



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$1.08

WINDHOEK - 10 March 1997

No. 1513

### CONTENTS

#### GOVERNMENT NOTICE

No. 43 Magistrates' Courts: Amendment of the Rules of Court..... 1

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## Government Notice

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### MINISTRY OF JUSTICE

No. 43 1997

#### MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The President has, under subsection (5) of section 25 of the Magistrates' Courts Act 1944 (Act 32 of 1944), confirmed the amendments made by The Rules Board under subsection (3) of that section to the Rules of Court promulgated under Government Notice R.1108 of 1968, which amendments are set out in the Schedule hereto. The amendments shall come into operation after the expiry of a period of one month from the date of publication of this notice.

#### SCHEDULE

1. In this Schedule "the Rules" means the Rules of Court published under Government Notice No. R1108 of 21 June 1968, as amended by Government Notices Nos. R.3002 of 25 July 1969, R.409 of 26 March 1970, R.947 of 2 June 1972, R.1115 of 28 June 1974, R.1285 of 19 July 1974, R.689 of 23 April 1976, R.261 of 25 February 1977, R.2221 of 28 October 1977, R.327 of 24 February 1978, R.2222 of 10 November 1978, R.1449 of 29 June 1979,

148 of 31 December 1985, AG. 58 of 15 August 1989, AG. 86 of 13 October 1989, AG. 122 of 1 December 1989 and 178 of 1 December 1992.

2. Rule 6 of the Rules is amended by the substitution for paragraph (a) of subrule (5) of the following paragraph.

"(a) show the surname of the defendant by which he or she is known to the plaintiff, the defendant's sex and residence or place of business, and, where known his or her first name or initials and his or her occupation, and if the defendant is sued in a representative capacity, the capacity in which he or she is being sued;"

3. The following rule is substituted for rule 10 of the Rules:

"10. If summons in an action be not served within 24 months of the date of its issue or, having been served, the plaintiff has not within that time after service taken further steps in the prosecution of the action, the summons shall lapse: Provided that where the plaintiff or his or her 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 defendant an extension of time in which to pay the debt claimed or any portion thereof has been granted to the defendant;
- (b) that in terms of the agreement judgment cannot, save in case of default, be sought within a period of 24 months from the issue of the summons; and
- (c) the period of the extension,

the summons shall not lapse until 24 months after the expiration of the period of extension."

4. Rule 37 of the Rules is amended by the substitution for subrule (1) of the following subrule:

"(1) Where any warrant or emoluments attachment order or garnishee order has been lost or mislaid, the court may authorise the issue of a second or further warrant or emoluments attachment order or garnishee order, as the case may be, upon production of a certificate issued by the plaintiff's legal practitioner stating that such warrant or order has been lost or mislaid, as the case may be."

5. Annexure 2 to the Rules is amended by the substitution for Table C of the following table.

**"TABLE C****GENERAL PROVISIONS AND TARIFF OF FEES  
(MESSENGERS OF THE COURT)****PART 1****MESSENGERS WHO ARE STAFF MEMBERS OF  
THE PUBLIC SERVICE**

1. For each service or execution or attempted service or execution of any process or document: N\$20.
2. The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.

**PART II****MESSENGERS WHO ARE NOT STAFF MEMBERS OF  
THE PUBLIC SERVICE**

1. (a) For the service of a summons, subpoena, notice, order or other document, not being a document mentioned in item 2, including the registration of such documents on receipt thereof for service and bank commission paid by the messenger, the journey to and from the place of service and a return or notification in terms of rule 8(4) to a party who has sued out process -
  - (i) within a distance of 6 kilometres from the court-house of the district for which the messenger is appointed : N\$20;
  - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the messenger is appointed: N\$24;
  - (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the messenger is appointed: N\$30.
- (b) For the attempted service of the documents mentioned in paragraph (a), including the registration of such documents on receipt thereof for service, the journey to and from the place of attempted service of and a return of notification in terms of rule 8(4) to a party who has sued out process -
  - (i) within a distance of 6 kilometres from the court-house of the district for which the messenger is appointed: N\$16;
  - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the messenger is appointed: N\$20;

- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the messenger is appointed: N\$24.
  - (c) The service of a notice referred to in rule 54(1) simultaneously with the summons shall not be regarded as a separate service.
- 2.
  - (a) For the execution of a warrant, interdict or garnishee order, including the registration of such documents on receipt thereof for execution and bank commission paid by the messenger, the journey to and from the place of execution and a return or notification in terms of rule 8(4) to a party who has sued out process -
    - (i) within a distance of 6 kilometres from the court-house of the district for which the messenger is appointed: N\$26;
    - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the messenger is appointed: N\$32;
    - (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the messenger is appointed: N\$40.
  - (b) For the attempted execution of the documents mentioned in paragraph (a), including the registration of such documents on receipt thereof for execution, the journey to and from the place of attempted execution and a return or notification in terms of rule 8(4) to a party who has sued out process -
    - (i) within a distance of 6 kilometres from the court-house of the district for which the messenger is appointed: N\$22;
    - (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the messenger is appointed: N\$26;
    - (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the messenger is appointed: N\$32.
  - (c) Where the process is one of ejectment, a further fee of N\$10 shall be paid after execution for each person, over and above the person named or referred to in the process of ejectment, in fact ejected from separate premises.
  - (d) Where service on any person, other than the judgment debtor, respondent or garnishee, is necessary in order to complete the execution, the fee laid down in item 1(a) may be charged in respect of each such service.

- (e) If the process is an order for attachment to found or confirm jurisdiction issued under section 30*bis* of the Act, the messenger shall be entitled to a further amount of N\$30 per hour, or part thereof, spent in executing the order.
3. If it is necessary for the messenger to travel further than 20 kilometres from the court-house of the district for which the messenger is appointed, a travelling allowance of N\$1.50 per kilometre for each kilometre or part thereof travelled further than the aforesaid distance to and from the place of service or execution shall be allowed in addition to the fees mentioned in item 1(a)(iii), 1(b)(iii), 2(a)(iii) or 2(b)(iii), as the case may be.
4. (a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, a travelling allowance of N\$1,50 per kilometre for every kilometre, or part thereof, shall be payable to the messenger for the forward and return journey, and it shall be calculated from the court-house of the district for which the messenger is appointed.
- (b) A travelling allowance shall include all the expenses incurred in travelling, including train fares.
- (c) A travelling allowance shall be calculated in respect of each separate service, except that -
- (i) where more services than one can be done on the same journey beyond a radius of 20 kilometres from the court-house, the distance from the radius of 20 kilometres to the first place of service shall be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and
- (ii) where service of the same process has to be effected on more than one person by a messenger within the area served by him or her only one charge for travelling shall be allowed.
- (d) When it is necessary for the messenger to convey any person under arrest for any distance of more than 10 kilometres, an allowance of N\$1 per kilometre in respect of that portion of the journey for which he was necessarily accompanied by such person shall be allowed.
- (e) The drawing up and handing over of a warrant of liberation or certificate of liberation to the officer in charge of a prison: N\$10. A travelling allowance at the tariff mentioned in paragraph (a) shall be payable for the execution of this duty.
5. (a) Making an inventory, including the making of all necessary copies and time spent on stock-taking: N\$15 for the first 30 minutes and thereafter N\$20 per hour or part thereof.

- (b) For the ejectment of a defendant from the premises mentioned in the warrant of ejectment: N\$15 for the first 30 minutes and thereafter N\$20 per hour or part thereof.
6. Security bond: N\$15.
7. (a) (i) Charge or custody of property (hereinafter referred to as "Possession") in terms of rule 41(7): The actual cost, provided it is reasonable.
- (ii) Also travelling allowances at the tariff mentioned in item 4, to include board in every case.
- (b) If livestock is attached, only the necessary expenses of herding and preserving the stock shall be allowed.
- (c) If the goods are removed and stored, only the cost of removal and storage shall be allowed.
- (d) For the purposes of this item -
- (i) "Possession" means actual physical possession by a person employed and paid by the messenger, whose sole work for the time being is to remain on the premises where the goods have been attached, and who, in fact, remains in possession for the period for which possession is charged.
- (ii) "Cost of removal" means the amount actually and necessarily disbursed for removal or attempted removal, if the goods were removed by a third party or an attempt was made to remove them, or if they were removed by the messenger personally, such amount as would fairly be allowable in the ordinary course of business if the goods were removed or attempted to be removed by a third party.
- (iii) "Cost of storage" means the amount actually and necessarily paid for storage if the goods were stored with a third person or, if the messenger provided the storage, such amount as would fairly be allowable in the ordinary course of business if the goods were stored with a third person.
8. (a) Where a warrant of execution or garnishee order is paid in full, or in part, to the messenger, or moneys are attached in execution against movables,  $7\frac{1}{2}$  per cent of the amount so paid or attached.
- (b) Where an execution debtor at the attempted execution of a warrant of arrest and detention pays the amount due in full, or in part, to the messenger,  $7\frac{1}{2}$  per cent on the amount so paid. The rules that apply to the collection of money on warrants of execution or garnishee orders shall apply *mutatis mutandis* to money received in terms of this paragraph.

9. Where property is released from attachment in terms of rule 41(7)(e), or the warrant of execution is withdrawn or stayed, or the judgement debtor's estate is sequestrated after the attachment, but before the sale: 2 per cent of the value of the goods attached, subject to the maximum of N\$50: Provided that the account is rendered within one month from the date of the release, withdrawal or stay.
10. Where the warrant of execution against movables is completed by sale,  $7\frac{1}{2}$  per cent of the amount (not exceeding the amount of the judgement debt with interest and costs) realised.
11. When immovable property has been attached in execution and is not sold, either by reason of the warrant having been withdrawn or stayed or of the sequestration of the estate of the execution debtor, the expenses in connection with the attempted sale and the sum of N\$50 shall be payable to the messenger or to the person in fact authorised to act as auctioneer, as the case may be: Provided that the account is rendered within one month from the date of withdrawal, stay or the sequestration of the estate of the execution debtor.
12. When immovable property has been attached in execution and the attachment lapses as referred to in section 66(4) of the Act: N\$15: Provided that the account is rendered within one month from the date of such lapse of attachment.
13. When an execution against immovable property is completed by sale, the following auctioneer's fees shall be allowed on the proceeds of the sale:
  - (a) If the messenger acted as auctioneer: 4 per cent, subject to a minimum of N\$50;
  - (b) if an auctioneer is employed as provided in rule 43(9): 2 per cent to the messenger, subject to a minimum of N\$50.
14. In addition to the fees allowed by items 9 to 13, both inclusive, there shall be allowed -
  - (a) the sum actually and reasonable paid by the messenger or the auctioneer for printing, advertising and giving publicity to any sale or intended sale in execution;
  - (b) the sum of N\$15 to the messenger for giving transfer to the purchaser.
15. Where the messenger is in possession under more than one warrant of execution, he or she may charge fees for only one possession, and such possession shall, as far as possible, be apportioned equally to the several warrants issued during the same period: Provided that each execution creditor shall be jointly and severally liable for such possession to an amount not exceeding what would have been due under his or her execution if it had stood alone.

16. Fees payable on the value of goods attached or on the proceeds of the sale of goods in execution shall not be chargeable on such value or proceeds so far as they are in excess of the amount of the warrant.
17. In addition to the fees prescribed, the messenger shall be entitled to charge the amount paid by him or her for telephone calls.
18. The fees and expenses of the messenger in execution of a garnishee order shall be added to the amount to be recovered under the order, and shall be chargeable against the judgement debtor.
19. If it is necessary for the messenger to return a document received by him or her for service or execution to the mandator because -
  - (a) the address for service which appears on the process does not fall within his jurisdiction; or
  - (b) the mandator requested, before and attempted service or execution of the process, that it be returned to him or her:an amount of N\$3.
20. For the conveyance of any person arrested by the messenger or committed to his or her custody from the place of custody to the court on a day subsequent to the day of arrest: N\$10 per journey.
21. For the examination of indicated newspapers and the *Official Gazette* in which the notice of sale has been published as referred to in rule 43(6)(c) and rule 41(8)(c): N\$3.
22. For forwarding a copy of the notice of sale to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property concerned whose address is reasonably ascertainable: for each copy N\$3.
23. For affixing a copy of the notice of sale on the notice-board or door of the court-house or other public building referred to in rule 43(6)(e) and rule 41(8)(b): N\$3.
24. For the drawing and issuing of an interpleader summons: N\$30.
25. In addition to the fees prescribed in this Table, the messenger shall be entitled to the amount actually disbursed for postage.
26. For the writing of a necessary letter to an interested party in the matter: N\$5.
27. For the perusal of the records of the Registrar of Deeds in terms of rule 43(3) to determine the order of precedence of creditors:
  - (a) If investigated by the messenger personally: N\$20 per case;

- (b) if the messenger utilises the services of a third party for the investigation: the actual cost charged by the third party, provided it is reasonable.
28. For the making of copies of necessary documents relevant to a process handled by the messenger: 50c per A4 size copy.
29. The general sales tax payable on messenger fees allowed on taxation by the clerk of the court."
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