

COURTS

Further Administration of Justice Proclamation 38 of 1920

Summary: This Proclamation ([OG 35](#)) provides for the procedure of circuit courts of the High Court. All that remains in force of this Proclamation are sections 1, 7, 11 and 13-15.

Amendments: Proc. 30/1935 ([OG 649](#)) amends sections 3 and 11 and repeals section 10. The SA *Supreme Court Act 59 of 1959* ([SA GG 6253](#)) repeals sections 2-6, 8, 9 and 12. The RSA *Civil Proceedings Evidence Act 25 of 1965* ([RSA GG 1066](#)) amends section 11.

Regulations: Section 13 of the Proclamation authorises regulations “as to the method of transport of the Judge of the High Court of South-West Africa and the scales of transport, travelling and subsistence allowances when he is travelling on duty or is absent on duty from his place of residence”. Pre-independence regulations have not been researched, as they would now be obsolete.

Magistrates’ Courts Act 32 of 1944, as amended in South Africa to November 1979

Summary: This Act ([SA GG 3346](#)) consolidates all laws relating to magistrates’ courts.

Applicability to SWA: Section 1, as amended by *Act 53 of 1970*, defines “territory” as “the territory of South West Africa”, and “province” and “Republic” are both defined to include the territory. Section 115A, inserted by *Act 53 of 1970*, states “This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated **12 November 1979**, as amended. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Section 3(1)(d) of the transfer proclamation excluded all references to “Republic” in the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Magistrates’ Courts Amendment Act 40 of 1952* ([SA GG 4873](#))
- *Magistrates’ Courts Amendment Act 14 of 1954* ([SA GG 5254](#))
- *General Law Amendment Act 62 of 1955* ([SA GG 5512](#))
- *General Law Amendment Act 50 of 1956* ([SA GG 5703](#))
- *General Law Amendment Act 68 of 1957* ([SA GG 5894](#))
- *Criminal Law Amendment Act 16 of 1959* ([SA GG 6195](#))
- *Criminal Law Further Amendment Act 75 of 1959* ([SA GG 6262](#))
- *General Law Further Amendment Act 93 of 1962* ([RSA GG 284](#))
- *Magistrates’ Courts Amendment Act 19 of 1963* ([RSA GG 456](#))
- *General Law Amendment Act 37 of 1963* ([RSA GG 488](#))
- *General Law Further Amendment Act 93 of 1963* ([RSA GG 555](#))
- *Bantu Laws Amendment Act 42 of 1964* ([RSA GG 801](#))
read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 ([RSA GG 240](#))
- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *Magistrates’ Courts Amendment Act 48 of 1965* ([RSA GG 1102](#))

- *Magistrates' Courts Amendment Act 8 of 1967* ([RSA GG 1664](#))
- *General Law Amendment Act 70 of 1968* ([RSA GG 2106](#))
- *Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969* ([RSA GG 2315](#))
- *Magistrates' Courts Amendment Act 17 of 1969* ([RSA GG 2317](#))
- *General Law Amendment Act 101 of 1969* ([RSA GG 2464](#))
- *General Law Amendment Act 17 of 1970* ([RSA GG 2655](#))
- *Magistrates' Courts Amendment Act 53 of 1970* ([RSA GG 2826](#))
- *General Law Amendment Act 80 of 1971* ([RSA GG 3197](#))
- *General Law Amendment Act 102 of 1972* ([RSA GG 3610](#))
- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *Second General Law Amendment Act 94 of 1974* ([RSA GG 4510](#))
- *Magistrate's Courts Amendment Act 63 of 1976* ([RSA GG 5120](#))
- *Criminal Procedure Act 51 of 1977* ([RSA GG 5532](#))
- *Lower Courts Amendment Act 91 of 1977* ([RSA GG 5621](#)).

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 14/1981 ([OG 4565](#)), which is brought into force by AG Proc. 33/1981 ([OG 4577](#)), amends section 92.

Act 11/1985 ([OG 5108](#)) amends the Act substantially.

The Appeals Amendment Act 29 of 1985 ([OG 5149](#)), which is brought into force by AG 19/1986 ([OG 5182](#)), amends sections 1 and 83.

Act 9/1990 ([GG 43](#)) amends section 1 and 10 of the Act (with regard to the administration of the Act and the qualifications for the appointment of judicial officers).

The Attorneys Amendment Act 17 of 1991 ([GG 314](#)) substituted section 21, with effect from 29 September 1989; this amending Act was repealed in its entirety by the Legal Practitioners Act 15 of 1995.

The Married Persons Equality Act 1 of 1996 ([GG 1316](#)), brought into force on 15 July 1996 by GN 154/1996 ([GG 1340](#)), amends section 5 and deletes section 111(4).

Act 9/1997 ([GG 1696](#)), which was brought into force on 3 November 1997 by GN 220/1997 ([GG 1722](#)), increases the limits on the jurisdiction of magistrates' courts, by altering sections 29, 46, 50, 65I, 74 and 92. In terms of these amendments, the basic limit for civil actions is N\$25 000. For criminal actions, a magistrates' court may impose a sentence of up to five years or a fine of up to N\$20 000, and a regional magistrates' court may impose a sentence of up to 20 years and a fine of up to N\$100 000.

Act 1/1999 ([GG 2058](#)) amends the minimum qualifications for regional magistrates, gives regional courts jurisdiction for murder trials, and repeals the provisions relating to imprisonment for failure to satisfy an order of court to pay a judgement debt (affecting sections 9, 12, 65A, 65C, 65D, 65E, 65F, 65G, 65H, 65J, 65K, 65L, 89, 106, 106A, 106B and 109).

The Magistrates Act 3 of 2003 ([GG 2996](#)) (the relevant portion of which was brought into force on 30 June 2003 by GN 125/2003, [GG 3001](#)) amends sections 1 and 66, substitutes section 8 and repeals sections 9, 9bis, 10, 11 and 12.

Act 6/2009 ([GG 4308](#)) amends the composition of the Rules Board in section 25.

Application to Rehoboth Gebiet: Amendments to the Act were applied to Rehoboth insofar as they related to matters which fell under the Legislative Authority of Rehoboth by the Magistrates' Courts Amendment Act 5 of 1982 (Rehoboth) (*Official Gazette 79 of Rehoboth*, dated 7 October 1983):

1. (1) Any amendment of the Magistrates' Courts Act, 1944 (Act 32 of 1944), in so far as that amendment relates to any matter in respect of which the Legislative Authority of Rehoboth is empowered to make laws and which was made for or also for the territory of South West Africa excluding Rehoboth after the commencement of the Rehoboth Self-Government Act, 1976 (Act 56 of 1976), shall, subject to the provisions of subsection (2), also apply in Rehoboth.

(2) For the purposes of sections 13 and 15 of the last-mentioned Act subsection (1) of this section shall be deemed to have been in operation immediately prior to the date on which a government for Rehoboth came into being in terms of section 11 (1) of that Act.

Note that the date that appears on *Official Gazette 79 of Rehoboth* is 7 October 1983, even though the Act which it publishes is dated 1982.

Regulations: The Act makes no provision for regulations. However, section 22 of *Act 53 of 1970* (which made this Act applicable to SWA) repealed section 3 of the South-West Africa Affairs Act, 1922 (Act No. 24 of 1922) "in so far as it relates to the attendance of witnesses in any civil action in any magistrate's court in the territory of South-West Africa", and the SWA Magistrates' Courts Ordinance 29 of 1963. Section 22(3) included a savings clause: "Any regulation, rule, notice, approval, authority, return, certificate, document or appointment made, issued or given, and any other act done under any provision of any law repealed by this Act, shall be deemed to have been made, issued, given or done under the corresponding provision of the principal Act." However, pre-independence regulations under these repealed laws which might have been thus saved have not been researched and are probably now obsolete.

Rules: The **Rules of Court** are contained in RSA GN R.1108 of 21 June 1968, as amended by—

RSA GN R.3002 of 25 July 1969

RSA GN R. 490 of 26 March 1970

RSA GN R.1752 of 16 October 1970

RSA GN R. 947 of 2 June 1972

RSA GN R.1115 of 28 June 1974

RSA GN R.1285 of 19 July 1974

(which corrects RSA GN R.1115 of 28 June 1974)

RSA GN R. 689 of 23 April 1976

RSA GN R. 261 of 25 February 1977

RSA GN R.2221 of 28 October 1977

RSA GN R. 327 of 24 February 1978

RSA GN R.2222 of 10 November 1978

RSA GN R.1194 of 8 June 1979

RSA GN R.1449 of 29 June 1979

RSA GN R. 652 of 28 March 1980

RSA GN R.1314 of 27 June 1980

RSA GN R.1800 of 28 August 1981

RSA GN R.1139 of 11 June 1982

RSA GN R.1689 of 29 July 1983

RSA GN R.1946 of 9 September 1983

(which corrects RSA GN R.1689 of 29 July 1983)

RSA GN 1338 of 29 June 1984

GN 148/1985 (31 December 1985)

GN 36/1987 (16 March 1987)

AG GN 58/1989 (15 August 1989) (OG 5774)

AG GN 86/1989 (15 October 1989) (OG 5822)

AG GN 122/1989 (fees) (1 December 1989)

GN 178/1992 ([GG 537](#)) (tariffs and fees)

GN 43/1997 ([GG 1513](#)) (Rules 6(5)(a), 10 and 37(1), and Annexure 2, Table C – provisions and fees pertaining to messengers of the court)

GN 75/2000 ([GG 2284](#)) (Rules 2, 5, 6, 8, 9, 12, 13, 29, 30, 33, 34, 35, 38, 41, 43, 48, 48A, 49, 51, 59, 66, Annexure 1 and Annexure 2)
GN 200/2007 ([GG 3930](#)) (Rules 12, 13, 41, 49, 60 and Annexure 2-Table C)
GN 294/2018 ([GG 6765](#)) (Annexure 2-Tables A, B, C, D and E).

The **Magistrate's Court Rules (Rehoboth) Amendment Proclamation** (AG 29/1979) applies the amendments to the Magistrate's Court Rules contained in RSA GN R.2222 of 10 November 1978 to the Rehoboth Gebiet.

Notices: Officers competent to perform **service of process** in terms of section 15(4) are designated in AG GN 84/1989 ([OG 5818](#)).

GN 22/1994 ([GG 799](#)) creates **district divisions**, appoints places for holding courts within each division and specifies the seat of the magistracy for each division. It is amended by GN 21/1999 ([GG 2046](#)), GN 176/2000 ([GG 2374](#)), GN 93/2002 ([GG 2755](#)), GN 82/2018 ([GG 6586](#)), GN 42/2021 ([GG 7482](#)) and GN 5/2022 ([GG 7723](#)).

(1) GN 43/2021 ([GG 7482](#)) includes a list of previous amendments to GN 22/1994 that is partly incorrect: GN 122/1997 ([GG 1585](#)), GN 177/2000 ([GG 2374](#)) and GN 94/2002 ([GG 2755](#)) amend GN 23/1994 ([GG 799](#)) and not GN 22/1994 ([GG 799](#)).

(2) GN 5/2022 ([GG 7723](#)) also includes a list of previous amendments to GN 22/1994 that is partly incorrect: GN 122/1997 ([GG 1585](#)), GN 177/2000 ([GG 2374](#)) and GN 94/2002 ([GG 2755](#)) amend GN 23/1994 ([GG 799](#)) and not GN 22/1994 ([GG 799](#)). In addition, GN 92/2002 ([GG 2755](#)) designates Ngoma as a place for holding a court in the district of Katima Mulilo but does not amend GN 22/1994; the corresponding amendment to GN 22/1994 is made by GN 93/2022 ([GG 2755](#)).

GN 23/1994 ([GG 799](#)) re-defines the **local limits of districts** and establishes their names, establishes a court for each district, appoints places for the holding of a court for each district, and specifies the seat of magistracy where there is more than one court in the district. It is amended by GN 122/1997 ([GG 1585](#)), GN 22/1999 ([GG 2046](#)), GN 177/2000 ([GG 2374](#)), GN 94/2002 ([GG 2755](#)) and GN 61/2014 ([GG 5455](#)).

GN 61/2014 ([GG 5455](#)) states that GN 23/1994 was also amended by GN 26/1994 ([GG 803](#)) and GN 21/1999 ([GG 2046](#)), but this is incorrect. GN 61/2014 also fails to list the amendment made by GN 94/2002.

GN 249/1997 ([GG 1741](#)) makes no amendments to previous Government Notices, but appoints Hochfeld, within the district of Okahandja, as a place for the holding of a court for that district and prescribes the local limits of the district of Okahandja as the local limits within which that court exercises jurisdiction. (Consequential amendments to GN 22/1994 ([GG 799](#)) are made by GN 21/1999 ([GG 2046](#)).

GN 92/2002 ([GG 2755](#)) appoints Ngoma within the district of Katima Mulilo and the district division Rundu, as a place for the holding of a court for that district and district division, and prescribes the local limits within which that court exercises jurisdiction. (Consequential amendments to GN 22/1994 ([GG 799](#)) are made by GN 93/2002 ([GG 2755](#)).

A **Code of Conduct for Magistrates** is contained in GN 190/2010 ([GG 4551](#)).

Note: Note that *S v Coetzee* 2011 (1) NR 359 (HC) emphasises that a record of criminal proceedings in the magistrates' court must be prepared in accordance with Chap XIII of the **Codified Instructions: Clerk of the Criminal Court** issued by the Permanent Secretary for Justice (Permanent Secretary's Administrative Circular dated 12 May 2008 re: "Amendment of Codified Jurisdictions Justice Code: Clerk of Criminal Court", updated 19 March 2008).

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003 ([GG 3020](#)), GN 189/2012 ([GG 5005](#)) and GN 70/2020 ([GG 7142](#)).

Cases:

generally:

S v Myburgh 2008 (2) NR 592 (SC) (suggestion to legislature to amend Act to extend jurisdiction of magistrate's courts, especially regional magistrate's courts, to order permanent stays of prosecution in appropriate criminal cases).

section 1:

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) ("judicial officer" and "Chief: Lower Courts"); appealed on other grounds in 2010 (1) NR 328 (SC)

section 9:

S v Kauma 1992 NR 17 (HC)

Mostert v The Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC) (declaring section 9 of the Act (on appointment of judicial officers) unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)

section 10:

Mostert v The Minister of Justice 2003 NR 11 (SC) (declaring section 10 of the Act (on qualifications of judicial officers) unconstitutional, but giving Parliament until 30 June 2003 to correct the defect; see Magistrate's Act 3 of 2003)

section 12:

Garces v Fouche & Others 1997 NR 278 (HC) (section 12(1))

section 14:

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (deputy messengers appointed pursuant to section 14(2)(b) fail to prove that they are employees in terms of labour law)

section 19:

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) (provisions of section 19 on deputy messengers mean that if they are not employees they must be agents)

section 65A-ff:

Julius v Commanding Officer, Windhoek Prison & Others; Nel v Commanding Officer, Windhoek Prison & Others 1996 NR 390 (HC) (declaring unconstitutional sections 65F, 65G, 65H and 65L and parts of sections 65A, 65K and 65J concerning imprisonment for civil debt)

section 66:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (section 66(1)(a) is unconstitutional insofar as it permits the sale in execution of immovable property without judicial oversight, but remains in force until 31 August 2019 to give Parliament opportunity to correct its defects)

section 83:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

section 89:

S v Handukene 2007 (2) NR 606 (HC) (section 89(1); lack of jurisdiction of district magistrate's court over common-law crime of rape applies equally to charge of rape under Combating of Rape Act 8 of 2000)

section 92:

Ex Parte Attorney-General, Namibia: In Re Corporal Punishment by Organs of State, 1991 NR 178 (SC) (the reference to whipping is unconstitutional)

S v Mapanka 2017 (4) NR 980 (HC) (section 92(1)(b))

section 106:

S v Muronga 2004 NR 134 (HC)

S v Ndakolute 2005 NR 37 (HC)

S v Paulus 2007 (2) NR 622 (HC) (no provision for summary enquiry)

S v Iyambula: In re Haipumbu 2018 (1) NR 1154 (NLD) (applies only to disobeying court order or summons, and only after substantive and fair criminal trial)

section 108:

S v Amujekela 1991 NR 303 (HC)

S v Ndihalwa 1997 NR 98 (HC)

S v Hekandjo 1998 NR 142 (HC)

S v Paaie 2006 (1) NR 250 (HC)

S v Cloete 2006 (2) NR 430 (HC)
S v Paulus 2007 (2) NR 622 (HC) (non-appearance in court not covered)
S v Shikesho 2007 (2) NR 625 (HC) (summary conviction under this section inappropriate when accused under influence of alcohol and unable to comprehend proceedings)
S v Iyambula: In re Haipumbu 2018 (1) NR 1154 (NLD) (applies only to conduct that takes place while court is sitting).

Cases on Magistrate's Court Rules:

Rule 7:

Duntrust (Pty) Ltd v H Sedlacek t/a GM Refrigeration 2005 NR 174 (HC)

Rule 9:

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC)(Rule 9(3)(e))

Rule 12:

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (Rule 12(1)(a) declared invalid on constitutional grounds)

Rule 17:

Olivier v Kaizemi 2005 NR 290 (HC)

Tsabo v Gobabis Municipality NLLP 2003 (4) 25 NLC

Rule 22:

Lewis v Sampoio 2000 NR 186 (SC)

Rule 36:

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC) (Rule 36(d))

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (Rule 36 declared unconstitutional but remains in force until 31 August 2019 to give Rules Board opportunity to correct the defect)

Rule 43:

Vermaak & Another v Messenger of the Court of Swakopmund & Another 2005 NR 14 (HC)

Hiskia & Another v Body Corporate of Urban Space & Others 2018 (4) NR 1067 (HC) (Rule 43 declared unconstitutional but remains in force until 31 August 2019 to give Rules Board opportunity to correct the defect)

Rule 49:

Lewis v Sampoio 2000 NR 186 (SC)

Brand v Swart 2002 NR 63 (HC)

Rule 51:

Mostert v First National Bank of Namibia Ltd & Another 2000 NR 54 (HC)

LTS v GPS & Others 2017 (2) NR 412 (HC)

Rule 55A:

Olivier v Kaizemi 2005 NR 290 (HC)

Rule 59:

Standard Bank of Namibia Ltd v Potgieter & Another 2000 NR 120 (HC) (rule 59(6))

Rule 62:

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (application of rule to district labour court matter; reversed on other grounds in *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC))

Rule 66:

S v Hoadums 1990 NR 259 (HC)

S v Veiko 1994 NR 79 (HC)

Rule 67:

S v Wellington 1990 NR 20 (HC) (rule 67(1))

S v Gey van Pittius & Another 1990 NR 35 (HC) (rule 67(1))

S v Tases 2003 NR 103 (HC) (rule 67(3))

S v Kakololo 2004 NR 7 (HC) (rule 67(1))

S v Andima 2010 (2) NR 639 (HC) (rule 67(1))

S v Kavari 2011(2) NR 403 (HC) (rule 67(1))

S v Beyer 2014 (4) NR 1041 (HC) (rule 67(1))

S v Ameb 2014 (4) NR 1134 (HC) (rule 67(1))
S v Kapure 2015 (2) NR 394 (HC) (rule 67(1))
S v PV 2016 (1) NR 77 (HC) (rule 67(1); “clearly and specifically”)
S v Miguel & Others 2018 (4) NR 946 (HC).

Commentary: Francois X Bangamwabo & Clever Mapaire, “The constitutionality or otherwise of section 66(1) of the Magistrates’ Courts Act, 1944 (No. 32 of 1944)”, *Namibia Law Journal*, Volume 2, Issue 1, 2010, available [here](#).

Vexatious Proceedings Act 3 of 1956

Summary: This Act ([SA GG 5632](#)) places restrictions on frivolous legal proceedings.

Applicability to SWA: Section 3 states “This Act shall apply also in the territory of South West Africa”, and section 1 defines “court” accordingly. The wording of section 3 did not make South African amendments automatically applicable to South West Africa. However, in any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer proclamation: Although this Act makes no reference to any minister, by virtue of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated **12 November 1979**. Regardless of whether or not there was a transfer of administration, the wording of the Act did not make South African amendments automatically applicable to South West Africa – and, in any event, there were no amendments to the Act in South Africa prior to Namibian independence.

Regulations: The Act makes no provision for regulations.

Cases: *Namibia Financial Institutions Supervisory Authority v Christian & Another* 2011 (2) NR 537 (HC).

General Law Amendment Ordinance 22 of 1958, sections 1-2

Summary: Section 1 of this Ordinance ([OG 2152](#)) makes it an offence to publish details of any person under 18 years old who is a party to civil proceedings. Section 2 of this Act (now obsolete) recognises the official title of “landdros”.

Amendments: Section 1(1) is amended by Ord. 13/1962 ([OG 2409](#)), to change the relevant age to 18. Section 2(2) is deleted by the Magistrate’s Courts Ordinance 29 of 1963 ([OG 2499](#)).

Regulations: There is no provision for regulations in these sections.

Supreme Court Act 15 of 1990

Summary: This Act ([GG 84](#)) provides for the jurisdiction of the Supreme Court of Namibia in accordance with Article 79 of the Namibian Constitution. It repeals the *Supreme Court Act 59 of 1959*, the *Supreme Court of South West Africa Proclamation 222 of 1981* and sections 3, 4 and 5 of the Appeals Amendment Act 29 of 1985 ([OG 5149](#)).

Amendments: The Judicial Service Commission Act 18 of 1995 ([GG 1195](#)) amends section 9. The Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) amends section 14. Act 4/2002 ([GG 2771](#)) amends

section 8.

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Rules: The **Rules of the Supreme Court** are contained in GN 249/2017 ([GG 6425](#)), which withdraws GN 221/2017 ([GG 6392](#)). GN 249/2017 provides that the new rules come into operation on 15 November 2017. (GN 221/2017 had repealed the previous rules contained in GN 56/1990 ([GG 86](#)), as amended by GN 80/2003 ([GG 2949](#)) and GN 119/2003 ([GG 2994](#)).)

Rules relating to Presidential Election Challenges are contained in GN 118/2015 ([GG 5761](#)).

Cases:

generally:

S v Arubertus 2011 (1) NR 157 (SC) (appeal by right of High Court's dismissal of application for condonation of late filing of appeal in criminal case, due to "lacuna in law", resulting in an "undesirable state of affairs where appeals against the dismissal of application for condonation have to be considered by this court without the benefit of the filter system provided for by the petition procedure intended to weed out unmeritorious appeals")

S v Likanyi 2017 (3) NR 771 (SC) (procedure for seeking reversal of Supreme Court judgment pursuant to Art 81 of the Namibian Constitution)

I cannot stress too strongly that the Supreme Court will, as a general rule, not entertain any attempt (relying on art 81) to reopen a case previously adjudicated and determined just because subsequently we think it may have been wrongly decided. In addition, no litigant may as of right come to this court to reopen its prior decision in terms of art 81. The Chief Justice will, upon a representation made, consider the matter and only if satisfied that exceptional circumstances exist having regard to all circumstances - including the imperative to safeguard finality to litigation - afford leave for the matter to be argued and give directions as to how it will be heard. It is unnecessary to set out what would constitute exceptional circumstances as the jurisprudence in that respect should be developed over time. Each case will be considered on its own facts and circumstances and the power will be invoked only exceptionally.

Until a procedure is authoritatively determined by the Chief Justice under s 37 of the Supreme Court Act, the procedure to be adopted will be the following. A party seeking to invoke the exceptional jurisdiction under art 81 may make representations to the Chief Justice, clearly setting out the factual and legal bases for the grievance. If the Chief Justice is satisfied that a good basis exists to invoke the jurisdiction, he will give directions as to how the matter should proceed with due regard to the rights of all affected parties. (paras 58-59)

Fischer v Seelenbinder & Another 2021 (1) NR 35 (SC) (warning legal practitioners to remain dispassionate instead of becoming personally involved in the disputes of their clients)

In this regard, counsel should remain robed in the court regalia and must avoid the temptation, beneath those robes, to be adorned in the shimmering robes of anguish and bitterness their clients are dressed in. (paras 39-40)

section 6:

S v Stowitzki 2003 NR 145 (SC) (sections 6 and 16(1))

section 7:

Wirtz v Orford & Another 2005 NR 175 (SC), approved in *Dresselhaus Transport CC v Government of the Republic of Namibia* 2005 NR 214 (SC) at 252D

section 12:

Somaeb v Chief Justice & Another 2018 (2) NR 468 (HC)

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC), approved in *Dresselhaus Transport CC v Government of the Republic of Namibia* 2005 NR 214 (SC) at 252D

section 14:

S v Koch 2006 (2) NR 513 (SC) (section 14(1))

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)

S v Malumo & Others 2010 (2) NR 595 (SC)
//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC) (section 14(1))
S v Masake & Others 2012 (1) NR 1 (SC)
see *Shetu Trading CC v Chair, Tender Board of Namibia & Others* 2012 (1) NR 162 (SC) (addressing the meaning of the phrase “judgment or order” in section 18 of the High Court Act 16 of 1990, which is relevant to the meaning of the same phrase in this section)
Permanent Secretary of the Judiciary v Somaeb & Another 2018 (3) NR 657 (SC) (section 14(7)(a))
Namdeb Diamond Corporation (Pty) Ltd v Coetzee 2018 (3) NR 737 (SC) (section 14(1) is qualified by section 18(2)(a) of High Court Act 16 of 1990, and application for appeal in terms of 14(1) must follow procedure in section 14(6))

section 15:

Schroeder & Another v Solomon & 48 Others 2011 (1) NR 20 (SC)
Attorney-General of Namibia v Minister of Justice & Others 2013 (3) NR 806 (SC)

section 16:

S v Bushebi 1998 NR 239 (SC)
S v Strowitzki 2003 NR 145 (SC) (section 16(1))
Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC)
Schroeder & Another v Solomon & 48 Others 2009 (1) NR 1 (SC), 2011 (1) NR 20 (SC)
S v Malumo & Others 2010 (2) NR 595 (SC)
Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC)
S v Masake & Others 2012 (1) NR 1 (SC)
Makapuli & Another v Swabou Investment (Pty) Ltd & Another 2013 (1) NR 238 (SC)
Standard Bank of Namibia Ltd v Atlantic Meat Market 2014 (4) NR 1158 (SC)
S v Likanyi 2017 (3) NR 771 (SC)
Somaeb v Chief Justice & Another 2018 (2) NR 468 (HC); *Permanent Secretary of the Judiciary v Somaeb & Another* 2018 (3) NR 657 (SC)
Bank Windhoek Ltd v Mofuka & Another 2018 (2) NR 503 (SC)

section 17:

Schroeder & Another v Solomon & 48 Others 2011 (1) NR 20 (SC)
Kamwi v Law Society of Namibia 2011 (1) NR 196 (SC)
Teek v President of the Republic of Namibia & Others 2015 (1) NR 58 (SC)

section 19:

Gonschorek & Others v Asmus & Another 2008 (1) NR 262 (SC) (section 19(a))

section 20:

S v Malumo & Others 2010 (2) NR 595 (SC).

Cases on Supreme Court Rules (2017) in GN 249/2017 ([GG 6425](#)):

generally:

Somaeb v Standard Bank Namibia Ltd 2017 (1) NR 248 (SC) at para 22 (“Rules of court cannot be applied selectively in the sense that they are bound to be complied with only by a certain group of persons engaged in litigation in our courts.”)

Rule 5:

Somaeb v Standard Bank Namibia Ltd 2017 (1) NR 248 (SC) (rule 5(4)(b) and (5))
Prosecutor-General v Kennedy 2019 (3) NR 631 (SC)

Rule 7:

Fischer v Seelenbinder & Another 2021 (1) NR 35 (SC)

Rule 8:

Somaeb v Standard Bank Namibia Ltd 2017 (1) NR 248 (SC) (rule 8(3))
Metropolitan Bank of Zimbabwe Ltd & Another v Bank of Namibia 2018 (4) NR 155 (SC) (rule 8(2)(b) counted from date when reasons for order provided, where there are reasons)

Rule 17:

Metropolitan Bank of Zimbabwe Ltd & Another v Bank of Namibia 2018 (4) NR 155 (SC) (rule 17(1) should say “not later than 21 days” instead of “not more than 21 days” and is applied in practice in this way).

Cases on Supreme Court Rules (1990) in GN 56/1990 (GG 86):

generally:

S v Stowitzki 2003 NR 145 (SC) (potential conflict with Constitution raised but not decided, at 156F-157A)

Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC) (duty of practitioners to ensure that record is complete and compliant with rules of court discussed at 445F-ff)

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC) (general disregard for court rules)

Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2013 (4) NR (SC) (condonation for breach of multiple rules of court refused; lackadaisical inattention to rules criticised, holding that such disregard for rules could not be condoned regardless of prospects of success on the merits of the case)

Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC) (concern about use of condonation applications; applications for condonation “not there for the asking or a mere formality”; unnecessary to deal with prospects for success on merits in view of absence of application for reinstatement of lapsed appeal coupled with “flagrant non-compliance with the rules of court”)

Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC) (failure to observe the rules of court, particularly rules 5(1) and 8(1) “has become a menace”)

Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC) (“There are times... where this court has held that it will not consider the prospects of success in determining the application because the non-compliance with the rules has been ‘glaring’, ‘flagrant’ and ‘inexplicable’.” at para 5, citing *Beukes & Another v SWABOU & Others* [2010] NASC 14 (5 November 2010) at para 20 and *Petrus v Roman Catholic Archdiocese* 2011 (2) NR 637 (SC) at para 10)

Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation) & Others 2014 (1) NR 234 (SC) (court should be understanding of difficulties faced by lay litigants, but non-compliance with rules by lay litigant cannot be condoned where it would render proceedings unfair or unduly prolonged; Registrar should not enrol case for hearing if appeal is deemed to be withdrawn, unless there is a proper application for condonation and reinstatement and record is in proper order)

Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC) (conflating Namibian court rules with those of other jurisdictions)

Katjaimo v Katjaimo & Others 2015 (2) NR 340 (SC) (instructing counsel awarded to pay costs out of his own pocket because of “negligence and remissness” which cannot be attributed to the litigant; general caution about compliance with rules of court)

Sufficient warning has been given by this court that the non-compliance with its rules is hampering the work of the court. The rules of this court, regrettably, are often more honoured in the breach than in the observance. That is intolerable. The excuse that a practitioner did not understand the rules can no longer be allowed to pass without greater scrutiny. The time is fast approaching when this court will shut the door to a litigant for the unreasonable non-observance of the rules by his or her legal practitioner. After all, such a litigant may not be without recourse as he or she would in appropriate instances be able to institute a damages claim against the errant legal practitioner for their negligence under the Acquilian action.... We hope that the cautionary observations made in this judgment will be taken seriously by all legal practitioners who practise in the Supreme Court. A legal practitioner has a duty to read the decided cases that emanate from the courts (both reported and unreported) and not simply grope around in the dark as seems to have become the norm for some legal practitioners, if judged by the explanations offered under oath in support of the condonation applications that come before the court. (paras 34-35)

Balzer v Vries 2015 (2) NR 547 (SC) (condonation in respect of non-compliance with rules 8(3) and 5(5) refused; at para 33: “appellant has acted with defiance with regard to an order

of the High Court and has frustrated the due process of law and thus undermined the rule of law upon which the Constitution is premised”)

Rule 3:

M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)
Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (application of Rule 3(6) versus Rule 8 on security for costs)

Rule 5:

Wirtz v Orford & Another 2005 NR 175 (SC)
Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)
Gurirab v Government of the Republic of Namibia & Others 2006 (2) NR 485 (SC)
Vahekeni v Vahekeni 2008 (1) NR 125 (SC)
Channel Life Namibia Ltd v Otto 2008 (2) NR 432 (SC)
Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)
M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)
Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC)
Strauss & Another v Laubuscagne 2012 (2) 460 (SC)
Rally for Democracy and Progress & Others v Electoral Commission & Others 2013 (2) NR 390 (HC)
Cargo Dynamics Pharmaceuticals (Pty) Ltd v Minister of Health and Social Services & Another 2013 (2) NR 552 (SC)
Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)
Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)
Arangies t/a Auto Tech v Quick Build 2014 (1) NR 187 (SC)
Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation) & Others 2014 (1) NR 234 (SC)
Chairperson, Council of the Municipality of Windhoek, & Others v Roland & Others 2014 (1) NR 247 (SC)
Weatherly International Plc v Bruni and McLaren NNO & Another 2014 (1) NR 273 (SC)
Nghikofa v Classic Engines CC 2013 (3) 659 (HC); see also *Nghikofa v Classic Engines CC* 2014 (2) NR 314 (SC)
Black Range Mining (Pty) Ltd v Minister of Mines & Energy & Others NNO 2014 (2) NR 320 (SC)
Fish Orange Mining Consortium (Pty) Ltd v !Goaseb & Others 2014 (2) NR 385 (SC)
Factcrown Ltd v Namibia Broadcasting Corporation 2014 (2) NR 447 (SC)
Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)
Katjaimo v Katjaimo & Others 2015 (2) NR 340 (SC)
Disciplinary Committee for Legal Practitioners v Murorua & Another 2016 (2) NR 374 (SC) (condonation refused for Disciplinary Committee's non-compliance with Rule 5(1))

Rule 8:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)
Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC) (Rule 8(2)-(3) must be read subject to section 18(5) of the High Court Act 16 of 1990)
Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC) (meaning of “government” in rule 8(5))
Executive Properties CC & Another v Oshakati Tower (Pty) Ltd & Others 2013 (1) NR 157 (SC) (condonation of non-compliance with Rule 8(3))
Shilongo v Church Council of the Evangelical Lutheran Church in the Republic of Namibia 2014 (1) NR 166 (SC)
Worku v Equity Aviation Services (Namibia) (Pty) Ltd (in Liquidation) & Others 2014 (1) NR 234 (SC)
Fish Orange Mining Consortium (Pty) Ltd v !Goaseb & Others 2014 (2) NR 385 (SC)
Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia 2014 (2) NR 464 (SC)
Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (application of Rule 8 versus Rule 3(6) on security for costs)

Makando v Disciplinary Committee for Legal Practitioners 2016 (4) NR 1127 (SC)

Rule 11:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Rule 13:

Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported) (discussion of contradictions of rule and need for amendment)

Rule 14:

Afshani & Another v Vaatz 2007 (2) NR 381 (SC) (effect of section 92(1) of Legal Practitioners Act 15 of 1995 on this rule)

Rule 18:

Kamwi v Duvenhage & Another 2008 (2) NR 656 (SC)

Petrus v Roman Catholic Archdiocese 2011 (2) NR 637 (SC) (general disregard for court rules as factor in condonation)

Rally for Democracy and Progress & Others v Electoral Commission & Others 2013 (2) NR 390 (HC).

Commentary: Raymond Heathcote, “Section 16 of the Supreme Court Act”, *Namibia Law Journal*, Volume 1, Issue 1, 2009, available [here](#) (discussing *Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others* 2008 (2) NR 753 (SC) and *Schroeder & Another v Solomon & Another* 2009 (1) NR 1 (SC)).

High Court Act 16 of 1990

Summary: This Act ([GG 85](#)) provides for the jurisdiction of the High Court of Namibia in accordance with Article 80 of the Namibian Constitution.

Amendments: Section 93 of the Legal Practitioners Act 15 of 1995 ([GG 1141](#)) amends section 3. The Judicial Service Commission Act 18 of 1995 ([GG 1195](#)) also amends section 3. The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)) amends section 29. The Appeal Laws Amendment Act 10 of 2001 ([GG 2585](#)) amends sections 16 and 18. Act 3/2002 ([GG 2770](#)) amends section 8. Act 14/2011 ([GG 4863](#)) inserts sections 2A and 4A and substitutes section 4, to provide for the creation of local divisions of the High Court. Act 12/2013 ([GG 5384](#)), which was brought into force on 4 February 2014 by GN 10/2014 ([GG 5397](#)), amends section 39.

Note: *Goseb & Others v Minister of Regional and Local Government and Housing & Others* 2011 (1) NR 224 (HC) erroneously states in para 10 at 227C that the Appeals Law Amendment Act 10 of 2001 “substituted s 2 of the High Court Act 16 of 1990”. The provision quoted by the High Court is actually section 18(2), which was substituted by the amending Act in question.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Rules: Section 40(1) of this Act states:” Any appointment or rules made or tariff prescribed in respect of allowances to witnesses, or deemed to have been made or prescribed, and any security given or anything done in connection with or by virtue of any such appointment under the Supreme Court of South West Africa Proclamation, 1981, shall be deemed to have been made, prescribed or done under the corresponding provisions of this Act.” This refers to the *Supreme Court of South West Africa Proclamation 222 of 1981* which was repealed by the Supreme Court Act 15 of 1990. However, pre-independence rules have not been researched.

Rules of the High Court are contained in GN 4/2014 ([GG 5392](#)), effective from 16 April 2014. These rules are amended by the addition of rules on administrative breaks and recesses in GN 118/2014 ([GG](#)

[5526](#)), with effect from 1 January 2015. They are further amended by GN 227/2014 ([GG 5608](#)), which repeals Rule 78.

The 2014 Rules repeal GN 59/1990 ([GG 90](#)), GN 60/1990 (erroneously referred to as GN 60/1999), GN 187/1992 ([GG 549](#)), GN 148/1993 ([GG 757](#)), GN 81/1996 ([GG 1293](#)), GN 221/1997 ([GG 1727](#)), GN 69/1998 ([GG 1829](#)), GN 189/2000 ([GG 2386](#)), GN 221/2002 ([GG 2879](#)), GN 141/2006 ([GG 3690](#)), GN 6/2008 ([GG 3983](#)), GN 253/2010 ([GG 4614](#)) and GN 57/2011 ([GG 4709](#)).

Previous rules of the High Court were contained in GN 59/1990 ([GG 90](#)), as amended by GN 187/1992 ([GG 549](#)), GN 148/1993 ([GG 757](#)), GN 81/1996 ([GG 1293](#)), GN 182/1996 ([GG 1350](#)), GN 221/1997 ([GG 1727](#)), GN 69/1998 ([GG 1829](#)), GN 141/2006 ([GG 3690](#)), GN 6/2008 ([GG 3983](#)), GN 253/2010 ([GG 4614](#)) and GN 57/2011 ([GG 4709](#)) (which contains numbering errors corrected by GN 67/2011 ([GG 4725](#))).

GN 182/1996 and GN 67/2011 were not repealed by GN 4/2014, although this appears to have been an oversight since they have no relevance after the repeal of the previous High Court rules which they amended.

Rules for High Court proceedings in terms of Chapters 5-6 of the Prevention of Organised Crime Act 29 of 2004 are issued in terms of that Act, in GN 79/2009 ([GG 4254](#)).

Notices: Practice Directions are issued in terms of the 2014 Rules of the High Court in GN 67/2014 ([GG 5461](#)), which repeals all previous High Court Practice Directions and their amendments. They are amended by GN 10/2017 ([GG 6227](#)), which is deemed to have come into operation on 1 January 2017, and by GN 362/2019 ([GG 7065](#)), with effect from 1 February 2020.

Sittings of the court and court terms are addressed in GN 60/1990 ([GG 90](#)), GN 189/2000 ([GG 2386](#)) and GN 221/2002 ([GG 2879](#)) – but these were all repealed by GN 4/2014 (although GN 4/2014 erroneously refers to GN 60/1999 instead of GN 60/1990).

A local division of the High Court, to be known as the Northern Local Division, is established by Proc. 5/2012 ([GG 4891](#)). The seat and area of jurisdiction of this division are set forth in GN 70/2012 ([GG 4391](#)), which makes reference to the Magisterial District Division: Oshakati in GN 22/1994 ([GG 799](#)).

Cases:

section 2:

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Onesmus v Minister of Labour & Another 2010 (1) NR 187 (HC) (section 2 read together with section 16; relationship to section 18(1) of Labour Act 6 of 1992)

S v Barnard 2019 (1) NR 78 (HC) (inherent jurisdiction under section 2 empowers High Court to consider bail application while criminal appeal is pending in Supreme Court)

section 4:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

section 13:

Wirtz v Orford & Another 2005 NR 175 (SC)

Prosecutor-General v Uuyuni 2014 (1) NR 105 (HC), reversed on appeal *Prosecutor-General v Uuyuni* 2015 (3) NR 886 (SC) (held on appeal that an *ex parte* proceeding in respect of a preservation of property order under section 51 of the Prevention of Organised Crime Act 29 of 2004 is not in conflict with section 13 of the High Court Act)

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC)

section 16:

S v Campbell & Others 1990 NR 310 (HC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC) (discussion of section 16(d) in *dicta*)

Van As & Another v Prosecutor-General 2000 NR 271 (HC) (section 2 read together with section 16)

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC)
National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)
Onesmus v Minister of Labour & Another 2010 (1) NR 187 (HC) (section 2 read together with section 16; relationship to section 18(1) of Labour Act 6 of 1992)
Daniel v Attorney-General & Others; Peter v Attorney-General & Others 2011 (1) NR 336 (HC)
DM v SM 2014 (4) NR 1074 (HC) (exercise of discretion to grant declaratory order under section 16(d))
International University of Management v Torbitt & Others 2015 (3) NR 698 (LC) (application of section 16(d)); overturned on appeal on other grounds in *Torbitt & Others v International University of Management* 2017 (2) NR 323 (SC)
New African Methodist Episcopal Church in the Republic of Namibia & Another v Kooper & Others 2015 (3) NR 705 (HC) (relevant to application of section 16(d), although this section is not explicitly cited)

section 18:

S v Strowitzki 1994 NR 265 (HC) (section 18(2)(a)(i))
S v Delie (1) 2001 NR 181 (HC); *S v Delie (2)* 2001 NR 286 (SC)
Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported) (whether the decision of a judge in chambers in terms of Rule 48 constitutes a judgment or order under section 18)
Namibia Grape Growers and Exporters Association & Others v The Ministry of Mines and Energy & Others 2004 NR 194 (SC) (appeal against order for costs in terms of section 18(3))
Beukes v Peace Trust NLLP 2004 (4) 102 NLC (attributes of a judgement or order which is appealable under section 18(3))
Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another 2005 NR 21 (SC)
Wirtz v Orford & Another 2005 NR 175 (SC)
Meat Processors (Pty) Ltd t/a Namibia Meat v Nunes 2005 NR 431 (HC)
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC) (section 18(3))
S v Koch 2006 (2) NR 513 (SC) (section 18(1) discussed in *dicta* at 520-22)
JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (SC)
Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC)
Handl v Handl 2008 (2) NR 489 (SC)
Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC)
M Pupkewitz & Sons (Pty) Ltd t/a Pupkewitz Megabuilt v Kurz 2008 (2) NR 775 (SC)
Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2010 (1) NR 286 (SC)
Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (meaning of “interlocutory order”)
Knouwds NO (in his capacity as provisional liquidator of Avid Investment Corporation (Pty) Ltd) v Josea & Another 2010 (2) NR 754 (SC)
Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd 2011 (1) NR 31 (SC)
//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC)
Shetu Trading CC v Chair, Tender Board of Namibia & Others 2012 (1) NR 162 (SC)
Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal Labour Court decision required under this section when Court refused condonation in appeal against arbitration award in terms of Labour Act 11 of 2007 after considering merits of case in that context)
Balzer v Vries 2015 (2) NR 547 (SC) (section 18(3))
Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another 2015 (4) NR 1161 (SC) (leave required under section 18(3) to appeal order of Labour Court under section 117(1)(e) of Labour Act 11 of 2007)
Leopard Tours Care and Camping Hire CC & Others v Dannecker 2017 (1) NR 50 (HC) (refusal of application for absolution from the instance is an interlocutory order contemplated in section 18(3) and not appealable as of right)

- Di Savino v Nedbank Namibia Ltd* 2017 (3) NR 880 (SC) (meaning of “interlocutory” in section 18(3))
- Arandis Power (Pty) Ltd v President of the Republic of Namibia & Others* 2018 (2) NR 567 (SC) (discussion and application of *Di Savino v Nedbank Namibia Ltd* 2017 (3) NR 880 (SC))
- Government of the Republic of Namibia v Phillipus* 2018 (2) NR 581 (SC) (discussion and application of *Di Savino v Nedbank Namibia Ltd* 2017 (3) NR 880 (SC); “An order which does not finally dispose of an action would thus be interlocutory. On the other hand, a special plea of prescription resulting in the dismissal of the main action, and thus finally disposing of the action would not be an interlocutory order. In this way an interpretation is given to s.18(3) which results in the term interlocutory having effect and not being superfluous.”)
- Namdeb Diamond Corporation (Pty) Ltd v Coetzee* 2018 (3) NR 737 (SC) (section 18(2)(a) qualifies section 14(1) of Supreme Court Act 15 of 1990, and High Court order striking application for leave to appeal from the roll constitutes an order of the High Court sitting as a court of appeal and thus requires leave to appeal under section 18(2)(a))
- section 19:
- SOS Kinderdorf International v Effie Lentin Architects* 1992 NR 390 (HC) (section 19(1))
- MFV Kapitan Solyanik Ukrainian-Cyprus Insurance Co & Another v Namack International (Pty) Ltd* 1999 (2) SA 926 (NmHC) (section 19(1))
- S v Katuta* 2006 (1) NR 61 (HC) (section 19(1)(b))
- JCL Civils Namibia (Pty) Ltd v Steenkamp* 2007 (1) NR 1 (SC)
- S v Shiputa* 2013 (3) NR 800 (NLD)
- section 20:
- S v Gawanab* 1997 NR 61 (HC)
- Hitula v Chairperson of District Labour Court Windhoek & Another* 2005 NR 83 (LC) (section 20 as applied *mutatis mutandis* by section 111, Labour Act 6 of 1992)
- S v Handukene* 2007 (2) NR 606 (HC) (section 20(1)(a))
- Katjivikua v The Magistrate: Magisterial District of Gobabis & Another* 2012 (1) NR 150 (HC)
- section 24:
- Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another* 2015 (2) NR 461 (HC)
- section 30:
- Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd* 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC) (Registrar’s powers to tax a lay-litigant’s bill of costs in terms of general duties under section 30(1))
- sections 30-31:
- Esterhuizen v Chief Registrar of the High Court and Supreme Court & Others* 2011(1) NR 125 (HC) (contractual appointment of acting deputy-sheriff and power to suspend)
- section 36(c):
- Southern Engineering & Another v Council of the Municipality of Windhoek* 2011 (2) NR 385 (SC)
- generally:
- Myburgh Transport v Botha t/a SA Truck Bodies* 1991 NR 170 (SC) (principles applicable to postponements)
- Aussenkehr Farms (Pty) Ltd & Another v Minister of Mines and Energy & Another* 2005 NR 21 (SC) test for distinguishing interlocutory versus final orders)
- S v Myburgh* 2008 (2) NR 592 (SC) (High Court as only “competent court” for purposes of Article 25 of Constitution)
- Government of Namibia v Africa Personnel Services* 2010 (2) NR 537 (HC) (inherent jurisdiction of High Court to alter own interlocutory order)
- S v Malumo & Others (In re Ndala)* 2014 (3) NR 690 (the question of whether the High Court Act is applicable to the Eastern Caprivi Zipfel was put forward, but the Court ruled that the issue can be raised only after the conclusion of the trial in terms of s. 319 of the Criminal Procedure Act 51 of 1977)
- Makando v Disciplinary Committee for Legal Practitioners* 2016 (4) NR 1127 (SC) (application of test for distinguishing interlocutory versus final orders)

Ndemuweda v Government of the Republic of Namibia (Minister of Health and Social Services) 2018 (2) NR 475 (HC) (duty of all persons, including organs of state, to comply with court orders; however, contempt of court requires “deliberate and mala fide” disregard of a court order, which was not present here; court urges the Minister of Finance “to investigate means on how the state’s obligations to pay monetary awards emanating from court orders can be funded from sources other than operational budgets of the ministries”)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (High Court has inherent jurisdiction to enforce an order of another court where that court lacks power to do so)

judicial case management:

Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation 2012 (2) NR 671 (SC) (abuse of process; purposes and objectives of judicial case management)

Markus v Telecom Namibia 2014 (3) NR 658 (HC) (finality of orders made in judicial case management)

Nedbank Namibia Ltd v Tile and Sanitary Ware CC & Others 2015 (1) NR 240 (HC) (judicial case management and interlocutory proceedings which may delay final determination of case)

Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC) (objectives reiterated as context for application of court rules)

Mingeli v Oshakati Premier Electric (Pty) Ltd 2015 (3) NR 688 (HC) (effects of judicial case management discussed at para 16)

Mukata v Appolus 2015 (3) NR 695 (HC) (failure to raise issue of non-compliance with rule 32(9)-(10) in 2014 High Court Rules at judicial case management conference results in denial of order for costs to successful applicant).

JI v HI 2017 (2) NR 595 (HC) (discussion of appropriate sanction where defendant and legal practitioner failed to attend pre-trial conference or to comply with Rule 14(3)(b))

While it is generally held that a litigant cannot be excused for the failure of adequate representation by his/her legal practitioner, I am of the considered opinion that this stance should be tempered with mercy in this jurisdiction as the majority of the population is not entirely legally literate and they, therefore, give all their trust to their legal practitioners and have no clue as to the competency or otherwise of such legal practitioners. It will therefore be unjust to willy-nilly condemn and punish them at the slightest opportunity. (para 10)

Arangies & Another v Unitrans Namibia (Pty) Ltd & Another 2018 (3) NR 869 (SC) (purpose of judicial case management and general acceptable grounds for altering pre-trial orders).

Cases on High Court Rules (2014) in GN 4/2014 ([GG 5392](#)) (came into effect on 16 April 2014):

generally:

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC) (“Practitioners should move along with the latest developments and should avoid clinging on to the repealed rules, notwithstanding how used they were to them... Especial care and attention should therefore be taken to ensure the proper citation of the rules in terms of which relief is sought in the papers. I shall, for present purposes, however, overlook the citation of the wrong rule and pay regard to the correct rule. The court may not always adopt this position as the new rules would be expected to have taken root in the minds of all practitioners in this jurisdiction by now.” (para 4))

Blaauw’s Transport (Pty) Ltd v Auto Truck & Coach CC & Another 2016 (1) NR 132 (HC) (principles guiding the granting of condonation applications)

Jackson v Shuudifonya 2017 (1) NR 155 (NLD) (two unrepresented parties made errors in that one applied for default judgment citing the wrong rule and the other applied for rescission of this default judgement out of time; justice is best served if default judgement is rescinded and parties given a chance to ventilate their matter in court; courts must also lean in favour of an applicant who points out that a court judgment was erroneously obtained)

Prosecutor-General v Paulo & Another 2017 (1) NR 178 (HC) (at para 16: practice of legal practitioners filing affidavits dealing with factual issues on behalf of their clients, instead of having the client depose to the evidence, should be discouraged; legal practitioner should not be in a position to have to become a witness, and should not associate himself with the client's cause)

Rule 1:

Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (Rule 1(2)-(3) as guide to interpretation of new High Court Rules)
Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) (Rule 1(3) as guide to interpretation of other rules)

Rule 5:

Maletzky v The President of the Republic of Namibia & Others 2016 (2) NR 420 (HC) (Rule 5 does not amend the common law right to freedom of contract and to pursue a cessation but is a procedural mechanism aimed at promoting the just and expeditious business of the court; Rule 5(4) is not unconstitutional discrimination as it applies to all persons and is intended to protect the public from charlatans who masquerade as legal practitioners)

Rule 8:

Moolman & Another v Jeandre Development CC 2016 (2) NR 322 (SC) (compliance with Rule 8(3): "...The overall purpose of the subrule had been unequivocally served. The rules of this court are to be understood conceptually and contextually. What [the legal practitioner] suggests should have occurred is plainly pointless. This point taking can only be described as an exercise in sterile formalism which is to be deprecated. It is an attempt in vain to elevate form over substance and serves only to result in the incurrance of unnecessary costs and wastage of the time of this court." (paras 11-12)

Rule 11:

Elgin Brown & Hamer Namibia (Pty) Ltd v Hydrodive Offshore International Ltd 2017 (3) NR 752 (HC) (rule 11(1)(a))

Rule 14:

Ji v HI 2017 (2) NR 595 (HC) (Rule 14(3)(b))

Rule 15:

Futeni Collection (Pty) Ltd v De Duine (Pty) Ltd 2015 (3) NR 829 (HC)
Standard Bank Namibia Ltd v Shipila (First National Bank Namibia Ltd & Others intervening; the Ombudsman as amicus curiae) 2016 (2) NR 476 (HC), overturned on appeal in *Standard Bank Namibia Ltd v Shipila & Others* 2018 (3) NR 849 (SC) (in the case of foreclosure under a registered bond, where creditor moves for default judgment under rule 15(3), rule 15(3) is sufficient to provide for the necessary judicial oversight; see related discussion of purpose of rule 108 in this case)

Rule 28:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC)
Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (Rule 28 applies to discovery generally; relation of new High Court Rule 28 to old High Court Rule 35(12) and distinction between old Rule 35(1) and new Rule 28(1))
Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (Rule 28(1), read with Rule 70(3), subject to Rule 66(1)(b))
Donatus v Ministry of Health and Social Welfare 2016 (2) NR 532 (HC)

Rule 32:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (Rule 32(9)-(11))
Mukata v Appolus 2015 (3) NR 695 (HC) (Rule 32(9)-(10))
Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (Rule 32(9)-(10))
Blaauw's Transport (Pty) Ltd v Auto Truck & Coach CC & Another 2016 (1) NR 132 (HC) (Rule 32(9)-(10))
CV v JV 2016 (1) NR 214 (HC) (Rule 32(9)-(10) applies to interlocutory matters under Rule 61)

and must be complied with)

Kondjeni Nkandi Architects & Another v Namibian Airports Company Ltd 2016 (1) NR 223 (HC)

KJ v CJ 2016 (4) NR 1204 (HC) (rule 32(9)-(10))

Leopard Tours Care and Camping Hire CC & Others v Dannecker 2017 (1) NR 50 (HC) (refusal of application for absolution from the instance is an interlocutory order which is subject to the cost restrictions in rule 32(11))

Uvanga v Steenkamp & Others 2017 (1) NR 59 (HC) (dismissal of a special plea alleging lack of *locus standi* is not an interlocutory matter, being a peremptory plea as opposed to a dilatory plea, so the cost restrictions in rule 32(11) are not applicable)

Tjoklits Investments CC v Aquarius Investments No. 191 CC (I 1569/2013) [2018] NAHCMD 322 (15 October 2018) (meaning of Rule 32(11))

Despite earlier decisions... to the contrary, the rule maker has clearly not capped the costs of both opposing parties to N\$20 000. The rule maker has capped only the successful party to N\$20 000. The word 'successful' in the rule cannot be ignored. It targets one party and one party only with the capping provision, the successful party... If the general intent of the rule maker was to cap every party in interlocutory proceedings, i.e the successful and the unsuccessful party it should have made it clear. The word 'awarded' should have read and should have been substituted with the word 'taxed' and the word 'successful' would not have been in the sentence. The last part of the sub-rule (32(11)) then would have read thus: 'the costs that may be taxed to a party in any interlocutory proceeding may not exceed N\$20 000'. (paras 6-8)

Bank Windhoek Ltd v Benlin Investment CC 2017 (2) NR 403 (HC) (requirements of compliance with Rule 32(9) and (10); compliance required for all interlocutory applications)

Wise v Shikuami NO & Another 2017 (2) NR 614 (HC) (rule 32(11))

Husselmann & Others v Saem & Others 2017 (3) NR 761 (HC) (rule 32(9) and (10) discussed, but without a finding on their applicability to a matter concerning non-joinder)

Bertolini v Ehlers & Another 2017 (4) NR 1035 (HC) (rule 32(11))

IBB Military Equipment & Accessory Supplies CC v Namibia Airports Co 2017 (4) NR 1194 (HC) (rule 32(9) and (10))

New Force Logistics CC v Anti-Corruption Commission 2018 (2) NR 375 (HC) (rule 32(9) and (10))

Spangenberg v Kloppers 2018 (2) NR 494 (HC) (rule 32(11))

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (rule 32(9) and (10), at paras 44-45)

Utoni v Freedom Square Investments Twenty-Four CC t/a Oshakati Fish Shop 2018 (3) NR 752 (NLD) (rule 32(9) & (10); at para 9: "the introduction of the case management system has placed wide judicial discretionary powers on the managing judge in the furtherance of the speedy and inexpensive resolution of cases", including exercise of discretion in finding that adequate steps were taken in terms of these subrules)

Rule 36:

Arangies & Another v Unitrans Namibia (Pty) Ltd & Another 2018 (3) NR 869 (SC) (rule 36(1) application considered)

Rule 40:

Auto Tech Truck and Coach CC v Fanny's Motor Repairs and Investment CC & Another 2015 (4) NR 1190 (HC) (application for leave to join third party refused)

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC)

United Africa Group (Pty) Ltd v Uramin Inc & Others 2017 (4) NR 1145 (HC)

Rule 41:

De Beers Marine Namibia (Pty) Ltd v Loubser 2017 (1) NR 20 (SC)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (rule 41(2) discussed at paras 39-43)

Rule 42:

Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC)

Council of the Itireleng Village Community v Madi 2017 (4) NR 1127 (SC) (application of rule to voluntary association)

Rule 45:

- Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2016 (3) NR 747 (SC) (Rule 45(5))
- Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others* 2016 (3) NR 893 (HC) (Rule 45(7))
- Skorpion Mining Company (Pty) Ltd v Road Fund Administration* 2016 (3) NR 864 (HC) (Rule 45(9)), overturned on appeal on other grounds in *Road Fund Administration v Skorpion Mining Company (Pty) Ltd* 2018 (3) NR 829 (SC)
- Brink NO & Another v Erongo All Sure Insurance CC & Others* 2018 (3) NR 641 (SC) (Rule 45(5))
- Rule 46:
Maritz v Louw NO & Others 2018 (4) NR 1000 (HC) (rule 46 applied to special plea)
- Rule 50:
Bertolini v Ehlers & Another 2017 (4) NR 1035 (HC)
- Rule 52:
Skorpion Mining Company (Pty) Ltd v Road Fund Administration 2016 (3) NR 864 (HC), overturned on appeal on other grounds in *Road Fund Administration v Skorpion Mining Company (Pty) Ltd* 2018 (3) NR 829 (SC)
- United Africa Group (Pty) Ltd v Uramin Inc & Others* 2017 (4) NR 1145 (HC)
- Rule 53:
Donatus v Ministry of Health and Social Welfare 2016 (2) NR 532 (HC)
- Rule 55:
Schütz v Pirker & Another 2015 (1) NR 231 (HC)
- Rule 56:
Schütz v Pirker & Another 2015 (1) NR 231 (HC)
- SV v HV* 2018 (2) NR 460 (HC)
- Rule 57:
Hayley Fay t/a Hayley Fay Properties v Uptown Property Investment CC & Others 2016 (3) NR 893 (HC)
- Rule 59:
Martucci & Others v Colcellini & Another 2016 (3) NR 658 (HC)
- Martucci & Others v Mountain View Game Lodge (Pty) Ltd* 2016 (3) NR 658 (HC)
- Rule 60:
Mukata v Appolus 2015 (3) NR 695 (HC) (rule 60(11))
- Rule 61:
CV v JV 2016 (1) NR 214 (rule 32(9)-(10) applies to interlocutory matters under Rule 61 and must be complied with; elements of Rule 61 application)
- IBB Military Equipment & Accessory Supplies CC v Namibia Airports Co* 2017 (4) NR 1194 (HC) (rule 61 versus rule 76 for purposes of review proceedings)
- Rule 64:
Akwenye v Amadhila 2018 (4) NR 1090 (HC)
- Rule 65:
Schütz v Pirker & Another 2015 (1) NR 231 (HC)
- Inspector General of the Namibian Police & Another v Dausab-Tjueza* 2015 (3) NR 720 (HC) (rules 65 and 76 compared; review of administrative decision should be brought in terms of rule 76)
- Ondonga Traditional Authority v Elifas & Another* 2017 (3) NR 709 (HC) (rule 65(1) read with rules 70(1) and 73(3))
- United Africa Group (Pty) Ltd v Uramin Inc & Others* 2017 (4) NR 1145 (HC) (rule 65(2))
- Rashed v Inspector General of the Namibian Police & Others* 2018 (2) NR 619 (HC) (at paras 37-43)
- Schkade v Gregory NO & Others* 2018 (4) NR 986 (HC) (rule 65 versus rule 76; rule 65(7))
- Rule 66:
Municipal Council of Gobabis v Smith t/a Bertie Smith Contractor Services 2015 (1) NR 299 (HC) (rule 66(1)(c))
- Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another* 2015 (4) NR 1194 (HC) (rule 28(1), read with rule 70(3), subject to rule 66(1)(b))

See *Prosecutor-General v Paulo & Another* 2017 (1) NR 178 (HC) (rule 66(4); principles governing late filing of confirmatory affidavits articulated and applied)

Mpasi NO & Another v Master of the High Court & Others 2018 (4) NR 909 (SC) (rule 66(1)(c))

Rule 70:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC) (Rule 70(3))

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (relation of new High Court rule 70(3) to old High Court rule 35(13); rule 70(3) applies rule 28 to discovery in motion proceedings but only where exceptional circumstances exist and where the requirements of rule 28(1) are satisfied)

Laicatti Trading Capital Inc & Others NNO v Greencoal (Namibia) (Pty) Ltd & Another 2015 (4) NR 1194 (HC) (Rule 28(1), read with rule 70(3), subject to rule 66(1)(b))

Minister of Finance & Another v Hollard Insurance Company of Namibia Limited & Others 2018 (4) NR 1133 (HC) (Rule 70(4))

Rule 72:

Ondonga Traditional Authority v Elifas & Another 2017 (3) NR 709 (HC)

Rule 73:

Premier Construction CC v Chairperson of the Tender Committee of the Namibia Power Corp Board of Directors 2014 (4) NR 1002 (HC) (rule 73(3))

Maletzky & Others v Electoral Commission & Others 2015 (2) NR 571 (HC) (rule 73(3))

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC) (rule 73(4))

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (rule 73(4))

Nowases & Others v Evangelical Lutheran Church in the Republic of Namibia ELCRN & Others 2016 (4) NR 985 (HC) (rule 73(4))

China Harbour Engineering Co LTD v Erongo Quarry and Civil Works (Pty) Ltd & Another 2016 (4) NR 1078 (HC) (claim of spoliation is inherently urgent)

Mugimu v Minister of Finance & Others 2017 (3) NR 670 (HC)

New Force Logistics CC v Anti-Corruption Commission 2018 (2) NR 375 (HC) (impact of festive season on delays in bringing an application considered in course of ruling on urgency)

Bank Windhoek Ltd v Mofuka & Another 2018 (2) NR 503 (SC)

Rashed v Inspector General of the Namibian Police & Others 2018 (2) NR 619 (HC) (at paras 32-36)

Van Zyl & Others v Namibian Affirmative Management and Business (Pty) Ltd & Others 2019 (1) NR 27 (HC) (rule 73(3))

Rule 75:

Uvanga v Steenkamp & Others 2017 (1) NR 59 (HC) (dicta on proper role of taxing officer in stating a case in terms of rule 75)

Rule 76:

South African Poultry Association & Others v Ministry of Trade & Industry & Others 2015 (1) NR 260 (HC)

Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (Rules 65 and 76 compared; review of administrative decision should be brought in terms of rule 76)

Fire Tech Systems CC v Namibia Airports Co Ltd & Others 2016 (3) NR 802 (HC)

Chairperson of the Tender Board of Namibia v Pamo Trading Enterprises CC & Another 2017 (1) NR 1 (SC) (theoretical use of review application and rule 76 to gain early discovery of record of administrative decision-making process)

Nelumbu & Others v Hikumwah & Others 2017 (2) NR 433 (SC) (discussion of how this rule could be used to aid review proceedings)

IBB Military Equipment & Accessory Supplies CC v Namibia Airports Co 2017 (4) NR 1194 (HC) (rule 76 versus rule 61 for purposes of review proceedings)

Schkade v Gregory NO & Others 2018 (4) NR 986 (HC) (rule 76 versus rule 65)

Rule 90:

GR v ER 2018 (2) NR 589 (HC)

Rules 92-93 (witness statements):

Josea v Ahrens & Another 2015 (4) NR 1200 (HC) (exposition of intent of new rules on witness statements and suggested format for such statements)

Conrad v Dohrmann & Another 2018 (2) NR 535 (HC) (at paras 118-120: improper for defendant's lawyer to put portions of plaintiff's witness statement to defendant immediately after defendant finished reading his witness statement into the record pursuant to rule 93(3))

Rule 97:

Prosecutor-General v Africa Autonet CC t/a Pacific Motors 2017 (4) NR 969 (HC) (notice of withdrawal should have been filed under this rule when preservation order was allowed to lapse under the Prevention of Organised Crime Act 29 of 2004)

Bertolini v Ehlers & Another 2017 (4) NR 1035 (HC)

GR v ER 2019 (1) NR 46 (HC) (rule 97(3); costs in matrimonial proceedings may take into account inequality of parties' respective financial means and best interests of parties' minor children)

Rule 100:

Fish Orange Mining Consortium (Pty) Ltd v Goaseb 2018 (3) NR 632 (HC) (rule governing applications for absolution from the instance quoted, but court notes that the rule does not set out principles for decision which must be found in case law, quoting principles summarised in *Ramirez v Frans & Others* (I 933/2013) [2016] NAHCM 376 (25 November 2016))

Rule 103:

PH v SH 2015 (2) NR 519 (HC) (rule 103(1)(a))

Inspector General of the Namibian Police & Another v Dausab-Tjiueza 2015 (3) NR 720 (HC) (rule 103(1)(a); consideration of meaning of "absence of any party")

Imbili v Nepela & Another 2017 (1) NR 96 (HC) (rule 103(1)(a) read with rule 26(4)-(5); court may rescind or vary an order or judgment in terms of rule 103(1)(a) if court file and record show that such order or judgment was obtained without adherence to the prescribed procedure)

Spangenberg v Kloppers 2018 (2) NR 494 (HC)

Rule 108:

Futeni Collection (Pty) Ltd v De Duine (Pty) Ltd 2015 (3) NR 829 (HC)

Standard Bank Namibia Ltd v Shipila (First National Bank Namibia Ltd & Others intervening; the Ombudsman as amicus curiae) 2016 (2) NR 476 (HC), overturned on appeal in *Standard Bank Namibia Ltd v Shipila & Others* (2018 (3) NR 849 (SC) (rule 108 is procedural in nature and may not be read to take away the substantive right of a judgment creditor to foreclosure; in the case of foreclosure under a registered bond, where creditor moves for default judgement under rule 15(3), rule 15(3) is sufficient to provide for the necessary judicial oversight; primary purpose of rule 108 is to give debtor an opportunity to oppose an application for an order declaring the property in question executable, and thus substantial compliance with Form 24 referenced in rule 108(2)(a) is sufficient; if rule 108 is properly read in context, it is not *ultra vires* the Act, the common law or the Constitution)

First National Bank of Namibia Ltd v Musheti 2018 (1) NR 144 (HC) (rule 108(1)(b))

Rule 110:

Beukes & Another v First National Bank Ltd & Others 2018 (3) NR 737 (HC) (rule 110(9))

Rule 130:

Conrad v Dohrmann & Another 2018 (2) NR 535 (HC) (at paras 121-ff)

Rule 131:

Prosecutor-General v Kennedy 2017 (1) NR 228 (HC) at para 34 (non-compliance with rule 131(1)(h) on page numbers in pleadings condoned)

Rule 138:

Telecom Namibia Ltd v Communications Regulatory Authority of Namibia & Others 2015 (3) NR 747 (HC) (rule 138 to be read intertextually with rule 3(6) and rule 70(3))

Wise v Shikuami NO & Another 2017 (2) NR 614 (HC) (at paras 25-ff).

Cases on previous High Court Rules (1990) in GN 59/1990 ([GG 90](#)):

generally:

- Swanepoel v Marais & Others* 1992 NR 1 (HC)
Adriaans v McNamara 1993 NR 188 (HC)
Johnston v Indigo Sky Gems (Pty) Ltd 1997 NR 239 (HC)
Ark Trading v Meredien Financial Services (Pty) Ltd 1999 NR 230 (HC) (discussion of importance of complying with rules of court)
Van Zyl & Another v Smit & Another 2007 (1) NR 314 (HC) (Practice Directives)
Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (Practice Directives)
Windhoek Truck and Bakkie CC v Greensquare Investments 106 CC 2011 (1) NR 150 (HC) (wilful disregard for rules undermines administration of justice and may attract exemplary costs order)
Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))
S v Sakaria 2013 (2) NR 347 (HC) (rule of practice preventing appellant seeking to reduce criminal sentence on appeal from withdrawing such appeal upon receipt of notice of court's *meru moto* intention to increase sentence)
Martin v Diroyal Motors Namibia (Pty) Ltd t/a Novel Ford & Others 2013 (2) NR 463 (HC) (court's common law discretion in respect of joinder)
S v Ashimbanga 2014 (1) NR 242 (HC) (layperson's failure to set out grounds of criminal appeal properly should be approached with leniency where state is not materially prejudiced in its ability to present opposing argument)
HKL v MML 2016 (2) NR 518 (SC) (lack of good faith in application for condonation)
... Plainly an application for condonation is to be in good faith. An untruthful statement used to explain a delay wholly negates that requirement... Almost every rule setting out the steps to be taken to prosecute an appeal had been violated. The cumulative effect of these multiple non-compliances renders them so 'glaring', 'inexplicable' and 'flagrant', particularly when compounded by the resort to dishonesty in order to buttress a weak explanation, that this court will not consider the prospects of success in determining those applications... (paras 40-41)

Rule 2:

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC)(rule 2(2))

Rule 3:

Rally for Democracy and Progress & Others v Electoral Commission of Namibia & Others 2010 (2) NR 487 (SC)

Rule 4:

Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board 2008 (2) NR 427 (HC)
RH v NS 2014(3) NR (HC) (rule 4(1)(b))
Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (rule 4(5)(c))

Rule 5:

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC) (rule 5(4)(a) does not require board resolution to be lodged with power of attorney signed by authorised official employed by company in question)

Rule 6:

Vaatz v Law Society of Namibia 1990 NR 332 (HC) (rule 6(15))
Cultura 2000 v Government of the Republic of Namibia 1992 NR 110 (HC) (rule 6(15))
Eimbeck v Inspector-General of the Namibian Police & Another 1995 NR 13 (HC) (rule 6(11))
Mahamat v First National Bank of Namibia Ltd 1995 NR 199 (HC) (rule 6(1))
Transnamib v Essjay Ventures Limited 1996 NR 188 (HC) (rule 6(4) and (5))
Coin Security Namibia (Pty) Ltd v Jacobs & Another 1996 NR 279 (HC) (rule 6(5))

Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC) (rule 6(4), (5) and (11))

RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC) (rule 6(12))

Swanepoel v Minister of Home Affairs & Others 2000 NR 93 (HC) (rule 6(12))

Bergmann v Commercial Bank of Namibia Ltd & Another 2001 NR 48 (HC) (rule 6(12))

Seasonaire v Mahe Construction (Pty) Ltd 2002 NR 53 (HC) (rule 6(5))

Gariseb v Bayerl 2003 NR 118 (HC) (rule 6(11))

Doeseb & Others v Kheibeb & Others 2004 NR 81 (HC) (*ex parte* order in the form of an Anton Pillar)

Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (in labour law context) (rule 6(12))

Congress of Democrats & Others v Electoral Commission 2005 NR 44 (HC) (rule 6(12))

Law Society of Namibia v Kamwi & Another 2005 NR 91 (HC) (rule 6(1) and (15))

Sheehama v Inspector-General, Namibian Police 2006 (1) NR 106 (HC) (rule 6(12))

Clear Channel Independent Advertising Namibia (Pty) Ltd & Another v Transnamib Holdings Ltd & Others 2006 (1) NR 121 (HC) (rule 6(12))

Knouwds NO v Josea & Another 2007 (2) NR 792 (HC) (rule 6(5))

Ondjava Construction CC & Others v Haw Retailers 2008 (1) NR 45 (HC) (rule 6(5))

Vahekeni v Vahekeni 2008 (1) NR 125 (SC) (rule 6(6))

Shixwameni & Others v Congress of Democrats & Others 2008 (1) NR 134 (HC) (rule 6(5))

Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC) (rule 6(5))

Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (rule 6(12))

Minister of Agriculture, Water and Forestry v O'Linn 2008 (2) NR 792 (SC) (rule 6(5))

Oshakati Tower (Pty) Ltd v Executive Properties CC & Others 2009 (1) NR 99 (HC) (deals with rule 6(5)(g) although this rule is not expressly cited in the case; also rule 6(15))

Council of the Municipality of Windhoek v Bruni NO & Others 2009 (1) NR 151 (HC) (rule 6(5))

La Rochelle (Pty) Ltd & Others v Nathaniel-Koch & Others 2010 (1) NR 260 (HC) (interpretation of rule 6(12) in previous proceedings before the Court in the same case)

Labour Supply Chain Namibia (Pty) Ltd v Awaseb 2010 (1) NR 322 (HC) (rule 6(12))

Government of Namibia v Africa Personnel Services 2010 (2) NR 537 (HC) (rule 6(12))

Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC) (rule 6(11) and (12) read with practice direction 26 issued on 2 March 2009)

Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd & Others 2012 (1) NR 331 (HC) (rule 6(12) read with Consolidated Practice Directions No E/8)

EH v D 2012 (2) NR 451 (HC) (rule 6(15); considerations of urgency when children's rights involved, in contrast to commercial or kindred matters)

Jack's Trading CC v Minister of Finance & Another 2013 (2) NR 480 (HC) (rule 6(12))

Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC) (rule 6(12))

New Era Investment (Pty) Ltd v Roads Authority & Others 2014 (2) NR 596 (HC) (rule 6(12)); upheld on appeal in *New Era Investment (Pty) Ltd v Roads Authority and Others* 2017 (4) NR 1160 (SC) without discussion of this rule

Standard Bank of Namibia Ltd v Atlantic Meat Market 2014 (4) NR 1158 (SC) (rule 6(12))

Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (rule 6(12))

Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (rule 6(8); also references para 27(3)(c) of consolidated practice directives issued on 2 March 2009)

Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC) (rule 6(1))

Rule 7:

Namib Contract Haulage (Pty) Ltd v Oshakati Garage CC 2014 (1) NR 174 (SC)

Rule 8:

- Zhou v Hong* 2006 (1) NR 84 (HC) (rule 8(3))
- Rule 10:
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)
Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (rule 10(1))
Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC)
- Rule 11:
Kandjii v Awaseb & Others 2014 (4) NR 1103 (HC)
- Rule 12:
Ex Parte Sudurhavid (Pty) Ltd: In Re Namibia Marine Resources (Pty) Ltd v Ferina (Pty) Ltd 1992 NR 316 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Namibia Insurance Association v Government of Namibia 2001 NR 1 (HC)
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)
Kahuure & Another in re Nguvauva v Minister of Regional and Local Government and Housing and Rural Development & Others 2013 (4) NR 932 (SC)
- Rule 14:
Parents' Committee of Namibia & Others v Nujoma & Others 1990 (1) SA 873 (SWA)
Meridien Financial Services (Pty) Ltd v Ark Trading 1998 NR 48 (HC), confirmed in *Ark Trading v Meridien Financial Services (Pty) Ltd* 1999 NR 230 (HC)
- Rule 15:
RL Civil Engineering v Ministry of Regional and Local Government and Housing & Another 1998 NR 61 (HC)
The Municipality of Walvis Bay v The Occupiers of the Caravan Sites at the Long Beach Caravan Park Walvis Bay Republic of Namibia 2005 NR 2007 (HC)
Nationwide Detectives and Professional Practitioners CC v Ondangwa Town Council 2009 (1) NR 308 (HC)
- Rule 16:
Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2008 (1) NR 290 (SC) (right of individual who is not a legal practitioner to represent a one-person close corporation in court as its “alter ego”)
Independence Catering (Pty) Ltd & Others v Minister of Defence & Others 2014 (4) NR 1085 (HC) (rule 16(5))
- Rule 17:
Veldman & Another v Bester 2011 (2) NR 581 (HC) (rule 17(2)(b))
- Rule 18:
Hipandulwa v Kamupunya 1993 NR 254 (HC)
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others; Hofmeister v Basson & Others 1999 NR 206 (HC)
Namibia Beverages v Amupolo 1999 NR 303 (HC)
Makono v Nguvauva 2003 NR 138 (HC)
Coastal Fish Traders (Pty) Ltd v Wilson & Another 2006 (2) NR 573 (HC)
Hepute & Others v Minister of Mines and Energy & Another 2008 (2) NR 399 (SC)
Minister of Mines and Energy & Another v Black Range Mining (Pty) Ltd 2011 (1) NR 31 (SC)
Namib Plains Farming CC v Valencia Uranium (Pty) Ltd & Others 2011 (2) NR 469 (SC)
Hangula v Motor Vehicle Accident Fund 2013 (2) NR 358 (HC)
China Henan International Cooperation (Pty) Ltd v De Klerk & Another 2014 (2) NR 517 (HC)
Namene v Khomas Regional Council 2016 (3) NR 701 (SC) (rule 18(6))
- Rule 19):
PH v SH 2015 (2) NR 519 (HC) (rule 19(1))
- Rule 20:
Namibia Beverages v Amupolo 1999 NR 303 (HC) (rule 20(2))
- Rule 21:

- Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders* 1999 NR 129 (HC) (rule 21(3))
- Kaese v Schacht & Another* 2010 (1) NR 199 (SC) (read together with rule 22(3), requires that further particulars must be expressly denied or expressly not admitted) (rule 21(2)(a))
- Rule 22:
- Makono v Nguvauva* 2003 NR 138 (HC) (rule 22(3))
- Kaese v Schacht & Another* 2010 (1) NR 199 (SC) (rule 22(3) read together with rule 21(2)(a), requires that further particulars must be expressly denied or expressly not admitted)
- Rule 23:
- Gauseb v Minister of Home Affairs* 1996 NR 90 (HC)
- Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders* 1999 NR 129 (HC)
- Bronkhorst v De Villiers; Van Zyl v De Villiers* 2012 (1) NR 137 (HC)
- Roads Contractor Co Ltd v Lemur Investments No 26 CC & Others* 2013 (4) NR 954 (HC)
- Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others* 2014 (2) NR 425 (HC)
- Rule 25:
- Gunchab Farming CC & Another v Barnard & Another* 2015 (2) NR 587 (HC) (rule 25(1))
- Rule 26:
- Council of the Municipality of Windhoek v MW Coetzee t/a MW Coetzee Builders* 1999 NR 129 (HC)
- Bronkhorst v De Villiers; Van Zyl v De Villiers* 2012 (1) NR 137 (HC)
- Gunchab Farming CC & Another v Barnard & Another* 2015 (2) NR 587 (HC)
- Rule 27:
- Adriaans v McNamara* 1993 NR 188 (HC)
- Xoagub v Shipena* 1993 NR 215 (HC)
- Transnamib v Essjay Ventures Limited* 1996 NR 188 (HC)
- Rothe v Asmus & Another* 1996 NR 406 (HC)
- S v Nakapela & Another* 1997 NR 184 (HC)
- Government of the Islamic Republic of Iran v Berends* 1997 NR 140 (HC)
- Johnston v Indigo Sky Gems (Pty) Ltd* 1997 NR 239 (HC)
- Seaflower Whitefish Corporation Ltd v Namibian Ports Authority* 2000 NR 57 (HC)
- The Nation (Pty) Ltd. v Meyer NLLP* 2002 (2) 55 NHC
- Vaatz: In re Schweiger v Gamikaub (Pty) Ltd* 2006 (1) NR 161 (HC)
- Dimensions Properties v Municipal Council of Windhoek* 2007 (1) NR 288
- China State Construction Engineering Corporation v Pro Joinery CC* 2007 (2) NR (HC) (rule 27(3): a procedural irregularity which constitutes a nullity cannot be condoned)
- Solomon v De Klerk* 2009 (1) NR 77 (HC)
- Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd* 2010 (2) NR 703 (HC) (conflict between rule 27 and rule 30 discussed)
- Rule 28:
- South Bakels (Pty) Ltd & Another v Quality Products & Another* 2008 (2) NR 419 (HC)
- Phincon Enterprises (Pty) Ltd v Dos Santos* 2012 (1) NR 352 (HC)
- Rule 29:
- Rothe v Asmus & Another* 1996 NR 406 (HC)
- Meyer v Deputy Sheriff, Windhoek & Others* 1999 NR 146 (HC)
- Commercial Bank of Namibia v Grobler* 2002 NR 24 (HC)
- Andreas v La Cock & Another* 2006 (2) NR 472 (HC)
- Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd* 2010 (2) NR 703 (HC) at 724A-E
- HP v FP* 2014 (3) NR 701 (HC)
- Rule 30:
- Ark Trading v Meredien Financial Services Namibian (Pty) Ltd* 1999 NR 230 (HC)
- Gariseb v Bayerl* 2003 NR 118 (HC)
- Wirtz v Orford & Another* 2005 NR 175 (SC)
- Kamwi v Law Society of Namibia* 2007 (2) NR 400 (HC)

China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC)
Ondjava Construction CC & Others v Haw Retailers t/a Ark Trading 2008 (1) NR 45 (HC)
Beauhomes Real Estate (Pty) Ltd t/a Re/max Real Estate Centre & Another v Namibia Estate Agents Board 2008 (2) NR 427 (HC)
Christian t/a Hope Financial Services v Chairman of Namibia Financial Institutions Supervisory Authority & Others 2009 (1) NR 22 (HC) (discussion of rule 30 applications in passing)
Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd 2010 (2) NR 703 (HC);
Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation 2012 (2) NR 671 (SC)
Goseb & Others v Minister of Regional and Local Government and Housing & Others 2011 (1) NR 224 (HC) (Full Bench resolves conflicting precedent by ruling that it is not a prerequisite for an applicant to give notice in terms of rule 30(5) before bringing a rule 30(1) application)
//Ae//Gams Data (Pty) Ltd & Others v St Sebata Municipal Solutions (Pty) Ltd & Others 2011 (1) NR 247 (HC)
Veldman & Another v Bester 2011 (2) NR 581 (HC)
Maletsky v Gaseb & Another 2014 (3) NR 645 (HC)
Maletsky v Minister of Justice & Others 2014 (4) NR 956 (HC)
PH v SH 2015 (2) NR 519 (HC)
Gunchab Farming CC & Another v Barnard & Another 2015 (2) NR 587 (HC)
Standard Bank Namibia Ltd & Others v Maletzky & Others 2015 (3) NR 753 (SC)

Rule 31:

Grüttemeyer NO v General Diagnostic Imaging 1991 NR 441 (HC) (rule 31(2))
Adriaans v McNamara 1993 NR 188 (HC) (rule 31(2))
Xoagub v Shipena 1993 NR 215 (HC) (rule 31(2))
Hipandulwa v Kamupunya 1993 NR 254 (HC) (rule 31(2))
Government of the Islamic Republic of Iran v Berends 1997 NR 140 (HC) (rule 31(2))
Mutjavikua v Mutual & Federal Insurance Company Ltd 1998 NR 57 (HC) (rule 31(2))
Maia v Total Namibia 1998 NR 303 (HC) (rule 31(2))
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC) (rule 31(2))
Mhungu v Commercial Bank of Namibia Ltd NLLP 2002 (2) 299 HC (rule 31(2))
Namcon CC v Tula's Plumbing CC 2005 NR 39 (HC) (rule 31(2))
China State Construction Engineering Corporation v Pro Joinery CC 2007 (2) NR (HC) (rule 31(2))
Minister of Home Affairs, Minister Ekandjo v Van der Berg 2008 (2) NR 548 (SC) (rule 31(2))
Hange & Others v Orman 2014 (4) NR 971 (HC) (rule 31(2))

Rule 32:

Commercial Bank of Namibia Ltd v Trans Continental Trading (Namibia) & Others 1991 NR 135 (HC)
Standard Bank of Namibia Ltd v Veldsman 1993 NR 391 (HC)
Kühn v Levey & Another 1996 NR 362 (HC)
Kramp v Rostami 1998 NR 79 (HC)
Kelnic Construction (Pty) Ltd v Cadilu Fishing (Pty) Ltd 1998 NR 198 (HC)
Namibia Petroleum (Pty) Ltd v Vermaak 1998 NR 155 (HC)
Bank Windhoek Ltd v Kessler 2001 NR 234 (HC)
Bierman NO v Combrink 2006 (2) NR 447 (HC)
Namibia Breweries Limited v Serrao 2007 (1) NR 49 (HC)
Kamwi v Ministry of Finance 2007 (1) NR 167 (HC)
Ritz Reise (Pty) Ltd v Air Namibia (Pty) Ltd 2007 (1) NR 222 (HC)
Namibia Airports Company Ltd v Conradie 2007 (1) NR 375 (HC)
Mauno Haindongo t/a Omawa Wholesalers v African Experience (Pty) Ltd 2006 (1) NR 56 (HC)
Gamikaub (Pty) Ltd v Schweiger 2008 (2) NR 464 (SC)

- Easy Life Management (Cape)(Pty) Ltd & Another v Easy Fit Cupboards Windhoek CC & Others* 2008 (2) NR 686 (HC)
- Mbambus v Motor Vehicle Accident Fund* 2011 (1) NR 238 (HC)
- Di Savino v Nedbank Namibia Ltd* 2012 (2) NR 507 (SC)
- Amunyela v Arovin Property Developers (Pty) Ltd* 2012 (2) NR 757 (HC)
- Brandt t/a Chris Brandt Attorneys v Windhoek Truck & Bakkie CC & Others* 2013 (1) 295 (HC)
- Rule 33:
- Freiremar SA v The Prosecutor-General of Namibia & Another* 1996 NR 18 (HC)
- Van As & Another v Prosecutor-General* 2000 NR 271 (HC)
- Arangies t/a Auto Tech v Quick Build* 2014 (1) NR 187 (SC) (discussion of rule 33(4) in context of consideration of prospects of success on merits in condonation application)
- Mbambus v Motor Vehicle Accident Fund* 2015(3) NR 605 (SC)
- Paschke v Frans* 2015 (3) NR 668 (SC)
- Rule 34:
- Prior t/a Pro Security v Jacobs t/a Southern Engineering* 2007 (2) NR 564 (HC) (rule 34(10))
- Rule 35:
- South African Sugar Association v Namibia Sugar Distributors (Pty) Ltd* 1999 NR 241 (HC)
- Waltraut Fritzsche t/a Reit Safari v Telecom Namibia Ltd* 2000 NR 201 (HC)
- Bank Windhoek Ltd v Kessler* 2001 NR 234 (HC)
- Kanyama v Cupido* 2007 (1) NR 216 (HC)
- Kauaaka & Others v St Phillips Faith Healing Church* 2007 (1) NR 276 (HC)
- Marco Fishing (Pty) Ltd v Government of the Republic of Namibia & Others* 2008 (2) NR 742 (HC)
- Rule 37:
- De Waal v De Waal* 2011 (2) NR 645
- Hubner v Krieger* 2012 (1) NR 191 (HC)
- De Beers Marine Namibia (Pty) Ltd v Lange NO & Others* 2014 (2) NR 437 (HC)
- Scania Finance SA (Pty) Ltd v Aggressive Transport CC & Another* 2014 (2) NR 489 (HC)
- Katzao v Trustco Group International (Pty) Ltd & Another* 2015 (2) NR 402 (HC)
- Rule 38:
- Gabrielsen v Crown Security CC* 2011 (1) NR 121 (HC) (appeal on issue of vicarious liability dismissed in *Crown Security CC v Gabrielsen* 2015 (4) NR 907 (SC)) (rule 38(2))
- Rule 39:
- Christian v Metropolitan Life Namibia & Another* 2007 (1) NR 255 (HC) (exception to rule that party seeking postponement is responsible for wasted costs)
- Rule 40:
- Aluminium City CC v Scandia Kitchens & Joinery (Pty) Ltd* 2007 (2) 494 (HC) (rule 40(6))
- Rule 41:
- De Beers Marine Namibia (Pty) Ltd v Lange NO & Others* 2014 (2) NR 437 (HC) (section 85(2))
- Rule 42:
- Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd* 2007 (2) NR 592 (HC), 2008 (1) NR 290 (SC)
- Prosperita Glass CC t/a Mr Glass v Pretorius t/a Ben Pretorius Building Contractor* 2008 (1) NR 368 (HC)
- National Housing Enterprise v Beukes & Others* 2009 (1) NR 82 (LC)
- Rule 43:
- Eger v Eger* 1997 NR 126 (HC)
- Dreyer v Dreyer* 2007 (2) NR 553 (HC)
- Handl v Handl* 2008 (2) NR 489 (SC)
- RH v NS* 2010 (2) NR 584 (HC)
- Rule 44:
- Grüttemeyer NO v General Diagnostic Imaging* 1991 NR 441 (HC)
- Sylvie McTeer Properties v Kuhn & Others* 2005 NR 519 (HC)
- Schacht v Schweiger* 2007 (1) NR 62 (HC)
- Kamwi v Law Society of Namibia* 2007 (2) NR 400 (HC)

De Villiers v Axiz Namibia (Pty) Ltd 2009 (1) NR 40 (HC), 2012 (1) NR (SC)
Jack's Trading CC v Minister of Finance & Another (Ohorongo Cement (Pty) Ltd Intervening)
2013 (2) NR 491 (HC)
Strauss & Another v Witt & Another 2014 (1) NR 213 (HC)
China Henan International Cooperation (Pty) Ltd v De Klerk & Another 2014 (2) NR 517 (HC)
Kamwi v Standard Bank Namibia Ltd & Others 2015 (3) NR 678 (SC)
Labuschagne v Scania Finance Southern Africa (Pty) Ltd & Others 2015 (4) NR 1153 (SC)
(rule 44(1)(a))
Sylvie McTeer Properties v Kuhn & Others 2017 (3) NR 929 (SC) (rule 44(1)(a) discussed in
passing, but not directly applicable in this case)

Rule 45:

Appolus v Shipanga & Others 1992 NR 273 (HC)
Hindjou v The Government of the Republic of Namibia 1997 NR 112 (SC)
Deputy Sheriff of Gobabis v Eiman & Another 1999 NR 310 (HC)
Jantjies v Jantjies & Another 2001 NR 26 (HC)
Bank Windhoek Ltd v Kusch 2003 NR 67 (HC)

Rule 46:

Mbutu v Esterhuizen NO & Others 2012 (1) NR 177 (HC)
Katjuuanjo v Willemse & Others 2013 (3) NR 850 (HC)

Rule 47:

Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Cellphone Warehouse (Pty) Ltd v Mobile Telecommunications Ltd 2002 NR 318 (HC)
Hepute & Others v Minister of Mines and Energy & Another 2007 (1) NR 124 (HC), 2008 (2)
NR 399 (SC)
Oehl NO v Nolte & Others 2013 (3) NR 643 (HC)
Schütz v Pirker & Another 2015 (1) NR 231 (HC)

Rule 48:

Vaatz v Law Society of Namibia 1993 NR 465 (HC)
Afshani & Another v Vaatz [2003] NASC 7 SA 9/2002 (unreported) (whether the decision of a
judge in chambers in terms of rule 48 constitutes a judgment or order under section 18)
Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)

Rule 49:

Telecom Namibia & Another v Mwellie 1996 NR 289 (HC)
Maia v Total Namibia 1998 NR 303 (HC)
Louw v Chairperson of the District Labour Court, Windhoek & Others 2001 NR 197 (HC) (rule
49(13) declared unconstitutional)
Deputy Sheriff for Caprivi Region v Mboози 2005 NR 172 (HC)
Vaatz: In re Schweiger v Gamikaub (Pty) Ltd 2006 (1) NR 161 (HC)
Witvlei Meat (Pty) Ltd v Agricultural Bank of Namibia & Another 2014 (1) NR 22 (HC) (powers
of court after granting judgment under rule 49(11))

Rule 51:

S v Tjiho 1991 NR 361 (HC)

Rule 53:

*Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated
Diamond Mines (Pty) Ltd & Others* 1991 NR 417 (HC)
Krüger v Transnamib Ltd (Air Namibia) & Others 1996 NR 168 (SC)
S v Gawanab 1997 NR 61 (HC)
Disposable Medical Products v Tender Board of Namibia 1997 NR 129 (HC)
Aonin Fishing (Pty) Ltd & Another v Minister of Fisheries and Marine Resources 1998 NR 147
(HC)
*Open Learning Group Namibia Finance CC v Permanent Secretary, Ministry of Finance &
Others* 2006 (1) NR 275 (HC)
Immanuel v Minister of Home Affairs & Another 2006 (2) NR 687 (HC)
Mbanderu Traditional Authority & Another v Kahuure & Others 2008 (1) NR 55 (SC)

- Purity Manganese (Pty) Ltd v Minister of Mines and Energy & Others; Global Industrial Development (Pty) Ltd v Minister of Mines and Energy & Another* 2009 (1) NR 277 (HC)
- Waterberg Big Game Hunting Lodge Otjahewita (Pty) Ltd v Minister of Environment* 2010 (1) NR 1 (SC) (judicial debate on when the Court is entitled to substitute its own judgment for that of the official in question during a review proceeding)
- Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others* 2011 (2) NR 437 (HC); appeal struck from roll in *Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others* 2013 (4) NR (SC)
- Erf Sixty-Six, Vogelstrand (Pty) Ltd v Council of the Municipality of Swakopmund & Others* 2012 (1) NR 393 (HC) (cost implications of failure to inform respondent of intention to withdraw rule 53 review application)
- Mobile Telecommunications Ltd v Namibia Communications Commission & Others* 2012 (2) NR 421 (HC) (costs implications of dilatory conduct in respect of rule 53)
- New Era Investment (Pty) Ltd v Roads Authority* 2014 (2) NR 596 (HC); upheld on appeal in *New Era Investment (Pty) Ltd v Roads Authority and Others* 2017 (4) NR 1160 (SC) without discussion of this rule
- Rule 54:
Pietersen-Diergaardt v Fischer 2008 (1) NR 307 (HC) (condonation of breaches of this rule)
- Rule 56:
Katzao v Trustco Group International (Pty) Ltd & Another 2015 (2) NR 402 (HC)
- Rule 58:
Katuematima v Tjaveandja & Others 1996 NR 339 (HC)
Deputy-Sheriff of Tsumeb v Koch & Another 2011 (1) NR 202 (HC)
- Rule 60:
Yam Diamond Recovery (Pty) Ltd in re Hofmeister v Basson & Others / Hofmeister v Basson & Others 1999 NR 206 (HC)
Zhou v Hong 2006 (1) NR 84 (HC)
S v Malumo & 116 Others (No 3) 2008 (2) NR 512 (HC)
- Rule 62:
Motor Vehicle Accident Fund v Gerber 2004 NR 119 (HC) (rule 62(4))
- Rule 63:
Kramp v Rostrami 1998 NR 79 (HC)
Ekindjo-Imalwa v The Law Society of Namibia & Another; The Law Society of Namibia & Another v The Attorney-General of the Republic of Namibia & Others 2003 NR 123 (HC)
Zhou v Hong 2006 (1) NR 84 (HC)
La Rochelle (Pty) Ltd & Others v Nathaniel-Koch & Others 2010 (1) NR 260 (HC)
Namibia Bunker Services (Pty) Ltd v ETS Katanga Futur & Another 2015 (2) NR 461 (HC) (rule 63(4))
- Rule 69:
Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC) (rule 69(3))
- Rule 70:
Vaatz v Law Society of Namibia 1993 NR 465 (HC)
Hameva & Another v Minister of Home Affairs, Namibia 1996 NR 380 (SC)
Pinkster Gemeente Van Namibia v Navolgers Van Christus Kerk SA 2002 NR 14 (HC)
Nate Ndauendapo & Associates v Aussenkehr Farms (Pty)Ltd & Others 2007 (1) NR 162 (HC)
Nationwide Detectives & Professional Practitioners v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC) (rule 70 read with tariff of fees prescribed by Sixth Schedule in GN 141/2006)
Hollard Insurance Company of Namibia Ltd v De Neyschen t/a Gecko Guest House 2014 (3) NR 860 (HC)
- Fourth Schedule:
Mbutu v Esterhuizen NO & Others 2012 (1) NR 177 (HC) (Item 5(c)(xiv))
- other:

Channel Life Namibia Limited v Finance in Education (Pty) Ltd 2004 NR 125 (HC) (costs in an urgent application where parties agreed not to proceed; application of rule that a party should at the earliest opportunity take all steps to end litigation or curtail costs associated with it)

Nationwide Detectives & Professional Practitioners CC v Standard Bank of Namibia Ltd 2007 (2) NR 592 (HC) (meaning of “costs” in a costs order and issue of what costs can be awarded to a lay litigant)

Christian v Metropolitan Life Namibia Retirement Annuity Fund & Others 2008 (2) NR 753 (SC) (Practice Directives 1/2002 and 1/2007; whether Practice Directives generally binding on lay litigants discussed in *dicta* at 771)

Hailulu v Anti-Corruption Commission 2011 (1) NR 363 (HC) (punitive costs in respect of postponement; responsibility of litigant for remiss conduct of litigant’s legal practitioner)

Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others 2011 (2) NR 437 (HC) (Consolidated Practice Directives 2009: Practice Directive 37); appeal struck from roll in *Kleynhans v Chairperson for the Council of the Municipality of Walvis Bay & Others* 2013 (4) NR (SC)

Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another 2013 (4) NR 1036 (HC) (Consolidated Practice Directives 2009: Practice Directive 37) (discussed in JD Kennedy Kariseb, “Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another – A tenet of ‘judicial nationalism’?”, *UNAM Law Review*, volume 2, issue 2, 2015, available at <http://unamlawreview.info> and JD Kennedy Kariseb, “Westcoast Fishing Properties v Gendev Fish Processors Ltd & Another”, *Namibia Law Journal*, Volume 8, Issue 1, 2016)

Maletsky v Minister of Justice & Others 2014 (4) NR 956 (HC) (duty of lay litigants to comply with Practice Directives)

Kamwi v Standard Bank Namibia Ltd & Others 2015 (3) NR 678 (SC) (meaning of “disbursements” in costs award in favour of lay litigant)

Mingeli v Oshakati Premier Electric (Pty) Ltd 2015 (3) NR 688 (HC) (guidelines for transfer of cases from one division to another in terms of Practice Directive 47).

Commentary:

Phillip M Balhao. “Review of judicial oversight in the High Court of Namibia regarding attachment and judicial sale of immoveable property”, *Namibia Law Journal*, Volume 10, Issue 1, 2018

Petrus T Damaseb, “Court-connected Mediation in the High Court of Namibia”, *Namibian Law Journal*, Volume 11, Issue 1, 2019

Petrus T Damaseb, “Fact Finding and Judgement Writing in High Court Civil Cases: A Namibian Perspective”, *Namibian Law Journal*, Volume 11, Issue 1, 2019.

Reciprocal Service of Civil Process Act 27 of 1994

Summary: This Act ([GG 977](#)) provides for the reciprocal service of process in civil matters in Namibian and in designated countries.

Regulations: The Act makes no provision for regulations.

Notices: The Republic of South Africa is declared to be a designated country in terms of section 2(1) of the Act by GN 113/1995 ([GG 1095](#)).

Enforcement of Foreign Civil Judgements Act 28 of 1994

Summary: This Act ([GG 978](#)) provides that civil judgements granted in designated countries may be

enforced in magistrates' courts in Namibia. It repeals the *Reciprocal Enforcement of Civil Judgements Act 9 of 1966*.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 ([GG 2327](#)) amends section 1.

Note that there are two versions of GG 2327. The correct one states at the top: “*This Gazette replaces previous Gazette No. 2327.*”

Regulations: The Act makes no provision for regulations, and there is no clause saving any regulations which may have been made under the repealed Act.

Notices: The Republic of South Africa is declared to be a designated country in terms of section 2(a) of the Act by GN 112/1995 ([GG 1095](#)).

Community Courts Act 10 of 2003

Summary: This Act ([GG 3044](#)) provides for the recognition and establishment of community courts and the application of customary law by these courts. It sets the jurisdiction and procedure of community courts and provides an appeal procedure. This Act repeals the following:

- **Rehoboth** Community: Confirmation of Agreement Proclamation 28/1923
- Civil and Criminal Jurisdiction - Chiefs, Headmen, Chiefs' Deputies and Headmen's Deputies, **Territory of South West Africa** Proclamation R.348/1967, as amended by Proc. R.222/1969, Proc. R.304/1972, Proc. R.241/1973,
- Jurisdiction of Chiefs, Chief Tribal Councillors (Ngambelas), Tribal Councillors (Kuta Members), Tribal Councils (Kutas), Headmen of Wards (Silalo Indunas) and Representatives of Chiefs - **Eastern Capri Zipfel** Proclamation R.320/1970
- Proclamation to provide for the establishment of a **Nama** Council, Tribal Authorities and
- Village Management Boards in Namaland Proclamation 160/1975
- Jurisdiction of Traditional Authorities in **Hereroland** in respect of Civil and Criminal Amendment Proclamation, AG 70/1980
- Native Administration Proclamation Amendment Act 27 of 1985 (which substituted section 3(1) of the Native Administration Proclamation 15 of 1928)
- **Damara** Community and Regional Authorities and Paramount Chief and Headmen Ordinance 2/1986
- **Tswana** Chief and Headmen Ordinance 3/1986.

The Act was brought into force on 17 November 2003 by GN 236/2003 ([GG 3095](#)).

Regulations: Section 33(2) contains a savings clause that states:

Anything done under a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act shall be deemed to have been done under that corresponding provision.

Regulations that may have been made in terms of the repealed laws have not yet been researched.

Regulations issued under the current Act are contained in GN 237/2003 ([GG 3095](#)), as amended by GN 280/2018 ([GG 6753](#)).

Notices: The period for application for recognition as community court is set as 17 November 2003-31 March 2004 in GN 238/2003 ([GG 3095](#)), extended to 31 December 2004 by GN 52/2004 ([GG 3176](#)) and further extended to 31 March 2013 by GN 237/2012 ([GG 5038](#)).

Establishment of community courts: Community courts are established as follows (presented in alphabetical order without taking orthographic marks into account) -

/Aman-GN 102/2011 ([GG 4750](#)), as amended by GN 146/2012 ([GG 4966](#)) and by GN 153/2020

([GG 7271](#))

≠Aodaman-GN 103/2011 ([GG 4750](#)), as amended by GN 64/2013 ([GG 5150](#)) and by GN 235/2015 ([GG 5853](#))

Bakgalagadi-GN 113/2009 ([GG 4262](#)), as amended by GN 186/2014 ([GG 5580](#))

Bondelswartz-GN 86/2009 ([GG 4262](#)), as amended by GN 234/2013 ([GG 5272](#)) and by GN 160/2015 ([GG 5795](#))

Note that the name of the court is misspelt in the list of contents of GG 4262.

Dâure-Daman-GN 230/2015 ([GG 5848](#))

Fransfontein-GN 106/2009 ([GG 4262](#)), as amended by GN 140/2018 ([GG 6649](#))

/Gaiio-Daman-GN 114/2009 ([GG 4262](#)), replaced by GN 52/2010 ([GG 4450](#)), as amended by GN 70/2021 ([GG 7506](#)); see also GN 259/2016 ([GG 6164](#))

GN 259/2016 ([GG 6164](#)) erroneously states that it is amending GN 114/2010; it applies to the /Gaiio-Daman Customary Court, but its import is unclear.

Gciriku-GN 90/2009 ([GG 4262](#)), as amended by GN 206/2013 ([GG 5256](#))

Note that the title of GN 206/2009 and the Schedule correctly state that GN 206/2009 amends GN 90/2009, but the text incorrectly states that it amends “Government Notice 60 of 20 May 2009”. (GN 60/2009 was issued on 1 April 2009 and is a moratorium on import of large predators and alien species of wild animals issued under the Nature Conservation Ordinance, 1975.)

/Gobanin-GN 91/2009 ([GG 4262](#))

Hai-//oms-GN 87/2009 ([GG 4262](#))

/Haramüb-GN 59/2011 ([GG 4712](#))

Kai-/Khauben-GN 92/2009 ([GG 4262](#)), as amended by GN 315/2018 ([GG 6784](#)), GN 313/2019 ([GG 7034](#)) and GN 151/2020 ([GG 7271](#))

Kakuru-Kouye-GN 79/2013 ([GG 5161](#)), as amended by GN 8/2014 ([GG 5397](#)) and by GN 314/2019 ([GG 7034](#))

Kambazembi-GN 93/2009 ([GG 4262](#)), as amended by GN 265/2014 ([GG 5644](#)), which is amended by GN 227/2015 ([GG 5848](#))

Note that GN 227/2015 erroneously states at one place that it is amending GN 95/2009.

!Khobesen-GN 104/2009 ([GG 4262](#)), as amended by GN 375/2019 ([GG 7069](#))

/Khomani Hagos-GN 94/2009 ([GG 4262](#)), as amended by GN 260/2012 ([GG 5061](#)) and GN 189/2014 ([GG 5580](#))

King Morwe II-GN 89/2009 ([GG 4262](#)), as amended by 239/2021 ([GG 7673](#))

!Kung-GN 173/2015 ([GG 5806](#))

Linyanti-GN 105/2009 ([GG 4262](#)), as amended by GN 261/2012 ([GG 5061](#)), GN 255/2018 ([GG 6724](#)), GN 42/2019 ([GG 6856](#)) and GN 167 ([GG 7601](#))

Note that the list of contents for GG 6724 and the heading of GN 255/2018 both erroneously state that GN 255/2018 amends GN 56/2010, but the text of GN 255/2018 correctly states that it amends GN 105/2009. The same is true of the list of contents for GG 6856 and the heading of GN 42/2019.

Mafwe-GN 95/2009 ([GG 4262](#)), as amended by GN 208/2013 ([GG 5256](#)), GN 236/2015 ([GG 5853](#)), GN 313/2018 ([GG 6784](#)) and GN 314/2018 ([GG 6784](#))

Maharero-GN 96/2009 ([GG 4262](#)), as amended by GN 108/2014 ([GG 5523](#)), GN 264/2014 ([GG 5644](#)) and GN 311/2017 ([GG 6482](#)); GN 376/2019 ([GG 7069](#)) appears to amend GN 264/2014 ([GG 5644](#))

Note that GN 376/2019 states that it amends GN 264 of 11 December 2013. There is no such notice. GN 264/2013 was published on 4 October 2013 and concerns another topic. No *Gazette* was published on 11 December 2013. GN 376/2019 probably intended to refer to GN 264/2014, which was published on 31 December 2014.

Masubia-GN 97/2009 ([GG 4262](#)), as amended by GN 274/2013 ([GG 5316](#)) – which is amended by GN 117/2017 ([GG 6309](#)), GN 313/2017 ([GG 6482](#)) and GN 198/2018 ([GG 6694](#)) – and by GN 188/2014 ([GG 5580](#)), GN 31/2015 ([GG 5681](#)), GN 20/2017 ([GG 6238](#)) and GN 120/2021 ([GG 7553](#)).

Mayeyi-GN 103/2009 ([GG 4262](#)), as amended by GN 262/2012 ([GG 5061](#)) and by GN 64/2019 ([GG 6868](#))

Note that the heading of GN 64/2019 states that it amends GN 262/2012, but the text of the notice states that it amends GN 103/2009, as amended by GN 262/2012.

Mbukushu-GN 98/2009 ([GG 4262](#))

Note that the name of the court is misspelt in the list of contents of [GG 4262](#).

Mbunza-GN 107/2009 ([GG 4262](#)), as amended by GN 146/2013 ([GG 5221](#)), which is amended by GN 71/2021 ([GG 7506](#))

!Oe#Gân-GN 60/2011 ([GG 4712](#)), as amended by GN 78/2013 ([GG 5161](#)), GN 275/2013 ([GG 5316](#)) and GN 187/2014 ([GG 5580](#)) (as amended by GN 260/2020 ([GG 7373](#)))

Note that the name of the court is misspelt in the list of contents of [GG 4712](#), and throughout [GG 5316](#) and [GG 5580](#).

Okalongo-GN 112/2009 ([GG 4262](#))

Ombadja-GN 53/2010 ([GG 4450](#)), as amended by GN 259/2012 ([GG 5061](#)) – which is amended by GN 91/2017 ([GG 6285](#)), which is in turn amended by GN 52/2022 ([GG 7747](#)) – and by GN 254/2018 ([GG 6724](#))

Note that GN 254/2018 indicates that GN 53/2010 was previously amended by GN 259/2012 and by GN 91/2017, but GN 91/2017 actually amended the amending notice, GN 259/2012.

Ombalantu-GN 109/2009 ([GG 4262](#)), replaced by GN 54/2010 ([GG 4450](#)), as amended by GN 101/2011 ([GG 4750](#)) and by GN 377/2019 ([GG 7069](#))

Note that the list of contents for GG 4750 erroneously states that GN 101/2011 amends GN 54/2011, but the text of GN 101/2011 correctly states that it amends GN 54/2010.

Ondonga-GN 99/2009 ([GG 4262](#)), replaced by GN 56/2010 ([GG 4450](#)), as amended by GN 77/2013 ([GG 5161](#)) – which is amended by GN 161/2014 ([GG 5559](#)) and by GN 95/2020 ([GG 7163](#)) – and by GN 162/2014 ([GG 5559](#)) – which is amended by GN 96/2020 ([GG 7163](#)), GN 94/2020 ([GG 7163](#)) and GN 226/2020 ([GG 7333](#)).

Note that the name of the court is misspelt in the list of contents of [GG 4262](#) and [GG 5161](#).

Ongandjera-GN 100/2009 ([GG 4262](#)), replaced by GN 55/2010 ([GG 4450](#)), as amended by GN 148/2013 ([GG 5221](#)) – which is amended by GN 26/2014 ([GG 5425](#)) and by GN 63/2019 ([GG 6868](#)) – and by GN 166/2021 ([GG 7601](#)).

Otjikaoko-GN 111/2009 ([GG 4262](#)), as amended by GN 96/2011 ([GG 4747](#)) – which is amended by GN 312/2017 ([GG 6482](#)) – and by GN 234/2015 ([GG 5853](#)) – which is amended by GN 86/2018 ([GG 6595](#)) and by GN 55/2022 ([GG 7747](#))

Otjimana (Eiseb Block Traditional Community)-GN 240/2021 ([GG 7673](#))

Oukwanyama-GN 101/2009 ([GG 4262](#)), replaced by GN 57/2010 ([GG 4450](#)), as amended by GN 258/2012 ([GG 5061](#)) – which is amended by GN 237/2014 ([GG 5613](#)) and by GN 152/2020 ([GG 7271](#)).

GN 237/2014 ([GG 5613](#)) contains an amendment in respect of assessors-designate and judges of a community court, but it is not clear what is being amended. The heading of GN 237/2014 states that it amends “Government Notice No. 101 of 20 May 2009 relating to the recognition of the Oukwayama [sic] Customary Court”. However, GN 101/2009 was withdrawn by GN 57/2010 ([GG 4450](#)). The text of GN 237/2014 states that it amends “Government Notice. 95 of 20 May 2009 as set out in the Schedule”; GN 95/2009 pertains to the Mafwe Community Court. The Schedule of GN 237/2014 states that it amends “Government Notice No. 285 of 15 October 2012”; however, this appears to be a typographical error and was probably meant to refer to GN 258/2012, issued on 15 October 2012, which relates to the Oukwanyama Community Court. It would appear that the amendment in GN 237/2014 was intended to apply to the Oukwanyama Community Court.

Ovambanderu-GN 281/2015 ([GG 5892](#)), as amended by GN 295/2019 ([GG 7020](#))

Note that the text of GN 295/2019 states that it amends GN 105/2009, while the title and the Schedule correctly state that it amends GN 281/2015.

Shambyu-GN 108/2009 ([GG 4262](#)), as amended by GN 97/2013 ([GG 5175](#)) and by GN 207/2013 ([GG 5256](#))

The title and the Schedule of GN 97/2013 state that GN 97/2013 amends GN 108/2009 relating to the Shambyu Customary Court, but the introductory text indicates that it amends GN 60/2009. The cited publication date of 20 May 2009 matches GN 108/2009. (GN 60/2009 is a moratorium on import of large predators and alien species of wild animals issued under the Nature Conservation Ordinance, 1975.)

Tsoaxudaman-GN 60/2010 ([GG 4450](#)), as amended by GN 76/2013 ([GG 5161](#)), GN 98/2021

([GG 7534](#)), GN 119/2021 ([GG 7553](#)) and GN 168/2021 ([GG 7601](#))
 Ukwangali-GN 98/2013 ([GG 5175](#)), as amended by GN 16/2018 ([GG 6524](#))
 Note that the name of the community court is “Ukwangali” in GN 98/2013 and
 “Uukwangali” in GN 16/2018.
 Uukolonkadhi-GN 58/2010 ([GG 4450](#)), as amended by GN 113/2012 ([GG 4941](#)) – which is
 amended by GN 229/2015 ([GG 5848](#)) and by GN 182/2019 ([GG 6952](#))
 Note that GN 113/2012 states that it is amending GN 59/2010, but it must have intended
 to refer to GN 58/2010 which concerns the Uukolonkadhi Community Court.
 Uukwaluudhi-GN 110/2009 ([GG 4262](#)), as amended by GN 290/2012 ([GG 5094](#)) and by GN
 147/2013 ([GG 5221](#))
 Uukwambi-GN 102/2009 ([GG 4262](#)), replaced by GN 59/2010 ([GG 4450](#)), as amended by GN
 227/2020 ([GG 7333](#))
 Vita-Thom Royal House-GN 88/2009 ([GG 4262](#)), as amended by GN 114/2012 ([GG 4941](#)), GN
 30/2015 ([GG 5681](#)), GN 228/2015 ([GG 5848](#)) and GN 121/2021 ([GG 7553](#))
 !Xoo-GN 145/2013 ([GG 5221](#)), as amended by GN 116/2017 ([GG 6309](#)) and by GN 175/2020
 ([GG 7290](#))
 Zeraeua-GN 61/2010 ([GG 4450](#)), as amended by GN 7/2014 ([GG 5397](#)) – which is amended by
 GN 65/2019 ([GG 6868](#)) and GN 53/2022 ([GG 7747](#)) – and by GN 54/2022 ([GG 7747](#))
 (which corrects the spelling of “Zeraeua”).

These notices also designate areas of jurisdiction and appoint assessors and justices.

Cases:

Muteka v Leopold (CR4-2016) [2015] NAHCNLD 63 (29 July 2016) (review of appeal proceedings in
 magistrate’s court in terms of section 27(1)(a) of Act; appeal proceedings set aside because of
 failure of magistrate’s court to appoint two assessors as required by the Act)
LM v JM & Others 2016 (2) NR 603 (HC) (enforcement of order of community court).

Commentary:

N Horn, “Criminal or Civil Procedure? The Possibility of a Plea of *Autrefois* in the Namibian
 Community Courts Act” in Manfred O Hinz & Helgard K Patemann (eds), *The Shade of New
 Leaves: Governance in Traditional Authority – A Southern African Perspective*, Windhoek:
 Centre for Applied Social Studies, 2006
 N Horn, “Community Courts In Namibia: Life or Death For Customary Law?”, MO Hinz, *In Search of
 Justice and Peace: Traditional and Informal Justice Systems in Africa*, Windhoek: Namibia
 Scientific Society, 2009.

Commentary on the South African Traditional Courts Bill:

Nomthandazo Ntlama & Dial Dayana Ndima, “The significance of South Africa’s Traditional Courts
 Bill to the challenge of promoting African traditional justice systems”, 4 (1) *International
 Journal of African Renaissance Studies - Multi-, Inter- and Transdisciplinarity* 6-30 (2009)
 Aninka Claassens, “Who told them we want this Bill? The Traditional Courts Bill and rural women”, 23:
 82 *Agenda* 9-22 (2009)
 Jennifer Williams & Judith Klusener, “The Traditional Courts Bill: a woman’s perspective”, 29 (2)
South African Journal on Human Rights 2013
 Thuto Thipe & Mbongiseni Buthelezi, “Democracy in action: the demise of the Traditional Courts Bill
 and its implications: discourse and debate”, 30 (1) *South African Journal on Human Rights* 2014
 Christa Rautenbach, “Legal Reform of Traditional Courts in South Africa: Exploring the Links between
 UBUNTU, Restorative Justice and Therapeutic Jurisprudence”, 2 *Journal of International &
 Comparative Law* 275 (2015)
 “South Africa’s efforts to fix traditional courts hit a snag”, *The Conversation*, 15 June 2021, available
[here](#).

Magistrates Act 3 of 2003

Summary: This Act ([GG 2996](#)) provides for the establishment of a Magistrates Commission and establishes a magistracy outside the Public Service. Part II of the Act was brought into force on 20 June 2003, and the remainder of the Act was brought into force on 30 June 2003. (Both dates were announced in GN 125/2003 ([GG 3001](#)).)

Amendments: Act 23/2003 ([GG 3122](#)) amends section 11 of the Act. Act 5/2009 ([GG 4307](#)) amends sections 1 and 11, and substitutes the expression “Chief Magistrate” for “Chief: Lower Courts” and “Chief of lower courts”.

Act 2/2014 ([GG 5431](#)) amends sections 1, 4, 5, 6, 7, 10, 12, 19, 20, 21, 25, 26 and 27 substitutes sections 11, 13, 14, 16, 24 and 28, and inserts section 5A and Schedule 1.

Regulations: Regulations regarding Magistrates, which came into force on 30 June 2003, are contained in GN 130/2003 ([GG 3007](#)), as amended by GN 200/2015 ([GG 5828](#)) (which inserted Part VA on misconduct).

Notices: The remuneration of magistrates is increased in GN 44/2009 ([GG 4236](#)), GN 297/2012 ([GG 5094](#)), GN 236/2014 ([GG 5613](#)), GN 96/2016 ([GG 6008](#)) and GN 202/2017 ([GG 6377](#)).

Certain degrees or equivalent qualifications in law are recognised as being satisfactory qualifications for appointment of a person as a magistrate in GN 166/2015 ([GG 5795](#)), which is amended by GN 237/2021 ([GG 7673](#)).

Appointments: Members of the Magistrates Commission are announced in General Notice 169/2003 ([GG 3020](#)), GN 155/2009 ([GG 4310](#)), GN 54/2011 ([GG 4701](#)), GN 189/2012 ([GG 5005](#)), GN 165/2015 ([GG 5795](#)), GN 151/2018 ([GG 6660](#)), GN 70/2020 ([GG 7142](#)), GN 225/2020 ([GG 7333](#)), GN 157/2021 ([GG 7590](#)) and General Notice 52/2022 ([GG 7747](#)). A designation of the chairperson of the Commission is announced in GN 41/2021 ([GG 7482](#)).

Cases:

Mostert & Another v The Magistrates' Commission & Another 2005 NR 491 (HC) (section 5)

Alexander v Minister of Justice & Others 2009 (2) NR 712 (HC) (section 11(7); appointment of acting magistrates by Magistrates Commission is generally constitutional, but appointment of Chief: Lower Courts as acting magistrate is impermissible violation of independence of judiciary); appealed on other grounds in 2010 (1) NR 328 (SC)

Alexander v Minister of Justice & Others 2010 (1) NR 328 (SC) at para 19 (Minister's designation of magistrate to conduct extradition enquiry under Extradition Act 11 of 1996 does not interfere with independence of magistrates under this Act)

Minister of Justice v Magistrates' Commission & Another 2012 (2) NR 743 (SC) (role of Minister of Justice and Magistrates' Commission in respect of disciplinary proceedings under sections 3, 13(1), 21(3)(a) and 26(17)(ii), in light of constitutional principle of separation of powers)

Le Roux v Minister of Justice & Others 2015 (1) NR 131 (HC) (review versus appeal of dismissal of magistrate; sections 21 and 26 of Act)

Ndeitunga v Kavaongelwa 2016 (3) NR 622 (HC) (discussion of provisions on misconduct)

The Act is also discussed in a dissenting opinion in *Visagie v Government of the Republic of Namibia & Others* 2017 (2) NR 488 (HC) (Geier J, paras 166-176); majority opinion confirmed on appeal in *Visagie v Government of the Republic of Namibia & Others* 2019 (1) NR 51 (SC).

UNIFORM RULES OF COURT

The **Uniform Rules of Court** are no longer applicable in Namibia. However, cases concerning these rules may contain information which is useful for the interpretation of other court rules and so are listed

here:

Rule 6(11):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Rule 6(12)(b):

Salt & Another v Smith 1990 NR 87 (HC)

Rule 31(2)(b):

Krauer & Another v Metzger (1) 1990 NR 41 (HC)

Krauer & Another v Metzger (2) 1990 NR 135 (HC)

Maia v Total Namibia (Pty) Ltd 1990 NR 216 (HC)

SOS-Kinderdorf International v Effie Lentin Architects 1990 NR 300 (HC)

Argos Fishing Company Ltd v Friopesca SA 1991 NR 106 (HC)

SOS Kinderdorf International v Effie Lentin Architects 1992 NR 390 (HC)

Rule 45(1):

Namib Building Society v Du Plessis 1990 NR 161 (HC)

Rule 53:

Federal Convention of Namibia v Speaker, National Assembly of Namibia & Others 1991 NR 69 (HC)

Booyesen v Kalokwe NO & Others 1991 NR 95 (HC)

Rule 63:

De Roeck v Campbell & Others (1) 1990 NR 28 (HC).

SELECTED CASES

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC) (superior court may in exceptional circumstances intervene in uncompleted proceedings before a lower court to prevent or obviate a grave injustice, but only where the matter is before the superior court in an appeal or review application; inherent jurisdiction of a superior court is limited to matters which are before that court and not matters which are before a lower court)

EK v BK 2017 (2) NR 474 (HC) (duties of legal practitioners and courts in connection with hierarchy of courts; duty of legal practitioners to clients is secondary to their duty to the court)

Visagie v Government of the Republic of Namibia & Others 2017 (2) NR 488 (HC) (no State liability for breach of fundamental rights by judicial officer); confirmed on appeal in *Visagie v Government of the Republic of Namibia & Others* 2019 (1) NR 51 (SC)

S v SSH 2017 (3) NR 871 (SC) (test for recusal of presiding officer; whether recusal is appropriate after accused appears in court in prison attire depends on the facts of case and was not justified here)

There are two circumstances in which a judge must recuse himself or herself. The first is where the judge is actually biased or has a clear conflict of interest and the second is where a reasonable person, in possession of the facts, would harbour a reasonable apprehension that the judge is biased. The protection of the constitutional principle of judicial impartiality imposes on the judge the duty to recuse if a reasonable person would have a reasonable apprehension that the judge is biased. (para 18)

COMMENTARY

Law Reform and Development Commission, *Report on Small Claims Courts*, LRDC 6, 1997, available [here](#)

Nico Horn & Anton Bösl (eds), *Human Rights and the Rule of Law in Namibia*, Macmillan Education, 2008, available [here](#)

Nico Horn & Anton Bösl, *The Independence of the Judiciary in Namibia*, Konrad Adenauer Stiftung, 2008, available [here](#)

Dennis U Zaire & Holger Haibach, "The Midgard Process", *Namibia Law Journal*, Volume 4, Issue 1, 2012

Legal Assistance Centre, *Access to Justice in Namibia: Proposals for Improving Public Access to Courts*, 2012, available [here](#)

Access to Justice as a Human Right, Paper No 1
Locus standi: Standing to Bring a Legal Action, Paper No 2
Costs and Contingency Fees, Paper No 3
Amicus Curiae Participation, Paper No 4

- Nico Horn, “*S v Hoabeb: A Dummy’s Guide on How to Avoid Justice in Namibia for Ten Years*”, *Namibia Law Journal*, Volume 5, Issue 1, 2013
- Diane R Hazel, “Litigating with class: Considering a potential framework for class actions in Namibia”, *Namibia Law Journal*, Volume 6, Issue 1, 2014
- Jaime Smit, “Every story has three versions – yours, mine and the truth: The admissibility of polygraph tests in court”, *Namibia Law Journal*, Volume 6, Issue 2, 2014
- Law Reform and Development Commission, *Locus Standi Discussion Paper*, LRDC 27, 2014, available [here](#)
- Sam Amoo, “The relevance of comparative jurisprudence in the Namibian legal system” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available [here](#)
- Nico Horn, “Transformative Constitutionalism: A Post-Modern Approach to Constitutional Adjudication in Namibia” in Nico Horn & Manfred O Hinz, eds, *Beyond a Quarter Century of Constitutional Democracy: Process and Progress in Namibia*, Windhoek: Konrad Adenauer Stiftung, 2017, available [here](#)
- Nico Horn, *Interpreting the Interpreters (The Namibian Constitution in the Courts)*, Konrad Adenauer Stiftung, 2017
- Wilhelmina N Shakela, “Transforming the Judiciary: The Adoption of e-Justice in Namibia” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available [here](#).

INTERNATIONAL LAW

Statute of the International Court of Justice (see Charter of the United Nations (UN), 1945)
SADC Protocol on the Tribunal, 2000
*****SADC Protocol on the Tribunal, 2014***

Commentary on SADC Tribunal:

- Oliver C Ruppel & Francois X Bangamwabo, “The SADC Tribunal: a legal analysis of its mandate and role in regional integration” in Anton Bösl & Trudi Hartszenberg (eds), *Monitoring Regional Integration in Southern Africa Yearbook 2008*, Konrad Adenauer Stiftung, available [here](#)
- Karin Klazen, “Towards a Southern African Development Community: The SADC Tribunal and its recent cases”, *Namibia Law Journal*, Volume 2, Issue 2, 2010, available [here](#)
- PN Ndlovu, “Campbell v Republic of Zimbabwe: A moment of truth for the SADC Tribunal”, *SADC Law Journal*, Volume 1, 2011, available [here](#)
- W Scholtz, “Review of the role, functions and terms of reference of the SADC Tribunal”, *SADC Law Journal*, Volume 1, 2011, available [here](#)
- A Afadameh-Adeyemi, “Barry Gondo & 8 Others v The Republic of Zimbabwe, SADC (T) 05/2008”, *SADC Law Journal*, Volume 1, 2011, available [here](#)
- O Adeleke, “Revisiting locus standi and the grounds for jurisdiction of the SADC Tribunal in United Republic of Tanzania v Cimexpan (Mauritius) Ltd, Cimexpan (Zanzibar) Ltd & Ajaye Jogoo, SADC (T) 01/2009”, *SADC Law Journal*, Volume 1, 2011, available [here](#)
- Gerhard Erasmus, “What future now for the SADC Tribunal? A plea for a constructive response to regional needs”, *Namibia Law Journal*, Volume 4, Issue 2, 2012
- Lukas Knott, “How to Reboot the SADC Tribunal: A European Perspective”, *SADC Law Journal*, Volume 2 (2), 2012, available [here](#)
- Dennis U Zaire & Kathrin Schneider, “The SADC Tribunal: Exclusive access?”, *Namibia Law Journal*, Volume 5, Issue 1, 2013.

See also **ADMIRALTY LAW**.

See also *Criminal Procedure Act 51 of 1977* and Extradition Act 11 of 1996 (**CRIMINAL LAW AND PROCEDURE**).

See also **EVIDENCE**.

See also **JUDGES**.

See also Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933 (execution of judgements in respect of immovable property) (**LAND AND HOUSING**).

See also **LAW**.

See also **LEGAL PRACTITIONERS**.