

Statutory Instrument No. 117 of 1969

THE HIGH COURT OF BOTSWANA ACT, 1967

RULES OF THE HIGH COURT

(Published on the 12th December, 1969)

It is notified for general information that in the exercise of the powers vested in him by section 28 of the High Court of Botswana Act, 1967 (No. 35 of 1967), the Chief Justice has made the following Rules of Court—

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RULES OF THE HIGH COURT OF BOTSWANA

ORDER 1

APPLICATION AND INTERPRETATION

1. These Orders and Rules may be cited as the Rules of the High Court and shall come into operation on 1st January, 1970. They shall apply to all proceedings taken on or after that day; and shall also apply, as far as may be practicable, to all proceedings pending on the said date.

2. On the coming into operation of these Orders, all previous Rules of the High Court shall be repealed save where, in pending proceedings, it is not practicable to adopt the procedure hereby laid down, in which case the procedure under the rules hereby repealed shall be followed.

3. In these Rules and attached forms, unless the context otherwise indicates:

“Act” shall mean the High Court of Botswana Act, 1967;

“Action” shall mean the proceeding commenced by summons or by writ in terms of Order 9;

“Advocate” shall mean an advocate duly admitted and still enrolled on the Roll of Advocates of the High Court;

“Attorney” shall mean an attorney duly admitted and still enrolled on the Roll of the High Court;

“Chief Justice” shall mean the Chief Justice of Botswana;

“Counsel” shall mean an advocate or an attorney;

“Court Day” shall mean any day other than Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these Rules or fixed by any Order of Court;

“Deliver” shall mean serve copies on all parties and file the original with the Registrar;

“District” shall have the meaning assigned to that term in the Subordinate Courts Proclamation, Cap. 5 (as amended).

“Form” shall mean the form set out in the schedule to these Rules;

“Holiday” shall mean any Sunday or other day declared by law to be a non-business day;

“Judge” shall mean a Judge sitting otherwise than in open court;

“Magistrate” shall mean a person appointed as such under Section 105 of the Constitution.

“Master” shall mean the Master of the High Court; appointed in terms of the Administration of Estates Proclamation, Cap. 83.

“Party” or any reference to plaintiff or other litigant in terms shall include his Counsel;

“Registrar” shall mean the Registrar of the High Court, and shall include an Assistant Registrar;

“Sheriff” shall mean the Sheriff of Botswana, and shall include a deputy sheriff.

4. Any act required to be done by any person on a date which is a holiday shall be valid and effectual if done on the next succeeding business day.

ORDER 2

DUTIES OF REGISTRAR

1. In addition to the duties referred to in other orders, the Registrar shall carry out the duties specified in this order.

2. The Registrar shall keep an index book to be called the Civil Record Book in which the following particulars shall be recorded:

- (a) the number of the action;
- (b) the names of the parties;
- (c) the plaint or cause of action;
- (d) the day and place of hearing the case;
- (e) the names of Counsel;
- (f) the judgment of the Court; and
- (g) any subsequent proceedings and remarks.

3. (1) As soon as a Summons is issued, the Registrar shall prepare a cover in which all pleadings received shall be filed. Separate covers shall also be kept for all petitions, motions or other matters to be presented to court.

(2) The summons and all other documents in an action, petition, motion or other matter shall be numbered by the Registrar before issue with a consecutive number for the year and the action, petition, motion or other matter shall, at the time of issue, be entered by him in the Civil Record book under that number.

(3) Every document afterwards served, delivered or filed in such action, petition, motion or other matter shall be marked with such number by the party delivering it and shall not be received by the Registrar until so marked.

4. The Registrar shall not accept and file any document or issue any summons subpoena or other process or order of court unless the prescribed stamp duty has been attached and cancelled except where the party has been granted leave to proceed *in forma pauperis*.

5. For the purpose of issuing summons, subpoenas or any writ of arrest under Order 9 in districts other than Lobatse, magistrates shall, within their respective places, be District Registrars of the High Court. A District Registrar shall, after issuing any summons or writ of arrest, forthwith transmit a copy of the summons or writ to the Registrar at Lobatse and shall, at the same time, forward the Attorney's warrant and authority to sue.

ORDER 3

ADVOCATES AND ATTORNEYS: WARRANTS TO SUE AND DEFEND

1. Save as is hereinafter provided, no summons and no order of arrest under Order 9, shall be issued by the Registrar at the instance of an attorney on behalf of a plaintiff, nor shall the Registrar cause appearance to be entered at the instance of an attorney on behalf of a defendant unless there has been filed with him a power of attorney to sue or

defend, as the case may be, provided that no power of attorney shall be filed by the Attorney General or any professional assistant to the Attorney General in any matter in which the Attorney General is acting in his capacity as such for or on behalf of the Government of Botswana or for a Government Department.

2. On good cause shown to the Registrar an attorney may without filing a power of attorney enter appearance on behalf of a client to defend proceedings, on the condition that the power of attorney is filed as soon as possible.

3. On good cause shown to the Registrar an attorney may without filing a power of attorney institute proceedings of an urgent nature, on the condition that the power of attorney is filed as soon as possible.

4. If any section by an attorney under Rules 2 and 3 of this Order is repudiated by his alleged principal and is found by the court to have been unjustified, the Court may order the attorney personally to pay the costs thereby occasioned.

5. The Registrar shall not set down any civil appeal at the instance of an attorney on behalf of an appellant unless:

- (a) such attorney files with the Registrar a power of attorney authorising him to prosecute the appeal; or,
- (b) it is shown to the Registrar that the power of attorney filed in the proceedings in the court *a quo* confers such authority.

6. Every attorney appearing or instructing an advocate to appear on behalf of the respondent at the hearing of a civil appeal shall before the hearing thereof file with the Registrar a power of attorney authorising him to act for the respondent, unless it is shown to the Registrar that the power of attorney filed in the proceedings in the court *a quo* confers such authority.

7. Powers of attorney shall be duly signed by the client and dated and shall be in Form 1 with such variations as circumstances may require.

8. A party suing or defending by an attorney shall be at liberty to change his attorney in any cause or matter upon notice of such change being filed with the Registrar.

9. An attorney may at any time renounce his agency by giving notice to his client and to the Registrar, but until the client furnishes the Registrar with, and notifies the opposite party of, a new address for service, any process served on the retiring attorney at the address for service shall be considered good service and the retiring attorney shall notify his former client of the service of any such process by letter addressed to the client's last known address.

ORDER 4

SUMMONS

1. Every action other than process of arrest of the defendant shall be commenced by a summons directed, where service is to be effected within the jurisdiction, to the Sheriff and signed by the Registrar.

2. The summons shall require the Sheriff where service is to be effected within the jurisdiction, to command the defendant that he cause an appearance to be entered within the period prescribed in the summons to answer the plaintiff's claim, and shall also

require the Sheriff to serve on the defendant a copy of the summons and immediately thereafter to return the summons duly endorsed with whatsoever he has done concerning it.

3. Before issue every summons shall contain:

- (a) The full name of the defendant and his residence or place of business, and, where known, his occupation, and, if he is sued in a representative capacity, the capacity in which he is so sued. The summons shall also state the defendant's sex, and, if a female, her marital status. Where the defendant's full name is unknown to the plaintiff and cannot be ascertained, that fact should be stated, and his name and initials, or his name and such of his initials as are known, should be given.
- (b) The full name, occupation and residence or place of business of the plaintiff and, if he sues in a representative capacity, the capacity in which he sues. The summons shall also state the plaintiff's sex, and, if a female, her marital status.
- (c) A statement of the nature of the claim made and of the relief or remedy sought in the action.
- (d) The date of issue.

4. The summons shall be in Form 2, with such variation as circumstances require.

5. In an action where the claim, apart from costs, is:

- (a) for a liquidated demand of money;
- (b) for the delivery of specified movable property;
- (c) for ejectment; or
- (d) for any two or more of such matters;

the summons may, at the option of the plaintiff, be endorsed with the particulars of the claim.

6. Such particulars shall take the place of a declaration and shall state truly and concisely the nature, and the grounds of the cause of action. A summons so endorsed shall bear on the face of it a statement that it is issued under Rule 5 of this Order.

7. No summons for service out of the jurisdiction of the court shall be issued without the leave of the court or a Judge, or of the Registrar exercising jurisdiction under Section 27 of the Act.

8. It shall not be essential to set forth in the summons the precise ground of complaint or the precise remedy or relief to which the plaintiff considers himself entitled, but a statement in summary form shall suffice.

9. Subject to the provisions of this Order, a summons may, before service, be amended by the plaintiff as he thinks fit. Any alteration or amendment of a summons, whether before or after issue, shall, before service thereof, be initialled by the Registrar, and until so initialled such alterations and amendments shall have no effect.

10. An address called the "address for service" where notices, pleadings, petitions, orders and other documents may be left by the defendant for the plaintiff shall be endorsed on every summons. The address for service shall not be more than 5 miles from the Registry where the defendant is required to enter appearance. Where the plaintiff sues by the agency of an attorney, the name of the attorney shall be endorsed on the summons and his address, if within the area mentioned, shall be the address for service.

11. In all cases where proceedings are commenced other than by summons, Rule 10 of this Order shall apply to the documents by which such proceedings are originate as if it were a summons.

12. A summons shall be prepared by the plaintiff or an attorney and shall be written or printed or partly printed and partly written on foolscap paper of good quality.

13. The time within which a defendant shall be ordered to enter appearance to defend shall be reckoned on the following scale:

Where the defendant's dwellinghouse or place of business is within 30 miles of the place where he is required to enter appearance the time allowed shall be not less than six days, exclusive of the day of service. Where the said distance exceeds 30 miles then the period shall be increased by one day for every additional 30 miles or portion of 30 miles.

14. No summons or other civil process of the Court may be sued out against the President or the Government of Botswana, or against any Judge of the High Court without the leave of the court upon motion made for that purpose.

15. Where the Sheriff is a party to an action the summons may be directed for service to some fit and proper person nominated by a Judge, and where a Deputy Sheriff is a party to some fit and proper person nominated by the Sheriff.

16. Every summons shall be made returnable to the High Court at Lobatsi and the summons shall be returned thereto by the Sheriff or his deputy after service has been effected.

ORDER 5

SERVICE OF SUMMONS, WRITS, NOTICES AND OTHER DOCUMENTS

1. Except in the case of arrest, summonses, notices and other documents may not be served on a Sunday or between 7 p.m. and 7 a.m., and no such service shall be valid.

2. Any party requiring service of any notice or other document to be made by the Sheriff shall deliver to him the original (save where it is already filed of record) of such notice or other document together with so many copies thereof as there are persons to be served.

3. (1) Where the application to the court is for an order affecting the liberty of the respondent, the summons or writ shall be served by delivery of a copy thereof to the respondent personally, unless the court or a Judge shall for good cause shown give leave for such summons or writ to be served in some other specified manner.

(2) Service of any process of the court, including any document in any application proceedings on the person to be served, shall be effected by the Sheriff in one or other of the following manners:

- (i) by delivering a copy thereof to the said person personally: Provided that where such person is a minor or a person under legal disability service shall be effected upon the guardian, tutor, curator, or the like of such minor or person under disability;
- (ii) by leaving a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery being a person apparently not less than

16 years of age. For the purpose of this paragraph, when a building other than a hotel, boarding house, hostel or similar residential building is occupied by more than one person or family, "residence" or "place of business" means that portion of the building occupied by the person upon whom service is to be effected;

- (iii) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over him;
- (iv) if the persons so to be served have chosen a *domicilium citandi*, by delivering a copy thereof at the *domicilium* so chosen;
- (v) in the case of corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction, or, if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner prescribed by law;
- (vi) by delivering a copy thereof to any agent who is duly authorised in writing to accept service on behalf of the person upon whom service is to be effected;
- (vii) where any partnership, firm or voluntary association is to be served, service shall be effected upon a partner, the proprietor, or on the chairman or secretary of the committee, or other managing body of such association as the case may be in one of the manners set forth in this rule;
- (viii) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the town clerk or assistant town clerk or mayor of such local authority, or to the secretary or similar officer or member of the board or committee of such body, or in any manner provided by law; or
- (ix) if two or more persons are sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule.

(3) It shall be the duty of the Sheriff or other person serving a process or documents to explain the nature and contents thereof to the person upon whom service is being effected, and to state in his return that he has done so.

(4) Service of any process of the court or of any document in a foreign country shall be effected:

- (a) by any person who is, according to a certificate, of:
 - (i) the head of any Botswana Diplomatic or Consular Mission, any person in the administrative or professional division of the public service serving at a Botswana Diplomatic, Consular or Trade office, any honorary Botswana Consul General, Consul, Vice-Consul or Trade Commissioner;
 - (ii) any foreign diplomatic or, consular officer attending to the service of process or documents on behalf of Botswana in such country;
 - (iii) any diplomatic or consular officer of any such country serving in Botswana;
 - (iv) any official signing as or on behalf of the department dealing with the administration of justice in that country;

authorised under the law of such country to serve such process or document; or

- (b) any person referred to in subparagraphs (i) and (ii) of paragraph (a) if the law of such country permits him to serve such process or document, or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(5) Service of any process of the Court or of any document in the United Kingdom of Great Britain and Northern Ireland, The Republic of South Africa, Zambia, Southern Rhodesia, Malawi, Lesotho or Swaziland may, notwithstanding the provisions of sub-rule (4), also be effected by a solicitor, attorney, notary public, or other legal practitioner in the country concerned who is under the law of that country authorised to serve process of court or documents.

(6) Service shall be proved in one of the following manners:

- (a) where service has been effected by the Sheriff, by the return of service of such Sheriff;
- (b) where service has not been effected by the Sheriff, nor in terms of sub-rule (5), by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his staff, the Government of Botswana, on any Minister, or any other officer of such Government in his capacity as such, by the production of a signed receipt therefor.

(7) Service of any process of court or document in a foreign country shall be proved:

- (a) by a certificate of the person effecting service in which he identifies himself, states that he is authorised under the law of that country to serve process of court or documents therein, and that the process of court or documents in question has been served as required by the law of that country, and sets forth the manner and the date of such service: Provided that the certificate of a person referred to in sub Rule (5) shall be duly authenticated; or
- (b) by a certificate of the person effecting service in terms of paragraph (b) of sub-rule (4) in which he states that the process of court or documents in question has been served by him, setting forth the manner and the date of such service and affirming that the law of the country concerned permits him to serve process of court or documents or that there is no law of such country prohibiting such service and that the authorities of that country have not interposed any objection thereto.

(8) Whenever the court is not satisfied as to the effectiveness of the service, it may order such steps to be taken as to it seems meet.

4. Any summons, writ, warrant, rule or notice, or other process, document or communication which by law, rule of court, or agreement of the parties is required or directed to be served upon any person or left at the house or place of abode or business of any person in order that such person may be effected thereby may be transmitted by telegraph or telegraphic copy served upon such person or left at his house or place of abode or business shall be of the same force and effect as if the original had been shown to or a copy thereof served upon such person, or left as aforesaid (as the case may be).

ORDER 6
EDICTAL CITATION

1. Save by leave of the court, no process or document whereby proceedings are instituted shall be served outside the Republic.

2. Any person desiring to obtain such leave shall make application to the court setting forth concisely the nature and extent of his claim, the grounds upon which it is based and upon which the court has jurisdiction to entertain the claim, and also the manner of service which the court is asked to authorise. If such manner be other than personal service, the application shall further set forth the last known whereabouts of the person to be served and the enquiries made to ascertain his whereabouts. Upon such application the court may make such order as to the manner of service as to it seems meet and shall further order the time within which notice of intention to defend is to be given or any other steps to be taken by the person to be served. Where service by publication is ordered, it may be in a form as near as may be in accordance with Form 3, approved and signed by the Registrar.

3. Any person desiring to obtain leave to effect service outside Botswana of any document other than one whereby proceedings are instituted may either make application for such leave in terms of rule 2 or request such leave at any hearing at which the court is dealing with the matter, in which latter event no papers need be filed in support of such request and the court may act upon such information as may be given from the Bar, or given in such manner as it may require, and may make such order as to it seems meet.

ORDER 7
PETITIONS AND APPLICATIONS

1. Save where proceedings by way of petition are prescribed by law, every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

2. When relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the Registrar and such person, otherwise it shall be addressed to the Registrar only.

3. (a) Every petition shall conclude with the form or order prayed and be verified upon oath by or on behalf of the petitioner.

(b) In every application the applicant shall, prior to the day of hearing, file with the Registrar a draft of the order which he seeks.

4. (a) Every application brought *ex parte* (whether by way of petition or upon notice to the Registrar supported by an affidavit as aforesaid) shall be filed with the Registrar and set down not less than two days before the day fixed for hearing. If brought upon notice to the Registrar, such notice shall set forth the form of the order sought, specify the affidavit filed in support thereof, request him to place the matter on the roll for hearing, and be as near as may be in accordance with Form 4.

(b) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application by him for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which he desires to be heard, whereupon the Registrar may set such application down for hearing at the same time as the application first mentioned.

(c) At the hearing the court may grant or dismiss either or both such applications as the case may require, or may adjourn the same upon such terms as to the filing of further affidavits by either applicants as to it seems meet.

5. (a) Every application other than one brought *ex parte* shall be brought on notice of motion as near as may be in accordance with Form 5, and true copies of the notice and all annexures thereto shall be served upon every party to whom notice thereof has to be given.

(b) In such notice the applicant shall appoint an address within 5 miles of the office of the Registrar at which he will accept notice and service of all documents in such proceedings, and shall set forth a day not less than 5 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant in writing whether he intends to oppose such application and shall further state that if no such notification is given the application will be set down for hearing on a stated day not being less than 7 days after service on the said respondent of the said notice.

(c) If the respondent does not on or before the day mentioned for that purpose in such notice notify the applicant of his intention to oppose, the applicant may place the matter on the roll for hearing by giving the Registrar notice to set down before noon on the court day but one preceding the day upon which the same is to be heard.

(d) Any person opposing the grant of an order sought in the notice of motion shall:

(i) within the time stated in the said notice give the applicant notice in writing that he intends to oppose the application and in such notice appoint an address within 5 miles of the office of the Registrar at which he will accept notice and service of all documents;

(ii) within 14 days of the service on him of the notice of motion, deliver his answering affidavit, if any, together with any relevant documents;

(iii) if he intends to raise a question of law only, he shall deliver notice of his intention to do so within the time stated in the proceeding subparagraph, setting forth such question.

(e) Within 7 days of the service upon him of the affidavit and documents referred to in sub-paragraph (ii) of paragraph (d) of Rule 5, the applicant may deliver a replying affidavit. The court may, in its discretion, permit the filing of further affidavits.

(f) Where no answering affidavit or notice in terms of sub-paragraph (ii) of paragraph (d) is delivered within the period referred to in sub-paragraph (ii) of paragraph (d), the applicant may within 4 days of the expiry thereof apply to the Registrar to allocate a date for the hearing of the application. Where an answering affidavit or notice is delivered, the applicant may apply for such allocation within 4 days of the delivery of his replying affidavit, or, if no replying affidavit is delivered, within 4 days of the expiry of the period referred to in paragraph (e). If the applicant fails so to apply within the appropriate period aforesaid, the respondent may do so immediately upon the expiry thereof. Notice in writing of the date allocated by the Registrar shall forthwith be given by applicant or respondent, as the case may be, to the opposite party.

(g) Where an application cannot properly be decided upon affidavit, the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view

to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross examined as a witness, or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues or otherwise.

6. The court, after hearing an application, whether brought *ex parte* or otherwise, may make no order thereon (save as to costs, if any), but grant leave to the applicant to renew the application on the same papers supplemented by such further affidavits as the case may require.

7. (a) Any party to any application proceedings may bring a counter application, or may join any party to the same extent as would be competent if the party wishing to bring such counter application or join such party were a defendant in an action and the other parties to the application were parties to such action. In the latter event, Order 10 shall apply *mutatis mutandis*.

(b) The periods prescribed with regard to applications shall apply *mutatis mutandis* to counter applications.

8. Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 24 hours' notice.

9. A copy of every application to court in connection with the estate of any person deceased, or alleged to be a prodigal, or under any legal disability, mental or otherwise, shall, before such application is filed with the Registrar, be submitted to the Master for consideration and report; and if any person is to be suggested to the court for appointment as curator to property, such a suggestion shall likewise be submitted to the Master for report.

10. The provisions of Rule 9 shall further apply to all applications for the appointment of administrators and trustees under deeds or contracts relating to trust funds or to the administration of trusts set up by testamentary disposition.

11. Notwithstanding the foregoing rules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the Registrar or as directed by a Judge.

12. (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner, and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as to it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.

13. In any application against any minister or other officer or servant of the State in his capacity as such, the respective periods referred to in paragraph (b) of rule 5, or for the return of a rule *nisi*, shall be not less than 14 days after the service of the notice of motion, or the rule *nisi*, as the case may be, unless the court shall have specially authorised a shorter period.

14. Rules 10, 11, 12 and 13 shall *mutatis mutandis* apply to all applications.

15. The court may on application order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The court shall not grant the application unless it is satisfied that the applicant will be prejudiced in his case if it be not granted.

ORDER 8

PROVISIONAL SENTENCE

1. Where by law any person may be summoned to answer a claim made for provisional sentence, proceedings shall be instituted by way of a summons as near as may be in accordance with Form 6, calling upon such person to pay the amount claimed or, failing such payment, to appear personally or by Counsel upon the day named in such summons not being less than 7 days after service upon him of such summons, to admit or to deny his liability.

2. Such summons shall be issued by the Registrar and the provisions of Rules 3 and 10 of Order 4 shall *mutatis mutandis* apply.

3. Copies of all documents upon which the claim is founded shall be annexed to the summons and served with it.

4. The plaintiff shall set down the case for hearing before noon on the court day but one preceding the day upon which it is to be heard.

5. Upon the day named in the summons the defendant may appear personally or by Counsel to admit or deny his liability and may, not later than noon of the court day but one preceding the day upon which he is called upon to appear in court, deliver an affidavit setting forth the grounds upon which he disputes liability. In such event, the plaintiff shall be afforded a reasonable opportunity of replying thereto.

6. If at the hearing the defendant admits his liability, or if he has previously filed with the Registrar an admission of liability signed by himself and witnessed by Counsel acting for him and not acting for the opposite party, or, if not so witnessed, verified by affidavit, the court may give final judgment against him.

7. The court may hear oral evidence as to the authenticity of the defendant's signature or that of his agent, to the documents upon which the claim for which provisional sentence is founded.

8. Should the court refuse provisional sentence, it may order the defendant to file a plea within a stated time and may make such order as to costs of the proceedings as to it may seem just. Thereafter, the provisions of these rules as to pleading and the further conduct of trial actions shall *mutatis mutandis* apply.

9. The plaintiff shall on demand furnish the defendant with security *de restituendo* to the satisfaction of the Registrar against payment of the amount due under the judgment.

10. Any person against whom provisional sentence has been granted may enter into the principal case only if he shall have satisfied the amount of the judgment for provisional sentence and taxed costs, or if the plaintiff on demand fails to furnish due security in terms of rules 9.

11. A defendant entitled and wishing to enter into the principal case shall, within one month of the grant of provisional sentence, deliver notice of his intention to do so, in which event the summons shall be deemed to be a summons with statement of claim

annexed thereto and he shall deliver a plea within 7 days thereafter. Failing such notice or such plea, the provisional sentence shall *ipso facto* become a final judgment and the security given by the plaintiff shall lapse.

ORDER 9

ARREST OF DEFENDANT

1. Where a plaintiff proves to the satisfaction of the Registrar that he has a good cause of action against a defendant to the amount of R100 or more, and that there is good ground for believing that the defendant is about to remove from Botswana and that the absence of the defendant from Botswana will materially prejudice the plaintiff in the prosecution of his claim, the Registrar may issue a writ of arrest directing the defendant to be arrested and holden to bail to answer the plaintiff's claim. Prior to the issue of any such writ, the plaintiff shall lodge with the Registrar an affidavit sworn to by the plaintiff, or his agent, or his servant, in which shall be set forth all facts which would justify the Registrar in issuing, or refusing to issue, the said writ, and in particular the following:—

- (a) the sum alleged to be due to the plaintiff by the defendant, when it became due and the cause thereof;
- (b) whether or not the plaintiff holds any security for the alleged debt and, if he does, the nature and value thereof;
- (c) that the deponent believes that the defendant is about to remove from Botswana and the grounds of such belief; and
- (d) the steps, if any, which the plaintiff has already taken to enforce his claim.

2. A writ of arrest shall be in the Form 7 and shall, before delivery to the Sheriff or his deputy, be endorsed with the plaintiff's address for service as required by Order 4, Rule 10.

3. A writ of arrest may be executed on any day and at any hour and at any place except in regard to members and officers of Parliament during such period as may be prescribed in any law relating to the Powers and Privileges of Parliament.

4. The Registrar may before issuing a writ of arrest require the plaintiff to give security for any damages which may be caused by such writ of arrest and may require such additional evidence as he may think fit.

5. The sum of money or other thing demanded shall be set out in the writ of arrest and the cost and charges of issuing the writ shall be endorsed thereon by the Registrar. The Sheriff or his deputy shall, upon any arrest made by virtue of any such writ, give to the defendant, at his request and at his charge, a true copy thereof and of all documents on which the claim is founded.

6. If on his arrest the defendant or any one on his behalf gives to the Sheriff or his deputy reasonable security by bond or obligation of the said defendant, and of another person residing and having sufficient means within Botswana, that the defendant shall appear according to the exigency of the said writ and shall stand to abide, and perform the judgment of the court thereon, or shall surrender himself to prison in execution of the same, or if the said defendant pays or delivers to the Sheriff or his deputy the sum of money or thing mentioned in the said writ, together with the costs and charges endorsed thereon, and the further costs of the execution of the writ, the Sheriff or his deputy shall

permit the defendant to go at large and free of the said writ of arrest. The bond or obligation to be given to the Sheriff or his deputy under this rule shall be as near as may be in Form 8.

7. If the defendant at any time after his arrest satisfies the claim contained in the writ, including the costs and charges endorsed thereon and the costs of the arrest, or if he gives a bond or obligation in terms of rule 6 of this Order, he shall be entitled to immediate discharge from such arrest.

8. If a bond or obligation has been given by the defendant or by anyone on his behalf in terms of rule 6 of this Order, the plaintiff shall proceed with his action precisely as if there had been no arrest and the writ of arrest shall in that case stand as a summons in the action.

9. Unless otherwise ordered, the costs of and incidental or a writ of arrest shall be costs in the cause.

10. Any person arrested shall be entitled to anticipate the day of appearance and to apply to the court in term time or to a judge in vacation for the discharge of the said arrest, upon giving 24 hours' notice to the attorney for the plaintiff, or to the plaintiff if he is not represented by an attorney.

11. If the Sheriff or his deputy takes from the party arrested any money or thing for the plaintiff or any bond or obligation by virtue of any writ of attachment, then the Sheriff or his deputy shall, as soon as practicable, and being thereunto required by the plaintiff or his attorney, deliver over to the plaintiff or his attorney any such money or thing or assign to the plaintiff such bond or obligation by an endorsement thereon to be made by the Sheriff or his deputy under his hand, which endorsement shall be as near as may be in Form 9.

12. If the defendant on the return day or on the day of the anticipation of the same as aforesaid admits the claim contained in the process, final judgement shall be given against him and he shall be discharged from such arrest.

13. If the defendant has not satisfied or admitted the claim contained in the writ and has not given security as aforesaid, the plaintiff shall on the return day, or on the day of the anticipation of the same as aforesaid, apply for confirmation of arrest, when the court or judge, unless sufficient cause to the contrary is shown, shall confirm such arrest and order the return of the defendant to prison, but shall make such further order as to it or him seems meet so as to provided for the speedy termination of the proceedings between the parties, the writ standing as summons in the case.

14. If in any such proceedings judgment is given against the defendant, he shall be entitled to his discharge from such arrest provided that such discharge shall not free him from his liability under the judgment or from subsequent proceedings thereunder.

ORDER 10

JOINDER OF PARTIES AND CONSOLIDATION OF ACTIONS

1. All persons may be joined in one action as plaintiffs in whom any right of relief (in respect of or rising out of the same transaction or series of transactions) is alleged to exist, whether jointly, severally or in the alternative where if such persons brought separate actions any common question of law or fact would arise: Provided that if, upon the application of any defendant, it appears that such joinder may embarrass or delay the trial of the action, the court may order separate trials, or make such other order as may be

expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the court in disposing of the costs otherwise directs.

2. Where any action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful if it has been commenced in the name of the right plaintiff, the court may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff subject to his consent in writing and upon such terms as may be just.

3. Where in any action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the mis-joinder of such plaintiff or any proceeding consequent thereon.

4. All persons may be joined as defendants against whom the right to relief is alleged to exist, whether jointly, severally or in the alternative, and judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court or a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

6. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

7. Trustees, executors and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court may, at any state of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.

8. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the court to defend such cause or matter on behalf of or for the benefit of all persons so interested.

9. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court may at any stage of the proceedings, either upon or without the application of either party, or upon the application of any party who claims to be interested, and on such terms as may appear to the court to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before

the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by an special order, and the proceedings as against such party shall be deemed to have begun only on the service of such summons or notice.

10. Any application to add to or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial by motion, or at the trial of the action in a summary manner.

11. Where a defendant is added or substituted the summons shall be amended accordingly, and the plaintiff shall, unless otherwise ordered by the court, file a copy of the summons as amended and serve the new defendant with such amended summons or notice in lieu of service thereof in the same manner as original defendants are served, and the proceedings shall be continued as if the new defendant had originally been made a defendant.

12. Unless owing to the terms of their marriage the husband possesses the marital power, a married woman can sue or be sued without the assistance of her husband, and it shall be sufficient to allege in the latter case that the married woman concerned has the free administration of her own property.

13. Where separate actions have been instituted, and it appears to the court convenient so to do, it may upon the application of any party thereto, and after notice to all interested parties, make an order consolidating such actions, whereupon:—

- (a) the said actions shall proceed as one action;
- (b) the provisions of this Order shall *mutatis mutandis* apply with regard to the action so consolidated; and
- (c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.

ORDER 11

THIRD PARTY PROCEDURE

1. Where a party in any action claims:—

- (a) as against any other person not a party to the action (in this rule called a "third party"), that such party is entitled in respect of any relief claim against him, to a contribution or indemnification from such third party; or
- (b) any question or issue in the action is substantially the same as a question or issue which has arisen or will arise between such party and the third party and should properly be determined not only as between any parties to the action but also as between such parties and the third party or between any of them;

such party may issue a notice hereinafter referred to as a third party notice, as near as may be in accordance with Form 10, which notice shall be served by the Sheriff.

2. Such notice shall state the nature and grounds of the claim of the party issuing the same, the question or issue to be determined, and any relief or remedy claimed, in so far as the statement of the claim and the question or issue are concerned, the rules with regard to pleadings and to summonses shall *mutatis mutandis* apply.

3. The third party notice shall be served before or concurrently with the delivery of the first pleading delivered by the party issuing it in the action in connection with which it is issued and shall be accompanied by a copy of all pleadings filed in the action up to the date of service.

4. If the third party intends to contest the claim set out in the third party notice, he shall deliver notice of intention to defend as if to a summons. Immediately upon receipt of such notice the party who issued the third party notice shall inform all other parties accordingly.

5. The third party shall, after service upon him of a third party notice, be a party to the action and, if he delivers notice of intention to defend, shall be served with all documents and given notice of all matters as a party.

6. The third party may plead or except to the third party notice as if he were a defendant to the action. He may also, by filing a plea, or other proper pleading, contest the liability of the party issuing the notice on any ground notwithstanding that such ground has not been raised in the action by such latter party: Provided, however, that the third party shall not be entitled to claim in reconvention against any person other than the party issuing the notice, save to the extent that he would be entitled to do so in terms of Order 16.

7. The rules with regard to the filing of further pleadings shall apply to third parties as follows:—

(a) insofar as the third party's plea relates to the claim of the party issuing the notice, the said party shall be regarded as the plaintiff and the third party as the defendant;

(b) insofar as the third party's plea relates to the plaintiff's claim, the third party shall be regarded as a defendant, and the plaintiff shall file pleadings as provided by the said rules.

8. Where a party to an action has against any other party (whether either such party became a party by virtue of any counter claim by any person, or by virtue of a third party notice, or by any other means), a claim referred to in rule 1, he may issue and serve on such other party a third party notice in accordance with the provisions of this rule. Save that no further notice of intention to defend shall be necessary, the same procedure shall apply as between the parties to such notice and they shall be subject to the same rights and duties as if such other party had been served with the third party notice in terms of rule 1.

9. Any party who has been joined as such by virtue of a third party notice may at any time make application to the court for the separation of the trial of all or any of the issues arising by virtue of such third party notice, and the court may upon such application make such order as to it seems meet, including an order for the separate hearing and determination of any issue, on condition that its decision on any other issue arising in the action, either as between the plaintiff and the defendant, or as between any other parties, shall be binding upon the applicant.

ORDER 12

PROCEEDINGS BY OR AGAINST PARTNERSHIPS AND ASSOCIATIONS

1. In this rule:—

“Association” means any unincorporated body of persons capable of owning a beneficial interest in property not being a partnership;

“Plaintiff” and “Defendant” include applicant and respondent;

“Sue” and “Sued” are used in relation to actions and applications.

2. A partnership or an association may sue or be sued in its name.

3. A plaintiff suing a partnership need not allege the names of the partners. If it does, any error of omission or inclusion shall not afford a defence to the partnership.

4. (a) A plaintiff suing a partnership may include in any summons a notice calling for particulars of the full name and residential address of each partner as at the relevant date.

(b) The defendant shall within 7 days deliver a written statement containing such information.

(c) Concurrently with the said statement, the defendant shall serve upon the persons referred to in paragraph (b) a notice as near as may be in accordance with Form 11 and deliver proof by affidavit of such service.

(d) A plaintiff suing a partnership and alleging in the summons or notice of motion that any person was at the relevant date a partner, shall notify such partner accordingly by delivering a notice as near as may be in accordance with Form 11.

(e) Any person served with notice in terms of paragraph (c) or (d) shall be deemed to be a party to the proceedings with the rights and duties of a defendant.

(f) Any party to such proceedings may aver in the pleadings or affidavit that such person was at the relevant date a partner or that he is estopped from denying such status.

(g) If any party to such proceedings disputes such status, the court may at the hearing decide that issue *in limine*.

(h) Execution in respect of a judgment against a partnership shall first be levied against the assets thereof, and, after such excussion against the private assets of any person held to be, or held to be estopped from denying his status as a partner, as if judgment had been entered against him.

5. The preceding rule shall apply *mutatis mutandis* to a defendant sued by a partnership.

6. If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.

7. (a) A plaintiff suing an association may include in any summons a notice calling for a certified copy of its current constitution and a list of the names and addresses of the office bearers and their respective officers at the relevant date.

(b) Such notice shall be complied with within 7 days.

(c) Paragraphs (a) and (b) shall apply *mutatis mutandis* to a defendant sued by an association.

8. Paragraphs (d) to (h) inclusive of rule 4 shall apply *mutatis mutandis* when:

- (a) a plaintiff alleges that any member, servant or agent of the defendant association is liable in law for its alleged debt;
- (b) a defendant alleges that any member, servant or agent of the plaintiff association will be responsible in law for the payment of any costs which may be awarded against the association.

9. Rule 6 shall apply *mutatis mutandis* in regard to the continuance of proceedings against any member, servant or agent referred to in paragraph (a) of rule 8.

10. If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.

ORDER 13

CHANGE OF PARTIES

1. No proceedings shall terminate solely by reason of the death, marriage or other change of status of any party thereto unless the cause of such proceedings is thereby extinguished.

2. Whenever by reason of an event referred to in rule 1 it becomes necessary or proper to introduce a further person as a party in such proceedings (whether in addition to or in substitution for the party to whom such proceedings relate) any party thereto may forthwith by notice to such further person, to every other party, and to the Registrar, add or substitute such further person as a party thereto, and subject to any order made under rule 4 hereof, such proceedings shall thereupon continue in respect of the person thus added or substituted as if he had been a party from the commencement thereof and all steps validly taken before such addition or substitution shall continue of full force and effect: Provided that save with the leave of the court granted on such terms (as to adjournment or otherwise) as to it may seem meet, no such notice shall be given after the commencement of the hearing of any opposed matter; and provided further that the copy of the notice served on any person joined thereby as a party to the proceedings shall (unless such party is represented by an attorney who is already in possession thereof), be accompanied in application proceedings by copies of all notices, affidavits and material documents previously delivered, and in trial matters by copies of all pleadings and like documents already filed of record.

3. Whenever a party to any proceedings dies or ceases to be capable of acting as such, his executor, curator, trustee or similar representative may by notice to all other parties, and to the Registrar, intimate that he desires in his capacity as such thereby to be substituted for such party, and, unless the court otherwise orders, he shall thereafter for all purposes be deemed to have been so substituted.

4. The court may upon notice of application delivered by any party within 21 days of service of notice in terms of rules 2 or 3 set aside or vary any addition or substitution of a party thus effected, or may dismiss such application or confirm such addition or substitution on such terms, if any, as to the delivery of any affidavits or pleadings, or as to postponement or adjournment, or as to costs or otherwise, as to it may seem meet.

ORDER 14

PLEADING GENERALLY AND CLOSURE OF PLEADINGS

1. Every pleading shall state the title of the action and the description of the pleading and on the last sheet of it there shall be endorsed the name and address of the attorney filing the same, or the name and address of the party if he does not act by an attorney.

2. Every pleading shall be filed with the Registrar and, except in the cases provided for by these rules, a copy of it shall be delivered by the party to the other party or parties to the action on the same day as it is filed, or as soon thereafter as is practicable.

3. Every pleading shall be legibly written or typed on foolscap paper and shall contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be a separate allegation. The year, day of the month, sums and numbers shall be expressed in figures and not in words. Where pleadings have been settled by counsel, they shall be signed by him, or on his behalf, and if not so settled they shall be signed by the party if he intends to appear in person.

4. Every allegation in a declaration or claim in reconvention shall be dealt with by the opposite party specifically. He must admit or deny every allegation or state that he has no knowledge concerning it, or confess and avoid it. Every allegation not so dealt with shall be taken to be admitted. The same rule shall apply to any allegation in subsequent pleadings, except where a joinder of issue is justified.

5. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but must answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else state how much he received. And so when a fact is alleged with diverse circumstances, it shall not be sufficient to deny it along with these circumstances, but a fair and substantial answer must be given.

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleading: Provided that if the particulars are of debt, expenses or damages and exceed three folios, the fact must be so stated with a reference to full particulars already delivered or to be delivered with the pleading.

7. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subsequent thereto, an averment of the performance or occurrence of all conditions precedent and necessary for the case of the plaintiff or defendant shall be implied in his pleading.

8. The defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or claim in reconvention not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply (as the case may be) as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as,

for instance, fraud, prescription, release, payment, performance of facts showing illegality either by statute or common law.

9. No pleading shall except by way of amendment raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

10. Wherever it is material to allege notice to any person of any fact or thing; it shall be sufficient to allege such notice as a fact, unless the form or precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

11. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied. (For instance, consideration for a bill of exchange, where plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

12. When a contract, promise or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise or agreement.

13. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document, or any part thereof, are material.

14. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred: Provided that the court or a judge may direct that particulars of such circumstances be given to the opposite party.

15. A plaintiff suing for damages shall set the special damages out in such manner as will enable a defendant reasonably to assess the quantum thereof; Provided that a plaintiff suing for damages for personal injury shall specify the nature and effects of the disability alleged to give rise to such damages, and shall, as far as practicable, state separately what amount, if any, is claimed for:-

- (a) medical, hospital and other similar expenses;
- (b) disability in respect of the earning of income (stating earnings lost to date and the estimated future loss).

16. A joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it shall except any facts which the party may be willing to admit and shall then operate as a denial of the facts not so admitted.

17. (1) A court or a judge may at any stage of the proceedings order to be struck out or amended:-

- (a) any argumentative or irrelevant or superfluous matter stated in any proceeding;
- (b) any evasive or vague and embarrassing or inconsistent and contradictory matter stated in any pleading;

(c) any matter stated in any pleading which may tend to prejudice, embarrass or delay the fair trial of the action.

(2) Any application made under this rule may be made in chambers. Provided that when an exception is taken to a pleading in terms of the rules relating to exceptions, an application to strike out any portion of that pleading may be made at the same time as, and in the alternative or in addition to, the exception.

18. No technical objection shall be raised to any pleading on the ground of any alleged want of form.

19. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered upon such terms as to costs and otherwise as may be just.

20. Before

(a) applying to a court or a judge:

(i) to strike out any portion of a pleading on any grounds; or

(ii) for a further and better statement of the nature of the claim or defence; or

(iii) for particulars; or

(b) filing any exception to a pleading

the party complaining of any pleading, or desiring particulars, may state by letter or the other party the nature of his complaint, or of the particulars he requires, and call upon the other party to amend his pleading so as to remove the cause of complaint or to furnish the required particulars, (as the case may be). Particulars so required shall be delivered within 14 days of the receipt of the request which, together with the reply thereto, shall form part of the pleadings. The costs of any such necessary letter and of any matters incidental to it, including any necessary conferences with counsel, shall be allowable on taxation. In dealing with the costs of any motion to strike out, or for a further and better statement of the nature of the claim or defence, or for particulars, the provisions of this rule shall be taken into consideration.

21. A party shall state all his exceptions and pleas and make all his applications to strike out at once: Provided that where an exception or plea in bar or in abatement is taken, or where application to strike out is made, it shall not be necessary to plead to the merits of the case. A party who pleads over may be allowed the costs of such plea to the merits, even where the case is disposed of without going into such merits.

22. Where in these rules a copy of any pleading is ordered to be delivered by a party to this opponent, and one or other of the parties or both of them are represented by attorneys, it shall mean delivery by or to the attorney of the party at the address for service.

23. Any party who has applied for particulars shall file with the Registrar a copy of his application and of the reply received to it. These copies shall be filed at least 4 days before the day fixed for the trial of the action.

24. The pleadings shall be considered closed:--

(a) if one of the parties is barred;

(b) if either of the parties has joined issue upon any pleading of the opposite party without adding any further or special pleading thereto;

(c) if a written agreement signed by counsel of both parties that the pleadings shall be considered as closed has been filed with the Registrar.

25. Either party, in case he conceives the record to be complete and that pleadings thereon ought to be closed, may apply to the court on motion for a rule calling upon his opponent to show cause why the same shall not be adjudged by the court, whereupon the court may make such order as the justice of the case may require.

26. After the close of pleadings, any party may, not less than 21 days before trial, deliver a notice calling for only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within 10 days of receipt thereof.

ORDER 15

DECLARATION

1. The statement of the plaintiff's claim shall be called his declaration, and it shall state truly and concisely the name and description of the party suing and his place of residence or place of business, and, if he sues in a representative capacity, the capacity in which he sues; the name of the defendant and his place of residence or place of business and, if he is sued in a representative capacity, the capacity in which he is sued; the nature, extent and grounds of the cause of action, complaint or demand.

2. Every declaration shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. And the same rules shall apply to any claim in reconvention made, or relief claimed by the defendant in his claim in reconvention.

3. Where the plaintiff seeks relief in respect of several distinct claims, or causes of action, founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set off or claim in reconvention, founded upon separate and distinct facts.

4. In actions where a declaration is required, it shall be filed with the Registrar.

5. Except where the defendant is in default, a copy of the declaration shall be delivered by the plaintiff to the defendant on the same day as it is filed with the Registrar, or as soon thereafter as is practicable.

6. Where the defendant has entered appearance to defend, and the plaintiff has failed of file his declaration within 30 days of the date of such entry, the defendant may give the plaintiff 4 days' notice of intention to bar him from declaring, and, on expiry of the notice and continued default, bar him from declaring.

7. Subject to the provisions of rule 6 of this order, the plaintiff may file his declaration at any time after issue of the summons, or he may cause it to be delivered to the defendant with the summons.

8. Unless the court orders otherwise, on good cause shown, no costs of any declaration shall be allowed:—

- (a) if the defendant within the time allowed for entering appearance tenders to satisfy the plaintiff's claim in full;
 - (b) if the defendant before 4 days next after the time prescribed in the summons for entering appearance consents to judgment in terms of rule 1 Order 19; or
 - (c) if the plaintiff's claim is for a debt or liquidated demand only, and the defendant fails within 4 days next after the time so prescribed to enter appearance.
9. Where the defendant is in default and owing to the nature of the case a declaration is required, the plaintiff may proceed in terms of rule 6 Order 19.
10. In his declaration a plaintiff may alter, modify or extend his claim or claims as stated in the summons, and the summons shall thereupon be deemed to be amended in accordance with the claim or claims made in the declaration; provided that where the defendant shows that he is prejudiced by such amendment the court may make such order as to costs or otherwise as the justice of the case demands.

ORDER 16

PLEA AND CLAIM IN RECONVENTION

1. The defendant's answer to the plaintiff's declaration shall be called his plea, and it shall set forth concisely the nature of his defence and deal with the allegations in the declaration as provided by rule 5 of Order 14.
2. Where the court is of opinion that any allegation of fact denied or not admitted by the defendant ought to have been admitted, the court may make such order as shall be just with respect to any extra costs occasioned by it having been denied or not admitted.
3. The defendant shall file his plea or exception with the Registrar and, on the same day, or as soon as thereafter is practicable, deliver a copy of it to the plaintiff.
4. Where the defendant has failed to file his plea, exception or special plea, within 14 days of the service of the plaintiff's declaration, the plaintiff may give the defendant 4 days' notice of intention to bar him from pleading, excepting or making claim in re-convention, and, in continued default of plea, thereafter bar him.
5. The defendant in an action may set up by way of claim in reconvention any right or claim he may have against the plaintiff, and such claim in reconvention shall have the same effect as an action, so as to enable the court to pronounce a final judgment in the in the same action both on the original claim and on the claim in reconvention.
6. Where legally entitled so to do, the defendant may set off his claim in reconvention against the plaintiff's claims.
7. A claim in reconvention shall be so described and shall set forth in paragraphs, separate and distinct from the plea, the nature, the extent and grounds of the cause of action.
8. A claim in reconvention shall be bound and filed with the plaintiff's plea, and a copy thereof delivered to the plaintiff.

9. Facts and allegations already set forth in the plea or in the declaration and admitted in the plea may be incorporated in the claim in reconvention by reference to the relevant paragraphs of the plea or declaration, as the case may be.

10. If in any case in which the defendant sets up a claim in reconvention, the action of the plaintiff is stayed, discontinued or dismissed, the claim in reconvention may nevertheless be proceeded with.

11. Where in any action the set off or claim in reconvention is established as a defence against the plaintiff's claim, the court may, if the balance is in favour of the defendant, give judgment for the defendant in such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

12. The court may for good cause shown order the plaintiff's claim and the claim in reconvention to be tried separately.

ORDER 17

REPLICATION TO PLEA IN RECONVENTION

1. Within 14 days of the service upon him of a plea, and subject to rule 2 hereof, the plaintiff shall where necessary deliver a replication to the plea and a plea to any claim in reconvention.

2. No replication or subsequent pleading which would be a mere joinder of issue or bare denial of allegations in the previous pleading shall be necessary, and issue shall be deemed to be joined and pleadings closed in terms of rule 24 of Order 14.

3. Where a replication or subsequent pleading is necessary, a party may therein join issue on the allegations in the previous pleading. To such extent as he has not dealt specifically with the allegations in the plea or such other pleading, such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined.

4. A plaintiff in reconvention shall, subject to the provisions of rule 2 hereof, within 14 days from the delivery of the plea in reconvention deliver a replication in reconvention.

5. Further pleadings may, subject to the provisions of rule 2 be delivered by the respective parties within 8 days of the previous pleading delivered by the opposite party. Such pleadings shall be designated: rejoinder, surrejoinder, rebutter, and surrebutter, as the case may be.

ORDER 18

APPLICATION FOR DIRECTIONS

1. In any action after pleadings are closed, or by leave of a judge after appearance has been entered, either party may make application for directions in respect of any interlocutory matter on which a decision may be required. Four clear days' notice of the application shall be given to the opposite party.

2. The party applying for directions shall, in his notice, set out the matters in respect of which he intends to ask for directions, and such matters shall, so far as is necessary and practicable, include generally the proceedings to be taken in the action and the costs of the application, and more particularly the following:—

pleadings, amendment to pleadings, particulars, admissions, removal of trial, the hearing of arguments on points of law, the trial of one or more questions (whether of law or of fact), inspection of movable and immovable property, commissions, examination of witnesses, place and date of trial.

3. The party to whom the application is addressed shall also, as far as practicable, apply at the hearing of the application for any directions which he may desire in respect of matters specified in rule 2. Such party shall before the hearing give notice to the other party or parties to the action of the matters in respect of which he intends to ask for directions.

4. Upon the hearing of the application, the judge shall, as far as practicable, make such order as may be just as to the matters in respect of which directions are asked.

5. No affidavit shall be used on the hearing of an application for directions except by leave of the judge.

6. Any application subsequent to the original application and before judgment for any directions as to any interlocutory matter or thing by any party shall be made by two clear days' notice to the other party stating the grounds of the application.

7. The costs of any application subsequent to the original application shall be borne by the party applying unless the judge is of the opinion that such application could not properly have been made at the hearing of the original application.

8. On the hearing of an application under this Order, the judge may :

(a) make an order :

(i) that evidence of any particular fact to be specified in his order shall be given at the trial by affidavit ; or

(ii) by consent of parties dispensing with any of the technical rules of evidence for the avoidance of expense and delay ;

and, in addition, in commercial causes :

(b) make such order or orders as he thinks fit for the speedy determination of the questions really in controversy between the parties, and particularly he may make orders dispensing with formal pleadings and settling the issues to be tried between the parties. Commercial causes shall include causes arising out of ordinary transactions of merchants and traders ; amongst others those relating to the construction of mercantile documents, export or import of merchandise, afreightment, insurance, banking and mercantile agency and mercantile usages.

9. Where in -

(a) any proceedings on motion or by petition ;

(b) applications for provisional sentence ;

(c) applications for the arrest of persons or of goods ;

there is a conflict of evidence and the matter cannot be decided without the hearing of oral evidence, the court in its discretion may order that such oral evidence as the parties may desire to produce be heard forthwith or on such date as the court may fix. The court may also give directions as to dispensing with all pleadings or any particular pleading or as to dispensing with the oral evidence of any person who has given or may

give evidence upon affidavit and may give such other directions as to it may seem most conducive to the speedy and inexpensive determination of the matters at issue. The court may on the application of either party order the attendance for cross-examination of any person who has made an affidavit in such proceedings.

ORDER 19

JUDGMENT BY CONSENT OR IN DEFAULT AND PROCEDURE FOR BARRING

1. At any time after service of the summons a defendant may consent to judgment without appearing in court. This rule does not apply to actions for divorce, judicial separation or nullity of marriage.

2. Such consent shall be in writing and signed either by the defendant personally or by an attorney who has entered appearance on his behalf. The defendant's signature shall be verified by an affidavit made by someone other than himself, or by the signature of an attorney acting for him and not for the opposite party.

3. Upon filing such consent with the Registrar, the plaintiff may without notice to the defendant set down the cause for judgment and thereupon judgment may be given or order made according to such consent.

4. In cases where the plaintiff's claim, other than a claim for provisional sentence, is for a debt of liquidated demand only, and the defendant has failed to enter appearance within the period prescribed in the summons for the entering of appearance, the plaintiff may, without notice, set the case down for judgment on any court day, and the court may on the plaintiff's application thereupon give judgment against the defendant according to the summons and subject to the provisions of rule 5 of this Order.

5. In cases where the return of service shows that the summons has not been served personally on the defendant, either:-

(a) the plaintiff shall file with the Registrar an affidavit made by himself or by any other person who can swear positively to the facts verifying the cause of action, and the amount claimed, and stating that in his belief there is no defence to the action; or

(b) such an affidavit may be produced and handed in at the hearing of the application for judgment.

6. (1) In cases where the plaintiff's claim is not for a debt or liquidated demand only, and the defendant has failed to enter appearance after the period prescribed in the summons for entering appearance, the plaintiff shall file his declaration if he desires to obtain judgment.

(2) A declaration filed under this rule shall have endorsed thereon "Filed for default of appearance".

(3) The plaintiff shall also deliver to the defendant personally or send by registered letter to his last known place of residence, or last known business address, a copy of the declaration, and a notice informing the defendant that the said declaration has been filed and that he must plead, answer or except thereto, or make claim in reconvention, within eight days of the date of delivery or posting the notice, and that, in default thereof, judgment will be prayed against him without any further notice. Proof of such personal

service or the receipt of the despatching post office for the registered letter, as the case may be, and a copy of the notice shall be filed with the registrar.

(4) This rule shall also apply to cases where the plaintiff is unable or unwilling to aver under oath that there is no defence to the action as required by rule 5 of this Order.

7. In cases under rule 6 where the defendant remains in default, plaintiff may, after expiry of the period of notice provided in the said rule, set down the case for judgment on any court day without further notice to the defendant, and thereupon the court may grant judgment or make such order as upon the declaration it considers the plaintiff entitled to: Provided that in actions for divorce, judicial separation or nullity of marriage, the plaintiff shall deliver to the defendant personally, or send by registered letter to his last known place of residence, or last known business address, a copy of the notice of set down, which notice shall be delivered or despatched not less than ten days before the date of trial.

8. Where the defendant has entered appearance but has been duly barred for default of plea, the plaintiff may, without notice to the defendant, set down the case for judgment on any court day and thereupon the court may grant judgment or make such order as upon the declaration it considers the plaintiff entitled to.

9. In cases set down under rules 7 and 8 of this order, the court may in its discretion enter judgment against the defendant and for the plaintiff without hearing any evidence, except in actions for divorce, judicial separation or nullity of marriage, or where the plaintiff's claim is for damages, in which cases evidence must be adduced.

10. Where the plaintiff has been duly barred from declaring or making claim, the defendant may, without notice to the plaintiff, apply to the court to dismiss the action for want of prosecution and on the hearing of such application the court may order the action to be dismissed with costs, or may make such other order on such terms as the thinks just.

11. In all cases where judgment has been given by consent or in default under the rules of this order, such judgment may be set aside by the court and leave given to the defendant to defend or to the plaintiff to prosecute his action. Such leave shall only be given on good and sufficient cause, and upon such terms as to costs and otherwise as the court deems just.

12. When on the calling of any case the defendant appears in court personally, or by his counsel, and the plaintiff makes default, the defendant shall be absolved from the said suit or action, unless it shall appear to the court that sufficient cause exists to postpone the same, or to make other order therein.

13. Where a party is entitled to give notice of intention to bar, he shall do so in form 12 and deliver the notice at the address for service of the party in default.

14. On the expiry of the time limited by the notice, not being less than the time allowed in the rules for the particular case, the party who has served the notice may bar the opposite party by filing a copy of the notice, duly completed, with the Registrar.

15. A party who has barred his opponent may withdraw such bar by filing a notice to withdraw with the Registrar.

16. Whilst a bar is in operation, the Registrar shall not accept for filing any pleading from the party barred and such party shall not be permitted to appear personally or by counsel in any subsequent proceedings in the action or suit, except only in an application for removal of the bar: Provided, however, that in matrimonial cases the court may in its discretion permit a party who has been barred to appear in person notwithstanding that the bar has not been removed.

17. The court may, upon an affidavit of merits, and other sufficient grounds, order the removal of a bar on such terms as to costs and otherwise as it deems just.

18. The removal of a bar either by the court or by consent shall not preclude a subsequent bar for subsequent default in respect of which the procedure set forth in this order shall be followed.

19. Where the defendant has entered appearance, the plaintiff shall not be entitled, save with the defendant's consent in writing, to withdraw the action until he has paid the defendant's taxed costs and has given notice of intention to withdraw to the defendant and to the Registrar.

ORDER 20

AMENDMENT OF PLEADINGS

1. Failing consent by all parties the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

2. The plaintiff may, without any leave, amend his declaration once at any time before the expiration of the time limited for replication and before replication, or where no plea is delivered, at any time before the expiration of 28 days from the appearance of the defendant who has last appeared.

3. A defendant who has set up any claim in reconvention or set-off, may, without any leave, amend such claim in reconvention or set-off once at any time before the expiration of the time allowed to him for answering the plea to the claim in reconvention and before such answer, or in case there is no plea, then at any time before the expiration of 28 days from the date of filing his own plea.

4. Where any party has amended his pleading under either of the last two preceding rules, the opposite party may within 14 days after delivery to him of the amended pleading apply to the court to disallow the amendment, or any part thereof, and the court may, if satisfied that the justice of the case requires it, disallow the same or allow it subject to such terms as to costs or otherwise as may be just.

5. Where any party has amended his pleading under rules 2 or 3 of this Order, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead, or within 14 days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

6. In all cases save where all parties consent, application for leave to amend may be made by either party to the court or to the judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within 14 days from the date of the order, such order to amend shall on the expiration of such limited time as aforesaid, or of such fourteen days (as the case may be), lapse unless the time is extended by the court or the judge.

8. Pleadings may be amended by written alterations in the copy which has been delivered and by addition on paper to be interleaved therewith, if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making of them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a copy of the document as amended.

9. Whenever any pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made in manner following, namely:- "Amended this

day of pursuant to Order of dated day of "

10. Whenever any pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same.

11. Clerical mistakes by the court or a judge in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion without an appeal.

12. The Court may at any time, and on such terms as to costs or otherwise, as the Court may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the pleadings.

13. The costs of and occasioned by any amendment made pursuant to rules 2 and 3 of this Order shall be borne by the party making the same, unless the court otherwise orders.

ORDER 21

IRREGULAR PROCEEDINGS

1. Any party to any cause in which an irregular or improper step or proceeding has been taken by any party may within 14 days of the taking of such step or proceeding apply to court to set it aside: Provided that no party who has taken any further step in the cause with knowledge of the irregularity or impropriety shall be entitled to make such application.

2. Application in terms of rule 1 shall be on notice to all parties, specifying particulars of the irregularity or impropriety alleged.

3. If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.

4. Until a party has complied with any order of court made against him, he shall not take any further step in the cause, save to apply for an extension of time within which to comply with such order.

5. Where a party fails to comply timeously with a request made or notice given pursuant to these rules, the party making the request or giving the notice, may notify the defaulting party that he intends after the lapse of seven days applying for an order that such notice or request be complied with, or that the claim or defence be struck out. Failing compliance within the seven days, application may be made to court and the court may make such order thereon as to it seems meet.

ORDER 22

SUMMARY JUDGMENT

1. Where the defendant has entered an appearance to defend, the plaintiff may apply to court for summary judgment on each of such claims in the summons as is only:-

- (a) based on a liquid document;
- (b) for a liquidated amount in money;
- (c) for delivery of specified movable property; or
- (d) for ejectment;

together with any claim for interest and costs.

2. The plaintiff shall within fourteen days after the date of entry of an appearance to defend, deliver notice of such application, accompanied by an affidavit made by himself, or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed, and stating that in his opinion there is no *bona fide* defence to the action and that entry of appearance to defend has been delivered solely for the purpose of delay. If the claim is founded on a liquid document, a copy of the document shall be annexed to such affidavit. Such notice of application shall state that the application will be set down for hearing on a stated day not being less than seven days from the date of delivery thereof.

3. Upon the hearing of an application for summary judgment, the defendant may:

- (a) give security to the plaintiff to the satisfaction of the Registrar for any judgment including costs which may be given; or
- (b) satisfy the court by affidavit (which shall be delivered before noon on the court day but one preceding the day on which the application is to be heard) or, with the leave of the court, by oral evidence of himself or of any other person who can swear positively to the fact that he 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 therefor.

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 *viva voce* 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 paragraph (b) of rule 3, 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 him as to the balance of the claim, unless he shall have paid such balance to the plaintiff or into court in terms of Order 24; or
 - (iii) make both orders mentioned in sub-paragraphs (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 order 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 him 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; and
- (b) 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.

ORDER 23

SPECIAL CASES AND ADJUDICATION ON POINT OF LAW

1. The parties to any civil action or suit may, after summons has been issued, concur in stating the questions of law arising therein in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts and documents as may be necessary to enable the court to decide the questions raised thereby. Upon the argument of such case, the court and the parties shall be at liberty to refer to the whole contents of such documents and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn there from if proved at the trial.

2. If it appears to the court that there is in any case or matter a question of law which it would be convenient to have decided before any evidence is given, or any question or issue of fact is tried, the court may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in such other manner as the court may deem expedient, and such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

3. Every special case shall be typewritten or printed by the plaintiff and signed by the several parties and their counsel and shall be filed by the plaintiff. If the Registrar so requests, one or more copies of the special case shall be filed for the use of the judges.

4. No special case in any cause or matter to which a minor or person of unsound mind is a party shall be set down for argument without leave of the court, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such minor or person of unsound mind, are true.

5. The parties to a special case may, if they think fit, enter into an agreement which shall be embodied or referred to in the special case that, on the judgment of the court being given in the affirmative or negative on the questions of law raised by the special case, a sum of money fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be paid by one of the parties to the other of them either with or without costs of the cause or matter; and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs (as the case may be), and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

ORDER 24

PAYMENT INTO COURT

1. (a) In any action for payment of a sum of money, the defendant may at any time pay unconditionally into court the sum so claimed or any part thereof, and the Registrar shall, upon the application of the plaintiff, cause to be paid such sum to the plaintiff's attorney (or to the plaintiff where he sues in person). In making such payment, the defendant shall state whether he acknowledges or disavows liability for the payment of the plaintiff's costs in whole or in part.

(b) If the defendant, in making such payment into court in terms of paragraph (a) of rule 1, acknowledges liability for payment of the costs in whole or in part, and fails to pay in full such costs, as taxed, within seven days after demand, the plaintiff may apply in writing through the Registrar to a judge for judgment for the same.

(c) If the defendant in making payment into court in terms of paragraph (a) of rule 1 disavows liability for any portion of the plaintiff's costs, he shall state in the notice accompanying the payment into court the grounds upon which he so disavows, and the action may be set down for hearing on the question of costs only.

2. In any action in which a sum of money is claimed, either alone or with any other relief, the defendant may, at any time without prejudice, pay an amount into court by way of an offer of settlement of the plaintiff's claim.

3. Where the plaintiff claims the performance of some act by the defendant, the defendant may at any time tender either unconditionally or without prejudice to perform such act. Unless such act must be performed by the defendant personally, *pari passu* with such a tender there shall be filed with the Registrar an irrevocable power of attorney to perform such act on behalf of the person making the tender.

4. Any party to an action who stands to be held liable to any other party to contribute towards or to be held liable with such party for the payment of any amount which may be

recovered by any other party, may either unconditionally or without prejudice by way of an offer of settlement –

- (a) make a written offer to that other party to contribute either a specific sum or in a specific proportion towards the amount to which the plaintiff may be held entitled in the action; or
- (b) pay into court a sum in respect of the share of the amount to which the plaintiff may be held to be entitled and for which share he may be adjudged liable.

5. One of several defendants, whether sued jointly, jointly and severally, separately or in the alternative, may either unconditionally or without prejudice by way of an offer of settlement pay into court a sum of money in respect of the plaintiff's claim, or tender in terms of these rules, to do any act or acts, the performance of which is claimed by the plaintiff.

6. Notice of any payment, tender or offer in terms of this rule shall be given to all parties to the action and shall state:–

- (a) whether the same is unconditional or without prejudice as an offer of settlement;
- (b) whether it is accompanied by a tender to pay the plaintiff's costs in whole or in part; and
- (c) whether the amount paid is offered in settlement of both claim and costs or of the claim only.

7. A plaintiff may within 10 days of the receipt of the notice referred to in rule 6, or thereafter with the consent of the defendant or a judge, accept any payment, tender to perform an act, or written offer in settlement of his claim and shall notify all other parties to the action accordingly, and the registrar, upon being satisfied that the requirements of this rule have been complied with, shall cause to be paid out to the plaintiff's attorney (or to the plaintiff where he sues in person) the money paid into court or give effect to, or deliver to the plaintiff's attorney (or to the plaintiff where he sues in person) the power of attorney referred to in rule 3.

8. If a tender or payment in terms of rules 2, 3 or 5 is not stated to be in satisfaction of a plaintiff's claim and costs, the plaintiff may, on notice to the defendant, apply for judgment for costs.

9. (a) No payment into court, tender or offer, made without prejudice in terms of this rule, by way of an offer of settlement, shall be disclosed at any time to the court before judgment has been given. No reference to the fact of such payment, tender or offer shall appear on any file in the office of the registrar containing the papers in the said case;

(b) The fact of a payment, tender or offer referred to in paragraph (a) of rule 9 may be brought to the notice of the court after judgment has been given as being relevant to the question of costs. If the court has given judgment on the question of costs in ignorance of any such payment, tender or offer, and such is brought to the notice of the court within 48 hours, the question of costs shall be considered afresh in the light thereof: Provided that nothing in this rule contained shall affect the court's discretion as to an award of costs;

(c) Any party to an action who shall, contrary to this rule, by himself or his counsel, mention or disclose to the court such payment, tender or offer shall, even if successful in the action, be liable to have costs given against him.

10. Payment into Court shall be effected by paying the amount into the Revenue Department in such manner as the Accountant-General may direct.

ORDER 25

DISCOVERY, INSPECTION AND PRODUCTION OF DOCUMENTS

1. Any party to any cause or matter may, without filing any affidavit, apply to a judge for an order directing any other party to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein, and the judge may make thereon such order as he thinks fit.

2. The affidavit to be made by a party against whom such order as is mentioned in rule 1 has been made, shall specify which, if any, of the documents therein mentioned he objects to produce and the reasons for such objections and shall be in form 13 with such variations as circumstances may require.

3. Any party to any cause or matter may at any time during the pending thereof apply to the court or a judge for an order for the production by any other party of any documents in his possession or power, relating to any matter in question in the cause or matter. Such application shall, unless the court or judge orders otherwise, be made on notice of motion to the party from whom production is sought.

4. The court or judge may, on an application made in terms of rule 3 of this order, make such order as seems right and may deal with the documents, production whereof may be ordered, in such manner as seems just: Provided that production of any document shall not be ordered if the court or judge is satisfied that the production is not necessary, at that stage of the cause or matter or at all, either for disposing fairly of the cause or matter or for saving costs.

5. Every party to an action or other proceeding shall be entitled at any time, to give notice in writing to any other party in whose pleading or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his attorney, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he satisfies the court that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the court deems sufficient for not complying with such notice, in which case the court may allow the same to be put in evidence on such terms as to costs and otherwise as the court may think fit.

6. Notice to any party to produce any documents referred to in his pleading or affidavit shall be in form 14 with such variation as the circumstances may require. An affidavit of the attorney or his clerk of the service of any notice to produce, shall in all cases be evidence of the service of the notice and of the time when it was served.

7. The party to whom such notice is given shall, within seven days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof, at which the documents, or such of them as he does not object to produce, may be inspected at the office of his attorney, or, in the case of banker's books or other books of account, or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in form 15 with such variations as the circumstances may require.

8. If the party served with notice under rule 5 of this order omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his attorney, or at the usual place of custody of the documents (as the case may be), the court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when, and so far as the court is of opinion, that it is not necessary either for disposing fairly of the cause or matter, or for saving costs. Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them and that they are in the possession or power of the other party. The court shall not make such order for inspection of such documents when and so far as the court is of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

9. (1) Where inspection of any business books is applied for, the court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interliniations or alterations: Provided that notwithstanding that such copy has been supplied the court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The court may, on the application of any party to any cause or matter at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any particular document or documents or any class or classes of documents specified or indicated in the application is or are or has or have at any time been in his possession, custody or power; and, if not, then in his possession, custody or power, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time, had in his possession, custody or power the particular document or the class or classes of documents specified or indicated in the application, and that they relate to the matters in question in the cause or matter, or to some of them.

10. If any party fails to comply with any order for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended.

11. Service of an order for discovery or inspection made against any party on his attorney, shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made, may show in answer to the application that he had no notice or knowledge of the order.

12. An attorney upon whom an order against any party for discovery or inspection is served under the last preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

13. This order shall apply to plaintiffs and defendants who are minors, and to their curators *ad litem*.

14. (a) Where a registered company as defined in any motor vehicle insurance law is a party to any action by virtue of the provisions of the said law, any party thereto may obtain discovery against the driver or owner of the vehicle insured by the said company.

(b) The provisions of paragraph (a) shall apply *mutatis mutandis* to the driver of a vehicle owned by a person, state, government or body of persons.

(c) Where the plaintiff sues as cessionary, the defendant shall *mutatis mutandis* have the same rights under this order against the cedent.

15. Any party to an action may, after the close of pleadings, 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. The party receiving such notice shall, not less than 21 days before the date of trial, 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;

(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.

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.

ORDER 26

ADMISSIONS

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the cause of any other party.

2. Either party may call upon the other party to admit any document, saving all just exceptions, and, in case of refusal or neglect to admit after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the court certifies that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

3. A notice to admit documents shall be in the form 16 with such variations as the circumstances may require.

4. Any party may, by notice in writing, at any time not later than nine days before the day for which the notice of trial has been given, 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.

5. In case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing,

whatever the result of the cause, matter or issue may be, unless at the trial or hearing the court certifies that the refusal to admit was reasonable, or unless the court shall at any time otherwise order or direct.

6. Any admission made in pursuance of such notice is to be deemed to be made only for the purpose of the particular cause, matter or issue, and not as an admission to be used against the party on any other occasion, or in favour of any person other than the party giving notice.

7. The court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

8. A notice to admit facts shall be in form 17 and admissions of facts shall be in form 18 with such variations as circumstances may require.

ORDER 27

INSPECTION, EXAMINATIONS AND EXPERT TESTIMONY

1. Subject to the provisions of this rule, any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed shall have the right to require any party claiming such damage or compensation, whose state of health is relevant for the determination thereof, to submit to medical examination.

2. Any party requiring another party to submit to such examination shall deliver a notice specifying the nature of the examination required, the person or persons by whom, the place where and the date (being not less than fourteen 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. Such notice shall state that such other party may have his own medical advisor present at such examination, and shall be accompanied by a remittance in respect of the reasonable expense to be incurred by such other party in attending such examination. Such expense shall be tendered on the scale as if such person were a witness in a civil suit before the court: Provided, however:

- (a) that if such other party is immobile, the amount to be paid to him shall include the cost of his travelling by motor vehicle and, where required, the reasonable cost of a person attending upon him;
- (b) where such other party will actually lose his salary, wage or other remuneration during the period of his absence from work, he shall, in addition to his expenses on the basis of a witness in a civil case, be entitled to receive an amount not exceeding R6 per day in respect of the salary, wage or other remuneration which he will actually lose;
- (c) any amount paid by a party as aforesaid shall be costs in the cause unless the court otherwise directs.

3. The person receiving such notice shall within seven days of the service thereof notify the person delivering it, in writing, of the nature and grounds of any objection which he may have in relation to:—

- (a) the nature of the proposed examination;
- (b) the person or persons by whom the examination is to be conducted;

- (c) the place, date or time of the examination;
- (d) the amount of the expenses tendered to him;

and shall further:—

- (i) in the case of his objection being to the place, date or time of the examination, furnish an alternative date, time and place, as the case may be;
- (ii) in the case of the objection being to the amount of the expenses tendered, furnish particulars of such increased amount as may be required.

Should the person receiving the notice not deliver such objection within the said period of seven days, he shall be deemed to have agreed to the examination upon the terms set forth by the person giving the notice. Should the person giving the notice regard the objection raised by the person receiving it as invalid in whole or in part he may, on notice, make application to a judge to determine the conditions upon which the examination, if any, is to be conducted.

4. Any party to such an action may at any time 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 ten days, any medical reports, hospital records, X-ray photographs, or other documentary information of a like nature relevant to the assessment of such damages.

5. If it appears from any medical examination carried out either by agreement between the parties or pursuant to any notice given in terms of this rule, or by order of a judge, that any further medical examination by any other person is necessary or desirable for the purpose of giving full information on matters relevant to the assessment of such damages, any party may require a second and final medical examination in accordance with the provisions of this rule.

6. If it appears that the state or condition of any thing 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 later than fourteen days before the hearing, 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 ten days from the date of the receipt of the notice.

7. The party called upon to submit such thing for examination may require the party requesting it to specify the nature of the examination to which it is to be submitted, and shall not be bound to submit such thing thereto if this would materially prejudice such party by reason of the effect thereof upon such thing. In the event of any dispute whether the thing should be submitted for examination, such dispute shall be referred to a judge on notice delivered by either party stating that the examination is required and that objection is taken in terms of this rule. In considering any such dispute the judge may make an order as to him seems meet.

8. Any party causing an examination to be made in terms of rules 1 and 6 shall:—

- (a) cause the person making the examination to give a full report in writing of the results of his examination and the opinions that he formed as a result thereof on any relevant matter;

- (b) after receipt of such report, and upon request, furnish any other party with a complete copy thereof;
- (c) bear the expense of carrying out any such examination; provided that such expense shall form part of such party's costs.

9. No person shall, save with the leave of the court, 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 shall :-

- (a) not less than fourteen days before the hearing have delivered notice of his intention to do so; and
- (b) not less than ten days before the trial have delivered a summary of such expert's opinions and his reasons therefor.

10. (a) No person shall, save with the leave of the court, or the consent of all the parties, be entitled to tender in evidence any plan, diagram, model or photograph unless he shall not less than ten days before the hearing have delivered a notice stating his intention to do so, offering inspection thereof and requiring the party receiving notice to admit the same within seven days of his receipt of the notice.

(b) If the party receiving the notice fails within the said period so to admit, the said plan, diagram, model or photograph shall be received in evidence upon its mere production and without further proof thereof. If such party states that he does not admit them, the said plan, diagram, model or photograph may be proved at the hearing and the party receiving the notice may be ordered to pay the cost of such proof.

ORDER 28

AGREEMENT OF ISSUES

1. (a) An attorney desirous of setting an action down for trial or of obtaining a date for the hearing thereof, shall as soon as possible after the close of the pleadings, and before delivering a notice of set down or filing a written request for such date, as the case may be, in writing request the attorneys acting for the other parties to such action to attend a conference at a mutually convenient time with the object of reaching agreement as to possible ways of curtailing the duration of such trial and in particular as to all or any of the following matters, namely :-

- (i) the possibility of obtaining admissions of fact and of documents ;
- (ii) the holding of any inspection or examination ;
- (iii) the making of any discovery of documents ;
- (iv) the exchange between parties of the reports of the experts ;
- (v) the giving of any further particulars reasonably required for the purposes of trial ;
- (vi) the plans, diagrams, photographs, models and the like, to be used at the trial ;
- (vii) the consolidation of trials ;
- (viii) the quantum of damages ;

(ix) the preparation and handing in at the trial of copies of correspondence and other documents in the form of a paged bundle with copies for the bench and all parties.

(b) At the conclusion of such conference, the attorneys shall draw up and sign a minute of the matters upon which they are agreed.

2. In his notice of set down or written request for a date for the hearing of the trial, as the case may be, such attorney shall state that the requirements of paragraph (a) of rule 1 have been observed.

3. At the commencement of the trial, counsel for the respective parties shall report to the court whether such conference has been held and, if so, shall hand in the signed minute referred to in paragraph (b) of rule 1.

4. Before the trial proceeds, the judge may call into his chambers counsel for the parties with a view to securing agreement on any matters likely to curtail the duration of the trial.

5. When giving judgment in the action, the court may make an order for the payment by a party of a portion of the costs when the attorney for such party has refused a request to attend a conference in terms of rule 1.

ORDER 29

PROCURING EVIDENCE FOR TRIAL

1. Any party desiring the attendance of any person to give evidence at a trial, may, as of right without any prior proceeding whatsoever, sue out from the office of the registrar one or more subpoenas for that purpose, each of which subpoenas shall contain the names of not more than four persons, and the service thereof upon any person therein named shall be effected by the sheriff in manner prescribed by Order 5, and the process for subpoenaing such witnesses shall be, as nearly as may be, in accordance with form 19. If any witness has in his possession or control any deed, instrument, writing or thing which the party requiring his attendance desires to be produced in evidence, the subpoena shall specify such document or thing and require him to produce it to the court at the trial.

2. The witnesses at the trial of any action shall be examined *viva voce* but a court may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit, or that the affidavit of any witness be read at the hearing on such terms and conditions as to it may seem meet: Provided that where it appears to the court that any other party reasonably requires the attendance of a witness for cross examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.

3. A court may on application on notice in any matter where it appears convenient, or necessary for the purpose of justice, make an order for taking the evidence of a witness before or during the trial by a commissioner of the court and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.

4. Where the evidence of any person is to be taken on commission by any commissioner within Botswana, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.

5. Unless the court ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before a commissioner in terms of an order granted under rule 3 shall be adduced upon oral examination in the presence of the parties, their counsel, and the witness concerned shall be subject to cross examination and re-examination.

6. A commissioner shall not decide upon the admissibility of evidence tendered but shall note any objections made and such objections shall be decided by the court hearing the matter.

7. Evidence taken on commission shall be recorded in such manner as evidence is recorded when taken before a court and the transcript of any shorthand record, or record taken by mechanical means, duly certified by the person transcribing the same and by the commissioner shall constitute the record of the examination: Provided that the evidence before the commissioner may be taken down in narrative form.

8. The record of the evidence shall be returned by the commissioner to the registrar with his certificate to the effect that it is the record of the evidence given before him and shall thereupon become part of the record in the case.

ORDER 30

CIVIL TRIALS

1. If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly insofar as he has discharged such burden: Provided that where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.

2. When a defendant has by his default been barred from pleading, and the case has been set down for hearing, and the default duly proved, the defendant shall not, save where the court in the interest of justice may otherwise order, be permitted, either personally or by counsel, to appear at the hearing.

3. If, when a trial is called, the defendant appears and the plaintiff does not appear, the defendant shall be entitled to an order granting absolution from the instance with costs but may lead evidence with a view to satisfying the court that final judgment should be granted in his favour, and the court, if so satisfied, may grant such judgment.

4. The provisions of rules 1 and 2 shall apply to any person making any claim (whether by way of claim in reconvention or third party notice or by any other means) as if he were the plaintiff, and the provisions of rule 3 shall apply to any person against whom such a claim is made as if he were a defendant.

5. Where the burden of proof is on the plaintiff, he, or one counsel for the plaintiff, may briefly outline the facts intended to be proved and the plaintiff may then proceed to the proof thereof.

6. At the close of the case of the plaintiff, the defendant may apply for absolution from the instance, in which event the defendant or one counsel on his behalf may address

the court and the plaintiff or one counsel on his behalf may reply. The defendant or his counsel may thereupon reply on any matter arising out of the address of the plaintiff or his counsel.

7. If absolution from the instance is not applied for or has been refused and the defendant has not closed his case, the defendant or one counsel on his behalf may briefly outline the facts intended to be proved, and the defendant may then proceed to the proof thereof.

8. Each witness shall, where a party is represented, be examined, cross-examined, or re-examined, as the case may be, by only one (though not necessarily the same) counsel for such party.

9. If the burden of proof is on the defendant, he or his counsel shall have the same rights as those accorded to the plaintiff or his counsel by rule 5.

10. Upon the cases on both sides being closed, the plaintiff or one or more of his counsel on his behalf may address the court, and the defendant or one or more counsel on his behalf may do so, after which the plaintiff or one counsel only on his behalf may reply on any matter arising out of the address of the defendant or his counsel.

11. Either party may apply at the opening of the trial for a ruling by the court upon the onus of adducing evidence, and the court, after hearing argument, may give a ruling as to the party upon whom such onus lies: Provided that such ruling may thereafter be altered to prevent injustice.

12. If there be one or more third parties, or if there be defendants to a claim in reconvention who are not plaintiffs in the action, any such party shall be entitled to address the court in opening his case, and shall lead his evidence after the evidence of the plaintiff and of the defendant has been concluded and before any address at the conclusion of such evidence. Save insofar as the court shall otherwise direct, the defendants to any counterclaim who are not plaintiffs shall first lead their evidence and thereafter any third parties shall lead their evidence in the order in which they became third parties. If the onus of adducing evidence is on the claimant against the third party, or on the defendant to any claim in reconvention, the court shall make such order as may seem convenient with regard to the order in which the parties shall conduct their cases and address the court, and in regard to their respective rights of reply. The provisions of rule 11 shall *mutatis mutandis* apply with regard to any dispute as to the onus of adducing evidence.

13. Where the onus of adducing evidence on one or more of the issues is on the plaintiff, and that of adducing evidence on any other issue is on the defendant, the plaintiff shall first call his evidence on any issues in respect of which the onus is upon him, and may then close his case. The defendant, if absolution from instance is not granted, shall, if he does not close his case, thereupon call his evidence on all issues in respect of which such onus is upon him.

14. After the defendant has called his evidence, the plaintiff shall have the right to call rebutting evidence on any issues in respect of which the onus was on the defendant: Provided that if the plaintiff shall have called evidence on any such issues before closing his case, he shall not have the right to call any further evidence thereon.

15. Nothing in rules 13 or 14 contained shall prevent the defendant from cross-examining any witness called at any stage by the plaintiff on any issue in dispute, and the plaintiff shall be entitled to re-examine such witness consequent upon such cross-examination without affecting the right given to him by rule 14 to call evidence at a

later stage on the issue on which such witness has been cross-examined. The plaintiff may further call the witness so cross-examined and give evidence on any such issue at a later stage.

16. A record shall be made of:—

- (a) any judgment or ruling given by the court;
- (b) any evidence given in court;
- (c) any objection made to any evidence received or tendered;
- (d) the proceedings of the court generally including any inspection in loco and any matter demonstrated by any witness in court; and
- (e) any other portion of the proceedings which the court may specially order to be recorded.

17. Such record shall be kept by such means as to the court seems appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.

18. The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with the Registrar. It shall not be necessary to transcribe them unless the court or a judge so directs or a party appealing so requires. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the Registrar. The transcript of the shorthand notes or the mechanical record certified as correct shall be deemed to be correct unless the court otherwise orders.

19. Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the Registrar to a judge to have the record transcribed if an order to that effect has not already been made. Such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.

20. If it appears convenient to do so, the court may at any time make any order with regard to the conduct of the trial as to it seems meet and thereby vary any procedure laid down by this order.

21. Every stenographer employed to take down a record of any proceeding shall be deemed to be an officer of the court and shall, before entering on his duties, take the following oath:

“I.....do swear that I shall faithfully and to the best of my ability record in shorthand or cause to be recorded by mechanical means as directed by the judge the proceedings in any case in which I may be employed as an official of the court, and that I shall similarly, when required to do so, transcribe the same or as far as I am able, any shorthand notes or mechanical record made by any other stenographer.”

22. By consent, the parties to a trial shall be entitled at any time before trial, on written application to a judge through the Registrar, to have the cause transferred to a subordinate court: Provided that the matter is one within the jurisdiction of the latter court whether by way of consent or otherwise.

23. The judge may, at the conclusion of the evidence in trial actions, confer with counsel in his chambers as to the form and duration of the addresses to be submitted in court.

24. Where the court considers that the proceedings have been unduly prolonged by the successful party by the calling of unnecessary witnesses, or by excessive examination or cross-examination, or by over-elaboration in argument, it may penalise such parties in the matter of costs.

ORDER 31

IN FORMA PAUPERIS PROCEEDINGS

1. Any poor person may apply to the court for leave to sue or defend as a pauper.

2. The application shall be made by petition setting forth briefly the cause of the action and that the petitioner is not possessed of property to the value of R100 excepting household goods, wearing apparel, tools of trade, and the matter or thing claimed by him in the suit if he is the plaintiff, and that he will not be able within a reasonable time to provide such sum. The facts alleged in the petition shall be supported by the petitioner's own affidavit.

3. The allegation of the poverty of the petitioner shall be supported by affidavit of two householders who are acquainted with his circumstances and shall be in form 20, with such variations as the circumstances shall require. In special circumstances which shall be detailed in the petition, the court may accept the affidavit of one householder, or the report of a magistrate or district commissioner as to the petitioner's poverty or such other evidence as it deems satisfactory. The Registrar shall furnish to the court a report on every application for leave to sue or defend as a pauper after making such enquiry as he may deem fit.

4. The petition shall be set down on the roll by the Registrar and any counsel who is prepared to certify that he has considered the case of the petitioner, and that *prima facie* he has a good cause of action or defence may move for a rule *nisi*: Provided that counsel shall not certify *probabilis causa* unless he has had a consultation with the petitioner personally.

5. Where no counsel moves at the hearing of the petition, the court may refer the petition to a counsel for consideration and fix another day for counsel's report or certificate and the hearing of the petition.

6. Where counsel has certified *probabilis causa* and the court is satisfied that the petitioner is unable to provide the funds necessary for the institution or defence of the proposed action, it may grant an order calling upon the opposite party to show cause on a day named why the petitioner should not be allowed to sue or defend *in forma pauperis*: or the court may in a clear case give leave summarily.

7. The rule *nisi* (if any) together with a copy of the petition shall be served on the opposite party. If summary leave is granted, a copy of the order shall be served on the opposite party.

8. Where the opposite party intends to oppose the grant of a final order, he shall give due notice thereof and at least 48 hours before the time fixed for the hearing file with the Registrar and serve on the pauper's counsel such affidavit as he intends to use.

9. On the return day after hearing such of the parties as appear, the court may confirm or discharge the rule nisi or make such other order as the justice of the case requires and may appoint counsel to act for the petitioner.

10. Where the cause of action is within the jurisdiction of a subordinate court, leave to sue as a pauper in the High Court shall not be granted except where the court is satisfied that it is a case proper to be tried in the High Court.

11. If the pauper does not succeed in his action or suit, or does not recover upon a judgment in his favour, no fees shall be taken from him by counsel or other officer of the court for anything done in the cause.

12. If the pauper succeeds and is awarded costs against his opponent, he shall, subject to taxation, be entitled to include and recover in such costs the fees of his counsel and all other fees remitted by his admission to sue as a pauper, and if he recovers either for principal, interest or costs he shall first pay and make good thereof *pro rata* all such costs, fees and charges.

13. On good cause shown to the court, leave to sue or defend as a pauper may be reviewed, rescinded or varied by the court, and the leave to sue as a pauper shall not exempt him from liability to be adjudged to pay costs.

14. Where leave has been granted to sue *in forma pauperis*, the court may order that service of all processes in connection with such action may be effected by a member of the Botswana police.

ORDER 32

WITHDRAWAL, SETTLEMENT, DISCONTINUANCE, POSTPONEMENT AND ABANDONMENT

1. A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the court, withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and may embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party. If no such consent to pay costs is embodied in the notice of withdrawal, or such taxed costs are not paid within fourteen days of demand, the other party may apply to court on notice for an order for costs.

2. Any party in whose favour any decision or judgment has been given may abandon such decision or judgment either in whole or in part by delivering notice thereof, and such judgment or decision abandoned in part shall have effect subject to such abandonment.

3. If in any proceedings a settlement or an agreement to postpone or withdraw is reached, it shall be the duty of the attorney for a plaintiff or applicant immediately to inform the Registrar accordingly.

4. Unless such proceedings have been withdrawn, any party to a written settlement shall, if the same has not been carried out, be entitled to apply for judgment in terms thereof on at least four days' notice to all interested parties.

ORDER 33

VARIATION AND RESCISSION OF ORDERS

1. The court may in addition to any other powers it may have *mero motu*, or upon the application of any party affected, rescind or vary:—

- (a) an order or judgment erroneously sought or erroneously granted without notice to any party affected thereby;
- (b) an order or judgment in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) an order or judgment granted as the result of a mistake common to all parties.

2. Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.

3. The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.

ORDER 34

MATRIMONIAL CAUSES

1. (a) In any action for the restitution of conjugal rights, the plaintiff may in the alternative claim a decree of divorce.

(b) Upon the hearing of the action for restitution of conjugal rights, the court may upon proof of the malicious desertion of the plaintiff by defendant order restitution of such rights (which order shall, unless the court otherwise directs, be served on the defendant personally) and may further direct the defendant to show cause on a day to be named in such order, why a decree of divorce should not be granted.

2. If, upon such return day, it is proved by affidavit or otherwise that the defendant has failed to comply with the order for restitution of conjugal rights, the court may grant a decree of divorce or make such other order as to it may seem just.

3. When the court grants leave to the plaintiff to serve a restitution order by publication, the form of the notice shall be as near as may be in accordance with form 21.

ORDER 35

MATRIMONIAL MATTERS

1. This Order shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:—

- (a) maintenance *pendente lite*;
- (b) the contribution towards the cost of a pending matrimonial action;
- (c) interim custody of any child;
- (d) interim access to any child.

2. The applicant shall deliver an unsworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a notice to the

respondent as near as may be in accordance with form 22. The statement and notice shall be signed by the applicant or his attorney, shall give an address for service within five miles of the court, and shall be served by the Sheriff.

3. The respondent shall within seven days of receiving the statement deliver an unsworn reply in the nature of a plea, signed and giving an address as aforesaid, in default of which he shall be *ipso facto* barred.

4. As soon as possible thereafter the Registrar shall bring the matter before the court for summary hearing, on 7 days' notice to the parties (unless the respondent is in default).

5. The court may, if it thinks fit, limit the evidence to that of the parties.

6. The court may, on the same procedure, vary its decision in the event of a material change taking place in the circumstances of either party or a child, or the contribution towards costs proving inadequate.

7. No counsel appearing in a case under this rule shall charge a fee of more than R15 if the claim is undefended, or R25 if it is defended, unless the court in an exceptional case otherwise directs.

ORDER 36

EXECUTION

1. The party in whose favour any judgment of the court has been pronounced may, at his own risk, sue out of the office of the Registrar one or more writs for execution thereof as near as may be in accordance with form 23: Provided that, except where by judgment of the court, immovable property has been specially declared executable, no such process shall issue against the immovable property of any person until a return shall have been made of any process which may have been issued against his moveable property, or the Registrar perceives from any return that the said person has not sufficient moveable property to satisfy the writ.

2. No process of execution shall issue for the levying and raising of any costs awarded by the court to any party until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for satisfying costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated not lodged with the deputy-sheriff before the day of the sale, such costs shall be excluded from his account and plans of distribution.

3. Whenever by any process of the court the deputy sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached) and there:

- (a) demand satisfaction of the writ, and, failing satisfaction;
- (b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and, failing such pointing out;
- (c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of rule 5, shall be taken into custody of the deputy-sheriff: Provided:—

(i) that if there is any claim made by any other person to any such property seized or about to be seized by the deputy-sheriff then, if the plaintiff gives the deputy sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the deputy-sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

(ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the deputy-sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.

4. The deputy sheriff shall file with the Registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.

5. Where any movable property has been attached by the deputy-sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the deputy-sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, whereupon the deputy-sheriff shall leave the said property attached and inventoried on the premises where it was found. The deed of suretyship shall be as near as may be in accordance with form 24.

6. If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the deputy sheriff shall remove the said goods to some convenient place of security, or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.

7. Where any movable property is attached as aforesaid, the deputy-sheriff shall where practicable and subject to Order 46 sell it by public auction to the highest bidder after due advertisement by him in one or more newspapers and after the expiration of not less than fourteen days from the time of seizure thereof. Where perishables are attached as aforesaid, they may with the consent of the execution debtor, or upon the execution creditor indemnifying the deputy-sheriff against any claim for damages which may arise from such sale, be sold immediately by the deputy-sheriff concerned in such manner as to him seems expedient.

8. If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:

(a) where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when —

(i) notice has been given by the deputy-sheriff to the lessor and lessee, mortgagor and mortgagee, or person liable on the bill of exchange or promissory note or security, as the case may be; and

- (ii) the deputy sheriff shall have taken possession of the writing (if any), evidencing the lease, or the bill of exchange or promissory note, bond or other security, as the case may be; and
 - (iii) in the case of a registered lease or any registered right, notice has been given to the Registrar of Deeds;
- (b) where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the deputy-sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the warrant of execution. The deputy-sheriff may upon exhibiting the original of such warrant of execution to the pledgee, lessor, lessee, purchaser or seller, enter upon the premises where such property is and make an inventory and valuation of the said interest;
- (c) in the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid --
- (i) the attachment shall only be complete when:
 - (a) notice of the attachment has been given in writing by the deputy-sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the Registrar of Deeds; and
 - (b) the deputy-sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or documents;
 - (ii) the deputy-sheriff may upon exhibiting the original of the warrant of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.

9. Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub rule (b) of rule 8.

10. Where property is subject to a real right of any third person is sold in execution, such sale shall be subject to the rights of such third person unless he otherwise agrees.

11. (a) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with the deputy-sheriff before the day of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold, in the order of preference referred to in paragraph (c) of rule 12 (14) of this Order.

(b) If there should remain any surplus, the deputy-sheriff shall pay it over to the judgment debtor; and the deputy-sheriff shall make out and deliver to him an exact account, in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and, if upon taxation any sum shall be disallowed, the deputy-sheriff shall refund such sum to the judgment debtor.

12. (1) A writ of execution against immovable property shall contain a full description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the deputy-sheriff; and shall be accompanied by sufficient information to enable him to give effect to sub-rule (3) hereof.

(2) An attachment shall be made by the deputy-sheriff of the district in which the property is situate upon a writ as near as may be in accordance with form 25.

(3) The mode of attachment of immovable property shall be by notice in writing by the deputy-sheriff served upon the owner thereof, and upon the Registrar of Deeds, and, if the property is in the occupation of some person other than the owner, also upon such occupier. Any such notice as aforesaid shall be served by means of a registered letter, duly prepaid and posted, addressed to the person intended to be served.

(4) After attachment, any sale in execution shall take place in the district in which the attached property is situate and be conducted by the deputy-sheriff of such district: Provided that the sheriff in the first instance, and subject to the provisions of paragraph (b) of sub-rule 8 may on good cause shown, authorise such sale to be conducted elsewhere and by another deputy-sheriff. Upon receipt of written instructions from the execution creditor to proceed with such sale, the deputy-sheriff shall ascertain and record what bonds or other encumbrances are registered against the property together with the names and addresses of the person in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.

(5) No immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless –

(a) the execution creditor has caused notice in writing of the intended sale to be served by registered post upon the preferent creditor if his address is known and, if the property is rateable, upon the local authority concerned, calling upon them to stipulate within ten days of a date to be stated a reasonable reserve price, or to agree in writing to a sale without reserve; and has provided proof to the deputy-sheriff that the preferent creditor has so stipulated or agreed; or

(b) the deputy-sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this sub-rule, of the proposed sale, or such creditor having been notified has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) of this sub-rule within the time stated in such notice.

(6) The deputy-sheriff may by notice served upon any person require him to deliver up to him forthwith all documents in his possession or control relating to the debtor's title to the said property.

(7) (a) The deputy-sheriff shall appoint a day and place for the sale of such property, such day being, except by special leave of the Sheriff, not less than one month after service of the notice of attachment.

(b) The execution creditor shall, after consultation with the deputy-sheriff, prepare a notice of sale containing a short description of the property, its situation and street number (if any), the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the deputy-sheriff with as many copies of the notice as the latter may require.

(c) The deputy-sheriff shall indicate two suitable newspapers circulating in the district in which the property is situated and require the execution creditor to publish the said notice once in each of the said newspapers and in the Government Gazette not later than 14 days before the date appointed for the sale and to furnish him not later than the day prior to the date of the sale with a copy of each of the said newspaper and with the number of the Gazette in which the notice appeared.

(d) Not later than ten days prior to the date of the sale, the deputy-sheriff shall forward by registered post, a copy of the notice of sale referred to in paragraph (b) above to every judgment creditor who has caused the said immovable property to be attached and to every mortgagee thereof whose address is known.

(e) Not less than ten days prior to the date of sale, the deputy-sheriff shall affix one copy of the notice on the noticeboard of the District Commissioner of the administrative district in which the property is situate and one copy at or as near as may be to the place where the said sale is actually to take place.

(8) (a) The conditions of sale shall, not less than 28 days prior to the date of the sale, be prepared by the execution creditor as near as may be in accordance with form 26 and the said conditions shall be submitted to the deputy-sheriff to settle them. The execution creditor shall thereafter supply the deputy-sheriff with two copies of the conditions of sale, one of which shall lie for inspection by interested parties at his office.

(b) Any interested party may, not less than seven days prior to the date of the sale, upon twenty-four hours' notice to the execution creditor, and the bond holders, apply to the Sheriff for any modification of the conditions of sale, and the Sheriff may make such modification thereon as to him may seem meet.

(9) The execution creditor may appoint an attorney to attend to the transfer of the property when sold in execution.

(10) Immovable property attached in execution shall be sold by the deputy-sheriff by public auction.

(11) If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the deputy-sheriff after due notice to the purchaser, and the property may again be put up for sale, and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the deputy-sheriff's distribution account, be recovered from him under judgment of the judge, pronounced summarily on a written report by the deputy-sheriff after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose; and if he is already in possession of the property the deputy-sheriff may, on seven day's notice, apply to a judge for an order ejecting him or any person claiming to hold under him, therefrom.

(12) Subject to the provisions of sub-rule (5), the sale shall be without reserve and upon the conditions stipulated under sub-rule (8) and the property shall be sold to the highest bidder.

(13) The deputy-sheriff shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him shall be as valid and effectual as if he were the owner of the property.

(14) (a) The deputy-sheriff shall not pay out to the creditor the purchase money until transfer has been given to the purchaser, but upon receipt thereof he shall forthwith pay the Sheriff all monies received in respect of the purchase price.

(b) The deputy-sheriff shall, as soon as possible after the sale, prepare in order of preference as hereinafter provided a plan of distribution of the proceeds and shall

forward a copy of such plan to the Registrar. Immediately thereafter the deputy-sheriff shall give notice by registered post to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection for fourteen days from the date mentioned at his office and at the office of the Registrar and, unless such parties shall signify in writing their agreement to the plan, such plan shall so lie for inspection.

(c) After deductions from the proceeds of the costs and charges of execution the following shall be the order of preference:

- (i) the claims of preferent creditors ranking in priority in their legal order of preference; and thereafter,
- (ii) the claims of other creditors whose writs have been lodged with the sheriff in the order of preference laid down in the law relating to Insolvency.

(d) Any interested person objecting to such plan shall, within four days of the expiry of the period referred to in paragraph (b) of this sub-rule, give notice in writing to the deputy-sheriff and all other interested persons of the particulars of his objection and shall bring such objection before a judge for review on ten days' notice to the deputy-sheriff and the said persons.

(e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order, including an order as to costs, as to him seems meet.

(f) If:

- (i) no objection be lodged to such plan; or
- (ii) the interested parties signify their concurrence therein; or
- (iii) the plan is confirmed or amended on review,

the Sheriff shall on production of a certificate from the conveyancer that transfer has been given to the purchaser and on the request of the deputy-sheriff pay out in accordance with the plan of distribution. If the address of a payee is not known, the amount due to him shall be paid into the Guardian's Fund established under any law relating to the administration of estates.

13. In this order the Sheriff may perform any function of a deputy-sheriff.

ORDER 37

IMPRISONMENT FOR DEBT

1. Where the Sheriff or his deputy has made a return of *nulla bona* or not sufficient goods on a writ of execution, the judgment creditor may cause to be issued a summons commanding the judgment debtor to pay the amount of the judgment, and, unless he does so, to show cause at a time and place stated why an order for personal attachment should not be decreed against him. The summons shall be in form 27 with such variations as circumstances may require.

2. A copy of the writ of execution as endorsed by the Sheriff or his deputy and a copy of the judgment shall be served on the judgment debtor together with the summons.

3. Where the judgment debtor has not paid the amount due, the judgment creditor shall on the return day of the summons, or on any adjournment thereof, produce to the court the original judgment and the original writ of execution with the return thereon or annexed

thereto, and may thereafter move for judgment in terms of the summons. Thereafter the judgment debtor may show cause why a writ of personal attachment shall not issue and may be examined, cross-examined and re-examined.

4. The court may adjourn the hearing for further evidence or refuse or grant an order for the personal attachment and imprisonment of the judgment debtor, or grant an order and suspend its execution on such terms as it deems fit, and may in its order limit the term of the imprisonment and make such order as to costs as the justice of the case requires.

5. Where an order has been made for personal attachment of a judgment debtor, and its execution suspended, so long as certain instalments are paid, the Registrar may, before issuing a writ, require the party applying therefor to satisfy him by affidavit that the debtor has failed in due payment of any such instalment.

6. Where there are two or more orders of personal attachment and imprisonment against the same debtor, such orders shall be cumulative with effect according to priority of issue of the respective writs of personal attachment, unless otherwise directed by the court.

7. A writ of personal attachment of a judgment debtor shall be signed by the Registrar and addressed to the Sheriff or his lawful deputy and to the keeper of a specified prison and shall be in form 28.

8. Save where immunity is conferred by any law, a writ for the personal attachment of a judgment debtor may be executed at any hour on any day except on a Sunday, and at any place except within the residence of the person to be imprisoned or the precincts thereof.

9. The Registrar may release a judgment debtor from prison whenever it is shown to his satisfaction that the judgment debtor has paid the judgment debt and all costs which he has been ordered to pay, or where the judgment creditor has failed to pay for the judgment debtor's maintenance, or where the judgment creditor consents to his release, or where a provisional or final order of sequestration is made in respect of the estate of the judgment debtor.

10. The court may grant the release of a judgment debtor for good cause shown by him after notice of motion to the judgment creditor.

ORDER 38

CONTEMPT OF COURT

1. The institution by a party of proceedings for contempt of court shall be made by notice of motion to the person against whom the contempt of court is alleged.

2. Such notice of motion shall set forth distinctly the grounds of complaint and shall be supported by an affidavit of the facts. Where the proceedings are instituted at the instance of the court *mero motu*, the notice shall be issued by the Registrar and no affidavit of the facts shall be necessary.

3. Nothing in the preceding rules shall affect the power of the court to deal summarily with a contempt of court committed in its presence without any written charge or notice to the offender.

4. Where the court or a judge has imposed a fine for contempt of court the Registrar shall furnish the Sheriff or his deputy with the particulars of such fine and deliver to him

a writ in form 29 with such variations as the circumstances of the case require. Immediately on the delivery of such writ, the Sheriff or his deputy shall execute the same in terms thereof.

5. Where the Court or a judge orders a person to be committed to prison or imposes a sentence of imprisonment for contempt of court, the Registrar shall furnish the sheriff or his deputy or a police officer with a writ of personal attachment and committal to prison in form 30 with such variations as the circumstances may require. Immediately on delivery of such writ, a sheriff or his deputy, or the police officer to whom it is delivered, shall execute the same.

ORDER 39

SECURITY FOR COSTS

1. A party entitled and desiring to demand security for costs from another shall, as soon as practicable after the commencement of the proceedings, deliver a notice setting forth the grounds upon which security is claimed and the amount demanded.

2. If the amount of security only is contested, the Registrar shall determine the amount to be given and his decision shall be final.

3. If the party from whom security is demanded contests his liability to give security, or if he fails or refuses to furnish security in the amount demanded, or the amount fixed by the Registrar, within ten days of the demand or the Registrar's decision, the other party may apply to court on notice for an order that such security be given and that the proceedings be stayed until such order is complied with.

4. The court may, if security be not given within a reasonable time, dismiss any proceedings instituted or strike out any pleadings filed by the party in default, or make such other order as to it may seem meet.

5. Any security for costs shall, unless the court otherwise directs, or the parties otherwise agree, be given in the form, amount and manner directed by the Registrar.

6. The Registrar may, upon the application of the party in whose favour security is to be provided, and on notice to interested parties, increase the amount thereof if he is satisfied that the amount originally furnished is no longer sufficient; and his decision shall be final.

ORDER 40

REVIEW OF TAXATION

1. Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to may within fourteen days of the *allocatur* require the taxing master to state a case for the decision of a judge, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation, and shall embody any relevant findings of fact by the taxing master: Provided that, save with the consent of the taxing master, no case shall be stated where the amount or the total of the amounts which the taxing master has disallowed or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed respectively, is less than R10.

2. The taxing master shall supply a copy of the case to each of the parties, who may, within ten days of the receipt of the copy, submit contentions in writing thereon, including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing master. Thereafter, the taxing master shall frame his report and shall lay the case together with the contentions of the parties and his report before a judge, who may then decide the matter upon the case and contentions so submitted, together with any further information which he may require from the taxing master, or may decide it after hearing, if he deems fit, the parties or their counsel in his chambers; or he may refer the case for decision to the court. A copy of the report of the taxing master, and of any further information supplied by him to the judge, shall be supplied by him to the parties.

3. The judge or court may make such order as to the costs of the case as he or it may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or court as and for costs.

4. For the purposes of these Rules the terms "taxing master" and "taxing officer" shall mean the Registrar or any public officer appointed by the Registrar under Section 6 (1) of the Act.

ORDER 41

CIVIL APPEALS FROM SUBORDINATE COURTS

1. An appeal to the court against a decision of a subordinate court in a civil matter shall be prosecuted within six weeks after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed. By prosecution of an appeal is meant applying in writing to the Registrar on notice to the other parties for a date of hearing.

2. The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.

3. If a cross-appeal has been noted, and the appeal lapses, the cross-appeal shall also lapse unless application for a date of hearing for such cross-appeal is made to the Registrar within three weeks of the date of the lapse of such appeal.

4. If the appellant does not within four weeks after noting the appeal apply in writing to the Registrar on notice to all other parties for a date of hearing, the respondent may at any time before the expiry of the aforesaid period of six weeks apply for a date of hearing of the appeal in like manner. Upon such application, an appeal and any cross-appeal shall be deemed to have been duly prosecuted.

5. Upon receipt of such application for a date of hearing for such an appeal or a cross-appeal, the Registrar shall forthwith assign a date of hearing thereto. Such date shall be during the next convenient Civil Session of the Court: Provided that a Judge may, upon the application of any party, assign an earlier date. The Registrar shall forthwith give the applicant for such date written notice of the date so assigned, whereupon the applicant shall without delay deliver a notice of set down and notify the clerk of the subordinate court in writing accordingly.

6. A notice of set down of a pending appeal shall *ipso facto* operate as a set down of any cross-appeal and *vice versa* unless the appeal has lapsed.

7. (a) Upon receipt of such notice of the date appointed for the hearing of an appeal, the party who applied for the same if presented by an attorney, shall prepare and lodge

with the Registrar, not less than fourteen days prior to the said date, a copy of the record. Where the party applying is not represented by an attorney, the provisions of Order 30, rule 5, of the Subordinate Courts Rules shall be followed.

(b) Such copy shall be clearly typed on foolscap paper in double spacing and the pages thereof shall be consecutively numbered. In addition, every 10th line on each page shall be numbered.

(c) The record shall contain a correct and complete copy of the pleadings, evidence and all other documents necessary for the hearing of the appeal and the copy lodged with the Registrar shall be certified as correct by the attorney lodging the same.

(d) The party lodging the copy of the record shall also furnish each of the other parties with a copy thereof duly certified.

8. (a) Save insofar as these affect the merits of an appeal, subpoenas, notices of trial, consents to postponements, schedules of documents, notices to produce or inspect, and other documents of a formal nature, shall be omitted from the copies of the record prepared in terms of the foregoing rule. A list thereof shall be included in the record.

(b) By consent of parties exhibits having no bearing on a point at issue in an appeal, and immaterial portions of lengthy documents, may likewise be omitted from such copies, in which event a written consent setting forth what documents or portions thereof, as the case may be, have been omitted, and signed by or on behalf of the parties, shall be filed with the Registrar when such copies are lodged: Provided that the court hearing the appeal may at all times refer to the original record and take cognizance of all matters appearing therein.

ORDER 42

APPEALS IN CRIMINAL CASES FROM SUBORDINATE COURTS TO THE HIGH COURT

1. (1) An accused person wishing to appeal against any conviction, sentence or order in a criminal case shall note his appeal within fourteen days after such conviction, sentence or order by lodging with the clerk of the court a written statement setting out clearly and specifically the grounds on which the appeal is based.

(2) If the accused person is unable, owing to illiteracy or to physical defect, to write out such a statement, the clerk of the court shall, upon request, do so.

(3) Upon an appeal being noted the judicial officer shall within seven days deliver to the clerk of the court a statement in writing showing –

(a) the facts he found to be proved;

(b) the grounds upon which he arrived at any finding of fact specified in the appellant's statement as appealed against; and

(c) his reasons for any ruling of law or as to the admission or rejection of evidence so specified as appealed against.

Provided that if the judicial officer is of the opinion that the written judgment delivered by him in terms of Section 285 B of the Criminal Procedure and Evidence Proclamation (as amended) contains all the information required by this rule, he shall so advise the clerk of the court in writing, which shall be deemed to be a sufficient compliance with this rule.

(4) Such statement shall become part of the record.

(5) The accused person may, within the time limited for the noting of an appeal, by notice to the clerk of the court amend the statement of his grounds of appeal, and the judicial officer may in his discretion, within seven days thereafter, deliver to the clerk of the court a further statement of reasons for judgment.

2. The clerk of the court shall, within seven days after receiving the judicial officer's statement or further statement, transmit the same, together with the appellant's statement and any notice of amendment thereof, with the record of the case to the Registrar. He shall at the same time forward four copies of the record and statements for the use of the court.

3. An appeal against a conviction, sentence or order made by a subordinate court in any criminal matter shall be set down by the Registrar on notice to all parties in accordance with such directions as he may receive from the Chief Justice from time to time.

4. These rules shall apply *mutatis mutandis* to an appeal by the Attorney-General against dismissal of a summons or charge or other decision of a subordinate court.

5. The ultimate responsibility in ensuring that all copies of the record of appeal are in all respects properly before the court shall rest on the party appellant.

ORDER 43

REVIEWS

1. Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any subordinate court and of any tribunal, board or officer performing judicial, quasi-judicial, or administrative functions, shall be by way of notice of motion directed and delivered by the parties seeking to review such decision or proceedings to the judicial officer, or chairman of the court, tribunal or board, or to the officer, as the case may be, and to all other parties affected –

(a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside; and

(b) calling upon the judicial officer, chairman or officer, as the case may be, to despatch within fourteen days of the receipt of the notice of motion, to the Registrar, the record of such proceedings sought to be corrected or set aside, together with such reasons as he is by law required or he desires to give or make, and to notify the applicant that he has done so.

2. The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which the applicant relies to have the decision or proceedings set aside or corrected.

3. The Registrar shall make available to the applicant the record despatched to him as aforesaid upon such terms as the Registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the Registrar with one copy, and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The cost of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

4. The applicant may within seven days after the Registrar has made the record available to him, by notice and accompanying affidavit, amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit and shall deliver the said notice and affidavit.

5. Should the judicial officer, chairman or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he shall:

- (a) within fourteen days of the receipt by him of the notice of motion or any amendment thereof deliver notice to the applicant that he intends so to oppose and shall in such notice appoint an address within five miles of the office of the Registrar at which he will accept notice and service of all processes in such proceedings; and
- (b) within twenty-one days of the expiry of the time referred to in rule 4 hereof, deliver any affidavits he may desire in answer to the allegations made by the applicant.

6. The applicant shall have the rights and obligations in regard to replying affidavits set out in Order 7.

7. The provisions of Order 7 as to set down of applications shall *mutatis mutandis* apply to the set down of review proceedings.

ORDER 44

CRIMINAL PROCEEDINGS: CIRCUIT COURT

1. In this Order the term "Circuit Court" means the High Court sitting as a circuit court for one or more magisterial districts.

2. The process of a circuit court for any district for summoning any person, either as an accused or as a witness in any criminal case before such court, may be sued out at any time, whether the date for holding such court shall have been appointed or not. It may be issued by the Registrar of the court or of the circuit court: Provided that the process for summoning any person required by the Attorney-General or his deputy as a witness in a criminal case in such court need not be endorsed or formally sued out by or on behalf of the Attorney-General.

3. The process of the circuit court for any district for arresting and holding to bail any person in order to compel his appearance before such court shall be issued by the magistrate of such district or by a judge.

4. All process of the circuit court shall be dated on the day on which it is issued, shall be signed by the officer issuing it, shall be endorsed by the person suing out the same and shall be directed to the deputy-sheriff.

5. The Registrar of every circuit court shall, on the closing of the same, cause to be transmitted to the Sheriff a list of all warrants of execution in criminal cases which have been issued by him.

6. In all cases where any process is required for the execution of any sentence, judgment or order of any circuit court in a criminal case, after the records thereof have been deposited in the office of the Registrar of the High Court, the process of the High Court for the execution of any such sentence, judgment or order may be issued to the party requiring the execution of the same.

7. When a circuit court imposes upon any party whatsoever a fine for contempt of court for default of appearance or otherwise, and such fine is not duly paid, the registrar of the circuit court shall furnish to the deputy-sheriff the particulars of such fine and deliver to him a warrant in respect thereof.

8. The Registrar of every circuit court shall immediately upon the closing of the court in that circuit town make out and transmit to the Registrar of the High Court a return showing all fines which have, during the sitting of the court in that town, been imposed by the said court, specifying therein the names of the parties, the amount of the fine, the date when imposed, the date when a warrant was delivered to the deputy-sheriff for its levy, the extent, if any, to which the fine was remitted, and whether it was paid without issue of a warrant.

9. The registrar of the circuit court shall be a magistrate nominated by the Registrar of the High Court.

ORDER 45

DE LUNATICO INQUIRENDO, APPOINTMENT OF CURATORS IN RESPECT OF PERSONS UNDER DIABILITY AND RELEASE FROM CURATORSHIP

1. Any person desirous of making application to the court for an order declaring any person (hereinafter referred to as "the patient") to be of unsound mind and as such incapable of managing his affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator *ad litem* to such patient.

2. Such application shall be brought *ex parte* and shall set forth fully :-

- (a) the grounds upon which the applicant claims *locus standi* to make such application;
- (b) the grounds upon which the court is alleged to have jurisdiction;
- (c) the patient's age and sex, full particulars of his means, and information as to his general state of physical health;
- (d) the relationship, if any, between the patient and the applicant, and the duration and intimacy of their association, if any;
- (e) the facts and circumstances relied on to show that the patient is of unsound mind and incapable of managing his affairs;
- (f) the name, occupation and address of the respective persons suggested for appointment by the court as curator *ad litem* and, subsequently, as curator to the patient's person or property, and a statement that these persons have been approached and have intimated that, if appointed, they would be able and willing to act in these respective capacities.

3. The application shall, as far as possible, be supported by :

- (a) an affidavit by at least one person to whom the patient is well known and containing such facts and information as are within the deponents own knowledge concerning the patient's mental condition. If such person is related to the patient, or has any personal interest in the terms of any order sought, full details of such relationship or interest, as the case may be, shall be set forth in his affidavit; and
- (b) affidavits by at least two medical practitioners, one of whom shall, where practicable, be an alienist, who have conducted recent examinations of the patient with

a view to ascertaining and reporting upon his mental condition and stating all such facts as were observed by them at such examinations in regard to such condition, the opinions formed by them in regard to the nature, extent and probable duration of any mental disorder or defect observed and their reasons for the same, and whether the patient is in their opinion incapable of managing his affairs. Such medical practitioners shall, as far as possible, be persons unrelated to the patient, and without personal interest in the terms of any order sought.

4. Upon the hearing of the application referred to in rule 1, the court may appoint the persons suggested or any other suitable person as curator *ad litem*, or may dismiss the application, or make such further or other order thereon as to it may seem meet and, in particular, on cause shown, and by reason of urgency, special circumstances or otherwise, dispense with any of the requirements of this rule.

5. Upon his appointment, the curator *ad litem* (who shall if practicable be an advocate or an attorney) shall without delay interview the patient, and shall also inform him of the purpose and the nature of the application unless, after consulting a medical practitioner referred to in paragraph (b) of rule 3, he is satisfied that this would be detrimental to the patient's health. He shall further make such enquiries, as the case appears to require, and thereafter prepare and file with the Registrar his report on the matter to the court, at the same time furnishing the applicant with a copy thereof. In his report the curator *ad litem* shall set forth such further facts, if any, as he has ascertained in regard to the patient's mental condition, means and circumstances and he shall draw attention to any consideration which, in his view, might influence the court in regard to the terms of any order sought.

6. Upon receipt of the said report, the applicant shall submit the same, together with copies of the documents referred to in rules 2 and 3 to the Master of the High Court for consideration and report to the Court.

7. In his report the Master shall, as far as he is able, comment upon the patient's means and general circumstances, and the suitability or otherwise of the persons suggested for appointment as curator to the person or property of the patient, and he shall further make such recommendations as to the furnishing of security and rendering of accounts by, and the powers to be conferred on, such curator as the facts of the case appear to him to require. The curator *ad litem* shall be furnished with a copy of the said report.

8. After receipt of the report of the Master, the applicant may, on notice to the curator *ad litem* (who shall if he thinks fit inform the patient thereof) place the matter on the roll for hearing on the same papers for an order declaring the patient to be of unsound mind and, as such, incapable of managing his affairs, and for the appointment of the person suggested as curator to the person or property of the patient or to both.

9. At such hearing the Court may require the attendance of the applicant, the patient, and such other persons as it may think fit to give such evidence *viva voce*, or furnish such information as the Court may require.

10. Upon consideration of the application, the report of the curator *ad litem* and of the Master and such further information or evidence, if any, as has been adduced *viva voce* or otherwise, the court may direct service of the application on the patient, or may declare the patient to be of unsound mind and incapable of managing his own affairs and appoint a suitable person as curator to his person or property, or both, on such terms as

to it may seem meet, or it may dismiss the application or generally make such order (including an order that the costs of such proceedings be defrayed from the assets of the patient) as to it may seem meet.

11. Different persons may, subject to due compliance with the requirements of this order in regard to each, be suggested and separately appointed as curator to the person and curator to the property of any person found to be of unsound mind and incapable of managing his own affairs.

12. The provisions of rules 1, 2 and 4 to 10 inclusive shall, insofar as the same are applicable thereto, also apply *mutatis mutandis* to any application for the appointment by the Court of a curator to the property of a person detained as or declared to be a mentally disordered or a defective person under the provision of any other law and who is incapable of managing his affairs.

13. Save to the extent as the court may on application otherwise direct, the provisions of rules 1 to 11 shall *mutatis mutandis* apply to every application for the appointment of a curator *bonis* to any person on the ground that he is, by reason of some disability, mental or physical, incapable of managing his own affairs.

14. Every person who has been declared by a court to be of unsound mind and incapable of managing his affairs, and to whose person or property a curator has been appointed, and who intends applying to court for a declaration that he is no longer of unsound mind and incapable of managing his affairs, or for release from such curatorship, as the case may be, shall give fourteen days' notice of such application to such curator and to the Master.

15. Upon receipt of such notice and after due consideration of the application, and such information as is available to him, the Master shall without delay report thereon to the court, at the same time commenting upon any aspect of the matter to which, in his view, its attention should be drawn.

16. Upon the hearing of any application referred to in rule 14 hereof, the court may declare the applicant no longer of unsound mind and as being capable of managing his affairs, order his release from such curatorship or dismiss the application, or, *mero motu*, appoint a curator *ad litem* to make such enquiries as it considers desirable, and postpone a further hearing of the matter to permit of the production of such report, affidavit or evidence, as the case may be, or postpone the matter *sine die* and make such order as to costs or otherwise as it may deem meet.

ORDER 46

INTERPLEADER

1. Where any person, in this rule called "the applicant", alleges that he is under any liability in respect of which he is or expects to be sued by two or more parties making adverse claims, in this rule referred to as "the claimants", in respect thereto, the applicant may deliver a notice in terms of this rule called an "interpleader notice" to the claimants. In regard to conflicting claims with respect to property attached in execution, the Sheriff shall have the rights of an applicant and an execution creditor shall have the rights of a claimant.

2. (a) Where the claims relate to money, the applicant shall be required, on delivering the notice mentioned in rule 1 hereof, to pay the money to the Registrar who shall hold it until the conflicting claims have been decided;
- (b) where the claim relates to a thing capable of delivery, the applicant shall tender the subject matter to the Registrar when delivering an interpleader notice, or take such steps to secure the availability of the thing in question as the Registrar may direct;
- (c) where the conflicting claim relates to immovable property, the applicant shall place the title deeds thereof, if available to him, in the possession of the Registrar when delivering the interpleader notice and shall, at the same time, hand to the Registrar an undertaking to sign all documents necessary to effect transfer of such immovable property, in accordance with any order which the court may make or any agreement of the claimants.

3. The interpleader notice shall:

- (a) state the nature of the liability, property or claim which is the subject matter of the dispute;
- (b) call upon the claimants within the time stated in the notice, not being less than fourteen days from the date of service thereof, to deliver particulars of their claims; and
- (c) state that upon a further date, not being less than fourteen days from the date specified in the notice for the delivery of claims, the applicant will apply to court for its decision as to his liability or the validity of the respective claims.

4. There shall be delivered together with the interpleader notice an affidavit by the applicant stating that:

- (a) he claims no interest in the subject matter in dispute other than for charges and costs;
- (b) he does not collude with any of the claimants;
- (c) he is willing to deal with or act in regard to the subject matter of the dispute as the court may direct.

5. If the claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated, or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject matter of the dispute.

6. If a claimant delivers particulars of his claim and appears before it, the court may –

- (a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;
- (b) order that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant;
- (c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;

(d) if it considers that the matter is not a proper matter for relief by way of interpleader notice, dismiss the application;

(e) make such order as to costs and the expense, if any, incurred by the applicant under paragraph (b) of rule 2 as to it may seem meet.

7. If an interpleader notice is issued by a defendant in an action, proceedings in that action shall be stayed pending a decision upon the interpleader, unless the court upon application made by any other party to the action otherwise orders.

ORDER 47

SWORN TRANSLATORS

1. Any person of full age may be admitted and enrolled by the Court as a sworn translator in any language upon satisfying the court as to his competency.

2. No person shall be admitted and enrolled as a sworn translator unless his proficiency in the language which he intends to translate has been duly certified in writing, after examination held not more than six months before the date of his application by a competent sworn translator of not less than five years standing: Provided that, if there be no sworn translator of sufficient standing within its jurisdiction the court may appoint as examiner any person whom it considers to be duly qualified to hold such examination.

3. Every sworn translator duly admitted and enrolled shall, to the extent of such admission and enrolment, be deemed to be a sworn translator for all courts, and the Registrar shall notify all subordinate courts of such admission and enrolment.

4. (a) Any person admitted and enrolled under rule 1 shall, before commencing to exercise the functions of his office, take an oath or make an affirmation which shall be subscribed by him in the following form:

"I.....do hereby swear solemnly and sincerely affirm and declare that I will in my capacity as a translator of the High Court and subordinate courts faithfully and correctly translate, to the best of my knowledge and ability, and document into the English language from any other language in respect of which I have been admitted and enrolled as a translator."

(b) Any such oath or affirmation shall be taken or made before a judge admitting and enrolling the translator, and the judge concerned shall, at the foot thereof, endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

ORDER 48

INTERPRETATION OF EVIDENCE

1. Where the evidence of any proceedings is given in any language with which the court or a party or his representative is not sufficiently conversant, such evidence shall be interpreted by a competent interpreter, sworn to interpret faithfully and to the best of his ability in the languages concerned.

2. Before any person is employed as an interpreter the court may, if in its opinion it is expedient to do so, or if any party on reasonable grounds so desires, satisfy itself as to the competence and integrity of such person after hearing evidence or otherwise.

3. Where the services of an interpreter are employed in any proceedings, the costs, if any, of interpretation shall, unless the court otherwise orders, be costs in the cause: Provided that where the interpretation of evidence given in the official language of the Court is required by the representative of a party, such costs shall be at such party's expense.

ORDER 49

INSPECTION OF RECORDS

1. Any party to a cause, and any person having a personal interest therein, with leave of the Registrar, on good cause shown, may at his office examine and make copies of all documents in any cause or matter pending before the court.

2. Any person may, subject to the payment of the prescribed fee, inspect the record of any cause which has been adjudicated on in court.

ORDER 50

CRIMINAL TRIALS

1. In this order the term "magistrate" includes any judicial officer presiding at a preparatory examination.

2. As soon as possible after the conclusion of a preparatory examination, the magistrate shall cause a copy of the record to be made and transmitted to the Registrar for transmission to the Senior State Counsel (Prosecutions). All exhibits which can conveniently be copied shall be copied and attached to the record, but all original exhibits shall be retained by the magistrate and not forwarded with the copy of the record.

3. If it is decided to indict the accused for trial or sentence before the High Court, Senior State Counsel (Prosecutions) shall inform the magistrate who shall, as soon as possible, transmit the original record together with three certified copies to the Registrar. All original exhibits, securely packed, shall be despatched to the Registrar who shall issue a receipt for such exhibits and ensure that they are available at the trial.

4. At least twenty-one days before the commencement of any criminal session, the Senior State Counsel (Prosecutions) shall transmit to the Registrar:

(a) a draft cause list or roll (in duplicate) of all criminal cases for disposal at that session reflecting the name and other particulars of each accused, the offence alleged, the names of witnesses to be subpoenaed for the trial, and the proposed date of hearing in respect of each cause;

(b) a set (in triplicate) of the indictments in respect of all cases for trial or sentence at that session.

5. Immediately upon receipt of the draft cause list or roll the Registrar shall settle the same, and take the necessary action to issue and cause to be served all subpoenas and shall cause to be served all indictments. The day, date and time for attendance at court shall be clearly endorsed on every subpoena and indictment issued. One subpoena shall contain the names of not more than 4 persons to be served.

6. The officer serving a subpoena or indictment shall -

(a) explain the nature and contents thereof to the person upon whom service is being effected and state in his return that he has done so;

- (b) when serving an indictment, put the following questions to an accused:
- (i) Do you desire that witnesses be subpoenaed for your trial? If so, do you desire the witnesses subpoenaed at the expense of the State?
 - (ii) What are their names, addresses, occupations and present whereabouts?
 - (iii) Do you wish to have the assistance of counsel at your trial?
 - (iv) Do you intend to arrange for counsel to be appointed, or do you wish the State to appoint counsel for you?
 - (v) If you desire the State to appoint counsel –
 - (a) what money contribution can you make towards the cost?
 - (b) what assets have you?

7. (a) If the accused desires that any witnesses be subpoenaed, the Registrar shall take the necessary action, provided that the Registrar may require an accused to satisfy him that it is reasonable to subpoena any witness at the expense of the State and, if not so satisfied, the Registrar may refer the question to a judge for direction.

8. In all cases where assessors are required, the Registrar shall make the necessary arrangements.

9. The Registrar shall keep a book to be called "The Criminal Record Book" in which shall be entered short particulars (including sentence, if any) of every criminal cause.

ORDER 51

SUPERANNUATION

1. After the expiration of three years from the day whereon a judgment has been pronounced, no writ of execution may be issued unless the debtor consents to the issue of the writ or unless the judgment is revived by the court on notice to the debtor, but in such case no new proof of the debt shall be required. In the case of judgment for periodic payments, the three years shall run, in respect of any payment, from the due date thereof.

2. Writs of execution of a judgment once issued remain in force and may, subject to any law relating to prescription be executed at any time without being renewed until the judgment has been satisfied in full.

ORDER 52

ENFORCEMENT OF PROTECTIVE PROVISIONS UNDER SECTION 18 OF THE CONSTITUTION

1. An application by any person for redress in terms of subsection (1) of Section 18 of the Constitution of Botswana shall be by way of notice of motion calling upon the party or parties, against whom redress is sought, to show cause why an order in terms of a draft (to be attached to the notice of motion) should not be granted by the court.

2. The notice of motion shall be supported by affidavit setting out the circumstances and the grounds upon which the applicant relies.

3. (a) The provisions of Orders 5 and 7 in regard to service of process and applications generally shall apply *mutatis mutandis* to proceedings under this order.

(b) In all cases where the Attorney-General is not a party to the action, a copy of the notice of motion and all accompanying documents shall be delivered to a responsible person at his chambers or sent by registered post addressed to him at his chambers.

4. In any reference under sub-section (3) of Section 18, the presiding officer shall concisely state such facts and refer to such documents as may be necessary to enable the court to decide the question raised. The presiding officer shall give every party to the proceedings an opportunity to propose additions, omissions or alterations to such statement and every such proposed addition, omission or alteration shall, unless incorporated in the statement of facts, be recorded and shall, together with the reasons of the presiding officer for rejecting the same, form part of the reference.

ORDER 53

TARIFF OF COURT FEES

1. The court fees payable in the High Court are as follows:--

	R. c.
(a) (i) on every original initial document whereby an action is instituted or application is made	10.00
(ii) on every bill of costs to be taxed which is not related to an action or application already registered in the court	5.00
(iii) on every power of attorney (to be filed with the Registrar) to appeal against the judgment of a subordinate court, excluding appeals in criminal cases.....	3.00
Provided that no fee shall be levied on the document whereby an <i>in forma pauperis</i> actions instituted.	
(b) For the Registrar's certificate on certified copies of documents (per folio of 100 words).....	0.20
(c) For inspecting records under Order 49 rule 2 (each).....	0.50

ORDER 54

TARIFF OF DEPUTY-SHERIFF FEES

1. The fees and charges contained in the appended tariff shall be chargeable by and allowed to deputy-sheriffs, provided that no fees may be charged for the service of process in *in forma pauperis* proceedings (but the necessary disbursements for the purpose of such service may be recovered).

2. Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.

3. Where any dispute shall arise as to the validity or amount of any fees or charges, or where necessary work is done and necessary expenditure incurred for which no provision is made, the matter shall be determined by the taxing master.

TARIFF

	R. c.
1. For registration of any document for service or execution, upon receipt thereof.	0.20
2. For service, or attempted service, of :	
(a) summonses, petitions, notices of motion (each).	2.00
(b) notices, orders or other documents (each).	1.00
Provided that –	
(i) whenever any document to be served with any such process is mentioned in the process or forms and annexure thereto, no additional fee shall be charged for the service of such document, otherwise a fee of R1 may be charged in respect of each separate document served ;	–
(ii) an attempted service of more than one document on the same person shall be treated as an attempted service of one document only ; and	–
(iii) no fee for the service of a separate document shall be charged in respect of the service of process in criminal cases	–
3. Travelling allowances ;	
(a) For the distance actually and necessarily travelled by the deputy-sheriff, or his officer reckoned from the office of the deputy-sheriff, both on the forward and the return journey, per mile or fraction of a mile.	The rates applicable to persons employed in the Public Service as authorized in General Orders.
(b) When two or more summonses or other process, whether at the instance of the same party or of different parties, are capable of being served on one and the same journey, the travelling allowance for performing the round of service shall be fairly and equitably apportioned among the several cases, regard being had to the distance at which the parties against whom such process is directed respectively reside from the office of the deputy-sheriff, but the fee for service shall be payable for each service made or attempted to be made	–
(c) This allowance shall be payable only in cases where the duty in question is to be performed beyond a radius of one mile from the office of the deputy-sheriff: Provided that if the office of the deputy-sheriff is situate more than three miles from the Court the allowance shall be payable only where such duty is to be performed beyond a distance of one mile from the Court	–

	R c.
4. (a) Postage in civil matters, as per postal tariff.....	-
(b) Postage in criminal matters, free.....	-
NOTE:-If difficulty is experienced in having envelopes marked "On Botswana Government service" accepted by the local postal authorities, the deputy-sheriff may take the postal matter to the Registrar of the Court, or to the magistrate, who shall frank the envelope with his official franking stamp.	
5. For the execution of any writ.	
(a) (i) of personal arrest, including conveying defendant to court, to attorney's office or to a prison, per person	4.20
(ii) for conveying defendant to court from place of custody on a day subsequent to the day of arrest and attending at court, R1.05 per hour with a minimum of R2.10 but not exceeding	4.20
(b) of ejection: R1.50 per hour, subject to a minimum fee of	5.25
(in addition to reasonable expenses necessarily incurred)	
(c) against immovable property:	
(i) for execution, including service of notice of attachment upon the owner of the immovable property and upon the Registrar of Deeds or other officer charged with the registration of such property and if the property is in occupation of some person other than the owner, also upon such occupier	3.05
(ii) for notice of attachment to a single lessee or occupier.....	1.05
Identical notices when there are several lessees, occupiers, or owners, for each after the first.....	0.25
(iii) for making valuation or report for purposes of sale	5.00
(iv) when a deputy-sheriff has been authorised to sell property and the property is not sold by reason of the fact that the attachment is withdrawn or the debtor's estate made insolvent, irrespective of the amount of the writ	2.10
The necessary notice for the withdrawal of the attachment, the first.....	1.05
Other identical notices for each after the first	0.25

R c.

(v) to ascertain and record what bonds or other encumbrances are registered against the property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered, including any correspondence in connection therewith.....	6.00
(vi) to notify the execution creditor of such bonds, or other encumbrances and of the names and addresses of the persons in whose favour such bonds or other encumbrances are registered	0.50
(vii) for consideration of proof that preferent creditor has complied with the requirements of paragraph (a) of sub-rule 5 of rule 12 of Order 36.....	0.50
(viii) for the notice referred to in sub-rule 6 of rule 12 of Order 36.....	1.05
(ix) for consideration of notice of sale prepared by execution creditor in consultation with deputy-sheriff.....	2.10
(x) for verifying that notice of sale has been published in the newspapers indicated and in the Gazette	0.50
(xi) for forwarding a copy of the notice of sale to every judgment creditor who had caused the immovable property to be attached and to every mortgagee thereof whose address is known, for each copy	0.25
(xii) for affixing a copy of the notice of sale on the notice board of the District Commissioner referred to in paragraph (e) of sub-rule (7) of rule 12 or Order 36, and at or as near as may be to the place where the sale is actually to take place, an inclusive fee of.....	1.05
(xiii) for considering the conditions of sale.....	1.05
(xiv) on the sale of immovable property by the deputy-sheriff as auctioneer two and one half per cent of the proceeds of the sale which shall be paid by the purchasers, with a minimum of.....	20.0

This includes cost of paying to the Sheriff all monies received in respect of the purchase price.

(xv) for any report referred to in sub-rule (2) of rule 12 of Order 36.....	2.10
(xvi) for giving transfer to the purchaser.....	1.05
(xvii) for preparing a plan of distribution of the proceeds (including the necessary copies) and for forwarding a copy to the Registrar	7.00
(xviii) for giving notice to all parties who have lodged writs and to the execution debtor that the plan will lie for inspection, for every notice	0.50
(xix) for request to sheriff to pay out in accordance with the plan of distribution.....	0.50
(d) Against movable property :	
(i) when a writ is paid on presentation, 1 per cent on the amount so paid with a minimum fee of.....	2.10
(ii) for any abortive attempt at attachment, including one hour's search and enquiry.....	2.10
(iii) when a writ is withdrawn or the debtor's estate made insolvent before any property is attached	2.10
(iv) for making an attachment, including one hour's search and enquiry.....	3.05
(v) notice of attachment, if necessary, to a single person	1.05
Identical notices, when there are more than one person to be given notice, for each after the first.....	0.25
(vi) when an attachment is withdrawn by a judgment creditor or the debtor's estate is made insolvent before sale, 3¼ percent on the value of the property attached or the amount of the writ whichever is the lesser	
(vii) when a writ is paid by the debtor to the deputy-sheriff after attachment but before sale, 3¼ per cent on the amount so paid	
(viii) when monies are taken in execution, 1½ per cent on the amount so taken.....	

(ix) for drawing advertisement of sale of goods attached.....	0.70
(x) for selling in execution (whether auctioneer employed or not), including distribution of the proceeds, on the first R200 or part thereof, 6 per cent, and over and above the first R200, 5 per cent	
(xi) the deputy-sheriff himself shall sell movable property in execution but he shall engage the services of an auctioneer if directed thereto in writing by the judgment creditor, provided the judgment creditor bears the additional commission, if any	
(xii) commission shall not be chargeable, as against a judgment debtor, on the value of movable property attached and subsequently claimed by a person other than the judgment debtor and released in consequence of such claim unless such property has been attached at the express direction of the judgment creditor, in writing, in which event the judgment creditor shall be liable to the deputy-sheriff for the commission.....	
(xiii) for insuring movable property attached when it is considered necessary and when the deputy-sheriff is directed thereto in writing, by the judgment creditor, in addition to the amount of premium paid, an inclusive fee of	3.05
(e) For keeping possession of property (money excepted):	
(i) for an officer necessarily left in possession, a reasonable inclusive fee per day not exceeding.....	4.20
For an additional officer, where necessary, limited to one, per day, not exceeding	0.75

NOTE: "Possession" means the continuous and necessary presence on the premises for the period in respect of which possession is charged of a person employed and paid by the deputy-sheriff for the sole purpose of retaining possession.

(ii) for removal and storage, the reasonable and necessary expenses for such removal and storage; and if an animal is to be stabled or fed, the reasonable charges for such stabling and feeding.	
(iii) for herding and preserving livestock, the necessary expenses for herding and preserving such stock.	
(iv) when no officer is left in possession and no security bond is taken, but movable property attached remains under the supervision of the deputy-sheriff, per day	0.25
6. (a) For making an inventory, including a copy for the person whose goods are being inventoried, per 100 words or part thereof.	0.70
(b) For any additional necessary copy, per 100 words or part thereof.	0.15
(c) For assistance, where necessary, in taking inventory (limited to one officer), a reasonable and inclusive fee per day, not exceeding	4.20
7. (a) For making return of service or execution, including drawing and typing original for court, limited to one person upon each original process	0.50
(b) Copy thereof for party desiring service or execution.	0.25
8. For drawing and completing bail bond, deed of suretyship or indemnity bond.	2.10
9. For copies of process and orders necessarily made at per folio with a minimum of.	0.50
10. For making copies of summonses, orders, subpoenas, writs, etc., received by telegram, 12½c. per folio of 100 words, with a minimum of.	0.50
11. In cases of prisoners sentenced to death:	
(a) where prisoner is executed – arranging for, etc., and attending capital punishment, an inclusive fee of.	25.20
(b) where prisoner is not executed, an inclusive fee of.	8.40

NOTE: This fee in both cases includes identifying the prisoner on arrival, subsequent attendances at the prison at the request of the

prisoner or the authorities, taking statements from prisoner if requested to do so, and transport.

- | | |
|------------------------------------------------------------------------------------------------|------|
| 12. For each necessary letter excluding formal letters accompanying process or returns. | 0,50 |
| 13. For each necessary attendance by telephone (in addition to prescribed trunk charges). | 0,30 |

ORDER 55

ADVOCATES FEES IN CIVIL MATTERS

1. Save where the court authorises fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between party and party.

2. Where fees in respect of more than one advocate are allowed in a party and party bill of costs, the fees to be permitted in respect of any additional advocate shall not exceed one half of those allowed in respect of the first advocate.

3. The appended tariff of maximum fees as between party and party (hereinafter referred to as "the tariff") shall (save where the court on application made before or when judgment is delivered otherwise orders) apply in the following matters:

- (a) any claim for a sum not exceeding R3,000 with or without any claim for ancillary relief;
- (b) any claim for delivery of property movable or immovable of a value not exceeding R3,000;
- (c) any claim for ejection from premises where the value of the right of occupation to the occupier does not exceed R3,000;
- (d) any claim for divorce, judicial separation or other matrimonial relief unless accompanied by a money claim exceeding R3,000 or a proprietary claim exceeding R3,000 in value (excluding a claim for maintenance);
- (e) any appeal and review from magistrates' courts;
- (f) any application for interdicts *pendente lite* in regard to any matter mentioned in paragraphs (a), (b), (c), or (d);

provided that:

- (i) where the amount of the claim exceeds R3,000 but that of the judgment does not, the tariff shall apply;
- (ii) where the defendant or respondent is awarded costs and the amount or value of the claim against him exceeds R3,000 the tariff shall not apply unless in either case the court otherwise orders.

4. In applying the provisions of the tariff the taxing master shall have regard to the scale of fees ordinarily allowed, as between party and party, at the time of coming into

operation of this tariff for like services and shall not without substantial reason allow any fee materially in excess thereof.

5. The taxation of advocates' fees as between party and party shall be effected by the taxing master in accordance with this rule and, where applicable, the tariff. Where the tariff does not apply, he shall allow such fees (not necessarily in excess thereof) as he considers reasonable.

TARIFF OF MAXIMUM FEES FOR ADVOCATES ON PARTY AND PARTY BASIS IN CERTAIN CIVIL MATTERS

	<i>Rs and</i>
1. Written advice and memoranda in the course of litigation	25
2. Drawing pleadings and stated cases, settling a statement of claim in a combined summons or third party notice	20
3. Advice on evidence	30
4. Consultations on trial, to settle affidavits, stated cases, etc., and receive instructions and/or furnish advice, informal inspections with attorney and/or client prior to hearing, etc., (per hour)	8
5. Settling notice of motion, affidavit, etc., where consultation not held	25
6. Appearance in court:	
(a) First day of hearings –	
(i) Opposed applications.... .	60
(ii) Exceptions or motions to strike out... .	60
(iii) Stated cases	60
(iv) Trials.... .	100
(v) Appeals from Magistrates' courts including review of proceedings thereof	75
(b) Subsequent days:	
A refresher (without the necessity of a refresher brief) in an amount per day to be allowed in the discretion of the taxing master, but not to exceed two-thirds of the fees allowed on taxation in respect of the first day.	
(c) (i) Attending court to note a reserved judgment	5
(ii) Attending court to note a reserved judgment including argument as to terms of order: whether as to costs or otherwise, and an application for leave to appeal	15
(d) Attending court on formal unopposed postponement	5
(e) Fee in lieu of fee for first day's hearing when case settled or withdrawn or postponed at the instance of any party:	

- | | |
|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| (i) not more than two days prior to the date of hearing |) Fee otherwise allowable on taxation for first day's hearing. |
| (ii) not less than three days and not more than seven days prior to the date of hearing |) Two-thirds of fee under (i). |
| (iii) not less than eight days and not more than twenty-one days prior to the date of hearing |) Half the fee under (i). |

7. Circuit matters:

For services necessarily rendered on circuit in respect of a matter already pending in a circuit court, any fee otherwise allowable in terms of the foregoing tariff may be increased in the discretion of the taxing master by an amount not exceeding one-third of such fee.

ORDER 56

TAXATION AND TARIFF OF FEES OF ATTORNEYS

1. It shall be competent for the taxing master to tax all bills of costs for services actually rendered by an attorney in his capacity as such, whether in connection with litigation or not. In the latter event, the taxing master shall nevertheless be guided as far as possible by the scales of fees fixed by the appended tariff: Provided that the taxing master shall not tax costs in instances where some other official is empowered to do so.

2. At the taxing of any bill of costs the taxing master may call for such books, documents, papers or accounts as in his opinion are necessary to enable him properly to determine any matter arising upon such taxing.

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

4. The taxing master shall not proceed to the taxation of any bill of costs unless he is satisfied that the party liable to pay the same has received due notice as to the time and place of such taxation and notice that he is entitled to be present thereat: Provided that such notice shall not be necessary:

- (a) if the party against whom costs have been awarded has not appeared at the hearing either in person or by his legal representative;
- (b) if the person liable to pay costs has consented in writing to taxation in his absence; and
- (c) for the taxation of writ and post-writ bills.

5. The taxing master shall be entitled in his discretion at any time to depart from any of the provisions of this tariff in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

6. (a) In order to diminish as such as possible the costs arising from the copying of documents to accompany the briefs of counsel, the taxing master shall not allow the costs of any unnecessary duplication in briefs.

(b) No fees shall be allowed by the taxing master as between party and party for the copying of any document not used at the hearing unless the court otherwise directs.

7. Fees for copying shall be disallowed to the extent by which such fees could reasonably have been reduced by the use of printed forms in respect of bonds, hire purchase agreements or any documents.

8. Where in the opinion of the taxing master more than one attorney has been necessarily engaged in the performance of any of the services covered by the tariff, each such attorney shall be entitled to be remunerated on the basis set out in the tariff for the work necessarily done by him.

9. A folio shall contain 100 words or part thereof, four figures to be counted as a word.

TARIFF OF FEES OF ATTORNEYS

A - TAKING INSTRUCTIONS

	R	c
1. To institute or defend any proceeding	2.10	to 31.50
2. For advice on evidence or on commission	1.05	to 16.80
3. For case on opinion, or for advocate's guidance in preparing pleadings, including exceptions	A fee equivalent to the fee allowed under Item 2 of Section D for drafting the document.	
4. For statement of witness	1.05	
5. To set down cause, issue subpoena or writ or any other simple instructions	0.67	
6. To draft a petition or affidavit	A fee equivalent to one half of the fee allowed under Item 7 of Section D for drafting the document provided that in cases where no petition or affidavit is actually drawn	

R c

the taxing master shall allow a fee in his discretion but not less than R2.10.

7. To note an appeal	....	....	....	....	2.10
8. To prosecute or defend an appeal (exclusive of the perusal of the record)	....	....	....	....	1.05 to 10.50

B – ATTENDANCE AND PERUSAL

1. Attending the receipt of and perusing and considering :					
(a) Any summons, petition, affidavit, pleading, advocate's advice and drafts, report, and important notice or document, per folio for the first ten folios	....				0.50
and thereafter, at per folio	....	....	....		0.25
(b) Any letter, record, stock sheets in voluntary surrenders, judgments or any other material documents not elsewhere specified: 13c. per folio, with a minimum fee of 50c.					
2. Attending the receipt of and considering any plan or exhibit or other material document in respect of which the basis of remuneration set out in Item 1 of this Section cannot be applied					0.67 to 10.50
3. Making searches in offices of record (per half-hour or part thereof)					1.33
4. Sorting out, arranging and paginating papers for pleading, advice on evidence or brief on trial or appeal (per half hour)					1.33
5. Attending to give or take discovery (per half hour)					1.33
6. Attending on client to obtain particulars of his claim and to settle same					1.05
7. Attending to bespeak and thereafter to procure transcription of shorthand note, etc.					1.05
8. Other attendances including telephone calls other than formal telephone calls (per half hour)					1.33

NOTE: The fees allowed under this Section shall be in addition to such fees as may be allowed for instructions under Section A. In computing the fees chargeable for perusal of documents in connection with instructions under Items A1 and A6, the number of words in all documents to be perused, shall be added together and the total divided by 100.

C – ATTENDANCE (FORMAL)

1. To serve or deliver any necessary document or letter or despatch any telegram not exceeding	0.50
2. To sue out any process or file any document	0.50
3. To set down causes for trial	0.50
4. To search for any return	0.50
5. On receipt, perusing and considering of notice of intention to defend	0.50
6. On advocate, e.g. with brief or to make appointment	0.50
7. On signature of powers of attorney to sue or defend	0.50
8. On <i>jurat</i>	0.67
9. Other formal attendances, including telephone calls	0.50
10. Attending receipt of a formal acknowledgment	0.33

D – DRAFTING AND DRAWING

1. Making an entry in the chamber book, where used (including all attendances)	1.33
2. Drafting instructions for case on opinion, for advocates guidance in preparing pleadings (including further particulars and requests for same) including exceptions, (per folio)	0.50
3. Drafting instructions to advocate for advice on evidence, for brief on trial or on commission (per folio)	0.50
4. Drafting instructions to advocate for argument in respect of all classes of pleading, provided that a fee for drafting instructions on motion, petition, exception or appeal, shall only be allowed at the discretion of the taxing master (per folio)	0.50
5. Drafting statements of witnesses (per folio)	0.50
6. Drawing subpoenas, powers of attorney to sue or defend and formal notices (per folio)	0.50
7. Drafting a petition, affidavit, any notice, except formal notice, summons, further particulars requested and furnished for trial, writs of execution, arrest or attachment and any other important document not otherwise provided for (per folio, for the first twenty folios)	1.00
and thereafter (per folio)	0.50

(The minimum charge under this item for drafting a summons, petition or affidavit shall be R4.20 save that the minimum charge shall not apply in the case of a formal affidavit of non-return in restitution suits, verifying affidavits, affidavits of service and other formal affidavits).

	R e
8. Letter or telegram	0.67
If more than one folio, for every additional folio	0.33
Copy to keep (per folio)	0.10
9. Drawing index to brief (per folio)	0.30
10. Drawing short brief	0.67

NOTE 1. – In computing the number of folios of any documents referred to in paragraphs 2, 3, 4, 5, and 7 of this Section, the taxing master shall deduct, but treat as annexures where relevant, any portions consisting of quotations from other documents and papers.

NOTE 2 – The charges allowed in this Section for drafting and drawing do not, save in the case of items numbers 1, 6, 8 and 10, include making the first fair copy which shall be charged for under Item 1 of Section F.

E – APPEARANCE, CONFERENCE AND INSPECTION

1. (a) Attendance by attorney when an advocate is employed in court or before a judge or before a commissioner or referee or at an inspection directed by the court:	
To note judgment only	2.10
otherwise, per hour	5.25
(b) Appearance by attorney without an advocate before a judge on request by the judge, or before a commissioner or referee, per hour	10.0

The above rates of remuneration shall not be applicable in respect of the time spent in travelling or waiting, but the taxing master shall, in respect of time necessarily so spent, allow such additional remuneration not exceeding R21 per diem as he in his discretion may deem fair and reasonable, and shall also allow a reasonable amount to cover the cost of necessary conveyance.

(c) Appearance by an attorney as counsel in court, or before a judge or before an arbitrator, commissioner, referee or at an inspection directed by the court:

Maximum fees:

as for advocates.

Provided that an attorney shall not be allowed fees both as an attorney and as counsel in respect of the same service.

2. Attendance of attorney's articled clerk to assist at contested proceeding:	
If advocate employed, per hour.....	1.05
If advocate not employed, per hour.....	2.10
When assisting attorney, <i>per diem</i>	3.15
3. Any conference or consultation with advocate with or without witnesses and on pleadings including exceptions and particulars to pleadings, applications, petitions, affidavits, testimony and on any other matter which the taxing officer may consider necessary –	
Per half-hour	2.10
4. (a) Any conference or consultation with client, witness or opposite party, and any other conference or consultation which the taxing officer may consider necessary: per half hour.	2.10
(b) Attending conference in terms of Order 28: per half-hour	4.00
5. Any inspection <i>in situ</i>, or otherwise per hour	4.20
The above rates of remuneration shall not be applicable in respect of time spent in travelling, but the taxing master shall in respect of time necessarily so spent, allow additional remuneration not exceeding R21 per diem, and shall also allow the reasonable costs of necessary conveyance.	
6. Evidence: Such just and reasonable charges and expenses as may, in the opinion of the taxing master, have been properly incurred in procuring the evidence and attendance of witnesses whose fees have been allowed on taxation provided that the qualifying expenses of a witness shall not be allowed without an order of court or the consent of all interested parties.	

F – MISCELLANEOUS

1. Briefing and copying: For making copies for the court, for counsel or for attorney, or for service or for any other necessary purpose, the charge shall be, for the first copy at the rate of 20c per folio (including the first copy of any document drafted in respect of which a charge is recoverable under Items 2, 3, 4, 5, 7 and 9 of Section D of this tariff) and for further copies up to 20, perfolio	0.10
and for still further copies, per folio	0.05
For making copies of the record in a civil appeal from the magistrates' courts the charge shall be for the first copy, per folio.....	0.10

	R c
and for all other copies, per folio.	0.05
2. Drawing insolvency schedules, including petition, affidavits and relative attendance <i>ad jurat</i>	6.30 to 21.00
Each necessary copy (the charge provided in Item 1 of this Section).	
3. For giving a verbal or written opinion (as between attorney and client).	2.10 to 21.00
4. General: Inclusive fee for consultations and discussions with client or advocate not otherwise provided or specially charged.	2.10 to 21.00

G – BILL OF COSTS

In connection with a bill of costs for services rendered by an attorney, such attorney shall be entitled to charge:

1. For drawing the bill of costs, making the necessary copies and attending settlement, five per cent on the first R200 or portion thereof, two-and-a-half per cent on the second R200 or portion thereof, and one per cent on the amount in excess of R400 of the amount of the attorney's fees, either as charged in the bill if not taxed or as allowed on taxation; and

2. In addition thereto, if recourse is had to taxation, for arranging and attending taxation and obtaining consents to taxation, five per cent on the first R200 or portion thereof, and two-and-a-half per cent on the second R200 or portion thereof, and one-and-a-half per cent on the amount in excess of R400 of the fees allowed.

NOTE: (1) The minimum fee under each item of this Section shall be R1.05.

(2) The fee under each item of this Section shall be calculated on the same amount.

H – NOTARIAL CHARGES

(a) Noting of bills of exchange and promissory notes:

1. Attending to present note or bill and noting answer	2.10
2. Letter or notice to maker, drawer, or endorser, each	0.67
3. Copy to keep	0.10
4. Paid for conveyance	–
5. Copy each letter or document to annex to protest, if necessary, (per folio)	0.20

	R c
6. Protest in duplicate	2.10
7. Paid in stamps	-
8. Certificate of presentation in duplicate	2.10
9. Copy documents to annex, if necessary, (per folio)	0.20
10. Paid stamps	-

(b) Charges for services rendered by a notary public other than those above set forth shall be assessed upon the same scale as is allowed to attorneys.

ORDER 57

ALLOWANCES PAYABLE TO ASSESSORS

1. An assessor shall be paid for every day necessarily spent away from his normal place of residence for the purpose of attendances at court, such fee not exceeding R6 as the Chief Justice may determine.

NOTE: A day shall be reckoned as twenty-four hours and a portion of a day shall be allowed *pro rata*.

2. Free transport shall be allowed to and from the assessor's normal place of residence.

ORDER 58

TARIFF OF ALLOWANCES PAYABLE TO WITNESSES IN CIVIL PROCEEDINGS IN THE HIGH COURT.

1. A witness attending open subpoena in any civil proceedings shall be paid an allowance towards subsistence at the same rates as are provided in the tariff for witness in criminal proceedings.

2. Public servants attending as witnesses shall deal with the allowance received as laid down in departmental regulations or instructions.

ORDER 59

SESSIONS OF THE COURT AND VACATIONS

1. For the despatch of criminal business there shall be four sessions every year which shall commence on the 1st February, 1st May, 1st August and 1st November respectively.

2. (a) For the despatch of civil business there shall be three terms in every year as follows:-

15th March to 30th April inclusive.
15th June to 31st July inclusive.
15th September to 31st October inclusive.

(b) The rest of the year shall be vacation.

3. During term time, and subject to a judge being available, the following matters may be set down for hearing on any Friday which is a business day, namely: applications, summonses for provisional sentence and civil imprisonment, and undefended actions.

Provided that urgent applications and petitions for compulsory sequestration may be heard on any business day.

4. During term time, defended actions, special cases, arguments on exception, appeals, review and other cases not specially provided for, may be set down for hearing on any business day approved by the Registrar, Unless the Chief Justice directs otherwise, defended actions may not be set down during the last three days of term.

5. The Court shall not sit during the months of December and January except for the despatch of business certified by counsel as being urgent.

6. A circuit court for the despatch of criminal business shall be held in the districts and on the dates appointed by the Chief Justice by notice in the Gazette.

7. If the day fixed for the commencement of a session, circuit session or term shall commence on the next succeeding business day; and if the day fixed for the end of a term is not a business day, the term shall end on the business day preceding.

8. Any sitting of the court may be held by a judge in chambers.

SCHEDULE

Form 1

POWER OF ATTORNEY TO SUE OR DEFEND

**In the High Court of
The Republic of Botswana**

I, _____ do hereby nominate and appoint
Attorney (with power of substitution) to be _____ lawful attorney and agent for
and in _____ name to institute/defend proceedings
of claim and demand against/instituted by _____ according to law and to
proceed to the determination thereof hereby promising to ratify any legal steps
may take by virtue of these presents.

Given under _____ hand at _____ this day of
19 .

Witnesses:

SUMMONS

**In The High Court of
The Republic of Botswana**

Civil Case No......

In the matter between:

.....Plaintiff

and

.....Defendant

To the Sheriff or his Deputy:

INFORM.....of.....
(state sex and occupation) (hereinafter called "the Defendant")

that.....of.....
(state sex and occupation) (hereinafter called "the Plaintiff")

hereby institutes action against him/her in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if he/she disputes the claim and wishes to defend the action he/she shall -

- (i) within days of the service upon him of this summons file with the Registrar of this Court at Lobatse notice of his intention to defend and serve a copy thereof on the Plaintiff's attorney, which notice shall give an address (not being a post office box or post restante) within five miles of the court for the service upon the defendant of all notices and documents in the action;
- (ii) thereafter, and within fourteen days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a plea, exception, notice to strike out, with or without a counter-claim.

INFORM the Defendant further that if he fails to file and serve notice as aforesaid judgment as claimed may be given against him without further notice to him, or if, having filed and served such notice, he fails to plead, except, make application to strike out or counter-claim, judgment may be given against him.

DATED at this day of 19 ..

ANNEXURE

Particulars of Plaintiff's Claim

.....
.....
.....

Plaintiff's Attorney.

Address of Plaintiff's Attorney:

NOTICE OF MOTION

**In the High Court of
The Republic of Botswana**

.....Applicant

and

.....Respondent

TAKE NOTICE that.....(hereinafter called "the Applicant")
intends to make application to this Court for an order

(a) (b) (c)

(here set forth the form of order prayed) and that the accompanying affidavit of.....
will be used in support thereof.

TAKE NOTICE FURTHER that the Applicant has appointed.....
(here set forth an address which must be within five miles of the office of the Registrar) at which he will
accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required (a) to notify
applicant's attorney in writing on or before the..... (b) and within fourteen days of the service
of this notice upon you, to file your answering affidavits, if any; and further that you are required to
appoint in such notification an address within five miles of the office of the Registrar at which you will
accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the.....
at.....a.m.

DATED at this day of 19 .

Applicant or his Attorney.
(Address).

To:

(1) (Address),
Respondent.

(2) The Registrar of the High Court,
Lobatse.

SUMMONS: PROVISIONAL SENTENCE

**In the High Court of
The Republic of Botswana**

In the matter between:

.....Plaintiff

and

.....Defendant

To the Sheriff or his Deputy:

INFORM (sex)
(occupation), of (residence or place of business)
(hereinafter called "the Defendant"):

(1) that he/she is hereby called upon immediately to pay to
..... (sex) (occupation) of
(residence or place of business) (hereinafter called "the Plaintiff") an amount of
together with interest thereon at the rate of% per annum as from claimed by Plaintiff
..... (here set out the cause of action) , and a
copy of which document is annexed hereto;

(2) that failing such payment, he/she is hereby called upon to appear before this Court personally or by Counsel
at on the day of 19
at o'clock in the forenoon (or as soon thereafter as the matter can be heard) to admit or deny
his liability for the said claim, and to state why the mortgaged property should not be declared executable;

(3) that if he denies liability for the same, he may not later than noon on the
day of 19 , file an affidavit with the Registrar of this Court, and serve a copy thereon on
Plaintiff's attorney, which affidavit shall set forth the grounds of his defence to the said claim, and in particular
state whether he admits or denies his signature to the said or whether he admits or denies the
signature or authority of his agent.

ENDORSEMENT TO BOND OF SECURITY

**In the High Court of
The Republic of Botswana**

I,the within-named Sheriff (or Deputy Sheriff) at the request of
....., the Plaintiff within-named, hereby assign to him, the said
.....,the within bail-bond, and all the benefit and advantage arising
therefrom.

In witness whereof, I have hereunto set my hand at this..... day of.....

19 .

(Deputy) Sheriff.

NOTICE TO ALLEGED PARTNER

**In the High Court of
The Republic of Botswana**

Civil Case No.

In the matter between:

Plaintiff

and

Defendant

To:

TAKE NOTICE that action has been instituted by the above-named Plaintiff against the above-named Defendant for the sum of and that the Plaintiff alleges that the above-named Defendant is a partnership of which you were from..... to a partner.

If you dispute that you were a partner or that the above-mentioned period is in any way relevant to your liability as a partner, you must withindays of the service of this notice give notice of your intention to defend. Upon your giving such notice a copy of the summons served upon the above-named Defendant will be served upon you.

To give such notice you must file with the Registrar and serve a copy thereof upon the Plaintiff at the address set out at the foot hereof a notice stating that you intend to defend. Your notice must give an address (not being a post office box or poste restante) within five miles of the Court for the service upon you of notices and documents in the action. Unless you do all these things your notice will be invalid.

Thereafter you should file a plea in which you may dispute that you were a partner or that the period alleged above is relevant or that the Defendant is liable, or all three of these matters.

If you do not give such notice you will not be at liberty to contest any of the above issues. If the above-named Defendant is held liable you will be liable to have execution issued against you, should the Defendant's assets be exhausted in execution and be insufficient.

DATED at this day of 19 ..

Attorney for.....

.....
(Address)

NOTICE OF INTENTION TO BAR

**In the High Court of
The Republic of Botswana**

In the matter between

Plaintiff

and

Defendant

TAKE NOTICE that the Plaintiff/Defendant is hereby required to file and deliver his Declaration/
Plea, or other answer to the Plaintiff's claim, within _____ days, and in default it is the
Defendant's/Plaintiff's intention to file a copy of this Notice with the Registrar as a bar.

Defendant's/Plaintiff's Attorney.

To:

A copy of this Notice was handed by me (or by _____, a clerk in my employ)
to _____ (a partner of, or a clerk in the employ of the above-named firm)
on the _____ day of _____ 19____, at _____ a.m./p.m.

To: The Registrar of the High Court at Lobatse.

The time limited by the Notice set out above having expired, we hereby bar the Plaintiff/Defendant
in terms thereof.

DATED at _____ this _____ day of _____ 19____.

AFFIDAVIT OF DOCUMENTS

**In the High Court of
The Republic of Botswana**

In the matter between :

Plaintiff

and

Defendant

I, _____ the above-named Defendant, hereby make Oath and say :-

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto. (State grounds of objection).

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on (state when and what has become of them, and in whose possession they now are):-

5. According to the best of my knowledge, information and belief, I have not now and never had in my possession, custody or power, or in the possession, custody or power of my attorneys or agents, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such single document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

Sworn before me at _____ this _____ day of _____ 19 _____.

Justice of the Peace, or
Commissioner of Oaths.

NOTICE TO ADMIT DOCUMENTS

**In the High Court of
The Republic of Botswana**

In the matter between:

Plaintiff

and

Defendant

TAKE NOTICE that the Plaintiff/Defendant in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the Defendant/Plaintiff, his attorney or agent, at _____ on the _____ day of _____ 19____, between the hours of _____ : _____ and the Defendant/Plaintiff is hereby required within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

DATED at _____ this _____ day of _____ 19____.

Attorney for the Plaintiff/Defendant.

To:

Description of Documents.

SUBPOENA

**In the High Court of
The Republic of Botswana**

Civil Case No......

In the matter between :

Plaintiff

and

Defendant

To the Sheriff or his Deputy :

INFORM :

- (1)
- (2) (State names, sex, occupation, and place
- (3) of business or residence of each witness)
- (4)

that each of them is hereby required to appear in person before this Court at _____ on the _____ day of _____ 19____, at _____ o'clock in the forenoon and thereafter to remain in attendance until excused by the said Court, in order to testify on behalf of the above-named Plaintiff/Defendant in regard to all matters within his knowledge relating to an action now pending in the said Court and wherein the Plaintiff claims :

- (1) _____
- (2) _____
- (3) _____

from the Defendant.

AND INFORM him that he is further required to bring with him and to produce to the said Court

(here describe accurately each document, book or other thing to be produced)

AND INFORM each of the said persons further that he should on no account neglect to comply with this subpoena as he may thereby render himself liable to a fine or to imprisonment.

DATED at _____ this _____ day of _____ 19____.

Registrar of the High Court.

.....
Plaintiff's/Defendant's Attorney

AFFIDAVIT OF HOUSEHOLDERS AS TO POVERTY

**In the High Court of
The Republic of Botswana**

In the matter between :

Applicant

and

Respondent

I, _____ of _____ make oath and say that I
am a householder living in the same neighbourhood as the above-named Applicant, and that I am well
acquainted with _____ and know _____ to be poor and not possessed of property to the amount
of R _____ except household goods, wearing apparel and tools of trade.

SWORN before me at _____ this _____ day of _____ 19 ____ .

Justice of the Peace, or
Commissioner of Gaths.

RESTITUTION OF CONJUGAL RIGHTS

**In the High Court of
The Republic of Botswana**

Civil Case No......

To:

formerly of _____, but whose present address is unknown;

TAKE NOTICE that by Order of Court dated the _____ day of _____ 19____, you are required to return, and restore conjugal rights to _____ your (wife/husband) on or before the _____ day of _____ 19____. Should you fail to do so, and not show cause to the contrary before the above-mentioned Court at 10 a.m. on the _____ day of _____ 19____, an order of divorce may be granted against you, with costs, and your (wife/husband) may be granted custody of the _____ minor child (ren) of the marriage, and you may be ordered to pay maintenance for _____ at the rate of _____

DATED at _____ this _____ day of _____ 19____

Registrar of the High Court.

Plaintiff's Attorney.
(Address)

WRIT OF EXECUTION

**In the High Court of
The Republic of Botswana**

Civil Case No.....

In the matter between

Plaintiff

and

Defendant

To the Deputy Sheriff
for the district of.....

You are hereby directed to attach and take into execution the movable goods of
the above-mentioned Defendant of (address),
and of the same to cause to be realised by public auction the sum of , together with
interest thereon at the rate of per centum per annum from the
day of of the said , which he recovered by judg-
ment of this Court dated the day of 19 , in the above-mentioned
case, and also all other costs and charges of the plaintiff in the said case to be hereafter duly taxed
according to law, besides all your costs thereby incurred.

Further pay to the said or his attorney the sum or sums due to him with
costs as above-mentioned, and for your so doing this shall be your warrant.

And return you this writ with what you have done thereupon.

DATED at this day of 19 .

Registrar of the High Court.

.....
Plaintiff's Attorney. (Address)

FORM OF SECURITY UNDER ORDER 36

**In the High Court of
The Republic of Botswana**

In the matter between :

Plaintiff

and

Defendant

WHEREAS by virtue of certain writ of the High Court of Botswana dated the
day of 19 , issued at the instance of against
of , the Deputy Sheriff has seized and laid under attachment the under-mentioned
articles, namely :

Now, therefore, we, the said and
of a (occupation), as surety for him,
bind ourselves severally and in solidum, hereby undertaking to the said Deputy Sheriff or his cessionaries,
assigns or successors in office, that the said goods shall not be made away with or disposed of, but shall
remain in possession of the said under the said attachment, and be produced to
the said Deputy-Sheriff (or other person authorised by him to receive the same) on the
day of 19 (the day appointed for the sale), or on any other day when the same
may be required in order to be sold, unless the said attachment shall legally be removed, failing which I,
the said hereby bind myself, my person, goods and effects, to pay and satisfy
the sum of (estimated value of the effects seized) to the said Deputy-Sheriff, his
cessionaries, assigns or successors in office, for and on account of the said

IN WITNESS whereof, we, the said and
have hereunto set our hands on this day of 19 .

Judgment Debtor

Surety.

Deputy Sheriff.

WRIT OF ATTACHMENT – IMMOVABLE PROPERTY

**in the High Court of
The Republic of Botswana**

Civil Case No.

In the matter between :

Plaintiff

and

Defendant

To the Deputy-Sheriff for
the district of

WHEREAS you were directed to cause to be realised the sum of _____ in satisfaction of a judgment debt and costs obtained by _____ against the said _____ in this Court on the _____ day of _____ 19 ____ .

AND WHEREAS your return stated _____ (here quote the Deputy-Sheriff's return on the writ against movables).

NOW, therefore, you are directed to attach and take into execution the immovable property of the said _____ being _____ (here give the description of the property) to cause to be realised therefrom the sum of _____ together with the costs hereof and of the prior writ amounting to _____ and your charges in and about the same, and thereafter to dispose of the proceeds thereof in accordance with Order 36, Rule 12.

For which this shall be your warrant.

DATED at _____ this _____ day of _____ 19 ____ .

Registrar of the High Court.

Plaintiff's Attorney.
(Address)

CONDITIONS OF SALE IN EXECUTION OF IMMOVABLE PROPERTY

**In the High Court of
The Republic of Botswana**

In re:

Plaintiff

Defendant

The property which will be put up to auction on the _____ day of _____ 19____,

consists of:

The sale shall be subject to the following conditions:

1. The property shall be sold by the Deputy-Sheriff of _____ at _____ to the highest bidder without reserve/with a reserve price of _____
2. The sale shall be for rands, and no bid for less than one rand shall be accepted.
3. If any dispute arises about any bid the property may be again put up to auction.
4. If the auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately be again put up to auction.
5. The purchaser shall, as soon as possible after the sale, and immediately on being requested by the _____, sign these conditions and if he has bought *qua qualitate*, state the name of his principal.
6. (a) The purchaser shall pay a deposit of ten per cent of the purchase price in cash on the day of sale, the balance against transfer to be secured by a bank or building society guarantee, to be approved by Plaintiff's attorney, to be furnished to the Deputy-Sheriff within _____ days after the date of sale.
(b) If transfer of the property is not registered within one month after the sale, the purchaser shall be liable for payment of interest to the Plaintiff at the rate of six per cent per annum and to the bondholder at the rate of _____ per cent per annum on the respective amounts of the award to the Plaintiff and the _____ bondholder in the plan of distribution as from the expiration of one month after the sale to date of transfer.

7. If the purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the Deputy-Sheriff after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the Deputy-Sheriff's distribution account, be recovered from him under judgment of the judge pronounced summarily on a written report by the Deputy-Sheriff, after such purchaser shall have received notice in writing that such report will be laid before the judge for such purpose; and if he is already in possession of the property the Deputy-Sheriff may, on seven days' notice, apply to a judge for an order ejecting him or any person claiming to hold under him therefrom.

8. The Purchaser shall pay auctioneer's charges on the day of sale and, in addition, transfer dues, costs of transfer, and arrear rates, taxes and other charges necessary to effect transfer, upon request by the attorney for the execution creditor.

9. The property may be taken possession of immediately after payment of the initial deposit, and shall after such deposit be at the risk and profit of the purchaser.

10. The purchaser may obtain transfer forthwith if he pays the whole price and complies with condition 8, in which case any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 6 and 8 hereof.

11. The Deputy-Sheriff may demand that any buildings standing on the property sold shall be immediately insured by the purchaser for the full value of the same, and the insurance policy handed to him and kept in force as long as the whole price has not been paid; and if he does not do so, the Deputy-Sheriff may effect the insurance at the purchaser's expense.

12. The property is sold as represented by the title deeds and diagram, the Deputy-Sheriff not holding himself liable for any deficiency that may be found to exist and renouncing all excess. The property is also sold subject to all servitudes and conditions specified in the deed of transfer.

13. The execution creditor shall be entitled to appoint an attorney to attend to transfer.

DATED at _____ this _____ day of _____ 19 _____

Deputy-Sheriff.

I certify hereby that today the _____ in my presence the hereinbefore-mentioned property was sold for

to

_____, the undersigned, _____, residing at _____

do hereby bind myself as the purchaser of the hereinbefore-mentioned property to pay the purchase price and to perform all and singular the conditions mentioned above.

.....

SUMMONS FOR IMPRISONMENT FOR DEBT

In the High Court of
The Republic of Botswana

To: The Sheriff or his Deputy.

Command of (hereinafter styled "the Defendant")
that justly and without delay he render and pay to to
(hereinafter styled "the Plaintiff") the sum of R of lawful money, with interest thereon at
the rate of per centum per annum from the day of 19 .
to the day of payment which he owes to the said Plaintiff upon and by virtue of a certain sentence of the
High Court of Botswana at bearing date the day of 19 ,
together with the sum of R and R , being the taxed costs incurred by the said Plaintiff
in obtaining the said sentence and execution thereof, which said sentence has been carried into
execution and a return since made thereon that no goods or chattels of the said Defendant could be found
whereof the exigency of the said writ or any part thereof could be made; as it is said;

And unless he shall do so, then summon the said Defendant that he appear before the High Court of
Botswana at in the forenoon, or so soon thereafter as counsel can be heard, to show
cause why he has not done it; and also to show cause, if any, why a writ of personal attachment shall
not forthwith be decreed to issue against the person of the said Defendant, to have effect and hold good
until he has paid the said Plaintiff the sum of R

And also summon the said Defendant then and there to plead to the Claim of the said Plaintiff for
payment thereof, under security, with costs, and to join issue thereon; and serve on the said Defendant
a copy of this Summons, of the said Sentence, Writ of Execution and Return thereon, whereon the said
Claim is founded; and return you then and there this Summons with whatsoever you have done thereupon.

DATED at this day of 19 .

Registrar of the High Court.

Plaintiff's Attorney.

WRIT OF EXECUTION - IMPRISONMENT FOR DEBT

**In the High Court of
The Republic of Botswana**

To: The Sheriff or his Deputy.

You are hereby commanded, in pursuance of an order of the High Court of Botswana, bearing date the day of 19 , to take of and deliver him to the Officer-in-Charge of the Prison at together with a certified copy of this Writ, there to be safely kept for a period of or until he shall have paid to of the sum of R of lawful money, with interest thereon at the rate of per centum per annum from the day of 19 , to the day of payment which the said by sentence of the said Court bearing date the day of 19 , recovered against the said , together with the sum of R for the taxed costs and charges of the said together with the further sum of R for this Writ, by him about this suit in that behalf expended, whereof the said is convicted, as appears of record, or until the said shall be in terms of the said Writ or otherwise legally discharged, and for so doing this shall be your warrant. And return you this Writ with what you have done thereon.

DATED at this day of 19 .

Registrar of the High Court.

Plaintiff's Attorney.

WRIT OF EXECUTION FOR CONTEMPT OF COURT BY DEFAULTING WITNESS

**In the High Court of
The Republic of Botswana**

To: The Sheriff or his Deputy,

WHEREAS at a Court holden at _____ on _____ day of _____ 19 __ ,
before the Honourable Mr. Justice _____ of _____ ,
one of the witnesses summoned to attend before the said Court for the purpose of giving evidence at the
trial of _____ , or in the action between _____ and
_____ did not accordingly attend at the said Court in obedience to the said
summons, but made default therein.

It was therefore ordered and adjudged by the Honourable Mr. Justice _____ that
the said _____ be fined, and he was fined accordingly the sum of R _____
to be by him forfeited and paid to the use of the State for his default aforesaid.

You are therefore commanded that you cause the said fine to be levied out of the goods or chattels of
the said _____ and that you do forthwith pay over the amount so levied to the State,
for which this shall be your warrant.

DATED at _____ this _____ day of _____ 19 __ .

Registrar of the High Court.

**WRIT OF PERSONAL ATTACHMENT
AND COMMITTAL TO PRISON**

**IN THE HIGH COURT OF
THE REPUBLIC OF BOTSWANA**

To the Sheriff or his Deputy, and to all police officers and other peace officers whom it may concern :

WHEREAS an order was made by the Honourable Mr. Justice

committing _____ of

to prison until he shall have complied with an order of the High Court of Botswana at

dated _____ day of _____ 19 _____, and that the said

_____ is still in contempt in failing to comply

therewith, *OR* sentencing _____ of

to _____ days' imprisonment for contempt of Court.

Now therefore you are commanded to take

of _____ if he be found in Botswana and deliver him to

the officer-in-charge of the prison at

together with a copy of this writ, there to be safely kept until the further order of the

High Court *OR* for the period of _____ days from the date of
his delivery to the officer-in-charge of the said prison.

And return you this writ to the High Court at Lobatsi with whatsoever you have done thereupon.

Registrar of the High Court.

F.X. ROONEY,
Registrar of the High Court

Registrar's Chambers,
High Court,
LOBATSE.
17th November, 1969.
L 2/7/136.