



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.00

WINDHOEK - 13 May 2011

No. 4709

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Government Notice

MINISTRY OF JUSTICE

No. 57

2011

AMENDMENT OF RULES OF HIGH COURT OF NAMIBIA: HIGH COURT ACT, 1990

Under section 39 of the High Court Act, 1990 (Act No. 16 of 1990), with the approval of the President of the Republic of Namibia, I have amended the rules set out in the Schedule.

P.T. DAMASEB
JUDGE PRESIDENT
HIGH COURT OF NAMIBIA

Windhoek, 27 April 2011

SCHEDULE

Definitions

1. In these rules “the Rules” mean the Rules of the High Court of Namibia published under Government Notice No. 59 of 10 October 1990 as amended by Government Notices Nos. 187 of 12 December 1992, 148 of 9 December 1993, 81 of 16 April 1996, 182 of 6 July 1996, 221 of 14 November 1997, 69 of 1 April 1998, 141 of 5 September 2006, 6 of 1 February 2008 and 253 of 22 November 2010.

Amendment of rule 1 of Rules

1. Rule 1 of the Rules is amended –

- (a) by the insertion of the following definition after the definition of “attorney”:
- “‘case management conference’ means a conference called by the managing judge in terms of Rule 37;”;
- (b) by the insertion of the following definitions after the definition of “deliver”:
- “‘directions’ means such prescriptions, instructions and directives given by the managing judge at a case management conference under rule 37;”;
- “‘initial case management conference’ means the first case management conference in terms of rule 37(4);”;
- “‘judicial case management’ means the judicial case management of cases for the purpose of attaining the objectives set out in rule 1A;”;
- “‘judicial case management rules’ means the rules regulating judicial case management in terms of these rules;”;
- (c) by the substitution of the following definition for the definition of “judge”:
- “‘judge’ means a judge of the court sitting otherwise than in open court, and includes a managing judge whether sitting in open court or otherwise than in open court;”;
- (d) by the insertion of the following definition after the definition of “Judge-President”:
- “‘managing judge’ means a judge to whom a case is allocated in terms of the case management rules to manage the case;
- “‘parties’ conference’ means a conference held in terms of paragraph (b) of subrule (5A);”;
- (e) by the insertion of the following definition after the definition of “party”:
- “‘pre-trial conference’ means the final case management conference held in terms of rule 37(11) and (12) prior to the hearing or trial;”;
- (f) by the insertion of the following definition after the definition of “registrar”:
- “‘set down’ means the set down of a trial or opposed motion in terms of rule 39; and”;
- (g) by the insertion of the following definition after the definition of “sheriff”:
- “‘status hearing’ means an enquiry conducted by a judge to determine the position of affairs at a particular time in respect of a case;”.

Insertion of rules 1A and 1B in Rules

2. The following rules are inserted after rule 1 of the Rules:

“Objectives of case management

1A. (1) The objectives of case management of an action or application in these rules are -

- (a) to ensure the speedy disposal of any action or application;
- (b) to promote the prompt and economic disposal of any action or application;

- (c) to use efficiently the available judicial, legal and administrative resources;
- (d) to provide for a court-controlled process in litigation;
- (e) to identify issues in dispute at an early stage;
- (f) to determine the course of the proceedings so that the parties are aware of succeeding events and stages and the likely time and costs involved;
- (g) to curtail proceedings;
- (h) to reduce the delay and expense of interlocutory processes;
- (i) to separate the adjudication of interlocutory motions from that of the merits to be heard at the trial;
- (j) to provide for the better and more practical and more timely production of evidence by expert witnesses;
- (k) to provide for the production or discovery of documents at a more convenient, practical and earlier time;
- (l) to ensure the involvement of the parties before the initial case management conference by the preparation of a case management report; and
- (m) to identify as soon as practicable firm dates for particular steps as well as for the trial of an action or hearing of an opposed motion.

(2) The objectives of case management set out in this rule apply to rules 35 and 36 of the Rules.

Obligations of parties and their legal practitioners

1B. The parties to an action or opposed motion and their legal practitioners, if they are represented, must –

- (a) assist the managing judge in curtailing the proceedings;
- (b) comply with rule 37 and other rules regarding judicial case management;
- (c) comply with any direction given by the managing judge at any case management conference or status hearing; and
- (d) attend all case management conferences, pre-trial conferences and status hearings caused to be arranged by the managing judge.”.

Amendment of rule 6 of Rules

3. Rule 6 of the Rules is amended -

(a) by the substitution for paragraph (c) of subrule (5) of the following paragraph:

“(c) If the respondent does not in such notice notify the applicant of his or her intention to oppose on or before the day mentioned for that purpose, the applicant must inform the registrar who must place the matter before the managing judge.”;

(b) by the addition of the following paragraph after paragraph (h) of subrule (5):

- “(i) As soon as all affidavits have been filed, the registrar must provide the managing judge with the file containing all the documents filed of record.”; and
- (c) by the addition of the following subrules after subrule (5):
- “(5A) (a) As soon as practicable after receipt of all the documents filed of record, the managing judge must give directions through the registrar to all parties in respect of the date determined by the judge for the holding of case management conference.
- (b) Not later than two court days before the holding of case management conference referred to in paragraph (a) the parties must meet at a parties’ conference to –
- (i) discuss the nature and basis of their respective claim and defence;
- (ii) consider reasonable ways in which the application may be determined promptly; and
- (iii) set out concisely and clearly the issues they, jointly or severally, wish to be addressed during the case management conference.
- (c) At the conclusion of the parties’ conference the parties by themselves or by their counsel must draw up and sign a report containing –
- (i) the matters they have discussed and agreed upon;
- (ii) the matters they have discussed and not agreed upon;
- (iii) the issues referred to in subparagraph (iii) of paragraph (b), and submit the report to the registrar who must place the report before the managing judge at least one day before the holding of the case management conference.
- (d) The case management conference must be held not later than three court days after the close of pleadings and the following issues must be addressed at the conference –
- (i) any proposal regarding an issue referred to in subparagraph (iii) of paragraph (b), whether agreed by the parties or not;
- (ii) reasonable ways in which issues may be limited and admissions and concessions which may lead to the narrowing of the issues to be adjudicated;
- (iii) the need for any interlocutory motions and the date for the hearing of such motions by the managing judge;
- (iv) the hearing and determination of a preliminary objection on points of law;
- (v) indexing, pagination and binding of the record of all the pleadings and documents filed of record;
- (vi) determining the time for the filing of heads of argument;
- (vii) determining the date of the hearing of the application; and

- (viii) any other issues which, in the opinion of the case managing judge, may facilitate the just and speedy determination of the application.
- (e) Where it is shown by a party at the case management conference that an interlocutory motion referred to in subparagraph (iii) of paragraph (d) is relevant –
 - (i) the motion must be heard within 10 days after the conclusion of the case management conference;
 - (ii) heads of argument of all parties must be filed not later than three days before the hearing of any interlocutory motion; and
 - (iii) a ruling must be made at any time before the hearing of the main application.
- (f) If in the opinion of the managing judge it is necessary to hold a further case management conference, such further conference must be held so soon after the conclusion of the case management conference in question, and, in any case, at least five days before the hearing of the application.
- (g) A case management conference is held in court or in chambers of the managing judge, as the judge may think fit, and must be attended by counsel representing the parties, or may be attended by unrepresented parties: Provided that the proceedings at the conference must be recorded.
- (h) The managing judge must make an order in respect of any issue determined by him or her during the case management conference.
- (5B) Where the issues are straightforward, the managing judge may dispense with case management conference and assign a date for hearing of the application, giving such directions for the conduct of the hearing as he or she thinks fit.
- (5C) A managing judge may from time to time hold status hearing in respect of cases in terms of the judicial case management rules.”
- (d) by the addition of the following subrule after subrule (15):
 - “(15A) Paragraphs (a) and (b) of subrule (1) of rule 37 apply with necessary modifications to applications under this rule.”;

Substitution of rule 37 of Rules

5. The following rule is substituted for rule 37 of the Rules:

“Individual docket allocation of cases and case management conferences

- 37.** (1) (a) Upon the coming into operation of the judicial case management rules, the control and management of every case filed at the Court vests in the court and not in the parties or their legal practitioners.
- (b) On the date of coming into operation of the judicial case management rules or so soon thereafter the registrar must, with the concurrence of the Judge-President, allocate every case in which pleadings have closed, to a managing judge who must manage the case as provided herein until its conclusion.
- (c) Despite paragraph (b), where the Judge-President thinks it expedient so to do for the reasonable and speedy disposal of a case, the Judge-President may in

respect of the case issue a direction that the case be allocated to a managing judge to manage the case in accordance with the judicial case management rules although the pleadings have not closed, and in that event the managing judge must give directions to the parties as respects further exchange of pleadings and such other directions not inconsistent with the judicial case management rules which must apply with necessary modifications.

- (d) In the event of any judge being incapable, for any reason, to manage or continue to manage a case under the judicial case management rules, the registrar must, immediately upon that incapacity being known by him or her and with the concurrence of the Judge-President, allocate the case to another judge and advise all parties in writing of such allocation. Such judge is bound by all decisions and rulings regarding case management given by the previous managing judge.

(2) As soon as practicable after the pleadings have closed or the Judge-President has issued a direction in terms of subrule 1(c), the registrar must provide the managing judge with the file containing the pleadings and documents filed of record.

(3) As soon as practicable after pleadings have closed or the Judge-President has issued a direction in terms of subrule (1)(c), the managing judge must give directions through the registrar to all parties in respect of the date determined by the judge for the holding of the initial case management conference.

(4) The parties must jointly prepare a case management report covering their discussions in respect of the issues to be considered at the initial case management conference, which report must –

- (a) be submitted to the managing judge not later than three court days before such case management conference; and
- (b) set forth the parties' proposals with respect to all the issues listed in subrule (5), being either joint proposals on which they agree, or individual proposals in respect of issues upon which they differ.

(5) The following issues must be addressed at the initial case management conference –

- (a) the need for joining other parties and dates for such joinder;
- (b) the filing of any further pleadings, the need for amendments to pleading or the filing of any statements or further particulars and the dates for such amendments or filing of statements or particulars;
- (c) the need for interlocutory motions and the dates when such motions are to be heard;
- (d) the admission of facts or other evidence by consent of the parties;
- (e) the control and scheduling of discovery, including, but not limited to, the inspection and production of documents or other admissions;
- (f) whether expert testimony is necessary, and if so, the dates for such notices and summaries, as well as notices in respect of photos, plans, etc, if necessary;
- (g) narrowing the field of dispute between expert witnesses, by their participation at further case management conference, if considered necessary, or in any other manner;

- (h) the date of hearing and determination of any objection on a point of law, if applicable;
- (i) any matter that may be raised in an application for directions;
- (j) giving orders or directions for a separate hearing in respect of any relevant issue;
- (k) the settlement of issues, enquiries and accounts;
- (l) securing a statement of a special case of law or facts;
- (m) the date for any additional case management conference, if considered necessary, and the date for a final pre-trial conference;
- (n) the possibility of settlement talks or possible mediation of the disputes;
- (o) the dispensing of evidence-in-chief of a witness by substituting it with an affidavit;
- (p) any other issues that are likely to facilitate the just and speedy disposal of the action or application, which may include, but not limited to -
 - (i) where issues are straightforward that the final conference may be dispensed with;
 - (ii) the recording of admissions;
 - (iii) factual and legal issues in dispute;
 - (iv) the identification of witnesses to be called and the setting of trial dates;
 - (v) giving direction in respect of any rule; and
 - (vi) the dates by which witness summaries and documentary exhibits must be filed.

(6) In matrimonial cases the following further issues must be addressed at the initial case management conference –

- (a) proposals must be made, where applicable, in a report for the custody and maintenance of, and access to, the minor children and for the maintenance of either spouse and for the division of matrimonial property, including, where necessary, the commissioning of a social welfare report; and
- (b) in the event of a dispute, each party must file together with the report an affidavit with documentary annexures, setting out his or her proposals on custody, access, maintenance and division of property, including full disclosure of –
 - (i) his or her income from every source together with documentary confirmation, where available;
 - (ii) a full list of matrimonial assets and liabilities with formal, if that is not reasonably practicable, or estimated valuations of each; and
 - (iii) a list of the financial needs of the minor children for their education and welfare.

- (7) The initial case management conference is, except in exceptional circumstances, completed in a single conference and it may not be adjourned.
- (8) (a) So soon after the initial case management conference, but not later than 14 days thereafter, the managing judge must, in respect of an action, issue a case management order.
- (b) The case management order must –
- (i) address the issues set forth in subrule (5) and, if applicable, in subrule (6) that are relevant to the action and must establish the time schedule for all relevant events;
- (ii) set out the subsequent course of the proceedings,
- and the order may, for good cause, be modified by the Judge.
- (9) Where deadlines are not met or the matter stalls for any other reason, the managing judge may in any case schedule a status hearing and may, after hearing the parties, make such order as to the just and speedy disposal of the case as he or she thinks fit, including the imposition of sanctions, including costs.
- (10) The managing judge may from time to time schedule, or the parties may from time to time request, additional case management conferences: Provided that additional conferences may be held solely for the purpose of facilitating the continuing judicial control of the case and may address any of the issues set out in subrule (5), or any other issues relevant to the management or fair and speedy resolution of the case.
- (11) (a) Prior to the trial or hearing of any matter, the judge must hold a pre-trial conference.
- (b) A pre-trial conference is held at an agreed time set by the managing judge and must be attended by the parties and their legal practitioners.
- (c) A pre-trial conference must address the issues set out in subrule (5), the parties' proposed final pre-trial order and any other issues related to a fair and speedy trial.
- (12) (a) The parties must jointly submit to the managing judge a proposed pre-trial order at least four court days before the pre-trial conference.
- (b) The plaintiff or applicant must initiate communication with the defendant or respondent, as the case may be, and must prepare the initial draft of the order referred to in paragraph (a).
- (c) The parties' proposed pre-trial order referred to in paragraph (a) must identify the following –
- (i) all issues of fact to be resolved during the trial;
- (ii) all issues of law to be resolved during the trial;
- (iii) all relevant facts not in dispute;
- (iv) all witnesses who may be called to testify at the trial, together with the brief summary of the substance of each witnesses' anticipated testimony;
- (v) all exhibits to be introduced into evidence during the trial, with copies, where practical, of all documentary exhibits;

- (vi) all objections to prospective witnesses, including their testimonies, and exhibits;
 - (vii) the anticipated length of the trial;
 - (viii) the dates for filing by the plaintiff of indexed, paginated and bound bundle of pleadings and notices, as well as documentary exhibits for use at the trial;
 - (ix) the date of the trial or hearing;
 - (x) any proposal for expediting the trial or hearing during proceedings; and
 - (xi) prospects for settlement of the case and whether the parties have participated in mediation or any other alternate dispute resolution efforts.
- (13) (a) Immediately, but not more than 14 days after completion of the pre-trial conference, the managing judge must issue a pre-trial order in such form as meets the circumstances of the case, which the registrar must timeously provide to the parties: Provided that the managing judge's pre-trial order may be amended by the judge if, in the opinion of the judge, such amendment is necessary to avoid manifest injustice.
- (b) The managing judge's pre-trial order referred to in paragraph (a) is based on the parties' proposed pre-trial order as modified by the managing judge and such order must –
- (i) specify the issues set out in sub rule 12(c) and
 - (ii) set a firm date for the trial, but the trial or hearing date may only be set after consultation with the registrar.
- (14) Issues, evidence and objections not set out in the managing judge's pre-trial order are not available to the parties at the trial or hearing.
- (15) A pre-trial conference is, except in exceptional circumstances, completed in a single conference and may not be adjourned.
- (16) Without lawful excuse, if a party or his or her counsel –
- (a) fails to attend a case management conference, a status hearing, any additional case management conference or the pre-trial conference;
 - (b) fails to participate in the creation of a case management report or parties' proposed pre-trial order;
 - (c) fails to obey a case management order or the managing judge's pre-trial order;
 - (d) fails to participate in good faith in the case management or pre-trial processes;
 - (e) fails to comply with the court deadline or obligations under the judicial case management rules,

the managing judge may enter such orders as are just, including, but not limited to, the following –

- (i) an order refusing to allow the non-compliant party to support or oppose designated claims or defences, or prohibiting that party from introducing designated issues in evidence;
- (ii) an order striking out pleadings or part thereof, including any defence, exception or special plea;
- (iii) an order dismissing a claim or entering a final judgment; or
- (iv) an order requiring the non-compliant party or his or her counsel to pay the opposing party's costs caused by the non-compliance.

(17) In order to expedite the determination of the real issues between the parties, the judge may, for good cause, at any status hearing, case management conference or at the trial –

- (a) relax or vary time limits set by these rules;
- (b) condone technical irregularities where these do not prejudice the other party; or
- (c) allow or order amendments to the pleadings to be filed so that only the real issues between the parties and not mere technicalities are determined at the trial.

(18) Where a pre-trial conference in terms of rule 37 that is replaced by this rule was held and minutes therefor filed, subrule (4) may not apply, if in the opinion of the managing judge the minutes reasonably satisfy the requirements of the case management rules, and in that event the minutes are deemed to be a report at the initial case management conference in terms of subrule (5): Provided that the managing judge may direct that certain issues that are not sufficiently dealt with in the minutes must be addressed by the parties at a parties' conference and submit a report thereon to the managing judge.”.

Substitution of rule 39 of Rules

6. The following rule is substituted for rule 39 of the Rules:

“Set down of defended action or opposed motion

39. (1) The managing judge must by order issued at a pre-trial conference or status hearing or by agreement between the parties, assign the date or dates for the conduct of a trial or the hearing of an opposed motion.

(2) Where a party or his or her legal practitioner is present when the date is assigned, no further notice of set down need to be served, but where a party or his or her legal practitioner is absent, the registrar must give no less than 14 court days' notice to all parties of the date or dates so assigned.

(3) When the matter has been set down for hearing, a party may, on good cause shown, apply to the judge no less than five court days before the date of hearing to have the set down changed or set aside.

(4) Despite this rule any party to opposed or defended proceedings may, on good cause shown, apply on notice to all the parties, to the judge for a special date or dates of hearing during any term of court or during any vacation, with the consent of all parties and having regard to the convenience of the judge.”.
