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Government Notice

MINISTRY OF JUSTICE

No. 107 2003

REGULATIONS MADE UNDER THE JUDGES' REMUNERATION ACT, 1990

The President has under section 5 of the Judges' Remuneration Act, 1990 (Act No. 18 of 1990) -

- (a) made the regulations set out in the Schedule; and
- (b) repealed Government Notices No. 76 of 1990 and No. 65 of 1994.

SCHEDULE

Definitions

1. In these regulations, unless the context indicates otherwise, any word to which a meaning has been assigned in the Act, shall have that meaning, and-

“actual service” includes -

- (a) every period of administrative recess;
- (b) every period of leave granted under regulation 3(1), but not leave referred to in regulations 2(3) and 3(2);

- (c) continuous service as acting judge immediately before assuming office as a judge in a permanent capacity;
- (d) uninterrupted service after termination of active service;

“administrative recess” means every period falling outside the term of the court;

“Chief Justice” means the Chief Justice of the Supreme Court;

“court” means the High Court or the Supreme Court, as the case may be;

“effects” means the movable property of a judge and of his or her family normally applied to personal use, including not more than two motor vehicles, but excluding livestock, domestic animals and pets;

“family” means the spouse in civil or customary law and any child or adopted child of a judge who is not self supporting;

“High Court” means the High Court of Namibia;

“judge”, in relation to regulations 2(1) and (3) and 10(2)(a)(ii) and (iii), does not include an acting judge or an *ad hoc* judge of the Supreme Court appointed under Article 82(2), or an acting judge of the High Court appointed under Article 82(3), of the Namibian Constitution;

“Judge-President” means the Judge-President of the High Court;

“leave” means leave of absence on full pay unless expressly indicated otherwise;

“Minister of Justice” includes a staff member of the Ministry of Justice acting on the authority of the Minister of Justice;

“official duties” means duties as a judge when on active service;

“official motor vehicle” means a motor vehicle owned by the State made available for use to a judge in accordance with regulation 7;

“official residence” means a residence provided by the Government to a judge in terms of regulation 4;

“registrar” means the registrar of the High Court or of the Supreme Court, as the case may be, and includes the assistant registrar;

“seat of the court” means the seat of the court at Windhoek or, in the case of a judge of the High Court assigned for duties to a division of the High Court situate at another place in Namibia, the court at such place; and

“the Act” means the Judges' Remuneration Act, 1990.

“term”, in relation to a court, means the term for the holding of courts, determined -

- (a) in relation to the Supreme Court, under section 37(1)(a) of the Supreme Court Act, 1990; and
- (b) in relation to the High Court, under section 39(2)(a) of the High Court Act, 1990;

Leave of absence

2. (1) Leave of not less than 50 days per annum shall be granted -

- (a) by the President to the Chief Justice;
- (b) by the Chief Justice to the Judge-President and to a judge of the Supreme Court, and
- (c) by the Judge-President to a judge of the High Court,

during an administrative recess of the court, to the extent that the judge's services are in the opinion of the President, the Chief Justice or the Judge-President, as the case may be, not required during the recess.

(2) Subject to subregulation (1), the Chief Justice and the Judge-President, respectively, shall not later than one month before the commencement of an administrative recess of the court determine whether and when the services of a judge will be required during the recess.

- (3) In addition to the leave referred to in subregulation (1) -
 - (a) the President shall grant to the Chief Justice;
 - (b) the Chief Justice shall grant to the Judge-President and a judge of the Supreme Court; and
 - (c) the Judge-President shall grant to a judge of the High Court,

leave for a period of three months for every period of four years actual service completed by the judge as soon as his or her services are not required.

(4) Leave to which a judge is entitled under this regulation shall not be accumulative and no salary or allowance may be claimed in respect of any leave which could have been taken but which was not utilized.

(5) The registrar shall keep record of all leave granted to the judges of the court concerned.

Sick-leave and special Leave

3. (1) If, according to a certificate of a medical practitioner, a judge is incapacitated due to illness or injury to perform his or her duties for a specified period -

- (a) the President, in the case of the Chief Justice;
- (b) the Chief Justice, in the case of the Judge-president or a judge of the Supreme Court; or
- (c) the Judge-President, in the case of a judge of the High Court,

may grant the judge sick-leave for that period.

- (2) If, in a specific case -
 - (a) the President, in the case of the Chief Justice;
 - (b) the Chief Justice, in the case of the Judge-president or a judge of the Supreme Court; or
 - (c) the Judge-President, in the case of a judge of the High Court,

is satisfied that exceptional circumstances exist which warrant that a judge be granted leave for which no provision is made in these regulations, he or she may grant leave to the judge for such period as may be appropriate, and may determine whether it be leave with full, reduced or no remuneration.

Accommodation

4. (1) A judge who is ordinarily resident in Namibia is entitled to be provided with suitable accommodation by the Government in an official residence at Government expense.

(2) A judge who occupies an official residence is liable for the payment of the local authority charges for electricity supply and refuse removal in respect of that residence, but all other charges, rates and taxes shall be borne by the Government.

(3) A judge, who is not ordinarily resident in Namibia, shall be provided with suitable accommodation at Government expense.

Allowances

5. (1) A judge who is ordinarily resident in Namibia and who does not occupy an official residence is entitled to be paid a housing allowance -

(a) in the case of the Chief Justice and the Judge-President, equal to the housing allowance payable to a Minister; and

(b) in the case of any other judge, equal to the housing allowance payable to a Deputy Minister,

(2) A judge shall be paid a telephone allowance of N\$250,00 per month.

(3) The Chief Justice and the Judge-President shall be paid an entertainment allowance of N\$5 000,00 and N\$4 000,00 per annum, respectively.

(4) Judges shall be provided with judges' robes which shall be purchased and cleaned by the registrar from funds allocated for the purpose in the budget of the Supreme Court and High Court.

(5) A judge travelling on an official journey outside Namibia is entitled to be paid subsistence allowances and travel expenses -

(a) in the case of the Chief Justice and the Judge-President, equal to the subsistence allowances and travel expenses payable to a Minister; and

(b) in the case of any other judge, equal to the subsistence allowances and travel expenses payable to a Deputy Minister,

except to the extent that the judge is paid in respect of that journey a subsistence allowance and travel expenses by a body or institution other than the Government.

(6) A judge who performs official duties at a place in Namibia other than the seat of the court shall during the period of actual absence from the seat of the court, including intervals during which the judge returns to the seat of the court while remaining committed in respect of accommodation at such other place, be entitled to a subsistence allowance -

(a) in the case of the Chief Justice and the Judge-President, equal to the subsistence allowance payable to a Minister;

(b) in the case of any other judge, equal to the subsistence allowance payable to a Deputy Minister.

Safety and Security

6. (1) Upon the request of a judge the Government shall provide security at Government expense to safeguard and protect the residence of the judge for such duration and at such times as the judge may require.

(2) In the case of safeguarding and protecting the person of a judge, the Government shall provide such security if in its opinion such protection is necessary.

Official Vehicles

7. (1) A judge appointed before the date of commencement of these regulations who was provided with of an official motor by the Government immediately before that date continues to be entitled to the use of that motor vehicle and to be provided with a new official motor vehicle from time to time in accordance with subregulation (2).

(2) A new official motor vehicle shall be made available to a judge referred to in subregulation (1) upon expiry of every period of six years after the last official motor vehicle was made available to him or her.

(3) An official motor vehicle to be made available to a judge in terms of subregulation (2) shall be a new Mercedes Benz 240 E-class or a BMW 528i or an equivalent replacement model thereof.

(4) Subject to subregulation (5), a judge to whom an official motor vehicle has been made available in terms of this regulation shall return the motor vehicle to the Government -

- (a) when the motor vehicle is replaced with a new official motor vehicle in accordance with subregulation (2); or
- (b) if the judge ceases to hold office as a judge.

(5) Notwithstanding subregulation (4), a judge holding office in a permanent capacity has the option to purchase his or her official motor vehicle from the Government -

- (a) if he or she resigns from office; or
- (b) when he or she retires from office,

at an amount equal to the initial purchase price of the motor vehicle less depreciation calculated at 12% per annum and N\$100,00 for every 1 000 kilometres travelled.

(6) An official motor vehicle purchased in terms of sub-regulation (5) ceases to be the property of the Government and shall no longer be serviced, repaired, licensed or maintained by the Government.

(7) Whenever an official motor vehicle of a judge requires repairs or maintenance at the Government Garage or elsewhere, another vehicle shall be made available to the judge for use during the period of such repairs or maintenance, at Government expense.

(8) Notwithstanding subregulations (1) and (2) a judge to whom an official motor vehicle has been made available may at any time when that motor vehicle is due to be replaced in accordance with subregulation (2) elect -

- (a) not to make further use of an official motor vehicle provided by the Government; and
- (b) to participate in the Motor Vehicle Allowance Scheme for Judges referred to in regulation 9.

Transport and travelling

8. (1) The Chief Justice and, upon request, the Judge-President shall be entitled to the service of an official driver assigned to his or her office.

(2) If, for any good reason, a judge to whom an official motor vehicle is provided cannot use that motor vehicle for travelling on official duty and instead uses private transport to perform his or her official duties he or she shall be compensated at a tariff in accordance with Treasury regulations.

(3) When travelling by air on an official journey outside Namibia -

(a) the Chief Justice and the Judge-President may travel as a first-class passenger;

(b) a judge other than a judge referred to in paragraph (a) may travel as a business-class passenger.

(4) A judge of the Supreme Court, other than the Chief Justice, who is not ordinarily resident in Namibia, is entitled to the costs of air travel, calculated at the rate applicable to business-class passengers, to and from his or her place of permanent residence on as many occasions as are considered reasonable by the Chief Justice, acting in consultation with the Minister of Justice.

(5) If a sitting of the court takes place outside Windhoek air transport may be used if the Chief Justice, in the case of the Supreme Court, or the Judge-President, in the case of the High Court, considers it to be necessary or expedient in the interest of the administration of justice.

(6) A judge who is not permanently resident at the seat of the court is entitled to -

(a) one return ticket every term for himself or herself and his or her spouse to travel by aeroplane, bus or train between his residence and the seat of the court at the expense of the Government; or

(b) if private transport is used, to be compensated at the tariff referred to in subregulation (2).

Motor Vehicle Allowance Scheme for Judges

9. (1) The Motor Vehicle Allowance Scheme for Judges is established for participation -

(a) by every judge appointed in a permanent capacity on or after the date of commencement of these regulations; and

(b) any judge appointed before that date who elects to participate in that Scheme in accordance with regulation 7(8).

(2) The purpose of the Motor Vehicle Allowance Scheme for Judges is -

(a) to replace in respect of judges referred to in subregulation (1) the scheme of official motor vehicles provided for in regulation 7; and

(b) to provide to judges participating in the Scheme allowances to procure motor vehicles for use on official duty.

(3) The terms and conditions applicable to the Motor Allowance Scheme for Judges are as set out in the Annexure to these regulations.

Transportation of effects

10. (1) (a) Whenever the effects of a judge are to be transported the registrar concerned shall obtain written tenders from at least three cartage contractors for the packing, loading, unloading and unpacking of the

effects for transport by train and, should the judge concerned so prefer, for transport by road.

- (b) The registrar shall accept the lowest tender obtained in accordance with subregulation (1), but the Minister of Justice may approve the acceptance of a higher tender if, in the Minister's opinion, there are good reasons for rejecting the lowest tender.
 - (c) The Government is not responsible for any insurance premiums in respect of the transportation of effects, but premiums in respect of insurance cover for transportation of effects by road may be paid from public funds if the lowest tender for road transport which is accepted includes such premiums as an integral part thereof.
 - (d) Not more than two motor vehicles belonging to a judge and his or her family may be loaded and transported by train or road and unloaded at Government's expense and shall be so transported at the owner's risk.
 - (e) The transportation of effects of a judge shall take place within 12 months after the appointment of the judge concerned, unless the Minister of Justice grants an extension of that period.
 - (f) The Minister of Justice may, in exceptional cases, approve the transportation of effects at the Government's expense and their storage in a warehouse at the seat of the court or the place where the judge has previously resided for a period not exceeding twelve months and, thereafter, their transportation to his or her new home: Provided that the registrar concerned shall call for at least three tenders for such storage and the lowest tender shall be accepted, unless the Minister for good reason approves the acceptance of a higher tender.
- (2) (a) If a person who is not ordinarily resident in Namibia is appointed as a judge, there shall be defrayed from the State Revenue Fund, the costs connected with -
- (i) his or her journey and that of his or her family to Windhoek, in so far as such costs do not exceed the costs of air transport;
 - (ii) the transport to Windhoek or to or from a warehouse for or after storing of the effects of the judge and his or her family and, if applicable, the storing of the effects, subject to paragraphs (b), (c) and (d);
 - (iii) the transport to Windhoek of not more than two motor vehicles of the judge or his or her family by goods train at owner's risk and incidental expenses on loading or unloading of the vehicles.
- (b) If effects are to be transported or stored, the registrar of the relevant court shall obtain written tenders beforehand from at least three cartage contractors for the packing, loading, transporting, unloading or unpacking, or the storage in a warehouse of the effects and for insurance cover thereof while being transported or stored, and, unless the Minister of Justice for good reason otherwise directs, the lowest tender shall be accepted.
 - (c) If the Minister of Justice for good reason grants permission thereto, effects may be stored in a warehouse for a period not exceeding 6 months, either before or after the transportation thereof to Windhoek.

- (d) Subject to paragraph (c), effects or motor vehicles shall be transported to Windhoek before the expiration of a period of 2 months after the judge has assumed office, unless the Minister of Justice within that period grants an extension of time for the transporting thereof.

(3) On the retirement or death of a judge, his or her effects may be transported only once to any place in Namibia or, in the case of a judge who was ordinarily resident outside Namibia before his or her appointment, to a place where he or she, or his or her widow or widower, as the case may be, intends settling, and the provisions of sub-regulation (2) shall *mutatis mutandis* apply: Provided that the transporting shall not take place earlier than 2 months prior to or later than 6 months after the date of retirement, or later than 6 months after the date of death.

(4) The registrar shall make all the travel and transport arrangements necessary in connection with a judge under these regulations.

Conditions applicable to acting judges and *ad hoc* judges

11. In addition to the benefits applicable to acting judges and *ad hoc* judges in terms of these regulations, an acting judge or an *ad hoc* judge -

- (a) who is practising as a legal practitioner at the time of his or her appointment shall be paid an amount of N\$200,00 per day for the duration of the appointment to maintain his or her practice as a legal practitioner;
- (b) who is appointed to perform duties away from his or her home, may, when assuming his or her duties, travel to the seat of the court and, at the conclusion of his or her duties, return to his or her home at the Government's expense in the manner and at the rate of compensation prescribed in Treasury Regulations.
- (c) may receive an official motor vehicle of a comparable class as that referred to in regulation 7(3), if available, from the Government for his or her use during the period of his or her appointment.

ANNEXURE

TERMS AND CONDITIONS OF MOTOR VEHICLE ALLOWANCE SCHEME

1. In this Annexure "Scheme" means the Motor Vehicle Allowance Scheme for Judges established by regulation 7.
2. Allowances under the Scheme are payable in respect of -
 - (a) a motor vehicle purchased by a judge; or
 - (b) an existing motor vehicle introduced by a judge,
 for participation in the Scheme and in respect of which the judge is liable for the payment of instalments under the hire-purchase system or any other contract on the instalment system.
3. Allowances payable under the Scheme consist of -
 - (a) a capital instalment allowance, payable in respect of the purchase of a motor vehicle; and
 - (b) a running costs allowance, payable in respect of the use of the motor vehicle on official duty.

4. The value of the allowances payable under the Scheme is based on the purchase price of a benchmark motor vehicle financed on the instalment system over 54 months at 17,5% interest as well as the running cost of the motor vehicle. The benchmark motor vehicle shall be a Mercedes Benz E 240 or an equivalent replacement model thereof.
5. The following conditions apply in respect of participation in the Scheme:
 - (a) Judges are responsible for acquiring and maintaining a vehicle that is suitable for the required purpose.
 - (b) Judges will be expected to ensure that they always have reliable vehicles which enhance the image of the judiciary and which will enable them to carry out their duties effectively and will not be an embarrassment to the State.
 - (c) Proof of liability for the payment of installments in respect of the motor vehicle, or proof that a motor vehicle has been ordered for acquisition on the instalment system, must be provided by a judge within three months of receiving allowances under the Scheme, if such proof is not provided, the allowances will be stopped after three months of date of implementation;
 - (d) To continue receiving allowances under the Scheme after liability for the payment of installments in respect of the motor vehicle has terminated, a judge must provide proof of the purchase of another vehicle within six months of such termination.
 - (e) A judge must utilize his or her vehicle for all official journeys arising from his or her duties. If, because of a break down or other defect, a judge cannot use the relevant vehicle, he or she must make alternative private arrangements in regard to official travelling. A Government vehicle will not be provided to the judge.
 - (f) A judge is responsible for all costs associated with the acquisition and maintenance of a motor vehicle in respect of which allowances are payable under the Scheme, including -
 - (i) the purchase (including the payment of an initial deposit);
 - (ii) licensing;
 - (iii) insurance;
 - (iv) excesses arising from insurance claims;
 - (v) fuel;
 - (vi) service, maintenance and repairs;
 - (vii) tyres; and
 - (viii) any other related and incidental costs.
 - (g) A judge may procure a motor vehicle that costs more or less than the purchase price of a benchmark vehicle referred to in paragraph 4, but in no case shall the allowances payable in respect of the motor vehicle exceed the amounts contemplated in that paragraph.
 - (h) Government services, supplies or accessories shall not be used for the maintenance of a motor vehicle in respect of which allowances are paid under the Scheme nor shall Government materials be used to clean such vehicles.

- (i) A judge is not entitled to claim compensation from the Government for travelling with the relevant motor vehicle on official duty, but if the distance of travel on official duty exceeds 500 kilometres during a particular month, a judge may claim compensation in accordance with the kilometre rate approved by Government from time to time for the distance travelled in excess of 500 kilometres. The allowances payable under the Scheme shall not be affected if the distance travelled by a judge on official duty is 500 kilometres or less in a month. For the purposes of this paragraph travelling between a judge's residence and the court at the seat of the court shall not be considered to be travelling on official duty.
 - (j) The Government shall have no obligation to provide any form of guarantee, surety or security to enable a judge to purchase a motor vehicle.
 - (k) Allowances payable under the Scheme are linked to the salary and benefits of a judge and shall be reduced proportionately in the case of any leave of absence without remuneration.
 - (l) If a judge's services terminate for any reason on a day other than the last working day of the month, the allowances payable to the judge in respect of that month shall be calculated pro rata up to the last day of service.
6. The Judicial Service Commission may recommend to the President to stop the payment of the allowance if it is satisfied that the criteria mentioned in paragraph 5(a) and (b) have not been met three months after notifying the judge in writing accordingly.
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