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Government Notice

MINISTRY OF LABOUR AND HUMAN RESOURCES DEVELOPMENT

No. 63

1994

LABOUR COURT RULES

Under section 22 of the Labour Act, 1992 (Act 6 of 1992), the Labour Courts' Rules Board has, after consultation with the Labour Advisory Council, made the rules for the conduct of the proceedings of the Labour Court as set out in the Annexure.

ANNEXURE

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FIRST SCHEDULE

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Definitions

1. In these rules, unless the context otherwise indicates, an expression in the Act has a corresponding meaning, and -

“address” means a physical or postal address or an operational telefacsimile number;

“Commissioner” means the Labour Commissioner appointed in terms of section 3(1)(a) of the Act and includes the acting Labour Commissioner so appointed;

“court” means the Labour Court established by section 15(1)(a) of the Act;

“day” means any calendar day other than a Saturday, Sunday or public holiday and when any particular number of days is prescribed for the performance of any act, the same shall be reckoned exclusive of the first and inclusive of the last day;

“delivery” means service of copies on all parties and filing the original with the registrar, and “deliver” shall have a corresponding meaning;

“High Court” means the High Court of Namibia referred to in the High Court Act, 1990 (Act 16 of 1990);

“labour inspector” means any person appointed as a labour inspector in terms of section 3(1)(b) of the Act, and includes any person appointed under section 3(1)(c);

“Minister” means the Minister of Labour and Human Resources Development;

“notice” means notice in writing;

“Permanent Secretary” means the Permanent Secretary: Labour and Human Resources Development;

“president” means the judge or acting judge of the High Court designated by the Judge-President of the High Court of Namibia in terms of section 16 of the Act or, when no such designation has been made, the Judge-President;

“public holiday” means a public holiday referred to in, or declared under section 1 of the Public Holidays Act, 1990 (Act 26 of 1990);

“respondent” means one or more respondents;

“registrar” means the registrar of the Labour Court or any person authorized to act in his or her place;

“serve” means to serve in accordance with rule 5, and “service” has a corresponding meaning; and

“the Act” means the Labour Act, 1992 (Act 6 of 1992).

Sessions of the court

2. The sessions of the court shall be from -

- (a) 1 February to 31 March, inclusive;
- (b) 15 April to 15 June, inclusive;
- (c) 1 August to 30 September, inclusive; and
- (d) 15 October to 15 December, inclusive.

Registrar of the court

3. (1) The offices of the registrar shall be open from 09h00 to 13h00 and from 14h00 to 16h00 on every day other than a Saturday, Sunday or public holiday.

(2) Under exceptional circumstances and when so directed by the president, the registrar shall issue, process and accept documents for filing at any other time.

Representation of parties

4. (1) Pursuant to section 18(2) of the Act, a party to any proceedings before the court may appear in person or be represented by a legal practitioner admitted to practise as an advocate or as an attorney in Namibia.

(2) Where the party is a company or trade union or employers' organisation it may be represented by one of its directors or other officers or office bearers or officials, as the case may be, provided that a resolution of the company, trade union or employers' organisation authorizing such person to represent it is filed with the registrar before the hearing.

(3) With leave of the court a party may be represented by any person provided that the party concerned files an affidavit with the registrar before the hearing setting out the reasons for wishing to be represented by that person.

Service

5. (1) Service of any notice of motion, notice, affidavit or other document may be effected in one or other of the following manners, namely -

- (a) by the delivery thereof by the party required to effect service or any adult person designated by that party to the person to be served personally;
- (b) by the delivery thereof by the party required to effect service or any adult person designated by that party, in the case where the person to be served is a company, partnership, trade union or employers' organisation, to a person apparently not less than 16 years of age and in the service of such company, partnership, trade union or employers' organisation at its local office or place of business or at its main office;
- (c) by the delivery thereof by registered post to the person to be served in the event of that person having a postal address, or by telefacsimile;
- (d) where the person to be served is represented by an attorney of record, by delivery thereof to such attorney or a person apparently not less than 16 years of age and employed at his or her office;

- (e) by the delivery thereof in such other manner as may be directed by the registrar.
- (2) (a) Where service is effected in accordance with sub-rule (1)(a), (b) or (d), proof of service shall be by filing a copy bearing the signature of the person served or, in the event of a refusal to sign a copy, by filing an affidavit of service in the form of form 1 to that effect.
- (b) Where service is effected in accordance with sub-rule (1)(c), service shall be deemed to have been effected, unless the contrary is proved, in the ordinary course of post or transmission upon proof of posting or upon proof of telefacsimile transmission, as the case may be, both in the form of form 1.
- (c) Where service is effected in accordance with sub-rule (1)(e), proof of service shall be in such manner as may be directed by the registrar.
- (3) Service shall not be effected -
 - (a) on a Saturday, Sunday or public holiday; or
 - (b) before 07h00 or after 19h00 on any other day,

unless the president otherwise directs.

Applications

6. (1) Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(2) When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the registrar and such person, otherwise it shall be addressed to the registrar only.

(3) The notice of motion shall be in the form of form 2.

(4) The original notice of motion, together with all annexures thereto, shall be filed with the registrar after service of a true copy thereof upon every party to whom notice of the application is to be given.

(5) In the notice of motion the applicant shall -

- (a) appoint an address at which he or she will accept service of all documents in the proceedings; and
- (b) inform the respondent that if he or she intends to oppose the application, he or she shall within 5 days after service of the notice of motion upon the respondent, deliver to the registrar and to the applicant a notice to oppose in the form of form 3.

(6) If no notice to oppose is delivered as contemplated in sub-rule (5)(b), the applicant may in writing apply to the registrar to assign a date for the hearing of the application.

(7) Upon receipt of an application contemplated in sub-rule (6), the registrar, after consultation with the president, shall assign a date for the hearing of the application and may, without notice to the respondent, set the matter down for hearing on that date.

(8) A respondent who does not deliver a notice of his or her intention to oppose within the period of time referred to in sub-rule (5)(b) shall not be entitled to take any part in the proceedings except -

- (a) to apply under rule 16 for an extension of time to deliver such a notice;
- (b) to apply under rule 17 for rescission or variation of any judgment or order;
- (c) to be called as a witness by another party.

(9) Any respondent opposing the grant of the relief sought in the notice of motion shall -

- (a) within 5 days of service of the notice of motion, give the applicant notice in the form of form 3 that he or she intends to oppose the application and, in that notice, appoint an address where he or she will accept notice and service of all documents in the proceedings;
- (b) (i) within 14 days of notifying the applicant of his or her intention to oppose the application, deliver an answering affidavit together with any relevant documents; or
- (ii) if he or she intends to raise a point of law only, deliver notice of such intention within the said 14-day period stating concisely the point of law.

(10) Within 7 days after the service upon him or her of the answering affidavit the applicant may deliver a replying affidavit.

(11) After service of the answering affidavit contemplated in sub-rule (10), no further affidavit or affidavits shall, without the leave of the court, be received by the court.

(12) After the expiration of the 14-day period mentioned in sub-rule (9)(b) the applicant may apply to the registrar, on 5 days notice to all other parties, to assign a date for the hearing of the application and the registrar shall, after consultation with the president, assign such a date and set the matter down for hearing on that date.

(13) If the applicant fails to apply to the registrar for a date of hearing within 21 days of receiving the respondent's notice of intention to oppose, the respondent may make such an application.

(14) Notice in writing of the date of hearing assigned by the registrar shall be given by the applicant or the respondent, as the case may be, to all other parties to the application.

(15) For the purpose of this rule the days between 16 December and 15 January, both inclusive, shall not be counted in the time allowed for the delivery of any notice or proceedings.

(16) Where an application cannot properly be decided on affidavit the court may make such an order as it considers fit with a view to ensuring a just and expeditious decision.

(17) In particular, but without affecting the generality of the provisions of sub-rule (16), the court may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any document to appear personally or grant leave for him or her or any other person to be subpoenaed to appear and be examined and cross-examined as a witness.

(18) The court, after hearing an application, may, if it considers it proper, make no order thereon (save as to costs, if any) but grant leave to the applicant to renew the application on the same papers, supplemented by such further affidavits as the case may require.

(19) Any party to an application may bring a counter-application in the form of form 4 and the provisions of these rules shall, subject to all necessary modifications, apply to counter-applications, except that -

(a) a counter-application shall be delivered together with the respondent's answering affidavit, unless the court allows it, on good cause shown, to be delivered at a later stage;

(b) it shall be unnecessary to repeat therein the addresses of the parties to the proceedings in question.

(20) Any period prescribed with regard to applications shall apply, with all necessary modifications, to counter-applications.

(21) A counter-application may be heard either together with, or separately from, the application in the first instance as the court may deem expedient under the circumstances.

(22) Notwithstanding the provisions of the preceding sub-rules, interlocutory and other applications incidental to pending proceedings may be brought on notice in the form of form 5 supported by such affidavits as the case may require and may be set down for hearing at a time assigned by the registrar or as directed by the president.

(23) (a) Subject to the provisions of paragraph (b), in urgent applications the court may dispense with the forms and service provided for in these rules and may dispose of the matter at such time and place and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it considers just and equitable in the circumstances.

- (b) The applicant shall use all means reasonably available to inform the respondent that the application is to be made and of the date and time thereof.
- (c) In every affidavit filed in support of an application brought under paragraph (a), the applicant shall set forth explicitly -
 - (i) the circumstances which he or she avers render the matter urgent;
 - (ii) the reasons why he or she could not be afforded substantial redress at a hearing in due course; and
 - (iii) the steps taken, or intended to be taken, to comply with the provisions of paragraph (b).

(24) Where an order is made which is of temporary effect only, and the party against whom the order is made was not served with the notice of motion, that party may apply to the court on 24 hours notice to all other parties for the order to be discharged and the court may make such order as it considers just and expedient.

- (25) (a) The court may, on application at any stage of the proceedings, order to be struck out from any affidavit any matter which -

- (i) is scandalous, vexatious or irrelevant;
- (ii) is otherwise an abuse of the process of the court,

but the court shall not make such an order unless it is satisfied that the party applying will be prejudiced in his or her case if such an order is not made.

- (b) With due regard to section 20 of the Act, the court may, on such application, make such order as to costs as it considers fit.

(26) Subject to the discretion of the court to disregard such statements if it considers it proper to do so, an affidavit may contain statements of information or belief provided that the sources and grounds thereof are identified.

(27) Not less than 5 days before the hearing date the applicant, if he or she is legally represented, shall deliver a copy of the main points which he or she intends to argue at the hearing as well as a list of authorities to be relied on in support of each point to the other parties to the application and the other parties, if they are legally represented, shall deliver a similar statement and list not less than 3 days before the said date to the applicant.

(28) The original and two copies of all such statements and lists shall be filed with the registrar not later than 12 noon within the time limits referred to in sub-rule (27).

Assessors

7. A request in terms of section 16(2)(a) of the Act by a party to proceedings before the court for the appointment of assessors shall be made by notice of request in the form of form 6 delivered to the registrar not later than 5 days after a date for hearing has been assigned by the registrar.

The hearing of applications

8. (1) The hearing of an application shall be conducted in such manner as the court considers most suitable to the clarification of the issues before it and generally to the just handling of proceedings and the court shall, so far as it appears appropriate, seek to avoid formality in the proceedings and, except in terms of the provisions of section 110 of the Act, shall not be bound by any law relating to the admissibility of evidence.

(2) If a respondent who has been duly served with the notice of motion as provided for in rule 6(3) and, in the case of a respondent who has delivered notice of intention to oppose, who has been duly served with notice of the date of the hearing as provided for in rule 6(9), fails to appear at the hearing of the application the court may, if of the opinion that the facts relating to the application are sufficiently established, determine the application and make such order as it considers fit, notwithstanding the respondent's failure to appear.

(3) If the applicant fails to appear at the hearing the court may dismiss the application or make such other order as it considers fit.

(4) Witnesses shall give oral evidence under oath or by affirmation, as the case may be, administered by the registrar or any other person designated by the registrar for that purpose.

(5) Any party to a hearing at which oral evidence is given may cross-examine witnesses called by the other party and re-examine his or her own witnesses.

Summoning of witnesses

9. (1) Where the court has directed that oral evidence be heard before an application can be decided on -

(a) the court; or

(b) a party to such application,

may require the registrar to summon witnesses to give evidence or to produce any document, record, books of account or other exhibit relevant to any issue relating to such application.

(2) A party to an application referred to in sub-rule (1)(b) -

(a) shall require the summoning of a witness in the form of form 7; and

- (b) may after commencement of the hearing require the summoning of a witness only with the consent of the court.
- (3) Service of a summons in the form of form 8 may be effected, subject to all necessary modifications, in the same manner as provided in rule 5(1).
- (4) The court may set aside service of any summons referred to in sub-rule (1) if it appears that the witness in question was not given reasonable time to enable him or her to appear in response to the summons.
- (5) The provisions of section 26 of the High Court Act, 1990 (Act 16 of 1990), relating to the modes of procuring attendance of witnesses and the penalty for non-attendance, shall, subject to all necessary modifications, apply to a witness summoned under this rule as if such witness had been subpoenaed in a civil action before the High Court.
- (6) A witness summoned by the registrar in terms of this rule shall be entitled to the witness fees and allowances prescribed in respect of witnesses appearing before the High Court in a civil matter.
- (7) The fees and allowances referred to in sub-rule (6) shall be paid by the party who requires the attendance of the witness concerned, unless -
 - (a) the court has required the summoning of such witness as provided for in sub-rule (1)(a); or
 - (b) the registrar, prior to the issue of the summons concerned, certifies that -
 - (i) the witness is a necessary witness for the purposes of the hearing; and
 - (ii) the party who requires the summoning of the witness does not have the means to pay such fees and allowances,in which case such witness shall be considered to be a witness appearing before the High Court in a criminal matter.

Joint applications

- 10. (1) An application (hereinafter referred to as a "joint application") may be brought on behalf of a group of applicants named in such joint application, against the same respondent.
- (2) (a) Such joint application may be brought in the name of any one of such applicants as a representative of some or all of the other applicants, provided that such other applicants agree thereto in writing and file the agreement in the form of form 9 with the registrar prior to the matter being set down for hearing.
- (b) In such agreement each person represented shall authorize the representative applicant on his or her behalf to -
 - (i) file affidavits, statements or any other documents;

- (ii) amend the application or abandon it;
- (iii) call witnesses and give evidence and make submissions to the court on any matter arising during the hearing of the application;
- (iv) take any other necessary step incidental to the prosecution of the application.

(3) The court may, of its own motion or upon application, at any stage of the proceedings, if it considers that the bringing of a joint application may prejudice the respondent, order that the applications of all or any of the persons represented shall be heard separately.

(4) The court may, upon application of an individual applicant in a joint application at any stage of the proceedings and upon good cause shown, order that that applicant's authorization to the representative applicant be rescinded and that that applicant be permitted to pursue the application separately.

Class applications

11. (1) One or more members of a class of applicants (hereinafter referred to as a representative party) may bring an application (hereinafter referred to as a class application) on behalf of all members of such a class, by bringing an application which, in addition to the requirements contained in rule 6, shall describe the class and contain sufficient particulars to establish that -

- (a) the members of the class in question are of such a number that joinder of all such members is impracticable;
- (b) there are questions of law or fact common to the class;
- (c) the cause of action of the representative parties is of a similar nature to the cause of action of the other members of the class;
- (d) the representative party or parties will fairly and adequately protect the interests of the other members of the class;
- (e) the hearing of separate applications would be likely to create the risk of inconsistent or varying decisions of the court;
- (f) the respondent or respondents against whom a class application has been brought has acted or refused to act on grounds generally applicable to the class;
- (g) the questions of law or fact common to members of the class predominate over any questions affecting only some members and that a class application is superior to other available methods for the fair and efficient adjudication of the issues.

(2) As soon as practicable after the class application has been served on the respondent, and not later than 10 days thereafter, the representative party or parties shall apply to the court in the form of form 5 on notice to the respondent, to determine whether the application will be heard as a class application.

(3) If the court decides to hear the application as a class application, the registrar, after consultation with the president, shall fix a hearing date and shall give notice thereof in such manner as is practicable in the circumstances of the case to the members of that class.

(4) The notice referred to in sub-rule (3) shall inform such members that -

- (a) the court will exclude any member from the class if the member so requests by a date specified in such notice;
- (b) the judgment or order of the court, whether favourable or not, will be binding on all members who do not request exclusion under paragraph (a); and
- (c) any member who does not request exclusion under paragraph (a) may, if the member so desires, appear personally or through a duly authorized representative at the hearing of such application.

(5) The court may make appropriate orders or rulings determining the course of proceedings or prescribing measures to prevent undue repetition or duplication in the presentation of evidence or argument at the hearing of a class application.

(6) A class application shall not be settled without the approval of the court and notice of the proposed settlement shall be given to the members of the class in such manner as the court may direct and thereupon such settlement shall, for all purposes, be deemed to be an order of court.

Consolidation of applications

12. (1) If two or more applications are filed and it appears to the court that -

- (a) common questions of law or fact arise in both or all of them; or
- (b) the applications arise out of same cause of action; or
- (c) it would be in the interest of justice,

the court may of its own accord or upon application by one or more of the applicants order that such applications be consolidated.

(2) The power conferred by this rule may be exercised notwithstanding that the hearing of one or more of the applications has already commenced.

Joinder of parties

13. (1) The court may at any time on notice in the form of form 10 to all parties, or upon application by a party on notice to all other parties, make an order joining a person in the proceedings and give such directions including the manner of service of the documents on the person joined as it considers necessary.

(2) An order to join shall only be made where the party to be joined has a substantial interest in the matter before the court.

(3) The court may likewise on notice in the form of form 10 to all parties or upon application by any party on notice to all other parties, order that any respondent named in the original application or subsequently joined, who does not have a substantial interest in the dispute, shall be dismissed from the proceedings.

Arbitration or settlement

14. (1) The parties may at any stage of the proceedings agree in writing to refer the application to arbitration for a final and binding determination and in such a case the parties shall forthwith file the agreement with the registrar and the application shall be stayed pending the decision of the arbitrator and, upon application of either party, the determination of the arbitrator shall be made an order of court.

(2) Unless otherwise provided in these rules, the parties may, at any time prior to judgment, agree in writing to settle the application without entry of a judgment, which agreement shall be filed with the registrar and if the terms of the agreement so provide, the court may make such settlement an order of court.

Applications for review

15. (1) This rule applies to any application -

- (a) to review the proceedings of any district labour court;
- (b) to review and set aside or correct any decision taken by the Minister, the Permanent Secretary, the Commissioner, a labour inspector or any other officer involved in the administration of the provisions of the Act;
- (c) to review the decision or proceedings of any tribunal, board or other body performing judicial, quasi-judicial or administrative functions with regard to any labour matter.

(2) An application to which this rule applies shall be made promptly and in any event within three months from the date when grounds for the application first arose.

(3) An application to which this rule applies shall be brought on notice of motion in the form of form 11 setting out the proceedings or decision sought to be reviewed and supported by an affidavit setting out the grounds and the facts and the circumstances upon which the applicant relies to have the proceedings or decision reviewed and corrected or set aside.

(4) The notice shall be directed and delivered to the chairperson of the district labour court, the Minister, the Permanent Secretary, the Commissioner, the labour inspector or other officer, or to the chairperson of the tribunal, board or body, as the case may be, and to all other persons directly affected -

(a) calling upon such persons to show cause why such proceedings or decision should not be reviewed and corrected or set aside; and

(b) where appropriate, calling upon the chairperson of the district labour court, tribunal, board or body, as the case may be, to despatch, within 10 days after receipt of the notice, to the registrar the record of the proceedings sought to be corrected or set aside together with such reasons as he or she desires or is by law required to give and to notify the applicant that this has been done.

(5) In the notice, the applicant shall -

(a) appoint an address at which he or she will accept notice and service of all documents in the proceedings;

(b) inform the respondent that if he or she intends to oppose the granting of the order sought in the application he or she shall deliver a notice, in writing, to the applicant within 10 days after service of the notice of motion, or any notice amending the notice of motion, stating that he or she intends to oppose.

(6) The registrar shall make available to the applicant the record despatched to him or her in compliance with sub-rule (4)(b) upon such terms as the registrar considers appropriate to ensure its safety, and the applicant shall thereupon have copies made of such portions of the record as may be necessary for the purposes of the review and shall supply the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as a true copy.

(7) The applicant may within 10 days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit and shall deliver the said notice and affidavit to the registrar.

(8) Should any person to whom the notice of motion is directed wish to oppose the granting of the order sought in the application, he or she shall -

(a) within 10 days after receipt by him or her of the notice of motion or any amendment thereof, deliver notice to the applicant that he or she intends so to oppose and shall in such notice appoint an address at which he or she will accept notice and service of all documents in the proceedings; and

(b) within 14 days after receipt by him or her of a copy of the record of the proceedings sought to be reviewed, or, where no such record is called for in the notice of motion, within 21 days after receipt by him or her of the notice of motion, deliver an answering affidavit together with any relevant documents.

(9) Within 7 days after service upon him or her of the answering affidavit, the applicant may deliver a replying affidavit.

(10) No further affidavit shall be received without leave of the court.

(11) After the expiration of the period of time allowed in sub-rule (8)(b) for delivery of an answering affidavit, the applicant may apply to the registrar in the form of form 5, on 5 days notice to all other parties, to assign a date for the hearing of the application and the registrar shall, after consultation with the president, assign such a date and set the matter down for hearing on that date.

(12) If the applicant fails so to apply within 7 days after the expiration of the period of time referred to in sub-rule (11), the respondent may make such an application.

(13) Notice in writing of the date assigned by the registrar shall be given by the applicant or the respondent, as the case may be, to all other parties.

(14) Save in so far as they are inconsistent with the provisions of this rule, the provisions of rule 6 shall, with all necessary modifications, apply to an application to which this rule applies.

Non-compliance with rules

16. The court may, upon application and on good cause shown, at any time -

(a) condone any non-compliance with these rules;

(b) extend or abridge any period prescribed by these rules, whether before or after the expiry of such period.

Rescission of judgment or order

17. (1) Any party to an application or counter-application in which judgment by default is given in terms of rule 6, may apply to the court to rescind or vary such judgment or order, provided that the application is made within 14 days after such judgment or order has come to his or her knowledge.

(2) Every such application shall be an application as contemplated by rule 6(22), and supported by an affidavit setting out briefly the reasons for the applicant's absence or default, as the case may be, and, where appropriate, the grounds of opposition or defence to the application or counter-application.

(3) The court may on good cause shown rescind or vary the judgment in question and give such directions as to the further conduct of the proceedings as it considers necessary in the interest of all the parties to the proceedings.

Appeals from district labour courts

18. (1) After receipt by the registrar of the record of the proceedings in the district labour court, the registrar shall forthwith assign a date for the hearing of the appeal and shall set the appeal, and any cross-appeal, down for hearing on the said date and give the parties at least 28 days notice in writing of the date of hearing.

(2) If any party to the appeal is dissatisfied with the date so assigned by the registrar for the hearing of the appeal he or she may apply to the registrar on 5 days notice to all other parties for a new date and the registrar may on such application order that a new date be assigned for the hearing of the appeal.

(3) (a) Within 14 days of receiving notice of the hearing date the legal representative acting for the appellant shall -

(i) inspect the record lodged with the registrar and ensure that it is a correct and complete record of the proceedings in the district labour court and, if it is not, take all necessary steps to have it corrected or completed;

(ii) ensure that two copies of the record have been lodged with the original record and, if they have not, prepare such copies and lodge them with the registrar;

(iii) ensure that such copies are clearly typed on A4 standard paper in double spacing, that the pages thereof are consecutively numbered and that every tenth line on each page is numbered;

(iv) prepare an index of the original record and the copies thereof, certify that the copies are correct and file the said index and certificate with the registrar; and

(v) supply each of the other parties with two copies of the record certified as aforesaid.

(b) Save in so far as these affect the merits of the appeal, documents of a formal nature shall be omitted from the copies of the record prepared in terms of this sub-rule but a list thereof shall be included in the record.

(c) By consent of the parties, exhibits having no bearing on a point at issue in the appeal and immaterial portions of lengthy documents may likewise be omitted from such copies, in which event a written consent, setting out those documents or portions thereof which have been omitted, shall be signed by or on behalf of the parties and be filed with the registrar when the certificate and index referred to in this sub-rule are filed: Provided that the court may at any time refer to the original record and take cognisance of all matters appearing therein.

(4) In the case of an appellant who is not legally represented the duties set out in sub-rule (3)(a) shall, in so far as it is practicable, be performed by the registrar.

(5) Not less than 10 days before the hearing date the appellant, if he or she is legally represented, shall deliver a copy of the main points which he or she intends to argue on appeal as well as a list of authorities to be relied on in support of each point to the other parties to the appeal and the other parties, if they are legally represented, shall deliver a similar statement and list not less than 5 days before the said date to the appellant and the original and two copies of all such statements and lists shall be filed with the registrar not later than 12h00 within the said time limits.

(6) (a) Notwithstanding the provisions of this rule, the president may, in consultation with the parties, direct that the appeal be heard as a matter of urgency and may such order as he or she considers fit with regard to the procedure to be followed and the date to be assigned for the hearing of the appeal.

(b) If any party refuses or fails to attend a consultation held in accordance with this sub-rule such direction and order may be made notwithstanding such absence.

Appeals under various provisions of the act

19. (1) This rule applies to an appeal noted by virtue of section 54(4)(a), 68(7)(a), 70(6)(a), 95(4)(a), 100(2)(a) or 114(6)(a) of the Act.

(2) Every appeal to which this rule applies shall be noted by delivery of a notice of appeal in the form of form 12, setting out concisely and distinctly the grounds of appeal, supported by an affidavit setting out the facts upon which the appellant relies for the relief sought.

(3) The notice of appeal and affidavit in support thereof shall be delivered within 21 days after the decision against which the appeal is noted was communicated to the appellant.

(4) (a) In the case of an appeal noted by virtue of section 54(4)(a) of the Act the person to be made respondent shall be the Commissioner and the person to be served shall be the Commissioner.

(b) In the case of an appeal noted by virtue of section 68(7)(a) of the Act the person to be made respondent shall be the Commissioner and the persons to be served shall be the Commissioner and the other parties to the collective agreement in question.

(c) In the case of an appeal noted by virtue of section 70(6)(a) of the Act the person to be made respondent shall be the Minister and the persons to be served shall be the Minister and any person who made an objection in terms of section 70(2) of the Act if the identity of such person is known to the appellant.

(d) In the case of an appeal noted by virtue of sections 95(4)(a) or 114(6)(a) of the Act the person to be made respondent shall be the Minister and the person to be served shall be the Minister.

(e) In the case of an appeal noted by virtue of section 100(2)(a) of the Act the person to be made respondent shall be the labour inspector concerned and the person to be served shall be such labour inspector.

(5) Any interested person may, on notice to all other parties, apply for leave to appear and be heard at the hearing of the appeal and the court may upon such application grant such leave.

(6) Within 14 days of the service upon him or her of the notice of appeal and affidavit in support thereof the respondent may deliver an answering affidavit setting out the facts relied upon in reaching his or her decision and the reasons therefor.

(7) Any person served with a notice of appeal pursuant to sub-rule (4) shall be entitled to appear and be heard at the hearing of the appeal.

(8) Subject to this rule and to any necessary modifications, the provisions of rule 6 shall apply to an appeal made by virtue of any of the sections of the Act mentioned in sub-rule (1).

Execution of judgments

20. (1) Without derogating from section 23 of the Act, any judgment or order of the court sounding in money may be enforced in accordance with the rules applicable in civil proceedings in the High Court, as if such judgment or order is a judgment or order given in a civil action in the High Court.

(2) The costs of execution of a judgment or order in accordance with this rule shall be a first charge on the proceeds of any property sold in execution but in so far as such proceeds are insufficient, such costs shall be borne by the party seeking to enforce the judgment or order, unless the court has, in accordance with the provisions of section 20 of the Act, made an order for costs in favour of that party.

Court fees

21. (1) Subject to sub-rule (2), the court fees to be paid to the registrar shall be those prescribed in the First Schedule and payment shall be indicated by the use of adhesive revenue stamps or imprinted stamps within the meaning of the definition of "stamp" in the Stamp Duties Act, 1993 (Act 15 of 1993).

(2) The payment of court fees may be waived by the registrar if he or she is satisfied that the party concerned does not have the means to pay such fees, in which case the fact that the fees have been waived shall be endorsed on the appropriate document.

Forms

22. Any reference in these rules to a numbered form shall be a reference to the corresponding form in the Second Schedule, provided that a substantially similar form may be used.

Application of rules of the High Court

23. Subject to the Act and these rules, where these rules do not make provision for the procedure to be followed in any matter before the court, the rules applicable to civil proceedings in the High Court made in terms of section 39(1) of the High Court Act, 1990 (Act 16 of 1990) shall apply to proceedings before the court with such qualifications, modifications and adaptations as the court may deem necessary in the interest of all parties to such proceedings.

Commencement of rules and saving

24. (1) These rules shall, subject to sub-rule (2), come into operation on 1 May 1994.

(2) The Rules of the High Court referred to in rule 23 and applied by section 22(5) of the Act shall, in respect of any proceedings commenced in the court before the coming into operation of these rules as contemplated in sub-rule (1), continue to apply as if these rules had not been enacted.

FIRST SCHEDULE

COURT FEES

(Rule 21)

	N\$
On every application not relating to a pending case	50,00
On every notice of appeal or cross-appeal	75,00
On every request to inspect any record -	
(a) if the correct number is furnished	2,00
(b) if an incorrect or no number is furnished, for every 100 records, or part thereof, searched	10,00
For a copy of the record made by the registrar -	
(a) for every 100 words, or part thereof, typed	2,00
(b) for every photocopy of an A4-size page or part there- of	1,00
For examining and certifying a copy of the record -	
(a) each 100 words or part thereof	2,00
(b) minimum charge	2,00

SECOND SCHEDULE

INDEX TO FORMS

Form No.:

- 1 Service of Documents (Rule 5(2))
- 2 Notice of Motion (Rule 6(3))
- 3 Notice of Intention to Oppose (Rule 6(9))
- 4 Counter-Application (Rule 6(19))
- 5 Application (Rule 6(22))
- 6 Notice of Request for Appointment of Assessors (Rule 7)
- 7 Notice to Summon Witnesses (Rule 9(1))
- 8 Subpoena (Rule 9(3))
- 9 Agreement to Joint Application (Rule 10(2))
- 10 Notice of Joinder (Rule 13(1))
- 11 Notice of Motion for Review (Rule 15(3))
- 12 Notice of Appeal (Rule 19(3))

FORM 1 (Rule 5(2))
SERVICE OF DOCUMENTS
IN THE LABOUR COURT

In the matter between:

and

Applicant

Respondent

AFFIDAVIT OF SERVICE

I,,
do hereby certify that on the day of
..... 19..... at (state time)

I duly served the following document(s)

.....
(describe the document(s) served) in the following manner:
(Complete (a), (b) or (c) as appropriate).

(a) By handing a copy to
(full name of the person served) the applicant/appellant/respondent/
a person apparently not less than 16 years of age and employed at the
applicant's/appellant's/respondent's place of business/local/main
office* and he/she* refused to sign a copy thereof;

(b) By sending a copy by registered post to

.....
(full name of the person served) the applicant/appellant/respondent*

at
(state the postal address) and I annex hereto the certificate of posting;

(c) By sending a copy by telefacsimile to

.....
(full name of the person served) the applicant/appellant/respondent*

at the following number
(state telephone number and code) and I annex hereto the transmission
confirmation slip;

Dated at this

day of 19

.....
Signature of deponent

2/ ...

Before administering the prescribed oath/affirmation, I put the following questions to the deponent and noted his/her reply in his/her presence:

(a) Do you know and understand the contents of this affidavit/solemn declaration?

Reply:

(b) Do you have any objection to the taking of the oath?

Reply:

(c) Do you regard the prescribed oath as binding on your conscience?

Reply:

This affidavit/solemn declaration was duly sworn to/affirmed before me and the deponent signed it in my presence at

on the day of 19.....

.....
Commissioner of Oaths

Full name DATE STAMP

Designation

Address

* Delete as applicable

NOTE:

1. State such other manner of service if so directed by the registrar;
2. Service shall be effected as near as possible within the time limits prescribed by Rule 5(3) of the Labour Court Rules.

Copy to: Applicant/Appellant/Respondent or his or her attorney or other representative; and

Original to: Registrar of the Labour Court with the original of the document(s) served attached.

FORM 2 (Rule 6(3))
NOTICE OF MOTION
IN THE LABOUR COURT

In the matter between:

and

Applicant

Respondent

TAKE NOTICE that
(hereinafter called the applicant) intends to apply to this Court for an order

(a)

(b)

(c)

(state the relief sought)

and that the accompanying affidavit of
will be used in support of the application.

AND FURTHER TAKE NOTICE that the applicant has appointed

.....
(state the applicant's address for service) at which he or she will accept notice
and service of all documents in these proceedings.

AND FURTHER TAKE NOTICE that if you intend opposing this
application you are required -

- (a) to inform in the form of form 3 the registrar of the above Court at the High Court, Private Bag 13179, Windhoek and the applicant or his or her attorney, if any, in writing, within 5 days after service upon you of this notice, not counting the day of service, of your intention to oppose;
- (b) to appoint an address in your notice of intention to oppose at which you will accept notice and service of all documents in these proceedings;
- (c) (i) to deliver your answering affidavits, if any, to the registrar and the applicant within 14 days after service of your notice of intention to oppose; or
(ii) to notify the registrar and the applicant, in writing, within the said 14-day period that you intend to raise a point of law only, stating concisely the point of law in question.

2/...

If no such notice of intention to oppose is given you will not be entitled to take any part in the proceedings, except as provided in rule 6(8), and such judgment may be given or an order made against or in relation to you as the Court may consider just and expedient.

DATED AT this

day of 19.....

.....
*Applicant or his or her attorney or
other representative
(address)*

To: (1)
(address) RESPONDENT

(2) The Registrar of the above Court

NOTE:

The days between 16th December and 15th January, both inclusive, are not counted in the time allowed for the delivery of any notice or proceeding.

FORM 3 (Rule 6(9))
NOTICE OF INTENTION TO OPPOSE
IN THE LABOUR COURT

In the matter between:

and

Applicant

Respondent

TAKE NOTICE that
(hereinafter called the respondent) (if more than one respondent is cited state whether first, second, etc. respondent [as the case may be]) intends to oppose this application.

AND FURTHER TAKE NOTICE that the respondent has appointed

.....
(state the respondent's address for service). at which he or she will accept notice and service of all documents in these proceedings.

DATED AT this day of

..... 19

.....
*Respondent or his or her attorney or
other representative
(address)*

To: (1)
(address) APPLICANT

(2) The Registrar of the above Court.

FORM 4 (Rule 6(19))
COUNTER-APPLICATION
IN THE LABOUR COURT

In the matter between:

and

Applicant

Respondent

TAKE NOTICE that the respondent (if more than one respondent is cited, state whether first, second, etc. respondent [as the case may be]) intends to apply to this Court for an order

(a)

(b)

(c)

(state the relief sought)

and that the accompanying answering affidavit of
will be used in support of this counter-application.

AND FURTHER TAKE NOTICE that if you intend opposing this counter-application you are required -

- (a) to inform the registrar of the above Court and the respondent or his or her attorney, if any, in the form of form 3, within 5 days after service upon you of this notice, not counting the day of service, of your intention to oppose;
- (b) (i) to deliver your replying affidavit, if any, to the registrar and the applicant within 14 days after service of your notice of intention to oppose; or
(ii) to notify the registrar and the applicant, in writing, within the said 14-day period that you intend to raise a point of law only stating concisely the point of law in question.

If no such notice of intention to oppose is given you will not be entitled to take any part in the proceedings in so far as they relate to this counter-application, except as provided in rule 6(8), and such judgment may be given or order made against or in relation to you as the Court may consider just and expedient.

.....
*Respondent or his or her attorney or
other representative*

To: (1) The applicant

(2) The Registrar of the above Court.

FORM 5 (Rule 6(22))
APPLICATION
IN THE LABOUR COURT

In the matter between:

Applicant/Appellant*
and
Respondent

TAKE NOTICE that the above named Applicant/Appellant/Respondent* intends to apply to this Court/the Registrar of this Court* on the

..... day of 19.....

at (time) for an order in the following terms:

(a)

(b)

(c)

(state the relief sought)

and that the accompanying affidavit of
will be used in support of the application.

DATED AT this day of

..... 19.....

.....
Applicant/Appellant/Respondent or his
or her attorney or other representative
(address)*

* *Delete as appropriate*

To: (1)
(address) APPLICANT/APELLANT/RESPONDENT*

(2) The Registrar of the above Court.

FORM 6 (Rule 7)

NOTICE OF REQUEST FOR APPOINTMENT
OF ASSESSORS

IN THE LABOUR COURT

In the matter between:

Applicant/ Appellant

and

Respondent

TAKE NOTICE that the above named Applicant/ Appellant/ Respondent* requests that assessors be appointed for the hearing of this matter.

DATED AT this day of

..... 19.....

.....

*Applicant/ Appellant/ Respondent**
or his or her attorney or other representative
(address)

* *Delete as appropriate*

FORM 7 (Rule 9(1))
NOTICE OF SUMMON WITNESSES
IN THE LABOUR COURT

In the matter between:

and

Applicant

Respondent

To: The Registrar of the above Court,
Private Bag 13179
WINDHOEK

- (a) You are hereby requested to summon the following witnesses whose names appear in Annexure "A" hereto, to appear before the above

Court on the day of 19.....

at am/pm to give oral evidence in the above-mentioned matter on behalf of the applicant/respondent; (*Delete as appropriate*)

and

- (b) to produce the following:

(i) Documents:

.....

.....

(ii) Records:

.....

.....

(iii) Books of account:

.....

.....

(iv) Exhibits relevant to this case:

.....

.....

(A proper description of all items in b(i) - b(iv) above must be given)

DATED AT this day of
..... 19.....

.....
*Applicant/ Respondent or his or her
attorney or other representatives*

ANNEXURE "A" to
FORM 7: Rule 9(1)
IN THE LABOUR COURT

In the matter between:

Applicant

and

Respondent

LIST OF WITNESSES TO BE SUMMONED i.t.o. RULE 9(1)

Note: Proper residential and postal addresses, telephone numbers and facsimile numbers, if any, must be furnished by both parties to the proceedings.

On Behalf of the Applicant	On Behalf of the Respondent
1.	
2.	
3.	
4.	
5.	
6.	
Signature of Applicant or his/her representative	Signature of Respondent or his/her representative
Date:	Date:

FORM 8 (Rule 9 (3))

SUBPOENA

IN THE LABOUR COURT

In the matter between:

Applicant

and

Respondent

SUMMONS OF WITNESS IN TERMS OF RULE 9(3)

To: The Deputy-Sheriff, Namibian Police or other person designated for the purpose of service:

Inform:

- 1.
- 2.
- 3.
- 4.

(State names, sex, occupation, place of residence or business, postal address, telefacsimile of each witness).

that each of them is hereby called upon to appear in person before this

Court at on the

day of 19..... at (time)
and thereafter to remain in attendance until excused by the Court, in order to testify on behalf of the abovenamed applicant/respondent in regard to all matters within his or her knowledge relating to the issues of the matter now before the Court and in the dispute between the parties.

Inform him or her further that it is required from him or her to bring and produce to this Court the following items:
(Describe accurately each document, book of accounts, record or other exhibit relevant to the issues of the matter in question)

and

Inform each of the said persons that he or she should on no account neglect to comply with the subpoena as he or she may thereby render himself or herself liable to a fine of N\$2 000,00 or imprisonment for a period not exceeding one year.

DATED AT this day

of 19.....

Registrar
Address

Copies to:
Applicant/Respondent
or their representatives

FORM 9 (Rule 10(2))
 AGREEMENT TO JOINT APPLICATION
 IN THE LABOUR COURT

In the matter between:

Applicant
 and
 Respondent

AGREEMENT

We, the undersigned applicants, in our capacity as parties to these proceedings before the Labour Court, do hereby agree that

.....
 (state name of the representative) is hereby authorised to represent us in the abovenamed application and shall have the following powers:

- (a) to file affidavits, statements or any other documents;
- (b) to amend the application or to abandon it;
- (c) to call witnesses and give evidence and make submissions to the Court on any matter arising during the hearing of the application;
- (d) to take any other necessary steps incidental to the prosecution of the application.

DATED AT this day
 of 19.....

Initials, Surnames and Signatures of all the applicants:

.....

I,
(name of authorized representative) do hereby accept the conditions of this
agreement subject to the provisions of Rule 10(5) of the Rules.

DATED AT this day

of 19.....

.....
*Signature of representative
in joint application*

Note: This agreement should be filed with the Registrar prior to the
matter being set down for hearing.

FORM 10 (Rule 13(1))
NOTICE OF JOINDER
IN THE LABOUR COURT

In the matter between:

Applicant
and
Respondent

TAKE NOTICE that you are called upon to show cause on the

day of 19..... at (time)
why:

(1)*
(state name(s) and address(es) of person(s) to be joined) should not be
joined as an applicant/respondent in these proceedings.

(2)*
(state name of respondent to be dismissed) should not be dismissed
from these proceedings.

* (Complete as appropriate)

DATED AT this day
of 19.....

.....
Registrar of the above Court

To: (1)
(address) Applicant

(2)
(address) Respondent

FORM 11 (Rule 15(3))
NOTICE OF MOTION FOR REVIEW
IN THE LABOUR COURT

In the matter between: Applicant
and Respondent

TAKE NOTICE that
(hereinafter called the applicant) intends to apply to this Court for the
proceedings or decision set out below to be reviewed and for an order -

- (a)
- (b)
- (c)

(state the relief sought)

and that the accompanying affidavit of
will be used in support of the application.

The proceedings or decision which the applicant seeks to have reviewed are
as follows:

.....
(state the proceedings or decision in respect of which relief is sought and the
person or body concerned.)

AND FURTHER TAKE NOTICE that you are hereby called upon -

- (a) to show cause why the above-mentioned proceedings or decision should
not be reviewed and the relief sought granted;
- (b) to despatch to the registrar of the above Court at the High Court, Private
Bag 13179, Windhoek, within 10 days after service upon you of this
notice, the record of the proceedings referred to above together with
such reasons as you are by law required to give or which you desire to
give and to notify the applicant in writing that this has been done.

(Delete paragraph (b) if not appropriate).

AND FURTHER TAKE NOTICE that the applicant has appointed

.....
(state the applicant's address for service) at which he or she will accept notice
and service of all documents in these proceedings.

AND FURTHER TAKE NOTICE that if you intend opposing this application you are required -

- (a) to inform the registrar of the above Court at the High Court, Private Bag 13179, Windhoek and the applicant or his or her attorney, if any, in writing, within 10 days after service upon you of this notice or any notice amending it, not counting the day of service, of your intention to oppose;
- (b) to appoint an address in your notice of intention to oppose at which you will accept notice and service of all documents in these proceedings;
- (c) (i)* within 14 days of service upon you of a copy of the record of the proceedings sought to be reviewed, deliver your answering affidavits, if any, together with any relevant documents to the registrar and the applicant; or

(ii)* within 21 days of the service upon you of this notice deliver your answering affidavits, if any, together with any relevant documents to the registrar and the applicant.

* (Delete whichever of these paragraphs is not appropriate).

If no such intention to oppose is given you will not be entitled to take any part in the proceedings, except as provided in rule 6(8), and such judgment may be given or order made against or in relation to you as the Court may consider just and expedient.

DATED AT this day
of 19.....

.....
*Applicant or his or her attorney or
other representative
(address)*

To: (1)
(address) RESPONDENT

(2) The Registrar of the above Court.

Note: The days between 16th December and 15th January, both inclusive, are not counted in the time allowed for the delivery of any notice or proceeding.

FORM 12 (Rule 19(3))
NOTICE OF APPEAL
IN THE LABOUR COURT

In the matter between:

and

Appellant

Respondent

TAKE NOTICE that
(hereinafter called the appellant) intends to appeal to this Court pursuant to

section of the Labour Act, 1992
(state the section of the Act in terms of which the appeal is noted) against the
whole of/ that part of (delete as appropriate) the decision of the respondent

made on or about the day of

..... 19..... whereby it was decided that

.....
(state the decision or part thereof appealed against)

and the appellant will ask this Court FOR AN ORDER

.....
(state the precise form of the order applied for, e.g.: that the said decision
may be set aside and that the respondent may be ordered to register the
collective agreement [or as the case may be]).

AND FURTHER TAKE NOTICE that the grounds of this appeal are -

.....
(set out concisely and distinctly the grounds of the appeal) and the fact relied
upon by the appellant are as set out in the accompanying affidavit of

AND FURTHER TAKE NOTICE that if you intend opposing this
appeal you may deliver an answering affidavit to the registrar of the above
Court at the High Court, Private Bag 13179, Windhoek and to the appellant
within 14 days after service upon you of this notice of appeal and that you
are, in any event, entitled to appear and be heard at the hearing of the appeal.

AND FURTHER TAKE NOTICE that after the expiration of the 14-day period allowed for the delivery of an answering affidavit the appellant proposes to apply to the registrar of the above Court, on 5 days notice, to assign a date for the hearing of this appeal.

DATED AT this day
of 19.....

.....
*Appellant or his or her attorney or
other representative
(address)*

To: (1)
(address) RESPONDENT

(2) The Registrar of the above Court.