

HIGH COURT ACT
(Cap. 04:02)

RULES OF THE HIGH COURT (AMENDMENT) RULES, 2024
(Published on 25th October, 2024)

ARRANGEMENT OF ORDERS

ORDER

1. Citation
2. Amendment of Order 9 of Cap. 04:02 (Sub. Leg.)
3. Amendment of Order 12 of the Rules
4. Amendment of Order 24 of the Rules
5. Amendment of Order 25 of the Rules
6. Amendment of Order 27 of the Rules
7. Amendment of Order 31 of the Rules
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16. Amendment of Order 74 of the Rules

IN EXERCISE of the powers conferred on the Chief Justice by section 28 of the High Court Act, the following Rules are hereby made —

1. These Rules may be cited as the Rules of the High Court (Amendment) Rules, 2024. Citation
2. The Rules of the High Court (hereinafter referred to as “the Rules”) are amended in Order 9 rule 3 by substituting for subrule (2), the following new subrule — Amendment of Order 9 of Cap. 04:02 (Sub. Leg.)

“(2) A defendant shall not enter an appearance to an action after the time set out in Order 6 rule 12 for the entry of appearance has expired, unless he has first made an application for, and has been granted leave for late filing by the judge.”.
3. Order 12 of the Rules is amended by substituting for rule 11, the following new rule — Amendment of Order 12 of the Rules

“11. Notwithstanding the provisions of this rule, interlocutory and other applications incidental to pending proceedings may be brought on notice in Form 4 or Form 5 set out in Schedule 1, as may be applicable, supported by such affidavits as the case may require, and set down on a motion day or as directed by the judge.”.
4. Order 24 of the Rules is amended — Amendment of Order 24 of the Rules
 - (a) in rule 2 (b) by substituting for subparagraph (i), the following new subparagraph —

“(i) an affidavit or affidavits by persons having direct knowledge thereof setting out the facts relied upon,”; and

Amendment of
Order 25 of the
Rules

- (b) by substituting for rule 4, the following new rule —
“4. A declaration shall be filed within 14 court days of entry of appearance.”
5. Order 25 of the Rules is amended in —

(a) rule 1 (2), by substituting for paragraph (a), the following new paragraph —

“(a) an affidavit or affidavits by persons having direct knowledge thereof setting out the facts relied upon;” and

(b) rule 3, by deleting the proviso appearing under subrule (2).

Amendment of
Order 27 of the
Rules

6. Order 27 of the Rules is amended in rule 4 (1), by inserting immediately after paragraph (o), the following new paragraph —

“(p) the scheduling and exchange of all processes, documents and other steps pursuant to —

(i) Order 21 (Close of Pleadings),

(ii) Order 28 (Application for Directions),

(iii) Order 35 (Special Cases and Adjudication on Point of Law),

(iv) Order 36 (Assessment of Damages),

(v) Order 37 (Inquiries and Accounts),

(vi) Order 39 (Discovery, Inspection and Production of Documents),

(vii) Order 40 (Admissions),

(viii) Order 41 (Inspection, Examinations and Expert Testimony),

(ix) Order 44 (Procuring Evidence for Trial), and

(x) Order 45 (Civil Trials),

shall be completed by the date set for a Final Pre-Trial Conference.”.

Amendment of
Order 31 of the
Rules

7. Order 31 of the Rules is amended —

(a) by substituting for rule 1, the following new rule —

“1. Any party who fails to comply with any time period for filing and service of process in terms of these Rules, order or directions of the Court shall be barred from filing such process.”;

(b) by substituting for rule 2, the following new rule —

“2. Any process that is filed and served in contravention of rule 1 shall be invalid, and of no force and effect.”; and

(c) by substituting for rule 3, the following new rule —

“3. A party in any proceedings where an automatic bar provided for under this Order has come into effect may —

(a) apply for a dismissal under Order 24 rule 8;

(b) apply for judgment in action or claim in reconviction, as the case may be, under Order 25 rule 11; or

(c) set the matter down, on notice to the other party, for the grant of a default Order in the same manner as if in terms of Order 43 rule 6 of these Rules.”.

Amendment of
Order 34 of the
Rules

8. The Rules are amended by substituting for Order 34, the following new Order —

“ORDER 34 SUMMARY JUDGMENT

1. The plaintiff may, after the defendant has delivered a plea, apply to court for summary judgment on each of such claims in the summons as is only —

(a) on a liquid document;

(b) for a liquidated amount in money;

(c) for delivery of specified movable property; or

(d) for ejection,
together with any claim for interest and costs.

2. (1) Within 14 court days after the date of delivery of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff or by any other person who can swear positively to the facts.

(2) The plaintiff shall, in the affidavit referred to in subrule (1) verify the cause of action and the amount, if any, claimed, and identify any point of law relied upon and the facts upon which the plaintiff's claim is based, and explain briefly why the defence as pleaded by the defendant does not raise any issue for trial.

(3) If the claim is founded on a liquid document, a copy of the document shall be annexed to such affidavit and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day not being less than 14 court days from the date of the delivery thereof.

3. The defendant may —

- (a) give security to the plaintiff to the satisfaction of the court for any judgment including costs which may be given; or
- (b) satisfy the court by affidavit (which shall be delivered five court days before the day on which the application is to be heard), or with the leave of the court by oral evidence of such defendant or of any other person who can swear positively to the fact that the defendant has a *bona fide* defence to the action; such affidavit or evidence shall disclose fully the nature and grounds of the defence and the material facts relied upon therefore.

4. No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in rule 2, nor may either party cross-examine any person who gives evidence orally or on affidavit:

Provided that the court may put to any person who gives oral evidence such questions as it considers may elucidate the matter.

5. If the defendant does not find security or satisfy the court as provided in rule 3 (b), the court may enter summary judgment for the plaintiff.

6. If on the hearing of an application made under this rule it appears —

- (a) that any defendant is entitled to defend and any other defendant is not so entitled; or
- (b) that the defendant is entitled to defend as to part of the claim, the court shall —
 - (i) give leave to defend to a defendant so entitled thereto and give judgment against the defendant not so entitled, or
 - (ii) give leave to defend to the defendant as to part of the claim and enter judgment against such defendant as to the balance of the claim, unless such balance has been paid to the plaintiff, or

(iii) make both orders mentioned in subparagraphs (i) and (ii).

7. If the defendant finds security or satisfies the court as provided in rule 3, the court shall give leave to defend, and the action shall proceed as if no application for summary judgment had been made.

8. Leave to defend may be given unconditionally or subject to such terms as to security, time for delivery of pleadings, or otherwise, as the court deems fit.

9. The court may at the hearing of such application make such order as to costs as to it may seem just:

Provided that if —

- (a) the plaintiff makes an application under this rule, where the case is not within the terms of rule 1 or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle such defendant to leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs; and may further order that such costs be taxed as between attorney and client;
- (b) in any case in which summary judgment is granted for the plaintiff substantially as prayed, and the court finds that the hearing of the summary judgment application was delayed by mere procedural technicalities at the instance of the defendant, the court may order the plaintiff's costs of summary judgment to be taxed as between attorney and client; and
- (c) in any case in which summary judgment was refused and in which the court after trial gives judgment for the plaintiff substantially as prayed, and the court finds that summary judgment should have been granted had the defendant not raised a defence which in its opinion was unreasonable, the court may order the plaintiff's costs of the action to be taxed as between attorney and client."

Amendment of
Order 39 of the
Rules

9. Order 39 of the Rules is amended by substituting for rule 15, the following new rule —

"15. (1) Any party to an action may, not less than 28 court days before the date set for Final Pre-Trial Conference, give notice to any other party to specify, in writing, particulars of dates and parties of or to any document intended to be used at the trial of the action on behalf of the party to whom notice is given.

(2) The party receiving such notice shall, not less than 21 court days before the date set for Final Pre-Trial Conference, give a notice —

- (a) specifying the dates and parties of or to, and the general nature of, any such document which is in his possession; and
- (b) specifying such particulars as he may have to identify any such document not in his possession, at the same time furnishing the name and address of the person in whose possession such document is.

(3) In making any such specification, the party so specifying may give the particulars of such documents as may be in his possession by reference to any discovery affidavit insofar as such particulars in the discovery affidavit are sufficient."

Amendment of
Order 40 of the
Rules

10. Order 40 of the Rules is amended by substituting for rule 4, the following new rule —

"4. Any party may, by notice in writing, at any time not later than 21 court days before the date set for Final Pre-Trial Conference, call on any other party to admit, for the purpose of the cause, matter or issue only, any specific fact or facts mentioned in such notice."

11. Order 41 of the Rules is amended —

(a) in rule 2 by substituting for subrule (1), the following new subrule —

“(1) Any party requiring another party to submit to such examination shall deliver a notice not less than 21 court days before the date set for Final Pre-Trial Conference specifying the nature of the examination required, the person or persons by whom, the place where and the date (being not less than 14 court days from the date of such notice) and time when it is desired that such examination shall take place, and requiring such other party to submit himself for examination then and there.”;

(b) by substituting for rule 4, the following new rule —

“4. Any party to such an action may not less than 21 court days before the date set for Final Pre-Trial Conference by notice, in writing, require any person claiming such damages to make available, insofar as he is able to do so, to such party within 10 court days, any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages.”;

(c) by substituting for rule 6, the following new rule —

“6. If it appears that the state or condition of anything of any nature whatsoever whether movable or immovable, may be relevant with regard to the decision on any matter at issue in any action, any party thereto may at any stage thereof, not less than 21 court days before the date set for Final Pre-Trial Conference, give notice requiring the party relying upon the existence of such state or condition of such thing, or having such thing in his possession, or under his control, to make it available for inspection or examination in terms of this rule, and may in such notice require him to submit the thing or a fair sample thereof for inspection or examination within a period of not more than 10 court days from the date of the receipt of the notice.”;

(d) by substituting for rule 9, the following new rule —

“9. No person shall, except with the leave of the judge, or the consent of all the parties to the suit, be entitled to call as a witness any person to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received unless he has —

(a) not less than 21 court days before the date set for Final Pre-Trial Conference, delivered notice of his intention to do so; and

(b) not less than 14 court days before the date set for Final Pre-Trial Conference, delivered a summary of such expert's opinions and his reasons therefore.”; and

(e) by substituting for rule 10, the following new rule —

“10. (1) No person shall, except with the leave of the judge, or the consent of all the substantive parties, be entitled to tender in evidence any plan, diagram, model or photograph unless he has not less than 21 court days before the date set for Final Pre-Trial Conference delivered a notice stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit the same within seven court days of his receipt of the notice.”.

12. Order 42 of the Rules is amended —

(a) by substituting for rule 1 (B), the following new rule —

“1B. (1) The Registrar administering each division of the High Court shall, where a case of exceptional public importance is presented for registration, inform the Chief Justice or any person for the time being acting on his stead, of this fact before allocation, to enable the Chief Justice to determine whether a judge or judges should be nominated or empanelled by the Chief Justice, in terms of section 6 of the Act.

(2) Subject to the provisions of subrule (1), where a case has been allocated to a judge, the Chief Justice or any person acting on his stead may —

- (a) on his own motion;
- (b) at the instance of the judge to whom the case has been allocated; or
- (c) on the motion of the parties to the case,

make a determination that the case is one of exceptional public importance and that a judge or judges should be nominated or empanelled by the Chief Justice in terms of section 6 of the Act.

(3) For the purposes of this rule, “a case of exceptional public importance” includes the following matters —

- (a) any question on the interpretation of the Constitution;
- (b) any issue on the appointment, tenure of office or the conditions of service of the Chief Justice, a judge of the High Court, the President or a judge of the Court of Appeal or a judicial officer;
- (c) an appeal against a decision of the Judicial Service Commission;
- (d) any issue involving the exercise of any disciplinary control over judicial officers, except for any matters that fall under section 97 of the Constitution;
- (e) a suit against the Chief Justice;
- (f) an election petition;
- (g) a review of a decision made by the President;
- (h) the designation, recognition, removal of powers of *Dikgosi* or *Dikgosana*;
- (i) the organisation, powers or administration of customary courts, customary law or the ascertainment or recording of customary law;
- (j) any issue involving tribal organization or tribal property;
- (k) any matter in which the remedy sought involves or affects the conditions of service of public officers; or
- (l) any other matter that the Chief Justice may, from time to time, determine to be, matters of exceptional public importance.

(4) The Chief Justice may make a determination in terms of subrule (1), and nominate such number of judges as he may determine to hear the case together with the judge first allocated the case, and state the station where the case will be heard, after a case has been allocated to such judge, but before the hearing of substantive arguments on the case.”; and

(b) in rule 2, by deleting subrules (2), (3), (4) and (5).

Amendment of
Order 45 of the
Rules

13. Order 45 of the Rules is amended by substituting for rule 11, the following new rule —

“11. Either party may apply, as part of the parties’ Proposed Final Pre-Trial Order, for a ruling by the judge upon the onus of adducing evidence and the judge may give directions in the Final Pre-Trial Order as to the party upon whom such onus lies.”.

14. Order 51 of the Rules is amended by deleting rule 9.

Amendment of
Order 51 of the
Rules

15. Order 68 of the Rules is amended in rule 4 by substituting subrule (3), the following new subrule —

Amendment of
Order 68 of the
Rules

“(3) The accused’s counsel shall, within 14 court days of receipt of a notice of trial, and after taking instructions from the accused, meet with the Director of Public Prosecutions to confer on, pleas to be offered, interpretation needs, formal submissions to be made, objections to any confession statement and the grounds therefor, the need for a trial within trial, witnesses that may be called by both parties, possible duration of the trial, and any other relevant matters, and shall file a joint minute to such meeting no less than two court days before the roll call.”.

16. Order 74 of the Rules is amended by substituting for —

Amendment of
Order 74 of the
Rules

(a) rule 3, the following new rule —

“3. With a view to affording a party who has been awarded an order for costs a full indemnity for all costs reasonably incurred by the party in relation to such party’s claim or defence, and to ensure that all such costs shall be borne by a party against whom the order for costs has been awarded, the taxing master shall, on every taxation, allow all such costs, charges or expenses, as may appear to him to have been necessary or proper for the attainment of justice, or for defending the rights of any party, but except as against the party who incurred the same, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over-caution, negligence or mistake, or by payment of a special fee to an advocate, or special charges or expenses to witnesses or to other persons or by other unusual expenses:

Provided that in instances where the judge is of the opinion that the claim or cause falls within the jurisdiction of the magistrates’ court, he may, on application by any party thereto, or *mero motu* order that the costs payable shall be on the tariffs as applicable in the magistrates’ court.”; and

(b) the words “10 thebe” wherever they appear, the words “P2.00”, in the Tariff of Fees For Attorneys.

MADE this 25th day of October, 2024.

TERRENCE T. RANOWANE,
Chief Justice.