



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.00

WINDHOEK - 5 November 2007

No. 3930

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Government Notice

MINISTRY OF JUSTICE

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| No. 200 | 2007 |
| AMENDMENT OF RULES OF COURT: MAGISTRATES' COURTS ACT, 1944 | |

The Cabinet, under subsection (5) of section 25 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), has confirmed the amendments made by the Rules Board under subsection (3) of that section to the Rules of Court, which amendments are set out in the Schedule, and come into operation after 30 days from the date of publication of this notice.

BY ORDER OF THE RULES BOARD

E.P. UNENGU

CHAIRPERSON OF THE RULES BOARD

Windhoek, 22 October 2007

SCHEDULE

Definitions

1. In these rules "the Rules" means the Rules of Court published under Government Notice No. R.1108 of 21 June 1968, as amended by Government Notices Nos. R.3002 of 25 July 1969, R.490 of 26 March 1970, R.1752 of 16 October 1970, R.947 of 2 June 1972, R.1115 of 28 June 1974, R. 1285 of 19 July 1974, R.689 of 23

April 1976, R.261 of 25 February 1977, R.2221 of 28 October 1977, R.327 of 24 February 1978, R.2222 of 10 November 1978, R.1194 of 8 June 1979, R.1449 of 29 June 1979, R.652 of 28 March 1980, R.1314 of 27 June 1980, R.1800 of 28 August 1981, R.1139 of 11 June 1982, R.1689 of 29 July 1983, R.1946 of 9 September 1983, R.1338 of 29 June 1984, 148 of 31 December 1985, 36 of 16 March 1987, AG.58 of 15 August 1989, AG.86 of 13 October 1989, AG. 122 of 1 December 1989, 178 of 1 December 1992, 43 of 10 March 1997, and 75 of 07 March 2000.

Amendment of rule 12 of the Rules

2. Rule 12 of the Rules is amended by the substitution for paragraph (b) of subrule (2) of the following paragraph:

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

Amendment of rule 13 of the Rules

3. Rule 13 of the Rules is amended -

(a) by the substitution for the heading of the following heading:

“Appearance to defend and withdrawal of legal practitioner of record”;
and

(b) by the addition after subrule (6) of the following subrule:

- “(7) (a) Where a legal practitioner acting in any proceedings for a party ceases so to act, he or she shall forthwith deliver notice thereof to such party, the clerk of the court and any other parties to the proceedings, but if the notice to the party for whom he or she acted is sent by registered post, such party is deemed to have received the notice after 7 days from dispatch of the notice.
- (b) After the notice, unless the party formerly represented, within 7 days after the notice, himself or herself notifies all other parties of a new address for service as contemplated in subrule (4), it is not necessary to serve any document upon such party unless the court otherwise orders, but any of the other parties may, before receipt of the notice of his or her new address for service of documents, serve any documents upon the party who was formerly represented.

- (c) The notice to the clerk of the court shall state the names and addresses of the parties notified and the date on which and the manner in which the notice was sent to them, as well as the last known physical and postal address of the party formerly represented.
- (d) The notice to the party formerly represented shall inform the party of the provision of paragraph (b)."

Amendment of rule 41 of the Rules

4. Rule 41 of the Rules is amended by the substitution for paragraph (e) of subrule (7) of the following paragraph:

- “(e) Unless an order of court is produced to the messenger requiring him or her to detain any movable property under attachment for such further period as may be stipulated in such order, the attachment shall automatically lapse after the expiry of four months from the date of attachment, unless a sale in respect of such property is pending. If such order was made on application made ex parte, such order is not subject to confirmation.”.

Amendment of rule 49 of the Rules

5. Rule 49 of the Rules is amended by the substitution for subrule (3) of the following subrule:

- “(3) Save where leave has been given to defend as a pro Deo litigant in terms of rule 53, no such application shall be set down for hearing until the applicant has paid into court, or has secured to the satisfaction of the plaintiff, to abide the directions of the court, the amount of 20% of the principal debt to a maximum amount of N\$3 000 as security for the costs of the application, but the judgment creditor may, by consent in writing lodged with the clerk of the court, waive compliance with this requirement.”.

Amendment of rule 60 of the Rules

6. Rule 60 of the Rules is amended by the addition after subrule (8) of the following subrule:

- “(9) (a) A party to a cause in which an irregular or improper step or proceeding has been taken by any other party may, within 7 days after becoming aware of the irregularity or impropriety, apply to the court to set aside the step or proceeding, but a party who has taken any further steps in the cause with knowledge of the irregularity or impropriety is not entitled to make such application.
- (b) Application in terms of paragraph (a) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged.
- (c) If at the hearing of such application the court is of the opinion that the step or proceeding is irregular or improper, it may set

aside the step or proceeding in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make such order as it considers fit.

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

Amendment of Annexure 2 to the Rules

7. Annexure 2 to the Rules is amended by the substitution for Table C of the following Table:

“TABLE C

GENERAL PROVISIONS AND TARIFF OF FEES

(MESSENGERS OF THE COURT)

PART I

MESSENGER WHO ARE STAFF MEMBERS OF THE PUBLIC SERVICE

1. For each service or execution or attempted service or execution of any process or document: N\$20,00.
2. The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

PART II

MESSENGERS WHO ARE NOT OFFICERS OF THE PUBLIC SERVICE

- IA. For registration of any document for service or execution upon receipt thereof: N\$3,25.
- 1B. (a) (i) For the service of a summons, subpoena, notice, order or other document not being a document mentioned in item 2: N\$46,00.
(ii) Where a mandatory instructs the messenger in writing to serve a document referred to in (i) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff referred to in (i) which additional costs shall be paid by the mandatory, save where the court orders otherwise.
- (b) (i) For the attempted service of the documents mentioned in paragraph (a): N\$29,00.
(ii) Where a mandatory instructs the messenger in writing to serve a document referred to in subitem (a)(i) urgently on the day of receipt of such document or after normal office hours and the messenger is unsuccessful in his or her attempt to effect service, the costs shall be calculated at double the tariff referred to in (i), which additional costs shall be paid by the mandatory, save where the court orders otherwise.

- (c) (i) Where a document must be served together with a process of the court and is mentioned in such process or an annexure thereto, no additional fees shall be charged for service of the document, otherwise N\$5,00 may be charged for every separate document served.
- (ii) No fees shall be charged for a separate document when process in Criminal matters is served.
- (iii) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.
2. (a) (i) For the execution of a warrant, interdict or garnishee order: N\$51,00.
- (ii) Where a mandatory instructs the messenger in writing to execute a document referred to in item 2(a) urgently on the day of receipt of such document or after normal office hours, the costs shall be calculated at double the tariff in item 2(a)(i), which additional costs shall be paid by the mandatory, save where the court orders otherwise.
- (b) (i) For the attempted execution of the documents mentioned in paragraph (a): N\$35,00.
- (ii) Where a mandatory instructs the messenger in writing to execute a document referred to in 2(a) urgently on the day of receipt of such document or after normal office hours and the messenger is unsuccessful in his or her attempt to effect execution, the costs shall be calculated at double the tariff in item 2(b)(i), which costs shall be paid by the mandatory, save where the court orders otherwise.
- (c) (i) For the ejection of a defendant from the premises referred to in the warrant of ejection: N\$50,00 per half hour or part thereof (except extraordinary expenses necessarily incurred).
- (ii) A further fee of N\$20,00 shall be paid after execution for every person over and above the person named or referred to in the process of ejection, in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor, respondent or garnishee is necessary in order to complete the execution, the fee laid down in item B(a) may be charged in respect of each such service.
- (d) For the arrest of a defendant in terms of an order *tanquam suspectus de fuga*, or an order to found or confirm jurisdiction in terms of section 30bis or an order in terms of section 65 of the Act or any other arrest in terms of the Act, not otherwise provided for, the messenger shall be entitled to, in addition to the tariff in item 2(a), an amount of N\$30,00 per half an hour or part thereof, for waiting time during negotiations between the several parties or waiting time at the court, due to the unavailability of a court.
3. Compilation of any return in terms of rule 8, in duplicate: N\$15,00.
4. If it is necessary for the messenger to travel, a travelling allowance of N\$4,00 per kilometer or part thereof travelled to and from the place of service or execution, calculated from the court-house for the district for which he or she is appointed, shall be allowed in addition to the fees mentioned in items 1 B(a)(i), 1 B(b)(i), 2(a)(i), 2(b)(i), 2(c)(i) or 2(d).

5. (a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, a travelling allowance of N\$4,00 per kilometer for every kilometer or part thereof beyond a radius of one kilometer from the office of the messenger, shall be payable for the forward and return journey, and shall be calculated from the court house of the district for which the messenger is appointed.
 - (b) (i) A travelling allowance shall include all the expenses incurred in travelling, including train fares.
 - (ii) In respect of discharge of any official duty, should it be necessary for a messenger, due to lack of passable roads, to travel on foot or by means of animal transportation, such messenger is in addition to the fee allowed in paragraph 4 entitled to a subsistence allowance of N\$200,00 per 24 hours in excess of the first 24 hours or part thereof so travelled.
 - (c) Travelling allowance shall be calculated in respect of each separate service, except that -
 - (i) where more services than one can be done on the same journey, the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and
 - (ii) where service of the same process has to be effected on more than one person by a messenger within the area served by him or her, only one charge for travelling shall be allowed.
 - (d) When it is necessary for the messenger to convey any person under arrest, an allowance of N\$3,00 per kilometer in respect of that portion of his or her journey on which he or she was necessarily accompanied by such person, shall be allowed.
 - (e) The drawing up and handing over of a warrant of liberation or certificate of liberation to the officer-in-charge of a prison: N\$22,50. A travelling allowance at the tariff mentioned in subitem (a) shall be payable for the execution of this duty.
6. (a) Making an inventory, including the making of all necessary copies and time spent on stocktaking: N\$50,00 per half an hour or part thereof.
 - (b) For assistance, if necessary, with the making of an inventory: N\$30,00 per half an hour or part thereof, for each assistant, provided that not more than two assistants are to be used.
7. The perusing, drawing up and completing of a bail bond, deed of suretyship or indemnity bond: N\$15,00.
 8. Charge of custody of property (money excluded), hereinafter referred to as "possession":
 - (a) (i) For each officer necessarily left in possession, a reasonable inclusive amount as per invoice of the relevant security company.

- (ii) In addition to the fee in (a)(I), a reasonable allowance for board and subsistence shall be allowed, provided that the person referred to in 8(a) actually stays on the premises, not being the premises from where the messenger usually conducts business and that such allowance is a reasonable inclusive amount: Provided further that such board and subsistence is not included in the invoice of the security company.
 - (b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.
 - (c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.
- 9. For the purposes of Item 8 of this Part -
 - “possession” means actual physical possession by a person employed and paid by the messenger, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.
 - “cost of removal” means the amount actually and necessarily disbursed for removal or attempted removal if the goods were removed by a third party or an attempt was made to remove them, if they were removed by the messenger himself or herself, such amount as would fairly be allowable in the ordinary course of business if the goods were removed by a third party, or an attempt was made to so remove them.
 - “cost of storage” means the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the messenger provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.
- 10.
 - (a)
 - (i) Where a warrant of execution or garnishee order is paid in full, or in part, to the messenger, or monies attached in execution against movables, 7.5 per cent of the amount so paid or attached, with a minimum of N\$50,00 and a maximum of N\$1500,00.
 - (ii) Notice of attachment to defendant and to each person to be notified: N\$5,00.
 - (b)
 - (i) Where an execution debtor at the attempted execution of a warrant of arrest or detention, pays the amount due in full or in part to the messenger, 7.5 per cent of the amount so paid, with a minimum of N\$50,00 and a maximum of N\$1500,00.
 - (ii) The rules that apply to the collection of money on warrants of execution or garnishee orders shall apply with the necessary changes to money received in terms of this paragraph.
- 11. Where property is released from attachment in terms of rule 47(7)(e), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestered after the attachment, but before the sale, 2 per cent of the amount of the warrant of execution, subject to a maximum of N\$150,00: Provided that if a sale subsequently takes place in consequence of the said attachment, the amount so paid shall be deducted from the commission payable under item 12.

12. Where the warrant of execution against movables is completed by sale, 7.5 per cent of the amount realized.
13. For the insurance of attached property, if deemed necessary, and on the written instructions of the judgment creditor to the messenger, in addition to the premium to be paid, an all inclusive amount of N\$30,00.
14. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of N\$150,00 shall be payable to the messenger or to the person in fact authorised to act as auctioneer, as the case may be.
15.
 - (a) The drawing up of a report of the improvements on the property for the purpose of sale, N\$50,00 per half hour or part thereof.
 - (b) Written notice to the purchaser who has failed to comply with the conditions of sale: N\$30,00.
 - (c) Consideration of conditions of sale: N\$45,00.
16. When immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the Act: N\$22,75.
17. When an execution against immovable property is completed by sale, the following auctioneer's fees shall be allowed to the messenger on the proceeds of the sale:
 - (a) On the sale of immovable property by the messenger as auctioneer, 5 per cent of the proceeds of the sale, subject to a minimum of N\$260,00 (inclusive in all instances of the messenger's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.
 - (b) If an auctioneer is employed as provided in rule 43(9), 2.5 per cent of the proceeds of the sale, subject to a minimum of N\$260,00 (inclusive in all instances of the messenger's bank charges and other expenses incurred in paying the proceeds into his or her trust account), which commission shall be paid by the purchaser.
18. In addition to the fees allowed by items 11 to 17, both inclusive, there shall be allowed:
 - (a) the sum actually and reasonably paid by the messenger or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution;
 - (b) the sum of N\$15,00 to the messenger for giving transfer to the purchaser.
19. Where the messenger is in possession of more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.

20. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
21. The fees and expenses of the messenger in execution of a garnishee order, shall be added to the amount to be recovered under the order, and shall be chargeable against the judgment debtor.
22. If it is necessary for the messenger to return a document received by him or her for service or execution to the mandator because -
 - (a) the address of service which appears on the process does not fall within his or her jurisdiction; or
 - (b) the mandator requested, before an attempted service or execution of the process, that it be returned to him or her,an amount of N\$5,00 shall be payable.
23. For the conveyance of any person arrested by the messenger or committed to his or her custody, from the place of custody to the court on a day subsequent to the day of arrest: N\$30,00 per journey and N\$50,00 per half an hour or part thereof for attending court.
24. For the examination of indicated newspapers and the Gazette in which the notice of sale has been published as referred to in rule 43(6)(c) and rule 41(8)(c): N\$5,00.
25. For forwarding a copy of the notice of sale to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable, for each copy: N\$40,00.
26.
 - (a) For affixing a copy of the notice of sale on the notice board or door of the court-house or other public building referred to in rule 43(6)(e) and rule 41(8)(b): N\$10,00.
 - (b) For affixing a copy of the notice of sale on the property due to be sold, the amount in paragraph (a) above and travelling costs referred to in item 5(a).
27. For the drawing up and issuing of an interpleader summons: N\$40,00.
28. In addition to the fees prescribed in this Table, the messenger shall be entitled to the amount actually disbursed for postage and telephone calls.
29. For the writing of each necessary letter, excluding formal letters accompanying process or returns: N\$10,00.
30. Each necessary attendance by telephone (in addition to prescribed trunk charges and cellular charges): N\$10,00.
31. Sending and receiving of each necessary facsimile per A4 size page (in addition to telephone charges): N\$10,00.
32. For the perusal of the records of the Registrar of Deeds in terms of rule 43(3) to determine the order of precedence of creditors:

- (a) if investigated by the messenger personally: N\$40,00 per case;
 - (b) if the messenger utilizes the services of a third party for the investigation, the actual cost as required by the third party, provided that it is reasonable.
- 33. For the making of all necessary copies of documents: N\$4,00 per A4 size page.
 - 34. For the drawing up of the bill of taxation and attendance of the taxation by the messenger: N\$35,00.
 - 35. Bank charges: Actual costs incurred relating to bank charges and cheque forms.
 - 36. The VAT payable on messengers' fees shall be allowed on taxation by the clerk of the court.
 - 37. For drawing a plan of distribution of proceeds (including the necessary copies): N\$35,00.
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