

*Statutory Instrument No. 123 of 1971*

THE HIGH COURT OF BOTSWANA ACT, 1967  
(No. 35 of 1967)

**RULES OF THE HIGH COURT (AMENDMENT) (NO. 3) RULES, 1971**

*(Published on the 26th November, 1971)*

ARRANGEMENT OF RULES

1. Citation
2. Amendment to Table of Rules in S.I. 117 of 1969
3. Amendment to Order 7 of S.I. 117 of 1969
4. Repeal and replacement of Order 28A of S.I. 117 of 1969
5. Insertion of new Order 35A in S.I. 117 of 1969
6. Addition of new Order 61 to S.I. 117 of 1969
7. Amendment to Schedule to S.I. 117 of 1969

In Exercise of the powers conferred upon me by section 28 of the High Court of Botswana Act, 1967, and of all other powers thereunto me enabling, I, Francis Xavier Mary Rooney, Acting Chief Justice of Botswana, make the following rules.

1. These Rules may be cited as the Rules of the High Court (Amendment) (No. 3) Rules, 1971. Citation
2. The Table of Rules to the Rules of the High Court, 1969, (hereinafter referred to as the principal rules) is amended by the insertion therein in the appropriate numerical position of the following new rules — Amendment to Table of Rules in S.I. 117 of 1969
  - “3A Effect of non-compliance.
  - 4A Disability.
  - 5A Entry of appearance to summons.
  - 28A Set-down of defended trial cases, motion and petitions.
  - 35A Drawing up of judgments and orders.
  - 60 Trade Union Act Rules.
  - 61 Paper and printing.”
3. Order 7 rule 5 of the principal Rules is amended by the deletion of the figure and words “5 miles of the office of the Registrar” wheresoever they appear therein and by the substitution therefor of the word “Botswana”. Amendment to Order 7 of S.I. 117 of 1969
4. The principal rules are amended by the deletion of Order 28A and by the substitution therefor of a new Order as follows — Repeal and replacement of Order 28A of S.I. 117 of 1969

“ORDER 28A

SET DOWN OF DEFENDED TRIAL CASES, MOTIONS OR PETITIONS

1 Any party to a defended trial or (subject to the provisions of Order 7), a notice of motion which is opposed may not later than 21 days before the

first day of the next ensuing civil session of the Court apply in writing to the Registrar for a date or dates of hearing.

2 Every application made under rule 2 shall contain an estimate of the duration of the proceedings, the date or dates required to be reserved for the hearing and a statement as to whether or not such date or dates is or are suitable to all other parties to the proceedings and a certificate to the effect that the provisions of Order 28 have been complied with or are not applicable.

3 The Applicant shall serve a copy of his application on all other parties to the proceedings.

4 The Registrar, on receipt of an application under rule 1 and on being satisfied that all the requirements of these Rules have been observed and that the matter is ready for trial shall not less than 7 days after receiving the application assign a date or dates for trial during the next civil session of the Court and shall give notice to the applicant of the date or dates so assigned.

5 An application to set down for trial under this Order shall not affect the right or obligation, as the case may be, of a party to file further pleadings within the time allowed for that purpose.

6 On receipt of the notice from the Registrar under rule 4 the applicant shall give not less than 14 days' notice of set down to the Registrar and all other parties.

7 When a matter has been set down for trial any party may apply to the Court to have the set down changed or set aside for good cause, provided that, with the approval of the Registrar, a date of set down may be changed by consent of all parties.

{8} If a party served with a copy of an application under rule 1 objects to any statement contained in the said application, he shall inform the Registrar of his objection within the period of 7 days provided for in rule (4).

{9} An application under rule 1 shall not be withdrawn except by consent of all parties or by leave of the Court.

{10} Notwithstanding the provision of this Order any party to contested proceedings may for good cause apply on notice to all other parties to a Judge in Chambers for a special date or dates for hearing and the Judge may on such application, in consultation with the Registrar, fix a special date or dates of hearing during any session of the Court."

5. The principal rules are amended by the insertion therein immediately after Order 35 of a new Order as follows —

Insertion of  
new Order  
35A in S.I.  
117 of 1969

#### “ORDER 35A

##### DRAWING UP OF JUDGMENTS AND ORDERS

1. All judgments and orders in civil proceedings, other than orders specified under rule 2, shall be drawn up and presented for filing within 7 days by the attorney for the party in whose favour the judgment or order has been made.

2. Where an order has been made neither embodying any special terms nor including any special directions, but simply enlarging time for taking any proceedings or doing any act of giving leave —

- (a) for the issue of any writ of execution when such leave is required;
- (b) for the amendment of any pleadings;
- (c) for the filing of any document; or
- (d) for any act to be done by any officer of the Court other than an attorney,

it shall not be necessary to draw up such order unless a judge otherwise directs. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule.

3. Every judgment or order, if and when it is drawn up, shall be dated with the day of the week, the month and the year on which it was made and shall take effect accordingly.

4. In the event that an attorney fails to comply with rule 1 of this order within the time specified any person affected by the judgment or order made may give notice to the Registrar of such failure.

5. The Registrar shall sign, seal and file any judgment or order presented to him under rule 1 provided that he is satisfied that it has been drawn up correctly and that the provisions of Order 61 have been observed in regard thereto.

6. On receipt of a notice under rule 4 or in any case where the party in whose favour the judgment or order has been made is not represented, the Registrar shall draw up, sign and seal the judgment or order as the case may be.

7. The omission to draw up a judgment or order shall not relieve any party to the proceedings from the obligation to obey the same unless it is of such a kind that personal service is necessary, but no action may be

dismissed, or pleadings struck out for failure to comply with an order which has not been drawn up and served upon the party in default and no taxation of costs may proceed and no writ of execution or attachment may be issued in the absence of a judgment or order drawn up and filed in accordance with this Order.

8. Clerical mistakes in judgment or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court on motion.”

Addition of  
new Order 61  
to S.I. 117 of  
1969

6. The principal rules are amended by the addition thereto immediately after Order 60 of a new Order as follows —

#### “ORDER 61 PAPER AND PRINTING

1. Unless the nature of the document renders it impracticable every document prepared by a party for use in the High Court shall be clearly and legibly printed or typewritten in permanent black or blue black ink on one side only of suitable paper or durable quality approximately 30 cm. long × 20 cm. wide having a margin not less than 4 cm. wide to be left blank on the left side of each page.

2. (a) Except where these Rules otherwise provide, every document prepared by a party for use in the High Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(b) For the purpose of these Rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(c) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 point type for printing or elite type for type lithography, stencil or duplicating or typewriting.

3. Petitions, affidavits, grounds of appeal and the like shall be divided into concise paragraphs and shall be consecutively numbered.

4. The plaintiff, petitioner, appellant or applicant in any case or matter shall not, later than three days prior to the hearing thereof collate and number consecutively and suitably secure all pages of the documents delivered and shall prepare and deliver a complete index thereof.

5. The Registrar may reject any document which does not comply with requirements of this Order.”

7. The Schedule to the principal Rules is amended by the deletion of Form 5 appearing therein and by the substitution therefor of a new Form as follows —

Amendment to Schedule to S.I. 117 of 1969

“NOTICE OF MOTION

Form 5

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 in Botswana 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 Botswana 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 1971.

Applicant or his Attorney  
(Address)

To:

- (1) (Address)  
Respondent.
- (2) The Registrar of the High Court, Lobatse.”

DATED at Lobatse this 10th day of November, 1971.

F.X. M. ROONEY,  
*Acting Chief Justice.*

L2/7/136 I