

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 107

07 FEBRUARY 2020

## RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS  
OF THE MAGISTRATES' COURTS OF SOUTH AFRICA

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), and with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

## SCHEDULE

## GENERAL EXPLANATORY NOTE:

- [ ] Words or expressions in bold type in square brackets indicate omissions from the existing rules.
- Words or expressions underlined with a solid line indicate insertions into the 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 Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5 of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015, R. 545 of 30 June 2015, R. 2 of 19 February 2016, R. 1055 of

29 September 2017, R. 1272 of 17 November 2017, R. 632 of 22 June 2018, R. 1318 of 30 November 2018, R. 842 of 31 May 2019, and R. 1343 of 18 October 2019.

### Amendment of rule 14 of the Rules

2. Rule 14 of the Rules is hereby amended—

(a) by the substitution in sub-rule (1) for the words preceding paragraph (a) of the following words:

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

(b) by the substitution for sub-rules (2), (3), (4) and (5) of the following sub-rules, respectively:

(2)(a) Within 15 days after the date of service of the plea, the plaintiff shall deliver a notice of application for summary judgment, together with an affidavit made by the plaintiff, or by any other person who can swear positively to the facts.

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

(c) If the claim is founded on a liquid document, a copy of the document shall be annexed to such affidavit, and the notice of application for summary judgment shall state that the application will be set down for hearing on a stated day, not being less than 15 days from the date of the delivery thereof.

(3) **[Upon the hearing of an application for summary judgment the]**  
**The defendant may—**

(a) give security to the plaintiff to the satisfaction of the **[registrar or clerk of the]** court for any judgment, including costs, which may be given; or

(b) satisfy the court by affidavit **[(which shall be delivered before noon on the court day but one preceding the day on which the application is to be heard)]** **(which shall be delivered five days before the day on which the application is to be heard)**, or, with the leave of the court, by oral evidence of **[himself or herself]** **such defendant**, or of any other person who can swear positively to the fact that **the defendant** has a *bona fide* defence to the action, and such affidavit or evidence shall **fully** disclose **[fully]** the nature **[and]** grounds of **[the]** defence and the material facts relied upon therefor.

(4) No evidence may be adduced by the plaintiff otherwise than by the affidavit referred to in sub-rule (2), nor may either party cross-examine any person who

gives evidence orally or on affidavit: Provided that the court may put to any person who gives oral evidence such questions as it **[deems fit]** considers may elucidate the matter.

(5) If the defendant does not find security or satisfy the court as provided in sub-rule (3), the court may enter summary judgment **[in favour of]** for the plaintiff.”;

(c) by the substitution in sub-rule (6) for paragraph (b)(ii) of the following paragraph:

“(ii) give leave to defend to the defendant as to part of the claim and enter judgment against **[him or her]** the defendant, as to the balance of the claim, unless such balance has been paid to the plaintiff; or”;

(d) by the deletion of sub-rule (9);

(e) by the substitution in sub-rule (10) for the words preceding paragraph (a) of the following words:

“The court may at the hearing of an application for summary judgment, make such order as to costs as **[it deems fit]** it may seem just: Provided that if—”; and

(f) by the substitution in sub-rule (10) for paragraph (a) of the following paragraph:

“(a) the plaintiff makes an application under this rule, where the case is not within the terms of sub-rule (1) or where the plaintiff, in the opinion of the court, knew that the defendant relied on a contention which would entitle **[him or her]** the defendant **[to]** leave to defend, the court may order that the action be stayed until the plaintiff has paid the defendant's costs, and may further order that such costs be taxed as between attorney and client; and”.

### **Amendment of Rule 33 of the Rules**

3. Rule 33 of the Rules is hereby amended—

(a) by the substitution for subrule (15) of the following subrule:

“(15) Where costs or expenses are awarded to any party by the court, otherwise than by a judgment in default of the defendant's delivery of notice of intention to defend or on the defendant's consent to judgment before the time for such notice 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 5 days' notice of taxation for an hour to be fixed (generally or specially) by the registrar or clerk of the court and he or she**

**may include in such bill all such payments as have been necessarily and properly made by him or her.]**

(a) draw a bill of such costs or expenses and he or she may include in such bill all such payments as have been necessarily and properly made by him or her; and

(b) prior to enrolling a matter for taxation, by notice as near as may be in accordance with Form 58 of Annexure 1-

(i) afford the party liable to pay costs at the time therein stated, and for a period of ten (10) days thereafter, by prior arrangement, during normal business hours and on any one or more such days, the opportunity to inspect such documents or notes pertaining to any item on the bill of costs; and

(ii) require the party to whom notice is given, to deliver to the party giving the notice within ten (10) days after the expiry of the period in subparagraph (i), a written notice of intention to oppose, specifying the items on the bill of costs objected to, and a brief summary of the reason for such objection.

(c) for the purposes of this subrule, not count the days from 16 December to 15 January, both inclusive, in the time allowed for inspecting documents or notes pertaining to any item on a bill of costs or the giving of a written notice of intention to oppose.”.

(b) by the insertion after subrule (15) of the following sub-rule:

“(15A) No taxation shall be set down in the days from 16 December to 15 January, both inclusive, except-

(a) where the period for delivery of the notice to oppose has expired before the commencement of the period 16 December to 15 January, both inclusive, and no notice of intention to oppose has been delivered; or

(b) where the party liable to pay the costs has consented in writing to the taxation in his or her absence.”; and

(c) by the substitution for subrule (16) of the following subrule:

**“(16)[After subrule (15) has been complied with the registrar or clerk of the court shall tax and allow the relevant costs and expenses: Provided that witness fees shall not be allowed in taxation unless properly vouched for.]**

The registrar or clerk of the court shall not proceed with the taxation of any bill of costs and allow the relevant costs and expenses unless he or she is satisfied that the party liable to pay the costs has received-

(a) due notice in terms of subrule 15(b); and

(b) not less than 10 days’ notice of the date, time and place of such taxation and that he or she is entitled to be present at the taxation: Provided that such notice shall not be necessary-

(i) if the party liable to pay the costs has consented in writing to taxation in his or her absence; or

(ii) if the party liable to pay the costs failed to give notice of intention to oppose in terms of subrule (15)(b)(ii):

Provided further that, if any party fails to appear, after having given notice of intention to oppose in terms of subrule (15)(b)(ii), the taxation may proceed in that party's absence.

(c) Witness fees shall not be allowed in taxation unless properly vouched for."

**Amendment of Annexure 1 to the Rules**

4. Annexure 1 to the Rules is hereby amended—

(a) by the repeal of Form 8; and

(b) by the insertion after Form No. 57 of the following Form:

**"No. 58 - Notice of intention to tax bill of costs in terms of rule 33(15)(b)**

**\*For use in the District Court**

In \_\_\_\_\_ the Magistrates' Court for the District of \_\_\_\_\_

held at..... Case No .....

In the matter between:

.....  
Plaintiff/Applicant

A.B.

and

C.D.

.....  
Defendant/Respondent

TAKE NOTICE THAT ..... (party) intends submitting the attached bill of costs to the Clerk of the court at ..... (place) for taxation.

You may inspect the documents or notes pertaining to any item on the bill of costs at.....(address) between the hours of.....(business hours) for a period of ten (10) days after receipt of this notice.

You may furthermore file a notice of intention to oppose the taxation within ten (10) days after the expiry of the period permitted for the inspection.

In your notice of intention to oppose you shall list all the items on the bill of costs to which you object, and a brief summary of the reason for your objection.

Should you fail to file your notice of intention to oppose within the time specified, the bill of costs will be submitted to the Clerk of the court for taxation without further notice to you.

If you give notice of intention to oppose within the specified time, you may, at the taxation, object to the items specified in your notice to oppose.

DATED at ..... this ..... day of .....  
20.....

.....  
Plaintiff/Defendant/Plaintiff's/Defendant's Attorneys

.....  
(Address)"

**"No. 58 - Notice of intention to tax bill of costs in terms of rule 33(15)(b)**

**\*For use in the Regional Court**

In the Regional Court for the Regional Division of  
.....  
held at..... Case No

In the matter between:

.....  
Plaintiff/Applicant

A.B.  
and  
C.D.

.....  
Defendant/Respondent

TAKE NOTICE THAT ..... (party) intends submitting the attached bill of costs to the Registrar at ..... (place) for taxation.

You may inspect the documents or notes pertaining to any item on the bill of costs at.....(address) between the hours of.....(business hours) for a period of ten (10) days after receipt of this notice.

You may furthermore file a notice of intention to oppose the taxation within ten (10) days after the expiry of the period permitted for the inspection.

In your notice of intention to oppose you shall list all the items on the bill of costs to which you object, and a brief summary of the reason for your objection.

Should you fail to file your notice of intention to oppose within the time specified, the bill of costs will be submitted to the Registrar for taxation without further notice to you.

If you give notice of intention to oppose within the specified time, you may, at the taxation, object to the items specified in your notice of intention to oppose.

DATED at ..... this ..... day of .....  
20.....

.....  
Plaintiff/Defendant/Plaintiff's/Defendant's Attorneys

.....  
(Address)".

### **Commencement**

5. This rule comes into operation on **9 March 2020**.