are payable by means of revenue stamps affixed on the of the applicable document, which will on presentation to the Registrar be defaced in terms of the Stamp Duties Act, 1972 as amended.

(ii) Court fees in respect of items 20-22 below shall be payable by affixing revenue stamps on a written request made to the Registrar.

Item		Amount
1.	For every power of attorney to sue or defend	20.00
2.	For every originating application	80.00
3.	For every answer to the originating application	80.00
4.	For every other pleading including reply to an answer (replication) and counter claim etc	60.00
5.	For every notice of motion or petition	80.00
6.	For every affidavit in support of the notice of motion or petition.	20.00
7.	For every certificate of urgency	20.00
8.	For every liquid document a litigant relies upon in support of his claim or defence	30.00
9.	For every annexure or document admitted, exhibited or filed of record	5.00
10.	For every writ	30.00
11.	For every decree, order or other ruling of court	40.00
12.	On every power of attorney to appeal against the judgment of the Subordinates' court, excluding appeals in criminal cases	20.00
13.	On every notice of appeal against a judgment of the court to the Court of Appeal (irrespective of whether it as prescribed by one or more Judges)	100.00
14.	On every bill of costs to be taxed which is not related to an action or application already registered in the court.	100.00
15.	For all Bill of costs, 1% of the amount allowed.	

16.	For the Registrar's certificate on any copy of a document, certifying such document as a true copy of the original, including a certificate certifying an originating application as a duplicate original originating application.	10.00
17.	For every certificate made under the hand of the Registrar, other than a certified copy.	
18.	For each copy of an order of court or judgment made by the Registrar, for each A4-size page or part thereof	5.00
19.	For each copy of a document, notice, pleading or part of a court record made by the Registrar, for each A4-size page or part thereof.	5.00
20.	On a request to inspect a court record made within 5 days after judgment was delivered.	50.00
21.	For each copy of any document, notice, pleading, judgment or part of a transcribed court record provided by the Registrar in electronic format, irrespective of whether the document, notice, pleading, judgment or part of a court record is provided on a separate disk, copied onto any other external device provided to the Registrar or transmitted via e-mail.	150.00
22.	For each electronic sound or video file of any recorded session of any proceedings digitally recorded, per session, irrespective whether the file is provided on a separate disk, copied onto any other external device provided to the Registrar or transmitted via e-mail.	150.00
23.	For every application to search for any entry or document on a record:	
(a)	If the number of the record is given;	10.00
(b)	If the number of the record is not given, for every week or part thereof required to be searched	30.00
24.	For each copy of any document, notice or pleading submitted to the Registrar for purpose of scanning, for each A4-size or part thereof.	5.00
25.	For transcription of court record other than criminal cases, per folio.	10.00

Annexure E

Tariff of fees for Sheriff and Deputy-Sheriffs

Item		Amount
1.	For registration of any document for service or execution upon receipt thereof.	10.00
2.	For service of any originating application together with special power of attorney thereto.	140.00
3.	For service of petitions, notice of motion, other notices, orders or any other documents, each Provided that:	70.00

(a) whenever any document to be served in terms of items 2 and 3 or with any such process is mentioned in the process or forms as annexure thereto, no additional fee shall be charged for the service of such document, but otherwise a fee of M10.00 may be charged in respect of each separate document served.

(b) No fee for the service of a separate document shall be charged in respect of the service of process in criminal cases.

4. Attempted service of originating applications, petitions, notices of motion, notice of set-down, other notices, orders and any other documents, the fee charged shall be half of the allowed tariff for that process if service is properly effected and the Sheriff is satisfied that a reasonable attempt to effect service at the appointed place have been made and that failure was not due to want of diligence on the part of the Deputy-Sheriff charged with duty of effecting that service.

5. An attempted service of two or more documents on the same person shall be considered an attempt

of service of one document only.

6. Travelling allowance: per kilometre — M5.00

(a) For the distance actually and necessarily travelled by the deputy-sheriff or his assistant, reckoned, from the office of the deputy-sheriff, both on the forward and the return journey, per kilometre or part thereof except in the case of service of a criminal process when it shall be M2.50 per kilometre or part thereof.

(b) When two or more originating applications or other process, whether at the instance of the same party or of different parties, are capable of being served on one and the same journey, the travelling allowance for performing the round of service shall be fairly and equitably apportioned among the several cases, regard being had to the distance at which the parties against whom such process is directed respectively reside from the office of the deputy-sheriff, but the fee for service shall be payable for each service made or attempted to be made.

(c) This allowance is payable only in cases where the duty in question is to be performed beyond a radius of one kilometre from the office of the deputy-sheriff.

7. (a) Postage in civil matters, as per postal tariff.

(b) Postage in criminal matters, free.

8. For the execution of any writ:

(a) Of personal arrest, including the conveyance of the person concerned to court, to a legal practitioner's office or to a prison, — 125.00

		per person and if the court session is on the same day as the arrest, attending at court, per hour.	
	(b)	For conveying the person concerned to court from a place of custody on a day subsequent to the day of arrest and attending at court per hour.	125.00
		Identical notices where there are several lessees, occupiers or owners, for each after the first lessee or occupier.	20.00
	(c)	For attachment of property *ad fundandam jurisdictionem or ad confirmandam jurisdictionem*.	125.00
	(d)	Where attachment in terms of item 8(c) is withdrawn or suspended.	30.00
	(e)	For ejectment is M125.00 per hour subject to a minimum fee of	125.00
		[**Note**: The fees referred to under item 8 are in addition to reasonable expenses necessarily incurred by the deputy-sheriff]	
9.	A writ against immovable property -		
	(a)	For execution or service on the Land Registrar or other officer charged with the registration of property and if the property is in occupation of some person other than the owner, also on that occupier;	125.00
	(b)	For notice of attachment to single lessee or occupier;	20.00
		[identical notices where there are several lessees, occupiers or owners, for each after the first;	10.00
	(c)	For notice of attachment to a headman or	10.00

chief having jurisdiction over the property;

(d)	For making valuation or report for purposes of sale;	125.00
(e)	When the deputy-sheriff has been authorised to sell the property and the property is not sold on account that the writ of attachment is withdrawn by the judgment creditor or stayed, 6% of the amount on the writ shall be due and payable to the deputy-sheriff;	
(f)	If the writ is paid by the judgment debtor to the deputy-sheriff or judgment creditor after immovable property has been attached but before sale, 6% shall be charged on the amount paid.	
(g)	When upliftment of judicial attachment on immovable property occurs;	200.00
(h)	For the first notice of making necessary notice of withdrawal of attachment; [and 10.00 for each of other identical notices]	20.00
(i)	For ascertaining and recording 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, including any correspondence in connection therewith (in addition to reasonable expenses necessarily incurred by the deputy-sheriff);	200.00
(j)	For notifying the execution creditor of such bonds or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered;	30.00

(k)	for considering of proof that a preferent creditor has complied with the requirements under rules 165(6) and 166(11);	20.00
(l)	for each notice referred to in rule 165(6);	30.00
(m)	for consideration of notice of sale prepared by the execution creditor in consultation with the deputy-sheriff and verifying that notice of sale has been published in the newspapers indicated and in the Gazette;	50.00
(n)	for forwarding a copy of the notice of sale to every judgment creditor who had caused the immovable property to be attached and to every mortgage thereof whose address is known, for each copy;	20.00
(o)	for affixing a copy of the notice of sale to the notice board of the Subordinate Court referred to in rule 166(7) and travelling costs referred to in item 6;	40.00
(p)	for considering the conditions of sale prepared by the execution creditor;	50.00
(q)	for considering further or amended conditions of sale submitted by an interested party;	100.00
(r)	settling of conditions of sale;	100.00
(s)	where the deputy-sheriff is an auctioneer for the sale of immovable property except that this fee may not be charged if commission is claimed in terms of item 9(t) below.	500.00
(t)	on the sale of immovable property by the deputy-sheriff as auctioneer, the deputy-sheriff	

is entitled to 10% commission of the proceeds of the sale of that immovable property. This commission shall be paid by the purchaser.

(u)	for written notice to the purchaser who has failed to comply with the conditions of sale;	50.00
(v)	for a report to the Judge in terms of rule 166(12);	100.00
(w)	for effecting transfer to the purchaser;	100.00
(x)	for preparing a plan of distribution of the proceeds, including the necessary copies and forwarding a copy to the Registrar;	150.00
(y)	for giving notice to all parties who have writs and to the execution debtor that the plan will lay for inspection, for every notice;	20.00
(z)	for request to the Registrar to pay out in accordance with plan of distribution;	20.00

10. A writ against movable property -

(a) where a writ of execution is paid on presentation to the judgment debtor, 5% on the amount so paid with a minimum fee of M200.00 shall be paid to the deputy-sheriff;

(b) if the writ of execution is withdrawn by the judgment creditor or by court order after movable property has been attached but before sale or if after the attachment but before sale, debtor's estate is placed under sequestration, 6% on the value of property attached shall be charged but the commission shall not in any case exceed the amount directed by the writ to be recovered; or

(c) if the writ is paid by the judgment debtor to the deputy-sheriff or judgment creditor after movable property has been attached but before sale, 6% shall be charged on the amount paid.

(d) when moneys are taken in execution, 6% of the amount so taken but that amount shall not exceed the 6% on the amount on the writ.

(e) for selling in execution, including distribution of the proceeds, the deputy-sheriff is entitled to 10% commission.

(f) commission shall not be chargeable against a judgment debtor on the value of movable property 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 which event the judgment creditor shall be liable to the deputy-sheriff for the 5% commission due and payable to the deputy-sheriff.

(g) 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 amount of premium paid, an inclusive fee of; 100.00

11. For keeping possession of property (money excluded) -

(a) for a person who is left in possession of the attached property for a time not exceeding fourteen days, that person is entitled per day, to a fee of; 70.00

for an additional person, where necessary, limited to one per day, a fee of; 50.00
[Note: ‘Possession means the continuous and

necessary presence on the premises for the period in respect of which possession is reckoned, of a person employed and paid by the deputy-sheriff for the sole purpose of retaining possession.']

	(b)	for removal and storage, the reasonable and necessary expenses for such removal and storage, and if an animal is to be stabled or fed, the reasonable charges for such stabling and feeding;	
	(c)	for tending livestock, the necessary expenses for tending such stock but not exceeding M100.00 per day;	
	(d)	where a person or security bond is not taken but the movable property attached remains under the supervision of the deputy-sheriff, per day.	10.00
12.	(a)	for making an inventory, including all necessary copies and time spent in stocktaking, per hour or part thereof;	100.00
	(b)	for assistance, where necessary, in taking inventory, a reasonable and inclusive fee per day, not exceeding	300.00
13.	For making return of service or execution, including drawing up and typing of original for court, limited to one person upon each original process; and copy thereof for party desiring service or execution.		50.00
14.	Drawing and completing of bail bond, deed of suretyship or indemnity bond.		50.00
15.	For the making of all necessary copies of documents per A4 size page.		5.00

16.	Attending any criminal session of a superior court per hour.	100.00
17.	Attending any court session in an interpleader where the deputy-sheriff has the rights of an applicant, including the reasonable time spend in travelling to and from the court, measured from the place where the deputy-sheriff ordinarily conducts his business per hour. Provided that, in the absence of a written undertaking by any of the parties to the interpleader to pay, payment of this fee will follow the cost order made by the court.	200.00
18.	Each necessary letter, facsimile or electronic mail excluding formal letters accompanying process or return.	20.00
19.	Each necessary attendance by telephone, irrespective whether the telephone call was made or received by the deputy-sheriff.	20.00
20.	Bank charges due and payable in respect of cash deposits or cheques drawn in respect of payment of any monies due and payable to a party in terms of the rules of court or a court order, the actual expense.	
21.	(a) Where the mandator instructs the deputy-sheriff to serve or execute a document referred to in items 2, 3 or 8 on an urgent basis or after hours, the deputy-sheriff shall charge an additional fee known as urgency fee, irrespective of whether the service or execution was successful, and such additional fee shall be paid by the mandator, save where the court orders otherwise. (b) for the purposes of paragraph (a) - (i) "urgent" means on the same day or within twenty-four hours of	500.00

the instruction; and

(ii) "after hours" means any time before 7h00 or after 19h00 on Mondays to Fridays or on a Saturday, Sunday or public holiday.

22. All court orders of liquidation or repossessions, 8% should be paid to the deputy-sheriff on the amount reflected or on the value of the property repossessed and 10% shall be paid after sale of such property. Where the 8% has been paid to the deputy-sheriff and subsequently the property is sold in execution, only the remaining 2% shall be due and payable to the deputy-sheriff.

23. A minimum fee shall be payable to the deputy-sheriff in exceptional circumstances where the deputy-sheriff is engaged in interdicts which involve risks including burial orders, the release of cars, guns and animals from the police and the deputy-sheriff may approach the taxing master where he feels that a higher fee is necessary. 1000.00

24. A fee for service performed by the deputy-sheriff but not specified in this Tariff, shall be determined by the Sheriff in consultation with the taxing master.

Annexure F

Tariff of fees for Attorneys when costs are awarded as between party and party

Item			Amount in Maloti
1.	TAKING INSTRUCTIONS		
	(a)	consultation with a client to institute or defend any proceedings;	800.00-1000.00
	(b)	for advice on evidence or advice on commission;	500.00-800.00
	(c)	to draft statement of witness.	150.00-300.00
	(d)	to draft a petition, affidavit or important pleading.	300.00
		Provided that in cases where instructions are taken but no petition or affidavit is actually drawn, the Taxing Master shall allow a fee in his discretion, but not less than.	100.00
	(e)	to set down cause, issue subpoena or writ or any other simple document	150.00
	(f)	to note, prosecute or defend an appeal (exclusive of perusal of the record)	300.00
	(g)	Taking instructions after receipt of plea.	400.00
	(h)	To make any interlocutory or procedural application.	300.00

2. APPEARANCES, CONFERENCES AND INSPECTIONS

(a) Appearance by an attorney in Court or before a Judge in Chambers or before an arbitrator, commissioner, referee or at an inspection directed by the Court, per half hour or part thereof -

(i)	If counsel is employed;	300.00
(ii)	If counsel not employed	400.00

(b) Any conference with an advocate, with or without witnesses, on pleadings, including exceptions and particulars to pleadings, applications, petitions, affidavits and testimony, and on any other matter which the taxing master may consider necessary per half hour or part thereof. 300.00

(c) Inclusive fee for necessary conference or consultations with a client, witness or opposite party, or advocate not otherwise provided for or separately charged, per half hour or part thereof. 300.00

(d) Any other conference which the taxing master may consider necessary, per half hour or part thereof. 300.00

(e) Preparing for trial where Counsel not employed, per half hour or part thereof, but not more than 3 hours. 300.00

(f) Attendance by an attorney in court to note judgment only -

(i)	Where counsel not employed	400.00

(ii) Where counsel is employed 300.00

(g) Appearances or attending conferences in terms of rules 40 to 44 per half hour or part thereof -

(i) by an attorney 300.00

(ii) by an articled clerk 150.00

(h) Attendance of attorney's articled clerk to assist in contested proceedings, per half hour or part thereof. 150.00

(i) Any inspection in situ, or otherwise, per half hour or part thereof -

(i) by an attorney; 300.00

(ii) by an articled clerk 100.00

(j) The rates of remuneration in items (a) to (i) do not include time spent in travelling or waiting and the taxing master may, in respect of time necessarily spent, allow such additional remuneration as he, in his discretion, considers fair and reasonable, not exceeding M1000.00 per day in the case of an attorney and M500.00 per day in the case of an articled clerk and he may also allow a reasonable amount to cover the costs of necessary conveyance.

3. ATTENDANCE AND PERUSAL

(a) Attending the receipt of and perusing and considering -

(i) originating application, petition, affidavit, pleading, counsel's advice 20.00

and drafts, report, important letter, notice or document per folio;

(ii) any formal letter, record stock sheets in voluntary surrenders, judgments or any other material document not elsewhere specified, per folio; 20.00

(iii) attending the receipt of and considering any plan or exhibit or other material document which was necessary for the conduct of the action, in respect of which the basis of remuneration cannot be calculated per folio; 150.00 -400.00

(b) Making searches in offices of record per half hour or part thereof -

(i) by an attorney 250.00

(ii) by an articled clerk 125.00

(c) sorting out, arranging and paginating papers for pleadings, advice on evidence or brief on trial or appeal, per half hour or part thereof 250.00

NOTE: Particulars of received papers need not be specified in the bill of costs, but the number of papers and pages received as well as the total amount charged must be specified. The opposing party as well as the taxing master are entitled to inspect the papers received if the correctness of the item is disputed.

(d) Attending to give or take disclosure, per half hour or part thereof. 250.00

(e) Attending to arrange translation and thereafter to procure same. 300.00

(f) Attending to peruse the roll, to establish if the matter is on the roll. 50.00

	(g)	Other attendances, including necessary telephone calls other than formal telephone calls.	100.00
4.	ATTENDANCE-FORMAL		
	(a)	To serve or deliver (other than by post) any necessary document or letter or despatch any telegram, provided that a single fee is to be allowed for the service and delivery of the same document.	100.00
	(b)	To sue out any process or file any document.	100.00
	(c)	To set down cause for trial.	100.00
	(d)	To search for any return of service.	100.00
	(e)	Attending on counsel, with brief to make appointment, to deliver brief or o collect brief.	100.00
	(f)	Attending on signature of power of attorney to sue or defend.	100.00
	(g)	Attending receipt of a formal acknowledgement.	100.00
	(h)	Other formal attendance including telephone calls and other administrative attendances not specifically provided for elsewhere.	100.00
5.	DRAFTING AND DRAWING		
	(a)	Drafting instructions for case on opinion, for counsel's guidance in preparing pleadings, including exceptions, per folio.	200.00
	(b)	Drafting instructions to counsel for advice on evidence or brief on trial or on commission,	

		per folio.	200.00
	(c)	Drafting instructions to counsel in respect of all classes of pleadings, exceptions or on motion petition or appeal, per folio.	200.00
	(d)	Drawing a petition, an exception, or affidavit, any notice (other than a formal notice), originating applications, answer, an annexure to the originating application, order of court, writ of execution, arrest or attachment and an important document or pleading otherwise not provided for, per folio.	50.00
	(e)	Drafting statement of witnesses, reports or summaries per folio.	50.00
	(f)	Drafting power of attorney to sue or defend;	200.00
	(h)	Drawing letters, telegrams, facsimiles, electronic mail: inclusive tariff for drawing up, checking, typing, printing, scanning, delivery, postage, posting and transmission thereof, per folio.	50.00
	(i)	Drawing index to brief, per folio.	30.00
	(j)	Drawing short brief.	150.00
6.	MISCELLANEOUS		
	(a)	For giving a written opinion (as between attorney and client).	1000.00-2000.00
	(b)	For making copies for Court, Registrar, Counsel or Attorney, or for service or for any necessary purpose, the charge will be at the rate of M5.00 per page for a copy (including the first copy	

of any document drafted in respect of which a charge is recoverable under this tariff).

(c) A folio shall consist of 100 words.

7. BILL OF COSTS

(a) In connection with a bill of costs for work done or services rendered by an attorney, he shall be entitled to charge -

(i) for drawing the bill of costs, making the necessary copies and attending settlement, 5% of the amount of the Attorney's fees, either charged in the bill if not taxed, or as allowed on taxation.

(ii) for arranging and attending taxation, 5% of the total fees allowed. If more than 25% of the fees are taxed off, the fee for arranging and attending taxation shall not be allowed.

8. TRAVELLING AND SUBSISTENCE ALLOWANCE

(a) A travelling allowance for Attorneys shall be allowed at the rate of M5.00 per kilometre where the Attorney travels more than five kilometres to court from his office by motor vehicle.

(b) A subsistence allowance for Attorneys shall be allowed at the rate of M1000.00 for each night if it is necessary for him to remain at the place where the court is situated.

9. ATTORNEY TO CHARGE ON THE TARIFF OF FEES ALLOWED TO COUNSEL

Where an attorney performs work which, but for the provisions of section 42(1) of the Legal Practitioners Act of 1983, could only be done by Counsel, the Attorney shall be entitled to charge on the tariff of fees to be allowed to Counsel, except that an Attorney shall not be entitled to charge fees for work done as an Attorney in addition to the fees charged by him as Counsel in respect of the same work.

Annexure G

Tariff of Fees for Advocates

In this Schedule 'King's Counsel' mean King's Counsel appointed by His Majesty Letsie III King of Lesotho, or a Queen's Counsel appointed Her Majesty Queen 'Masenate Mohato Seeiso or a Senior Counsel appointed as such in a foreign country and having been admitted to practice in the Superior Courts of Lesotho.

Item			King's Counsel	Junior Counsel
1.	TAKING BRIEF			
	(a)	To institute or defend any motions, applications or action proceedings.	1200.00-2000.00	800.00-1200.00
2.	CONSULTATIONS AND CONFERENCES			
	(a)	Consultation with client to settle affidavits, stated cases and on trial and to receive advice on litigation, per half hour or part thereof.	500.00	500.00
	(b)	Settling of notice of motion or affidavits where consultation not held.	700.00	600.00
	(c)	Any necessary consultation or conference with instructing Attorney not herein specified, per hour or part thereof.	800.00	700.00
	(d)	All consultations other than those referred to	500.00	500.00

under this tariff, per half hour or part thereof.

3. APPEARANCE IN COURT

(a)	Unopposed motions, applications including interlocutory applications.	3000.00-3500.00.	2000.00-25000.00
(b)	Opposed applications including exceptions or special plea.	5000.00 - 6500.00	4000.00 - 5500.00
(c)	Stated cases.	5000.00 - 6500.00	4000.00 - 5500.00
(d)	Trials.	6000.00 - 7000.00	5000.00 - 6000.00
(e)	Unopposed appeals or reviews from Subordinate Courts including Judicial Commissioner's Court.	3000.00 - 3500.00	2000.00 - 2500.00
(f)	Opposed appeals and reviews from Subordinate Courts including Judicial Commissioner's Court.	4000.00 - 5000.00	3000.00 - 4000.00
(g)	Review proceedings from Courts or tribunals subordinate to the High Court not mentioned above.	4000.00 - 5000.00	3000.00 - 4000.00
(h)	Subsequent and not necessarily consecutive days, 2/3		

of the amount allowed
on the first day of hearing.

(i) Noting judgment:

(i)	with no arguments on any matter;	500.00	400.00
(ii)	with arguments as to costs or other matter.	2500.00 - 3000.00	2000.00 -2500.00

(j)	Unopposed application for leave to appeal.	3000.00	2000.00
(k)	Opposed application for leave to appeal.	3500.00 - 4500.00	2500.00 -3500.00
(l)	Unopposed postponement.	700.00	500.00
(m)	Opposed. postponement.	2000.00 - 2500.00	1500.00 - 2000.00

4. DRAWING PLEADINGS

(a)	Inclusive fee for replication or rejoinder including settling.	1200.00	1000.00
(b)	Inclusive fee for drawing exceptions, applications to strike out, etc including settling same.	1500.00	1300.00
(c)	Inclusive fee for drawing other pleadings except for those stated in (a) and (b) above and settling same.	1500.00	1300.00

(d)	Drawing heads of argument including settling of same per hour with a maximum of three hours.	1000.00	800.00
(e)	Inclusive fee for settling originating application where consultation not held.	1000.00	600.00
(f)	Settling stated case, where consultation not held.	1000.00	600.00

5. JUDICIAL CASE MANAGEMENT

(a)	Attendance at any party's judicial case management or pre-trial conference and drafting or settlement of any minute, per hour or part thereof, with a maximum of three hours.	1000.00	600.00
(b)	Inclusive fee for appearance at any judicial case management or pre-trial hearing per day.	2000.00	1500.00

6. TRAVELLING AND SUBSISTENCE ALLOWANCE

(a) Where an advocate travels by motor vehicle to Court, a travelling allowance shall be allowed at the rate of M5,00 per kilometre.

(b) A subsistence allowance for Advocates may be allowed at the rate of M1000.00 per night.

Printed by the Government Printer, P.O. Box 268, Maseru 100 Lesotho