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Government Notice

MINISTRY OF JUSTICE

No. 81

1996

AMENDMENT OF THE RULES OF THE HIGH COURT OF NAMIBIA

The Judge-President has, under section 39 of the High Court Act, 1990 (Act 16 of 1990), with the approval of the President, and with effect from 7 September 1995, amended the rules for the conduct of proceedings of the High Court of Namibia published under Government Notice 59 of 1990, as set out in the Annexure.

ANNEXURE

1. Rule 1 is hereby amended -
 - (a) by the deletion of the definition of "advocate";
 - (b) by the deletion of the definition of "attorney";

- (c) by the insertion of the following definition after the definition of "combined summons":

"counsel" means a legal practitioner admitted, enrolled and entitled to practice as such in the court"; and

- (d) by the substitution in the definition of "party" for the expression "attorney with or without an advocate" of the word "counsel".

2. Rule 4 is hereby amended by the insertion of the following sub-rule after sub-rule (6):

"(6A)(a) The document which serves as proof of service shall, together with the served process of court or document, without delay be furnished to the person at whose request service was effected.

(b) The person referred to in paragraph (a) shall file each such document on behalf of the person who effected service with the Registrar when -

- (i) he or she sets the matter in question down for any purpose;
- (ii) it comes to his or her knowledge in any manner that the matter is being defended;
- (iii) the registrar requests filing;
- (iv) his or her mandate to act on behalf of the party is terminated in any manner."

3. Rule 7 is hereby amended by the substitution for paragraph (b) of sub-rule (3) of the following paragraph:

"(b) Counsel appearing on behalf of any party, other than a party who has caused the appeal to be set down, or who instructed another counsel to so appear, shall, before the hearing thereof, file with the registrar a power of attorney authorising him or her to so act."

4. Rule 31 is hereby amended by the addition of the following sub-rule:

"(5)(a) Whenever a defendant is in default of delivery of notice of intention to defend an action where each of the claims is for a debt or liquidated demand, the plaintiff, if he or she wishes to obtain judgment by default, may file with the registrar a written application for judgment against such defendant, instead of following the procedure prescribed by sub-rule (2),

(b) The registrar may -

- (i) grant judgment as requested;
 - (ii) grant judgment for part of the claim only or on amended terms;
 - (iii) refuse judgment wholly or in part;
 - (iv) postpone the application for judgment on such terms as he or she may consider just;
 - (v) request or receive oral or written submissions;
 - (vi) require that the matter be set down for hearing in open court.
- (c) The registrar shall record any judgment granted or direction given by him.
- (d) Any party dissatisfied with a judgment granted or direction given by the registrar may, within 20 days after he or she has acquired knowledge of such judgment or direction, set the matter down for reconsideration by the court.
- (e) The registrar shall -
- (i) if the value of the claim as stated in the summons, apart from any consent to jurisdiction, is within the jurisdiction of the magistrate's court, and unless the plaintiff claims costs on the counsel and client scale, other than by virtue of an undertaking by the defendant under a written agreement to pay costs on that scale, grant judgment for costs on the appropriate scale applicable in undefended actions in the magistrate's court plus the deputy sheriff's fees, or, if he or she is satisfied that the defendant has so undertaken to pay costs on the counsel and client scale, grant judgment for costs on that scale, plus the deputy sheriff's fees;
 - (ii) in other cases, unless the application for default judgment requires costs to be taxed or the registrar requires a decision on costs from the court, grant judgment for costs in an amount of N\$800,00 plus the deputy sheriff's fees.
- (f) Where, as contemplated in subparagraph (i) of paragraph (e), the plaintiff claims costs on the counsel and client scale, other than by virtue of an undertaking by the defendant under a written agreement to pay costs on that scale, the registrar shall refer such claim to a judge for decision and enter the judgment for costs in accordance with that decision."

5. Rule 35 is hereby amended by the substitution in paragraph (c) of sub-rule (2) for the expression "between attorney and advocate" of the expression "between counsel and another counsel instructed by him or her."

6. Rule 41 is hereby amended -

(a) by the substitution in paragraph (a) of sub-rule (1) for the expression "the society of advocates of Namibia" of the expression "the Law Society of Namibia";

(b) by the substitution for paragraph (b) of sub-rule (2) of the following paragraph:

"(b) a statement signed by counsel referred to in paragraph (a) of sub-rule (1) or, where applicable, by such counsel and any second counsel nominated in terms of paragraph (b) of that sub-rule, that being satisfied that the person concerned is unable to pay fees he or she or they, as the case may be, is or are acting for the said person gratuitously in the proceedings to be instituted by him or her; and";

(c) by the substitution for sub-rule (5) of the following sub-rule:

"(5) Every counsel by whom the statement referred to in sub-rule (2)(b) has been signed shall act gratuitously for the said person in the said proceedings, and shall not be a liberty to withdraw, settle or compromise such proceedings, or to discontinue his or her or their assistance without the leave of the judge, who may in the latter event give directions as to the appointment of a substitute or substitutes, as the case may be."; and

(d) by the substitution in sub-rule (7) for the word "advocate" of the expression "counsel instructed by him or her".

7. Rule 43 is amended -

(a) by the substitution for sub-rule (7) of the following sub-rule:

"(7) Unless the court otherwise directs counsel in a case under this rule shall not charge a fee -

(a) of more than N\$450 for appearance if the claim is defended or N\$200 if it is undefended;

(b) of more than N\$450 for any other services rendered in connection with the claim."; and

(b) by the deletion of sub-rule (8).

8. The following rule is hereby substituted for rule 56:

"Admission of Legal Practitioners

56.(1) Subject to the provisions of rule 6 in so far as they are not inconsistent with the provisions of this rule, a person applying to be admitted and authorised to practice as a legal practitioner shall at least 30 days before the day on which his or her application is to be heard by the court -

- (a) give written notice to the registrar of the date on which the application is to be made;
- (b) deliver to the registrar the original and a copy of all the documents in support of the application and an affidavit stating whether he or she has at any time been struck off the roll kept in relation to legal practitioners or suspended from practice by the court;
- (c) serve a copy of the documents and affidavit referred to in paragraph (a) on the Secretary of the Law Society of Namibia.

(2) If the applicant at any time prior to the hearing of the application delivers to the registrar any documents or declarations, other than the documents or affidavit referred to in paragraph (b) of sub-rule (1), he or she shall forthwith serve a copy thereof on the Secretary of the Law Society of Namibia."

9. Rule 57 is hereby amended by the deletion in sub-rule (5) of the expression "(who shall if practicable be an advocate, or failing such, an attorney)".

10. The following rule is hereby substituted for rule 69:

"Fees of Counsel Generally

69.(1) Save where the court authorises fees consequent upon the employment of one counsel by another, only the fees of one counsel shall be allowed as between party and party in the following matters:

- (a) Any undefended action for divorce or claim under rule 43;
- (b) any unopposed application for judgment by default, summary judgment or for provisional sentence;
- (c) any unopposed application for leave to sue by way of edict or for substituted service;
- (d) any unopposed application for admission to practice and to be enroled as a legal practitioner or to be enroled as a sworn translator;

- (e) any unopposed application for the postponement or adjournment of proceedings, the removal of any matter from the roll, the confirmation, discharge or extension of a restitution order or return date of a *rule nisi*;
- (f) any unopposed application for sequestration or voluntary surrender of an estate, liquidation of a company or corporation or the rehabilitation of a person's estate;
- (g) any unopposed application for rescission of any judgment;
- (h) any claim for a sum not exceeding N\$5 000,00 with or without any claim for ancillary relief;
- (i) any claim for delivery of property, movable or immovable, of a value not exceeding N\$5 000,00;
- (j) any claim for ejectment from premises where the value of the right of occupation to the occupier does not exceed N\$5 000,00; and
- (k) any appeal or review from the Magistrates Court.

(2) Save where the court authorises the fees consequent upon the employment of more than one counsel by another to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one such counsel by another shall be allowed as between party and party in matters other than those contemplated in sub-rule (1).

(3) Where fees in respect of the employment of more than one counsel employed by another are allowed in a party and party bill of costs, the fees to be permitted in respect of any such additional employed counsel shall not exceed one half of those allowed in respect of the first employed counsel.

(4) The taxation of the fees of counsel employed by another as between party and party shall be allowed by the taxing master as he or she considers reasonable, due regard being had to the other provisions of this sub-rule, the time necessarily taken, the complexity of the matter, the nature of the subject matter in dispute, the amount in dispute, the seniority of counsel employed, the fees ordinarily allowed for like services prior to the promulgation of this rule and any other factors which he or she considers relevant.

(5) The provisions of this rule shall not apply to the employment of one counsel by another where the counsel so employed -

- (a) is an employee or a partner or a member of the same legal practice, partnership or company and practising in the same town as the counsel who employed him or her;

- (b) is the correspondent in the legal proceedings concerned at the seat of the High Court of another counsel practising in another town."

11. Rule 70 is hereby amended -

- (a) by the substitution for sub-rule (1) of the following sub-rule:

"(1) Subject to the provisions of rule 69, the taxing master shall be competent to tax any bill of costs for services actually rendered by counsel in connection with litigious work and such bill shall be taxed, subject to the provisions of sub-rules (5) and (8), in accordance with the provisions contained in the Sixth Schedule hereto: Provided that the taxing master shall not tax costs in instances where some other officer is empowered to do so."; and

- (b) by the substitution for sub-rule (8) of the following sub-rule:

"(8) Where, in the opinion of the taxing master, more than one counsel referred to in rule 69(5) have necessarily been engaged in the performance of any of the services covered by the tariff, each such counsel shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him or her."

12. The rules are hereby amended by the substitution of the word "counsel" for the following words and expressions, wherever they occur:

"attorney" - except in rule 4(4)(b) and in the expressions "Attorney-General", "Government-Attorney" and "power of attorney";

"advocate";

"attorneys";

"advocates";

"an attorney";

"an advocate";

"the attorneys";

"advocate and attorney";

"advocates and attorneys";

"attorney or advocate";

"advocates or attorneys";

"an advocate and an attorney".
