



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

R1,50

WINDHOEK — 1 December 1992

No. 537

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 178 Magistrate's Courts: Amendment of the Rules of Court	1

Government Notice

MINISTRY OF JUSTICE

No. 178

1992

MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The President has, under section 25(5) of the Magistrates' Courts Act, 1944 (Act 32 of 1944), confirmed the amendments made by the Rules Board under subsection (3) of the said section 25 to the Rules of Court promulgated under Government Notice R.1108 of 1968 and which amendments are set out in the Schedule below. The said amendments shall come into operation on 1 January 1993.

SCHEDULE

Annexure 2 is hereby amended -

(a) by the substitution for Table A of the following Table:

"TABLE A

Costs

PART I

GENERAL PROVISIONS

1. (a) Save as provided in subparagraph (b), costs in defended actions shall be taxed according to Scale A of Part III and in other matters and interpleader proceedings, according to Scale A of Part IV.
 - (b) When the amount in dispute exceeds R1 000 costs shall be taxed according to Scale B, and when the amount in dispute exceeds R2 000, according to Scale C of Part III or IV, as the case may be.
 - (c) Where the amount in dispute is not apparent on the face of the proceedings, costs shall, unless the court orders otherwise, be computed at the lowest rate.
2. (a) For the purposes of computing costs, the expression 'amount in dispute' shall mean -
 - (i) where costs are awarded to the plaintiff, the amount or value of the judgment, and in any such case 'amount or value of the judgment' shall, where more than one claim is involved in the action, mean the total of all the amounts involved in the judgment;
 - (ii) where costs are awarded to the defendant, the amount or value of the claim, and in any such case 'amount or value of the claim' shall where more than one claim is involved in the action, mean the total of the amounts of all the claims involved in the action.

(The amount or value of the judgment or claim, as the case may be, shall be inclusive of interest, but exclusive of costs.)

- (b) In the event of a matter being settled at any time, the costs shall be taxed according to the scale laid down in the agreement of the settlement: Provided that if in the event of a settlement there is no agreement as to the scale of fees applicable, any party shall have the right, within fourteen days of the date of the settlement, to apply to a magistrate to determine the scale of fees to be applied at the taxation.

3. Cost taxable in terms of rule 33(20) shall be deemed to have been awarded under a judgment for the amount paid into court or a judgment in terms of the settlement, as the case may be.
4. Claims for ejectment shall be computed at two months rent of the premises.
5. The rate at which costs are computed, shall not be increased by reason of any claim for confirmation of any interdict or interlocutory order.
6. Fees to counsel shall be allowable on taxation only in cases falling within the provisions of paragraph 1(b) or where the court has made an order in terms of rule 33(8), and shall not be so allowed unless payment thereof is vouched by the signature of counsel.
7. Where the amount allowed for an item is specified, the amount includes the costs of all necessary copies, attendances and services (other than services through the messenger) in connection therewith.
8. Where the amount allowed for an item is left blank -
 - (a) the drawing of documents shall be allowed at R6,00 for each folio;
 - (b) copies for filing and service shall also be allowed;
 - (c) R4,00 shall be allowed for each necessary service.
9. (a) Where any document appears to the court to be unnecessarily prolix, the court may disallow all or any part of the charge therefor.
(b) Where printed forms of documents to be copied are available, the charge for copying shall be limited to the necessary particulars inserted in such printed documents.
10. A folio shall consist of 100 written or printed words or figures: Provided that four figures shall be reckoned as one word.
11. (a) Unless otherwise provided, a charge for perusing shall be allowed at R2,25 per folio in respect of any document or pleading necessarily perused.
(b) Where a charge is allowed for copying, it shall be R2,00 per folio, unless otherwise provided.
(c) Where copies are made otherwise than by typewriter, the charge shall be R1,00 per page, notwithstanding the number of words on the page.
12. Where there are more than one defendant, R5,00 shall be added in respect of each additional defendant for each of items 2 and 3 of Part II, items 3 and 9 of Part III and items 2, 9, 10, 12, 14 and 18 of Part IV of this Table.

13. (a) Where the judgment debt is payable by instalments in terms of the judgment, the fees shall be taxable immediately the judgment is given, but shall be recoverable only on the payment of each instalment.
- (b) A fee of 10 per cent on each instalment collected in redemption of the capital and costs of the action shall be allowed, subject to a maximum amount of R150,00 on each instalment.
14. The clerk of the court shall on taxation disallow any charge unnecessarily incurred.
15. Where the fee under any item is calculated on an hourly basis, the total number of hours on any one day shall be added together and the fee calculated on such total.
16. The amount allowable for the issue (including an appearance in court) of a notice to show cause in terms of section 109(2) shall be R75,00.

PART II

UNDEFENDED ACTIONS

	R
Item 1 Registered letter of demand in terms of section 56 of the Act	9,00
Item 2 Summons, including a letter of demand other than the letter of demand referred to in item 1 -	
(a) where the claim is not more than R1 500	30,00
(b) where the claim is more than R1 500, but not more than R5 000	100,00
(c) where the claim is more than R5 000	150,00
Item 3 Judgment -	
(a) where the claim is not more than R1 500	30,00
(b) where the claim is more than R1 500, but not more than R5 000	75,00
(c) where the claim is more than R5 000	125,00
Item 4 Notice in terms of rule 12(2)	15,00
Item 5 Notice in terms of rule 54(1)	15,00

Item 6	Affidavit or certificate	—
Item 7	Attending court at the request of the magistrate when claim is referred to court for judgment	As allowed under item 15 of the scale for defended actions (Part III)
Item 8	For each registered letter which is forwarded to the debtor in terms of section 57(1), 57(3) or section 58(2) of the Act by the creditor or his or her attorney, including copies	9,00
Item 9	Admission of liability and undertaking to pay debt in instalments or otherwise (section 57 of the Act)	24,00
Item 10	Consent to judgment or to judgment and an order for the payment of judgment debt in instalments (section 58 of the Act)	24,00

Note: The amount of the fees allowable under items 4, 5, 6, 7, 8, 9 and 10 shall without taxation be included in the amount of the costs for which judgment is entered.

PART III
DEFENDED ACTIONS

Item	Scale A	Scale B	Scale C
	R	R	R
1. Instructions to sue or defend or to counterclaim or defend a counterclaim, perusal of all documentation and consideration of merits and all necessary consultations to issue summons	100,00	160,00	200,00
2. Summons	50,00	75,00	100,00
3. Appearance	10,00	10,00	10,00
4. Notice under rule 12(1)(b) and (2)	10,00	10,00	10,00
5. Plea	50,00	75,00	100,00
6. Claim in reconvension	50,00	75,00	100,00
7. Reply if necessary	50,00	75,00	100,00
8. Drawing up of documents not specifically mentioned, including requests for further particulars, schedule of documents, affidavits, subpoenas, any notice not otherwise provided for and drawing up of statements by witnesses, per folio	10,00	10,00	10,00
9. Production of documents for inspection, or inspection of documents, per quarter of an hour or part thereof	35,00	35,00	35,00

10. Each copy of service, per page	2,00	2,00	2,00
11. The recording of statements by witnesses, per quarter of an hour	35,00	35,00	35,00
12. Notice of trial or reinstatement	10,00	10,00	10,00
13. Preparing for trial (if counsel not employed) ..	175,00	250,00	300,00
14. Attendance at settlement negotiations, for each quarter of an hour or part thereof actually spent on such negotiations	35,00	35,00	35,00
15. Attending court during trial, or at on-the-spot inspection, for each quarter of an hour or part thereof spent in court while case is actually being heard -			
(a) if counsel not employed	35,00	35,00	35,00
(b) if counsel employed	Nil	Nil	Nil
16. Attending pre-trial conference, for each quarter of an hour or part thereof actually spent on such conference	35,00	35,00	35,00
17. Attending court to hear reserved judgment, per quarter of an hour or part thereof	7,00	7,00	7,00
18. Correspondence and attendances: For each letter or telegram necessarily written or received, including copy to keep, and each necessary attendance not otherwise provided for, but a charge for perusing shall not be allowed in addition to the fee herein provided for	4,50	4,50	4,50
19. Consultation, per quarter of an hour or part thereof	35,00	35,00	35,00
20. The court may, on request made at the hearing, allow in addition to the fee prescribed in item 13 above, a refresher fee in postponed or partly heard trials	110,00	160,00	220,00
21. Time spent waiting at court (owing to no court being available) per quarter of an hour or part thereof	20,00	20,00	20,00

PART IV

OTHER MATTERS

(Exceptions, applications to strike out, applications for summary judgment, interlocutory applications, arrest, interdict, *ex parte* applications under rule 27(9) and applications to review judgment, order or taxation).

Item	Scale A	Scale B	Scale C
	R	R	R
1. Instructions to make application, to oppose or to show cause (the court may on request allow a higher amount)	30,00	30,00	60,00
2. Drawing up of documents, affidavits, applications, notices and orders, per folio	6,00	6,00	6,00
3. Attending court on hearing:			
(a) if unopposed, for each quarter of an hour or part thereof actually spent in court	15,00	25,00	35,00

(b) If opposed, where council is employed, for each quarter of an hour or part thereof actually spent in court	Nil	Nil	20,00
(c) if opposed, where counsel is not employed, for each quarter of an hour or part thereof	20,00	30,00	35,00
4. Fee for preparing for trial, when opposed, if allowed by the court on request	125,00	125,00	125,00
5. Consultations and settlement negotiations — when opposed, per quarter of an hour or part thereof	35,00	35,00	35,00

Note: The court may, on request made at the hearing, allow, as an alternative to the fees prescribed in item 4, a fee for preparing argument under items 13 and 20 of the scale for defended actions.

INTERPLEADER PROCEEDINGS

Item	Scale A	Scale B	Scale C
	R	R	R
6. Instructions:			
(a) Where interpleader proceedings are initiated by messenger	35,00	50,00	65,00
(b) Otherwise	65,00	85,00	110,00
7. Summons (if not sued out by messenger)	35,00	50,00	65,00
8. Affidavit	—	—	—
9. Attending court on return of summons (if matter is not being heard)	25,00	25,00	25,00
10. Attending court on trial or interpleader issue, per quarter of an hour or part thereof actually spent in court	35,00	35,00	35,00

Note: The court may, on application made at the hearing, allow, in addition to the fee prescribed in item 10, a fee for preparing argument under item 13 of the scale for defended actions.

TAXATION OF COSTS

11. Drawing up bill of costs	5 per cent of the fees allowed
12. Attending taxation	5 per cent of the total bill allowed
13. Notice of application for review of taxation and service	—
14. Affidavit, where necessary	—
15. Attending on review of taxation, per quarter of an hour or part thereof actually spent in court	R35,00

EXECUTION

	R
16. (a) Issue of warrant of execution, ejectment, arrest and committal in terms of section 109, delivery up of possession	25,00
(b) For each reissue thereof	10,00
17. Inclusive fee for work done in connection with releasing of immovable property attached	30,00
18. Inclusive fee for work done in connection with sale in execution of immovable property only (excluding work for which fees are already provided for elsewhere and the drawing up of the conditions of sale)	75,00
19. (a) Drawing up of notice of sale in terms of rule 41(8) or rule 43(6), or conditions of sale in terms of rule 43(7), per folio	—
(b) For all other work done and papers and documents supplied to the messenger in connection with the sale in execution of movable property, an inclusive fee of	55,00
20. Security for restitution, where necessary	20,00
21. Instructions on exception or application, where allowed	40,00
22. Instructions on trial	50,00
23. Drawing brief on exception or application, where allowed	—
24. Drawing brief on trial	—
25. Attending each necessary consultation with counsel, per quarter of an hour or part thereof	35,00

FEES TO COUNSEL

26. With brief to argue exception or application	250,00
--	--------

Note: A fee to counsel on application shall be allowed only where the court certifies that the briefing by counsel was warranted.

27. With trial brief for the first day, not exceeding	675,00
---	--------

28. In any court held more than 30 kilometres from Windhoek, there may be allowed by special order of the court a travelling allowance (in addition to the fee on brief) of	1,00 per kilometre
29. Each necessary consultation, per quarter of an hour or part thereof	35,00
30. For every day exceeding one on which evidence is taken or arguments heard, a refresher fee not exceeding	450,00
31. Drawing up pleadings	85,00

Notes: (a) In regard to items 23 and 27 a fee in lieu of the fee for the first day's hearing shall be allowed as follows when the case is settled, or withdrawn or postponed at the instance of any party on or before the date of hearing:

(i) not more than 2 days prior to the date of hearing: the fee otherwise allowable on taxation for the first day's hearing;

(ii) not less than 3 days and not more than 7 days prior to the date of hearing: two-thirds of the fee under subparagraph (i); and

(iii) not less than 8 days and not more than 21 days prior to the date of hearing: half of the fee under subparagraph (i).

(b) The court may on request allow a higher fee for counsel in regard to items 27, 29, 30 and 31.

(c) A fee for travelling time by counsel shall be allowed at the same rate as for attorneys under rule 33(9).

MISCELLANEOUS

	R
32. Obtaining certified copy of judgment	20,00
33. Obtaining payment in terms of rule 18(4)	12,00
34. Request for security in terms of rule 62(1)	—
35. Furnishing security in terms of rule 62(1)	— ;

(b) by the substitution for Table B of the following Table:

"TABLE B**Costs****PART I****GENERAL PROVISIONS IN RESPECT OF PROCEEDINGS
IN TERMS OF SECTION 65 AND 65A TO 65M
OF THE ACT.**

1. Save as provided in paragraph 3, no fees other than those laid down in the tariff to this Part shall be allowed.
2. Subject to the provisions of section 65K of the Act, items (a), (b) and (c) of the tariff to this Part (whichever is applicable) shall apply to the drawing up of the notice referred to in section 65A(i), inclusive of appearance at the inquiry into the judgment debtor's financial position referred to in section 65D, or any later appearances at suspension, amendment or rescission proceedings and shall, except for the fee allowed under item (o) of the tariff, be an inclusive fee, chargeable only once, for the drawing up, issue and all reissues of the notice and all postponements of the inquiry, irrespective of the number of days on which the proceedings are heard in court: Provided that where the debtor moves from the jurisdiction of the court after issue of the notice referred to in section 65A(1) and the notice is again issued in any other district, the aforesaid fee may also be charged in such other district if the court so orders.
3. The following shall be allowed in addition to the fees prescribed in the tariff:
 - (a) All necessary disbursements incurred in connection with the proceedings.
 - (b) A fee of 10 per cent on each instalment collected in redemption of the capital and costs of the action shall be allowed, subject to a maximum amount of R150,00 on each instalment: Provided that where the amount is payable in instalments the collection fees shall be recoverable only on payment of each instalment.

(These fees shall be in substitution for and not in addition to the collection fees prescribed in paragraph 13 of the general provisions under Table A.)
 - (c) All necessary disbursements incurred in connection with any prior abortive proceedings under section 72, if the court has so ordered.
 - (d) Any amount necessarily and actually disbursed in tracing the judgment debtor, where the capital amount of the debt at the time the tracing agent was employed was not less than R50,00. The total amount to be allowed in any one case may not exceed R100,00.

4. For the purposes of the tariff to this Part the amount of the claim shall, save as provided in paragraph 3(d), be the total of the capital amount and costs outstanding at the date of the first institution of proceedings under section 65A(a) of the Act.

TARIFF

	R
(a) Where the claim does not exceed the amount of R1 000,00	50,00
(b) Where the claim exceeds the amount of R1 000,00 but is not more than R2 000,00	75,00
(c) Where the claim exceeds the amount of R2 000,00	90,00
(d) Warrant of Arrest and Detention (Form 42)	20,00
(e) Emoluments Attachment Order (Form 38)	25,00
(f) Warrant of Liberation (Form 43) or Certificate of Liberation	10,00
(g) Application for cost on notice (including appearance in court)	20,00
(h) Obtaining certified copy of judgment	20,00
(i) Affidavit of certificate by the judgment creditor or his or her attorney	15,00
(j) For each registered letter forwarded to the debtor in terms of section 65A(2), 65E(3), 65E(6) or 65J(2) of the Act by the creditor or his or her attorney	9,00
(k) Affidavit of affirmation by debtor (Rule 45(7))	15,00
(l) Request for an order under section 65 of the Act	15,00
(m) Attending postponed proceedings in terms of section 65E(3)	20,00
(n) Subpoena:	
(i) Draw up of subpoena per folio	6,00
(ii) Every necessary attendance and correspondence per attendance	4,00
(o) (i) Correspondence: For every necessary letter or telegram written or received, including copy to retain, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for, per folio	6,00

(ii) Attendances: For each necessary attendance not otherwise provided for, per attendance	6,00
(iii) Necessary formal telephone calls, per call	6,00
(iv) Necessary telephone consultations, per 5 minutes or part thereof, subject to a maximum of R60,00	10,00

PART II

GENERAL PROVISIONS IN RESPECT OF PROCEEDINGS IN TERMS OF SECTION 72 OF THE ACT

1. Save as provided in paragraphs 2 and 3, no fees other than those laid down in the tariff to this Part shall be allowed.
2. Paragraph 3(a), (b) and (d) of the general provisions under Part I of this Table shall *mutatis mutandis* apply to this Part.
3. All necessary disbursements incurred in connection with any prior abortive proceedings under section 65 shall be allowed, if the court has so ordered.
4. For the purposes of this tariff the amount of the claim shall, save as provided in paragraph 3(d) of the general provisions under Part I of this Table, be only the total of the capital amount outstanding at the date of the first institution of proceedings in terms of section 72 of the Act.

TARIFF

	R
(a) Where the claim is under R200	30,00
(b) Where the claim is R200 or more	65,00
(c) Obtaining certified copy of a judgment	18,00
(d) Application for an order of execution against the garnishee	25,00

PART III

GENERAL PROVISIONS IN RESPECT OF PROCEEDINGS IN TERMS OF SECTION 74 OF THE ACT

1. (a) Paragraph 3(a) of the general provisions under Part I of this Table shall *mutatis mutandis* apply to this part.
- (b) The remuneration of the administrator shall not exceed 8 per cent on each instalment collected in redemption of the capital and costs and this amount shall be recoverable only upon payment of each instalment and shall be in substitution for and not in addition to the

collection fees prescribed in paragraph 13 of the general provisions under Table A or paragraph 3(b) of the general provisions under Part I of this Table.

2. For the purposes of items 4 and 5 of the tariff to this Part, a folio shall consist of 100 written or printed words or figures: Provided that four figures shall be reckoned as one word.

TARIFF

Item	One to ten creditors	Eleven to twenty creditors	Twenty-one or more creditors
	R	R	R
1. Instructions to apply for administration order, including the necessary perusal of summonses, demands, and ascertaining the amount of assets and liabilities, including all attendances and correspondence necessary in connection therewith	35,00	50,00	80,00
2. Instructions on application under section 74Q(1) or to oppose such application or the granting of administration order	27,00	27,00	27,00
3. Drawing up application for administration order or review thereof and affidavit, including all annexures thereto and all attendances, excluding attendance in court	50,00	50,00	50,00
4. Making copies of application, affidavit and annexures for creditors, per page	0,75	0,75	0,75
5. Perusal of application and other documents served, if any, per folio	2,00	2,00	2,00

NOTE: The fees under this item may only be claimed by the attorney for an opposing party.

6. Attending court:			
(a) On postponement or setting aside, if not occasioned by the attorney or his or her client	13,00	13,00	13,00
(b) On any other hearing	27,00	54,00	54,00
7. For furnishing to a creditor by the administrator of the information referred to in section 74M(a) of the Act, per application	4,00	4,00	4,00
8. For furnishing of a copy of the debtor's statement of affairs referred to in sections 74 and 74A(1) of the Act by the administrator in terms of section 74M(b) or of a list or account referred to in section 74G(1) or 74J of the Act or of the debtor's statement of affairs referred to in section 65I(2) of the Act per page	0,75	0,75	0,75
9. Correspondence and attendances	6,00	6,00	6,00"; and

and

- (c) (i) by the substitution in Part II of Table C -
- (aa) in paragraph 1(a)(i) for the amount "R10,00" of the amount "R15,00";
 - (bb) in paragraph 1(a)(ii) for the amount "R12,00" of the amount "R18,00";
 - (cc) in paragraph 1(a)(iii) for the amount "R15,00" of the amount "R22,50";
 - (dd) in paragraph 1(b)(i) for the amount "R8,00" of the amount "R12,00";
 - (ee) in paragraph 1(b)(ii) for the amount "R10,00" of the amount "R15,00";
 - (ff) in paragraph 1(b)(iii) for the amount "R12,00" of the amount "R18,00";
 - (gg) in paragraph 2(a)(i) for the amount "R13,00" of the amount "R19,50";
 - (hh) in paragraph 2(a)(ii) for the amount "R16,00" of the amount "R24,00";
 - (ii) in paragraph 2(a)(iii) for the amount "R20,00" of the amount "R30,00";
 - (jj) in paragraph 2(b)(i) for the amount "R11,00" of the amount "R16,50";
 - (kk) in paragraph 2(b)(ii) for the amount "R13,00" of the amount "R19,50";
 - (ll) in paragraph 2(b)(iii) for the amount "R16,00" of the amount "R24,00";
 - (mm) in paragraph 3 for the amount "70c" of the amount "R1,00";
 - (nn) in paragraph 4(a) for the amount "70c" of the amount "R1,00";
 - (oo) in paragraph 4(d) for the amount "70c" of the amount "R1,00";
 - (pp) in paragraph 5(a) for the amounts "R5,00" and "R10,00" of the amounts "R15,00" and "R20,00", respectively;
 - (qq) in paragraph 5(b) for the amounts "R5,00" and "R10,00" of the amounts "R15,00" and "R20,00", respectively;
 - (rr) for paragraph 9 of the following paragraph:

"9. Where property is released from attachment in terms of rule 41(7)(e), or the warrant of execution is withdrawn or stayed, or the judgment debtor's estate is sequestrated after the attachment,

but before the sale: 2 per cent of the value of the goods attached, subject to a maximum of R50,00: Provided that the account is rendered within one month from the date of the release, withdrawal or stay”;

(ss) for paragraph 11 of the following paragraph:

“11. Where immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of R50 shall be payable to the messenger or to the person in fact authorised to act as auctioneer, as the case may be: Provided that the account is rendered within one month from the date of withdrawal, stay or the sequestration of the estate of the execution debtor.”;

(tt) for paragraph 12 of the following paragraph:

“12. Where immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the Act: R15,00: Provided that the account is rendered within one month of such lapse of attachment.”;

(uu) in paragraph 19 for the amount “R2,50” of the amount “R3,00”;

(vv) in paragraph 20 for the amount “R5,00” of the amount “R10,00”;

(ww) in paragraph 21 for the amount “R2,00” of the amount “R3,00”;

(xx) in paragraph 22 for the amount “R2,00” of the amount “R3,00”;

(yy) in paragraph 23 for the amount “R2,00” of the amount “R3,00”;

(zz) in paragraph 24 for the amount “R5,00” of the amount “R30,00”;

(aaa) in paragraph 26 for the amount “R2,00” of the amount “R5,00”;

(bbb) in paragraph 27 for the amount “R15,00” of the amount “R20,00”;
and

(ii) by the addition to Part II of Table C of the following paragraph:

“29. The general sales tax payable on messenger fees allowed on taxation by the clerk of the court.”.
