

**CHAPTER 04:04 - MAGISTRATES' COURTS: SUBSIDIARY LEGISLATION**  
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Increased Jurisdiction Order

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Rules of the Magistrates' Courts

**INCREASED JURISDICTION ORDER**

*(under section 60(6))*

*(19th November 1976)*

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation
2. Increased jurisdiction

G.N. 444, 1976

**1. Citation**

This Order may be cited as the Increased Jurisdiction Order.

**2. Increased jurisdiction**

Chief Magistrates, Senior Magistrates and Magistrates Grade I shall have power to try all offences contrary to the Penal Code, other than offences contrary to sections 34 to 38, 42, 53, 62 to 65, 200, 202, 208, 217 to 219, 222 and 224, and attempts to commit such offences.

**MAGISTRATES' GRADE II (INCREASED POWERS OF PUNISHMENT) ORDER**

*(under section 61(6))*

*(29th September, 1993)*

ARRANGEMENT OF REGULATIONS

1. Citation
2. Increased powers of punishment

S.I. 99, 1993.

**1. Citation**

This Order may be cited as the Magistrates' Grade II (Increased Powers of Punishment) Order.

**2. Increased powers of punishment**

Magistrates Grade II are hereby authorised to award sentences of imprisonment up to and including 5 years or to impose fines up to and including P10 000, or both.

**RULES OF THE MAGISTRATES' COURTS**

*(under section 67)*

*(1st February, 1971)*

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## **ORDER I**

### **CITATION, APPLICATION AND INTERPRETATION**

1. (1) These Rules may be cited as the Rules of the Magistrates' Courts.
- (2) The provisions contained in Orders XV and XVIII of these Rules shall be applicable only if-
  - (a) the plaintiff does not apply for summary judgment; or
  - (b) the plaintiff, having applied for summary judgment, the application has been dismissed, or an order has been made giving the defendant leave to defend.
- (3)(a) The forms contained in the First Schedule to these Rules may, where applicable, be used with such variations as the circumstances may require; but non-compliance with this

rule shall not in itself be a ground of exception or defence.

(b) All process of the court for service or execution, and all documents or copies to be filed of record, shall be on foolscap paper or its metric equivalent.

(c) All process sued out or notices or documents delivered shall be endorsed with the name and address of the party suing out or delivering the same.

(d) The clerk of the court may before issuing any process which is not substantially in the form required by these Rules, refer the same to the judicial officer who may direct him either to issue or to refuse to issue such process:

Provided that this provision shall not apply to any matter as to which the opposite party may except under these Rules, and in particular shall not apply to endorsements of particulars of claim under Order VII, rule 3(1), otherwise than as to costs, fees and charges.

2. (1) In these Rules, unless the context otherwise requires-

**"clerk of the court"** includes any assistant clerk and any person appointed to act as such clerk or assistant;

**"company"** means an incorporated or registered company;

**"copy"** means a true and correct copy;

**"court house"** means the building in which the magistrate's court is usually held;

**"default judgment"** means a judgment entered or given in the absence of the party against whom it is made;

**"deliver"** (except in Order VI) means to file of record with the clerk of the court and to serve a copy on the opposite party;

**"delivery"** means such filing and service;

**"give security"** means to give security to the satisfaction of the clerk of the court, either by payment into court of the amount in question or by the giving of a security bond therefor, either by a party with someone as his surety who is approved by the clerk of the court, or by two or more persons who are so approved;

**"Guardian's Fund"** means the fund established under section 101 of the Administration of Estates Act;

**"messenger"** means the messenger of the court, or (except in rule 1 of Order II) his lawful deputy, and includes any person specially approved of by the court to effect any particular service;

**"money"** includes all coined money, whether current in the Republic or not, and all banknotes, bank-drafts, cheques, orders, warrants or authorities for the payment of money;

**"notice"** means notice in writing;

**"owner"** and other like terms when used with reference to property or acts, includes corporations of all kinds and any other associations of persons capable of owning or holding property; they also, when relating to State property, include the President;

**"party"** means any person who is a party to the proceedings;

**"pending case"** means a case in which a summons has been issued and which has not been withdrawn, discontinued or dismissed and in which judgment has not been given;

**"place of security"** means the place appointed by the judicial officer for the safekeeping of money, securities or other articles of value;

**"plaintiff", "defendant", "applicant", "respondent" and "party"** include, for the purpose of service, notice, appearance, endorsement, signature and payment of moneys out of court, or out of the hands of the messenger, the attorney appearing for any such party and the mayor, chairman, town clerk, secretary or similar officer of any local authority or similar body nominated by it for the purpose;

**"property"** includes everything animate or inanimate, corporeal or incorporeal, capable of being the subject of ownership;

**"valuable security"** includes any document which is the property of any person and which is the evidence of the ownership of any property, or of the right to recover or receive any

property.

(2) Where anything is required by these Rules to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

(3) All distances shall be calculated over the shortest route reasonably available in the circumstances.

**ORDER II  
MESSENGER OF THE COURT OR OTHER PERSON  
EFFECTING SERVICE**

1. (1) Every messenger of the court who is not an officer of the Public Service of the Republic shall give security to the satisfaction of the Registrar of the High Court for the due fulfilment of the duties of his office and for the due and punctual disposal of all moneys which shall come into his hands by virtue of his office.

(2) Except in the case of suretyship by an insurance company, such security shall be given in accordance with the following scale:

Where the civil cases recorded during the preceding calendar year are numbered-

P

1 to 50 -	200
51 to 100 -	400
101 to 200 -	500
201 to 300 -	700
301 to 500 -	1000
501 to 1,000 -	1500
Over 1,000 -	2000.

2. Except as otherwise provided in the Act or these Rules, the process of the court shall be served or executed, as the case may be, through the messenger.

3. Service or execution of process of the court shall be effected without any avoidable delay, and the messenger or other person effecting service shall, in any case where resistance to the due service or execution of the process of the court has been met with or is reasonably anticipated, have power to call upon any member of the Botswana Police Force to render him aid.

4. A messenger or other person effecting service shall endorse on or annex to all process entrusted to him for service or execution, a return showing the date and the manner of service and the result of execution; and shall then forthwith return the said process to the clerk of the court.

5. A messenger or other person effecting service shall, as to process entrusted to him for service, notify by post or otherwise in writing the party who sued out the process and, as soon as may be, either-

- (a) that service has been duly effected and the date thereof; or
- (b) that he has been unable to effect service and the reason for such inability.

**ORDER III  
CLERK OF THE COURT**

1. The clerk of the court shall keep a book to be called the Civil Record Book and shall enter therein forthwith at each successive stage of the action-

- (a) the number of the action;

- (b) the names of the parties and their attorneys, if any;
- (c) the cause of the action, e.g. price of goods sold and delivered, or ejection, or damages for defamation, etc;
- (d) the date of issue of summons;
- (e) the dates of entry of appearance and of filing subsequent pleadings;
- (f) the date or dates of hearing (if any);
- (g) the date and the terms of any judgment and whether by default, consent or after trial; and
- (h) any remarks required by these Rules or by the special circumstances of the case.

2. (1) The summons or other first document filed in a case, or on an application not relating to a then pending case, shall be numbered by him with a consecutive number for the year; and the action or application shall be entered by him in the Civil Record Book under that number.

(2) Every document afterwards served or delivered in such case or application, or in any subsequent case in continuation of any such application, shall be marked with such number by the party delivering it and shall not be received by the clerk of the court until so marked.

3. (1) All documents delivered to him to be filed of record and all minutes made by the court shall be filed of record under the number of the respective action or application.

(2) Copies of such records shall, upon pre-payment of the prescribed fees, be made and issued by the clerk of the court to any person applying therefor, and entitled thereto, or such copies may be made by such person in the presence of the clerk.

4. It shall also be the duty of the clerk of the court-

- (a) to sign and issue all such process of the court as may be sued out by any person entitled thereto, or at the request of any party by whom process was sued out, to re-issue such process after its return by the messenger, or other person effecting service;
- (b) to notify the plaintiff forthwith by post or otherwise of the defendant's consent to judgment before entry of appearance, payment into court before entry of appearance of the amount claimed or any part thereof, or of an application for a judgment by default having been refused;
- (c) to write out, upon the request of any party and on payment of the following court fees, any process of the court which any party requests him to write out-  
 Summons, defence or counterclaim .....00  
 Application or security bond ..... thebe  
 Subpoena, warrant of execution or other process or document . thebe:
- (d) to note on a certified copy of a judgment at the request of the party to whom such notice is issued costs payable by the judgment debtor in respect of the judgment which have been incurred after judgment.

5. All fines imposed by the court shall be paid direct to a Government revenue collector.

6. Any act required to be done by the clerk of the court may be done by a judicial officer except that a judicial officer shall in no case write out any affidavit, pleading or process for any party.

#### **ORDER IV REPRESENTATION OF PARTIES**

1. (1) A party may institute or defend and may carry to completion any legal proceedings either in person or by a legal practitioner.

(2) A local authority, company or other incorporated body in doing so may act through an

officer thereof nominated by it for the purpose.

(3) A partnership or group of persons associated for a common purpose in doing so may act through a member thereof nominated by it for the purpose.

(4) No persons acting under subrule (1), (2) or (3) other than a legal practitioner shall be entitled to recover therefor any costs other than necessary disbursements.

(5) It shall not be necessary for any person to file a power of attorney to appear, but the authority of any person appearing for a party may be challenged by the other party within 48 hours after he has notice that such person is so appearing, or with the leave of the court for good cause shown at any time before judgment; and thereupon such person may not, without the leave of the court, so appear further until he shall satisfy the court that he has authority so to appear; and the court may adjourn the hearing of the action or application to enable him to do so.

2. (1) If a party dies or becomes incompetent to continue an action, the action shall thereby be stayed until such time as an executor, trustee, guardian or other competent person has been appointed in his place, or until such incompetence shall cease to exist.

(2) Where an executor, trustee, guardian or other competent person has been so appointed, the court may on application order that he be substituted in place of the party who is dead or has become incompetent.

#### **ORDER V IN FORMA PAUPERIS**

1. (1) Any person desiring to sue or defend as a pauper may apply to the court, on notice to the party to be sued, or to the plaintiff, as the case may be, for leave to do so. The applicant shall deliver with such notice an affidavit made by himself setting out fully the grounds of action or of defence on which he intends to rely and particulars of his means.

(2) The clerk of the court may at the request of the applicant and on the direction of a judicial officer write out the notice and affidavit mentioned in subrule (1), notwithstanding that the claim or value of the matter in dispute exceeds P5,00 and no fee shall be payable by the applicant for such assistance.

2. The court may upon any such application-

- (a) examine the applicant on oath as to whether he has a *prima facie* right of action or defence, and as to his means;
- (b) require the applicant to call further evidence with reference to either question;
- (c) refer any such application to an attorney for investigation and report as to the applicant's means and whether he has a *prima facie* right of action or defence, as the case may be.

3. If the court is thereafter satisfied that the applicant has a *prima facie* right of action or of defence, and is not possessed of means or earnings sufficient to enable him to pay the court fees and the charges of the messenger or other person effecting service, the court may order-

- (a) that the process of the court shall issue and be served free of charge to the applicant other than for the disbursements of the messenger or other person effecting service; and
- (b) that an attorney shall be appointed to act for such applicant; or
- (c) that the clerk of the court shall, without charge, write out such process, affidavits, notices and other documents as may be required to comply with these Rules:

Provided that an order shall not be made in the terms of paragraph (b), unless the applicant shall either produce the written consent of an attorney so to act, or shall satisfy the court that he is illiterate or is for some other good reason unable to conduct his case in person.

4. (1) 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 his attorney's costs and also the fees and charges so remitted; and if he shall recover either for principal, interest or costs he shall first pay and make good thereout *pro rata* all such costs, fees and charges.

(2) If the pauper shall not succeed or shall not recover upon a judgment in his favour, no fees shall be taken from him by the attorney so appointed to act for him.

5. An order made under this Order-

- (a) shall not exempt the applicant from liability to be adjudged to pay adverse costs; and
- (b) may, on application at any time before judgment by any person affected thereby, be reviewed and rescinded or varied by the court for good cause shown.

#### **ORDER VI**

#### **SERVICE OF PROCESS, NOTICES AND DOCUMENTS**

1. (1) Any party may, by himself or his authorized agent or by a person acting on behalf of his authorized agent, validly effect service of any process, notice or other document:

Provided that service of an interdict, warrant of arrest, warrant of committal or warrant of attachment of persons or property or of any process, notice or other document affecting the liberty of the respondent shall be effected only by a messenger.

(2) Any person requiring service of any process, notice or other document to be effected by a messenger or, if the process, notice or other document is not one to which the proviso to subrule (1) applies, by a person other than a messenger shall deliver to the messenger or that other person, as the case may be, the original of the process, notice or other document together with as many copies thereof as there are persons to be served.

2. (1) Except as provided in subrule (2) or in the case of service by post, or upon an order of the court, process, notices or other documents shall not be served on a Sunday or a public holiday.

(2) An interdict, a warrant of arrest, a warrant of committal and a warrant of attachment of persons or property may be executed on any day, at any hour and at any place.

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

(2) All other process shall, subject to the provisions of this Order, be served upon the person affected thereby by delivery of a copy thereof in one or other of the following manners-

- (a) to the said person personally or to his duly authorized agent;
- (b) at his residence or place of business to some person apparently not less than 16 years of age and apparently residing at or employed there;
- (c) at his place of employment to some person apparently not less than 16 years of age and apparently in authority over him or, in the absence of such person in authority, to a person apparently not less than 16 years of age and apparently in charge at his place of employment;
- (d) if the person to be served has chosen a *domicilium citandi*, at the *domicilium* so chosen;
- (e) in the case of a corporation or company at its local office or in any other manner specially provided by law;
- (f) if the plaintiff or his authorized agent has given written instruction to the messenger to serve by registered post or the plaintiff's authorized agent has given to some other person acting on that agent's behalf instruction to the like effect, the process shall be so served:

Provided that where service has been effected in the manner prescribed by paragraph (b), (c) or (f), the court or clerk of the court, as the case may be, may, if there is reason to doubt whether the process served has come to the actual knowledge of the person to be served, and in the absence of satisfactory evidence, treat such service as invalid.

(3) The messenger or other person effecting service shall, on demand by the person upon or against whom process is served, exhibit to him the original of the process except where service has been effected by post, in which case the original may be inspected where it is filed

of record.

4. (1) Where the person to be served keeps his residence or place of business closed, and thus prevents the messenger or other person effecting service from serving the process, it shall be sufficient service to affix a copy thereof to the outer or principal door of such residence or place of business.

(2) Where the messenger or other person effecting service is unable after diligent search to find at the residence or *domicilium citandi* of the person to be served either that person or such person as is described in rule 3(2)(b), it shall be sufficient service to affix a copy of the process to the outer or principal door of such residence or place of business.

5. (1) Service of process in an action where no relief (other than costs) is claimed except an order for ejection for certain premises or a judgment for the rent thereof may, if it cannot be effected in manner prescribed in rule 3, be made by affixing a copy thereof to the outer or principal door or on some other conspicuous part of the premises in question.

(2) Service of an interpleader summons where claim is made to any property attached in execution under process of the court may be made upon the attorney of record (if any) of the party to be served.

6. Where two or more persons are to be served with the same process, service shall be effected upon each, except-

- (a) in the case of a partnership, when service may be effected by delivery at the office or place of business of such partnership, or if there be none such, then by service on any member of such partnership in any of the manners hereinbefore stated;
- (b) in the case of two or more persons sued in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of them in any of the manners hereinbefore stated;
- (c) in the case of a syndicate, unincorporated company, club, society, church, public institution or public body, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairman or secretary or similar officer thereof in any of the manners hereinbefore stated.

7. (1) Service of a subpoena requiring the attendance of a witness may be effected in any of the manners specified in rule 3 or 4, at a reasonable time before attendance is required.

(2)(1) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend (as the case may be), or by sending by registered post to the postal address so given.

(2) An address for service or postal address so given may be changed by delivery of notice of a new address, and thereafter service may be effected as aforesaid at such new address.

(3) Service by registered post under this rule shall be deemed, until the contrary appears, to have been effected at 10 a.m. on the next day but three after the postmarked date upon the receipt for registration.

8. Where service cannot be effected in any manner hereinbefore prescribed, the court may, upon evidence of that fact and that the action is within the jurisdiction of the court, make an order allowing service to be effected in such manner as may be stated in such order.

9. (1) Where the service to be effected is that of-

- (a) a summons for civil imprisonment;
- (b) an order made *ex parte* which calls upon the respondent to show cause at a time stated or limited in the order;
- (c) an interpleader summons; or
- (d) notice to a judgment debtor under Order XXVIII, rule 5(2),

service shall be effected at least three days plus one additional day for each 10 kilometres distance of the place of service from the office of the clerk of the court not exceeding 21 days in

all before the time stated or limited therein for the appearance of the party served.

(2) Except where otherwise provided, notice of application to the court shall be served at least three days before the time appointed for the hearing of the application.

10. (1) Where under any rule other than rule 7 service of any summons or process may be effected by registered post, the service shall be so effected by the messenger or other person effecting service placing a copy thereof in an envelope, addressing and posting it by prepaid registered letter to the address of the party to be served and at the time of registration making application requiring to be furnished with an acknowledgement by the addressee of the receipt thereof as provided in the Post Office (Postal and Franking) Regulations. A receipt form duly completed shall be a sufficient acknowledgement of receipt for the purposes hereof; if no such acknowledgement be received, the messenger or other person effecting service shall state the fact in his return of service of the summons or process.

(2) Every such letter shall have on the envelope a printed or typewritten notice in the following terms:

"This letter must not be re-addressed. If delivery is not effected before .....19..... it must be delivered to the messenger of the Magistrates' Court by ..... (or other person effecting service) at .....  
(address of person effecting service).

11. Nothing in these Rules shall authorize the service of any summons or process outside Botswana without the leave of a judge.

12. All process shall, without endorsement, be valid throughout Botswana.

#### **ORDER VII SUMMONS COMMENCING ACTION**

1. The process of the court for commencing an action shall be by summons calling upon the defendant to enter an appearance within a stated time after service (which shall not be less than three days, plus an additional day for each 10 kilometres distance of the place of service from the office of the clerk of the court but not to exceed 21 days in all) to answer the claim of the plaintiff, and warning the defendant of the consequences of failure to do so; and shall be signed by the clerk of the court, and shall bear the date of issue by him.

2. (1) The summons shall before issue be endorsed with-

- (a) particulars of claim;
- (b) forms of-
  - (i) consent to judgment;
  - (ii) appearance to defend.

(2) The endorsement shall be signed by the plaintiff or by his attorney, and the full address where the plaintiff will accept service of process in the action and also the postal address of the person so signing shall be given thereon.

3. (1) The particulars of claim shall show the nature and amount of the claim, the rate of interest and the amount thereof claimed up to the date of the summons, and the amount which, if the action is undefended, is claimed for attorney's costs and court fees. The messenger or other person effecting service shall endorse the amount of his charges on the summons on service thereof.

(2) The particulars shall also show any abandonment of part of the claim under section 24 of the Act and any set-off under section 25 of the Act.

(3) Where the summons contains more than one claim, the particulars of each claim and the relief sought in respect of each claim shall be stated separately.

(4) Where the particulars contain more than 100 words, they may be contained in an annexure served with the summons, which annexure shall be taken to be part of the summons.

(5) The clerk of the court may refuse to issue a summons in which an excessive amount is claimed for attorney's costs or court fees.

4. The summons shall also show-

- (a) the surname of the defendant by which he is known to the plaintiff, the defendant's sex and residence or place of business, and, where known, his Christian name or initials and his occupation; and, if the defendant is sued in a representative capacity, the capacity in which he is so sued;
- (b) the Christian name and the surname, occupation and residence or place of business of the plaintiff;
- (c) when the plaintiff sues as cessionary, the name, address and description of the cedent at the date of the cession and the date of the cession;
- (d) where the plaintiff sues in a representative capacity, the capacity in which he sues;
- (e) where the plaintiff sues upon an instrument, presentment whereof was necessary, the fact and date of presentment.

5. More claims than one may be made in a summons, either alternatively or otherwise, but claims which are not expressed to be alternative shall not be mutually inconsistent nor based on inconsistent averments of fact.

6. (1) Any two or more persons claiming or being sued as co-partners may sue or be sued in the name of the firm, of which such persons were co-partners at the time of the accruing of the cause of action; and, in any such case, any party may by notice require from the party so suing or sued a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm.

(2) The party receiving such notice shall, within five days after receipt thereof, deliver the statement required.

(3) When the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named in the summons; but all the proceedings shall nevertheless continue in the name of the firm.

(4) Any person carrying on business in a name or style other than his own name may sue or be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit all the provisions of this rule relating to proceedings against firms shall apply.

(5) The provisions of this rule shall also apply *mutatis mutandis* to an unincorporated company, syndicate or association.

(6) When an action has been instituted by or against a firm or by or against a person carrying on business in a name or style other than his own name or by or against an unincorporated company, syndicate or association in the name of the firm or in such name or style or in the name of the company, syndicate or association, as the case may be, the court may, on the application of the other party to the action made at any time either before or after judgment on notice to a person alleged to be a partner in such firm or the person so carrying on business, or a member of such company, syndicate or association, declare such person to be a partner, the person so carrying on business or a member, as the case may be, and on the making of such order the provisions of subrule (3) shall apply as if the name of such person had been declared in a statement delivered as provided in subrule (2).

7. (1) Subject to the provisions of this Order, a summons may, before service, be amended by the plaintiff as he shall think fit.

(2) Any alteration or amendment of a summons before service, and whether before or after issue, shall, before the summons is served, be initialled by the clerk of the court in the original summons, and, until so initialled, such alterations and amendments shall have no effect.

(3) A summons may, after service, be amended with the leave of the court either on application on notice or at the hearing subject to such order as to adjournment and costs as shall be just; and the court shall take into consideration whether adequate prior notice of intention to apply for such amendment has been served upon the other party affected:

Provided that when neither the Christian name nor the initial of the defendant is shown in the summons but the Christian name or initial of the person on whom service of the summons

has been effected is disclosed in the return of the messenger or other person effecting service, the clerk of the court may at the request of the plaintiff and without notice to such person insert such name or initial in the summons as being the name or initial of the defendant, and such amendment shall for all purposes be considered as if it had been made before service of the summons.

### **ORDER VIII CLAIMS IN RECONVENTION**

1. The provisions of these Orders shall *mutatis mutandis* apply to claims in reconvention except that it shall not be necessary to enter an appearance to defend, and that all times which, in the case of a claim in convention, run from the date of appearance shall, in the case of a claim in reconvention, run from the date of delivery of the claim.

2. A claim in reconvention shall be made by the delivery within the time limited by rule 1 of Order XV for the delivery of a plea or a statement in writing giving such particulars of the claim in reconvention as are required as to claims in convention.

3. (1) A defendant may set up by a claim in reconvention any right or claim to any amount which he may allege against the plaintiff, whether liquid or illiquid, whether or not it arises out of or is connected with the subject matter of the claim in convention; and such claim (if within the jurisdiction of the court) shall have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action both on the claim in convention and on the claim in reconvention.

(2) A defendant delivering a claim in reconvention may by notice delivered therewith or within two days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 29 of the Act.

(3) Where the court either *mero motu* or on objection taken by the plaintiff has pronounced the claim in reconvention to exceed its jurisdiction, the defendant may forthwith or by notice delivered within two days after such pronouncement apply for stay.

(4) If no application for stay be made as provided in subrule (2) or (3), or, having been made, be dismissed, the court shall on the application of the plaintiff or otherwise of its own motion dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under section 24 of the Act sufficient of such claim to bring it within the jurisdiction.

4. Where both the claim in convention and the claim in reconvention proceed to trial, under Order XVIII of these Rules, each action may be tried separately, but judgment shall be given on both *pari passu*.

5. A claim in reconvention may not be made by a defendant in reconvention.

6. Where an action is withdrawn, stayed, discontinued or dismissed, it shall nevertheless be competent to proceed separately with the claim in reconvention, if any.

### **ORDER IX APPEARANCE TO DEFEND**

1. (1) A defendant intending to defend an action shall, within the period limited by the summons, enter an appearance to defend by delivery of a notice that he intends to defend.

(2) In actions against the State appearance to defend may be entered at any time within 21 days after service of the summons.

(3) Notwithstanding the provisions of subrules (1) and (2), an appearance to defend, even though entered after the expiry of the period mentioned in the summons, or the period mentioned in subrule (2), shall be effective:

Provided a request for default judgment has not yet been filed; and

Provided further that if the request for default judgment and the appearance to defend are filed on the same day, the appearance to defend shall still be effective, but the plaintiff shall be entitled to costs of such request for default judgment as if the matter had been an undefended action.

2. Such notice shall be signed by the defendant, and shall state the full address for service and also the postal address of the person who has so signed, unless the addresses are the same.

3. The clerk of the court shall, at the request of an illiterate defendant, who does not employ an attorney, enter an appearance for him.

4. The entry of an appearance shall be without prejudice to any objection or exception which the defendant may have.

### **ORDER X JUDGMENT BY CONSENT OR DEFAULT**

1. (1) A defendant may before entry of appearance consent to judgment by-
- (a) signing the form of consent endorsed on the original summons; or
  - (b) lodging with the clerk of the court a consent in a similar form duly signed by him and by two witnesses whose addresses are also given;
  - (c) lodging with the clerk of the court the copy of the summons served upon him with the form of consent endorsed thereon duly signed by him.

(2) Where a defendant so consents before instructions for service have been given to the messenger or other person effecting service, it shall not be necessary to serve the summons, and he shall not be chargeable with fees for service.

(3) A defendant so consenting before the expiration of the time limited for appearance shall not be chargeable with the judgment charges.

(4) A defendant may after entry of appearance consent to judgment by delivering a consent signed by himself or by his attorney of record in a form similar to that endorsed on the summons.

(5) If the defendant's consent is for less than the amount claimed in the summons, he may enter an appearance to defend or may continue his defence as to the balance of the claim; and, notwithstanding a judgment upon such consent, the action may proceed as to such balance, and it shall in that event be in all subsequent respects an action for such balance.

2. If a defendant has failed to enter appearance to defend within the time limited in rule 1 of Order IX or before the lodgement of the request hereinafter mentioned and has not consented to judgment, the plaintiff may lodge with the clerk of the court a written request to have judgment entered against such defendant for any sum not exceeding the sum claimed in the summons or for other relief so claimed, for the costs of the action, and for interest from the date of the summons to the date of judgment at the rate specified in the summons or, if no rate be specified, at the rate of six per cent per annum.

3. If the defendant has entered appearance but has failed to deliver a plea within the time limited by rule 1 of Order XV, the plaintiff may deliver notice in writing calling upon the defendant to deliver a plea within 72 hours of the receipt of such notice, and on failure of the defendant so to do may lodge with the clerk of the court a written request to have judgment entered in the same manner as if the defendant had failed to enter appearance to defend.

4. (1) When the defendant has failed to enter appearance to defend or, having entered appearance, has failed to deliver a plea within the period specified in a notice delivered to him in terms of rule 3 of this Order, and the plaintiff has in either case requested the grant of judgment, or when the defendant has consented to judgment, the clerk of the court shall place the request for judgment or the consent to judgment before a judicial officer who may, subject to the provisions of subrules (2), (3), (4), (5) and (6), summarily grant judgment in terms of the plaintiff's request or of the defendant's consent, as the case may be.

(2) If it appears to the judicial officer that the defendant intends to defend the action but that his entry of appearance is defective in respect that the notice thereof-

- (a) has not been properly delivered;
- (b) has not been properly signed; or
- (c) has not set out the postal address of the person signing it or an address for service as

prescribed in rule 2 of Order IX; or

(d) exhibits any two or more of such defects or any other defect of form;

he shall not grant judgment against the defendant unless the plaintiff has delivered written notice to the defendant that request for judgment in default of due entry of appearance is being made and the defendant has not within 72 hours of the receipt by him of such notice delivered a notice of entry of appearance in due form. Such notice shall clearly set out in what respects the defendant's entry of appearance is alleged to be defective.

(3) Judgment in default of appearance to defend shall not be entered in an action in which the summons has been served by registered post unless with the return of service by the messenger or the person effecting service there has been filed the acknowledgement mentioned in rule 10 of Order VI.

(4) In a request for judgment on a claim for damages under this rule, the request shall be dealt with by the court and the plaintiff shall furnish to the court evidence either oral or by affidavit of the nature and extent of the damages suffered by him. The court shall thereupon assess the amount recoverable by the plaintiff as damages and shall enter judgment therefor.

(5) If the action be on a liquid document the plaintiff shall before entry of judgment file of record the original of such document duly stamped, or an affidavit setting out reasons to the satisfaction of the judicial officer why such original cannot or should not be filed.

(6) A judicial officer may order that any consent to or request for judgment be heard in open court and the court may thereupon-

- (a) if a default judgment be sought, call upon the plaintiff to produce such evidence either written or oral in support of his claim as it may deem necessary;
- (b) if a judgment by consent be sought, call upon the plaintiff to produce evidence to satisfy the court that the consent has been signed by the defendant and is a consent to the judgment sought;
- (c) enter judgment in terms of the plaintiff's request or for as much of the claim as has been established to its satisfaction;
- (d) enter judgment in terms of the defendant's consent;
- (e) refuse judgment; or
- (f) make such other order as may be just.

(7) When one or more of several defendants in an action consent to judgment or fail to enter appearance or to deliver a plea, judgment may be entered against the defendant or defendants who have consented to judgment or are in default and the plaintiff may proceed on such judgment without prejudice to his right to continue the action against another defendant or other defendants.

(8) Particulars of all judgments granted under this rule shall be recorded in the Civil Record Book.

#### **ORDER XI FURTHER PARTICULARS**

1. (1) A defendant may at any time after entering appearance to defend and before delivery of the plea apply to the plaintiff by notice for copies of all or any of the accounts or documents upon which the action is founded; and copies shall be delivered by the plaintiff within four days after receipt of such notice.

(2) If the plaintiff fails so to deliver such copies, the action may, on application, be dismissed with costs.

(3) The plaintiff shall, on notice, forthwith allow the defendant to inspect the originals of such accounts or documents.

2. (1) Any party may, by notice delivered not more than four days after appearance in the case of a summons or after the delivery of any other pleading or after judgment on any exception to such pleading has been given, require the party delivering such pleading to deliver such further information as is reasonably necessary as to any specified matters arising upon

such pleading.

(2) The party delivering such pleading shall, within seven days after receipt of such notice, deliver the information reasonably required.

(3) For the purposes of this rule, the word "pleading" shall include summons, counterclaim, plea, reply and the schedule of documents prescribed by Order XVII.

3. (1) 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 by the court upon such terms as to costs and otherwise as may be just.

(2) Upon failure to comply with any order for further particulars, the court may, on application, order that the action stand dismissed, or the defence be struck out or that the allegation of which particulars were ordered be struck out from the pleading.

#### **ORDER XII PAYMENT INTO COURT**

1. A defendant may at any time pay into court unconditionally the amount claimed in the summons and thereupon all further proceedings in the action shall be stayed except as hereinafter provided for the recovery of any costs not included in such payment.

2. (1) A defendant may without prejudice pay an amount into court by way of offer in settlement of the plaintiff's claim.

(2) A plaintiff may within 10 days after receipt of notice of such payment into court deliver a request for the payment out to him of the amount paid in and further proceedings shall thereupon be stayed except as hereinafter provided for the recovery of costs not included in the payment.

3. (1) A defendant paying money into court after entry of appearance in terms of rule 1 or at any time in terms of rule 2 of this Order shall at the same time deliver a notice setting out the amount paid into court and whether it is paid in unconditionally under rule 1 or as an offer of settlement under rule 2 and if in the case of payment in under rule 2 the amount paid is offered in settlement of both claim and costs, stating the fact.

(2) Money paid into court in terms of this rule shall be paid into a deposit account with the Government in such manner as the Accountant-General may from time to time direct.

4. (1) The clerk of the court shall cause to be paid out to the plaintiff any moneys paid into court under rules 1 and 2 of this Order:

Provided that moneys paid into court under rule 2 shall only be paid out on delivery of the request mentioned under subrule (2) of that rule.

(2) The Accountant-General shall, on receipt of a written instruction by the clerk of the court so to do, forthwith pay to the plaintiff the moneys paid into revenue in terms of subrule (2) of rule 3.

(3) A plaintiff entitled to payment under sub-rule (1), except when a defendant making payment under rule 2 states in his notice of payment that the amount paid in is inclusive of costs, be entitled to recover from the defendant the costs incurred by him up to the time of payment into court, together with his costs of obtaining payment, in the same manner as if an order for such costs had been made by the court.

5. Where money has been paid into court under rule 2 as an offer of settlement and the court finds on a trial of the action that there is not more due to the plaintiff than the amount so paid in, the court shall first order payment out to the plaintiff of so much thereof as may be awarded to him (but subject to any order or judgment against him for the defendant's costs) and shall then give judgment for the defendant and shall order the plaintiff to pay the costs incurred by the defendant after payment into court and shall make such order as may be just in regard to costs previously incurred.

6. A defendant pleading tender shall on the day of filing his plea pay into court the amount alleged in the plea to have been tendered if such amount has not already been paid to

the plaintiff.

7. Except as provided in rule 4, moneys paid into court under this Order shall be paid out only upon a judgment declaring who is entitled thereto or upon the written consent of the parties.

8. Where the claim is for damages or compensation, the amount of a tender or payment into court shall not be disclosed to the court or in the pleadings until after judgment on the claim has been given. The order for costs shall be made only after disclosure of the amount tendered or paid into court and the court, in awarding costs, shall proceed as provided in rule 5.

### **ORDER XIII EXCEPTIONS, APPLICATIONS TO STRIKE OUT AND SPECIAL DEFENCES**

1. (1) A defendant shall, within seven days after entry of appearance, deliver particulars of any exceptions to the summons:

Provided that where the delivery of documents or particulars have been requested in terms of Order XI, particulars of the exception may be delivered within seven days after delivery of such documents or particulars.

(2) A defendant failing to deliver such particulars within such period may not thereafter raise any exception without leave of the court granted on application after notice to the plaintiff.

2. (1) The only exceptions which may be taken by the defendant are -

- (a) that the summons does not disclose a cause of action;
- (b) that the summons is vague and embarrassing;
- (c) that the summons does not comply with the requirements of Order VII of these Rules;
- (d) that the summons has not been properly served;
- (e) that the copy of the summons served upon a defendant differs materially from the original.

(2) Any other defence shall be raised by means of a plea in accordance with the provisions of Order XV.

(3) Where more than one claim is made in a summons, exception may be taken to any one or more of such claims.

3. (1) The court shall not uphold an exception unless it is satisfied that the defendant would be prejudiced in the conduct of his defence if the summons were allowed to stand.

(2) A defendant raising an exception to the summons shall clearly and concisely state the ground upon which the exception is founded.

(3) The court shall not uphold an exception that the summons is vague and embarrassing unless the defendant has, prior to taking the exception by delivery of a notice, given the plaintiff an opportunity of removing the cause of complaint.

4. (1) A defendant may move to strike out any of two or more claims in a summons which, not being in the alternative, are mutually inconsistent or are based on inconsistent averments of fact, or to strike out any argumentative, irrelevant, superfluous or contradictory matter contained in the summons.

(2) The provisions of rule 1 shall apply *mutatis mutandis* to the delivery of particulars of such motion.

5. (1) An exception or application to strike out shall, if particulars thereof have been delivered before the hearing of any application by the plaintiff for summary judgment be heard and determined at the hearing of such application. If no such application be made, either party may on seven days' notice set down such exception or motion for hearing before the trial.

(2) Evidence may be called by either party to support or to repel an exception that the summons does not comply with the requirements of Order VII.

(3) In sustaining any dilatory plea, the court may order the proceedings to be stayed and if thereafter the ground of stay is removed it may on application discharge the stay.

### **ORDER XIV**

## **SUMMARY JUDGMENT**

1. (1) Where a defendant has entered an appearance to defend, the plaintiff in convention may apply to the court for summary judgment if the claim is only-

- (a) on a liquid document;
- (b) for a liquidated amount in money;
- (c) for the delivery of specified movable property;
- (d) for ejectment; or
- (e) for any two or more such matters as are described in paragraph (a), (b), (c) or (d); in addition to costs.

(2) Such an application shall be made on not less than three days' notice delivered not more than four days after the date of the defendant's appearance to defend; and the plaintiff shall deliver with such notice-

- (a) if the claim is illiquid, a copy of 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, if any, and stating that in his belief there is not a *bona fide* defence to the action and that appearance has been entered solely for the purpose of delay;
- (b) if the claim is liquid, a copy of the liquid document on which the claim is founded.

2. (1) Upon the hearing of an application for summary judgment, the defendant may-

- (a) pay into court to abide the result of the action the sum sued for, together with such sums for costs as the court may determine;
- (b) give security to satisfy any judgment which may be given against him in the action; or
- (c) satisfy the court by affidavit delivered not later than noon of the preceding day (which affidavit may by leave of the court be supplemented by oral evidence) that he has a *bona fide* defence to the action or *bona fide* counterclaim against the plaintiff. Such affidavit and evidence shall disclose fully the nature and grounds of the defence or counterclaim.

(2) No evidence may be adduced by the plaintiff otherwise than by the affidavit of which a copy was delivered with the notice or by production without evidence of the liquid document sued upon; nor may any person who gives oral evidence of the liquid document sued upon; nor may any person who gives oral evidence be cross-examined by the plaintiff, but such person may after examination by the defendant be examined by the court.

3. (1) Subject to Order XIII of these Rules, if the defendant does not so either pay into court or find security or satisfy the court, the court may enter summary judgment for the plaintiff.

(2) If the defendant so pays into court or finds security or so satisfies the court, the court shall give leave to defend, and the action shall proceed as if no application under this Order had been made.

4. Where leave to defend is given under rule 3(2), the evidence given on the hearing of the application for summary judgment shall not, at any subsequent hearing, be admissible (except by consent) in favour of the party on whose behalf it was given, except insofar as the respective deponents and witnesses are produced at such subsequent hearing for cross-examination.

5. If, on the hearing of an application made under this Order, it appears that a defendant is entitled to leave to defend and another defendant is not so entitled, or that a defendant is entitled to leave to defend as to part only of the claim, the court may-

- (a) give leave to defend to a defendant so entitled thereto and enter judgment against a defendant not so entitled;
- (b) give leave to defend as to such part of the claim and enter judgment against the defendant as to the balance of the claim; or
- (c) make both orders mentioned in paragraphs (a) and (b).

## **ORDER XV PLEA**

1. The defendant shall within seven days-
  - (a) after entry of appearance;
  - (b) after delivery of documents or particulars in terms of Order XI; or
  - (c) after the dismissal of an application for summary judgment, if such application be made;
  - (d) after the making of an order giving leave to defend; or
  - (e) after the dismissal of an exception or application to strike out, if such exception or application be set down for hearing in terms of rule 5 of Order XIII; or
  - (f) after any amendment of the summons allowed by the court at the hearing of such exception or application,

deliver a statement in writing to be called a plea:

Provided that if an appeal be noted against a decision on exception, or such proceedings be brought for review, the plea shall be delivered within such time as may be directed by the High Court, or, on application, by the court.

2. If the defendant be the State and the summons has been served elsewhere than at the permanent head office of the defendant department seven days shall be added in each case to the number of days prescribed in rule 1.

3. The plea shall be dated and signed by the defendant or his attorney.

4. The defendant in his plea shall either admit or deny or confess and avoid all the material facts alleged in the particulars to the summons and shall clearly and concisely state the nature of his defence and all the material facts on which it is based.

5. (1) For the purposes of this rule "defendant" includes a person upon whom a summons has been served and who alleges that he is not the defendant cited in the summons and enters appearance to defend on that ground. The court may on the hearing of any such defence order costs to be paid to or by such person as if he were a party to the action.

(2) If such defence be sustained the court, instead of dismissing the summons, may, if moved thereto by the plaintiff, allow any necessary amendment and order that it be served upon the real defendant.

6. A bare denial of liability or a defence of general issue shall not be admissible, but the defendant may, either as a sole defence or in combination with any other defence not inconsistent therewith, deny specifically any of the allegations in the summons.

7. Subject to the provisions of Order XII-

- (a) where a tender is pleaded as to part of the amount claimed, the plea shall specify the items of the plaintiff's claim to which the tender relates;
- (b) a plea of tender shall not be admissible unless the amount of the alleged tender is paid into court on the delivery of the plea, if not already paid to the plaintiff. Such amount shall be paid out to the plaintiff only on the order of the court or upon the written consent of the parties;
- (c) a tender after action brought shall imply an undertaking to pay the plaintiff's costs up to the date of the tender (unless such undertaking is expressly disavowed at the time of such tender) and shall be valid without a tender or payment into court of the amount at which such costs may be taxed.

8. Where payment into court is alleged in the plea, the particulars shall show whether the payment in has been made under rule 1 or 2 of Order XII or by way of tender under rule 7 of this Order. If the nature of the payment be not specified it shall be deemed to be by way of tender after action brought.

9. Every allegation of fact by the plaintiff which is inconsistent with the plea shall be presumed to be denied and every other allegation shall be taken to be admitted.

10. If during the trial of an action it appears that there is *a prima facie* evidence of a defence on some other ground than that pleaded the court may, on application at the trial, allow such new defence to be then pleaded *vica voce* on such terms as to adjournment and costs as

shall be just.

11. Any defence which can be adjudicated upon without the necessity of going into the main case may be set down by either party for a separate hearing upon seven days' notice at any time after such defence has been raised.

12. A plaintiff may within seven days of delivery of the plea or further particulars and with or before delivering a reply deliver particulars of an exception to the plea.

13. A plaintiff may except to the plea on the ground either-

- (a) that it does not disclose a defence to the plaintiff's claim;
- (b) that it is vague and embarrassing; or
- (c) that it does not comply with the requirements of this rule.

14. (1) The court shall not uphold any exception unless it is satisfied that the plaintiff would be prejudiced in the conduct of his case if the plea were allowed to stand.

(2) A plaintiff raising an exception to the plea shall clearly and concisely state the grounds upon which the exception is founded.

(3) The court shall not uphold an exception that the plea is vague and embarrassing unless the plaintiff has, prior to taking the exception, by delivery of a notice given the defendant an opportunity of removing the cause of the complaint.

15. Particulars delivered by the defendant in terms of Order XI shall be deemed to be included in the plea.

16. The provisions of rule 12 shall apply *mutatis mutandis* to the delivery of particulars of an application to strike out.

17. An exception to or application to strike out matter from a plea may be set down for hearing by either party on seven days' notice.

18. If such an exception or application be sustained and no application for amendment be made or, being made be refused, the court may, if the plea then discloses no defence, give judgment for the plaintiff.

#### **ORDER XVI REPLY**

1. Where the defence is other than a bare denial of one or more of the allegations of the summons, the plaintiff may, within seven days after delivery of the plea or after the delivery in terms of rule 2 or Order XI of further information in respect of the plea, deliver a statement in writing to be called a reply.

2. The rules applicable to the plea shall, *mutatis mutandis*, apply to the reply.

3. Where the plaintiff does not within the time limit deliver a reply, he shall be taken to have denied all the allegations of fact contained in the plea.

4. Upon the delivery of a reply or, where no reply is delivered, upon the expiration of the period limited for reply, the pleadings shall be deemed to be closed.

#### **ORDER XVII**

#### **DISCOVERY OF DOCUMENTS, MEDICAL EXAMINATIONS, INSPECTION, EXPERT TESTIMONY, AND EVIDENCE BY PLAN, DIAGRAM, MODEL OR PHOTOGRAPH**

1. (1) After the close of pleadings either party may deliver a notice to the other party calling on him to deliver a schedule specifying the books and documents in his possession or under his control relating to the action which he intends to use in the action or which tend to prove or disprove either party's case. Such schedule verified by affidavit shall be delivered by the party thereto required within three days of the delivery of the aforesaid notice. If privilege be claimed for any of the documents scheduled such documents shall be separately listed on the schedule and the ground on which privilege is claimed in respect of each shall be set out.

(2) A book or documents not so disclosed may not be used for any purpose on the trial of the action by the party in whose possession or under whose control it is without the leave of the court on terms as to adjournment and costs as may be just, but the other party may call for and use such book or document in the cross-examination of a witness.

2. Each party shall on notice forthwith allow the other party to inspect and take copies of all books and documents disclosed in terms of rule 1, or specified in a notice delivered in terms of rule 3; and shall, on prepayment therefor, forthwith furnish the other party with such copies thereof or extracts therefrom as may be requested.

3. Either party may, by notice to produce, require the other to produce, on the trial of the action, the books and documents so disclosed and also any other books and documents specified in detail; and such a notice shall have the effect of a subpoena under Order XXIII as regards all such books or documents as are in the possession or under the control of the party to whom notice is given.

4. (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 may require any party claiming such damages or compensation whose state of health is relevant to the determination of such damages or compensation to submit to an examination by one or more duly registered medical practitioners.

(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 it will be conducted, the place where and the date (being not less than 14 days from the date of such notice) and time it is desired that such examination shall take place and requiring such other party to submit himself for examination at such place, date and time.

(3) The notice referred to in subrule (2) shall state that such other party may have his own medical adviser 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.

(4) The amount of the expense referred to in subrule (3) shall be tendered on the scale as if such person were a witness in a civil suit before the court:

Provided that-

- (i) if such other party is physically incapable of proceeding on his own to attend such examination, 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;
- (ii) where such other party will actually forfeit any 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 P6,00 per day in respect of the salary, wage or other remuneration which he will actually forfeit;
- (iii) any amount paid by a party in terms of subrules (3) and (4) shall be costs in the cause, unless the court otherwise directs.

(5) Any party receiving a notice referred to in subrule (2) shall, within seven days of the service thereof, notify the party delivering it in writing of the nature and grounds of any objections 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, suggest an alternative place, date or time for the examination;
- (ii) in the case of his objection being to the amount of the expenses tendered, furnish particulars of such increased amount as he may require.

(6) If the party receiving the notice does not deliver any such objection within the period referred to in subrule (5), he shall be deemed to have agreed to the examination upon the terms

set forth by the party giving the notice.

(7) If the party receiving such objection is of opinion that the objection or any part thereof is not well-founded he may apply to the court to determine the conditions upon which the examination, if any, is to be conducted.

(8) Any party to proceedings referred to in subrule (1) may at any time by notice require any party claiming any damages or compensation so referred to, to make available insofar as he is able to do so, to such first-mentioned party within 10 days any medical report, hospital record, X-ray photograph, or other documentary information of a like nature relevant to the assessment of such damages or compensation.

(9) If it appears from any medical examination carried out either by agreement between the parties or in pursuance of any notice given in terms of this rule, or any determination made by the court under subrule (7) that any further medical examination by any other medical practitioner is necessary or desirable for the purpose of obtaining full information on matters relevant to the assessment of such damages or compensation, any party may require a second and final examination in accordance with the provisions of this rule.

(10) If it appears that the state or condition of anything of any nature whatsoever whether movable or immovable may be relevant with regard to the decision of any matter at issue in any action, any party thereto may at any stage thereof, not later than 10 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 and may in such notice require such party to have such thing or a fair sample thereof available for inspection or examination for a period not exceeding 10 days from the receipt of the notice.

(11) The party requested to submit such thing for inspection or examination may require the party so requesting to specify the nature of the inspection or examination for which such thing is to be submitted, and shall not be bound to submit such thing therefor if he will be materially prejudiced by reason of the effect thereof upon such thing.

(12) In the event of any dispute whether the thing should be submitted for inspection or examination, either party may on application to the court state that the inspection or examination has been required and objected to and the court may make such order as it may deem just.

(13) Any party causing a medical examination or an inspection or examination to be made in terms of subrules (1) and (10) shall-

- (a) cause the person making the medical examination or the inspection or examination to give a full report in writing of the results of such medical examination or inspection or examination, as the case may be, 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; and
- (c) bear the expense of the carrying out of any such medical examination or inspection or examination and such expense shall form part of such party's costs.

(14) No persons shall, except with the leave of the court or the consent of all 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 10 days before the hearing, have delivered notice of his intention to do so; and
- (b) not less than seven days before the hearing, have delivered a summary of such opinions of such expert and his reasons therefor.

(15) No party to an action shall, except with the consent of all the other parties to the action or with the leave of the court, be entitled to tender in evidence any plan, diagram, model or photograph unless he shall not less than 10 days before the hearing of the action have given every such other party notice of his intention to do so.

(16) Such notice shall state that every party receiving it shall be entitled to inspect such plan, diagram, model or photograph and shall require such party, within seven days of the receipt thereof, to state whether he has any objection to such plan, diagram, model or photograph being admitted in evidence without proof.

(17) If the party receiving the notice fails within the period specified in the notice to state whether he objects to the admission in evidence of the plan, diagram, model or photograph referred to in the notice, such plan, diagram, model or photograph, as the case may be, shall be received in evidence upon its mere production and without further proof thereof.

(18) If such party objects to the admission in evidence of such plan, diagram, model or photograph, such plan, diagram, model or photograph, as the case may be, may be proved at the hearing of the action and the party receiving the notice may be ordered to pay the costs of such proof.

### **ORDER XVIII TRIAL**

1. (1) The trial of an action shall be subject to the delivery by the plaintiff after the pleadings have been closed of notice of trial for a day or days approved by the clerk of the court:

Provided that if the plaintiff does not within 14 days after the pleadings have been closed deliver notice of trial the defendant may do so.

(2) The delivery of such notice shall *ipso facto* operate to set down for trial at the same time any counterclaim made by the defendant.

(3) Service of such notice shall be effected at least seven days before the day so approved.

2. The trial of an action shall take place at the courthouse from which the summons was issued, unless the court otherwise orders.

3. A witness who is not a party to the action may be ordered by the court-

- (a) to leave the court until his evidence is required or after his evidence has been given; or
- (b) to remain in court after his evidence has been given until the trial is terminated or adjourned.

4. (1) The court may, before proceeding to hear evidence, require the parties to state shortly the issues of fact or questions of law which are in dispute and may record the issues as so stated.

(2) If the question in dispute is a question of law and the parties are agreed upon facts, the facts may be admitted in court, either *viva voce* or by written statement, by the parties and recorded by the court, and judgment may be given thereon without further evidence.

(3) When questions of law and issues of fact arise in the same case and the court is of the opinion that the case may be disposed of upon the questions of law only, the court may require the parties to argue upon those questions only and may give its decision thereon before taking evidence as to the issues of fact and may give final judgment without dealing with the issues of fact.

(4) Where, upon the pleadings, it appears to the court that there are several issues of fact and the court is of opinion that the determination of any one of such issues would dispose of the whole case, it may require the parties to deal with that issue before proceeding with the other issues, and the court may thereupon give final judgment without dealing with such other issues.

5. (1)(a) If on the pleadings the burden of proof is on the plaintiff he shall first adduce his evidence.

(b) If absolution from the instance is not then decreed, the defendant shall then adduce his evidence.

(2) Where such burden of proof is on the defendant, the defendant shall first adduce his evidence, and the plaintiff shall thereafter adduce his evidence.

(3)(a) Where the burden of proving one or more of the issues is on the plaintiff and that of proving others is on the defendant, the plaintiff shall first call his evidence on any issues proof whereof is upon him, and may then close his case, and the defendant shall then call his evidence on all the issues.

(b) If the plaintiff has not called any evidence (other than that necessitated by his evidence on the issues proof whereof is on him) on any issues proof whereof is on the defendant, he shall have the right so to do after the defendant has closed his case. If he has called any such evidence he shall have no such right.

(4) In case of dispute as to the party upon whom the burden of proof rests, the court shall direct which party shall first adduce evidence.

(5) Either party may, with the leave of the court, adduce further evidence at any time before judgment; but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order.

(6) The court may at any time before judgment, on the application of either party or of its own motion, recall any witness for further examination.

(7) Any witness may be examined by the court, as well as by the parties.

(8) After the evidence on behalf of both parties has been completed, the party who first adduced evidence may first address the court and thereafter the other party, and the party who first adduced evidence may reply.

6. Where the court has authorized the evidence of any witness to be taken on interrogatories, such interrogatories shall be filed within four days of the order, and cross-interrogatories within four days thereafter.

#### **ORDER XIX WITHDRAWAL, DISMISSAL AND SETTLEMENT**

1. Where the summons has not been served or the period limited for entry of appearance to defend has expired and no such appearance has been entered, the plaintiff may withdraw the summons by notice to the clerk of the court.

2. (1) Except as provided by rule 1 a plaintiff or applicant desiring to withdraw an action or application against all or any of the parties thereto shall deliver notice of withdrawal.

(2) Any party served with notice of withdrawal may within 10 days thereafter apply to the court for an order that the party so withdrawing shall pay the applicant's costs of the action or application withdrawn, together with the costs incurred in so applying:

Provided, however, that where the plaintiff in the notice of withdrawal embodies in such notice a consent to pay the costs, such consent shall then have the force of an order of court, and the clerk shall tax the costs on the request of the defendant.

(3) Any party may, by delivery of notice, abandon any specified claim, objection, exception or defence pleaded by him; and such notice shall be taken into consideration in taxing costs.

3. A defendant may, if the plaintiff has not within 14 days after the pleadings have been closed given notice of trial either for a day not more than 21 days distant or for the first day obtainable from the clerk of the court, apply to the court to dismiss the action for want of prosecution; and the court may on such application either dismiss the action with costs or make such other order in regard thereto and as to the costs of the application as may be just.

4. (1) Application may be made to the court by either party at any time after entry of appearance and before judgment to record the terms of any settlement of an action without entry of judgment agreed to by the parties. If the terms of the settlement so provide, the court may make such settlement an order of the court.

(2) Except when the application is made in court during the hearing of any proceeding in the action at which the other party is represented or when written waiver by such other party, which may be included in the statement of terms of settlement, of notice of the application is produced to the court, notice of the application shall be delivered.

(3) At the hearing of the application the applicant shall lodge with the court a statement of the terms of the settlement signed by all the parties to the action, and if no objection thereto be made by any other party the court shall note that the action has been settled on the terms set out in the statement, and thereupon all further proceedings in the action shall, except as hereinafter provided, be stayed.

(4) When the terms of settlement provide for the future fulfilment by one or both parties of stated conditions and that in default of fulfilment the entry of a judgment in the action in terms specified in the statement may be sought by the other party, such other party may at any time within 12 months thereafter apply for the entry of such judgment. Such application shall be on notice to the party alleged to be in default setting forth particulars of the breach by the respondent of conditions of the terms of settlement.

(5) After hearing the parties the court may-

- (a) dismiss the application;
- (b) enter judgment for the applicant as specified in terms of the settlement;
- (c) set aside the settlement and give such directions for the further prosecution of the action as it may deem fit;
- (d) make such order as may be just as to the costs of the application.

#### **ORDER XX RECORDS OF PROCEEDINGS**

1. Minutes of record shall forthwith be made of-

- (a) any judgment given by the court;
- (b) any *viva voce* evidence given in court;
- (c) any objection made to any evidence received or tendered; and
- (d) the proceedings of the court generally, including the record of any inspection *in loco*.

2. The court shall also mark each document put in evidence and note such mark on the record.

3. Such minutes and marks may be made by the clerk of the court and, except where made by the clerk of the court, or as hereinafter provided, they shall be made by the presiding judicial officer.

4. The court may direct either generally or specially for the purposes of any particular matter that the addresses of the parties, *viva voce* evidence given, any exception or objection taken during the course of the proceedings, the rulings and judgment of the court and such other portion of the proceedings as the court may specially indicate, be noted in shorthand (hereinafter also referred to as "shorthand notes") or recorded by mechanical means.

5. (1) Every person employed for the taking of shorthand notes or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his duties in writing take an oath or make an affirmation before a judicial officer in the following form:

"I ..... , swear/solemnly and sincerely affirm and declare that I will faithfully, accurately and to the best of my ability take down in shorthand/cause to be recorded by mechanical means, as directed by the judicial officer, the proceedings in any case in which I may be employed thereto as an officer of the court and that I will similarly, when required to do so, transcribe the same or, as far as I am able to do so, any other notes taken by any officer of the court/recorded by mechanical means."

(2) Such oath or affirmation shall be administered in the manner prescribed for the taking of an oath or affirmation.

6. (1) Shorthand notes so taken shall be certified as correct by the shorthand writer and filed with the record of the case by the clerk of the court.

(2) Subject to the provisions of rule 7, no such shorthand notes shall be transcribed unless a judicial officer so directs.

(3) The transcript of any shorthand notes so transcribed shall be certified as correct by

the person making it and shall be filed with the record.

7. (1) In any case in which no transcription was ordered in terms of rule 6, any person may on notice to the clerk of the court request a transcription of any shorthand notes taken by virtue of a direction given under rule 4 and shall pay a fee of 20 thebe for every 100 words or part thereof for such transcription.

(2) One copy of the transcript of such shorthand notes shall be supplied, free of charge, to the person at whose request the transcription was made.

(3) The original copy of the transcript of any shorthand notes referred to in subrule (1) shall be certified as correct by the person making it and shall be filed with the record of the case.

(4) A sum sufficient to cover the approximate fee payable under subrule (1) shall be deposited with the clerk of the court in advance.

8. Subject to the provisions of rule 11, any shorthand notes taken by virtue of a direction made under rule 4, and any transcript thereof, certified as correct, shall be deemed to be correct and shall form part of the record of the proceedings in question.

9. Subject to the provisions of rule 7(2), a copy of any transcript made simultaneously with the transcript of any shorthand notes may, upon application to the clerk of the court, be supplied to any person upon payment of a fee of-

- (a) in the case of a copy of a transcript referred to in rule 6, 10 thebe for every 100 words or part thereof;
- (b) in the case of a copy of a transcript referred to in rule 7, two thebe for every 100 words or part thereof.

10. Any reference in this Order to shorthand notes or to a transcription or transcript of such notes, or to a copy of such transcript, or to a person employed for the taking of such notes, or to a person transcribing such notes, shall be construed also as a reference to a record of proceedings made by mechanical means, to a transcription or transcript of such record, or to a copy of such transcript, to a person employed for the taking of such mechanical record, or to a person transcribing such record, as the case may be.

11. Any party may, not later than seven days after judgment, or where the proceedings have been noted in shorthand or by mechanical means, within seven days after having been notified by the clerk of the court that the transcript of the shorthand notes or mechanical record has been completed, apply to the court to correct any errors in the minutes of such proceedings or in the transcript of such shorthand notes or mechanical record and the court may then correct any such errors.

12. If, before the hearing of the application all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the court.

#### **ORDER XXI APPLICATIONS**

1. Except where otherwise provided, an application to the court for an order affecting any other person shall be on notice, in which shall be stated shortly the terms of the order applied for and the time when the application will be made to the court. Delivery of such notice shall be effected in the case where the State is the respondent, not less than 14 days, and in any other case not less than three days before the date of hearing.

2. Except where otherwise provided, an application need not be supported by affidavit but in the event of any dispute arising as to the facts, the court may-

- (a) receive evidence either *viva voce* or by affidavit and try the issues in dispute in a summary manner; or
- (b) order that the issue shall be tried by way of action, that the applicant shall be plaintiff and the respondent be defendant and that the notice of application shall stand as summons or that the applicant shall deliver such particulars of his claim as are

prescribed in Order VII within seven days or such shorter time as the court may appoint.

3. For the purposes of the action appearance to defend shall be deemed, when the notice of application is ordered to stand as summons, to have been entered on the day on which such order is made, and when the applicant is ordered under this rule to file particulars, to have been entered on the day on which such particulars are delivered.

4. Unless the court shall otherwise order, minutes, other than the minutes of the record, shall not be drawn up of orders on application on notice; and notice or service of such an order to or on any person who has had notice of the application shall not be necessary.

5. Except where otherwise provided, an *ex parte* application shall be made in writing stating shortly the terms of the order applied for and the grounds on which the application is made and shall be signed by the party making the application.

6. Except where otherwise provided, an *ex parte* application shall not, unless required by the court in any case, be supported by affidavit or other evidence.

7. Any person affected by an order made *ex parte* may apply to discharge it with costs on not less than 12 hours' notice.

8. In every application the person substantially interested shall be made respondent.

9. All interlocutory matters may be dealt with upon application, and any application which may be made *ex parte* may at the applicant's election be made on notice.

10. All opposed applications shall be heard in open court.

#### **ORDER XXII**

#### **ARRESTS, INTERDICTS, ATTACHMENTS, AND MANDAMENTEN VAN SPOLIE**

1. (1) Except where otherwise provided in these Rules, every application to the court for an order of arrest, interdict or attachment or for a *mandament van spolie* under section 18 of the Act, may be made *ex parte*.

(2) Every such *ex parte* application shall be upon affidavit stating shortly the facts upon which the application is made and the nature of the order applied for.

2. The court may, before granting an order upon such application, require the applicant to give security for any damages which may be caused by such order and may require such additional evidence as it may think fit.

3. (1) Every order made *ex parte* (other than an order for the arrest of any person) shall call upon the respondent to show cause against it at a time stated in the order, which shall not be a less time after service than the time allowed by these Rules for appearance to a summons, unless the court shall give leave for shorter service.

(2) The return day of an order may be anticipated by the respondent upon 12 hours' notice to the applicant.

4. (1) A copy of any order made *ex parte* and of the affidavit, if any, on which it was made shall be served forthwith on the respondent thereto.

(2) Where cause is shown against any such order the court may order the deponent to any such affidavit to attend for cross-examination.

(3) Any order made *ex parte* may be discharged or varied by the court on cause shown by any person affected thereby; and on such terms as to costs as may be just.

5. (1) An order made *ex parte* shall *ipso facto* be discharged upon security being given by the respondent for the amount to which the order relates together with costs.

(2) Such security may be given to abide the result of the action instituted or to be instituted; and may be assigned by the respondent to part only of the order and shall in that event operate to discharge the order as to that part only.

(3) Unless the court shall otherwise order, the messenger may release any person arrested upon such person giving security to the satisfaction of the messenger that he will appear upon the return day of the arrest.

6. (1) The minutes of any order required for service or execution shall be drawn up by the party entitled thereto and shall be approved by the clerk of the court.

(2) The copies of such minutes for record and service shall be made by such party and the copy for record shall be signed by the clerk of the court.

7. An interdict and a warrant of arrest other than for civil imprisonment may be executed on any day, at any hour, and at any place.

8. So far as may be necessary to the execution of any such warrant, writ or order, the messenger may open any door on any premises or of any piece of furniture, if opening be refused or if there be no person there who represents the person against whom such warrant, writ or order is to be executed, and the messenger may, if necessary, use force to that end.

### **ORDER XXIII SUBPOENAS**

1. The process of the court for compelling the attendance of any person to give evidence or to produce any book, paper or document shall be by subpoena issued by the clerk of the court and sued out by the party desiring the attendance of such person. In the case of evidence taken on commission, such process shall be sued out by the party desiring the attendance of the witness and shall be issued by the commissioner.

2. There shall be handed to the messenger (if the party suing out the subpoena desires it to be served through the messenger) together with the said subpoena so many copies thereof as there are witnesses to be summoned and also such sum of money as the party for whom they are to be summoned considers that the messenger shall pay or offer to the said witnesses for their conduct money.

3. The court may set aside service of any subpoena if it appears that the witness served was not given reasonable time to enable him to appear in pursuance of the subpoena.

### **ORDER XXIV INTEREST**

1. Where the defendant has not consented to judgment 24 hours before the expiration of the time allowed for appearance to defend, interest from the date of issue of the summons to the date of judgment may in the judgment be added to the amount claimed in the summons at the rate claimed in the summons or, if there be no such rate, then at the rate of six per cent per annum.

2. Every judgment for payment of money shall bear interest from the date of judgment until payment at such rate as may be adjudged or, if there be no such rate, then at the rate of six per cent per annum.

### **ORDER XXV EXECUTION**

#### ***A. General***

1. The process for the execution of any judgment for the payment of money, for the delivery up of goods or premises or for ejection, shall be by warrant issued and signed by the clerk of the court and addressed to the messenger.

2. Such process may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

3. Such process may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the messenger by the party who has sued out such process. A request in writing made from time to time by such person to defer execution of such process for a definite period not being longer than one month shall not be deemed to be a suspension.

4. Any alterations in such process shall be initialled by the clerk of the court before such process is issued by him.

5. Any such process shall be invalid if a wrong person is named therein as a party; but no such process shall be invalid merely by reason of the misspelling of any name therein, or of any error as to date.

6. Except where judgment has been entered by consent or default, execution shall not be issued without special leave of the court applied for at the time of granting the judgment before the day following that on which the judgment is given.

7. Where the messenger is in doubt as to the validity of any attachment or contemplated attachment, he may require that the party suing out the process shall give security to indemnify him.

8. Unless the summons commencing the action has been served upon the defendant personally or he has entered appearance to defend or notice of attachment has been given to him personally-

- (a) if any property corporeal or incorporeal is attached in execution, the judgment creditor shall, at least seven days before the day appointed for the sale of such property, give security to the satisfaction of the messenger for the payment to the execution debtor if such attachment be set aside of any sum which the execution debtor may in law be entitled to recover from the execution creditor for damages suffered by reason of such attachment, or of any proceedings consequent thereon; and if security be not given the attachment shall cease to have effect:

Provided that the execution debtor may by endorsement to that effect on the writ of execution dispense with the giving of security under this rule;

- (b) if moneys are received by the messenger under any form of execution otherwise than as the proceeds of the sale in execution of property in respect of the attachment of which security has been given in terms of paragraph (a), such moneys shall not be paid to the execution creditor until he has given security for the restitution of the full amount received by the messenger if the attachment thereof be thereafter set aside:

Provided that the execution debtor may in writing over his signature dispense with the giving of such security.

9. The prescribed fee for security given under this rule shall without taxation be recoverable as part of the costs of execution.

10. Any surety bond or other document of security given in terms of this rule may be sued upon by the execution debtor without formal transfer thereof to him.

11. Unless otherwise ordered by the court, the costs and expenses of issuing a warrant and levying execution shall be a first charge on the proceeds of the property sold in execution and may, so far as such proceeds are insufficient, be recovered from the execution debtor as costs awarded by the court.

12. Subject to any hypothec existing prior to attachment, all warrants of execution lodged with the messenger on or before the day immediately preceding the date of the sale in execution shall rank *pro rata* in the distribution of the proceeds of the goods sold in execution.

13. Withdrawal of attachment shall be effected by note made and signed by the messenger on the warrant of execution that the attachment is withdrawn, stating the time and date of the making of such note. The messenger shall give notice in writing of the withdrawal and of the time and date thereof to the execution creditor and the execution debtor and to any person by whom a claim to the property attached has been lodged with him:

Provided that the property shall not be released from attachment so long as an unsatisfied warrant of execution lodged under rule 12 remains in the hands of the messenger.

14. If any property attached or about to be attached in execution is claimed by any third party as his property or any third party makes any claim to the proceeds of property so attached and sold in execution, the messenger shall on receipt of the claim forthwith give notice to the execution creditor.

15. Notwithstanding such claim by a third party, the messenger shall attach such property if he has not yet done so and the property shall remain under attachment pending the outcome of interpleader proceedings unless sooner released from attachment upon order of the court or otherwise. The provisions of rule 28 shall *mutatis mutandis* apply to property so

attached.

16. If in the case of property so attached the execution creditor gives the messenger notice within two days after receipt of the notice referred to in rule 14 that he admits the claim, he shall not be liable for any costs, fees or expenses afterwards incurred and the messenger may withdraw from possession of the property claimed.

17. On completion of any sale in execution of property, whether movable or immovable, the messenger shall attach to his return a vendue roll showing details of the property sold, the prices realized, and, where known, the names and addresses of the purchasers and an account of the distribution of the proceeds.

18. No messenger or person on behalf of the messenger shall at a sale in execution purchase any of the property offered for sale either for himself or for any other person.

19. Where any money comes into the hands of the clerk of the court by reason of any writ of execution, the clerk of the court shall forthwith pay such money into the revenue department.

20. The Accountant-General shall, on receipt of a written instruction by the clerk of the court and in accordance therewith, forthwith pay to the plaintiff or plaintiff's attorney the sums directed by the clerk of the court out of moneys paid to the revenue department under rule 19.

#### ***B. Execution against a Partnership***

21. (1) Where a judgment debtor is a partner in a firm and the judgment is against him for a separate debt, the court may, after notice to the judgment debtor and to his firm, appoint the messenger as receiver to receive any moneys payable to the judgment debtor in respect of his interest in the partnership.

(2) Such appointment shall, until the judgment debt is satisfied, operate as an attachment of the interest of the judgment debtor in the partnership assets.

(3) Where the judgment is against a firm, the partnership property shall first be exhausted so far as it is known to the judgment creditor, before the judgment is executed against the separate property of the partners.

#### ***C. Execution against Movable Property***

22. (1) The messenger shall, upon receiving a warrant directing him to levy execution on movable property, repair to the house or place of business of the execution debtor not later than the day following the day of the receipt of such warrant (to which period shall be added, if such house or place of business be situate outside the limits of the town or place where the court is held, one additional day for each 40 kilometres or part of 40 kilometres between such limits and such house or place of business), or as soon as circumstances permit, and there demand payment of the judgment debt and costs or else require that so much movable property be pointed out as the messenger may deem sufficient to satisfy the warrant, and if such last-mentioned request be complied with the said messenger shall make an inventory and valuation of such property. If the property pointed out is insufficient to satisfy the warrant, the messenger shall nevertheless proceed to make an inventory and valuation of so much movable property as may be pointed out in part execution of such warrant.

(2) If the execution debtor cannot be found or does not point out such property, the messenger shall immediately make an inventory and valuation of so much of the movable property belonging to the execution debtor as he may deem sufficient to satisfy the warrant or of so much of the movable property as may be found in part execution of the warrant.

(3) If on demand the execution debtor pays the judgment debt and costs (or part thereof) the messenger shall forthwith endorse the amount paid and the date of payment on the original and copy of the warrant, which endorsement shall be signed by him and countersigned by the execution debtor or his representative.

23. So far as may be necessary to the execution of any such warrant, the messenger may open any door on any premises, or of any piece of furniture, if opening be refused or if there be no person there who represents the person against whom such warrant is to be

executed and the messenger may, if necessary, use force to that end.

24. The messenger shall exhibit the original warrant of execution and shall hand to the execution debtor or leave on the premises a copy thereof.

25. As soon as the foregoing requirements of this Order have been complied with by the messenger, the goods so inventoried by him shall be deemed to be judicially attached.

26. The messenger shall hand a copy of the said inventory signed by himself to the execution debtor or leave the same on the premises, which copy shall have subjoined thereto a notice of the attachment.

27. Where specie and documents are found and attached, the number and kinds thereof shall be specified in the inventory and any such specie or documents shall thereupon be sealed and kept in a place of security.

28. (1) The execution creditor or his attorney shall, where movable property, other than specie or documents, has been attached, within 10 days after notification of such attachment, instruct the messenger in writing whether the property shall be removed to a place of security or left upon the premises in the charge and custody of the execution debtor or in the charge and custody of some other person acting on behalf of the messenger. Unless so instructed within the time aforesaid, the messenger shall leave the movable property, other than specie or documents, upon the premises and in the possession of the person in whose possession the said movable property is attached:

Provided that the execution creditor or his attorney may, upon satisfying the clerk of the court (who shall endorse his approval on the document containing the instructions) of the desirability of immediate removal upon issue of the warrant of execution, instruct the messenger in writing to remove immediately from the possession of the execution debtor all or any of the articles reasonably believed by the execution creditor to be in the possession of the execution debtor.

(2) Where a messenger is instructed as aforesaid to remove the movable property, he shall do so without any avoidable delay, and he shall in the meantime leave the same in the charge or custody of some person who shall have the charge or custody in respect of the goods on his behalf.

(3) Any person in whose charge or custody movable property which has been attached, has been left, shall not use, let or lend such property, or permit it to be used, let or lent, nor shall he in any way do anything which will decrease its value and, if the property attached shall have produced any profit or increase, the custodian shall be responsible for any such profit or increase in like manner as he is responsible for the property originally attached.

(4) If such a custodian, other than the execution debtor, makes a default in his duty he shall not be entitled to recover any remuneration for his charge and custody.

(5) Unless an order of court is produced to the messenger requiring him to detain any movable property under attachment for such further period as may be stipulated in such order, the messenger shall, if a sale in respect of such property is not pending, release from attachment any such property which he has removed to a place of security or left in the charge or custody of a person on his behalf and which has been detained in such a place of security or in the charge or custody of such person on his behalf for a period exceeding six weeks. If such order was made on application made *ex parte*, such order shall not be subject to confirmation.

29. (1) Any movable property sold in execution of process of the court shall be sold publicly and for cash by the messenger or, with the approval of a judicial officer, by an auctioneer or other person appointed by the messenger, to the highest bidder at or as near to the place where the same was attached or to which the same had been so removed as aforesaid as may be advantageous for the sale thereof.

(2) The execution creditor shall, after consultation with the messenger, prepare a notice of sale and furnish two copies thereof to the messenger in sufficient time to enable one copy to be affixed not later than seven days before the day appointed for the sale on the notice board or

door of the courthouse or other public building in which the said court is holden and the other at or as near as may be to the place where the said sale is actually to take place.

(3) If in the opinion of the messenger the value of the goods attached exceeds P100 he shall indicate some local or other newspaper circulating in the district and require the execution creditor to publish the notice of sale in that newspaper not later than seven days before the date appointed for the sale in addition to complying with subrule (2), and to furnish him with a copy of the said paper in which the publication appeared not later than the day preceding the date of sale.

30. The day appointed for the sale shall be not less than 21 days after attachment:

Provided that where the goods attached are of a perishable nature, or with consent of the execution debtor, the court may, upon application, reduce any period referred to in this rule or rule 29 to such extent and on such condition as it may think fit.

31. A sale in execution shall be stopped as soon as sufficient money has been raised to satisfy the said warrant and any warrant referred to in rule 12 and the costs of the sale.

32. Should the messenger have a balance in hand after satisfaction of the claim of the execution creditor and of all warrants of execution lodged with him on or before the day immediately preceding the date of the sale and of all costs, he shall pay the same to the execution debtor if he can be found, otherwise he shall pay such balance into the Guardian's Fund.

#### ***D. Execution against Immovable Property***

33. A warrant of execution against immovable property shall contain a full and complete description of the nature and situation (including the address) of the immovable property to enable it to be traced and identified by the messenger, and shall be accompanied by sufficient information to enable the messenger to give effect to the provisions of rule 34.

34. The mode of attachment of immovable property shall be by notice by the messenger served in like manner as a summons together with a copy of the warrant of execution upon the execution debtor as owner thereof, upon the Registrar of Deeds or other officer charged with the registration of such immovable property, upon all registered holders of bonds (other than the execution creditor) registered against the property attached and, if the property is in the occupation of some person other than the execution debtor, also upon such occupier, and upon the local authority in whose area the property is situated.

35. After attachment the messenger shall ascertain and record whether the said property is subject to any claim preferent to that of the execution creditor and, if that be the case, he shall thereupon notify the execution creditor of the existence of any such claim, and thereafter the provisions of section 38(2) of the Act shall be observed.

36. The messenger may by notice, served in like manner as a summons, require the execution debtor to deliver to him forthwith all documents in his possession or under his control relating in any way to his title to the said property.

37. Where the said property is situate in a district other than that in which the judgment was given, the party requiring execution shall forward the warrant of execution to the messenger of the court of the district in which the said property is situate, who shall proceed to attach the property in the manner provided in this rule.

38. (1) The messenger shall appoint a day and place for the sale of such property which day shall, except by special leave of the court, be not less than one month after service of the notice of attachment.

(2) The execution creditor shall, after consultation with the messenger, prepare a notice of sale containing a short description of the property and its situation, the date, time and place for the holding of the sale and the material conditions thereof and furnish the messenger with as many copies of the said notice as he may require.

(3) The messenger shall indicate two newspapers circulating in the district in which the property is situate and require the execution creditor to publish the said notice once in each of

the said newspapers and in the *Gazette* not later than seven 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 one copy of each of the said papers and with the number of the *Gazette* in which the notice appeared.

(4) Not less than seven days prior to the date of the sale the messenger shall forward by registered post a copy of the notice of sale referred to in subrule (2) to every execution creditor who has lodged a warrant of execution and to every mortgagee in respect of the immovable property whose address is reasonably ascertainable.

(5) Not later than seven days before the day appointed for the sale the messenger shall affix one copy of the notice on the notice board or door of the courthouse or other public building in which the said court is holden and one copy at or as near as may be to the place where the said sale is actually to take place.

39. (1) The conditions of sale shall be prepared by the execution creditor and shall, *inter alia*, provide for payment by the purchaser of any interest due to a preferent creditor from the date of sale of the property to date of transfer. The execution creditor shall, not less than 28 days prior to the appointed date of sale, deliver two copies of the conditions of sale to the messenger and one copy thereof to each person who may be entitled to notice of the sale.

(2) Any interested party may, not less than 21 days prior to the appointed date of sale, upon 24 hours' notice to such other persons as may have received a copy of such conditions of sale and to the execution creditor, apply to a judicial officer for a modification of such conditions of sale and such judicial officer may make such order as he may deem just.

40. The execution creditor may appoint a conveyancer for the purposes of transfer.

41. (1) The execution creditor or any person having an interest in the due and proper realization of such property may, by notice given to the messenger within 14 days after attachment, but subject to the provisions hereinafter contained, require that such property shall be sold by an auctioneer in the ordinary course of business and may in such notice nominate the auctioneer to be employed.

(2) Where such notice is given by any person other than the execution creditor, such notice shall be accompanied by the deposit of a sum sufficient to cover the additional expense of sale by an auctioneer in the ordinary course of business, and in default of such a deposit such notice shall be void and such notice shall lapse if in fact the services of an auctioneer are not obtainable. If after satisfying the claim of the execution creditor and all warrants of execution lodged with the messenger on or before the day immediately preceding the date of the sale and all costs there are surplus proceeds of such property, such deposit shall be returned to the depositor, but if there is not such a surplus such deposit shall, as far as may be necessary, be applied in payment of the auctioneer's fees and expenses.

(3) If two or more such notices are given, the first shall have the preference.

42. The sale shall be by public auction without reserve and the property shall, subject to any order of the High Court made under section 38(2) of the Act and to the other conditions of sale, be sold to the highest bidder.

43. The sale shall be held in front of the courthouse of the district, or, for good cause shown, at such other place as a judicial officer may determine.

44. Where the said property is situate in a district other than that in which the judgment was given, the sale of the said property shall be effected by the messenger of the court of the district in which it is situate in the manner provided by this Order.

45. The messenger 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.

46. (1) Subject to the provisions of subrule (2), all moneys in respect of the purchase price shall be paid to the messenger of the court and not to the execution creditor or any other person on his behalf. The messenger shall forthwith pay such moneys into court and shall not

pay out the purchase money until transfer has been given to the purchaser. Money paid into court in terms of this rule shall be paid into a deposit account with the Government in such manner as the Accountant-General may from time to time direct.

(2) The messenger shall immediately after the sale prepare in order of preference as hereinafter provided in this rule, a plan of distribution of the purchase money received and such plan shall lie in the office of the clerk of the court for inspection by persons having an interest therein for a period of 14 days, unless all such persons inform the messenger in writing that they have no objection to such plan.

(3) After deduction from the purchase money of the costs of execution, the following shall be the order of preference-

- (a) the claims of any creditors ranking in priority to the judgment debtor in their legal order of preference;
- (b) the claim of the execution creditor to the extent of his judgment, plus costs and the claims of other execution creditors who have lodged warrants of execution in terms of rule 12, plus costs;
- (c) the claims of creditors secured in respect of that property in their legal order of preference.

(4) Any person having an interest in such plan and objecting thereto shall, within 14 days, give notice in writing to the messenger, the clerk of the court and all other persons having an interest therein of the particulars of his objection and may bring such plan before the court for review.

(5) Such review shall be on four days' notice to the persons mentioned in subrule (4).

(6) The court, on review, may hear and determine the matter in dispute in a summary manner and may thereafter amend or confirm the plan of distribution or may make such order as may be just.

(7) If-

- (a) no objection be lodged to such plan;
- (b) the persons having an interest signify their concurrence therewith; or
- (c) the plan is amended or confirmed on review,

the clerk of the court shall, on production of evidence that transfer has been given to the purchaser, cause the amount paid into court under subrule (1) to be paid out in accordance with the plan of distribution and any surplus shall, subject to any attachment for any other unsatisfied debt, be paid to the execution debtor.

47. The messenger shall, when notifying the result of the execution in terms of Order II, rule 5, also show the disposal of the amount recovered.

#### **ORDER XXVI INTERPLEADER**

1. (1) Where any third party (hereinafter in this rule referred to as the "applicant") has in his custody or possession property to which two or more persons (hereinafter in this rule referred to as the "claimants") make adverse claims, the applicant may sue out a summons in the form prescribed for that purpose in the First Schedule to these Rules calling upon the claimants to appear and state the nature and particulars of their claims and have such claims adjudicated upon.

(2) If the property in question consists of money, the applicant shall when suing out the summons pay the amount thereof into court. The clerk of the court shall forthwith pay such amount into the revenue department.

(3) The applicant shall annex to such summons an affidavit setting out-

- (a) that he claims no interest in the subject matter in dispute other than for charges or costs;
- (b) that he is not colluding with any of the claimants; and
- (c) that in the case of property other than money paid into court in terms of subrule (2), he

is willing to deal with the property as the court may direct.

2. (1) Where any person other than the execution debtor (hereinafter in this Order referred to as the "claimant") makes any claim to or in respect of property attached by the messenger in execution of any process of the court and the execution creditor has not admitted the claim within the period referred to in Order XXV, rule 16, or where any such claimant makes any claim to the proceeds of property so attached and sold in execution, the messenger shall forthwith prepare and sue out a summons in the form prescribed for the purpose in the First Schedule to these Rules calling upon the claimant and the execution creditor to appear on the date specified in the summons to have the claim of the claimant adjudicated upon.

(2) The clerk of the court shall sign and issue such summons without any fee being paid.

(3) The court shall, when giving judgment, direct by which party such fee shall be paid and thereupon such party shall pay such fee.

(4) Any person making a claim referred to in subrule (1) shall, not less than seven days before the date specified in the summons, lodge with the messenger an affidavit in triplicate setting forth the particulars of his claim and the grounds thereof.

(5) The messenger shall forward one copy of such affidavit to the execution creditor and one copy to the execution debtor.

3. If any claimant does not appear in pursuance of any summons sued out under this rule or fails to file an affidavit referred to in rule 2(4) before the date so referred to or within such further period as the court may allow or appears but fails or refuses to comply with any order made by the court after his appearance, the court may make an order declaring him and all persons thereafter claiming under him barred from making any claim in respect of the subject matter referred to in the summons against the applicant or the messenger.

4. If any claimant referred to in this Order appears in pursuance of the summons the court may-

- (a) order him to state, orally or in writing on oath or otherwise as the court may deem expedient, the nature and particulars of his claim;
- (b) order that the matters in issue shall be tried on a day to be appointed for that purpose and, if any such claimant is a claimant referred to in rule 1, order which of the claimants shall be plaintiff and which defendant for the purpose of trial; or
- (c) try the matters in dispute in a summary manner.

5. Where the matters in issue are tried, whether summarily or otherwise, the provisions of Order XVIII as to the trial of an action shall *mutatis mutandis* apply.

6. The court may, in and for the purposes of any interpleader proceedings, make such order as to any additional expenses of execution occasioned by the claim and as to payment of costs incurred by the applicant or messenger as may be just.

#### **ORDER XXVII CIVIL IMPRISONMENT**

1. The process of the court for summoning any person for civil imprisonment shall be signed and issued by the clerk of the court and shall also be signed by the party suing out the same. When the judgment or order in respect of which proceedings for civil imprisonment are taken was given in any other court, the clerk of the court shall not issue the process until there shall be lodged with him a copy of the judgment or order in such other court duly certified by the clerk of such court.

2. The warrant of the court for the civil imprisonment of any person shall be signed and issued by the clerk of the court and shall be addressed to the messenger of the court and to the keeper of a specified prison. The execution of such warrant may at any time before the arrest of the judgment debtor be stayed by the judgment creditor.

3. Where an order is made for civil imprisonment to be suspended so long as certain instalments are paid, the clerk of the court may before issuing a warrant of civil imprisonment require the party applying therefor to satisfy him that the debtor has failed in due payment of any

such instalment.

4. An application by the judgment debtor for the suspension, variation or discharge of a decree or warrant of civil imprisonment shall be made on notice.

5. Where there are two or more orders of civil imprisonment against the same debtor, such orders shall be cumulative with effect according to priority of issue of the respective warrants, unless otherwise directed by the court.

6. A warrant for civil imprisonment may be executed at any hour on any day except Sunday, Christmas Day and Good Friday, and at any place except within the residence of the person to be imprisoned or the precincts thereof.

7. At centres where an attorney is not available, the court may, on the return day of the process, permit the messenger to move the court for an order in terms of the summons:

Provided that-

- (i) the messenger produces the written authority of the plaintiff or his attorney to move in the matter;
- (ii) the messenger shall not be entitled to put questions to the judgment debtor;
- (iii) no costs shall be recoverable from the judgment debtor in respect of any such motion by the messenger.

### **ORDER XXVIII GARNISHEE ORDERS**

1. (1) Except as provided in rule 7, application for a garnishee order may be made *ex parte* supported by an affidavit setting forth-

- (a) that the applicant has obtained judgment against the judgment debtor in a magistrate's court, unless the judgment was obtained in the court in which the application is made, a certified copy of such judgment shall be annexed to the affidavit;
- (b) that such judgment is still unsatisfied, naming the amount still payable thereunder;
- (c) that the garnishee resides, carries on business or is employed within the district and is indebted to the judgment debtor, setting out the cause of the said debt and whether or not it is for salary or wages and the amount of the debt or that such amount is not known to the deponent;
- (d) that the debt is, at the time of the application, due and payable; and
- (e) if the debt is in respect of salary or wages, or both that the judgment debtor will, after the execution of the order sought, have a sufficient balance of income to maintain himself and those dependent upon him, giving details.

(2) If in open court the judgment debtor admits sufficient of the facts set out in subrule (1) to warrant an attachment being granted, such admissions shall be recorded and application for a garnishee order may be made orally without an affidavit.

(3) Upon such application the court may require such further evidence as it shall see fit.

2. (1) Upon such application the court may order the garnishee to pay to the judgment creditor or his attorney so much of the debt due and payable from him to the debtor as may be sufficient to satisfy the said judgment, together with the costs of the garnishee proceedings (including the costs of service) or, failing such payment, to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.

(2) The clerk of the court shall note upon the face of such order the day and hour at which it was made.

(3) Such order shall be served upon the garnishee and upon the judgment debtor and shall operate as an attachment of the said debt in the hands of the garnishee.

(4) Every such order shall bear upon the face thereof the following note in bold type-  
"***To the above-named Garnishee***-If the debt due by you to the above-named judgment debtor was not owing both at the day and hour above-mentioned and at the time when this order was served upon you, you should appear at the court and prove the facts. If you do not appear, you may be compelled to pay the debt twice over.

*To the above-named Judgment Debtor*-If the judgment against you has been satisfied, or is, for any reason, no longer operative against you or if the debt is not due and payable or is due to you for salary or wages and its attachment will not leave you a sufficient amount to enable you to maintain yourself and those dependent on you, you should appear at the court and prove the facts; but you cannot be heard on any other point."

3. (1) The judgment debtor may appear upon the return day and shall have a *locus standi* to oppose the confirmation of the order but only upon the ground of irregularity in the proceedings or that the judgment had been satisfied otherwise than under the garnishee order, or was for some reason not operative against him at the time when he received notice of the garnishee application or that the debt sought to be attached is not due and payable or that it is due for salary or wages and that its attachment will not leave him a sufficient amount to maintain himself and those dependent on him.

(2) If, upon the return day, the judgment debtor satisfies the court that the judgment was not so operative, or that the debt is not due and payable, the order shall be set aside; and all the subsequent rules of this Order shall be read subject to this provision.

(3) If it is shown to the court that the debt is due for salary or wages, and that its attachment, in whole or in part, will not leave the judgment debtor a sufficient amount to maintain himself and those dependent upon him, the order shall (subject to the provisions of section 44 of the Act) be set aside as to such amount and shall only apply to the balance above such salary or wages; and all the subsequent rules of this Order shall be read subject to this provision.

(4) If on the return day the debtor in open court consents thereto or his written consent thereto be produced the court may, subject to the provisions of section 45(1) of the Act and whether or not the provisional order be confirmed in whole or in part, order that the garnishee do pay to the judgment creditor or his attorney out of the earnings accruing to the judgment debtor from the garnishee such sums of money at such future times as it may direct. The provisions of rule (7)3 shall apply to the enforcement of such an order against the garnishee.

4. If the garnishee pays any money to the judgment creditor or his attorney pursuant to the order of the court, the judgment creditor or his attorney shall retain the amount until the return day and shall thereafter deal with it in accordance with the order made by the court.

5. (1) If the garnishee does not dispute that the debt is owing from him to the debtor or allege that he has a set-off against the debtor or that the debt sought to be attached belongs to or is subject to a claim by some other person or if he shall not appear to show cause as is mentioned in rule 2(1), the court may order execution to issue against the garnishee for so much of the debt as may be sufficient to satisfy the said judgment together with the costs of the garnishee proceedings; and the process for the execution of such order shall be as nearly as possible in accordance with the provisions of Order XXV:

Provided that, if the order has been duly served upon the garnishee but not upon the judgment debtor, the court shall order the messenger to pay into court the proceeds of such execution to abide the further order of the court. Any money paid into court shall forthwith be paid to a revenue officer.

(2) In such event the judgment creditor may thereafter apply (if within six months of the return day upon delivery of notice to the judgment debtor and thereafter *ex parte*) for the payment out of court to him of such proceeds; and upon such application the court may make such order as shall be just.

6. (1) If the garnishee disputes his liability to pay the said debt or alleges that he has other defence, set-off or counterclaim which would be available to him if he were sued for the said debt by the judgment debtor, the court may order the garnishee to state, orally or in writing, on oath or otherwise, as to the court may seem expedient, the particulars of the said debt and of his defence thereto and may either hear and determine the matters in dispute in a summary way or may order-

- (a) that the matters in issue shall be tried under the ordinary procedure of the court; and
- (b) that, for the purpose of such trial, the judgment creditor shall be plaintiff and the garnishee defendant or *vice versa*.

(2) If the garnishee alleges that the said debt belongs to or is subject to a claim by some other person, the court may order such other person to appear and state the nature and particulars of his claim and either to maintain or relinquish it and may deal with the matter as if the judgment creditor and such other person were claimants in interpleader under Order XXVI.

(3) If the judgment debtor alleges that the judgment has been satisfied or is for some other reason not operative against him or that the debt is not due and payable to him rules 4, 5 and 6 of Order XXVI shall apply to the subsequent proceedings in the matter as if the garnishee had taken out an interpleader summons under that Order, and as if the judgment creditor and the judgment debtor were claimants within the meaning of that Order.

(4) After hearing the parties or such of them as shall appear, the court may-

- (a) order execution to issue against the garnishee;
- (b) declare the claims of any person to the debt attached to be barred;
- (c) dismiss the application;
- (d) make such other order as may be just.

7. (1) Application for the attachment of future or accruing earnings shall be made on notice to the judgment debtor and the garnishee. The notice shall set forth, *mutatis mutandis*, the particulars specified in paragraphs (a), (b), (c) and (e) of rule 1(1).

(2) At the hearing of the application the court may (subject to the provisions of section 45 of the Act) order that the garnishee do pay periodically, to the messenger definite amounts out of the earnings of the judgment debtor.

(3) If the garnishee fails to pay to the judgment creditor or his attorney the sums of money at the times specified in such order, the judgment creditor may, on notice to the garnishee, make application for an order that execution issue against the garnishee. The provisions of rule 6(1) and (2) shall apply to the hearing of such application.

(4) After hearing the parties the court may-

- (a) dismiss the application;
- (b) order that execution issue against the garnishee in respect of any sums payable and unpaid and of any costs ordered to be paid by him;
- (c) order that the costs of the application be paid by either party;
- (d) make such other order as may be just.

#### **ORDER XXIX**

#### **REVIEW OF JUDGMENTS AND ORDERS**

1. (1) Any party to an action in which a default judgment is given may within one month after such judgment has come to the knowledge of the party against whom it is given apply to the court to rescind or vary such judgment.

(2) Every such application shall be on affidavit which shall set forth shortly the reasons why the applicant did not appear and the grounds of defence to the action or proceeding in which the judgment was given or of objection to the judgment.

(3) Except where leave has been given to defend as a pauper under Order V, no such application shall be set down for hearing until the applicant has paid into court, to abide the directions of the court, the amount of the costs awarded against him under such judgment and also the sum of P10,00 as security for the costs of the application:

Provided that the judgment creditor may by consent in writing lodged with the clerk of the court waive compliance with this requirement.

(4) Unless the applicant proves to the contrary, it shall be presumed that he had knowledge of such judgment within two days after the date thereof.

2. (1) The court may on the hearing of any such application, unless it is proved that the applicant was in wilful default, and if good cause be shown, rescind or vary the judgment in

question and may give such directions and extensions of time as may be necessary in regard to the further conduct of the action or application.

(2) The court may also make such order as may be just in regard to moneys paid into court by the applicant.

(3) If such application is dismissed, the default judgment shall become a final judgment.

3. (1) The rules contained in this Order shall *mutatis mutandis* govern all proceedings for the rescission or variation of any judgment by the court in the exercise of the jurisdiction conferred by section 22 of the Act.

(2) Where rescission or variation of a judgment is sought on the grounds of invalidity, fraud or mistake, application may be made not later than one year after the applicant first had knowledge of such invalidity, fraud or mistake.

4. (1) Any judgment of the court may, on the application of any person affected thereby who was not a party to the action or matter, made within one month after he has knowledge thereof, be so rescinded or varied by the court to the extent only to which such applicant is affected thereby.

(2) The provisions of rules 1 and 2 shall *mutatis mutandis* apply to any such application.

### **ORDER XXX CIVIL APPEALS**

1. Upon a request in writing by any party within seven days after judgment and before noting an appeal and upon payment by such party of the prescribed fee, the judicial officer shall within 14 days hand to the clerk of the court a written judgment which shall become part of the record showing-

- (a) the facts he found to be proved; and
- (b) his reasons for judgment.

2. The clerk of the court shall forthwith on receipt from the judicial officer of such written judgment supply to the party applying therefor a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

3. An appeal may be noted within 21 days after the date of the judgment appealed against or within 14 days after the clerk of the court has so supplied a copy of the written judgment to the party applying therefor, whichever period shall be the longer.

4. An appeal shall be noted by the delivery of notice and, unless the High Court shall otherwise order, by giving security for the respondent's costs of appeal to the amount of P100,00:

Provided that no security shall be required from the State.

5. Money paid into court under rule 4 shall be paid to the Accountant-General and shall be available for the payment of the respondent's costs, if so ordered by the court.

6. A cross-appeal shall be noted by the delivery of notice within eight days after the delivery of the notice of appeal.

7. A notice of appeal or cross-appeal shall state-

- (a) whether the whole or part only of the judgment is appealed against, and, if part only, then what part;
- (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

8. (1) Upon delivery of a notice of appeal the judicial officer shall within 14 days thereafter hand to the clerk of the court a statement in writing showing (so far as may be necessary having regard to any written judgment already handed in by him)-

- (a) the facts he found to be proved;
- (b) the grounds upon which he arrived at any finding of fact specified in the notice of appeal; and
- (c) his reasons for any ruling of law or for the admission or rejection of any evidence so specified.

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

(3) The provisions of this rule shall also, so far as may be necessary, apply to a cross-appeal.

9. The party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by the Rules of the High Court and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the High Court shall otherwise order.

10. The clerk of the court shall, within 14 days after he receives notice that an appeal has been set down for hearing, transmit to the Registrar of the High Court the record in the action duly certified.

11. (1) A respondent desiring to abandon the whole or any part of a judgment appealed against may do so by the delivery of a notice in writing stating whether he abandons the whole, or, if part only, what part, of such judgment.

(2) Every such notice of abandonment shall become part of the record.

12. Where the parties agree that the decision of the court shall be final, either party may lodge the memorandum of such agreement with the clerk of the court, and such memorandum shall thereupon become part of the record in the action or matter.

### **ORDER XXXI ASSESSORS**

1. (1) The court may from time to time compile a list of persons who, having regard to the nature of the business of the court and to their fitness from ability and reputation, appear to be qualified to act as assessors under section 20 of the Act and who are willing so to act upon reasonable notice and upon payment of the fees prescribed.

(2) Every person for the time being named in such list shall be an assessor for the purposes of this Order and shall continue to be an assessor until a new list has been compiled or until he gives to the clerk of the court his resignation in writing. Upon receipt of such resignation the clerk of the court shall remove the name of such assessor from the list:

Provided that an assessor summoned to act as such in any action may not without the leave of the court resign during the trial of an action.

(3) Nothing in this Order shall prevent the court from summoning, with the consent of all parties to the action, persons not on the list to act as assessors in any special action.

(4) The number and names of the assessors to sit in any case shall be decided by consent of the parties or, where they are unable to agree, by the court:

Provided that not more than two assessors shall sit in any case.

2. (1) A party who desires the trial to take place with assessors shall deliver notice of application for assessors, if he be the plaintiff with the notice of trial and if he be the defendant not more than three days after receiving notice of trial. Such notice shall contain either a consent by the other party or a notice setting down the application for hearing.

(2) The party applying shall, at the time of delivering the notice of application, deposit with the clerk of the court the sum of P6,00 for each assessor applied for and shall be liable for any further sum becoming due to the assessors for fees. The fees and expenses of the assessors shall, unless otherwise ordered by the court, be costs in the action.

(3) When the court of its own motion summons any assessor to its assistance the fees for such assessor shall be paid by the State.

3. (1) If the application be consented to or granted, the clerk of the court shall summon the assessors named in the consent or selected by the court by serving a summons upon each of them in any of the manners provided for the service of a summons commencing an action.

(2) If at the time and place appointed for the trial either of the assessors summoned do not attend, the court may either proceed to try the action with the assistance of the assessor, if any, or without assistance if none attend, or may adjourn the trial.

4. (1) Where a trial is postponed or adjourned, the party applying for assessors shall, forthwith after the order for postponement or adjournment, pay to the clerk of the court (in

addition to the deposit mentioned in rule 2) the fees due up to the hour of postponement or adjournment to such assessors as have attended.

(2) Where such payment is not made, the court may stay the action until it be made or may continue the trial without the assistance of assessors or may make such order as may be just.

5. Every assessor acting in a case shall be entitled to the fees set out in Table C of the Second Schedule to these Rules.

## **ORDER XXXII COSTS**

1. The court in giving judgment or in making any order, including any adjournment or amendment, may award such costs as may be just, and may, in the case of any adjournment without evidence being taken or argument heard, also award as counsel's fee payment of a refresher fee.

2. The costs of any application or order or issue raised by the pleadings may-

- (a) be awarded by the court irrespective of the judgment in the action;
- (b) be made costs in the action; or
- (c) be reserved to be dealt with on the conclusion of the action,

but, if no order is made, such costs shall be costs in the action.

3. Unless the court shall for good cause otherwise order, costs of interim orders shall not be taxed until the conclusion of the action, and a party may present only one bill for taxation up to and including the judgment or other conclusion of the action.

4. Where a judgment or order for costs is made against two or more persons it shall, unless the contrary is stated, have effect against such persons severally as well as jointly.

5. The scale of fees to be taken by attorneys as between party and party shall be that set out in Table A of the Second Schedule in addition to the necessary expenses.

6. Except as to appearance in open court without counsel, such fees shall be allowable whether the work has been done by the attorney or by his clerk, but shall, except in the case of the fee referred to in paragraph 13 of the general provisions under Table A of the Second Schedule be allowable only in so far as the work to which such fees have been allocated has in fact and necessarily been done.

7. The magistrate presiding over any civil proceedings which last for the period of one hour or longer, shall note on the record of the proceedings in respect of each day thereof-

- (a) the time of the day when the proceedings actually commenced and actually ended; and
- (b) the time of the day of the commencement and conclusion of each adjournment on that day.

8. The court may on request made at or immediately after the giving of judgment in any contested action or proceeding in which-

- (a) is involved any difficult question of law or of fact;
- (b) the plaintiff makes two or more claims which are not alternative claims; or
- (c) the claim or defence is frivolous or vexatious,

award costs on any scale higher than that on which the costs of the action would otherwise be taxable.

9. Where in any proceedings it is impossible for a party to obtain the services of a local attorney, he may employ the nearest available or some other attorney, and upon proof thereof the court may, if costs are awarded to him, order that such costs shall include the reasonable travelling expenses of such attorney and also a special allowance not exceeding P20 for each day's absence from such attorney's usual place of business:

Provided that if the attorney employed be not the nearest available attorney, the travelling expenses and special allowance so allowed shall not exceed the expenses and allowance which would have been allowed if the nearest available attorney had been employed.

10. Where the court is of opinion that at the hearing the party to whom costs are

awarded has occupied time unnecessarily or in relation to matters not relevant to the issue, the court may disallow a proportionate part of the hearing fee payable to his attorney or counsel.

11. The court may in its discretion order that the whole of the costs of an action (including the costs of any claim in reconvention) be paid by the parties in such proportions as it may direct.

12. Where the court is of opinion that expense has been unnecessarily incurred because of the successful party's failure to take a course which would have shortened the proceedings and decreased the costs, it may award only such costs as would have been incurred if the successful party had taken such course.

13. Where costs in convention and reconvention are awarded to different parties, the clerk of the court shall on taxation subject to any order which has been made by the court, allow as costs in convention all such costs as would in his judgment have been incurred if no claim in reconvention has been made and as costs in reconvention all other costs allowed.

14. The costs of issuing any warrant of execution or arrest shall, where they are payable by the party against whom the warrant is issued, be assessed by the clerk of the court without notice, and inserted in the warrant.

15. Witness fees and expenses shall be allowed in respect of the attendance at the trial of a party to an action or proceeding only if such party has been declared by the court to be a necessary witness.

16. Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's entry or appearance to defend, or on the defendant's consent to judgment before the time for such appearance has expired, the party to whom such costs or expenses have been awarded shall deliver a bill of such costs or expenses and give at least five days' notice of taxation for an hour to be fixed (generally or specially) by the clerk of the court and he may include in such bill all such payments as have been necessarily and properly made by him.

17. The clerk of the court shall thereupon tax and allow the costs and expenses awarded:

Provided that witness fees shall not be allowed in taxation unless properly vouched for.

18. Where more than one-fourth of the bill (excluding expenses) is taxed off, the party presenting the bill shall not be allowed any costs of taxation.

19. Where a bill of costs as between attorney and client is required to be taxed, taxation shall take place on at least five days' notice thereof to the attorney or client, whether or not an action thereof is pending:

Provided that, notwithstanding the provisions of rule 3, a bill of costs as between attorney and client may be taxed at any time after termination of the mandate.

20. Where liability for costs is determined without judgment of the court by virtue of the provisions of Order XII or by a settlement recorded in terms of Order XIX, such costs shall be taxable by the clerk of the court as if they had been awarded by the court.

21. On failure of the party giving notice of taxation to appear at the appointed time for taxation, such bill of costs may be taxed in his absence but such party shall not be allowed any costs of taxation.

22. (1) In criminal matters an attorney's remuneration shall be specially agreed in advance in a gross sum or on the basis of a reasonable charge.

(2) Where the agreement is for remuneration in a gross sum, the gross sum shall cover all services of the attorney until the issues in the case shall be determined irrespective of the length of the case or complexity of the issues.

(3) Where the agreement is for remuneration by way of reasonable charge, the client may demand a detailed bill of charges and expenses and if the client disputes the reasonableness of the charges and expenses he may, by notice of motion (which must state the grounds of objection), apply to a judicial officer to determine the dispute and the judicial officer

may proceed summarily in the matter and may make such order (including an order as to costs of the motion) as he considers just.

(4) Where on the authority of the client an advocate is instructed to conduct the case, the charges of the attorney for work done by him shall, as far as practicable, be in accordance with the tariff laid down in civil matters; and the attorney shall, on request, provide the client with a bill of charges. Such bill shall be taxable by the clerk of the court as if it were a bill of costs in a civil matter.

### **ORDER XXXIII FEES OF THE CLERK OF THE COURT AND OF THE MESSENGER OR OTHER PERSON EFFECTING SERVICE**

1. The fees to be taken by the clerk of the court shall be those prescribed in Table D of the Second Schedule.

2. (1) Where any dispute arises between the clerk of the court and any person desiring to lodge any document as to the fees payable thereon, the question shall be referred to a judicial officer, who shall decide the same in a summary manner.

(2) Such judicial officer's decision shall be final for the purpose of the action or matter in respect of which such document is lodged, but such decision shall be without prejudice to any other rights of any person interested.

3. The fees and charges to be taken by the messenger or other person, not being a party to the action, effecting service shall be those prescribed in Table B of the Second Schedule.

4. Every account of fees or charges furnished by a messenger or other person, not being a party to the action, effecting service shall contain the following note:

"You may require this account to be taxed and vouched before payment".

5. (1) Any party having an interest may, by notice in writing, require the fees and charges claimed by or paid to the messenger or other person effecting service to be taxed by the clerk of the court and may attend such taxation.

(2) Upon such taxation, the messenger or other person effecting service shall vouch to the satisfaction of the clerk of the court all charges claimed by him.

(3) Where the fees and charges of the messenger or other person, not being a party to the action, effecting service are taxed and passed in full, the messenger or that other person, as the case may be, shall be allowed an additional fee of 50 thebe for attending taxation.

6. This Order shall not apply to criminal matters.

### **ORDER XXXIV REVIEW ON TAXATION**

1. Any interested party may, within seven days after he has knowledge thereof bring before a judicial officer for review-

- (a) the costs and expenses claimed in any undefended action;
- (b) the assessment by the clerk of the court of any costs and expenses;
- (c) the taxation by the clerk of the court of any costs awarded in any action or matter;
- (d) the taxation by the clerk of the court of any fees or charges of the messenger.

2. Such review shall be on five days' notice to the party entitled to receive or liable to pay such costs and expenses or to the messenger, as the case may be.

3. Any party dissatisfied with the decision of the judicial officer as to any item or part of an item which was objected to before the clerk of the court, may, after notice to the other party, within four days of the decision, require the judicial officer to state a case for the decision of a judge, which case shall embody all relevant findings of fact by the judicial officer:

Provided that, except with the consent of such officer, no case shall be stated where the total of the amounts which he has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed, respectively, is less than P4,00.

4. Any party may within seven days after the judicial officer has so stated a case submit

contentions in writing to the judicial officer.

5. The judicial officer shall lay the case together with the written contentions submitted and his own report, not later than 10 days after receipt of such contentions, before a judge who may then-

- (a) decide the matter upon the case and contentions so submitted, together with any further information which he may require from the judicial officer;
- (b) decide it after hearing the parties or their counsel or attorneys in chambers;
- (c) refer the case for decision to the High Court.

6. The judge or the court so deciding may make such order as he or it deems fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or the High Court as costs.

#### **ORDER XXXV APPEALS TO MAGISTRATES' COURTS**

Subject to the provisions of any law:

1. Where an appeal lies to a magistrate's court it may be noted by delivery of notice within 30 days after the date of the judgment appealed against.

2. The notice of appeal shall set out concisely and distinctly the grounds of appeal.

3. The party noting the appeal shall prosecute the same within 21 days after the noting of the appeal by applying to the clerk of the court for a date of hearing and on his failure to do so the appeal shall be deemed to have lapsed:

Provided that the court may on good cause shown condone any delay in prosecuting an appeal.

4. The hearing of the appeal shall be subject to the delivery by the appellant of notice of set-down for a day approved by the clerk of the court.

5. Such notice shall be delivered at least seven days before the day of hearing.

6. At any time after delivery of notice of appeal but not later than delivery of notice of set-down the appellant shall cause to be filed with the clerk of the court the record, or a duly certified copy thereof, of the proceedings which resulted in the judgment or decision under appeal.

7. Subject to the provisions of any other law regulating procedure of the court on such appeals, the court may, in its discretion, grant leave to a party to adduce oral evidence at the hearing of the appeal or proceed by way of re-hearing either in whole or in part.

8. The court may in its discretion award to either party the costs incurred in the appeal. Such costs shall be taxed on such scale of costs prescribed for actions in the court as the court may direct.

#### **ORDER XXXVI PRE-TRIAL PROCEDURE**

1. The court may at any stage in any legal proceedings in its discretion *suo motu*, or upon the request in writing of any party, direct the parties or their representatives to appear before it in chambers for a conference to consider-

- (a) the simplification of the issues;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of facts and of documents with a view to avoiding unnecessary proof;
- (d) the limitation of the number of expert witnesses;
- (e) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.

2. The request in writing referred to in rule 1 shall be made in duplicate to the clerk of the court requesting the court to call a pre-trial conference and shall indicate generally the matters which it is desired should be considered at such a conference.

3. The clerk of the court shall forthwith place such request before a judicial officer, who

shall, if he decides to call a conference, direct the clerk of the court to issue the necessary process.

4. The process for requiring the attendance of parties or their legal representatives at a pre-trial conference shall be by letter signed by the clerk of the court, together with a copy of the request, if any, referred to in rule 1. Such letter shall be delivered by hand or registered post at least seven days prior to the date fixed for the said conference; unless the parties agree to a lesser notice.

5. The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or their representatives.

6. Such order shall be binding upon the parties unless altered at the trial to prevent manifest injustice.

7. If a party refuses or neglects to appear at the conference, the court may, upon conclusion of the proceedings, order the party who has so absented himself to pay such costs as in the opinion of the court were incurred as a result of such absence.

### **ORDER XXXVII GENERAL**

1. (1) Except as is otherwise provided in these Rules, failure to comply with these Rules or with any request made in pursuance thereof, shall not be ground for the entry of judgment against the party in default.

(2) Where any provision of these Rules or any request made in pursuance of any such provision has not been fully complied with, the court may on application order compliance therewith within a stated time.

(3) Where any order so made is not fully complied with within the time so stated, the court may on application forthwith enter judgment in the action against the party so in default or may adjourn the application and grant an extension of time for compliance with the order on such terms as to costs and otherwise as shall be just.

(4) The court may on either such application order such stay of proceedings as may be necessary.

2. (1) Any time limit prescribed by these Rules (except the period within which appeal must be noted) may at any time whether before or after the expiry of the period limited be extended-

(a) by the written consent of the opposite party; and

(b) if such consent is refused, then by the court on application and on such terms as to costs and otherwise as may be just.

(2) Where there has been short service without leave, the court may instead of dismissing the application, adjourn it until (at earliest) the expiration of the period required for full service; and thereupon any objection to short service shall lapse.

3. (1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent or by the court, either on application or of its own motion.

(2) Where such an adjournment or postponement is made *sine die*, either party may by delivery of notice of reinstatement set down the action, application or matter for further hearing on a day generally or specially fixed by the clerk of the court, not earlier than seven days after delivery of such notice.

(3) Any adjournment or postponement shall be on such terms as to the costs and otherwise as the parties may agree to or as the court may order.

4. (1) If a plaintiff or applicant does not appear at the time appointed for the trial of the action or the hearing of the application, the action or application may be dismissed with costs.

(2) If a defendant or respondent does not so appear, a judgment against him (not exceeding the relief claimed) may be given with costs.

5. The withdrawal or dismissal of an action or a decree of absolution from the instance shall not be a defence to any subsequent action; but if a subsequent action is brought for the same or substantially the same cause of action before payment of the costs awarded on such withdrawal, dismissal or decree of absolution, the court may on application, if it thinks fit and if the said costs have been taxed and payment thereof has been demanded, order a stay of such subsequent action until such costs shall be paid and that the plaintiff shall pay the costs of such application to stay proceedings.

6. (1) No process or notice shall be invalid by reason of any obvious error in spelling or in figures or of date.

(2) If any party has in fact been misled by any such error in any process or notice served upon him, the court may on application grant him such relief as may be just, and may for that purpose set aside the process or notice and rescind any default judgment given thereon.

7. (1) Where it is necessary to give in evidence in the court any record, entry or document of the same court in another action, the clerk of the court shall on reasonable notice produce and show the original thereof and the cost of copies shall not be allowed.

(2) Where it is necessary to give in evidence in another court any such record, entry or document, a copy thereof certified by the clerk of the court may be given in evidence without production of the original.

8. (1) The court may, on application by a person desiring to intervene in an action and having an interest therein, grant leave to such party to intervene on such terms as may be just.

(2) The court may, on application by any party to an action, order that another person shall be added either as a plaintiff or as a defendant, on such terms as may be just.

9. (1) Where the plaintiff-

- (a) is a mere nominal plaintiff and is in a condition of poverty or insolvency;
- (b) is a limited company and there is reason to believe that the company will be unable to pay the costs of the defendant if his defence is successful; or
- (c) is ordinarily resident outside of Botswana and has no assets within Botswana which can be reached,

the defendant may (unless the plaintiff has obtained leave to sue as a pauper) after service of the summons and before close of the pleadings require him to give security for the costs of the action (not including the principal or costs of any claim in reconvention made by the defendant):

Provided that if the fact relied upon first came to the knowledge of the defendant after the close of pleadings, the defendant may within two days after such fact has come to his knowledge require that such security be given.

(2) If such request is not complied with within 48 hours, the court may on application either stay the proceedings until such request is complied with or dismiss the action.

(3) In this rule "plaintiff" shall not include a plaintiff in reconvention, nor shall "action" include a counterclaim.

10. If summons in an action be not served within 12 months of the date of its issue or, having been served, the plaintiff has not within the time taken further steps in the prosecution of the action, the summons shall lapse:

Provided that where the plaintiff or his attorney files an affidavit with the clerk of the court before the expiration of such period setting out:

- (i) that at the request of the debtor an extension of time in which to pay the debt claimed or any portion thereof has been granted to him,
- (ii) that in terms of the agreement judgment cannot, except in case of default, be sought within a period of 12 months from the issue of the summons,
- (iii) the period of the said extension,

the summons shall not lapse until 12 months after the expiration of the period of extension.

11. When a court imposes upon any person a fine for failure to appear or other contempt of court and the fine is not forthwith paid, the clerk of the court may issue process for the

recovery of the amount of such fine and such process shall be executed by the messenger of the court in the manner prescribed in Order XXV. For the purposes of issue and execution of such process the State shall be deemed to be the judgment creditor.

**ORDER XXXVIII  
CRIMINAL MATTERS**

1. (1) The clerk of the court shall keep a book to be styled the "Criminal Record Book" in which he shall daily enter particulars of every criminal case coming before the court on that day.

(2) The charge sheet or, when the matter comes before the court by way of preparatory examination, the inner sheet, shall when the matter first comes before the court be numbered by him with a consecutive number for the year and the case shall then be entered in the Criminal Record Book under that number.

(3) The particulars to be recorded in the Criminal Record Book shall include-

- (a) date of hearing;
- (b) number of case;
- (c) name and description of accused;
- (d) crime or offence charged;
- (e) verdict;
- (f) sentence or other disposal;
- (g) remarks (including date and effect of any order of a superior court on review or appeal).

(4) The judicial officer presiding at the hearing shall cause to be recorded in the Criminal Record Book any sentence imposed or other order of disposal made by him including acquittal, or other discharge, postponement of sentence, adjournment, remand to another court or committal for trial.

2. (1) The court may in any criminal trial direct that the plea and statement of the accused, the evidence orally given, any exception or objection taken during the course of the proceedings, the rulings and judgment of the court and such other portion of the proceedings as the court may specially indicate, be taken down in shorthand either verbatim or in narrative form.

(2) Every person for the taking of shorthand notes in terms of subrule (1) or for the transcription of notes so taken by another person shall be deemed to be an officer of the court and shall before entering on his duties take before a judicial officer an oath in the form prescribed in the First Schedule.

(3) The shorthand notes taken in terms of subrule (1) shall be certified as correct by the writer and shall be filed by the clerk of the court with the record of the case. Unless the judicial officer presiding at the trial shall otherwise direct, the notes shall be transcribed as soon as may be after the conclusion of the trial, and the transcription shall be certified as correct by the person making it and also filed with the record.

(4) Shorthand notes and transcripts thereof certified as provided in subrule (3) shall be deemed to be correct and shall form part of the record of the proceedings in the trial:

Provided, however, that the court may on application by the prosecutor or by the accused made within 14 days after the conclusion of the trial or after the completion of the transcription of such notes order the amendment of such notes or such transcript.

(5) Where by direction of the judicial officer in terms of subrule (3) the shorthand notes have not been transcribed, any person may at any time by notice to the clerk of the court require that a transcription be made. Any person other than the prosecutor or the accused so requiring transcription shall pay to the clerk of the court at the time of making the request fees at such rates as the Chief Justice may from time to time prescribe.

(6) Any person may on request obtain from the clerk of the court a copy of any transcript made in terms of subrule (3) or (5) upon payment, except in the case of the State, at the time of making the request, of fees at such rates as the Chief Justice may from time to time prescribe.

**ORDER XXXIX**

**PAYMENT OF COURT FEES** 1. Anything to the contrary in any law notwithstanding, there shall be issued a general receipt for all fees received, and the payment in respect thereof recorded on the relevant document.

**ORDER XL**

**TARIFF OF ALLOWANCES PAYABLE TO WITNESSES IN CIVIL PROCEEDINGS IN THE MAGISTRATES' COURTS** 1. A witness attending upon subpoena in any civil proceeding shall be paid subsistence and transport allowances at the same rates as are provided in the tariff for witnesses in criminal proceedings.

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

**FIRST SCHEDULE  
FORMS**

Form No.

1. General Headings
2. General Conclusions
3. General Form of Notice of Application
4. Summons Commencing Action
5. Endorsement on Summons
6. Conclusion to Endorsement of Claim
7. Notice under Order VI, Rule 8, for Substituted Service
8. Notice of Service of Summons
9. Notice of Non-service of Summons
10. Notice of Consent to Judgment
11. Request for Default Judgment
12. Notice of Withdrawal
13. Notice of Application for Summary Judgment
14. Affidavit in Support of Application for Summary Judgment
15. Forms as to Inspection and Production of Documents
16. Certificate of Record
17. Order Obtained *Ex Parte*
18. Order for Arrest of Person *Suspectus de Fuga*
19. Warrant for Fine or Arrest of a Witness in Default
20. Warrant for the Apprehension of a Witness in Default
21. Security on Arrest or Interdict *Ex Parte*
22. Subpoena
23. Security for stay of Execution
24. Security when Execution is Allowed Pending Appeal
25. Warrant of Ejectment or Upon Decree for Delivery up of Possession of Premises
26. Warrant upon Decree for the Delivery up of Goods
27. Warrant of Execution against Property
28. Notice of Attachment in Execution
29. Security Bond on Attachment
30. Interpleader Summons (General)
31. Interpleader Summons (Messenger)
32. Security under Order No. XXV, Rule 7
33. Summons for Civil Imprisonment
34. Warrant for Civil Imprisonment
35. Affidavit in Support of Application for a Garnishee Order
36. Garnishee Order
37. Garnishee Order for the Attachment of emoluments
38. Agreement not to Appeal
39. Application for Trial with Assessors
40. Summons to Assessor

- 41. Notice of Abandonment of part of Claim, etc.
- 42. Commission *de bene esse*
- 43. Request to Inspect Record
- 44. Oath of Office of Shorthand-Writer

**No. 1-GENERAL HEADINGS**

**1. In Actions**

In the Magistrate's Court for the District of .....  
 held at ..... No. .... of 20.....  
 Between ..... Plaintiff  
 and ..... Defendant

**2. In Applications**

In the Magistrate's Court for the District of .....  
 held at ..... No. .... of 20.....  
 In the matter of the Application .....  
 ..... Applicant  
 against ..... Respondent.

**3. In Garnishee Matters**

In the Magistrate's Court for the District of .....  
 held at ..... No. .... of 20.....  
 In the matter of ..... Creditor  
 ..... Judgment Debtor  
 ..... Garnishee.

**No. 2-GENERAL CONCLUSIONS**

**1. Process for Service**

Dated at ..... this .....  
 day of ..... 20 .....

*Clerk of the Court.*

**2. Process for Execution**

And return to this Court what you have done by virtue hereof, for which this shall be your  
 warrant.

Dated at ..... this .... day of ..... 20 .....

By order of the Court.  
*Clerk of the Court.*

(Attorney for) Execution Creditor.

**3. Notice**

Dated at ..... this .... day of ..... 20 .....

Attorney for the .....

To: .....

**4. Security Bond**

In witness whereof the said ..... and .....  
 have hereunto set their hands at ..... this  
 ..... day of ..... 20 .....

As witnesses:

- 1. (Signature and address)
- 2. (Signature and address)

**5. Agreement**

Witness our hands this ..... day of ..... 20 .....

Plaintiff or Plaintiff's Attorney.

Defendant or Defendant's Attorney.

As witnesses:

- (a) (Signature and address)
- (b) (Signature and address)

**6. Affidavit**

Sworn at ..... this ..... day of ..... 20 .....  
Before me,  
(Signed) .....  
*Justice of the Peace*  
(or *Commissioner of Oaths*).

**No. 3-GENERAL FORM OF NOTICE OF APPLICATION**  
(Heading)

TAKE NOTICE that application will be made to this Court on ..... the  
..... day of ..... 20 .....  
at ..... for an order that (*state shortly terms of order applied for*).

**No. 4-SUMMONS COMMENCING ACTION**  
(Heading)

To:

.....  
of .....

YOU ARE HEREBY SUMMONED that you do within ..... days after the service of this  
Summons upon you ENTER or cause to be entered with me and also the plaintiff or his attorney  
at the address specified herein an APPEARANCE TO ANSWER THE claim of  
..... of ..... in the ..... District,  
(Occupation), the plaintiff herein for P..... and costs, particulars whereof are  
endorsed hereon.

AND TAKE NOTICE THAT in default of your doing so you will be held to have admitted the  
said claim, and the plaintiff may proceed therein and judgment may be given against you in your  
absence; but that, on payment of the said claim and costs to me within the said time, judgment  
will not be given against you herein; and that if at least 24 hours before the expiration of the said  
time, you so pay or lodge with me a consent to judgment, you will save judgment charges.

AND FURTHER TAKE NOTICE THAT:

(1) If you allege any exception, special defence or counterclaim, you must, within seven days  
after appearance, deliver to me and to the said plaintiff or his attorney a statement in writing of  
the nature and grounds thereof; and

(2) If you allege a defence on the merits, you must, within seven days after appearance, so  
deliver a statement in writing showing the nature and grounds of such defence.

(*Endorsement on Back of Summons, or on the copy*)

1. **Particulars of Claim** (see Form No. 5)

2. **Consent to Judgment**

I admit that I am liable to the plaintiff as claimed in this Summons or; in the amount of  
P..... and costs to date and I consent to judgment accordingly.

Dated this ..... day of ..... 20 .....

*Defendant.*

NOTE: If the consent is not given on the original Summons or on the copy served it must be  
witnessed by two witnesses whose addresses must be given.

3. **Form of Appearance to Defend**

To: The Clerk of the Court.

Enter an appearance for the defendant, who intends to defend this action.

Dated this ..... day of ..... 20 .....

at .....

*Defendant or Defendant's Attorney.*

Address for service:

Postal Address:

**No. 5-ENDORSEMENT ON SUMMONS**

NOTE: These forms are examples only and are not, except as to the claims for costs, either  
compulsory or applicable to all cases.

1. The plaintiff's claim is for the price of goods sold and delivered.  
 Particulars:  
 1970, 1st January-

	P	t
Balance of account for butcher's meat to this date 1970, 1st January to 31st March .....		20,00
Butcher's meat .....		20,00
Total .....		40,00
Paid .....		15,00
1970, 1st February,		
Balance .....		25,00

with costs, if the action is undefended, as follows:

	Summons	Judgment
	P	t
Attorney's Charges .....		
Court Fees .....		
Fees of messenger or other person, not being a party to the action, effecting service .....		
Total		

2. The plaintiff's claim is against the defendant, as maker of a promissory note for P50,00, dated 1st January, 1970, payable four months after date of ..... of which the plaintiff is now the holder, which note was, on 1st May, 1970, duly presented at the Bank, High Street, Lobatse, where the same was payable, and was dishonoured.

	P	t
Principal .....		50,00
Interest at ..... per cent .....		2,00
Amount due .....		52,00
with costs, etc.		

3. The plaintiff's claim is for money lent to the defendant.  
 Particulars:

	P	t
1st January, 1970 .....		100,00
1st June, 1970-Paid		50,00
Balance .....		50,00
Interest at ..... per cent .....		10,00
Total.....		60,00

with costs, etc.

4. The plaintiff's claim is (1) for arrears of rent due in respect of the defendant's monthly tenancy of No. 1 ..... Street, Gaborone.

	P	t
1st January, 1970-Rent due for month January, 1970 ..		20,00
1st February, 1970-Ditto. February, 1970, .....		20,00
1st March, 1970-Ditto. March, 1970 .....		20,00
Total .....		60,00
15th February, 1970, paid .....		10,00
Balance .....		50,00

with costs, etc.

and (2) for ejectment.

Particulars:

Plaintiff, on the 28th February, 1970, gave defendant one month's notice to leave the said premises.

5. The plaintiff's claim is for arrears of wages (or salary) as a ..... at P..... per .....

Particulars:

January, 1970 .....	40,00
February, 1970 .....	40,00
	<hr/>
	80,00
15th February, 1970, Paid .....	30,00
	<hr/>
Balance .....	50,00

with costs, etc. 

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6. The plaintiff's claim is for the delivery to him of movable property or damages in lieu of the delivery thereof, and for damages for the past non-delivery thereof.

Particulars:

- (1) On the 18th March, 1969, plaintiff lent to defendant a mahogany table and three bentwood chairs, value P27,00 to be returned on demand.
  - (2) On the 27th August, 1969, plaintiff demanded the return of the said table and chairs.
  - (3) Defendant refused and still refuses to return the said table and chairs.
  - (4) The reasonable hire of such table and chairs is P1 a month.
- Wherefore plaintiff claims-
- (a) Return of the said table and chairs;
  - (b) Damages-

In addition to delivery .....	3,00
In lieu of delivery .....	27,00
	<hr/>
	with costs, etc.

7. The plaintiff's claim is for damages for personal injuries caused by defendant's negligence:  
Particulars:

- (1) On the 14th October, 1969, about 10 a.m. Plaintiff was crossing Main Street, Lobatse, from north to south.
- (2) At the same time defendant was driving a motor car along the said street from east to west.
- (3) Defendant, by negligent driving, struck plaintiff and threw him to the ground, inflicting the following injuries-  
Left arm broken.  
Three ribs broken.  
Face severely cut.  
Coat torn.
- (4) Plaintiff, by reason of the above injuries, was unable to pursue his occupation as a miner for seven weeks and incurred the following damages:

	P	t
Medical attendance, etc.	35,00	
Loss of earnings	120,00	
Damage to coat	3,00	
Pain and suffering	1250,00	
	<hr/>	
Total .....	1408,00	

(5) Plaintiff admits that he is indebted to defendant in the sum of P100 as damages for breach of a contract to deliver to defendant 1,000 tons of coal, entered into between the parties verbally on 12th September, 1968, and

	P	t
Set-off .....	100,00	
	<hr/>	
Balance .....	1308,00	

(6) In order to bring the claim within the jurisdiction of the court, plaintiff abandons P308,00 and claims P1000,00, with costs, etc.

8. The plaintiff's claim is as cessionary of a claim by J.K., of 444 Main Street, Lobatse, attorney, for professional services rendered, ceded to the plaintiff by the said, J.K., by writing, dated 11th August, 1968.

Particulars:

1968, 1st and 8th March.

Agreed fee for defence in State v. C.D., P2100 with costs, etc.

**No. 6-CONCLUSION TO ENDORSEMENT OF CLAIM**

*Plaintiff or Plaintiff's Attorney.*

Address .....

Postal Address .....

**No. 7-NOTICE UNDER ORDER VI, RULE 8,  
FOR SUBSTITUTED SERVICE**

To:

C.D., of

TAKE NOTICE that a Summons has been issued against you in this Court by A.B., of ..... for the sum of P..... for goods sold and delivered (or as the case may be), and that an order has been made that the publication of notice of such Summons shall be deemed to be good and sufficient service of the Summons on you. You are required to enter an appearance to the Summons on or before the ..... day of ..... 20 ..... , and, if you do not do so, judgment may be given against you in your absence.

**No. 8-NOTICE OF SERVICE OF SUMMONS  
(Heading)**

You are hereby informed that the defendant was on the ..... day of ..... 20 ..... at ..... served with the Summons in this Action.

(Date)

*Messenger of the Court, or  
person effecting service.*

To the Plaintiff's (Attorney).

**No. 9-NOTICE OF NON-SERVICE OF SUMMONS  
(Heading)**

You are hereby informed that it has not been found possible to serve on the defendant the Summons in this action for the following reasons-

(Date)

*Messenger of the Court, or  
person effecting service.*

To the Plaintiff's (Attorney).

**No. 10-NOTICE OF CONSENT TO JUDGMENT  
(Heading)**

You are hereby informed that the defendant has today consented to judgment herein for P..... with costs of P

(Date)

*Clerk of the Court.*

To the Plaintiff's (Attorney).

**No. 11-REQUEST FOR DEFAULT JUDGMENT  
(Heading)**

The plaintiff prays that-

- (1) the defendant having been duly served;
- (2) the time for appearance by the defendant having expired; and
- (3) the defendant not having entered an appearance to defend;

judgment may be entered against the defendant, as claimed in the Summons, together with P..... for interest at ..... per cent from the date of Summons.

Dated this ..... day of  
..... 20  
.....

*Plaintiff or Plaintiff's Attorney.*

**No. 12-NOTICE OF WITHDRAWAL  
(Heading)**

TAKE NOTICE that the above-named plaintiff hereby withdraws the above action and consents to pay the defendant's taxed costs.

Dated this ..... day of ..... 20 .....  
*Plaintiff/Plaintiff's Attorney.*

To: .....  
.....  
and: The Clerk of the Court.

**No. 13-NOTICE OF APPLICATION FOR SUMMARY JUDGMENT  
(Heading)**

TAKE NOTICE that application will be made to this Court on ..... the  
..... day of ..... 20 .....  
at ..... for leave to enter judgment against you in this action for  
P..... and costs.

AND FURTHER TAKE NOTICE that the Affidavit of ..... of  
which a copy is served herewith, will then be used in support of such application, and that you  
may reply thereto by affidavit.

**No. 14-AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR SUMMARY JUDGMENT  
(Heading)**

I, .....  
(Address) .....  
(Occupation) .....

make oath and say as follows-

1. I am the plaintiff in this action (or, the facts herein stated are within my own knowledge, and I am duly authorized to make this affidavit).
2. The defendant is indebted to the plaintiff in the sum of P..... on the grounds stated in the Summons.
3. I verily believe that the defendant has not a *bona fide* defence to this action and that appearance has been entered solely for purposes of delay.

**No. 15-FORMS AS TO INSPECTION AND PRODUCTION OF DOCUMENTS**

**1. Notice to deliver Schedule of Documents.**

TAKE NOTICE that ..... requires you, within three days after receiving this notice, to deliver a schedule specifying the books and documents in your possession or under your control relating to the action which you intend to use in the above action or are material to prove or disprove either party's case.

**2. Notice to produce Documents for Inspection.**

TAKE NOTICE that the ..... requires you to produce for his inspection at your office on ..... at ..... the documents specified in your Schedule of Documents (or, the accounts and documents upon which the action is founded and also the documents specified in the notice delivered to you herein on the ..... day of ..... 20 ..... in terms of Rule 3 of Order XVII).

**3. Notice to produce (General Form).**

TAKE NOTICE that you are hereby required to produce and show to the Court on the trial of this action, all books and documents disclosed in your Schedule of Documents, and also

(specify documents)-

NOTE-The foregoing notices are to be headed in the action and dated and signed by the party or his attorney, and are to be addressed to the party affected or his attorney, if he has one.

### **No. 16-CERTIFICATE OF RECORD**

#### **(Heading)**

I, ..... Clerk of the Court (or Shorthand Writer of this Court) do hereby certify and declare that the foregoing notes are a true record of the proceedings in this action and of all evidence received by the said Court.

Dated at ..... this ..... day of ..... 20 .....

*Clerk of the Court (or Shorthand Writer).*

### **No. 17-ORDER OBTAINED EX PARTE**

#### **(Heading)**

It is Ordered:

1. That a rule *nisi* be and is hereby granted calling upon .....  
(*respondent*) of ..... (*respondent's address*) to show cause, if any, to this Court on the ..... day of ..... at ..... in the ..... noon, or so soon thereafter as he can be heard, why ..... shall not be interdicted from ..... (*set out the acts from which respondent or any other person is restrained*) pending the decision of an action to be brought by the applicant against the said ..... (*respondent*) for ..... (*set out the nature of the claim*).

2. That the said action be commenced within ..... days.

3. That this rule operate as an interim interdict.

*By Order of the Court.*

*Clerk of the Court.*

*Applicant's Attorney.*

*Street.*

### **No. 18-ORDER FOR ARREST OF PERSON SUSPECTUS DE FUGA**

#### **(Heading)**

It is Ordered:

1. That the Messenger of the Court do take the body of .....  
(*respondent*) and safely keep him and have him before the Court at ..... o'clock in the ..... noon on the ..... day of ..... 20 ....., then and there to show cause why he should not be detained to abide the judgment of this court in an action for a sum of P..... to be instituted against him by the applicant.

2. That the said action be instituted within 48 hours from the date of this order.

*By Order of the Court.*

*Clerk of the Court.*

*Applicant's Attorney.*

*Street.*

### **No. 19-WARRANT FOR FINE OR ARREST OF A WITNESS IN DEFAULT**

#### **(Heading)**

To the Messenger of the Court and to the Keeper of the Gaol of the above District.

Whereas A.B. of ..... has been duly subpoenaed to give evidence (or, to produce certain books, papers or documents, as the case may be) in the above matter before this Court at ..... on the ..... day of ..... 20 ..... and has made default:

And whereas this Court has imposed upon the said A.B. for his said default a fine of ..... Pula and for non-payment has committed him to the gaol of the above district for a period of

.....  
 This is therefore to authorize and require you the said Messenger of this Court to take the body of the said A.B. and, unless he shall pay to you the said sum of ..... Pula, to deliver him to the Keeper of the Gaol of this District together with this warrant there to be safely kept until he shall have paid the said sum of ..... Pula or until the expiration of the said period of ..... from the day on which the said A.B. shall be received into or retained in the said prison by virtue of this warrant whichever of the two shall first happen or until the said A.B. shall be otherwise legally discharged.

And this is to command you the said Keeper of the said Gaol to receive and safely keep the said A.B. as aforesaid.

**No. 20-WARRANT FOR THE APPREHENSION OF A WITNESS  
 IN DEFAULT**

**(Heading)**

To the Messenger of the Court.

Whereas A.B. of ..... has been duly subpoenaed to give evidence (or, to produce certain books, papers or documents, as the case may be) in the above matter before this Court at ..... on the ..... day of ..... 20 ....., and has made default:

This is therefore to authorize and require you to take the body of the said A.B. and have him before the Court at ..... on the ..... day of ..... 20 ....., then and there to give his evidence and to be otherwise dealt with according to law.

**No. 21-SECURITY ON ARREST OR INTERDICT EX PARTE**

**(Heading)**

Whereas A.B., of ..... has applied for the issue of a warrant of arrest against C.D., of ..... (or, an arrest or interdict against the goods of C.D. at ..... ) and the Court has fixed the security to be given by the said A.B., at the sum of P..... .

Now therefore the said A.B. undertakes and binds himself to satisfy any lawful claim by the said C.D. against him the said A.B., for damages which the said C.D. may suffer by reason of the said arrest (or interdict) in case the said arrest (or interdict) be hereafter set aside.

And the said E.F. hereby undertakes and binds himself as surety for and co-principal debtor with the said A.B. in a sum not exceeding the said sum of P..... for the due fulfilment by the said A.B. of the obligation undertaken by him by these presents.

**No. 22-SUBPOENA**

**(Heading)**

To:

1. A.B., of .....
2. C.D., of .....
3. E.F., of .....
4. G.H., of .....

You are hereby required to appear in person before this Court at ..... on the ..... day of ..... 20 ..... at the hour of ..... in the ..... noon, and so from day to day until this action is tried, to give evidence in this action on behalf of the .....

*(Where documents are required to be produced, add:)*

- (1) and to bring with you and then produce to the Court the several documents specified in the list hereunder-
- (2) List of documents to be produced-

Date	Description	Original or copy
------	-------------	------------------

--	--	--

**No. 23-SECURITY FOR STAY OF EXECUTION  
(Heading)**

WHEREAS the said A.B. by judgment of this Court on the ..... day of ..... 20 ....., recovered against the said C.D., the sum of P..... together with the sum of P..... for costs;

AND WHEREAS the said C.D. has applied to the Court for a stay of execution pending appeal (or, pending the hearing of an application to review and reverse the said judgment) and the Court has directed that execution be stayed accordingly subject to the said C.D. giving security within ..... days;

NOW, THEREFORE, the said C.D. and E.F. of ..... as surety and co-principal debtor for him the said C.D. hereby undertake and bind themselves jointly and severally to satisfy the said judgment and any further liability which may arise by way of damages or otherwise by reason for such suspension; so far as such judgment may not be reversed or varied on such appeal (or review) and further severally (*here insert any further terms required*).

**No. 24-SECURITY WHEN EXECUTION IS ALLOWED  
PENDING APPEAL  
(Heading)**

WHEREAS the said A.B. on the ..... day of ..... recovered by judgment of this Court against the said C.D. the sum of P..... together with the sum of P..... for costs;

AND WHEREAS the said Court has directed the said judgment notwithstanding that the said C.D. has noted an appeal against the same to be carried into execution upon security being given for restitution;

NOW THEREFORE the said A.B. and L.M. of ..... as surety and co-principal debtor for him the said A.B. hereby undertake and bind themselves jointly and severally to refund and make restitution of the above several sums of ..... and ..... should the judgment of the said Court be reversed and further terms required.

**No. 25-WARRANT OF EJECTMENT OR UPON DECREE  
FOR DELIVERY UP OF POSSESSION OF PREMISES  
(Heading)**

To the Messenger of the Court.

Whereas in this action the said plaintiff on the ..... day of ..... 20 ..... obtained judgment for the ejectment of the said defendant from the premises known as .....

This is to authorize and require you to put the said plaintiff into possession of the same by removing therefrom the said defendant for which this shall be your warrant.

**No. 26-WARRANT UPON DECREE FOR THE DELIVERY UP  
OF GOODS  
(Heading)**

To the Messenger of the Court.

Whereas in this action the Court did decree that the said defendant should deliver to the said plaintiff a certain (*describe the thing to be delivered*):

This is to authorize and require you to take the said (*describe the thing*) and place the said plaintiff in possession thereof for which this shall be your warrant, and return to this Court what

you have done by virtue thereof.

**No. 27-WARRANT OF EXECUTION AGAINST PROPERTY  
(Heading)**

To the Messenger of the Court.  
AMOUNT TO BE LEVIED  
(with costs of execution).

WHEREAS in this action the said A.B. on the ..... day of ..... 20 ....., by the judgment of the Court recovered against the said C.D. of the several sums set out in the margin hereof mounting in all to the sum of .....

Judgment Debt Costs  
Cost of issuing Warrant  
Costs of Appeal:

This is therefore to authorize and require you that of the property of the said C.D. you cause to be levied and raised the said sum of P..... together with your costs of this execution; and pay to the said A.B. the said sum of P.....

TOTAL ..... P  
NOTE:

- (1) If the judgment debtor pays the amounts specified in the margin hereof with messenger's charges of P..... within half an hour after the entry of the messenger he will not be required to pay any further costs of execution.
- (2) This execution may be paid out before sale subject to the payment of the messenger's fees and charges of execution, which may be required to be taxed.
- (3) The only immovable property upon which this warrant may be executed is: (*set out its situation and nature sufficient to enable it to be identified*).
- (4) (In case of re-issue the fact and date of re-issue and any increase or reduction in the amounts to be levied shown on the face hereof shall be set out in a note endorsed hereon and signed by the judgment creditor's attorney and by the clerk of the court. No alterations except in consequence of amendment duly authorized by the Clerk of the Court shall after first issue be made on the face hereof.)

**No. 28-NOTICE OF ATTACHMENT IN EXECUTION  
(Heading)**

To C.D., Judgment Debtor.

TAKE NOTICE that I have this day seized and laid under judicial attachment the articles comprised in the above inventory in pursuance of a warrant to me directed under the hand of the Clerk of the Court for the District of ..... whereby I am required to cause to be levied and raised of your property in this District the sum of P..... and P..... costs recovered against you by the judgment of the said Court in this action and also for my charges in and about the said warrant.

Dated at ..... this ..... day of ..... 20 .....  
*Messenger of the Court.*

**No. 29-SECURITY BOND ON ATTACHMENT  
(Heading)**

WHEREAS the said A.B. on the ..... day of ..... last by judgment of this Court recovered against the said C.D. the sum of P..... together with the sum of P..... for costs; and whereas by virtue of a certain warrant under the hand of the Clerk of the said Court bearing date, etc., directed to E.F. Messenger of the said Court the said E.F. has seized and laid under attachment in respect of the said judgment and in respect to the execution thereof the undermentioned articles, viz:-

NOW THEREFORE the said C.D. and L.M. of ..... as surety and co-principal debtor for him the said C.D. hereby severally undertake and bind themselves jointly and severally to the said E.F. that the said goods shall not be made away with or disposed of but the same shall remain in possession of the said C.D. under effect of the said attachment and shall be produced to the Messenger of the said Court on the ..... day of

..... next (*the day appointed for sale*) or any other day when the same may be required in order to be sold in execution of the said judgment and expenses if the same shall not be sooner satisfied to the said A.B.; otherwise the said L.M. hereby undertakes and binds himself to pay and satisfy the said judgment costs and expenses for and on behalf of the said C.D.

**No. 30-INTERPLEADER SUMMONS (GENERAL)**  
**(Heading)**

WHEREAS ..... of ..... has interpleaded in this Court as to the subject-matter following:-  
*(State subject-matter)*

which is adversely claimed by..... of .....and of ..... hereinafter called the claimants; Summon the said claimants that they severally appear before this Court holden at ..... on ..... the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon, and that they do then severally state the nature and particulars of their several claims and whether they will maintain or relinquish the same.

**No. 31-INTERPLEADER SUMMONS (MESSENGERS)**  
**(Heading)**

To A.B. (*describing Execution Creditor*) and C.D. (*describing Claimant*)  
You are hereby summoned to appear before this Court on the ..... day of ..... 20 ....., at ..... o'clock in the forenoon, to have it determined and declared whether certain movable property, to wit ..... attached on the ..... day of ..... 20 ..... by the Messenger of this Court by virtue of a warrant of execution issued by this Court on the ..... day of ..... 20 ..... in the action in which you, the said A.B. obtained judgment for the sum of P..... against E.F. (*describing the Execution Debtor*), and which said property is claimed by you, the said C.D., as being your property, is or is not your property.  
DATED at ..... this ..... day of ..... 20 .....  
*Clerk of the Court.*

**No. 32-SECURITY UNDER ORDER No. XXV, RULE 7**  
**(Heading)**

WHEREAS the said plaintiff on the ..... day of ..... 20 ..... recovered judgment in this Court against the said defendant for the sum of P..... together with the sum of P..... for costs:  
AND WHEREAS under the said judgment execution has been issued and property has been attached:  
NOW, THEREFORE, the said plaintiff doth undertake and bind himself to the said execution debtor that if the execution and attachment be hereafter set aside, he will satisfy any lawful claim against him by the said execution debtor for damages suffered by the said execution debtor by reason of the said execution and attachment.  
AND L.M. .... of ..... doth undertake and bind himself as surety and co-principal debtor in a sum not exceeding P..... for the due fulfilment by the said plaintiff of the obligation undertaken by these presents.

**No. 33-SUMMONS FOR CIVIL IMPRISONMENT**  
**(Heading)**

To C.D. of (*describe the defendant as in the former process*).  
You are hereby summoned to appear before this Court to be held at ..... on the ..... day of ..... next at ..... o'clock in the ..... noon to show why a decree of civil imprisonment should not be made against you at the suit of E.F. of (*describe the plaintiff as in the former process*) in respect of the non-payment of the sum of (*insert the joint*

amount of debt and costs) recovered against you by the said E.F. by a judgment of the said Court bearing date the .....day of ..... 20 .....

**No. 34-WARRANT FOR CIVIL IMPRISONMENT**  
**(Heading)**

To the Messenger of the Court and to the Officer-in-Charge of Prison at .....  
These are to command you the said Messenger of the Court to take C.D. of (*describe as in the last preceding form*) and deliver him to the Officer-in-Charge of the Prison at aforesaid together with this warrant there to be safely kept until he shall have paid to E.F. of (*describe the plaintiff as in the summons aforesaid*) the sum of P..... (*parcel of the sum of P.....*) which the said E.F. recovered for his debt and costs by judgment of this Court bearing date the ..... day of ..... 20 ..... or until the expiration of ..... from the day on which the said C.D. shall be received into or retained in the said prison by virtue of this warrant whichever of the two shall first happen or until the said C.D. shall be otherwise legally discharged.

NOTE: No alterations shall after first issue be made on the face hereof but any suspension, variation, increase or reduction in the sum payable by the debtor, and the fact and date of any re-issue shall be shown by endorsement hereon signed by the judgment creditor's attorney and by the clerk of the court.

**No. 35-AFFIDAVIT IN SUPPORT OF APPLICATION FOR A GARNISHEE ORDER**  
**(Heading)**

I, A ..... B ..... of ..... duly sworn, state:

1. I am the above-named Judgment Creditor (or, I am duly authorized by the above-named Judgment Creditor to act for him in this matter).
2. The Judgment Creditor has obtained judgment against the Judgment Debtor in this Court (or, in the Magistrate's Court for the District of ..... a certified copy of which judgment is hereto annexed marked "A") on the ..... day of ..... 20 ....., in an action numbered for the sum of P..... and costs amounting to P..... .
3. The said judgment is still unsatisfied to the amount of P..... .
4. The Garnishee resides (or, carried on business as a ..... or, is employed as .....) at ..... within the jurisdiction of this Court and is indebted to the Judgment Debtor in the sum of P..... (or in an amount to the Petitioner unknown) at present or in future owing or accruing to the judgment debtor for ..... (*set out the cause of the debt*).
5. The Judgment Debtor will, after the execution of the order herein sought, have a sufficient income, i.e. P..... per month, arising from (*set out the source of such income*) ..... to maintain himself and those dependent upon him, i.e. (*set out the numbers and relationship to the Judgment Debtor of his dependants*).

**No. 36-GARNISHEE ORDER**  
**(Heading)**

WHEREAS it has been made to appear to the above-named Court that a debt is at present or in the future owing or accruing to the judgment debtor by or from the Garnishee:

It is ordered:

1. That the said debt to an amount not exceeding P..... be attached to answer a judgment recovered against the Judgment Debtor by the Judgment Creditor in the ..... Court on the ..... day of ..... 20 ..... for the sum of P..... on which judgment the sum of P..... remains due and unpaid.
2. That the Garnishee do pay to the Judgment Creditor or his attorney the said sum of P..... together with P..... (the costs hereof) but not exceeding in all the sum of P..... (out of his said debt) or, failing such payment, that the Garnishee appear before this Court on the ..... day of ..... 20 ..... at ..... o'clock in the

..... noon, then and there to show cause why he should not pay the same.  
DATED at ..... this ..... day of ..... 20 ..... at  
..... hours ..... minutes in the ..... noon.

By Order of the Court,  
*Clerk of the Court.*

Attorney for Judgment Creditor.

### **TO THE ABOVE-NAMED JUDGMENT DEBTOR**

If the judgment against you has been satisfied or is, for any reason, no longer operative against you, you should appear at the Court and prove the facts; but you cannot be heard on any other point.

### **No. 37-GARNISHEE ORDER FOR THE ATTACHMENT OF EMOLUMENTS (Heading)**

WHEREAS it has been made to appear to the above-named Court that emoluments are at present or in future owing or accruing to the Judgment Debtor by or from the Garnishee and that after satisfaction of this order sufficient means will be left to the Judgment Debtor to maintain himself and those dependent on him:

It is ordered:

- (1) That the said emoluments be attached;
- (2) That the Garnishee pay to the Judgment Creditor or his attorney on the ..... day of each and every month/week hereafter the sum of P..... until a sufficient amount has been paid to satisfy a judgment recovered against the Judgment Debtor by the Judgment Creditor in the magistrate's court for the district of ..... on the ..... day of ..... 20 ..... (on which Judgment the sum of P..... remains unpaid) and the costs of attachment amounting to P.....

If the Garnishee fails to pay the Judgment Creditor or his attorney as aforesaid, he shall appear before this court on the ..... day of ..... 20 ..... at ..... to show cause why he should not pay the same.

To the above-named Judgment Debtors:

If the judgment against you has been satisfied or is, for any reason, no longer operative against you or the attachment will not leave you sufficient to enable you to maintain yourself and those dependent on you, you should appear at the court and prove the facts; but you cannot be heard on any other point.

### **No. 38-AGREEMENT NOT TO APPEAL (Heading)**

We (*the respective attorneys of*) the above-named plaintiff and defendant, do hereby agree that the decision of the above-named Court in the above-named action shall be final.

### **No. 39-APPLICATION FOR TRIAL WITH ASSESSORS (Heading)**

The plaintiff (*or defendant*) hereby applies to have the above action tried with assessors. Either (1)

The defendant (*or plaintiff*) consents to such application and to the appointment of the following assessor:-

A.B. of ..... , etc.

*Plaintiff or Plaintiff's Attorney.*

*Defendant or Defendant's Attorney.*

Or (2)

The defendant (*or plaintiff*) consents to such application, but the parties are unable to agree upon the names of assessors;

Wherefore the parties pray the Court to appoint an assessor (*or two assessors*), excluding the following assessors:- (*Set out the names of those assessors whom one or other of the parties objects to.*)

*Plaintiff or Plaintiff's Attorney.*

*Defendant or Defendant's Attorney.*

Or (3)

The defendant (*or plaintiff*) objects to such application: wherefore the plaintiff (*or defendant*) has set down this application for hearing on the ..... day of ..... 20 ..... at ..... m.

*Plaintiff (or Defendant) or  
Plaintiff's (or Defendant's) Attorney.*

To the Clerk of the Court and  
To the Defendant (or Plaintiff).

Application granted/refused this ..... day of ..... 20 .....  
Assessors appointed:- A.B., etc.

*Clerk of the Court.*

**No. 40-SUMMONS TO ASSESSOR  
(Heading)**

You are hereby summoned to attend and serve as an Assessor in this Court on the ..... day of ..... 20 ....., at ....., to assist the Court in the above action in accordance with the provisions of section 20 of the Magistrates' Courts Act.

*I have the honour to be,*

*Sir,*

*Your obedient servant,  
Clerk of the Court.*

To A.B., etc.

**No. 41-NOTICE OF ABANDONMENT OF PART OF CLAIM,  
ETC.  
(Heading)**

TAKE NOTICE that the plaintiff (*or defendant*) hereby abandons the undermentioned claim (*or objection, exception, defence, as the case may be*) set up by him in his summons (*or plea, reply, etc., as the case may be*).

Particulars:-

**No. 42-COMMISSION DE BENE ESSE  
(Heading)**

To .....  
of .....  
Greeting.

Under and by virtue of the authority vested in me by section 210 of the Criminal Procedure and Evidence Act) (Cap. 08:02), I do hereby commit to you full power and authority as a Commissioner of this Court to examine G ..... H ..... of ..... (*and such other witness as either of the parties to this suit may desire to call*) and to take the evidence on oath of the said witness(es) in the above suit now pending in this Court.

Given under my hand at ..... this ..... day of ..... 20 .....

**No. 43-REQUEST TO INSPECT RECORD**

Magistrate's Court

District of ..... 20 .....

I apply to inspect Record No. (*or, if the applicant does not know the Registered No.*) I apply to inspect the record of .....

*Plaintiff  
Defendant.*

Search to begin with the month of ..... 20 .....

*(Signed)*

If the applicant is a party to the case, or the attorney of such a party, his capacity should be

stated after his signature.

### **No. 44-OATH OF OFFICE OF SHORTHAND-WRITER**

I, A.B., do swear that I will faithfully, accurately and to the best of my ability take down in shorthand, as directed by the judicial officer, the proceedings in any case in which I may be employed thereto as an officer of the Court and that I will similarly when required so to do transcribe the same or any other notes taken by any officer of the court.

Sworn before me at ..... this ..... day of ..... 20 .....

*Judicial Officer.*

## **SECOND SCHEDULE TABLE A COSTS PART I GENERAL PROVISIONS**

1. (1) Except as provided in subparagraphs (2), (3) and (4), costs in defended actions shall be taxed on Scale A.
  - (2) When the amount in dispute exceeds P100 but does not exceed P400, costs shall, except as provided in subparagraph (3), be taxed on Scale B.
  - (3) When the court has made an order in terms of Order XXXII, rule 8, whereby costs are awarded on a higher scale, costs shall be taxed on a scale mentioned in such order.
  - (4) When the amount in dispute exceeds P400, costs shall be taxed on Scale C.
  - (5) Where the amount in dispute is not apparent on the face of the proceedings, costs shall be computed at the lower rate; but the court may, on the application of any party, assess the amount in dispute.
2. (1) For the purpose of computing costs, the expression "amount in dispute" shall mean, where costs are awarded to the plaintiff, the amount or value of the judgment, and "amount or value of the judgment" shall mean, where more than one claim is involved in the action, the total of the amounts involved in the judgment. Where costs are awarded to the defendant, the expression "amount in dispute" shall mean the amount or value of the claim, and "amount or value of the claim" shall mean, where more than one claim is involved in the action, the total of the amounts of all the claims. The amount or value of the judgment or claim shall be inclusive of interest but exclusive of costs. In the event of a matter being settled at any time the costs shall be taxed on the scale laid down in the agreement of the settlement.
  - (2) In the event of there being no agreement as to the scale of fees applicable, any party shall have the right within 14 days of the date of the settlement to apply to a magistrate who shall determine the scale of fees to be applied at the taxation.
3. Costs taxable in terms of Order XXXII, rule 20, shall be deemed to have been awarded under a judgment for the amount paid into court or a judgment in terms of the settlement, as the case may be.
4. Claims for ejectment shall be computed at two months' rent of the premises.
5. The rate at which costs are computed shall not be increased by reason of any claim for confirmation of any interdict or other interlocutory order.
6. Fees to counsel shall be allowable on taxation only in cases falling within the provisions of paragraph 1(2), (3) or (4) and may not be so allowed unless payment of them is vouched by the signature of counsel.
7. Where the amount allowed for an item is specified, the amount is inclusive of all necessary copies, attendances and services (other than services through the messenger) in connection therewith.
8. Where the amount allowed for an item is left blank-
  - (a) the drawing of documents shall be allowed at 50 thebe for each folio;
  - (b) copies for filing and service shall also be allowed;
  - (c) service shall be allowed at 50 thebe for each necessary service.
9. (1) Where any document appears to the court to be unnecessarily prolix, the clerk of the court may disallow all or any part of the charge therefor.

(2) Where printed forms are available of documents to be copied, the charges for copying shall be limited to the necessary matters inserted in such printed documents.

10. A folio is 100 written or printed words or figures. Four figures shall be reckoned as one word.

11. (1) Unless otherwise provided, a charge for perusing shall be allowed at 15 thebe per folio in respect of any document or pleading necessarily perused, subject to a minimum charge of 60 thebe.

(2) Unless otherwise provided, where a charge is allowed for copying, it shall be 20 thebe per folio.

12. Where there are more defendants than one, 50 thebe shall be added in respect of each additional defendant for each of the items numbers 1 and 2 of Part II, items numbers 3 and 9 of Part III, and items 3, 16, 27, 28, 30, 32 and 36 of Part IV of this Table.

13. (1) Where the judgment debt is payable by instalments in terms of the judgment, the fees shall be taxable immediately the judgment is given, but shall be recoverable only on the payment of each instalment.

(2) A fee of 10 per cent for collection of each instalment shall be allowed until a total amount of P20 shall have been paid in reduction of the capital and thereafter five per cent.

14. The clerk of the court shall on taxation disallow any charge unnecessarily incurred.

15. Where the fee under any item is calculated on an hourly basis, the total number of hours on any one day shall be added together and the fee calculated on such total.

## PART II UNDEFENDED ACTIONS

	P	t
Item 1.	- Summons (inclusive of demand): If the claim or claims or the value of the claim or claims in the aggregate do not exceed P50 .....	3,00
Item 2.	- Judgment: If the claim or claims or the value of the claim or claims in the aggregate do not exceed P50 .....	1,50
Note:	Where the claim or the value of the claim in issue exceeds P50 the fees under items 1 and 2 shall be increased by 50 thebe for every P100 or part of P100 exceeding the first P50 up to a maximum of P1000,00 irrespective of the amount of the actual claim.	
Item 3.	- Notice in terms of Order X, rule 4(2) .....	1,00
Item 4.	- Notice in terms of Order VII, rule 6 .....	1,00
Item 5.	- Affidavit .....	1,00 per folio
Item 6.	- Attending court at the request of the magistrate whenAs allowed under item 26 claim referred to court for judgment ..... of the scale for defended actions.	
Note:	The amount of fees allowable under items 3, 4, 5 and 6 shall without taxation be included in the amount of the costs for which judgment is entered.	

## PART III DEFENDED ACTIONS

	Scale A	Scale B	Scale C	
	P	P	P	
1.	Instructions to sue or defend or to counterclaim or defend counterclaim .....	5,00	10,00	15,00
2.	Instructions on commission <i>de bene esse</i> .....	2,00	2,00	2,00
3.	Summons .....	3,00	5,00	7,00

4.	Appearance .....	1,00	1,00	1,00
5.	Notice under Order X, rules 3 and 4(2) .....	1,00	1,00	1,00
6.	Plea .....	3,00	5,00	7,00
7.	Instructions after receipt of plea .....	3,00	5,00	7,00
8.	Claim in reconvention .....	3,00	5,00	7,00
9.	Reply, if necessary .....	3,00	5,00	7,00
10.	Request for further particulars .....	1,00	2,00	4,00
11.	Further particulars .....	1,00	2,00	4,00
12.	Consent to adjournment or extension of time .....	1,00	1,00	1,00
13.	Attendance, applying for costs on discontinuance .....	3,00	3,00	3,00
14.	Schedule of documents and affidavit .....	1,00	2,00	4,00
15.	Production of documents for inspection, per half hour of the time spent .....	1,00	2,00	3,00
16.	Inspecting documents, per half hour of the time spent .	1,00	2,00	3,00
17.	Subpoena (not more than one for each four witnesses summoned) .....	1,00	1,00	1,00
18.	Each copy for service	0,20	0,20	0,20
19.	(1) Any notice not otherwise provided for	1,00	1,00	1,00
	(2) Any summary or copy of a report furnished in terms of Order XXII .....	1,00	1,00	1,00
20.	Affidavit (other than of discovery) .....	50 thebe	per folio	
21.	Interrogatories .....	50 thebe	per folio	
22.	Taking proof of witness (each) .....	1,00	1,00	1,00
23.	Notice of trial or reinstatement .....	1,00	1,00	1,00
24.	Preparing for trial (if counsel not employed) .....	10,00	15,00	25,00
25.	Attending court when action on roll for trial but adjourned .....	3,00	3,00	3,00
26.	Attending court on trial or at examination on commission, for each hour or part of an hour spent in court while case is actually being heard-			
	(1) where counsel not employed .....	4,00	6,00	10,00
	(2) where counsel employed .....	2,00	4,00	4,00
27.	Attending pre-trial conference: For each hour or part of an hour actually occupied in such conference.....	4,00	4,00	4,00
28.	Attending court to hear reserved judgment	3,00	3,00	3,00
	Note: Where an unqualified person appears no fee shall be allowed.			
29.	Correspondence and attendances: For each necessary letter or telegram written or received, including copy to keep, and each necessary attendance not otherwise provided for: Provided that a charge for perusing shall not be allowed in addition to the fee herein provided for	0,60	0,60	0,60
30.	Agreement not to appeal .....	1,00	1,00	1,00
31.	Inspection <i>in loco</i> before trial if the court so orders .....	1,50	3,00	4,00

**PART IV  
OTHER MATTERS**

(Exceptions and applications to strike out)

			P
1.	Instructions .....		2,00
2.	Particulars of exception or application to strike out .....		1,00

- |    |   |      |
|----|---|------|
| 3. | Notice of set-down .....  | 1,00 |
| 4. | Attending court on hearing-   |      |
|    | (a) If unopposed .....  | 3,00 |
|    | (b) If opposed (where counsel employed), per hour actually spent in court .....               | 4,00 |
|    | (c) If opposed (counsel not employed), per hour or part thereof actually spent in court ..... | 6,00 |

Note: The court may on application made at the hearing allow, in addition to the fee prescribed under subparagraph (c), a fee for preparing argument under item 24 of the scale for defended actions.

***Applications for Summary Judgment***

- |    |   |             |
|----|---|-------------|
| 5. | Application and affidavit (or copy of liquid document) .....        | 50 thebe    |
|    |   | per folio   |
|    |   | (minimum of |
|    |   | P 1,00)     |
|    |   | P           |
| 6. | Attending court on hearing-   |             |
|    | (a) If unopposed .....  | 3,00        |
|    | (b) If opposed: As under item 26 of the scale for defended actions. |             |

***Interlocutory Applications***

- |     |   |                    |
|-----|---|--------------------|
| 7.  | Instructions .....  | 2,00               |
| 8.  | Application .....   | 1,00               |
| 9.  | Affidavit .....   | 50 thebe per folio |
| 10. | Attending court on hearing-   |                    |
|     | (a) Unopposed .....   | 3,00               |
|     | (b) If opposed (counsel not employed), per hour actually spent in court.....  | 8,00               |
|     | (c) If opposed (counsel employed and his employment certified by the court, on application made at the hearing to be necessary), per hour ..... | 4,00               |

Note: The court may on application made at the hearing allow, in addition to the fee prescribed under subparagraph (b), a fee for preparing

argument under item 24 of the defended actions scale.

***Arrest, Interdict and Ex Parte Orders***

11. Instructions .....	2,00
12. Affidavit .....	50 thebe per foli o
13. Attendance in court .....	3,00
14. <i>Ex parte</i> order .....	1,00 per foli o
15. Instructions to show cause against .....	2,00
16. Notice of application to show cause and service (if necessary) .....	2,00
17. Attending court on hearing-	
(a) If opposed, per hour actually spent in court	8,00
(b) If unopposed	3,00

Note: The Court may on application made at the hearing allow, in addition to the fee prescribed under subparagraph (a), fee for preparing argument under item 24 of the defended actions scale.

***Interpleader Summons***

18. Instructions-	
(a) where interpleader proceedings initiated by messenger	5,00
(b) otherwise	10,00
19. Summons (if not sued out by the messenger)	5,00
20. Affidavit	50 thebe per foli o
21. Attending court on return of summons (if the matter is not being heard) .	3,00
22. Attending court on trial of interpleader issue per hour actually spent in court .....	8, 00

***Application Under Order XIX, Rule 4(4), or Application To Review Judgment or Order***

23. Instructions and searching record	3,00
24. Application and service	1,50

25	Instruction to oppose	3,00
26.	Attending court on hearing-	
(a)	If unopposed	3,00
(b)	If opposed, per hour actually spent in court	8,00

***Taxation of Costs***

27.	Bill of costs: five per cent of the fees allowed	
28.	Attending taxation: five per cent of the total of the bill allowed	
29.	Notice of application for review of taxation and service .....	1,00
30.	Affidavit where necessary .....	50 thebe per foli o
31.	Attending on review of taxation, per hour or part of an hour in court while review is actually being heard .....	4, 00

***Execution***

32. (1)	Issue of warrant of execution, ejectment, arrest, delivery up of possession, etc. ....	
(2)	For each re-issue thereof .....	1,00
33.	Inclusive fee for work involved in releasing of attachment of immovable property .....	2,00
34.	Inclusive fee for work done in connection with sale in execution of immovable property only (excluding work for which fees are already provided for elsewhere and the drawing of the conditions of sale) .....	10,00
35. (1)	Drawing of notice of sale in terms of Order XXV, rule 29, or Order XXV, rule 38, or conditions of sale in terms of Order XXV, rule 39, per folio .....	0,50
(2)	For all other work done and papers and documents supplied to the messenger in connection with a sale in execution of movable property-an inclusive fee .....	5,00
36.	Security for restitution, where necessary .....	2,00

***Where Counsel is Employed***

37.	Instructions on exception or application where allowed .....	4,00
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38.	Instructions on trial .....	5,00	
39.	Drawing brief on exception or application where allowed .....	1,00 per	foli
			o
40.	Drawing brief on trial .....	1,00 per	foli
			o
41.	Attending each necessary consultation with counsel .....	2,50	

***Fees to Counsel***

42.	With brief to argue exception or application .....	20,00	
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Note: (1) The Court may on request made at the hearing allow a fee not exceeding P30 if it considers the higher fee warranted.

(2) A fee to counsel on application shall be allowed only where the court certified that the briefing of counsel was warranted.

43.	With trial brief, not to exceed .....	30,00	
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44. In any court held more than 20 kilometres from the seat of the High Court, there may be allowed by special order of the court a travelling allowance (in addition to the fee on brief):

(a) Where the distance from such nearest town is 50 kilometres or less ..... 12,00

(b) Where the court is more than 50 kilometres from such nearest town: 15 thebe per kilometre for each kilometre travelled between such nearest town and the seat of the court and return.

Note: Where a trial continues uninterrupted from day to day, or where portions of the trial so continue, the aforementioned allowances shall be allowed only once for such trial or for such portion of the trial, as the case may be.

45.	On each necessary consultation	5,00	
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46.	For every day exceeding one, on which evidence is taken or arguments heard, a refresher not exceeding	20,00	
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47.	Where trial is adjourned upon payment of the costs of the day, as part of such costs (only by the party requesting such adjournment)	10,00	
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48.	Drawing pleadings	10,00	
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Note: Where costs are taxed on scale C, items 42, 44 and 45 shall be raised to P60, P10 and P45 respectively.

***Miscellaneous***

49.	Obtaining certified copy of judgment	2,00	
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50. Obtaining payment out in terms of Order XII, rule 4	1,00
51. Request for security in terms of Order XII, rule 6	1,00
52. Giving security	1,00

**TABLE B  
TARIFF OF FEES OF MESSENGERS OR OTHER PERSONS, NOT BEING PARTIES,  
EFFECTING SERVICE**

For service or attempted service of any summons and for other process and endorsing the necessary return ..... 1,00

Whenever any document to be served with any process is mentioned in such process, no fee shall be charged for the service of such document; otherwise the fee of P1 may be allowed in respect of each separate document served, provided that no such fee for the service of a separate document shall be allowed in respect of the service of process in criminal cases.

**ALLOWANCES**

**1. Travelling Allowance**

- |   |   |
|---|---|
| (1) When a motor vehicle (other than a motorcycle or a motor scooter) is used ..... | The rates applicable to persons employed in the Public Service as authorized in General Orders. |
| (2) When a motor cycle or motor scooter is used .....                               | 10 thebe per kilometre.   |
| (3) When a public conveyance is used .....  | The actual disbursement.  |
| (4) When service is effected by means other than (1) to (3) .....                   | 50 thebe per day or part  |

of a  
day.

Note: This allowance shall be payable only in cases where the duty in question is to be performed beyond a radius of one kilometre from the office of the messenger or the abode or office of the other person, not being a party to the action, effecting service:

Provided that if the office of the messenger or the abode or office of such other person is situate more than three kilometres from the Court the allowance shall be payable only where such duty is to be performed beyond a distance of one kilometre from the Court.

## **2. Subsistence Allowance**

- (1) Subsistence allowance shall be paid in addition to travelling allowance at the rate of 50 thebe per day or part of a day.
- (2) No subsistence allowance shall be allowed when service is effected within the limits of the township or village in which the courthouse is situated.
- (3) A judicial officer may increase the subsistence allowance in any case in which he considers there are special circumstances to warrant such an increase.

Travelling allowance and subsistence allowance may be allowed for attempted service as well as for actual service. When two or more summonses or other process, whether at the instance of the same plaintiff or of different plaintiffs, have been, or, in the opinion of the taxing officer, should have been, served on one and the same journey, the travelling allowance and subsistence allowance for performing the round of service shall be fairly and equitably apportioned among the several cases, regard being had to the distances at which the parties against whom such process is directed respectively, reside, but the fee for service shall be payable for every service made or attempted to be made.

3. (1) For taking inventory per 100 words or portion thereof ..... 50 thebe

(2) For each necessary copy thereof ..... 10 thebe

4. For drawing advertisement of sale of goods attached ..... 50 thebe

5. In respect of execution-

- (a) when a writ is paid on presentation, one per cent on the amount of the writ, with a minimum fee of P1,00;
- (b) when a writ is withdrawn by the judgment creditor, or the judgment debtor's estate is placed under sequestration before any movable property has been attached, a fee of P1,00;
- (c) when a writ is withdrawn by the judgment creditor or the judgment debtor's estate is placed under sequestration after movable property has been attached, but before sale, two and a half per cent on the value of the movable property attached, but commission shall not in any case be calculated on an amount greater than that directed to be recovered;

- (d) when a writ is paid by the judgment debtor to the messenger after movable property has been attached but before sale, three per cent on the amount so paid;
- (e) after sale in execution-
  - (i) for the first P200 or less than P200 of the amount recovered, five per cent,
  - (ii) for every subsequent P200 or portion thereof, four per cent;
- (f) commission shall not be allowed on the value of movable property attached, but subsequently claimed by a person other than the judgment debtor and released in consequence of such claim, unless such property has been attached on the express direction of the judgment creditor.

6. Keeping possession of property seized-

- (a) for each custodian (not exceeding two in number) necessarily left in possession, *per diem* ..... 75 thebe  
 "Possession" means the continuous and necessary presence on the premises and for the period in respect of which possession is charged for a custodian employed and paid by the messenger for the sole purpose of retaining possession;
- (b) for removal and storage, the reasonable and necessary expenses of such removal and storage;
- (c) for herding and preserving livestock, the necessary expenses of herding and preserving such stock;
- (d) disbursement can only be allowed when actually and necessarily made, and on production of receipts therefor when obtainable;
- (e) when no officer is left in possession and no security bond is taken, but the movable property attached remains under the supervision of the messenger, a reasonable fee not exceeding, per diem .....
- (f) a messenger may insure movable property attached if it is necessary and he is authorized in writing by the judgment creditor to do so, and for effecting such insurance he shall be allowed a fee of P2 in addition to the premium paid.

- 7. For effecting an arrest..... P3,00
- 8. For conveying a defendant to gaol from the place of arrest, per kilometre or fraction of a kilometre ..... 10 thebe
- 9. For bringing a defendant to Court from the place of custody, per day or fraction of a day ..... 75 thebe
- 10. For drawing and completing a bail bond, deed of security or indemnity bond ..... P1,00
- 11. For executing a writ of ejectment ..... P5,00
- 12. For executing a writ of attachment of immovable property or an attachment and *fundandam jurisdictionem*, including notices to the owner and the ..... P3,00

- Registrar of Deeds and endorsing the necessary return .....
13. Notice of attachment to a single lessee or occupier identical notices when there are several lessees or occupiers-for each after the first ..... 25 thebe
14. For executing a writ of attachment of pension, salary, wages, and inheritance P2,00 or rights of a similar character, including notices to the judgment debtor, the Treasury, Executor, Master of the High Court, etc. ....
15. Notice to Registrar of Deeds withdrawing an attachment on immovable property..... 75 thebe
16. For copies of writs and orders necessarily made ..... 50 thebe
17. The fees and charges for all work reasonably and necessarily done in the service or execution of process for which no provision is made in this tariff shall be assessed, and every question arising under or relative to such tariff shall be determined by the clerk of the court.
18. All disbursements actually made or liabilities incurred in the execution of process shall be subject to taxation by the clerk of the court and the production of receipts when obtainable.
19. No fee may be charged for the service of process in pauper cases, but the messenger shall be entitled to receive his out of pocket expenses.
20. The messenger's fees shall be added to the amount to be recovered under this tariff, and shall be chargeable against the judgment debtor.

**TABLE C  
FEES TO ASSESSORS**

1. For every attendance when the case is wholly or partially heard, P2 for each hour or part of an hour of such attendance, but not to be less than P6 or more than P10 for every such attendance.
2. For every attendance when the case is not heard, but is postponed or settled, at the above rate, but the minimum to be P2.
3. Attendances to be reckoned from the hour for which the assessor is summoned to the hour at which judgment is given or reserved, or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.
4. When the case is adjourned, postponed, or settled, attendances to be reckoned from the hour for which the assessor is summoned to the hour at which the case is adjourned, postponed or settled or to the hour at which the assessor is expressly released by the court from further attendance, whichever shall be the earlier.
5. An assessor who has neither a residence nor a place of business within three kilometres of the courthouse, shall also be entitled to a travelling allowance at the rate of 10 thebe a kilometre for each journey actually and necessarily taken between the courthouse and his residence or place of business.

**TABLE D  
COURT FEES**

1. In claims in which the value of the subject matter of the dispute is P80,00 or over-
  - (a) on every original initial document whereby an action is instituted or application is made ..... P4,00
  - (b) on every bill of costs to be taxed which is not related to an action or application already registered in the court ..... P2,00
2. In claims in which the value of the subject matter of the dispute is less than P80,00, five per cent of the value.
3. In claims in which the value of the subject matter of the dispute cannot conveniently be ascertained ..... P4,00
4. No fee shall be levied on the document whereby an *in forma pauperis* action or appeal is instituted.
5. Request to inspect any record-
  - (a) If the number of the record is given ..... 10 thebe
  - (b) If the number of the record is not given for every month required to be searched ..... 10 thebe
6. Request for a copy of a record or part thereof to be made by the clerk of the court-for each 100 words or part thereof ..... 20 thebe
7. For examining and certifying a copy of a record, for each 100 words ..... 5 thebe
8. For every appeal from a judgment of a Customary Court ..... P4,00
9. Request for a written judgment under Order XXX, rule 1 ..... P2,00
10. For appeal from a judgment of a magistrate's court to the High Court ..... P10,00
11. When an appellant requires the magistrate's court appealed from to supply typed copies of the record for the use of the High Court, he shall be entitled to the requisite number of copies for delivery to the Registrar of the High Court on payment of the following fees-
  - (a) for the first four folios of 100 words each, or part thereof ..... 50 thebe
  - (b) for each subsequent folio of 100 words ..... 10 thebe
12. If the appellant requires a copy or copies for his own use, for each copy supplied, one-quarter rate. If the respondent requires a copy or copies for his own use, for first copy, full rate, and for each subsequent copy, one-quarter rate.
13. (1) A clerk of the court who has omitted to take any such fees shall be liable to pay and make good the amount thereof to the Accountant-General.
  - (2) (a) Where any dispute arises between the clerk of the court and any persons desiring to lodge any document as to whether the document is or is not sufficiently stamped, the question shall be referred to a judicial officer who shall decide the same in a summary manner.
    - (b) The judicial officer's decision shall be final for the purpose of the action or matter in respect of which such document is lodged and shall discharge the

clerk of the court under paragraph (1) hereof; but such decision shall be without prejudice to any other rights of any person interested.

Notes:(1) For the purposes of item 1 "action" does not include a counterclaim.

(2) No charge shall be made for the inspection of the record in any case-

- (a) to any party at any time before judgment;
- (b) to anyone within seven days after judgment.