

Statutory Instrument 290 of 1980

Magistrates Court (Civil) Rules, 1980

SIs 290/1980, 289/1983, 15/1984, 62/1985, 61/86211/1987, 218/1992, 367/1990, 248/1993, 345/1993, 122/1994, 165/1994, 162/1995, 363/1995, 215/2004, 63/2005,

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IT is hereby notified that the Minister of Justice and Constitutional Affairs has, in terms of section 73 of the Magistrates Court Act [Chapter 7:10], made the following rules:

ORDER 1

APPLICATION AND INTERPRETATION

1. Title

These rules may be cited as the Magistrates Court (Civil) Rules, 1980.

2. Application

These rules shall apply to all civil proceedings in a court.

3. Application of Orders 16 to 19

The provisions contained in Orders 16 to 19 shall be applicable only if the plaintiff—

- (a) does not apply for summary judgment; or
- (b) having applied for summary judgment, an order is made giving the defendant leave to defend.

4. Forms

(1) The forms contained in the First Schedule may be used with such variations as circumstances require.

(2) Non-compliance with the provisions of subrule (1) shall not in itself be a ground for exception, but the clerk of the court may refuse to use any process which does not comply with the prescribed requirements.

(3) All process of the court for service or execution and all documents or copies to be filed of record shall, where practicable, be on A4 paper.

(4) All process of the court or notices or documents delivered shall be endorsed with the name and address of the party suing out or delivering the same.

5. Definitions and reckoning of time and distance

(1) In these rules—

“company” means an incorporated or registered company;

“copy” means a true and correct copy;

“default judgment” means a judgment given in the absence of the party against whom it is made;

“deliver”, other than in Order 7, means to file of record with the clerk of the court and to serve a copy on the opposite party;

“form” means the appropriate form set out in the First Schedule;

“give security” means to give security to the satisfaction of the clerk of the court by—

- (a) payment into court of the amount in question; or
- (b) the giving of a security bond therefor, either by a party with some one as his surety who is approved by the clerk of the court or by two or more persons who are so approved;

“money” includes all coined money, whether current in Zimbabwe or not, and all bank-notes, bank-drafts, cheques, orders, warrants or authorities for the payment of money;

“notice” means notice in writing;

“owner” and other like terms, when used in relation to property or acts, include corporations of all kinds and any other associations of persons capable of owning or holding property;

“party” means any person who is a party to the proceedings;

“pending case” means a case in which summons has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been given;

“plaintiff”, “defendant”, “applicant”, “respondent” and “party” include, for the purpose of service, notice, appearance, endorsement and signature, the legal practitioner appearing for any such party;

“process of the court” means any process of a magistrate’s court which is issued by the clerk of the court;

“property” includes everything animate or inanimate, corporeal or incorporeal, which is capable of being the subject of ownership;

“shorthand-writer” includes the operator of a recording-machine;

“valuable security” includes any document which is the property of any person and which is the evidence of the ownership of any property or of the right to recover or receive any property.

(2) Where anything is required by these rules to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

(b) All distances shall be calculated over the shortest route reasonably available in the circumstances.

ORDER 2

1. Service of process through messenger

Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the messenger.

2. Duty of messenger and police

Service or execution of process of the court shall be effected without any avoidable delay, and the messenger shall, in any case where resistance to the due service or execution of the process of the court has been met or is reasonably anticipated, have power to call upon any police officer to render aid to himself or his deputy.

3. Return of service

The messenger to whom process is entrusted for service or execution shall—

(a) if he has effected the service or execution—

(i) in the prescribed form, notify the clerk of the court and, at the same time, the party who sued out the process that service or execution has been duly effected, stating the date and manner of service or the result of execution; and

(ii) return a copy of the said process to the party who sued it out;

(b) if he has not effected the service or execution—

(i) in the prescribed form, notify the clerk of the court and the party who sued out the process that he has been unable to effect service or execution, stating the reason for such inability; and

(ii) return the said process to such party, and keep a record of any process so returned.

ORDER 3

1. Numbering of case by clerk of court

(1) The summons or other document first filed in a case or in an application not relating to a then pending case shall be numbered by the clerk of the court with a consecutive number for the year.

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

(3) All documents referred to in subrule (1) or (2) and all minutes made by the court shall be filed of record under the number of the respective action or application.

(4) The clerk of the court shall, upon the prepayment of such fees as may be prescribed—

(a) obtain a transcription of any record;

(b) furnish a copy of any record;

(c) permit the making of any copies of any record in his presence.

2. Issue of process and notification of plaintiff by clerk of court

It shall also be the duty of the clerk of the court—

(a) to issue all such process of the court as may be sued out by any person entitled thereto; and

(b) to notify the plaintiff forthwith by post or otherwise of any application for a judgment by default having been refused.

3. Magistrate may perform clerk's functions

Any act which is required to be done by the clerk of the court may be done by a magistrate.

4. Magistrate and clerk not to write documents for parties

A clerk of the court or a magistrate shall in no case write out any affidavit, pleading or process for any party.

ORDER 4

1. Who may represent party

(1) A party may institute or defend and may carry to completion any legal proceedings—

(a) in person; or

(b) by a legal practitioner; or

(c)-(d)

- (e) in the case of a local authority, company or other incorporated body, through an officer thereof nominated by it for the purpose; or
- (f) in the case of a partnership or group of persons associated for a common purpose, through a member thereof nominated by it for the purpose.

(2) No person acting under subrule (1), other than a legal practitioner*, shall be entitled to recover therefor any costs other than necessary disbursements.

2. Proof of authority to act for party

It shall not be necessary for any person to file a power of attorney to act, but the authority of any person acting for a party may be challenged by the other party—

- (a) within forty-eight hours after he has notice that such person is so acting; or
- (b) with the leave of the court for good cause shown, at any time before judgment;

and thereupon such person may not, without the leave of the court, so act further until he has satisfied the court that he has authority so to act, and the court may adjourn the hearing of the action or application to enable him to do so.

3. Death or incapacity of party

If a party dies or becomes incompetent to continue an action or application, the action or application shall thereby be stayed until—

- (a) such time as an executor, trustee, guardian or other competent person has been appointed in his place; or
- (b) such incompetence ceases to exist.

4. Substitution of executor, etc

Where an executor, trustee, guardian or other competent person has been so appointed, the court may, on application, order that he be substituted in the place of the party who has so died or become incompetent.

ORDER 5

1. Application by party to sue as pauper

Any person desiring to sue or defend as a pauper may apply to the court *ex parte*, either in writing or viva voce, for leave to do so.

2. Investigation of application

The court may, upon application in terms of rule 1, take one or more of the following steps—

- (a) examine the applicant on oath as to whether he has a *prima facie* right of action or defence, and as to his means;
- (b) require the applicant to call further evidence with reference to either question;
- (c) refer any such application to a legal practitioner for investigation and report as to the applicant's means and whether he has a *prima facie* right of action or defence, as the case may be;
- (d) require the applicant to give notice of the application to the opposite party.

3. Grant of application

If the court is thereafter satisfied that the applicant has a *prima facie* right of action or defence, and is not possessed of means or earnings sufficient to enable him to pay the court fees and messenger's charges, the court may order that—

- (a) the process of the court shall issue and be served free of charge to the applicant, other than for the disbursements of the messenger;
- (b) a legal practitioner shall be appointed to act for such applicant;
- (c) the clerk of the court shall, without charge and notwithstanding the provisions of rule 4 of Order 3, write out such process, affidavits, notices and other documents as may be required to comply with these rules:

Provided that an order shall not be made in terms of paragraph (b) unless the applicant either produces the written consent of a legal practitioner so to act, or satisfies the court that he is illiterate or is for some other good reason unable to conduct his case in person.

4. Costs

(1) If the pauper succeeds and is awarded costs against his opponent—

- (a) he shall, subject to taxation, be entitled to include and recover in such costs his legal practitioner's costs and also the fees and charges so remitted; and
- (b) if he recovers for principal, interest or costs, he shall first pay and make good thereof *pro rata* all such costs, fees and charges.

(2) If the pauper does not succeed or does not recover upon a judgment in his favour, no fees shall be taken from him by the legal practitioner so appointed to act for him.

5. *Effect of order to proceed in forma pauperis*

An order made under this Order—

- (a) shall not exempt the applicant from liability to be adjudged to pay adverse costs;
- (b) may, subject to the provisions of section 39 of the Act, on application at any time before judgment by any person affected thereby, be rescinded or varied by the court for good cause shown.

ORDER 6

Application to proceed against President or judges

(1) No—

- (a) summons or other civil process whatsoever may be sued out against;
- (b) application whatsoever may be brought against;

the President or any of the judges of the Supreme Court or the High Court without the leave of the court upon application made for that purpose.

[Subrule amended by s.i 289 of 1983]

(2) An application for leave of the court referred to in subrule (1) shall be made in terms of Order 22:

Provided that, where the respondent opposes the granting of such leave, it shall not be necessary for him to appear.

ORDER 7

1. Interpretation

(1) In this Order—

“process” means any document which is required to be served on any person in terms of these rules.

(2) Where the person upon whom any process is to be served is a minor or a person under legal disability, any reference to that person in this Order shall be construed as a reference to his guardian, tutor, curator or other legal representative.

[Rule substituted by s.i 248 of 1993]

2. Application of Order

This Order shall apply to the service of all process within Zimbabwe except to the extent that it is inconsistent with—

- (a) any other provision of these rules relating to the service of any particular process; or
- (b) any order or direction which the court may give in relation to the service of any particular process.

[Rule substituted by s.i 248 of 1993]

3. Who may serve process

(1) Service of a summons, warrant or order of court shall be effected by the messenger.

(2) Service of any process, other than a summons, warrant or order of court, may be effected by the messenger or by the party concerned or his legal practitioner or agent.

(3) Any party who requires the messenger to serve any process shall deliver to him a copy of the process, together with as many further copies as there are persons to be served.

[Rule substituted by s.i 248 of 1993]

4. When process may be served

Service of process shall not be valid if served between 10 pm and 6 am:

Provided that—

- (a) process for the arrest of any person; and
- (b) process served by post, telegraph, telefacsimile or courier;

shall be valid whenever it is served.

[Rule substituted by s.i 248 of 1993]

5. Manner of service of process

(1) Process in relation to a claim for an order affecting the liberty of a person shall be served by delivery of a copy thereof to that person personally.

(2) Subject to this Order, process other than process referred to in subrule (1) may be served upon a person in any of the following ways —

- (a) by personal delivery to that person or to his duly authorized agent;

- (b) by delivery to a responsible person at the residence or place of business or employment of the person on whom service is to be effected or at his chosen address for service;
- (c) in the case of process other than a summons or an order of court, by delivery to that person's legal practitioner of record;
- (d) in the case of process to be served on a body corporate —
 - (i) by delivery to a responsible person at the body corporate's place of business or registered office; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to a director or to the secretary or public officer of the body corporate;
- (e) in the case of process to be served on a partnership —
 - (i) by delivery to a responsible person at the partnership's office or place of business; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to any of the partners;
- (f) in the case of process to be served on a syndicate, club, society, church or other unincorporated association—
 - (i) by delivery to a responsible person at the local office or place of business of the association; or
 - (ii) if it is not possible to serve the process in terms of subparagraph (i), by delivery to the chairman or secretary or similar officer of the association.

[Rule substituted by s.i 248 of 1993]

6. Service where person to be served prevents service or cannot be found

Where any process is to be served, and—

- (a) the person upon whom it is to be served keeps his residence, place of business or employment, address for service or registered office closed and thus prevents the process from being served; or
- (b) the person seeking to effect service of any process is unable, after diligent search at the residence, place of business or employment, address for service or office of the person to be served, to find that person or a responsible person referred to in paragraph (b), (d), (e) or (f) of subrule (2) of rule 5;

it shall be sufficient service to leave a copy of the process in a letter-box at or affixed to or near the outer or principal door of, or in some other conspicuous position at, the residence, place of business or employment, address for service or office, as the case may be.

[Rule substituted by s.i 248 of 1993]

7. Service on two or more persons

Where two or more persons are to be served with the same process, service shall be effected upon each of them, except in the case of—

- (a) married persons who are not separated under an order of judicial separation, when service of process relating to property jointly owned or jointly held by them may be effected on either spouse;
- (b) two or more persons sued in their capacities as joint trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected upon any one of them.

[Rule substituted by s.i 248 of 1993]

7A. Service by registered post

(1) Any process, other than process referred to in subrule (1) of rule 5, may be served by registered post in accordance with this rule.

(2) Where—

- (a) the party requiring service of the process, other than process referred to in subrule (1) of rule 5, has given written instructions to the messenger to serve the process by registered post; or
- (b) the clerk of the court has directed that any process, other than process referred to in subrule (1) of rule 5, shall be served by registered post;

the messenger shall serve the process by registered post in accordance with this rule.

(3) Process shall be served in accordance with this rule by placing a copy thereof in an addressed envelope endorsed with the words,

“If delivery of this letter cannot be made within fourteen days, it is to be returned to the sender”

or words to the same effect, and posting it by prepaid registered post to the address of the person upon whom the process is to be served.

(4) An acknowledgement of receipt of an envelope posted in terms of subrule (3), signed by the person to whom the envelope was addressed and furnished in terms of by-laws made under the Postal and Telecommunication Services Act [*Chapter 12:02*], shall be *prima facie* proof that the process contained in the envelope was served upon him.

[Rule inserted by s.i 248 of 1993]

7B. Service of process where ejectment or payment of rent is sought

Service of process in proceedings in which the only relief that is claimed, apart from costs, is an order of ejectment from premises or judgment for the rent thereof may, if it cannot otherwise be effected, be made by leaving a copy of the process in a letter-box at or affixing it to or near the outer or principal door of, or in some other conspicuous position at, the premises in question.

[Rule inserted by s.i 248 of 1993]

7C. Proof of service

Where service of any process has been effected by—

- (a) the messenger, proof of service shall be by return of service or by endorsement on the process concerned;
- (b) a legal practitioner or a responsible person in his employ, proof of service shall be by a certificate of service in Form No. CIV 6A;
- (c) a person other than the sheriff or his deputy or a person referred to in paragraph (a) or (b), proof of service shall be by affidavit;
- (d) post in accordance with rule 7A, proof of service shall be by signed acknowledgement referred to in subrule (4) of that rule.

[Rule inserted by s.i 248 of 1993]

7D. Change of address for service

An address for service may be changed by the delivery of notice of a new address for service, and thereafter service may be effected in accordance with this Order at the new address.

[Rule inserted by s.i 248 of 1993]

7E. Service by telegraph or facsimile

Any process for service may be transmitted by telegraph or telefacsimile, and a telegraphic or telefacsimile copy that is served in any of the ways prescribed in this Order shall be of the same effect as if the original had been so served.

[Rule inserted by s.i 248 of 1993]

7F. Inspection of original of process

The original of any process which has been served on any person may be inspected by that person at the office of the clerk of the court where it is filed.

[Rule inserted by s.i 248 of 1993]

8. Substituted service

Where service cannot be effected in any manner or on any day or at any time prescribed, the court may, upon evidence of that fact and that the action is within the jurisdiction of the court, make an order allowing service to be effected in such manner or on such day or at such time as may be stated in such order, including notice by advertisement in substitution for or in addition to service.

9. Minimum time for service of process in particular cases

(1) Where the service to be effected is that of—

- (a) a summons for civil imprisonment; or
- (b) an order made *ex parte* which calls upon the respondent to show cause at a time stated or limited in the order; or
- (c) an interpleader summons; or
- (d) notice to a judgment debtor under subsection (2) of section 33 of the Act;

service shall be effected at least seven days if the person to be served is resident within the jurisdiction of the court at which he has to appear, and fourteen days if not so resident, before the stated or limited time for the appearance of the party served.

(2) Except where otherwise provided, notice of any application to the court shall be served at least seven days before the time appointed for the hearing of the application.

10. Postal service

....

[Rule repealed by s.i 248 of 1993]

ORDER 7A

[Order inserted by s.i 367 of 1990]

1. Application of Order

This Order shall apply to claims for—

- (a) money, whether arising out of contract, delict or otherwise; or
- (b) the delivery or release of any goods;

whether or not joined with or made as an alternative to any other claim, where the claims are instituted against—

- (i) the State; or
- (ii) the President, a Vice-President or any Minister or Deputy Minister in his official capacity; or
- (iii) any officer or employee of the State in his official capacity.

2. *Persons upon whom notice and process to be served*

Where a person mentioned in the first column of the Fourth Schedule is the defendant or respondent in any proceedings to which this Order applies—

- (a) the notice of intention to bring the proceedings required by section 6 of the State Liabilities Act [*Chapter 8:14*]; and
- (b) all process of the court by which the proceedings are instituted or by which effect is given to any judgment arising out of the proceedings;

shall be served upon the person specified in relation to the defendant or respondent in the second column of the Fourth Schedule, and copies of the notice and process shall be served, for information, upon the person or persons specified in relation to the defendant or respondent in the third column of that Schedule.

3. *Notice of intention to bring claim to be attached to process*

Where process of the court instituting proceedings to which this Order applies is served on a defendant or respondent, there shall be attached to the process a copy of the notice of intention to bring the proceedings required by section 6 of the State Liabilities Act [*Chapter 8:14*].

4. *Order not to affect jurisdiction of court*

Nothing in this Order shall be construed as affecting the territorial jurisdiction of the court.

ORDER 8

SUMMONS COMMENCING ACTION

1. *Issue of summons and time to enter appearance*

(1) The process of the court for commencing an action shall be by summons—

- (a) calling upon the defendant to enter an appearance within a stated time after service to answer the claim of the plaintiff; and
- (b) warning the defendant of the consequences of failure to do so.

(2) The period referred to in paragraph (a) of subrule (1) within which the defendant is called upon to enter an appearance shall be not less than—

- (a) seven days if the defendant does reside;
- (b) fourteen days if the defendant does not reside;

within the jurisdiction of the court from which the summons is issued.

(3) The summons shall be issued by the clerk of the court and shall bear the date of issue.

(4) The original of the summons shall at all times be retained of record in the office of the clerk of the court.

2. *Contents of summons*

(1) The particulars of the claim shall appear on the face of the summons and shall be signed by any such person as is mentioned in Order 4.

(2) The summons shall give—

- (a) subject to the provisions of subrule (3), an address for service within fifteen kilometres of the court-house from which it is to be issued; and
- (b) the postal address of the plaintiff.

(3) Where there are fewer than three legal practitioners practising independently of one another within fifteen kilometres from the court-house from which the summons is to be issued, the address for service may be one which is farther than fifteen kilometres from the court-house.

3. *Contents of particulars of claim*

(1) The particulars of claim shall show—

- (a) the nature and amount of the claim; and
- (b) the rate of interest and the amount thereof claimed up to the date of the summons; and
- (c) the amount which, if the action is undefended, is claimed for legal practitioner's costs and court fees; and
- (d) any abandonment of part of the claim; and

(e) any set-off.

(2) The messenger shall endorse the amount of his charges for service thereof on the summons.

(3) Where the summons contains more than one claim, the particulars of each claim and the relief sought in respect of each claim shall be stated separately.

(4) Where the particulars contain more than one hundred words, they may be contained in an annexure served with the summons, which annexure shall be taken to be part of the summons.

(5) The clerk of the court may refuse to issue a summons in which an excessive amount is claimed for legal practitioner's costs or court fees.

4. Other matters to be included in summons

The summons shall also show—

(a) the surname of the defendant by which he is known to the plaintiff, his residence or place of business or employment and, where known, his Christian name or initials and his occupation; and

(b) if the defendant is sued in a representative capacity, the capacity in which he is so sued; and

(c) the Christian name and the surname, occupation and residence or place of business of the plaintiff; and

(d) where the plaintiff sues as cessionary, the name, address and description of the cedent at the date of the cession and the date of the cession; and

(e) where the plaintiff sues in a representative capacity, the capacity in which he sues; and

(f) where the plaintiff sues upon an instrument presentment whereof was necessary, the fact and date of presentment.

5. Multiple or alternative claims in one summons

More claims than one may be made in a summons, either alternatively or otherwise, but claims which are not expressed to be alternative shall not be mutually inconsistent, nor based on inconsistent averments of facts.

6. Actions by or against partnerships, etc

(1) Any two or more persons claiming or being sued as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action and, in any such case, any party may by notice require from the party so suing or sued a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.

(2) The party receiving any notice in terms of subrule (1) shall, within seven days after receipt thereof, furnish the statement required and supply a copy thereof to the clerk of the court.

(3) When the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named in the summons, but all the proceedings shall nevertheless continue in the name of the firm save where civil imprisonment proceedings are instituted in terms of Order 28 against one of the said partners, when such partner shall be specifically named in such civil imprisonment proceedings.

(4) Any person carrying on business in a name or style other than his own name may sue or be sued in such name or style as if it were a firm name, and so far as the nature of the case will permit all the provisions of this rule relating to proceedings against firms shall apply.

(5) The provisions of this rule shall, *mutatis mutandis*, apply to an unincorporated company, syndicate or association.

(6) When an action has been instituted by or against—

(a) a firm in the name of the firm; or

(b) a person carrying on a business in a name or style other than his own name in such name or style; or

(c) an unincorporated company, syndicate or association in the name of the company, syndicate or association;

the court may on the application of the other party to the action made at any time, either before or after judgment, on notice to a person alleged to be a partner in such firm or the person so carrying on business or a member of such company, syndicate or association, as the case may be, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2)

7. Amendment of summons

(1) Subject to the provisions of this Order, a summons may, before service, be amended by the plaintiff as he thinks fit.

(2) Any alteration or amendment of a summons before service, and whether before or after issue, shall, before the summons is served, be initialled by the clerk of the court in the original summons and, until so initialled, such alterations and amendments shall have no effect.

(3) Subject to the provisions of subrule (4), a summons may, after service, be amended as is provided in section 66 of the Act, either on application on notice or at the hearing, subject to such order as to adjournment and costs as the court thinks just, and the court shall take into consideration whether adequate prior notice of intention to apply for such amendment has been served upon the other party affected.

(4) When—

(a) neither the Christian name nor the initial of the defendant is shown; or

(b) a wrongly spelt Christian name or not all Christian names appear in the summons;

but the correct Christian name or initial of the person on whom service of the summons has been effected is disclosed in the return of the messenger, the clerk of the court may, at the request of the plaintiff and without notice to the defendant, insert such name or initial in the summons as being the name or initial of the defendant, and such amendment shall, for all purposes, be considered as if it had been made before service of the summons.

ORDER 9

CLAIMS IN RECONVENTION

1. Application of Rules to claims in reconvention

The provisions of these rules shall, *mutatis mutandis*, apply to claims in reconvention, except that—

(a) it shall not be necessary to enter an appearance to defend; and

(b) all times which, in the case of a claim in convention, run from the date of appearance shall, in the case of a claim in reconvention, run from the date of delivery of the claim.

2. When claim in reconvention to be made

A claim in reconvention shall be made by the delivery within seven days after appearance of a statement in writing giving such particulars of the claim in reconvention as are required with regard to claims in convention.

3. What may be claimed in reconvention

(1) A defendant may set up by a claim in reconvention any right or claim of any amount which he may allege against the plaintiff, whether—

(a) liquid or illiquid; or

(b) liquidated or unliquidated; or

(c) it arises out of or is connected with the subject-matter of the claim in convention or not;

and such claim, if within the jurisdiction of the court, shall have the same effect as a cross-action, so as to enable the court to pronounce a final judgment in the same action both on the claim in convention and on the claim in reconvention.

(2) A defendant delivering a claim in reconvention may, by notice delivered therewith or within seven days thereafter, apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 15 of the Act.

(3) Where the court finds that the claim in reconvention exceeds its jurisdiction, the defendant may forthwith, or by notice delivered within seven days after such finding, apply for stay of the action.

(4) If no application for stay be made or, having been made, be dismissed, the court shall, on the application of the plaintiff or otherwise of its own motion, dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under paragraph (h) of subsection (1) of the section 11 of the Act sufficient of such claim to bring it within the jurisdiction.

4. Effect of claim in reconvention on plaintiff's right to apply for summary or default judgment

A claim in reconvention shall not prejudice the right of the plaintiff in convention to apply for summary or default judgment.

5. Plaintiff's claim and claim in reconvention may be tried separately

Where both the claim in convention and the claim in reconvention proceed to trial under Order 19, each action may be tried separately, but judgment shall be given on both *pari passu*.

6. Defendant in reconvention may not make claim in reconvention

A claim in reconvention may not be made by a defendant in reconvention.

7. Claim in reconvention may be proceeded with even if plaintiff's action withdrawn

Where an action is withdrawn, stayed, discontinued or dismissed, it shall nevertheless be competent to proceed separately with the claim in reconvention, if any.

ORDER 10

APPEARANCE TO DEFEND

1. Method of entering appearance

A defendant intending to defend shall, within—

- (a) seven days after service of the summons if he resides within the jurisdiction of the court from which the summons was issued;
- (b) fourteen days after service of the summons if he does not reside within the jurisdiction of the court from which the summons was issued;

or within the period limited by the summons, whichever is the longer, enter an appearance to defend by delivery of a memorandum in writing that he intends to defend.

2. Late appearance effective if no application for default judgment made

Notwithstanding anything contained in rule 1, an appearance to defend, even though entered after the expiry of the period mentioned in rule 1, shall nevertheless be effective if a request for default judgment has not yet been made.

3. Contents of memorandum of intention to defend

(1) A memorandum referred to in rule 1 shall—

- (a) be signed by the defendant; and
- (b) subject to the provisions of subrule (2), give an address for service within fifteen kilometres of the court-house from which the summons was issued; and
- (c) give the postal address of the defendant.

(2) Where there are fewer than three legal practitioners practising independently of one another within fifteen kilometres from the court-house from which the summons is issued the address for service may be one which is farther than fifteen kilometres from the court-house.

4. Entry of appearance: defendant may still except to action

The entry of an appearance shall be without prejudice to any exception which the defendant may have.

ORDER 11

1. Consent to judgment and effect on costs; effect of partial consent

(1) A defendant may consent to judgment by delivery of a memorandum in writing stating—

- (a) that he so consents; and
- (b) whether his consent is for the full amount claimed or less.

(2) Where a defendant consents in terms of subrule (1) before instructions for service have been given to the messenger—

- (a) it shall not be necessary to serve the summons; and
- (b) the defendant shall not be chargeable with fees for service.

(3) A defendant consenting in terms of subrule (1) before the expiration of the time limited for appearance shall not be chargeable with judgment charges.

(4) If the defendant's consent is for less than the amount claimed in the summons—

- (a) he may enter an appearance to defend or may continue his defence as to the balance of the claim; and
- (b) notwithstanding a judgment upon such consent, the action may proceed as to such balance and it shall in that event be in all subsequent respects an action for such balance.

2. Application for default judgment

Where a defendant has failed to enter an appearance to defend and has not consented to judgment, the plaintiff may lodge with the clerk of the court a written request to have judgment entered, with costs, against such defendant for—

- (a) any sum, not exceeding the amount claimed in the summons; or
- (b) other relief so claimed;

together with interest from the date of the summons to the date of judgment at the rate specified in the summons, or, if no rate is so specified at the rate for the time being prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

[Rule amended by s.i 218 of 1992]

3. Judgment in default of plea

Where a defendant has failed to deliver a plea as provided by Order 16 the plaintiff —

- (a) after delivery of written notice calling upon the defendant to file his plea within forty-eight hours of the receipt of such notice; and
- (b) on failure of the defendant to do so;

may lodge with the clerk of the court a written request to have judgment entered with costs and interest in the same manner as if the defendant had failed to enter an appearance to defend.

4. When judgment by consent or in default may be entered

(1) Where a defendant—

- (a) consents to judgment in terms of rule 1; or
- (b) has failed to enter an appearance to defend and the plaintiff has requested judgment in terms of rule 2; or
- (c) has failed to deliver a plea as provided by Order 16 and the plaintiff has requested judgment in terms of rule 3;

the clerk of the court shall, subject to the provisions of subrules (2), (3), (4), (5), (6), (7), and (8), enter judgment in the terms of the defendant's consent or of the plaintiff's request for judgment, as the case may be.

(2) If it appears to the clerk of the court that the defendant intends to defend the action but that his entry of appearance is defective, in respect that the memorandum thereof—

- (a) has not been properly delivered; or
- (b) has not been properly signed; or
- (c) does not set out the postal address of the person signing it or an address for service as prescribed in rule 3 of Order 10, or
- (d) exhibits any two or more of such defects or any other defect of form;

he shall not enter judgment against the defendant unless the plaintiff has delivered written notice to the defendant that request for judgment in default of due entry of appearance is being made, and the defendant has not within forty-eight hours of the receipt by him of such notice delivered a memorandum of entry of appearance in due form.

(3) Notice by the plaintiff referred to in subrule (2) shall clearly set out in what respect the defendant's entry of appearance is alleged to be defective.

(4) Judgment in default of appearance to defend shall not be entered in an action in which the summons has been served by registered post unless with the return of service by the messenger there has been filed the certificate of the postmaster of the office of destination that the letter has been duly delivered.

(5) The clerk of the court shall refer to the court any request made for the entry of judgment on a claim for damages and—

- (a) the plaintiff shall furnish to the court evidence, either written or oral, of the nature and extent of the damages suffered by him;
- (b) the court shall thereupon assess the amount, if any, recoverable by the plaintiff as damages and shall give an appropriate judgment.

(6) The clerk of the court shall refer to the court any request made for the entry of judgment on a claim founded on any cause of action arising out of or based on any hire-purchase agreement governed by the Hire-Purchase Act [Chapter 14:09], and the court shall thereupon make such an order or give such a judgment as it thinks just.

(7) If the action is on a liquid document, the plaintiff shall, before entry of judgment, whether by consent or default, file of record the original document duly stamped, or an affidavit setting out reasons to the satisfaction of the court why the original document cannot or should not be filed.

(8) The clerk of the court may refer to a magistrate any consent to or request for judgment, and the magistrate may thereupon—

- (a) if a default judgment is sought, call upon the plaintiff to produce evidence, either written or oral, in support of his claim;
- (b) if a judgment by consent is sought, call upon the plaintiff to produce evidence, either written or oral, that the consent has been signed by the defendant and is a consent to the judgment sought;
- (c) enter judgment in terms of the plaintiff's request or for so much of the claim as has been established to his satisfaction;
- (d) enter judgment in terms of the defendant's consent;
- (e) refuse judgment;
- (f) make such other order as he thinks just.

(9) When one or more of several defendants in an action consent to judgment or fail to enter appearance or to deliver a plea—

- (a) judgment may be entered against the defendant or defendants who have consented to judgment or are in default; and

- (b) the plaintiff may proceed on such judgment without prejudice to his right to continue the action against another defendant or other defendants.

ORDER 12

FURTHER PARTICULARS

1. Supply of copies of documents and inspection of originals

(1) A defendant, whether in convention or reconvention, may at any time after service of summons or counter claim, and before delivery of the plea, apply to the plaintiff by notice for copies of all or any of the accounts or documents upon which the claim is founded, and such copies shall be furnished to him by the plaintiff within seven days after receipt of such notice.

(2) The plaintiff shall, on notice, forthwith allow the defendant to inspect the originals of such accounts or documents.

2. Application for further particulars

(1) Any party may, by notice delivered not more than seven days after—

(a) entry of appearance in the case of a summons; or

(b) the delivery of any other pleading; or

(c) judgment on any exception to such pleading has been given;

require the party delivering such pleading to deliver such further information as is reasonably necessary to enable such party to plead.

(2) The party delivering such pleading shall, within seven days after receipt of such notice, deliver the information reasonably required.

3. Further particulars after close of pleadings

(1) Any party may, by notice delivered after the pleadings are closed, require the other party to deliver such further information in respect of any pleading as is reasonably necessary to enable that party to prepare for trial.

(2) The party receiving such notice shall, as soon as reasonably possible, deliver the information reasonably required.

4. Interpretation

For the purposes of this order—

“pleading” includes a summons, counter claim, plea, reply and the schedule of documents prescribed by Order 18.

ORDER 13

PAYMENT INTO COURT

1. Payment into court of full sum claimed

A defendant may at any time pay into court unconditionally the amount claimed in the summons, and thereupon all further proceedings in the action shall be stayed, save as hereinafter provided for the recovery of any costs not included in such payment.

2. Offer in settlement

(1) A defendant may, without prejudice, pay an amount into court by way of offer in settlement of the plaintiff's claim.

(2) A plaintiff may, within seven days after receipt of notice of such payment, deliver a request for the payment to him of the amount paid, and further proceedings shall thereupon be stayed, save as hereinafter provided for the recovery of any costs not included in such payment.

3. Notice of payment or offer of settlement

A defendant paying money into court in terms of rule 1 or 2 shall at the same time deliver a notice—

(a) setting out that an amount has been paid into court; and

(b) stating whether it has been paid unconditionally under rule 1 or as an offer of settlement under rule 2; and

(c) in the case of payment under rule 2, stating whether the amount paid is offered in settlement of both claim and costs.

4. Payment to plaintiff of money paid into court

The clerk of the court shall pay out to the plaintiff any moneys paid into court under rule 1 or 2:

Provided that moneys paid into court under rule 2 shall be paid out only on delivery of the request mentioned in subrule (2) of rule 2.

5. *Effect on costs of making payment or offer*

A plaintiff entitled to payment under rule 4 shall, save when a defendant making payment under rule 2 states in his notice of payment that the amount paid is inclusive of costs, be entitled to recover from the defendant the costs incurred by him up to the time of payment into court, together with his costs of obtaining payment, in the same manner as if an order for such costs had been made by the court.

6. *Procedure where plaintiff fails to prove that there is more due than was offered*

Where money has been paid into court under rule 2 as an offer of settlement and the court finds on a trial of the action that the plaintiff has failed to prove that there is any more due to him than the amount so paid, the court shall—

- (a) first order payment to the plaintiff of so much thereof as may be awarded to him, subject to any order or judgment against him for the defendant's costs; and
- (b) then give judgment for the defendant and order the plaintiff to pay the costs incurred by the defendant after payment into court; and
- (c) make such order as it thinks just in regard to costs previously incurred.

7. *Payment into court of sum tendered*

A defendant pleading tender shall, on the day of filing his plea, pay into court the amount so tendered if such amount has not already been paid to the plaintiff.

8. *When payment out may be made of money paid into court*

Save as provided in rule 4, moneys paid into court under this Order shall be paid out only upon—

- (a) a judgment declaring who is entitled thereto; or
- (b) the written consent of the parties.

9. *Procedure where tender or payment made on claim for damages or compensation*

Where the claim is for damages or compensation—

- (a) the amount of a tender or payment into court shall not be disclosed to the court or in the pleadings until after judgment on the claim has been given;
- (b) an order for costs shall be made only after disclosure of the amount tendered or paid into court;
- (c) the court, in awarding costs, shall proceed as provided in rule 6.

10. *Payment out: time limitation*

(1) Where money has been paid into court under rule 2 or 7 and has not been paid out after one year of the date on which it was paid into court, the clerk of the court shall, unless the case has been set down for trial in terms of Order 19, return the money to the defendant and shall, at the same time, give notice to the plaintiff that he is doing so.

[Subrule amended by s.i 363 of 1995]

(2) If the defendant cannot be found, the money shall be paid into the Guardian's Fund to the credit of the defendant.

ORDER 14

EXCEPTIONS AND MOTIONS TO STRIKE OUT

1. *When exception may be made*

(1) A defendant shall, within seven days after entry of appearance, deliver particulars of any exception to the summons:

Provided that, where the delivery of documents or information has been requested in terms of Order 12, particulars of the exception may be delivered within seven days after delivery of such documents or information.

(2) A defendant failing to deliver such particulars of any exception within the period prescribed in subrule (1) may not thereafter raise any exception without leave of the court granted on application after notice to the plaintiff.

2. *Grounds for excepting to summons*

The defendant may except to the summons on one or more of the following grounds only—

- (a) that it does not disclose a cause of action;
- (b) that it is vague and embarrassing;
- (c) that it does not comply with the requirements of Order 8;
- (d) that it has not been properly served;
- (e) that the copy served upon the defendant differs materially from the original.

3. Raising of other defences

Any other defence shall be raised by means of plea in accordance with the provisions of Order 16.

4. Exceptions: multiple claims

Where more than one claim is made in a summons, exception may be taken to any one or more of such claims.

5. When court may uphold exception

(1) The court shall not uphold any exception unless it is satisfied that the defendant would be prejudiced in the conduct of his defence if the summons were allowed to stand.

(2) A defendant raising an exception that the summons does not comply with the requirements of Order 8 shall set out particulars of the alleged non-compliance.

(3) The court shall not uphold an exception that the summons is vague and embarrassing unless the defendant has, prior to taking the exception, by delivery of a notice given the plaintiff an opportunity of removing the cause of the complaint.

6. Application to strike out claim or material in summons

(1) A defendant may move to strike out—

- (a) any of two or more claims in a summons which, not being in the alternative, are mutually inconsistent or are based on inconsistent averments of fact;
- (b) any argumentative, irrelevant, superfluous or contradictory matter contained in the summons.

(2) The provisions of rule 1 shall, *mutatis mutandis*, apply to the delivery of particulars of a motion to strike out.

7. When exception or motion to strike out to be heard

(1) An exception or motion to strike out shall, if particulars thereof have been delivered before the hearing of an application by the plaintiff for summary judgment, be heard and determined at the hearing of such application.

(2) If no application for summary judgment has been made, either party may, on seven days' notice, set down such exception or motion to strike out for hearing before the trial.

8. Effect of successful exception or motion to strike out

If an exception to, or motion to strike out matter from, a summons is sustained and no application for amendment is made or, an application having been made, it is refused, the court may, on application by the defendant, dismiss the claim.

ORDER 15

SUMMARY JUDGMENT

1. When application for summary judgment may be made

(1) Where a defendant has entered an appearance to defend, the plaintiff, whether in convention or reconvention, may apply to the court for summary judgment on any claim in the summons which is only—

- (a) on a liquid document; or
- (b) for a liquidated amount in money; or
- (c) for the delivery of specified movable property; or
- (d) for ejectment; or
- (e) for any two or more such matters as are described in paragraph (a), (b), (c) or (d);

in addition to costs.

(2) An application in terms of subrule (1) shall be made on not less than seven days' notice delivered not more than seven days after the date of the defendant's appearance to defend, and the plaintiff shall deliver with such notice—

- (a) if the claim is illiquid, a copy of an affidavit, made by himself or by any other person who can swear positively to the facts—
 - (i) verifying the cause of action and the amount claimed, if any; and
 - (ii) stating that in his belief there is not a *bona fide* defence to the action and that appearance has been entered solely for the purpose of delay;
- (b) if the claim is liquid, a copy of the liquid document on which the claim is founded.

2. Procedure on application for summary judgment

(1) Upon the hearing of an application for summary judgment, the defendant may—

- (a) pay into court to abide the result of the action the sum sued for, together with such sum for costs as the court may determine; or

- (b) give security to satisfy any judgment which may be given against him in the action; or
 - (c) satisfy the court by affidavit then filed, which may be supported by viva voce evidence or otherwise, that he has a good *prima facie* defence to the action.
- (2) At the hearing of an application for summary judgment—
- (a) no evidence may be adduced by the plaintiff otherwise than by—
 - (i) the affidavit of which a copy was delivered with the notice; or
 - (ii) production without evidence of the liquid document sued upon;
 - (b) the plaintiff may not cross-examine any witness called by the defendant, but any such witness may be questioned by the court and re-examined by the defendant.

3. Courses open to court

(1) Subject to the provisions of Order 14, if the defendant does not so pay into court, find security or satisfy the court as provided in subrule (1) of rule 2, the court may enter summary judgment for the plaintiff.

(2) If the defendant does pay into court, find security or satisfy the court as provided in subrule (1) of rule 2, the court shall give leave to defend, and the action shall proceed as if no application under this Order had been made.

4. Use in subsequent proceedings of evidence given at application for summary judgment

Where leave to defend is given under subrule (2) of rule 3, the evidence given on the hearing of the application for summary judgment shall not, at any subsequent hearing, be admissible, except by consent, in favour of the party on whose behalf it was given, except in so far as the respective deponents and witnesses are produced at such subsequent hearing for cross-examination.

5. Procedure where defendant partly successful

If, on the hearing of an application made under this Order, it appears either that a defendant is entitled to leave to defend and another defendant is not so entitled, or that a defendant is entitled to leave to defend as to part only of the claim, the court may—

- (a) give leave to defend to a defendant so entitled thereto and enter judgment against a defendant not so entitled; or
- (b) give leave to defend to the defendant as to such part of the claim and enter judgment against the defendant as to the balance of the claim; or
- (c) make both orders mentioned in paragraphs (a) and (b).

ORDER 16

PLEA

1. When plea must be lodged; signing of plea

- (1) The defendant shall, within seven days after—
- (a) entry of appearance; or
 - (b) delivery of documents or particulars in terms of rule 1 or 2 of Order 12; or
 - (c) if application for summary judgment is made, the dismissal of such application; or
 - (d) the making of an order giving leave to defend; or
 - (e) if exception or motion to strike out is set down for hearing in terms of rule 7 of Order 14, the dismissal of such exception or motion; or
 - (f) any amendment of the summons allowed by the court at the hearing of such exception or motion;
- deliver a statement in writing to be called a plea:

Provided that, if an appeal is noted against a decision on an exception or such proceedings are brought on review, the plea shall be delivered within such time as is directed by the court of appeal or, on application, by the court.

- (2) The plea shall be dated and signed by any such person as is mentioned in Order 4.

2. Contents of plea

The defendant, in his plea, shall—

- (a) admit or deny or confess and avoid all the material facts alleged in the particulars to the summons; and
- (b) clearly and concisely state the nature of his defence and all the material facts on which it is based.

3. Summons served on wrong defendant

(1) The provisions of this Order shall apply to a person upon whom a summons has been served who alleges that he is not the defendant cited in the summons and enters appearance to defend on that ground as though he were a defendant, and the court may, on the hearing of any such defence, order costs to be paid to or by such person as if he were a party to the action.

(2) If a defence referred to in subrule (1) is sustained, the court, instead of dismissing the summons, may, if moved thereto by the plaintiff, allow any necessary amendment and order that it be served on the real defendant.

4. Bare denial or general defence not admissible

A bare denial of liability or a defence of general issue shall not be admissible, but the defendant may, either as a sole defence or in combination with any other defence not inconsistent therewith, deny specifically any of the allegations in the summons.

5. Plea of tender

Subject to the provisions of Order 13—

- (a) where a tender is pleaded as to part of the amount claimed, the plea shall specify the items of the plaintiff's claim to which the tender relates;
- (b) a plea of tender shall not be admissible unless the amount of the alleged tender is paid into court on the delivery of the plea, if not already paid to the plaintiff, and such amount shall be paid out to the plaintiff only on the order of the court or upon the written consent of the parties;
- (c) a tender after action is brought shall—
 - (i) unless such undertaking is expressly disavowed at the time of such tender, imply an undertaking to pay the plaintiff's costs up to the date of the tender; and
 - (ii) be valid without a tender or payment into court of the amount at which such costs may be taxed.

6. Allegation in plea of payment into court

Where payment into court is alleged in the plea—

- (a) the particulars shall show whether the payment has been made under rule 1 or 2 of Order 13 or by way of tender under rule 5 of this Order;
- (b) if the nature of the payment is not specified, it shall be deemed to be by way of tender after action is brought.

7. Denial or admission of plaintiff's allegations: when presumed

Every allegation of fact by the plaintiff which is inconsistent with the plea shall be presumed to be denied and every other allegation shall be taken to be admitted.

8. Defence emerging during trial

If during the trial of an action, it appears that there is *prima facie* evidence of a defence on some other ground than that pleaded, the court may, on application at the trial, allow such new defence to be then pleaded *viva voce* on such terms as to adjournment and costs as it thinks just.

9. Hearing of defences which can be adjudicated on outside main case

Any defence, including an exception, which can be adjudicated upon without the necessity of going into the main case may be set down by either party for a separate hearing upon seven days' notice at any time after such defence has been raised.

10. Exception to or motion to strike out plea

A plaintiff may, within seven days of the delivery of the plea or further particulars and with or before delivering a reply, deliver particulars of an exception to the plea, or a motion to strike out in terms of rule 14.

11. When plaintiff may except to plea

A plaintiff may except to the plea on one or more of the following grounds only—

- (a) that it does not disclose a defence to the plaintiff's claim;
- (b) that it is vague and embarrassing;
- (c) that it does not comply with the requirements of this Order.

12. When court may uphold exception to plea

(1) The court shall not uphold any exception to a plea unless it is satisfied that the plaintiff would be prejudiced in the conduct of his case if the plea were allowed.

(2) A plaintiff raising an exception that the plea does not comply with the requirements of this Order shall set out particulars of the alleged non-compliance.

(3) The court shall not uphold an exception that the plea is vague and embarrassing unless the plaintiff has, prior to taking exception, by delivery of a notice given the defendant an opportunity of removing the cause of the complaint.

13. Inclusion in plea of further particulars

Information delivered by the defendant in terms of Order 12 shall be deemed to be included in the plea.

14. Motion to strike out defences

- (1) A plaintiff may move to strike out—
 - (a) any of two or more defences which, not being pleaded in the alternative, are mutually inconsistent;
 - (b) any argumentative, irrelevant, superfluous or contradictory matter which may be stated in a plea.
- (2) The provisions of rule 9 shall, *mutatis mutandis*, apply to the delivery of particulars of a motion to strike out.

15. Notice required to except or to move to strike out

An exception to or motion to strike out matter from a plea may be set down for hearing by either party on seven days' notice.

16. Effect of successful exception or motion to strike out

If an exception to or motion to strike out matter from a plea is sustained and no application for amendment is made or, having been made, is refused, the court may, if the plea then discloses no defence, give judgment for the plaintiff.

ORDER 17

1. Plaintiff may reply to plea

Where the defence is other than a bare denial of one or more of the allegations of the summons, the plaintiff may—

- (a) within seven days after the delivery of the plea; or
 - (b) after delivery in terms of rule 2 of Order 12 of further information in respect of the plea;
- deliver a statement in writing to be called a reply.

2. Rules applicable to reply

The rules applicable to the plea shall, *mutatis mutandis*, apply to the reply.

3. Effect of failure to reply

Where the plaintiff does not within the time limited deliver a reply, he shall be taken to have denied all the allegations of fact contained in the plea.

4. Closure of pleadings

Upon the delivery of a reply or, where no reply is delivered upon the expiration of the period limited for reply, the pleadings shall be deemed to be closed.

ORDER 18

DISCOVERY OF DOCUMENTS

1 Application for delivery of schedule of books and documents to be used by other party

(1) After the close of pleadings, either party may deliver a notice to the other party calling on him to deliver a schedule specifying the books and documents in his possession or under his control relating to the action which he intends to use in the action or which tend to prove or disprove either party's case.

(2) The schedule referred to in subrule (1) shall be delivered by the party thereto required within seven days of the delivery of the said notice.

(3) If privilege is claimed for any of the documents scheduled—

- (a) such documents shall be separately listed on the schedule; and
- (b) the ground on which privilege is claimed in respect of each shall be set out.

(4) A book or document not disclosed in terms of this rule may not be used for any purpose in the trial of the action by the party in whose possession or under whose control it is without the leave of the court on such terms as to adjournment and costs as may be just, but the other party may call for and use such book or document in the cross-examination of a witness.

2. Supply of documents or copies thereof

Each party shall—

- (a) on notice forthwith allow the other party to inspect and take copies of all books and documents disclosed in terms of rule 1 or specified in a notice delivered in terms of rule 3;
- (b) on prepayment therefor, forthwith furnish the other party with such copies thereof or extracts therefrom as may be requested.

3 Notice requiring other party to produce documents at trial

(1) Either party may, by notice to produce, require the other to produce on the trial of the action the books and documents so disclosed and any other books and documents specified in detail.

(2) A notice under subrule (1) shall have the effect of a subpoena under Order 24 as regards all such books or documents as are in the possession or under the control of the party to whom notice is so given.

ORDER 19

1. Pre-trial conference

[Rule substituted by s.i 122 of 1994]

(1) After the close of pleadings a party who wishes to have the action brought to trial shall request the other party to attend a pre-trial conference at a mutually convenient time and place.

(2) At the pre-trial conference the parties shall attempt to reach agreement on possible ways of expediting or curtailing the duration of the trial and in particular as to all or any of the following matters—

- (a) the obtaining admissions of fact and of documents;
- (b) the holding of any inspection or examination;
- (c) the exchange of reports of experts;
- (d) the making of any discovery of documents;
- (e) the giving of any further particulars reasonably required for the purposes of trial;
- (f) the plans, diagrams, photographs, models, and the like, to be used at the trial;
- (g) the consolidation of trials;
- (h) the quantum of damages;
- (i) the definition of the real issues and the manner in which any particular issue may be proved;
- (j) an estimation of the probable duration of the trial;
- (k) the preparation of correspondence and other documents to be handed in at the trial in the form of a paged bundle with copies for the court and all parties;

and, if it is practicable to do so, the parties shall attempt to reach a settlement of all or any of the matters in dispute between them.

(3) If the parties to an action consent to such a course, a pre-trial conference in terms of subrule (1) shall be held before a magistrate, in chambers, at a date and time fixed by the clerk of court in consultation with the parties.

(4) The clerk of court, acting on the instructions of a magistrate, may at any time on reasonable notice, notify the parties to an action to appear before a magistrate in chambers, on a date and at a time specified in the notice, for a pre-trial conference with the object of reaching agreement on or settling the matters referred to in subrule (2), and the magistrate may at the same time give directions as to the persons who shall attend and the documents to be furnished or exchanged at such conference.

(5) Where the clerk of court has given notice in terms of subrule (4) to parties who have not yet held a pre-trial conference, it shall not be necessary for them to hold such a conference in terms of subrule (1).

(6) If—

- (a) a party does not accede to a request for the holding of a pre-trial conference in terms of subrule (1); or
- (b) a party refuses to consent in terms of subrule (3) to a pre-trial conference being held before a magistrate; or
- (c) the parties are unable to agree on a suitable date or venue for a pre-trial conference in terms of subrule (1) or who should attend;

any party may apply to a magistrate for directions in regard to the matter in dispute.

(7) Upon the conclusion of a pre-trial conference, other than a conference held before a magistrate, the parties shall draw up a minute of the conference proceedings and such minute shall be signed by the parties or their legal practitioners.

(8) If at a pre-trial conference, other than a conference held before a magistrate, the parties cannot agree on any matter referred to in subrule (2), any party may make an application to the magistrate for directions in regard to the matter in dispute.

(9) If at a pre-trial conference the parties agree on a settlement of any matter in dispute, a magistrate may, on application being made by the parties, make an order embodying the terms of the settlement.

(10) Upon the conclusion of a pre-trial conference held before a magistrate, the magistrate—

- (a) shall record any decisions taken at the conference and any agreements reached by the parties as to the matters to be considered; and
- (b) may make an order limiting the issues for trial to those not disposed of by admission or agreement; and

- (c) may give directions as to any matter referred to in subrule (2) upon which the parties have been unable to agree; and
- (d) shall record the refusal of any party to make an admission or reach agreement, together with the reasons therefor.

(11) If a party fails to comply with directions given by a magistrate in terms of subrule (4), (6), (8) or (10) or with a notice given in terms of subrule (4), the court may, on court application being made therefor by any other party, dismiss the claim or strike out the defence or make such other order as may be appropriate.

2. Setdown of trial

(1) The trial of an action shall be subject to the delivery by the plaintiff after the pre-trial conference has been held of notice of trial for a day approved by the clerk of the court and if the plaintiff does not, within fourteen days after the pre-trial conference, deliver notice of trial the defendant may do so.

(2) The delivery of a notice of trial shall *ipso facto* operate to set down for trial at the same time any counterclaim made by the defendant.

(3) Service of a notice of trial, including notice for reinstatement where the trial has been adjourned or postponed sine die, shall be effected at least seven days before the day approved by the clerk of the court.

[Subrule amended by s.i 289 of 1983]

3. Where trial to take place

The trial of an action shall, unless the court otherwise orders, take place at the court-house from which the summons was issued.

4. Presence of witnesses at court

A witness who is not a party to the action may be ordered by the court—

- (a) to leave the court until his evidence is required or after his evidence has been given;
- (b) to remain in the court after his evidence has been given until the trial is terminated or adjourned.

5. Facts in issue, admissions and questions of fact

(1) The court may, having regard to the order made in terms of subrule (8) of rule 1*, before proceeding to hear evidence, require the parties to state shortly the issues of fact or questions of law which are in dispute and may record the issues so stated.

(2) Where, upon the pleadings, or having regard to the order made in terms of subrule (8) of rule 1, it appears to the court that there are several issues of fact and the court is of opinion that the determination of any one of such issues would dispose of the whole case, it may—

- (a) require the parties to deal with that issue before proceeding with the other issues; and
- (b) thereupon give final judgment without dealing with such other issues.

(3) If the question in dispute is a question of law and the parties are agreed upon the facts, the facts may be admitted in court, either viva voce or by written statement, by the parties and recorded by the court, and judgment may be given thereon without further evidence.

(4) When a question of law and issues of fact arise in the same case and the court is of opinion that the case may be disposed of upon the question of law only, the court may—

- (a) require the parties to argue upon the question of law only; and
- (b) give its decision thereon before taking evidence as to the issues of fact; and
- (c) give final judgment without dealing with the issues of fact if the decision upon the question of law warrants such judgment

6. Order in which evidence to be led

(1) If on the pleadings the burden of proof is on the plaintiff—

- (a) he shall first adduce his evidence;
- (b) if absolution from the instance is not then decreed, the defendant shall thereafter adduce his evidence.

(2) If on the pleadings the burden of proof is on the defendant—

- (a) he shall first adduce his evidence; and
- (b) the plaintiff shall thereafter adduce his evidence.

(3) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant—

- (a) the plaintiff shall first call his evidence on any issues proof whereof is upon him and may then close his case, and the defendant shall then call his evidence on all the issues;

(b) if the plaintiff has not called any evidence, other than that necessitated by his evidence on the issues proof whereof is on him, on any issues proof whereof is on the defendant, he shall have the right to do so after the defendant has closed his case, but if he has called any such evidence he shall have no such right.

(4) In case of dispute as to the party upon whom the burden of proof rests, the court shall direct which party shall first adduce evidence.

(5) Either party may, with the leave of the court, adduce further evidence at any time before judgment, but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order.

(6) The court may at any time before judgment, on the application of either party or of its own motion, recall any witness for further examination.

(7) Any witness may be examined by the court, as well as by the parties.

(8) After the evidence on behalf of both parties has been completed, the party who first adduced evidence may first address the court, and thereafter the other party, and the party who first adduced evidence may reply.

7. Filing of interrogatories

Where the court has authorized the evidence of any witness to be taken on interrogatories—

(a) such interrogatories shall be filed within seven days of the order; and

(d) cross-interrogatories shall be filed within seven days thereafter.

(e)

ORDER 20

WITHDRAWAL AND DISMISSAL

1. Withdrawal of summons by plaintiff

Where—

(a) the summons has not been served; or

(b) the period limited for the entry of appearance to defend has expired and no such appearance has been entered;

the plaintiff may withdraw the summons by notice to the clerk of the court.

2. Notice of withdrawal of action or application

(1) Save as provided by rule 1, a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver notice of withdrawal.

(2) Any party served with notice of withdrawal may, within fourteen days thereafter, apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn, together with the costs incurred in so applying:

Provided that where the plaintiff in the notice of withdrawal embodies in such notice a consent to pay the costs such consent shall then have the force of an order of court, and the clerk of the court shall tax the costs on the request of the defendant.

(3) Any party may, by delivery of notice, abandon any specified claim, exception or defence pleaded by him and such notice shall be taken into consideration in taxing costs.

3. Application for dismissal of action

(1) A defendant may, if the plaintiff has not within fourteen days after the pleadings have been closed applied to the clerk of the court for a date for a pre-trial conference in terms of Order 19*, apply to the court to dismiss the action for want of prosecution.

(2) A defendant may, if the plaintiff has not within fourteen days after the pre-trial conference held in terms of Order 19 given notice of trial either for a day not more than twenty-one days distant or for the first day obtainable from the clerk of the court, apply to the court to dismiss the action for want of prosecution.

(3) The court may, on application under subrule (1) or (2), either dismiss the action with costs or make such other order in regard thereto and as to the costs of the application, as it thinks just.

ORDER 21

RECORD OF PROCEEDINGS

1. Minutes of record

(1) Minutes of record shall be made of—

(a) any judgment given by the court; and

- (b) any viva voce evidence given in court; and
 - (c) any objection made to any evidence received or tendered; and
 - (d) the proceedings of the court generally, including the record of any inspection *in loco*.
- (2) The court shall also duly mark each document put in evidence and note such mark on the record.

2. Recording in shorthand

(1) The court may appoint a shorthand-writer to record a note of viva voce evidence and the proceedings, and such appointment may be made either generally for the purposes of the court or specially for the purposes of any particular matter.

(2) Every person employed for the taking of a record in terms of subrule (1) or for the transcription of the record so taken by another person shall—

- (a) be deemed to be an officer of the court; and
- (b) before entering on his duties, take before a magistrate an oath that he will faithfully, accurately and to the best of his ability perform his duties.

(3) If an appeal is noted and set down for hearing, such record shall, so far as relevant to the appeal, be transcribed and certified by such shorthand-writer as a true record of the proceedings, and such transcript shall thereafter form part of the record.

3. Correction of errors in record

(1) Any party may, not later than seven days after judgment or, where the record has been taken in terms of subrule (1) of rule 2, after the transcription thereof has been completed, apply to the court to correct any errors in the record and the court may correct any such errors.

- (2) If, before the hearing of an application in terms of subrule (1), all parties affected—
- (a) file a consent to the corrections claimed, no costs of such application shall be allowed;
 - (b) do not file a consent to the corrections claimed, costs shall be in the discretion of the court.

ORDER 22

APPLICATIONS

1. Notice to be given of application

(1) Except where otherwise provided, an application to the court for an order affecting any other party or persons shall be on not less than seven days' notice to such other party or person, stating shortly the terms of the order applied for and the time at which the application will be made to the court

(2) An application referred to in subrule (1) may be supported by affidavit.

2. Statement in response to application

(1) The respondent may, not less than forty-eight hours before the time stated in such application, deliver a statement in writing in which he either—

- (a) consents to the order mentioned in the application; or
- (b) opposes the granting of such order.

(2) Where the respondent consents to the order—

- (a) the order shall be deemed to be granted from the time mentioned in the application;
- (b) it shall not be necessary for either party to appear.

(3) Where the respondent opposes the order, his statement shall—

- (a) set out the grounds on which he opposes the order;
- (b) if he denies the facts set out in the application or seeks to place additional facts before the court, be supported by affidavit.

3. Reply by applicant to respondent's statement

(1) The applicant may reply by affidavit to any facts alleged in any affidavit filed by the respondent.

(2) After the applicant's reply no further affidavit shall be filed, except with leave of the court.

(3) Whenever practicable, the applicant's replying affidavit shall be delivered at least twenty-four hours before the time fixed for the hearing.

4. Evidence at hearing of application

At the hearing of the application the court may receive evidence viva voce.

5. Orders court may make on application

After hearing the parties the court may—

- (a) refuse the application; or
- (b) grant the order applied for or any variation thereof; or
- (c) order that the issue shall be tried by way of action and give such directions as it thinks just to enable such issue to be brought to trial;

and make such order as to costs as it thinks just.

6. When appearance to defence is deemed to have been entered

For the purposes of the action, appearance to defend shall be deemed—

- (a) when the notice of application is ordered to stand as summons, to have been entered on the day on which such order is made;
- (b) when the applicant is ordered under rule 5 to file particulars, to have been entered on the day on which such particulars are delivered.

7. Ex parte applications

(1) Except where otherwise provided, an *ex parte* application shall be made in writing stating shortly—

- (a) the terms of the order applied for; and
- (b) the grounds on which the application is made;

and shall be signed by the party making the application.

(2) Except where otherwise provided, an *ex parte* application shall not, unless required by the court in any case, be supported by affidavit or other evidence.

(3) Any person affected by an order made *ex parte*, including an interdict for rent under section 38 of the Act, may apply to discharge it with costs on not less than twenty-four hours' notice.

8. Person substantially interested to be made respondent

In every application the person substantially interested shall be made respondent.

9. Interlocutory matters may be dealt with on application

All interlocutory matters may be dealt with upon application.

10. Opposed applications to be heard in open court

All opposed applications shall be heard in open court.

ORDER 23

ARRESTS, INTERDICTS, ATTACHMENTS AND *MANDAMENTEN VAN SPOLIE*

1. Method of applying for arrest, etc

(1) Except where otherwise provided, an application to the court for an order of arrest, interdict or attachment or for a *mandament van spolie* under section 12 of the Act may be made *ex parte*.

(2) An *ex parte* application referred to in subrule (1) shall be upon affidavit stating shortly the facts upon which the application is made and the nature of the order applied for.

2. Security for damages

The court may, before granting an order upon such an application, require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it thinks fit.

3. Procedure where summons includes interdict; return day for ex parte orders

(1) Where a summons referred to in section 38 of the Act is to include an interdict in terms of that section a notice in the form prescribed in form No CIV 8 shall be endorsed by the plaintiff on the summons.

(2) An order made *ex parte*, other than an order—

- (a) for the arrest of any person; or
- (b) referred to in section 38 of the Act; or
- (c) of attachment for rent under section 34 of the Act;

shall call upon the respondent to show cause against it at a time stated in the order, which shall not be a shorter time after service than the time allowed by these rules for appearance to a summons, unless the court gives leave for shorter notice.

(3) The return day of an order made *ex parte* may be anticipated by the respondent upon twenty-four hours' notice to the applicant.

4. Service of ex parte order and discharge on cause shown

(1) A copy of an order made *ex parte* and of the affidavit, if any, on which it was made shall be served forthwith on the respondent thereto.

(2) Where cause is shown against an order made *ex parte* the court may order the deponent to any such affidavit to attend for cross-examination.

(3) An order made *ex parte* may be discharged or varied by the court on cause shown by any person affected thereby, and on such terms as to costs as it thinks just.

5. Discharge on giving of security

(1) An order made *ex parte* shall *ipso facto* be discharged upon security being given by the respondent for the amount to which the order relates, together with costs.

(2) Such security may be given to abide the result of the action instituted or to be instituted, and may be assigned by the respondent to part only of the order, and shall in that event operate to discharge the order as to that part only.

(3) Unless the court otherwise orders, the messenger may release any person arrested upon such person giving security to the satisfaction of the messenger that he will appear upon the return day of the arrest.

6. Minutes of order

(1) The minutes of any order required for service or execution shall be—

- (a) drawn up by the party entitled thereto; and
- (b) approved by the clerk of the court.

(2) The copies of such minutes for record and service shall be made by such party, and the copy for record shall be signed by the clerk of the court.

7. When interdict or warrant for arrest may be executed

An interdict or a warrant of arrest other than for civil imprisonment may be executed on any day, at any hour and at any place.

ORDER 24

SUBPOENAS

1. Attendance of witnesses to be secured by subpoena

(1) The process of the court for compelling the attendance of any person to give evidence or to produce any books, papers or documents shall be by subpoena issued by the clerk of the court and sued out by the party desiring the attendance of such person.

(2) In the case of evidence taken on commission, such process shall be sued out by the party desiring the attendance of the witness, and issued by the commissioner.

2. Service of subpoena by messenger

(1) There shall be delivered to the messenger, if the party suing out the subpoena desires it to be served through the messenger, together with the subpoena—

- (a) so many copies thereof as there are witnesses to be summoned; and
- (b) such sum or sums of money as the party for whom they are to be summoned intends that the messenger shall pay or offer to the witnesses respectively for their conduct money.

(2) The court may set aside the service of any subpoena if it appears that the witness served was not given reasonable time to enable him to appear in pursuance of the subpoena.

3. Person failing to appear

(1) If any person, being duly subpoenaed to give evidence, fails to appear when required during the proceedings, the court, upon being satisfied upon oath or by the return of the messenger that—

- (a) such person has been duly subpoenaed; and
- (b) his reasonable expenses have been paid or offered to him;

may issue a warrant for his apprehension in order that he may be brought before the court to give evidence.

(2) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control, which the party requiring his attendance desires to show in evidence fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena, the court may, if satisfied as referred to in subrule (1), impose a penalty not exceeding fifty dollars for his default.

ORDER 25

INTEREST

1. Interest from date of issue of summons

Where the defendant has not consented to judgment before the expiration of the time allowed for appearance to defend, interest from the date of issue of the summons to the date of judgment may in the judgment be added to the amount claimed in the summons at the rate claimed in the summons or, if no such rate is claimed, at the rate for the time being prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

[Rule amended by s.i 218 of 1992]

2. Interest from date of judgment

A judgment for payment of money shall bear interest from the date of judgment until payment at such rate as may be adjudged, at the rate for the time being prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

[Rule amended by s.i 218 of 1992]

ORDER 26

EXECUTION

1. Warrant for execution of judgment

- (1) The process for the execution of any judgment for—
 - (a) the payment of money; or
 - (b) the delivery of goods or premises; or
 - (c) ejectment;

shall be by warrant issued and signed by the clerk of the court and addressed to the messenger.

(2) Such process may be sued out by any person in whose favour any such judgment has been given if such judgment is not then satisfied, stayed or suspended.

(3) Such process may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the messenger by the party who has sued out such process.

(4) A request in writing made from time to time by such person to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

(5) Any alterations in such process shall be initialled by the clerk of the court before such process is issued by him.

(6) Any such process shall be invalid if a wrong person is named therein as a party, but no such process shall be invalid merely by reason of the misspelling of any name therein or of any error as to date.

(7) Except where judgment has been entered by consent or default, execution shall not be issued before the day following that on which the judgment is given without special leave of the court, applied for at the time of granting the judgment.

2. Furnishing of security by judgment creditor

(1) Where the messenger is in doubt as to the validity of any attachment or contemplated attachment, he may require the party suing out the process to give security to indemnify him.

(2) Unless the summons commencing action has been served upon the defendant personally or he has entered appearance to defend or notice of attachment has been given to him personally—

- (a) if any property, corporeal or incorporeal, is attached in execution, the execution creditor shall, at least seven days before the day appointed for the sale of such property, give security to the satisfaction of the messenger for the payment to the execution debtor, if such attachment be set aside, of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment or of any proceedings consequent thereon, and if such security is not given the attachment shall cease to have effect:

Provided that the execution debtor may by endorsement to that effect on the writ of execution dispense with the giving of security under this rule;

- (b) if moneys are received by the messenger under any form of execution otherwise than as the proceeds of the sale in execution of property in respect of the attachment of which security has been given in terms of paragraph (a), such moneys shall not be paid to the execution creditor until he has given security for the restitution of the full amount received by the messenger if the attachment thereof is set aside:

Provided that the execution debtor may in writing over his signature dispense with the giving of such security.

(3) The prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution.

(4) Any surety bond or other document of security given in terms of this rule may be sued upon within a period of three months after the date of execution by the execution debtor without formal transfer thereof to him.

3. Cost of execution; order of execution by warrants; withdrawal of attachment; accounting for proceeds of sale in execution

(1) Unless otherwise ordered by the court, the costs and expenses of issuing and levying execution —

(a) shall be a first charge on the proceeds of the property sold in execution; and

(b) may, so far as such proceeds are insufficient, be recovered from the execution debtor as costs awarded by the court.

(2) Subject to any hypothec existing prior to attachment, all warrants of execution lodged with the messenger on or before the day immediately preceding the date of the sale in execution shall, subject to the provisions of subrule (21) of rule 7, rank *pro rata* in the distribution of the proceeds of the goods sold in execution.

(3) Withdrawal of attachment shall be effected by note made and signed by the messenger on the writ of execution that the attachment is withdrawn, stating the time and date of the making of such note.

(4) The messenger shall give notice in writing of the withdrawal and of the time and date thereof to the execution creditor and the execution debtor and to any person by whom a claim to the property attached has been lodged with him.

(5) Property shall not be released from attachment so long as an unsatisfied warrant of execution lodged under subrule (2) remains in the hands of the messenger.

(6) If any property taken in execution is claimed by any third party as his property, the messenger shall on receipt of the claim forthwith give notice thereof to the execution creditor.

(7) If the execution creditor gives the messenger notice within seven days thereafter that he admits the claim, he shall not be liable for any costs, fees or expenses afterwards incurred, and the messenger may withdraw from possession of the property claimed.

(8) On completion of any sale in execution of property, whether movable or immovable, the messenger shall attach to his return —

(a) a statement showing details of the property sold, the prices realised and the names and addresses of the purchasers; and

(b) a statement showing the distribution of the proceeds of the sale and of any deposit paid to the messenger.

[Subrule substituted by s.i 363 of 1995]

(9) A messenger shall not at a sale in execution purchase any of the property offered for sale either for himself or for another person.

(10) If after a sale in execution of property, whether movable or immovable, there remains any surplus with the messenger—

(a) it shall be liable to attachment for any other unsatisfied judgment debt;

(b) if there is no unsatisfied judgment debt, the messenger shall pay such surplus to the judgment debtor if he can be found and, if he cannot be found, into court.

(11) The clerk of the court shall, as soon as is practicable after the 2nd January in each year, pay into the Guardian's Fund to the credit of the judgment debtor any moneys paid into court in terms of paragraph (b) of subrule (10) at any time prior to the 1st October of the preceding year.

4. Judgment debtor a firm or member of a firm

(1) Where a judgment debtor is a partner in a firm and the judgment is against him for a separate debt, the court may, after notice to the judgment debtor and to his firm, appoint the messenger as receiver to receive any moneys payable to the judgment debtor in respect of his interests in the partnership.

(2) An appointment in terms of subrule (1) shall, until the judgment debt is satisfied, operate as an attachment of the interests of the judgment debtor in the partnership assets.

(3) Where the judgment is against a firm, the partnership property shall first be exhausted, so far as it is known to the judgment creditor, before the judgment is executed against the separate property of the partners.

4A. Notice to debtor of proposed execution

[Rule inserted by s.i 211 of 1987]

(1) Upon receiving—

(a) a warrant of execution against property; or

(b) a warrant of ejectment and execution against property; or

(c) a warrant of delivery and execution against property; the messenger shall, within twenty-four hours or as soon as circumstances permit, go to the house or place of business of the execution debtor and deliver to the debtor or leave at the house or place of business a notice warning the debtor of the date of the proposed execution of the warrant, which date shall not be sooner than forty-eight hours after the notice was so delivered or left:

Provided that the messenger need not deliver or leave such a notice in any case in which he has reasonable grounds for believing that immediate execution of the warrant is necessary in order to prevent the execution debtor from concealing or disposing of any property in order to avoid its attachment.

(2) An inadvertent failure by the messenger to deliver or leave a notice in terms of subrule (1) shall not invalidate any attachment, sale in execution or ejection effected in accordance with a warrant.

5. Execution of warrant; attachment of goods and sale in execution

(1) The messenger shall, upon receiving a warrant directing him to levy execution on movable property—

(a) go to the house or place of business of the execution debtor at the time and on the date specified in the notice served in terms of Rule 4A;

[Paragraph amended by s.i 211 of 1987]

(b) there demand payment of the judgment debt and costs or else require that so much movable property be pointed out as the messenger thinks sufficient to satisfy the warrant;

(c) if the judgment debt and costs, or part of the costs, are paid, forthwith endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him and countersigned by the debtor or his representative;

(d) if the judgment debt and costs are not paid in full, make an inventory and valuation of the property pointed out to him or, if the debtor does not point out property, make an inventory and valuation of so much of the movable property belonging to the debtor as he thinks sufficient to satisfy the warrant.

(2) If necessary for the execution of any such warrant the messenger may open any door on any premises or of any piece of furniture, if opening is refused or if there is no person there who represents the person against whom such warrant is to be executed, and the messenger may, if necessary, use force to that end.

(3) The messenger shall exhibit the original warrant of execution and shall deliver to the debtor or leave on the premises a copy thereof.

(4) As soon as the foregoing requirements of this rule have been complied with by the messenger, the goods so inventoried by him shall be deemed to be judicially attached.

(5) The messenger shall deliver a copy of the inventory signed by himself to the debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.

(5a) The messenger shall deliver a copy of the inventory signed by himself to the clerk of court

[Subrule inserted by s.i 363 of 1995]

(6) Where—

(a) money is found and attached, the number and kinds thereof shall be specified in the inventory;

(b) any documents are attached they shall be specified in the inventory;

and any such money or documents shall be sealed up and conveyed to the office of the messenger.

(7) Where any movable property has been attached in terms of this rule, the messenger shall remove the goods attached to some convenient place of security unless—

(a) the person whose movable property has been so attached undertakes in writing, together with some sufficient surety, unless the judgment creditor, in writing, dispenses with the joinder of surety, that the same shall be produced on the day appointed for its sale if the judgment creditor is not sooner satisfied in respect of his judgment debt, in which case the messenger shall leave the property so attached and inventoried, other than money or documents, upon the premises where the same was found;

(b) the goods consist of property inconvenient to remove, in which case the messenger may leave the same upon the premises and, unless an undertaking with or without surety, as the case may be, in terms of paragraph (a) is given, in the charge and custody of some person for him until the day appointed for the sale thereof;

(c) the messenger is instructed by the judgment creditor, in writing, to leave the goods on the premises, in which case the messenger shall leave the goods, which shall remain subject to attachment, on such premises until he is instructed by the judgment creditor to remove the goods and on being so instructed he shall, unless an undertaking with or without surety, as the case may be, in terms of paragraph (a) is given, remove the goods as soon as is reasonably possible in the circumstances.

(8) A custodian appointed in terms of subrule (7) may not—

(a) use, let or lend the attached goods;

- (b) permit the attached goods to be used, let or lent;
- (c) in any way do anything which will decrease the value of the attached goods;

and, if the attached goods produce any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he is responsible for the goods originally attached.

(9) If such custodian makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody.

(10) Any movable property sold in execution of the process of the court shall be sold—

- (a) publicly and for cash to the highest bidder;
- (b) by the messenger or, with the approval of a magistrate by an auctioneer or other person appointed by the messenger.

(11) The place where a sale in terms of subrule (10) is held shall be the place where the property was taken or to which it was removed or such other place as may be advantageous for the sale thereof.

(12) The messenger, if in his opinion the value of the attached goods exceeds fifty dollars, shall publish notice of the sale in some local or other newspaper circulating in the district.

(13) Subject to the provisions of subrule (15), at least seven days before the day appointed for the sale the messenger shall affix a notice—

- (a) on the door of the court-house or of some other public building in the place where the court is held; and
- (b) at or as near as may be to the place where the sale is actually to take place;

and such notice shall set out the day and place where such sale is to be held.

(14) Subject to the provisions of subrule (15), the day appointed for the sale shall be not less than fourteen days after the time of seizure or attachment.

(15) Where the attached goods are of a perishable nature or the execution debtor consents, the court may, on application, reduce either or both of the periods mentioned in subrules (13) and (14) to such extent and on such conditions as it thinks just.

(16) A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the warrant and the costs of the sale.

6. Attachment of leases, negotiable instruments, etc

(1) Where the property attached in execution is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment—

- (a) shall not be complete until after notice to the lessor, lessee or person liable on the bill of exchange or other security, as the case may be; and
- (b) shall not be valid unless and until the instrument in question is taken possession of by the messenger and notice has, in the case of a registered lease, been given to the Registrar of Deeds concerned.

(2) Where the movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person—

- (a) attachment shall be effected by service by the messenger on the execution debtor and on such third person of notice of the attachment with a copy of the warrant of execution, which service may be effected as if such notice were a summons;
- (b) the messenger may, upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller, enter upon the premises where such property is and make an inventory and valuation of the property.

(3) The method of attachment of property attached under section 34 of the Act shall, *mutatis mutandis*, be the same as that of attachment in execution.

7. Execution against immovable property

(1) A warrant of execution against immovable property shall state the situation and nature of the immovable property sought to be attached sufficiently to enable it to be identified.

(2) The mode of attachment of immovable property shall be by notice by the messenger served in like manner as a summons, together with a copy of the warrant of execution, upon—

- (a) the execution debtor as owner thereof; and
- (b) the Registrar of Deeds or other officer charged with the registration of such immovable property; and
- (c) all registered holders of bonds registered against the property attached; and
- (d) if the property is in the occupation of some person other than the execution debtor, such occupier; and
- (e) the local authority in whose area the property is situated.

(3) After attachment the messenger shall—

- (a) ascertain and record whether the property is subject to any claim ranking in priority to that of the execution creditor; and
- (b) thereupon notify the judgment creditor of the existence of any such claim to enable the latter to proceed in terms of subsection (2) of section 20 of the Act.

(4) The messenger may by notice, served in like manner as a summons, require the execution debtor to deliver up to him forthwith all documents in his possession or under his control relating in any way to his title to the property.

(5) Where the property is situated in some province other than that in which the judgment was given, the messenger of the court of the latter province shall forward the writ to the messenger of the court of the province in which the property is situated, who shall proceed to attach the property in the manner provided in this rule.

(6) Subject to rule 8, the messenger shall—

- (a) appoint a day and place for the sale of the property, such day being, except by special leave of the court, not less than one month after service of the notice of attachment;
- (b) cause the sale to be advertised at least twice in some local or other newspaper circulating in the area by an advertisement containing a short description of the property and its situation, the time and place for the holding of the sale and the material conditions thereof;
- (c) when the advertisement is first forwarded for publication, also forward a copy thereof by registered post to—
 - (i) every judgment creditor who has caused the property to be attached; and
 - (ii) every mortgagee thereof whose address is reasonably ascertainable.

[Subrule amended by s.i 162 of 1995]

(7) The conditions of sale shall be prepared by the execution creditor who shall, not less than twenty-eight days prior to the proposed date of the sale, deliver—

- (a) two copies thereof to the messenger; and
- (b) one copy thereof to each person who is entitled to notice of the sale.

(8) Any interested party may, not less than twenty-one days prior to the proposed date of the sale, upon twenty-four hours' notice to such other persons as have received a copy of the conditions of sale prepared in terms of subrule (7) and to the execution creditor, apply to a magistrate for any modification of such conditions of sale and the magistrate may make such order on the application as he thinks just.

(9) The execution creditor may appoint the conveyancer for the purposes of sale and transfer.

(10) The execution creditor or any person having an interest in the due and proper realization of the property may, by notice given to the messenger within fourteen days after attachment, but subject to the provisions of subrules (11) and (12)—

- (a) require that such property shall be sold by an auctioneer in the ordinary course of business; and
- (b) nominate the auctioneer to be employed.

(11) Where a person other than the execution creditor gives the notice mentioned in subrule (10)—

- (a) he shall at the same time deposit with the messenger a sufficient sum to cover the additional expense of a sale by an auctioneer in the ordinary course of business;
- (b) if the deposit in terms of paragraph (a) is not made the notice shall be void;
- (c) if the services of an auctioneer are not obtainable the notice shall lapse;
- (d) where the sale takes place the auctioneer's fees and expenses shall be met in the first place from the surplus which remains after the execution creditor has been satisfied:

Provided that if this surplus is insufficient or if there is no surplus, then the auctioneer's fees and expenses shall be met from the deposit;

- (e) after the auctioneer has been satisfied the messenger shall return the deposit, or so much of it as remains, to the depositor.

(12) If two or more notices in terms of subrule (10) are given the first shall have the preference.

(13) The sale shall be by public auction without reserve and the property shall, subject to the conditions of sale, be sold to the highest bidder.

(14) If no notice is given in terms of subrule (10), the sale shall be conducted by an auctioneer, with the approval of a magistrate, or by the messenger himself if—

- (a) there is no auctioneer carrying on business in the area in which the messenger operates; or
- (b) it is expedient, where a magistrate has so directed, that the messenger should conduct the sale.

[Subrule substituted by s.i 165 of 1994]

(15) The sale shall be held in the presence of a magistrate who shall certify to a provincial magistrate, if that is the case, that the sale was duly and properly conducted and, in his certificate, the magistrate shall state the name of the execution debtor, the amount of the purchase price and the name of the purchaser.

[Subrule substituted by s.i 363 of 1995]

(15a) If the provincial magistrate is satisfied that the highest price offered is reasonable, having regard to the circumstances of time and place and to the state of the property market, he shall within seven days from the date of the sale declare the highest bidder to be the purchaser, subject to confirmation under subrule (15d).

[Subrule inserted by s.i 363 of 1995]

(15b)—

- (a) where all persons interested including the judgment debtor consent thereto, or otherwise with the consent of a provincial magistrate, the messenger may sell immovable property attached in execution otherwise than by public auction, if he is satisfied that the price offered is fair and reasonable and that the property is unlikely to realise a larger sum by a sale at a public auction;
- (b) if, after a sale by public auction, a provincial magistrate is not satisfied that the highest price offered is reasonable as provided in subrule (15a), the provincial magistrate may direct that the property be sold by private treaty for such price, being greater than the highest offer made at the public auction, as he deems fair and reasonable:

Provided that if the messenger is unable to sell the property by private treaty at a price greater than the highest offer, the property shall again be offered for sale by public auction.

[Subrule inserted by s.i 363 of 1995]

(15c) Any person having an interest in a sale may apply to court to have it set aside on the ground that the sale was improperly conducted or that the property was sold for an unreasonably low sum or on any other reasonable ground:

Provided that any person making such application shall give due notice of the application to the messenger stating the grounds of his objection to the confirmation of the sale.

[Subrule inserted by s.i 363 of 1995]

(15d) If no objection is made to court within seven days from the date that a provincial magistrate declares the highest bidder to be the purchaser in terms of subrule (15a) or from the date of a sale by private treaty in terms of subrule (15b), as the case may be, the provincial magistrate shall confirm the sale.

[Subrule inserted by s.i 363 of 1995]

(16) Where the property is situated in a province other than that in which the judgment was given, the sale of the property shall be effected by the messenger of the court of the province in which it is situated in the manner provided by this rule.

(17) Upon confirmation of the sale in terms of subrule (15d), the messenger shall give transfer of the property to the purchaser against payment of the purchase price and upon performance of the conditions of sale.

[Subrule substituted by s.i 363 of 1995]

(18) The messenger shall not pay out the purchase money until transfer has been given to the purchaser.

(19) The messenger shall forthwith pay into court all moneys received by him in respect of the purchase price.

(20) The messenger shall immediately after the sale prepare in order of preference as provided in this rule, a plan of distribution of the purchase money received and—

- (a) the plan shall lie in his office for a period of fourteen days for inspection by persons having an interest therein, unless they have signified in writing their agreement to the plan;
- (b) a copy of the plan shall be lodged with the clerk of the court.

(21) After deduction from the purchase money of the costs of execution, the following shall be the order of preference—

- (a) the claims of any creditors ranking in priority to the judgment creditor in their legal order of preference;
- (b) the claims of the judgment creditor secured to the extent of his judgment and costs;
- (c) the claims of other creditors secured in respect of that property in their legal order of preference.

(22) If any person having an interest in such plan objects thereto he shall, within fourteen days, give notice in writing to the messenger, clerk of the court and all other persons having an interest therein of the particulars of his objection and may bring such plan before the court for review and—

- (a) such review shall be on seven days' notice to the said messenger, clerk of the court and other interested persons; and
- (b) the court, on review, may hear and determine the matter in dispute in a summary way and may thereafter amend or confirm the plan of distribution or may make such order as it thinks just.

(23) If—

- (a) no objection is lodged to such plan; or
- (b) the persons having an interest in such plan signify their concurrence therewith; or
- (c) such plan is confirmed on review;

the clerk of the court shall, on production of evidence that transfer has been given to the purchaser, pay to the messenger the amount paid into court under subrule (19).

(24) When the messenger has received such amount from the clerk of the court, he shall pay it out in accordance with the plan of distribution.

(25) The messenger shall, when endorsing or on annexing to the warrant the result of the execution required by rule 3 of Order 2, show also the disposal of the amount recovered by him, supported by the receipts of the judgment creditor and of the person entitled to the balance, if any.

8. Attachment of dwelling

[Rule inserted by s.i 162 of 1995]

(1) In this rule —

“dwelling” means a building or part of a building, including a flat, designed as a dwelling for a single family and includes the usual appurtenances and outbuildings associated with such a building;

“Secretary” means the Secretary of the Ministry responsible for the administration of the Housing and Building Act [*Chapter 22:07*].

(2) Whenever a dwelling is attached under rule 7, the messenger shall forthwith send the provincial magistrate or magistrate of the court from which the warrant of execution was issued, as the case may be, written notification that the dwelling has been attached and is to be sold in execution, and the messenger shall take no further steps in regard to the sale of the dwelling for a period of forty days, pending notification by the magistrate concerned in terms of subrule (4).

(3) Upon receiving notification of the attachment of a dwelling in terms of subrule (2), the magistrate shall forthwith send the Secretary —

- (a) written notification that the dwelling has been attached under this Order and is to be sold in execution; and
- (b) copies of all documents and particulars relating to its attachment.

(4) If, within 30 days after being sent notification under subrule (3), the Secretary notifies the magistrate in writing that he proposes to satisfy or settle the judgment creditor’s claim from the National Housing Fund established by section 14 of the Housing and Building Act [*Chapter 22:07*], the magistrate shall, without undue delay, notify the messenger in writing.

(5) On receiving notification under subrule (4), the messenger shall —

- (a) inform the judgment creditor of the Secretary’s proposal; and
- (b) take no further steps in regard to the sale of the dwelling concerned until a period of sixty days has elapsed from the date on which he received such notification.

(6) For the purpose of calculating any time-limit under this Order, any period during which the messenger is required by subrule (2) or (5) to take no steps in regard to the sale of any dwelling shall be disregarded.

ORDER 27

INTERPLEADER

1. When interpleader relief may be claimed

(1) Relief by way of interpleader may be granted—

- (a) where the person seeking relief (in this Order called the applicant) is under any liability for debt, money or movable property, for or in respect of which he is or expects to be sued by two or more parties (in this Order called the claimants) making adverse claims thereto;
- (b) where the applicant is the messenger of the court and claim is made to any property attached by him in execution under any process of the court or to the proceeds or value of any such property by any person other than the person against whom the process issued, and the execution creditor has not after notice admitted the claim as provided in subrule (7) of rule 3 of Order 26.

(2) When the execution creditor has not admitted the claim as provided in subrule (7) of rule 3 of Order 26, the messenger shall prepare and sue out a summons as is prescribed in form No CIV 33.

2. Applications to be commenced by summons

The applicant may take out a summons, calling upon the claimants to appear and state the nature and particulars of their claims and either to maintain or relinquish them.

3. Affidavit by applicant

An applicant other than the messenger shall annexe to the summons sued out in terms of rule 3 an affidavit setting out that—

- (a) he claims no interest in the subject matter in dispute other than for charges or costs; and
- (b) he does not collude with any of the claimants; and
- (c) he is willing to pay or transfer the subject matter into court or dispose of it as the court may direct.

4. Orders which court may make

(1) If a claimant—

- (a) does not appear in response to the summons; or
- (b) having appeared, neglects or refuses to comply with any order made after his appearance;

the court may make an order declaring him and all persons thereafter claiming under him barred against the applicant, but the order shall not affect the right of the claimants between themselves.

(2) If one or more claimants appear in pursuance of the summons the court may take one or more of the following steps—

- (a) order any such claimant to state, orally or in writing, on oath or otherwise, as to the court may seem expedient, the nature and particulars of his claim;
- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose;
- (c) order which of the claimants shall be plaintiff and which the defendant for the purpose of trial;
- (d) try the matters in dispute in a summary manner.

5. Procedure where matters in issue are tried

Where the matters in issue are tried, whether summarily or otherwise, the provisions of Order 19 as to the trial of an action shall, *mutatis mutandis*, apply.

6. Orders as to costs

The court may, in and for the purpose of any interpleader proceedings, make—

- (a) all such orders as to any additional expenses of execution occasioned by the claim as it thinks just; and
- (b) such order as it thinks just as to the payment of costs incurred by the applicant.

ORDER 28

CIVIL IMPRISONMENT

1. Process to be signed by clerk of court

(1) The process of the court for summoning any person for civil imprisonment shall be signed and issued by the clerk of the court, and shall also be signed by the party suing out the same.

(2) When the judgment or order in respect of which proceedings for civil imprisonment are taken was given in any other court, the clerk of the court shall not issue any process until there has been lodged with him a copy of the judgment or order in such other court duly certified by the clerk of such court.

1A. Inquiry into judgment debtor's failure to pay

(1) Where the judgment debtor has not paid the amount due, on the return day of the summons or any adjournment thereof the court shall inquire, in accordance with subrule (2) and in the presence of the judgment debtor or his legal practitioner, into the question of the judgment debtor's failure to pay the amount due:

Provided that, if the judgment debtor has failed to appear, either in person or represented by a legal practitioner, the court may make a decree of civil imprisonment against him and authorize the issue of a warrant for his arrest, if the court is satisfied that the summons was served upon him personally.

(2) In an inquiry in terms of subrule (1), the court shall —

- (a) call upon the judgment debtor to adduce evidence as to his financial position; and
- (b) receive any evidence that may be adduced by or on behalf of the judgment debtor or the judgment creditor in regard to the judgment debtor's financial position and his ability to pay the amount due, whether such evidence is adduced orally or by affidavit or in any other manner that the court considers appropriate; and
- (c) where evidence is adduced orally, permit the cross-examination of the witness concerned.

[Rule inserted by s.i 248 of 1993]

1B. When court may issue decree of civil imprisonment

(1) After an inquiry in terms of rule 1A, the court —

- (a) may issue a decree of civil imprisonment against the judgment debtor and authorize the issue of a warrant for his arrest, if the court is satisfied, having taken into account the matters referred to in subrule (2) and in

section 27 of the Act, that the judgment debtor has the means to pay or the ability to earn the amount of the judgment debt, and that his failure or refusal to satisfy the judgment debt is wilful;

- (b) shall not issue a decree or authorize the issue of a warrant referred to in paragraph (a), if the court is not satisfied as provided in that paragraph, or if the judgment debtor proves, in terms of proviso (ii) to section 27 of the Act, that he has no means of satisfying the judgment debt.

(2) In determining the ability of a judgment debtor to pay the amount due, the court shall take into account the following matters —

- (a) the nature and extent of his income and assets; and
(b) the amounts needed by him for his necessary expenses and those of his dependants; and
(c) any amounts needed by him to make payments in terms of any court order or agreement; and
(d) if he is unemployed, the reason therefor; and
(e) if he is employed, whether a garnishee order would be appropriate, in which event the court may adjourn the inquiry to enable proceedings for such an order to be instituted in terms of Order 29.

[Rule inserted by s.i 248 of 1993]

1C. Ancillary orders

In proceedings under this Order, the court may —

- (a) limit the term of imprisonment of a judgment debtor;
(b) grant such order, including an order as to costs, and give such directions, as the court thinks appropriate.

[Rule inserted by s.i 248 of 1993]

2. Warrant to be signed by clerk of court

(1) The warrant of the court for the civil imprisonment of any person shall be signed and issued by the clerk of the court, and shall be addressed to the messenger of the court and to the keeper of a specified prison.

(2) A warrant for civil imprisonment shall bear on its face the date when the decree was made and, if any payments have been made under the decree, the date of the last payment.

3. Debtor failing to pay instalments

Where an order is made for civil imprisonment to be suspended so long as certain instalments are paid, the clerk of the court may, before issuing a warrant for civil imprisonment, require the party applying therefor to satisfy him that the debtor has failed in due payment of any such instalment.

4. Effect of multiple orders for civil imprisonment

Where there are two or more orders for civil imprisonment against the same debtor, such orders shall be cumulative with effect according to priority of issue of the respective warrants unless otherwise directed by the court.

5. When warrant for civil imprisonment may be executed

A warrant for civil imprisonment may be executed—

- (a) at any hour on any day except Sunday, Christmas Day and Good Friday; and
(b) at any place except within the residence of the person to be imprisoned or the precincts thereof:

Provided that a magistrate may, on good cause shown, grant leave for a warrant for civil imprisonment to be executed on a Sunday, Christmas Day or Good Friday or to be executed within the residence of the person to be imprisoned or the precincts thereof, as the case may be.

ORDER 29

GARNISHEE ORDERS

1. How application to be made

(1) Application for a garnishee order may be made *ex parte* by lodging such application with the clerk of the court.

(1a) Not later than fourteen days before applying for a garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor, the applicant shall cause written notice of the application, together with the supporting documents that will be filed with the application, including a copy of the judgment that created the judgment debt concerned and the judgment creditor's affidavit setting forth the amounts still due to him in terms of the judgment to be served on—

- (a) the Director of the Salary Service Bureau and the head of the Ministry, department or force in which the judgment debtor is employed, where the judgment debtor is employed by the State otherwise than in the Zimbabwe National Army or in Parliament; or
(b) the Chief Paymaster of the Zimbabwe National Army and the Commander of the Army, where the judgment debtor is employed in the Zimbabwe National Army; or

- (c) the Director of the Salary Service Bureau and the Secretary to Parliament, where the judgment debtor is a member of the staff of Parliament or is a Senator or member of the House of Assembly.

[Subrule inserted by s.i 162 of 1985 and amended by s.i 61 of 1986]

(1b) A notice in terms of subrule (1a) shall set forth the date on which the application for the garnishee order is to be made and sufficient information to identify the judgment debtor, including—

- (a) his full names; and
(b) his employee code number or force number; and
(c) the Ministry, department, force or institution in which he is employed, as appropriate.

[Subrule inserted by s.i 162 of 1985]

(1c) As soon as possible after receiving a notice in terms of subrule (1a), the Director of the Salary Service Bureau or the Chief Paymaster of the Zimbabwe National Army, as the case may be, shall send the applicant for the garnishee order and the judgment debtor a notice setting forth—

- (a) the amount of any money that is or will be payable to the judgment debtor by way of salary or wages; and
(b) the amount and nature of any deductions required to be made from such salary and wages by the Director or the Chief Paymaster; and
(c) the earliest date from which any payment may be made in terms of a garnishee order.

[Subrule inserted by s.i 162 of 1985]

(2) An application in terms of subrule (1) shall be supported by an affidavit setting forth—

- (a) that the applicant has obtained judgment against the judgment debtor in a magistrates court; and
(b) that such judgment is still unsatisfied, naming the amount still payable thereunder; and
(c) that the garnishee resides, carries on business or is employed within the province and is or will be indebted to the judgment debtor, setting out, so far as is known to the applicant—
(i) the cause of the debt; and
(ii) whether or not it is for salary or wages; and
(iii) the amount of the debt or that such amount is not known to the deponent; and
(d) if the debt is in respect of salary or wages, that upon the facts known to the applicant, which shall be stated in the affidavit, the judgment debtor will, after the execution of the order, have a sufficient balance of income to maintain himself and those dependent upon him.

(3) Where an application for a garnishee order is made to a court other than that in which judgment was given, there shall be annexed to the affidavit referred to in subrule (2) a certified copy of the judgment.

(3a) Where an application for a garnishee order is made against the State for the attachment of salary or wages owed by the State to a judgment debtor, there shall be annexed to the affidavit referred to in subrule (2) a copy of the notice sent by the Director of the Salary Service Bureau or the Chief Paymaster of the Army, as the case may be, in terms of subrule (1c).

[Subrule inserted by s.i 162 of 1985]

(4) The clerk of the court shall, as soon as possible, lay the papers referred to in subrules (1), (2), (3) and (3a) before a magistrate, who may refuse or grant the application in whole or in part:

Provided that—

- (i) the magistrate before whom such papers are laid may require that the applicant appear in support of his application in open court and the court may thereafter refuse or grant the application in whole or in part.
(ii) in the case of an application for a garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor, the magistrate before whom such papers are laid shall direct that service of the order shall not restrain the alienation of any debt relating to such salary or wages until the date specified by the Director of the Salary Service Bureau or the Chief Paymaster of the Zimbabwe National Army in terms of paragraph (c) of subrule (1c).

[Subrule amended by s.i 162 of 1985]

(5) If in open court the judgment debtor admits sufficient of the facts set out in subrules (2) and (3) to warrant an attachment being granted, such admission shall be recorded and application for a garnishee order may be made orally without an affidavit.

(6) On any application in terms of this rule the court may require such further evidence as it thinks fit.

2. Notes to appear on order

(1) The clerk of the court shall note upon the face of an order made under subsection (1) of section 33 of the Act the day and hour at which it was made.

(2) An order referred to in subrule (1) shall bear on its face the following note in bold type—

- (a) **“TO THE ABOVE-NAMED GARNISHEE. If the debt due by you to the above-named judgment debtor was not owing both at the day and hour abovementioned and at the time when this order was served upon**

you, or if the debt is alleged to be in respect of future salary or wages and such debt will not become due or is subject to any set off or lien of some other person, you should appear at the court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over.”;

- (b) “TO THE ABOVE-NAMED JUDGMENT DEBTOR. If the judgment against you has been satisfied, or is, for any reason, no longer operative against you, or if the debt is due to you or to become due to you for salary or wages and its attachment will not leave you sufficient means to enable you to maintain yourself and those dependent on you, you should appear at the court and prove the facts; but you cannot be heard on any other point.”

2A. Garnishee order against the State

(1) In the case of a garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor, the order made under subsection (1) of section 33 of the Act shall be served on the judgment debtor and upon the persons specified in paragraph (a), (b) or (c), as the case may be, of subrule (1a) of rule 1.

(2) In the case of a garnishee order against the State, other than a garnishee order referred to in subrule (1), the order made under subsection (1) of section 33 of the Act shall be served on the head of the Ministry, department or force that is responsible for holding the moneys or paying the debt, as the case may be, that is to be attached.

[Subrule inserted by s.i 162 of 1985]

3. Opposition by judgment debtor

(1) The judgment debtor may appear on the return day and shall have a locus standi to oppose the confirmation of the order, but only on the ground that—

- (a) the judgment had been satisfied otherwise than under the garnishee order or was for some other reason not operative against him at the time when he received notice of the garnishee application; or
(b) the debt sought to be attached is for salary or wages and its attachment will not leave him a sufficient amount to maintain himself and those dependent on him.

(2) If, on the return day, the judgment debtor satisfies the court that the judgment was not so operative, the order shall be set aside, and all the subsequent rules of this Order shall be read subject to this provision.

(3) If it is shown to the court that—

- (a) the debt is due for salary or wages; and
(b) its attachment, in whole or in part, will not leave the judgment debtor a sufficient amount to maintain himself and those dependent upon him;

the order shall be set aside as to such amount and shall only apply to the balance above such salary or wages, and all the subsequent rules of this Order shall be read subject to this provision.

4. Garnishee to pay money to messenger

If the garnishee pays any money pursuant to the order of the court he shall pay it to the messenger who shall retain the amount until the return day and shall thereafter deal with it in accordance with the order made by the court.

5. Allegation by judgment debtor that debt satisfied

(1) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him, rules 4, 5 and 6 of Order 27 shall apply to the subsequent proceedings in the matter as if—

- (a) the garnishee had taken out an interpleader summons under that Order; and
(b) the judgment creditor and the judgment debtor were claimants within the meaning of that Order.

(2) After hearing the parties or such of them as appear the court may—

- (a) order execution against the garnishee:

Provided that no garnishee order against the State for the attachment of salary or wages owed by the State to a judgment debtor shall require any payment to be made by the State before the date specified by the Director of the Salary Service Bureau or the Chief Paymaster of the Army in terms of paragraph (c) of subrule (1c) of rule 1; or

[Proviso inserted by s.i 162 of 1985]

- (b) declare the claims of any person to the debt attached to be barred; or
(c) dismiss the application; or
(d) make such other order as it thinks just.

6. Judgment debtor ceasing to be employed by garnishee

Where a garnishee order has been made for the attachment of salary or wages to be earned in the future and thereafter the judgment debtor ceases to be employed by the garnishee, the latter shall immediately give notice to the judgment creditor or his legal practitioner.

ORDER 30

RESCISSON, VARIATION OR CORRECTION OF JUDGMENTS AND ORDERS

1. Application for rescission or variation of default judgment

(1) Any party against whom a default judgment is given may, not later than one month after he has knowledge thereof, apply to the court to rescind or vary such judgment.

(2) Any application in terms of subrule (1) shall be on affidavit stating shortly—

(a) the reasons why the applicant did not appear or file his plea; and

(b) the grounds of defence to the action or proceedings in which the judgment was given or of objection to the judgment.

(3) Save where leave has been given to defend as a pauper under Order 5, no application in terms of subrule (1) shall be set down for hearing until the applicant has paid into court, to abide the directions of the court—

(a) the amount of the costs awarded against him under such judgment; and

(b) the sum of ten dollars as security for the costs of the application.

(4) Unless the applicant proves to the contrary, it shall be presumed that he had knowledge of such judgment within two days after the date thereof.

(5) Where money has been paid into court under subrule (3) and has not been paid out after two years of the date on which it was paid into court, the clerk of the court shall return the money to the applicant and shall, at the same time, give notice to the respondent that he is doing so.

(6) If the applicant cannot be found, the money referred to in subrule (5) shall be paid into the Guardian's Fund to the credit of the applicant.

2. Orders which court may make

(1) The court may on the hearing of any application in terms of rule 1, unless it is proved that the applicant was in wilful default—

(a) rescind or vary the judgment in question; and

(b) give such directions and extensions of time as necessary for the further conduct of the action or application.

(2) The court may also make such order as it thinks just in regard to moneys paid into court by the applicant.

(3) If an application in terms of rule 1 is dismissed the default judgment shall become a final judgment.

3. Application of Order to rescission of other judgments

The rules contained in this Order shall, *mutatis mutandis*, apply to any judgment which may, under section 39 of the Act, be rescinded, varied or corrected by the court.

4. Application for rescission by person affected by judgment

(1) Any judgment of the court may, on the application of any person affected thereby who was not a party to the action or matter, made within seven days after he has knowledge thereof, be so rescinded, varied or corrected by the court.

(2) The provisions of rules 1 and 2 shall, *mutatis mutandis*, apply to any application referred to in subrule (1).

ORDER 31

APPEALS

1. Application for reasons for judgment

(1) Upon a request in writing by any party made within seven days after judgment and before noting an appeal and upon payment by such party of a fee of ten dollars, the magistrate shall within fourteen days deliver to the clerk of the court a written judgment which shall become part of the record showing—

(a) the facts found to be proved; and

(b) his reasons for judgment.

[Subrule amended by s.i 289 of 1983]

(2) The clerk of the court shall forthwith on receipt from the magistrate of such judgment, notify the party applying therefor of the fact that the judgment is available.

2. Method of noting appeal or cross-appeal

(1) An appeal may be noted within—

(a) twenty-one days after the date of the judgment appealed against; or

(b) fourteen days after the delivery to the clerk of the court by the magistrate of a written judgment in terms of subrule (1) of rule 1;

whichever period is the longer.

(2) An appeal shall be noted by—

(a) the delivery of notice; and

(b) unless the court of appeal otherwise directs, giving security for—

(i) the respondent's costs of appeal to the amount of one hundred dollars;

(ii) the costs of the preparation of a copy of the record to the amount estimated by the clerk of the court:

Provided that a clerk of the court may, in his discretion, accept a written undertaking from the appellant to pay for the costs of the preparation of the record.

(3) A cross-appeal shall be noted by the delivery of notice within seven days after the delivery of the notice of appeal.

(4) A notice of appeal or of cross-appeal shall state—

(a) whether the whole or part only of the judgment or order is appealed against and, if part only, then what part; and

(b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

3. Magistrate to give reasons for judgment

(1) Upon the delivery of a notice of appeal the magistrate shall within fourteen days deliver to the clerk of the court a statement in writing showing, so far as may be necessary, having regard to any written judgment already delivered by him—

(a) the facts he found to be proved; and

(b) the grounds upon which he arrived at any finding of fact specified in the notice of appeal as appealed against; and

(c) his reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

(2) A statement delivered in terms of subrule (1) shall become part of the record.

(3) The provisions of this rule shall, so far as necessary, apply to a cross-appeal.

4. Time within which to prosecute appeal

(1) The party noting an appeal or cross appeal shall prosecute the same within such times as may be prescribed by rules of the Supreme Court.

(2) In default of prosecution in terms of subrule (1), the appeal or cross-appeal shall be deemed to have lapsed, unless the Supreme Court sees fit to make an order to the contrary.

[Rule amended by s.i 289 of 1983]

5. Record of trial

(1) The clerk of the court shall, as soon as reasonably possible after the date of—

(a) noting an appeal; or

(b) service upon him in terms of the rules of the High Court of an application for review of civil proceedings of the court;

lodge with the Registrar of the Supreme Court or the High Court, as the case may be, the original record together with four typed copies, which copies shall be certified as true and correct copies.

[Subrule as amended by s.i 289 of 1983]

(2) The copies of the record shall be—

(a) clearly typed with double or one and a half linear spacing in black record ink and on one side of the paper only;

(b) paginated from the first to the last page, whether the pages contain evidence or not, and at the top of each page containing evidence the name of the witness giving such evidence shall appear.

(3) Every tenth line on each page of the copies of the record shall be numbered in the left-hand margin.

(4) The evidence in the original record shall be paginated from the first to the last page.

(5) All records shall contain a complete and correct index of the evidence and of all documents and exhibits in the case, the nature of the exhibits being briefly stated in the index.

(6) All records shall be securely bound in stout covers disclosing—

(a) the names of the parties; and

(b) the court or public body appealed from or whose proceedings are being brought on review; and

(c) the names of the legal practitioners of the parties.

(7) Bulky records shall be divided into separate conveniently sized volumes numbered consecutively.

(8) Merely formal documents shall be omitted from the records, and no document shall be included more than once.

(9) Subject to the provisions of subrule (10), the clerk of the court, after consultation with the magistrate, shall omit from the record.—

(a) all documents which are not relevant to the appeal; and

(b) the evidence of any witness, or any part of such evidence, which is not relevant to the appeal.

(10) The magistrate may, on application by either party, order the clerk of court to include any document or evidence in the record.

6. Abandonment by respondent of judgment

A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing stating whether he abandons the whole or, if part only, what part of such judgment.

7. Agreement by parties that court's decision shall be final

Where the parties agree, under subsection (1) of section 40 of the Act, that the decision of the court shall be final—

(a) either party may lodge the memorandum of such agreement with the clerk of the court; and

(b) such memorandum shall thereupon become part of the record in the action or matter.

ORDER 32

COSTS AND MESSENGER'S FEES

1. Orders as to costs

(1) The court, in giving judgment or making any order, including therein adjournment and amendment, may make such order as to costs as it thinks just.

(2) The costs of any application or order or issue raised by pleadings may be—

(a) awarded by the court irrespective of the judgment in the action; or

(b) made costs in the action; or

(c) reserved to be dealt with on the conclusion of the action;

but if no order is made, such costs shall be costs in the action.

(3) Unless the court for good cause orders otherwise—

(a) costs of interim orders shall not be taxed until the conclusion of the action;

(b) a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.

(4) Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

2. Costs which may be allowed on taxation

(1) The scale of fees to be taken by legal practitioners as between party and party shall be that set out in Table A of the Second Schedule, in addition to necessary expenses:

Provided that the taxing officer may in exceptional cases and for good and sufficient reason depart from any of the provisions of Table A of the Second Schedule where strict adherence to such provisions would be inequitable.

(2) Such fees shall be allowable whether the work has been done by the legal practitioner or by his clerk, but shall be allowable only in so far as the work to which they have been allocated has in fact and necessarily been done.

(3) The clerk of the court shall on every taxation allow all such costs, charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the clerk of the court to have been incurred or increased through overcaution, negligence or mistake.

(4) Where an action is defended and it is impossible for a party to obtain the services of a local legal practitioner, he may employ the nearest available or some other legal practitioner, and upon proof thereof the court may, if costs are awarded to him, order that such costs shall include—

(a) the reasonable travelling expenses of such legal practitioner; and

(b) a special allowance not exceeding ten dollars for each day's absence from such legal practitioner's usual place of business:

Provided that if the legal practitioner employed is not the nearest available legal practitioner, the travelling expenses and special allowance so allowed shall not exceed the expenses and allowance which would have been allowed if the nearest available legal practitioner had been employed.

(5) Where the court is of opinion that at the hearing the party to whom costs are awarded has occupied time unnecessarily, or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to his legal practitioner.

(6) Where the costs in convention and reconvention are awarded against different parties, the court may award part of the hearing fee to one party and the remainder to the other party.

(7) Where costs in convention and reconvention are awarded to different parties—

(a) they shall on taxation be, as far as possible, apportioned to the respective claims; and

(b) any such costs which cannot be so apportioned shall be costs in convention.

(8) The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the clerk of the court without notice and inserted in the warrant.

3. Taxation of bill of costs

(1) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least forty-eight hours' notice of taxation to the other party.

(2) The clerk of the court shall thereupon in accordance with the provisions of Table A of the Second Schedule, tax and allow the costs and expenses so awarded, but witness fees shall not be allowed in taxation unless properly vouched for.

(3) Where more than one-fourth of the bill, excluding expenses, is taxed off, the party presenting the bill shall not be allowed any costs of taxation.

(4) Where a bill of costs as between legal practitioner and client is required to be taxed, taxation shall take place on at least forty-eight hours' notice thereof to the legal practitioner or client, whether an action therefor is pending or not.

4. Messenger's fees and charges

(1) The fees and charges to be taken by the messenger of the court shall be those prescribed by Table B of the Second Schedule.

(2) An account of fees or charges furnished by the messenger shall contain the following note—
“You may require this account to be taxed and vouched before payment.”

(3) Any party having an interest may, by notice in writing, require the fees, charges or expenses claimed by or paid to the messenger to be taxed by the clerk of the court, and may attend on such taxation.

(4) Upon taxation in terms of subrule (3) or in any other case where the clerk of the court so requires the messenger shall vouch to the satisfaction of the clerk of the court all expenses claimed by him.

(5) Where the messenger's fees or charges are taxed and passed in full the messenger shall be allowed an additional fee of one dollar for attending the taxation.

5. Review of costs and taxation

(1) Any party having an interest may, within seven days after he has knowledge thereof, bring before a magistrate for review—

(a) the costs and expenses claimed in any undefended action;

(b) the assessment by the clerk of the court of any costs and expenses;

(c) the taxation by the clerk of the court of any costs awarded in any action or matter;

(d) the taxation by the clerk of the court of any fees or charges of the messenger.

(2) A review in terms of subrule (1) shall be on forty-eight hours' notice to the party entitled to receive or liable to pay such costs or expenses, or to the messenger, as the case may be.

(3) Any party dissatisfied with the decision of the magistrate as to any item or part of any item which was objected to before the clerk of the court may, after notice to the other party, within forty-eight hours of the decision require the magistrate to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the magistrate:

Provided that, save with the consent of such magistrate, no case shall be stated where the total of the amount which he has disallowed or allowed as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than twenty dollars.

(4) Either party may within a further seven days submit contentions in writing to the magistrate.

(5) The magistrate shall lay the case forthwith, but no later than fourteen days after receipt of such contentions, together with the contentions submitted and his own report before a judge who may—

- (a) decide the matter upon the case and contentions so submitted, together with any further information which he may require from the magistrate; or
- (b) if he thinks fit, decide the matter after hearing the parties or their legal practitioners in chambers; or
- (c) refer the case for decision to the Supreme Court.

[Subrule as amended by s.i 289 of 1983]

(6) The judge or the court deciding a matter in terms of subrule (5) may make such order as he or it thinks fit, including an order that the unsuccessful party pay the opposing party a sum fixed by the judge or the court as costs.

6. Fees payable to clerk of court

The fees to be taken by the clerk of the court shall be those prescribed by Table C of the Second Schedule and shall be paid by affixing revenue stamps to the relevant document.

ORDER 33

GENERAL

1. Effect of failure to comply with rules

(1) Except as is otherwise provided in these rules, failure to comply with these rules or with any request made in pursuance thereof shall not be a ground for judgment against the party in default.

(2) Where any provision of these rules or any request made in pursuance of any such provision has not been fully complied with, the court may on application order compliance therewith within a stated time.

(3) Where any order made in terms of subrule (2) is not fully complied with within the time stated, the court may on application—

- (a) forthwith enter judgment in the action against the party so in default; or
- (b) adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as it thinks just.

(4) The court may on an application in terms of subrule (2) or (3) order such stay of proceedings as it thinks necessary.

2. Extension of prescribed time limits

(1) Any time limit prescribed by these rules, other than the period within which an appeal must be noted, may be extended—

- (a) by any party with the written consent of the opposite party; or
- (b) by the court on application and on such terms as to costs and otherwise as it thinks just.

(2) Where there has been short service without leave the court may, instead of dismissing the application, adjourn it until, at the earliest, the expiration of the period required for full service and thereupon any objection to short service shall lapse.

Adjournment or postponement of case

3. (1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent or by the court, either on application or of its own motion.

(2) Where an adjournment or postponement of a trial or hearing is made sine die—

- (a) the further hearing of the action, application or matter shall be subject to the same notice as was required for the trial of the action or for the hearing of the application or matter;
- (b) the notice in such case may be given by either party to the action or application.

(3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties agree to or as the court orders.

4. Failure by party to appear

(1) If a plaintiff or applicant does not appear at the time appointed for the trial of the action or the hearing of the application, the action or application may be dismissed with costs.

(2) If a defendant or respondent does not appear a judgment against him, not exceeding the relief claimed, may be given with costs.

5. Effect of withdrawal or dismissal of action or decree of absolution

(1) The withdrawal or dismissal of an action or a decree of absolution from the instance shall not be a defence to any subsequent action.

(2) If a subsequent action is brought for the same or substantially the same cause of action before payment of the costs awarded on such withdrawal, dismissal or decree of absolution, the court may on application, if it thinks fit and if the costs have been taxed and payment thereof has been demanded, order—

- (a) a stay of such subsequent action until such costs are paid; and
- (b) that the plaintiff shall pay the costs of such application to stay the proceedings.

6. *Validity of process and pleadings*

- (1) Every process, notice or pleading shall be legibly written or typed.
- (2) No process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.
- (3) If any party has in fact been misled by any error referred to in subrule (2) in any process or notice served on him, the court may on application grant him such relief as may be just and may for that purpose set aside the process or notice and rescind any default judgment given thereon.

7. *Records, etc, of previous trials*

(1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action, the clerk of the court shall on reasonable notice produce and show the original thereof, and the cost of copies shall not be allowed

(2) Where it is necessary to give in evidence in another court any such record, entry or document, a copy thereof certified by the clerk of the court may be given in evidence without production of the original.

8. *Joinder third party*

(1) The court may, on application by a person desiring to intervene in an action and having an interest therein, grant leave to such party to intervene on such terms as it thinks just.

(2) The court may, on application by any party to an action, order that another person shall be added either as a plaintiff or as a defendant, on such terms as it thinks just.

9. *When defendant may require plaintiff to provide security for costs*

- (1) Where a plaintiff —
 - (a) is not resident within Zimbabwe; or
 - (b) is an unrehabilitated insolvent; or
 - (c) has no substantial interest in the cause of action;

the defendant may, unless the plaintiff has obtained leave to sue as a pauper, after service of the summons and before close of the pleadings require him to give security for the costs of the action, not including the costs of any claim in reconvention made by the defendant:

Provided that if the fact relied upon first came to the knowledge of the defendant after the close of pleadings the defendant may within seven days after such fact has come to his knowledge require that such security be given.

(2) If a request in terms of subrule (1) is not complied with within forty-eight hours, the court may on application either stay the proceedings until such request is complied with or dismiss the action.

10. *Lapsing of summons*

If the summons in an action is not served within two years of the date of its issue or, having been served, the plaintiff has not within that time taken further steps in the prosecution of the action, the summons shall lapse:

Provided that where the plaintiff or his legal practitioner files an affidavit with the clerk of the court before the expiration of such period setting out—

- (a) that at the request of the debtor an extension of time in which to pay the debt claimed or any portion thereof has been granted to him; and
- (b) that in terms of the agreement judgment cannot, save in case of default, be sought within a period of two years from the issue of the summons; and
- (c) the period of the extension;

the summons shall not lapse until twelve months after the expiration of the period of extension.

11. *Repeals*

The rules specified in the Third Schedule are repealed.

ORDER 34

PERIODICAL COURTS

1. *Issue of process by police officer*

(1) The process of any court for summoning any person, whether as a party or as a witness, to appear before that court when held at any place other than the ordinary and stated place for holding of the same may be issued by the member-in-charge of a Zimbabwe Republic Police Station who is appointed by the Minister of Justice and Constitutional Affairs, by notice in the *Gazette*, as an issuer of process for the specified court.

[Subrule as amended by s.i 289 of 1983]

- (2) Process referred to in subrule (1) shall—
- (a) in substance correspond with the forms prescribed for process issued by the clerk of the court; and
 - (b) state the place where the court is intended to be held; and
 - (c) be directed to and be executed by such person as the issuer of the process shall nominate and appoint, and such person so nominated and appointed shall have and possess in regard to the execution and return of such process the like powers and authorities and be entitled to the like fees as the messenger of the court would have possessed or been entitled to had the same been directed to and executed by and returned by him; and
 - (d) at the foot be signed thus—
“*duly authorized.*”
- (3) Process referred to in subrule (1) need not be signed by the magistrate or by the clerk of the court.

2. Validity of process issued by police officer

Process referred to in rule 1 shall have force and effect in all respects as if the same had been directed to the officer appointed to execute ordinarily the process of the court and had been issued by the clerk of the court:

Provided that nothing in this rule contained shall be construed so as to prevent the issue in common form by such clerk of any process for requiring the appearance of any person before the court at any place where such court has been appointed to be held.

FIRST SCHEDULE (Order 1, rule 4 (1))

FORMS

Form

- CIV1 General headings.
- CIV2 General conclusions.
- CIV3 Notice of application.
- CIV4 Summons commencing action.
- CIV5 Particulars of claim.
- CIV6 Conclusion to particulars of claim.
- CIV6A Certificate of service
- CIV7 Notice under rule 8 of Order 7.
- CIV8 Interdict in terms of section 38 of the Act.
- CIV9 Request for default judgment.
- CIV10 Notice of withdrawal.
- CIV11 Notice of application for summary judgment.
- CIV12 Affidavit in support of application for summary judgment.
- CIV13 Affidavit under section 34 of the Act.
- CIV14 Security for rent attachment.
- CIV15 Order for rent attachment.
- CIV16 Consent to sale of attached goods.
- CIV17 Forms as to inspection and production of documents.
- CIV18 Certificate of record.
- CIV19 Order obtained *ex parte*.
- CIV20 Order for arrest of person.
- CIV21 Warrant for fine or arrest of a witness in default.
- CIV22 Warrant for the apprehension of a witness in default.
- CIV23 Security on arrest or interdict *ex parte*.
- CIV24 Subpoena.
- CIV25 Security for stay of execution.
- CIV26 Security when execution is allowed pending appeal.
- CIV27 Warrant of ejection and execution against property.
- CIV28 Warrant of delivery and execution against property.
- CIV29 Warrant of execution against property.
- CIV29A. Notice of removal.
- CIV30 Notice of attachment in execution.
- CIV31 Security bond on attachment.

CIV32 Interpleader summons.
CIV33 Interpleader summons.
CIV34 Security under rule 2 of Order 26.
CIV35 Summons for civil imprisonment.
CIV36 Warrant for civil imprisonment.
CIV37 Affidavit in support of application for garnishee order.
CIV38 Garnishee order.
CIV39 Agreement not to appeal.
CIV40 Notice of abandonment of part of claim, et cetera.
CIV41 Commission de bene esse.
CIV41A. Instruction for immediate service of process.
CIV42 Notification by messenger.