
GOVERNMENT NOTICES

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 611

29 July 2011

MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Expressions in bold type in square brackets indicate omissions from existing rules.

Expressions underlined with a solid line indicate insertions into existing rules.

Definition

1. In this Schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice No. R. 1222 of 24 December 2010.

Amendment of rule 5 of the Rules

2. Rule 5 of the Rules is hereby amended by the substitution for subrule (3) of the following subrule:

"(3) (a) (i) Every summons shall be signed by an attorney acting for the plaintiff and shall bear the attorney's physical address, which address shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within

15 kilometres of the court house, the attorney's postal address, and, where available the attorney's facsimile address and electronic mail address: Provided that the State Attorney may appoint the office of the registrar or clerk of the civil court as its address for service.

- (ii) If no attorney is acting for the plaintiff, the summons shall be signed by the plaintiff, who shall in addition append a physical address, which address shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the courthouse at which plaintiff will accept service of all subsequent documents and notices in the suit, the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.
- (iii) After subparagraph (i) or (ii) has been complied with, the summons shall be signed and issued by the registrar or clerk of the court and shall bear the date of issue by the registrar or clerk as well as the case number allocated thereto.

(b) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) If an action is defended the defendant may, at the written request of the plaintiff, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the plaintiff, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.”.

Amendment of rule 13 of the Rules

3. Rule 13 of the Rules is hereby amended by the substitution for subrule (3) of the following subrule:

“(3) (a) When a defendant delivers notice of intention to defend, the defendant shall therein give his or her full physical residential or business address, postal address and where available, facsimile address and electronic mail address, and shall also indicate and select therein the preferred address for service on the defendant thereat of all documents in such action, and service

thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required: Provided that the physical address given by the defendant in the notice of intention to defend shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be an address situated within 15 kilometres of the courthouse.

(b) The defendant shall indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.”.

Amendment of rule 55 of the Rules

4. Rule 55 of the Rules is hereby amended by the substitution for subrule (1) of the following subrule:

“(1) (a) Every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.

(b) The notice of motion must be addressed to the party or parties against whom relief is claimed and to the registrar or clerk of the court.

(c) Where it is necessary or proper to give any person notice of an application, the notice of motion must also be addressed to such person and served on such person.

(d) The notice of motion in every application other than one brought *ex parte* shall be similar to Form 1A of Annexure 1 and copies of the notice, and all annexures thereto, shall be served upon every party to whom notice thereof is to be given.

(e) In a notice of motion the applicant shall-

(i) appoint a physical address, which address shall, in places where there are three or more attorneys or firms of attorneys practising

independently of one another, be within 15 kilometres of the office of the registrar or clerk of court, at which notice and service of all documents in such proceedings will be accepted;

- (ii) state the applicant's postal, facsimile or electronic mail addresses where available; and
 - (iii) set forth a day, not less than 5 days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether he or she intends to oppose such application, and state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the respondent of the notice.
- (f) If the respondent does not, on or before the day mentioned for that purpose in a notice of motion, notify the applicant of his or her intention to oppose, the applicant may place the matter on the roll for hearing by giving the registrar or clerk of the court notice of set down 5 days before the day upon which the application is to be heard.
- (g) Any party opposing the grant of an order sought in a notice of motion shall
- (i) within the time stated in the notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address, which address shall, in places where there are three or more attorneys or firms of attorneys practising independently of one another, be within 15 kilometres of the office of the registrar or clerk of the court, at which he or she will accept notice and service of all documents, as well as such party's postal, facsimile or electronic mail addresses where available;
 - (ii) within 10 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and
 - (iii) where it intends to raise questions of law only, deliver notice of intention to do so, within the time stated in subparagraph (ii), setting forth such question.
- (h) Within 10 days of the service upon him or her of the affidavit and documents referred to in paragraph (g)(ii), the applicant may deliver a replying affidavit.
- (i) The court may in its discretion permit the filing of further affidavits.
 - (j) (i) Where no answering affidavit, or notice in terms of paragraph (g)(iii), is delivered within the period referred to in paragraph (g)(ii) the applicant may within 5 days of the expiry thereof apply to the registrar or clerk of the court to allocate a date for the hearing of the application.
 - (ii) Where an answering affidavit is delivered the applicant may apply for an allocation of the date for the hearing of the application within 5 days

of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within 5 days of the expiry of the period referred to in paragraph (h) and where such notice is delivered the applicant may apply for such allocation within 5 days after delivery of such notice.

(iii) If the applicant fails so to apply within the appropriate period provided for in subparagraph (ii), the respondent may do so immediately upon the expiry thereof.

(iv) Notice in writing of the date allocated by the registrar or clerk of the court shall be delivered by applicant or respondent, as the case may be, to the opposite party not less than 10 days before the date allocated for the hearing.

(k) (i) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.

(ii) The court may in particular, but without affecting the generality of subparagraph (i) direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for that person or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.”.

Amendment of rule 56 of the Rules

5. The following rule is hereby substituted for rule 56 of the Rules:

“[Arrests *tanquam suspectus de fuga*,] Interdicts, attachments to secure claims and *mandamenten van spolie*

56. (1) Application to the court for an order of [arrest *tanquam suspectus de fuga*,] an interdict or attachment or for a *mandament van spolie* shall be made in terms of rule 55.

(2) Every application referred to in subrule (1) shall be accompanied by an affidavit stating the facts upon which the application is made and the nature of the order applied for.

(3) The court may, before granting an order upon an application referred to in subrule (1), 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.

[(4) An order made *ex parte* for the arrest *tanquam suspectus de fuga* of a person shall call upon the respondent to show cause against it at a time stated in the order, which shall be the first court day after service.]

[(5) The return day of an order made *ex parte* for arrest *tanquam suspectus de fuga* may be anticipated by the respondent upon 12 hours' notice to the applicant.]

(4) Unless otherwise ordered by a court, an order for [the arrest *tanquam suspectus de fuga* of a person or] the attachment of goods shall *ipso facto* be discharged upon security being given by the respondent to the sheriff for the amount to which the order relates, together with costs.

(5) The security contemplated in subrule (6) 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."

Commencement

6. These rules shall come into operation on 2 September 2011.