



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

### MINISTRY OF JUSTICE

No. 253

2010

#### AMENDMENT OF RULES OF HIGH COURT OF NAMIBIA: HIGH COURT ACT, 1990

Under section 39 of the High Court Act, 1990 (Act No. 16 of 1990), read with section 115 of the Electoral Act, 1992 (Act No. 24 of 1992), with the approval of the President of the Republic of Namibia, I have amended the rules set out in the Schedule.

**P.T. DAMASEB**  
**JUDGE PRESIDENT**  
**HIGH COURT OF NAMIBIA**

### SCHEDULE

#### Definitions

**1.**     In these rules “the Rules” mean the Rules of the High Court of Namibia published under Government Notice No. 59 of 10 October 1990 as amended by Government Notices Nos. 187 of 12 December 1992, 148 of 9 December 1993, 81 of 16 April 1996, 182 of 6 July 1996, 221 of 14 November 1997, 69 of 1 April 1998, 141 of 5 September 2006, and 6 of 1 February 2008.

**Insertion of rules 6A, 6B, 6C, 6D and 6E in Rules**

2. The following rules are inserted after rule 6 of the Rules:

**“Definitions on case management of section 109 application**

**6A.** For the purposes of these rules, any word or expression to which a meaning has been assigned in the Act, the High Court Act or the Rules has that meaning, and unless the context otherwise indicates –

“case management conference” means the conference held in terms of rule 6D(6);

“case management judge” means the judge appointed in terms of rule 6D(3) to manage a section 109 application;

“case management order” means an order referred to in rule 6D(10);

“complaint” means a complaint contemplated in section 109 of the Act;

“day” means a calendar day and not a court day as defined in rule 1 of the Rules;

“parties’ conference” means a conference held in terms of rule 6D(4);

“presentation”, in relation to section 109 application, means the filing of such application with the registrar;

“section 109 application” means an application brought in terms of section 109 of the Act;

“the Act” means the Electoral Act, 1992 (Act No. 24 of 1992);

“these rules” means rules 6A, 6B, 6C, 6D and 6E.

**Objectives of case management of section 109 application**

**6B.** The objectives of case management in an election application brought in terms of section 109 of the Act are –

- (a) to ensure the speedy disposal of the application;
- (b) to promote the prompt and economic disposal of the application;
- (c) to use efficiently the available judicial, legal and administrative resources;
- (d) to identify the issues in dispute at an early stage;
- (e) to determine the course of the proceeding so that the parties are aware of the events that will occur and the likely time and cost involved;
- (f) to reduce delay and expense of interlocutory processes;
- (g) to separate the adjudication of interlocutory motions from the adjudication of the merits of a section 109 application; and
- (h) to identify as soon as practicable a firm date for the disposal of the section 109 application.

**Responsibilities and duties regarding case management of section 109 application**

**6C.** (1) Once filed with the Court, the management of a section 109 application is the responsibility of the Court and not of the litigants or their counsel.

(2) The parties and their counsel have a duty to assist the Court in curtailing proceedings and to expedite determination of a section 109 application.

(3) The fact that the parties agree to allow each other time beyond that prescribed by the Rules is not binding on the Court.

(4) For the purposes of a section 109 application where there is a conflict between a provision of rule 6 of the Rules and a provision of these rules, the provision of these rules must apply.

**Section 109 application**

**6D.** (1) For the purposes of a section 109 application, the affidavit referred to in rule 6(1) of the Rules must disclose fully and clearly the nature of the complaint and the reason for the complaint and the material facts relied upon therefor.

(2) Rule 6(1), (2), (3), (5)(a), (b), (d) and (e) and (15) apply to section 109 application with the following amendments:

- (a) in subrule (3) the word “petition” is read as “application” and “petitioner” is read as “applicant”
- (b) in subrule (5)(a) the words “other than one brought ex parte” is deleted;
- (c) in subrule (5)(b) the period of “2 days” is substituted for “5 days”;
- (d) in subrule (5)(d)(ii) the period of “5 days” is substituted for “14 days”; and
- (e) in subrule (5)(e) the period of “2 days” is substituted for “7 days”.

(3) After pleadings have closed in terms of the Act and the Rules, the Judge President must appoint a case management judge to manage the application until a judge is appointed to hear the section 109 application.

(4) At least 1 day before the holding of the case management conference the parties must meet at a parties’ conference to –

- (a) discuss the nature and basis of their respective claim and defence;
- (b) consider reasonable ways in which the application may be determined promptly; and
- (c) set out concisely and clearly the issues they, jointly or severally, wish to be addressed during the case management conference.

(5) At the conclusion of the parties’ conference the parties by themselves or by their counsel must draw up and sign a report containing -

- (a) the matters they have discussed and agreed upon;

- (b) the matters they have discussed and have not agreed upon;
- (c) the issues referred to in paragraph (c) of subrule (4),

and submit the report to the registrar who must place the report before the case management judge at least 1 day before the holding of the case management conference.

(6) The case management conference must be held not later than 3 days after the close of pleadings and the following issues must be addressed at the conference -

- (a) any proposal regarding an issue referred to in paragraph (c) of subrule (4), whether agreed by the parties or not;
- (b) reasonable ways in which issues may be limited and admissions and concessions which may lead to the narrowing of the issues to be adjudicated;
- (c) the need for interlocutory motions and the date for the hearing of such motions by the case management judge;
- (d) the hearing and determination of a preliminary objection on points of law;
- (e) indexing, pagination, and binding of the record of all the pleadings and documents filed of record;
- (f) determining the time for the filing of heads of argument;
- (g) determining the date of the hearing of the section 109 application; and
- (h) any other issues which, in the opinion of the case management judge, may facilitate the just and speedy determination of the section 109 application.

(7) Where it is shown by a party at the case management conference that an interlocutory motion referred to in paragraph (c) of subrule (6) is relevant -

- (a) the motion must be heard within 4 days after the conclusion of the case management conference;
- (b) heads of argument of all parties must be filed not later than 2 days before the hearing of any interlocutory motion; and
- (c) a ruling must be made at least 3 days before the hearing of the section 109 application.

(8) If in the opinion of the case management judge it is necessary to hold a further case management conference, such conference must be held so soon after the case management conference in question, and, in any case, at least 2 days before the hearing of the section 109 application.

(9) A case management conference must be recorded and held in chambers of the Judge or elsewhere at his or her discretion, and must only be attended by counsel representing the parties.

(10) A case management judge must make an order in respect of any issue addressed and determined by him or her during a case management conference.

(11) A section 109 application is heard by a court consisting of the case management judge alone or by any number of judges as the Judge-President may consider necessary, and the number may include the case management judge.

(12) A section 109 application must be heard within 10 days after the conclusion of the case management conference, where only one case management conference is held, or after the conclusion of the last case management conference, where more than one case management conference is held.

(13) Subject to the Act and these rules, where these rules do not make provision for the procedure to be followed in a section 109 application, the rules of court regulating motion proceedings apply with such qualifications, modifications and adaptations as the court may consider necessary.

**Application in terms of section of Act other than section 109 or in terms of any other law**

**6E.** (1) For the avoidance of doubt, these rules do not apply to an application brought in terms of a section of the Act other than section 109 thereof or brought in terms of any other law, irrespective of whether such application concerns a matter that is connected with, or incidental to, an election held or to be held in terms of the Act.

(2) The rules of court regulating motion proceedings apply to an application referred to in subrule (1).”

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