

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 2573

7 October 2022

RULES REGULATING MATTERS IN RESPECT OF THE SMALL CLAIMS 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), read with section 25 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984), with the approval of the Minister for Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE

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Definitions

1. In these rules and in the forms annexed hereto, unless the context otherwise indicates, a word to which a meaning has been assigned in the Act bears that meaning; and—

"abandon" means to give up a portion of a claim or counterclaim to bring the claim within the jurisdiction of the Small Claims Court and "abandonment" has a corresponding meaning;

"affidavit" means a written statement voluntarily made under oath or upon affirmation before a commissioner of oaths;

"application" means to apply to the court orally or in writing for relief in terms of the Act;

"clerk of the court" means a clerk of the court appointed under section 11 of the Act and includes an assistant clerk of the court so appointed;

"counterclaim" means a claim the defendant has against the plaintiff irrespective of the plaintiff's cause of action;

"defendant" means the person against whom a claim is made;

"deliver" (except in rules 7 and 13) means to serve a copy of the document on the opposite party by hand delivery or electronic mail and lodge with the clerk of the court and "delivery" and "delivered" and "delivering" have a corresponding meaning;

"documents" includes but is not limited to a book, writing, tape recording, video, photograph, electronic recording or data message;

"domicilium citandi" means an address chosen by a party, in writing, where legal notices or process may be sent or served and **"domicilium"** and **"domicilium citandi et executandi"** have a corresponding meaning;

"jointly and severally" means where there are two or more persons responsible for a debt, each person may be liable for a proportionate share of the debt or the whole of the amount;

"legal entity" means an association, partnership, syndicate, company, close corporation, trust, stokvel and any other entity that is not a natural person;

"lodge" means to submit, furnish to, or file documents with, the Clerk of the Court by hand or by electronic means and **"lodged"** has a corresponding meaning;

"plaintiff" means the person who institutes the claim;

"property" includes everything animate or inanimate, corporeal or incorporeal, movable or immovable, capable of being subject to ownership;

"set-off" means the deduction from a claim or counterclaim of an amount admitted by a party, due by that party to the other party concerned;

"sign" means affixing or appending a signature including an electronic signature comprising the initial or name of the person signing, in any font, style or size which is intended by the person to serve as a signature and includes an advanced electronic signature as provided for in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) and **"signed"** and **"signature"** has a corresponding meaning; and

"the Act" means the Small Claims Courts Act, 1984 (Act No. 61 of 1984).

Advisory Board

2. (1) (a) The Minister may establish one or more boards as contemplated in section 25(1)(d) of the Act and may appoint as many members to such board or boards as he or she deems fit.

(b) A member of such a board shall hold office for such period as determined by the Minister, and any such appointment may be terminated at any time by the Minister if there are sound reasons for doing so.

(c) The Minister shall appoint the chairperson and vice-chairperson of the said board.

(d) If the chairperson and vice-chairperson are not available, a chairperson shall be appointed by the members present if quorate, being 50% of the members of the Board.

(2) The Minister may dissolve the board at any time.

(3) The board must advise the Minister in regard to—

- (a) the appointment of suitable persons as commissioners, in the case of an attorney or advocate, after consultation with the Legal Practice Council;
- (b) the recruitment and utilisation of persons as commissioners, clerks, assistant clerks, interpreters, legal assistants and such other persons as may be necessary;
- (c) suitable court and office accommodation;
- (d) the times for the holding of court; and
- (e) any other matter which may be necessary for the proper functioning of the court.

Duties of the clerk of the court

3. (1) Any party initiating proceedings must approach the clerk of the court to issue a summons.

(2) The clerk of the court—

- (a) must sign, date and issue the process initiating the proceedings;
- (b) must assign a consecutive case number for the year and a unique reference number to the summons and record the case and unique reference numbers in a register;
- (c) must ensure that every document subsequently filed in respect of the same proceeding is marked with the same case number;
- (d) may request a party to correct any patent defect or error in any document that is filed and may assist the party if necessary; and
- (e) must file under the case number, any process of the court and any process delivered to the court in the matter and must perform any ancillary duties as may be directed by the commissioner to give effect to the finality of the matter.

(3) A commissioner may perform any function of the clerk of the court or sign any process prescribed in these rules except that a commissioner may not prepare any statement or process for any party.

Duties of the legal assistant

4. (1) The legal assistant must render to any person who so requests—

- (a) advice in regard to any action which falls within the jurisdiction of the court;
- (b) assistance with the drafting of the process of court; and
- (c) advice in regard to the prescribed tariff for sheriffs and where to lodge a complaint for overcharging.

(2) Any act to be performed by the legal assistant in terms of these rules may be performed by the clerk of the court.

Interpreters

5. (1) All interpreters interpreting evidence in any language with which the court or a party or his or her representative is not sufficiently conversant, must either have been sworn in to interpret in the High Court or Magistrates' Courts or where not sworn in, be sworn in by stating the following before the commissioner:

"I,..... (full name), do hereby swear or truly affirm that whenever I may be called upon to perform the functions of an interpreter in any proceedings in any Small Claims Court, I shall truly and correctly to the best of my ability interpret from one language to the other being used in those proceedings and vice versa."

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

Oath of witnesses

6. (1) (a) The oath in terms of section 28 of the Act shall be administered in the following form:

"I swear that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth, so help me God."

(b) Any person who is required to take the oath and who informs the commissioner that he or she—

- (i) objects to taking the oath; or
- (ii) does not consider the oath to be binding on his or her conscience,

shall make an affirmation in the following words at the direction of the commissioner:

"I solemnly affirm that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth."

(2) The oath and affirmation shall have the same legal effect.

Contents of letter of demand

7. (1) The letter of demand referred to in section 29(1) of the Act must set out the facts upon which the claim is based, the date upon which the claim arose and the amount or relief claimed and must substantially correspond with Form 4 of Annexure 1.

(2) The plaintiff must prove by means of an affidavit or by a registered post receipt that the letter of demand referred to in section 29(1) of the Act has been delivered to the defendant.

(3) The plaintiff may use Form 5 in Annexure 1 for the affidavit referred to in subrule (2).

Summons

8. (1) The summons must—
- (a) substantially correspond with Form 1 of Annexure 1 and include—
 - (i) a form of consent to judgment; and
 - (ii) a notice drawing the defendant's attention to the provisions of sections 29(3), 35, 38, 39, 40 and 43 of the Act;
 - (b) contain particulars of the claim and set out—
 - (i) the date when the claim arose;
 - (ii) the nature of the claim;
 - (iii) the amount of the claim;
 - (iv) the relief or outcome that is sought from the court;
 - (v) any abandonment of part of the claim under section 18 of the Act and any set-off under section 19 of the Act; and
 - (vi) the particulars and relief sought in respect of each claim separately where the summons contains more than one claim.
 - (c) be signed by the plaintiff;
 - (d) state the plaintiff's residential or business address and where available, an electronic mail address, telephonic and cellular number;
 - (e) state the surname and first names or initials of the defendant by which the defendant is known to the plaintiff, the defendant's residential address or place of business and where available, the electronic mail address, telephonic

and cellular number and in the case of a legal person, partnership, club, association, business, church or syndicate it shall be summoned under the name by which it is known to the plaintiff; and

(f) be signed by the clerk of the court and bear the date of issue by him or her and reflect the case number and unique reference number.

(2) The residential, business or electronic mail address, provided in subrule (1)(d), may be used for service of documents on the plaintiff.

(3) The summons must be served on the defendant not less than 10 days before the date of hearing. A copy of Form 7 of Annexure A must be attached to and served with the summons on the defendant.

(4) Documents lodged shall not be invalidated by non-compliance with any of the requirements and may be corrected by the commissioner in his or her discretion unless the other party is prejudiced.

Amendment of documents

9. (1) Subject to the provisions of this rule, a summons may be amended by the plaintiff before service.

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

(3) Any alteration or amendment of a summons after service must be made in terms of rule 10.

(4) Any documents may be amended after service, by the commissioner of his or her own accord or on request by the relevant party after consideration by the commissioner of any possible prejudice to any other party.

Applications

10. (1) Any application required in terms of the Act or these rules may be made orally or in writing.

(2) If an application is made in writing it must substantially correspond with Form 8 of Annexure 1.

Service of summons

11. A summons may be served on a defendant—

- (a) by the plaintiff or the plaintiff's authorised representative, in terms of rule 12;
- or
- (b) by the sheriff in terms of rule 13.

Service of summons by plaintiff or plaintiff's authorised representative by hand delivery to defendant

12. (1) Where the summons is served by the plaintiff or his or her authorised representative by hand delivery, the plaintiff or the plaintiff's authorised representative must—

- (a) make as many copies of the summons as there are defendants to be served;

- (b) hand over a copy of the summons to the defendant in person;
- (c) where requested, show the original or certified copy of the summons to the defendant; and
- (d) after service on the defendant, lodge the original summons and proof of service with the clerk of the court as soon as possible.

(2) Proof of service of the summons on the defendant must substantially correspond with Form 6 in Annexure 1.

(3) Where the defendant keeps his or her residence or place of business closed or otherwise prevents the plaintiff from serving the summons, the plaintiff may call upon the sheriff to serve the summons, subject to compliance with subrule 13(1)(a) and (b).

Service of process by the sheriff

13. (1) Where a summons, warrant of execution or any other process is delivered to the sheriff for service on the defendant, the sheriff—

- (a) shall only be obliged to effect service if the party who requires such service has paid the sheriff's fees beforehand;
- (b) must be furnished with the original or certified summons, original warrant or any other process and as many copies of these documents as there are defendants to be served;
- (c) must serve the summons or execute the warrant of execution and any other process of court without any unavoidable delay once paragraph (a) and (b) have been complied with;

- (d) must, where requested, exhibit the original summons or certified copy of the summons, warrant of execution or process to the person to be served and serve a copy thereof on the person;
- (e) must notify the clerk of the court and the plaintiff in the summons, warrant of execution or any other process in writing that service or execution has been duly effected, stating the date, manner of service or execution and return the said process to the clerk of the court;
- (f) must notify the plaintiff in the summons, warrant of execution or any other process in writing that service or execution could not be effected, the reason that service or execution could not be effected and return the said process to such party and keep a record of any process so returned;
- (g) must after service or attempted service of any process, specify the amount of each of his or her charges separately and the total thereof on the original and all copies of his or her return of service;
- (h) shall, for service effected in terms of subrule (2)(b) to (j), indicate in the return of service of the process the name of the person to whom it has been delivered and the capacity in which such person stands in relation to the person, corporation, company, body corporate or institution affected by the process: Provided further that whenever the court is not satisfied as to the effectiveness of the service, it may order such further steps to be taken as it deems fit; and
- (i) shall, in any case where the service or execution of any process of the court has been met with or is reasonably expected to be met with resistance, have the power to call upon any member of the Service as defined in section 1 of

the South African Police Service Act, 1995 (Act No. 68 of 1995), to render aid to the sheriff.

(2) All process that is required to be served on any person may be served in any of the following ways:

- (a) By handing a copy of the process to the person;
- (b) by leaving a copy of the process at the person's place of residence or business with any other person who is apparently at least 16 years of age and in charge of the premises at the time: Provided that for the purpose of this paragraph, when a building is occupied by more than one person or family, "residence" means that portion of the building occupied by the defendant;
- (c) by leaving a copy of the process at the person's place of employment with any person who is apparently at least 16 years of age and apparently in authority or in charge at the place of employment;
- (d) if the person to be served has chosen a *domicilium citandi*, by serving a copy of the process at the *domicilium* so chosen: Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected;
- (e) in the case of a company or other body corporate, by serving a copy of the process on a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic, or its main place of business within the magisterial district in which the dispute first arose or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business;
- (f) in the case of a partnership, firm or association, by serving a copy of the document on a person who at the time of service is apparently in charge of

the premises and apparently at least 16 years of age, at the place of business of such partnership, firm or association or, if such partnership, firm or association has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairperson or secretary of the managing or other controlling body of such association as the case may be;

- (g) 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, by delivery to any one of them in any manner prescribed in this rule;
- (h) in the case of a syndicate, unincorporated company, club, society or church, 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 manner prescribed in this rule;
- (i) by handing a copy of the document to any representative authorised in writing to accept service on behalf of the person; or
- (j) any method or manner of service as may be ordered by the court including, where appropriate service by registered post, electronic mail or any other electronic means.

(3) Where two or more persons are to be served with the same process, service shall be effected upon each, except where the persons are those stated in subrule (2)(f), (g) and (h).

(4) Where the person to be served keeps his or her residence or place of business closed and thus prevents the sheriff 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.

(5) Where the sheriff is unable after a diligent search, to find at the residence or *domicilium citandi* of the person to be served, either that person or a person referred to in subrule (2)(b) or, in the case of a company or body corporate referred to in subrule (2)(e), a responsible employee, it shall be sufficient service to affix a copy of the process to the outer or principal door of such residence, local office or principal place of business or to leave a copy of the process at such *domicilium*.

(6) If it comes to the sheriff's knowledge that the person on whom service must be made has a new residential or business address, the sheriff shall serve the process on the person at the new address: Provided that the address is within the jurisdiction for which the sheriff was appointed, without returning the documents to court for amendment.

(7) Where the relief claimed in any action is limited to an order for ejectment from certain premises or land or a judgment for the payment of rent and for the cost of such proceedings, and it is not possible to effect service in the manner prescribed in subrule (2), service of process may be effected by affixing a copy thereof to the outer or principal door of such premises or on some other conspicuous part of the premises or land in respect of which the process is being served.

Written statement of defence

14. (1) Where the defendant wishes to lodge a written statement of defence then such statement must—

- (a) set out the nature of the defence and the grounds on which it is based;
- (b) be signed by the defendant or his or her authorised representative; and

(c) be lodged with the clerk of the court.

(2) For the purposes of this rule "defendant" includes any person upon whom a summons has been served and who alleges that he or she is not the defendant cited in the summons and enters an appearance to defend on that ground.

(3) Form 7 in Annexure 1 may be used for the written statement of defence and counterclaim.

(4) (a) If the written statement of defence includes a counterclaim, the statement must be served in the same manner set out in rules 12 and 13 for the service of a summons.

(b) The written statement of defence must be lodged with the clerk of the court after service on the plaintiff.

(5) The clerk of the court must bring the written statement of defence to the attention of the plaintiff.

Counterclaim

15. (1) A counterclaim may be made orally or in writing.

(2) If a counterclaim is made in writing—

(a) it shall be made by stating in a written statement of defence, particulars of the counterclaim as are required in terms of rule 8 in respect of a claim and Form 7 in Annexure 1 may be used for the counterclaim;

(b) such counterclaim included in a statement of defence, must be served in terms of rule 12 or 13; and

(c) the counterclaim must be lodged with the clerk of the court after service on the plaintiff.

(3) Where a counterclaim is raised at a hearing whether orally or in writing the commissioner may —

- (a) proceed with the matter where there would be no prejudice to any party; or
- (b) postpone the hearing to allow a party an opportunity to address any prejudice suffered by such party.

Hearing

16. (1) (a) The parties must appear on the day and at the time of the hearing with all the relevant and supporting documents.

(b) The parties may appear in person or by audio or audio-visual means.

(c) Any party may appear by audio or audio-visual means only after an application to the court is made at least 3 days before the date of the hearing and an order is granted allowing such an appearance.

(2) The plaintiff must furnish the court with proof that the summons was served on the defendant.

(3) The plaintiff and the defendant must ensure that any witness or witnesses in support of his or her claim or defence gives evidence in person or by audio or audio-visual means.

Consent to judgment

17. (1) A defendant who has admitted liability and consented to judgment in writing after receiving a summons shall—

- (a) sign the form of consent endorsed on the original summons; or

(b) sign the consent form on a copy of the summons and lodge it with the clerk of the court.

(2) If the defendant's consent to judgment is for less than the amount claimed in the summons, he or she may still enter a written statement of defence in respect of the balance of the claim. Notwithstanding a judgment upon such consent, the action may proceed in respect of such balance and shall be in all subsequent respects an action for such balance.

(3) The court may grant judgment on any consent signed by the defendant.

Offer by judgment debtor after judgment in terms of section 40 of the Act

18. (1) (a) A judgment debtor may within 10 days of the granting of a judgment for the payment of money make an offer to the judgment creditor to pay the judgment debt and costs in specified instalments.

(b) Form 9 of Annexure 1 to the Rules may be used for the offer in subrule (1)(a).

(c) The judgment creditor must notify the judgment debtor within 5 days whether the offer is accepted or not.

(d) After acceptance of the offer by the judgment creditor, the judgment debtor must commence payment.

(2) (a) A judgment creditor may after accepting the offer, make a written request to the clerk of the court to order the judgment debtor to pay in accordance with the offer made in subrule (1).

(b) Form 10 of Annexure 1 to the Rules may be used for the written request in subrule (2)(a).

(3) The clerk of the court must within 5 days of the granting of the request made in subrule (2)(a), notify the parties in writing that the offer in subrule (1) constitutes an order of court in terms of section 39 of the Act.

Execution after non-payment of judgment in terms of section 41(2) of the Act

19. (1) If a judgment for the payment of money is not paid within 10 days or in the case of a failure to pay an instalment at the time and in the manner determined by the court, the judgment creditor may lodge with the clerk of the court an application for the matter to be referred to the clerk of the Magistrates' Court as provided for in section 41 of the Act.

(2) The application in subrule (1) must substantially correspond with Form 11 of Annexure 1.

Process in execution

20. (1) The process for the execution of any judgment for the surrender of property whether movable or immovable, or for ejectment shall be by warrant signed and issued by the clerk of the court and addressed to the sheriff corresponding substantially with Form 2 or 3 of Annexure 1, whichever is applicable.

(2) The clerk of the court may be approached by any person in whose favour such judgment has been given, to issue a warrant if the judgment has not been satisfied, stayed or suspended.

(3) A warrant may at any time, on payment of the fees incurred, be withdrawn or suspended by notice to the sheriff by the judgment creditor who has issued such process.

(4) Any alterations to a warrant shall be initialled by the clerk of the court and the judgment creditor before it is issued.

(5) A warrant shall be invalid if a wrong person is named therein as a party, but it shall not be invalid merely by reason of the misspelling of any name, or of any error in respect of date.

(6) Where a warrant has been lost or mislaid, an interested party may make written application corresponding substantially with Form 8 of Annexure 1, to the clerk of the court for the issue of a second or further warrant.

(7) Where an application in terms of subrule (6) has been granted —

(a) the provisions of subrules (3) to (5) shall subject to the necessary alterations, apply to any such warrant issued by the clerk of the court;

(b) the second or further warrant shall clearly be endorsed as follows:

“This second or further warrant (describe nature of warrant) was issued by the clerk of the small claims court on (date) and replaces any warrant (describe nature of warrant) instead of which it is issued or reissued”.

(8) When any warrant which has been replaced by a warrant issued in terms of subrule (6) becomes available, it shall immediately be cancelled by the clerk of the court by endorsing across the face thereof between two parallel transverse lines the words:

“Cancelled. Fresh warrant (describe nature of warrant) issued by the clerk of the court (name and signature of clerk of the court), dated”.

(9) The fact that a second or further warrant has been issued and the date thereof, shall be endorsed on the summons with which the action was instituted.

Representation of parties

21. (1) If the authority of a person representing a legal entity is challenged on stated grounds or if the court has reason to doubt the authority of the representative, then the court may require the production of proof that the representative is properly authorised.

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

(3) Where an executor, trustee guardian or other competent person has been appointed, the court may, on oral application, order that he or she be substituted for the party who has died or become incompetent.

Non-compliance with rules, including time limits and errors

22. (1) Except where 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 giving of judgment against the party in default.

(2) No process shall be invalid merely by reason of any obvious misspelling, or any errors in respect of figures or dates.

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

Costs

23. Where a judgment or order of costs is made against two or more parties, such costs shall be payable by them jointly and severally.

Sheriffs' Fees

24. The fees and travelling expenses chargeable by and payable to the sheriffs, shall be those prescribed in Part II of Annexure 2.

Actions against partners, a person carrying on business in a name or style other than his own name, syndicate or association

25. (1) Any person carrying on business in a name or style other than his or her own name, or two or more persons who are co-partners, may be sued in such name or style or in the name of the partnership.

(2) Subrule 25(1) shall also apply similarly to an unincorporated company, syndicate, association or stokvel.

Reviews

26. (1) A party desiring to review the proceedings in terms of section 46 of the Act must apply to the High Court.

(2) The review of the proceedings referred to in subrule (1) shall only be made on one or more of the following grounds:

- (a) Absence of jurisdiction of the court;
- (b) interest in the cause, bias, malice or the commission of an offence referred to in section 46(b) of the Act by the commissioner; or
- (c) gross irregularity with regard to the proceedings.

(3) Every review in terms of this rule must be instituted by a notice of review and founding affidavit substantially in accordance with Form 12 of Annexure 1.

(4) The notice of review and affidavit must set out the proceedings to be reviewed, state the grounds, facts and circumstances relied upon for the review and must be lodged with the clerk of the court where the proceedings were held.

(5) Within 5 days of the receipt of a notice of review and affidavit, the clerk of the court must notify the commissioner who presided over the proceedings and the opposite party or parties of the review application and further notify them that the notice to review, affidavit, summons and all documents in the court file are available from the clerk's office.

(6) The commissioner must within 15 days of receiving the notice of review and affidavit lodge with the clerk of the court a statement using Form 13 of Annexure 1 in answer to the allegations made by the applicant.

(7) Within 5 days after the statement of the commissioner in subrule (6) is made available, the party bringing the review may amend, add to or vary the notice of review and affidavit by using Form 14 of Annexure 1 which Form must be lodged with the clerk of the court.

(8) The clerk of the court must within 5 days of receipt of the Form referred to in subrule (7) which amends, adds to or varies the notice of review, notify the commissioner who presided over the proceedings and the opposite party or parties that the Form is available from the clerk's office.

(9) Should the commissioner or any party affected desire to oppose the granting of the relief prayed for, he or she must within 5 days of the documents in subrule (8) being made available, lodge with the clerk of the court, an affidavit using Form 15 of Annexure 1, in answer to the allegations made by the applicant.

(10) The clerk of the court must within 10 days after the expiry of the period in subrule (9) send to the Registrar of the High Court, a paginated bundle consisting of—

- (a) the notice and amended notice of review;
- (b) the affidavits lodged by the party bringing the review;
- (c) the statement and opposing affidavit, if applicable, of the commissioner;
- (d) the affidavits, if applicable of any affected parties; and
- (e) the summons and documents in the court file.

(11) The Registrar of the High Court must within 10 days of receipt of the paginated bundle, lay the same in chambers before a judge of that division for his or her consideration, directions and decision on review.

(12) The clerk of the court must keep a register of matters sent to the Registrar of the High Court for review.

(13) The clerk of the court must within 5 days after receiving the decision made by the Judge on the review, notify the parties and the commissioner of the decision.

(14) (a) Any notice or notification to be given by the clerk of the court to the parties and the commissioner may be done—

- (i) in writing, by electronic mail or any other electronic means; or
- (ii) orally, by telephone or cellular phone.

(b) Proof of notice or notification given to the parties and the commissioner shall be as follows:

- (i) If notice or notification was given in writing, either an electronic mail delivery receipt or data message; or
- (ii) if notice or notification was given orally, an endorsement on the file by the clerk of the court recording the date, time, telephone or cellular number, name of person contacted, the message communicated and whether the message was relayed to the person directly or through voicemail.

(15) No payment as contemplated in Part I of Annexure 2, shall be required by a commissioner in respect of a copy of any document requested by him or her in terms of this rule.

Saving of pending proceedings

27. (1) Nothing in these rules shall affect proceedings which are pending at the date of commencement of these rules and such proceedings shall be continued and concluded in every respect as if these rules had not been promulgated.

(2) Proceedings shall, for the purpose of this rule, be deemed to be pending, if at the date of commencement of these rules, summons had been issued and shall be deemed to be concluded when judgment is given.

Short title and commencement

28. These rules shall be called the Rules Regulating Matters in Respect of the Small Claims Court and shall commence on a date to be fixed by the Minister.

ANNEXURE 1

FORMS

1. Summons
2. Warrant for the surrender of goods
3. Warrant of ejectment
4. Letter of Demand in terms of section 29(1) of the Act
5. Affidavit in terms of rule 7(2)
6. Return of service in terms of rule 12(2)
7. Written statement of defence and counterclaim
8. Applications
9. Offer by debtor
10. Request by judgment creditor in terms of section 40 of the Act
11. Application by judgment creditor in terms of section 41(2) of the Act
12. Notice of review and affidavit in terms of rule 26(3)
13. Statement by commissioner in terms of rule 26(6)

14. Amendment, variation and addition to notice of review in terms of rule 26(7)
15. Affidavit in terms of rule 26(9)

No.1 — Summons

In the Small Claims Court for the Area of _____

Case No: _____

Unique Reference No: _____

Clerk of the Court (signature and date of issue)

SUMMONS

(To be completed by the Plaintiff)

A. PARTICULARS OF THE PLAINTIFF OR PLAINTIFFS:

Surname
First Names.....
Residential address.....
Business address.....
Postal Address.....
Telephone No.....
Cellular No.....
E-mail address.....

B. PARTICULARS OF THE DEFENDANT OR DEFENDANTS:

Surname or Name of entity.....
First Names.....
Residential address (*where known*).....
Business address (*where known*).....
Postal Address (*where known*).....
Telephone No (*where known*).....
Cellular No (*where known*).....
E-mail address (*where known*).....

PLEASE READ THE ENTIRE DOCUMENT AS IT HAS IMPORTANT INFORMATION

1. YOU (defendant) are hereby summoned to appear personally before this court (insert court district, physical address, telephone number, e-mail address (if applicable) and court room number)

on the _____ of _____ 20__ at _____ (time) to admit or deny or dispute your liability for the claim of the plaintiff as stated in the Particulars of Claim.

2. IF YOU ADMIT THE CLAIM (LIABILITY) AND CONSENT TO JUDGMENT, complete the information below and lodge the summons (including this page) with the Clerk of the Small Claims Court:

(a) I admit that I am liable to the plaintiff as claimed in this summons OR in the amount of R_____ and I consent to judgment accordingly.

(b) I offer to pay the debt in instalments of R_____ per month, the first instalment to be paid to the plaintiff on or before the _____ (insert date) and payable every month thereafter until the debt and costs (if applicable) is paid. (DELETE PARAGRAPH (b) if you are not making an offer to pay the debt in instalments)

DATED at _____ on this _____ day of _____, 20_____.

DEFENDANT _____ (name and signature)

WITNESSES:

(full names) _____, (signature) _____

(address and contact number) _____

(full names) _____, (signature) _____

(address and contact number) _____

3. IF YOU DENY OR DISPUTE THE CLAIM, you may complete Form 7 (written statement of defence and counterclaim) in Annexure 1 attached to this summons and lodge the Form with the clerk of the Small Claims Court before the date you are

summoned to appear. **YOU MUST APPEAR ON THE DATE OF THE HEARING WHETHER YOU SUBMIT FORM 7 OR NOT.**

4. **IF YOU WISH TO DISCUSS THE CLAIM** with the clerk of the Small Claims Court then you should contact him or her at the address above before the date of the hearing.

5. **DEFENDANT TO NOTE THE FOLLOWING:**

- (a) If you do not appear on the date (above), judgment may be obtained against you by the plaintiff unless you have previously admitted the claim.
- (b) If money is to be paid in terms of a judgment or order of court, the money must be paid directly to the judgment creditor (this is the person in whose favour the judgment has been granted or order of court made).
- (c) If judgment for the payment of money is granted against you and you indicate that you will not be able to pay, the court may conduct an enquiry into your financial position after which the court may order you to pay the judgment debt, interest and costs in specified instalments or otherwise.
- (d) If the court has not made an order for you to pay the judgment debt and costs in specified instalments (paragraph (c) above), then you may within 10 days after judgment has been granted, make a written offer to the judgment creditor to pay the judgment debt and costs in instalments or otherwise using Form 9 in Annexure 1.
- (e) If your written offer is accepted by the judgment creditor, at the request of the judgment creditor the clerk of the court shall order you to pay the judgment debt and costs in terms of your offer and the order by the clerk of the court shall be deemed to be an order of the court.
- (f) If judgment has been granted against you, you must notify the judgment creditor fully and correctly, within 14 (fourteen) days after you have changed your place of residence; business or employment of your new place of residence, business or employment.
- (g) If, after judgment has been granted against you for the payment of money or an order for the payment of money in instalments has been made, you fail to satisfy the judgment or order, such judgment or order may be enforced against your movable property and if the movable property is found to be

insufficient then against your immovable property after execution against your immovable property has been authorised by the court.

- (h) In terms of section 47 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984)("Act"), any person who obstructs the messenger (sheriff) or deputy messenger (deputy sheriff) of the court in the execution of his or her duties under the Act or fails to give notice of a change of address in terms of section 43 of the Act, shall be guilty of an offence and liable upon conviction to a fine not exceeding R2000 or to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

PARTICULARS OF CLAIM

(To be completed by the Plaintiff)

PLEASE NOTE:

- A. Print or type.
- B. Be brief and concise. Mere reference to attached correspondence is not acceptable. Set out in point form the important features of the matter, indicating names and dates where possible.
- C. The sections below must be completed. DO NOT give a detailed exposition of the history of the matter.

1. State the date when the claim arose:

2. State the amount you are claiming or what you want from the defendant:

3. Explain the nature of your claim (explain briefly why the amount or what you are claiming is due to you):

4. What relief or outcome do you want from the court?

5. If you have any evidence (documents) that you are relying on then attach photocopies of the documents (please do not send your original) and briefly list the documents that you have attached below:

IF PARAGRAPH 7 OR 8 BELOW DO NOT APPLY TO YOUR CLAIM, CROSS OUT THE PARAGRAPH OR PARAGRAPHS.

7. The Plaintiff hereby abandons in terms of section 18 of the Act, the sum of R_____ (*delete if not applicable*) being part of the claim. (*Note: "abandon" means to give up a portion of a claim or counterclaim to bring the claim within the jurisdiction of the Small Claims Court*).

8. The Plaintiff hereby sets-off in terms of section 19 of the Act, the sum of R_____ (*delete if not applicable*) being the amount to be deducted from the admitted debt as stated in the summons (*Note: "set-off" means the deduction from a claim or counterclaim of an amount admitted by a party, due by that party to the other party concerned*).

Date: _____

Signature, mark or fingerprint of Plaintiff: _____

NOTE:

- (a) Once you have completed the summons, you must take the summons together with as many copies as there are defendants, to the clerk of the court (Small Claims Court) to be issued.
- (b) Once issued the summons may be served on the defendant or defendants by you or your authorised representative, in terms of rule 12 or by the sheriff in terms of rule 13.
- (c) If you or your authorised representative serve the summons, your attention is drawn to rule 12 stated below:

"Service of summons by plaintiff or plaintiff's authorised representative by hand delivery to defendant

12. (1) Where the summons is served by the plaintiff or his or her authorised representative by hand delivery, the plaintiff must—

- (a) make as many copies of the summons as there are defendants to be served;
- (b) hand over a copy of the summons to the defendant in person;
- (c) where requested, show the original or certified copy of the summons to the defendant; and
- (d) after service on the defendant, lodge the original summons and proof of service with the clerk of the court as soon as possible.

(2) Proof of service of the summons on the Defendant must substantially correspond with Form 6 in Annexure 1.

(3) Where the defendant keeps his or her residence or place of business closed or otherwise prevents the plaintiff from serving the summons, the plaintiff may call upon the sheriff to serve the summons, subject to compliance with subrule 13(1)(a) and (b)"

No.2— Warrant for the surrender of goods

In the Small Claims Court for the area of.....	
Case No...../20.....	Unique Reference No.: _____
In the matter between:	
..... Plaintiff	
and	
..... Defendant	
<i>To the Sheriff:</i>	
Whereas in this action the court ordered that the defendant surrender to the plaintiff a certain..... (describe the thing to be surrendered);	
You are hereby authorised and required to take the said.....	
..... (describe the thing) from the defendant and place the plaintiff in possession thereof, for which this shall be your warrant;	
And return to this court what you have done by virtue hereof.	
Dated on this.....day of....., 20.....	

	By Order of the Court
..... <i>Plaintiff</i> <i>Clerk of the Court</i>
<i>Address:</i>	
.....

No.3—Warrant for ejectment

In the Small Claims Court for the area of	
Case No...../20.....	Unique Reference No.: _____
In the matter between:	
..... Plaintiff	
and	
..... Defendant.	
<i>To the Sheriff:</i>	
Whereas in this action, the plaintiff on the day of, 20.... obtained judgment for the ejectment of the said defendant from the premises or land known as	
You are hereby authorised and required to put the said plaintiff in possession of the said premises or land by removing the said defendant therefrom, for which this shall be your warrant;	
And return to this court what you have done by virtue hereof.	
Dated on this.....day of....., 20.....	
	By Order of the Court

 <i>Clerk of the Court</i>
..... Plaintiff	
Address:	
.....	

No.4— Letter of demand in terms of s29(1) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984)

FROM (*plaintiff to insert his or her details below*):

Name: _____

Surname: _____

Address: _____

E-mail: _____

Date: _____

TO (*insert details below*):

Name of person or entity: _____

Surname (*if applicable*): _____

Address: _____

E-mail (*where known*): _____

DEMAND

1. I, _____ (name and surname of person making the demand) hereby claim the sum of R _____ (amount claimed) from you OR _____ (*other, insert what you are claiming from the defendant*) in respect of _____ (set out the facts upon which the claim is based, e.g. rent, contract, etc.) that arose on or about _____ (insert date).

2. You are required within 14 (fourteen) days from the date of receipt of this demand, to pay or to settle the amount of R _____ OR _____ (*other, insert what you demand from the defendant*).

If you fail to comply with this demand within the 14 (fourteen) days, I will institute action against you in the Small Claims Court to obtain a judgment for my claim against you.

_____ (signature, mark or fingerprint here)

NOTE:

- (a) This letter of demand must be sent by registered post or delivered personally by you to the person you are sending the demand to.
- (b) If you have delivered the letter personally then your attention is drawn to rule 7(2) and (3) stated below:

"(2) The plaintiff must prove by means of an affidavit or by a registered post receipt that the letter of demand referred to in section 29(1) of the Act has been delivered to the defendant.

(3) The plaintiff may use Form 5 in Annexure 1 for the affidavit referred to in subrule (2).".

No.5— Affidavit in terms of rule 7(2) - letter of demand in terms of section 29(1)

AFFIDAVIT IN TERMS OF RULE 7(2)

1. I, the undersigned

(State full names and surname)

Identity or Passport No.:

Residing at: _____

Hereby make oath and state or solemnly affirm that:

1.1 On the _____ *(insert date)* at _____ *(insert time)*, I delivered a letter of demand in terms of section 29(1) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984) to _____ *(state the name of the person who received the letter)* at _____ *(place or address where letter was delivered)*

1.2 I delivered the letter by:—

1.2.1 Giving it personally to the person referred to in paragraph 1.1; OR

1.2.2 Other (explain below how the letter was delivered to the person referred to in paragraph 1.1):

NAME: _____

SIGNATURE: _____

I certify that the deponent has acknowledged that he or she knows and understands the contents of this declaration, which was sworn to/affirmed (delete what is not applicable) and signed before me at _____ (place) on _____ (date) under compliance with the rules promulgated in Government Notice R. 1258 dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS

NAME: _____

CAPACITY: _____

ADDRESS: _____

No.6— Return of service where summons is served by plaintiff or plaintiff's authorised representative

In the Small Claims Court for the Area of _____

CASE NO.: _____ UNIQUE REFERENCE NO.: _____

_____ PLAINTIFF

AND

_____ DEFENDANT

RETURN OF SERVICE

(To be completed by the plaintiff or plaintiff's authorised representative)

1. I, the undersigned

(State full names and surname)

Identity or Passport No.: _____

Residing at: _____

Hereby make oath and state or solemnly affirm that:

1.1 I am the plaintiff or plaintiff's representative *(delete whichever is not applicable)*.

1.2 I served the summons on the defendant _____
(insert name of person) on this _____ (day) of _____ (month), 20____ at
about _____ (time) by handing a copy of the summons to him or her.

OR

1.3 I attempted to serve the summons on the defendant
_____ (insert name of person) on this
_____ (day) of _____ (month), 20____ at about _____ (time) but he
or she refused to take a copy of the summons. I then took the summons and the
copy with me **OR** I left a copy of the summons at the premises.

OR _____ (explain what you did with the summons).

Delete paragraph 1.2 or 1.3, whichever is not applicable.

NAME: _____

SIGNATURE: _____

I certify that the deponent has acknowledged that he or she knows and understands the contents of this declaration, which was sworn to/affirmed (delete what is not applicable) and signed before me at _____ (place) on _____ (date) under compliance with the rules promulgated in Government Notice R. 1258 dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS

NAME: _____

CAPACITY: _____

ADDRESS: _____

<p>NOTE: This document must be lodged with the Clerk of the Court before or on the date of the hearing of the matter.</p>
--

No.7— Written statement of defence and counterclaim

In the Small Claims Court for the Area of _____

CASE NO.: _____ UNIQUE REFERENCE NO.: _____

WRITTEN STATEMENT OF DEFENCE AND COUNTERCLAIM

(To be completed by the defendant)

A. PARTICULARS OF THE DEFENDANT:

Surname or Name of entity:

First Names:.....

Residential address:.....

Business address:.....

Postal Address:.....

Telephone No:.....

Cellular No:.....

E-mail address:.....

B. PARTICULARS OF THE PLAINTIFF:

Surname.....

First Names:

WRITTEN STATEMENT OF DEFENCE

1. How much of the claim do you dispute?

(tick whichever applies)

I dispute the full amount (money) claimed OR the claim (other than money) as shown on the particulars of claim

OR

I admit the amount of R

And I paid the amount admitted on (date)

2. **Do you deny or dispute this claim because you have already paid it or complied with it?** (tick below whichever applies)

No (then go to **paragraph 3.2 and 3.3**)

Yes (then complete **paragraph 3.1**)

3.1 I paid R

To the plaintiff on (date)

Provide details of where and how you paid the amount or complied with the claim, in the box below. If you have proof of your payment or compliance with the claim then attach this proof.

3.2 What is your response to the plaintiff's claim?

3.3 Why do you say that you are not liable? State the nature of your defence and the particulars of the grounds on which your defence is based, in the box below?

COUNTERCLAIM (if you are not making a counterclaim then cross out this heading)

4. If you wish to make a claim against the Plaintiff (counterclaim), then complete the following:

4.1 If your claim is for a specific sum of money, how much are you claiming?

R

4.2 My claim is for *(specify nature of claim and what you want from the court)*

Note: you may use additional paper if necessary. Please insert your name, surname and the case number on the top right of each page, if additional paper is used.

5. The defendant hereby abandons in terms of section 18 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984) ("Act"), the sum of R_____ *(delete if not applicable)* being part of the claim. *(Note: "abandon" means to give up a portion of a claim or counterclaim to bring the claim within the jurisdiction of the Small Claims Court)*

6. The defendant hereby sets off in terms of section 19 of the Act, the sum of R_____ (*delete if not applicable*) being the amount to be deducted from the admitted debt as stated in the summons. (*Note: "set-off" means the deduction from a claim or counterclaim of an amount admitted by a party, due by that party to the other party concerned*).

7. I consent to the service of all further documents by electronic mail to the e-mail address referred to in paragraph A.

Date: _____

Signature, mark or fingerprint of defendant: _____

NOTE:

- (a) If you do **NOT HAVE A COUNTERCLAIM** then lodge this document with the clerk of the court.
- (b) If you **HAVE A COUNTERCLAIM** then you must also serve a copy of this document on the plaintiff, and lodge the original document with the clerk of the court.

The counterclaim may be served by you or the sheriff. If you serve the counterclaim, it must be done as follows:

1. You must make as many copies of the written statement of defence that includes your counterclaim, as there are plaintiffs to be served.
2. Hand over a copy of the written statement of defence and counterclaim to the plaintiff.
3. Where requested, show the original or certified copy of the written statement of defence and counterclaim to the plaintiff.
4. After service on the plaintiff, lodge the original written statement of defence and counterclaim and proof of service with the clerk of the court as soon as possible.
5. Proof of service of the written statement of defence and counterclaim on the plaintiff must substantially correspond with Form 6 in Annexure 1.
6. Where the defendant keeps his or her residence or place of business closed and thus prevents you from serving the written statement of defence and counterclaim, you may call upon the sheriff to serve the summons, subject to compliance with rule 13(1)(a) and (b)".

No.8—Applications

In the Small Claims Court for the Area of _____

CASE NO.: _____ UNIQUE REFERENCE NO.: _____

APPLICATION

(To be completed by the Applicant, the person or entity that is applying to the court for the relief stated in this document)

A. PARTICULARS OF THE APPLICANT:

Surname or Name of entity:.....

First Names *(where applicable)*:.....

Residential address:.....

Business address:.....

Postal Address:.....

Telephone No:.....

Cellular No:.....

E-mail address:.....

B. PARTICULARS OF THE RESPONDENT:

Surname or Name of entity:

First Names *(where applicable)*:.....

Residential address *(where known)*:.....

Business address *(where known)*:.....

Postal Address *(where known)*:.....

Telephone No *(where known)*:.....

Cellular No *(where known)*:.....

E-mail address *(where known)*:.....

1. Are you the Plaintiff or the Defendant in the action (summons proceedings)

(tick below, the appropriate box)

Plaintiff

Defendant

2. Application will be made to the Court on the _____ day of _____ at _____ 20____ for an order in terms of: (*tick below whichever applies*)

section 31 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984) ("Act") (Joinder of plaintiffs, party applying for separate hearing to be held where there is a joint action, *go to paragraph 3*)

section 32 of the Act (Joinder of defendants, party applying for separate hearing to be held where there is a joint action, *go to paragraph 3*)

section 33(3) of the Act (party applying for the substitution of the name or place as commonly known with the correct name or place, *go to paragraph 4*)

section 36(a) of the Act (party applying for rescission of judgment granted in the absence of the person against whom that judgment was granted, *go to paragraph 5*)

section 36(b) of the Act (party applying for rescission of judgment which was *void ab origine* (this term means incorrect from the very beginning) or was obtained by fraud or as a result of a mistake common to both parties, *go to paragraph 6*)

section 36(c) of the Act (party applying for correction of patent error or errors in judgment), *go to paragraph 7*)

Other _____
 _____ (specify section or rule in terms of which application is made, *go to paragraph 8*)

3. (a) The Court is requested to grant an order for a separate hearing for the Applicant or Respondent (Delete whichever is not applicable).

(b) (insert below the particulars substantiating the request that a separate hearing should be held)

4. (a) Whereas the name of the plaintiff or defendant (*delete whichever is not applicable*) or place, as commonly known (*delete if not applicable*) is stated in the summons as _____, and whereas the name or place (*delete whichever is not applicable*) is _____.

(b) The Court is requested to grant an order for the substitution of _____ for _____ where it appears in the summons.

(c) (*insert below sufficient details in support of your application*)

5. (a) Whereas judgment was granted against the plaintiff or defendant (*delete whichever is not applicable*) in his or her or their absence on _____ (*insert date*).

(b) Whereas the Court is requested to grant an order rescinding the judgment granted on _____.

(c) (*insert below the **reasons for your absence** on the date that judgment was granted against you and state concisely **your defence** to the claim made against you and indicate when and how you first had knowledge of the judgment against you*).

6. (a) Whereas judgment was granted against the plaintiff or defendant (*delete whichever is not applicable*) on _____ (*insert date*).

(b) Whereas the Court is requested to grant an order rescinding or varying the judgment granted on _____.

(c) (*insert below sufficient details in support of your application for the rescission or the variation of the judgment based on whether it was void ab origine, obtained by fraud or as a result of a mistake common to both parties and indicate when and how you first had knowledge of the judgment against you*).

7. (a) Whereas judgment was granted against the plaintiff or defendant (*delete whichever is not applicable*) on _____ (*insert date*).

(b) Whereas the Court is requested to grant an order correcting the patent error or errors in the judgment granted on _____ as follows _____.

(c) (*insert below sufficient details in support of your application for the correction of a patent error*)

8. (a) In terms of section or rule (*delete whichever is not applicable*) _____, the Court is requested to grant an order for _____.

(b) *(insert below sufficient details in support of your application.)*

Date: _____

Signature, mark or fingerprint of Applicant: _____

NOTE:

A copy of this document must be served on the other party and the original must be lodged with the Clerk of the Court.

To:

Respondent

Address: (as stated in part B above)

And to:

To: The Clerk of the Small Claims Court

_____ (*insert area*)

By hand: Received by the Clerk of the Small Claims Court on this _____ day
of _____ 20____.

Or

Per E-mail: _____

No.9 — Offer by debtor

In the Small Claims Court for the Area of _____

CASE NO.: _____ UNIQUE REFERENCE NO.: _____

_____ PLAINTIFF

AND

_____ DEFENDANT

OFFER BY DEBTOR

(To be completed by the party making the offer)

1. PARTICULARS OF THE PARTY MAKING THE OFFER:

Surname or Name of entity:.....

First Names (*where applicable*):.....

Residential address:.....

Business address:.....

Postal Address:.....

Telephone No.:.....

Cellular No.:.....

E-mail address:.....

1. I, _____ plaintiff or defendant hereby offer to pay to _____, an amount of R _____ on the _____ (insert date) **OR** the judgment debt of R _____ and costs in the amount of R _____ as ordered by the court on _____ (insert date) as follows:

1.1 Instalments in the amount of R _____ per month, the first instalment to be paid to the judgment creditor on or before the _____ (*insert date*) and payable every month thereafter until the debt and costs (if applicable) is

paid and if any instalment is not paid on time then the full balance still owing will become immediately payable.

Date: _____

Signature, mark or fingerprint of the person making the offer: _____

OR

1.2 (a) *(specify alternative offer to paragraph 1.1 above and include details of the amount offered to be paid, and when the first amount and subsequent amounts are to be paid)*

(b) If any instalment referred to in paragraph 1.2(a) above is not paid on time then the full balance still owing will become immediately payable.

Date: _____

Signature, mark or fingerprint of the person making the offer: _____

<p>NOTE TO THE PERSON MAKING THIS OFFER:</p> <p>A. This document must be submitted to the Judgment Creditor.</p> <p>B. The Judgment Creditor will notify you within 5 days whether the offer is accepted or not.</p> <p>C. If your offer is accepted you must commence payment to the judgment creditor. The judgment creditor may apply to the clerk of the court for the terms of this offer to be made an order of the court.</p> <p>D. If your offer to pay is made an order of court as per paragraph C and you fail to pay an instalment at the time and in the manner determined by the order of the court, the judgment will be enforceable by execution in the Magistrate's Court having jurisdiction in accordance with the provisions of the Magistrates' Courts</p>
--

Act, 1944 (Act No. 32 of 1944). The judgment creditor may proceed as if the judgment was granted in the Magistrate's Court in his or her favour for the amount mentioned in the affidavit filed in terms of section 41(2) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984).

No.10 – Request by judgment creditor in terms of s40 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984).

In the Small Claims Court for the Area of _____

CASE NO.: _____ UNIQUE REFERENCE NO.: _____

_____ PLAINTIFF

AND

_____ DEFENDANT

REQUEST BY JUDGMENT CREDITOR IN TERMS OF s40 OF THE SMALL CLAIMS COURTS ACT, 1984 (ACT NO. 61 OF 1984)

1. I,
SURNAME and NAME.....(JUDGMENT CREDITOR)
ADDRESS (insert an address: residential; business; postal or e-mail to which the clerk of the court may send confirmation of the granting of the order)
.....
.....
.....
.....

Telephone No:.....
Cellular No:.....

hereby request the clerk of the Small Claims Court to order the judgment debtor to pay in accordance with the offer made on the _____ (*insert date*).

2. The judgment debtor's written offer to pay is attached as Annexure A.

Date: _____

Signature, mark or fingerprint of the judgment creditor: _____

To: The Clerk of the Small Claims Court

_____ (*insert area*)

By hand: Received by the Clerk of the Small Claims Court on this _____ day
of _____ 20____.

or

Per E-mail: _____

No.11 – Application by judgment creditor in terms of s41(2) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984)

In the Small Claims Court for the Area of _____

CASE NO.: _____ UNIQUE REFERENCE NO.: _____

_____ PLAINTIFF

AND

_____ DEFENDANT

APPLICATION BY JUDGMENT CREDITOR IN TERMS OF s41(2) OF THE SMALL CLAIMS COURTS ACT, 1984 (ACT NO. 61 OF 1984)

1. The judgment creditor in the above matter, hereby makes application in terms of section 41(2) of the Small Claims Courts Act, 1984 and requests that the matter be referred to the Clerk of the Magistrates' Court as provided for in section 41(3) of the Small Claims Courts Act, 1984.

2. The affidavit of the judgment creditor appears below:

AFFIDAVIT

1. I, the undersigned

(State full names and surname)

Identity or Passport No.: _____ being the plaintiff or defendant in this matter

Residing at: _____

Hereby make oath and state or solemnly affirm that:

1.1 Judgment for R_____ (*insert the amount*) and costs in the amount of R_____ (*delete if not applicable*) was granted on _____ (*insert date*) in the Small Claims Court _____ (*insert area*) against _____

1.2 The following amount or amounts has or have been paid since Judgment:

1.2.1 R_____ paid on _____ (*insert date*);

1.2.2 R_____ paid on _____ (*insert date*);

1.2.3 R_____ paid on _____ (*insert date*); **or**

1.3 No payment has been made (*delete whichever is not applicable*).

1.4 The amount still owing on the judgment as at the date of my signature below is R_____.

NAME: _____

SIGNATURE: _____

I certify that the deponent has acknowledged that he or she knows and understands the contents of this declaration, which was sworn to/affirmed (*delete what is not applicable*) and signed before me at _____ (place) on _____ (date) under compliance with the rules promulgated in Government Notice R. 1258 dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS

NAME: _____

CAPACITY: _____

ADDRESS: _____

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To: The Clerk of the Small Claims Court

_____ (*insert area*)

By hand: Received by the Clerk of the Small Claims Court on this _____ day
of _____ 20_____.

or

Per E-mail: _____

No. 12 – Notice of review and affidavit in terms of rule 26(3)

IN THE HIGH COURT OF SOUTH AFRICA

(_____ DIVISION)

Case No _____/20____

Small Claims Court Case No _____/20____

In the matter between

_____ Applicant

and

_____ Respondent

NOTICE OF REVIEW

PLEASE TAKE NOTE that the Applicant hereby applies for the review of the proceedings in the matter held in the Small Claims Court _____(area) under case number _____. An order is prayed for in the following terms:

1. That the proceedings and judgment granted in the Small Claims Court _____(area) under case number _____be set aside;
2. further and/or alternative relief; and
3. costs, if applicable.

TAKE NOTICE FURTHER that the affidavit of the applicant, will be used in support of this application.

AFFIDAVIT IN SUPPORT OF A NOTICE OF REVIEW

1. I, the undersigned

(State full names and surname)

hereby make oath and state or solemnly affirm that:

1.1 I am the applicant in this matter and the Plaintiff or Defendant (*delete whichever is not applicable*) in a matter instituted in the Small Claims Court in _____ (*state the area*) under case number _____.

1.2 The respondent in this matter is the Plaintiff or Defendant (*delete whichever is not applicable*) in a matter referred to in paragraph 1.1 above.

1.3 The facts deposed to herein are within my personal knowledge and are to the best of my knowledge and belief true and correct.

2. On the _____ (*state date*), the Small Claims Court in _____ (*area*) under case number _____ granted judgment in favour of the Plaintiff or Defendant (*delete whichever is not applicable*) for:

3. I apply to the above Honourable Court to review the proceedings presided over by Commissioner _____ (*insert name and surname of commissioner*) on the following ground or grounds:

3.1 absence of jurisdiction of the court;

3.2 interest in the cause;

3.3 bias;

3.4 malice;

3.5 commission of an offence referred to in section 46(b) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984); or

3.6 gross irregularity with regard to the proceedings

(*delete whichever paragraphs above are not applicable and initial next to the deleted paragraph*).

4. The grounds, facts and circumstances in support of my application are stated below:

WHEREFORE I pray that the Court grants the order or orders in the Notice of Review.

APPLICANT

I certify that the deponent has acknowledged that he or she knows and understands the contents of this declaration, which was sworn to/affirmed (delete what is not applicable) and signed before me at _____ (place) on _____(date) under compliance with the rules promulgated in Government Notice R. 1258 dated 21 July 1972 (as amended).

 COMMISSIONER OF OATHS
 NAME _____
 CAPACITY _____
 ADDRESS _____

The sections below must be completed by the party bringing the review. Once completed the document must be lodged with the clerk of the court where the Small Claims Court proceedings were held. Make sure that you keep a copy of this document for safe-keeping and make sure that the clerk of the court stamps your copy

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Applicant (party bringing the review, *name and surname if applicable*): _____

Address of Applicant: _____

Your e-mail address (*if you have one*): _____

Your telephone or cellular number (*if you have one*): _____

To: The Clerk of the Small Claims Court

_____ (*insert area*)

By hand: Received by the Clerk of the Small Claims Court on this _____ day
of _____ 20____.

or

Per E-mail: _____

No. 13 – Statement by commissioner in terms of rule 26(6)

IN THE HIGH COURT OF SOUTH AFRICA
(_____ DIVISION)

Case No _____ /20 _____

Small Claims Court Case No _____ /20 _____

In the matter between

_____ Applicant

and

_____ Respondent

STATEMENT BY COMMISSIONER

1. I, _____ (*full names and surname*) am the commissioner who presided in the matter instituted in the Small Claims Court in _____ (*area*) under case number _____.

2. I have read the notice of review and affidavit of the applicant and respond as follows to the allegations made by the applicant:

SIGNED AT _____ ON _____

COMMISSIONER

This statement must be lodged with the clerk of the court where the Small Claims Court proceedings were held.

To: The Clerk of the Small Claims Court

_____ (insert area)

By hand: Received by the Clerk of the Small Claims Court on this _____ day
of _____ 20_____.

or

Per E-mail: _____

No. 14 – Amendment, variation and addition to notice of review in terms of rule 26(7)

IN THE HIGH COURT OF SOUTH AFRICA

(_____ DIVISION)

Case No _____/20 _____

Small Claims Court Case No _____/20 _____

In the matter between

_____ Applicant

and

_____ Respondent

AMENDMENT, VARIATION AND ADDITION TO NOTICE OF REVIEW

1. I, the undersigned

(State full names and surname if applicable)

hereby make oath and state or solemnly affirm that:

1.1 I lodged a notice of review in a matter instituted in the Small Claims Court in _____(state area) under case number _____.

1.2 The facts deposed to herein are within my personal knowledge and are to the best of my knowledge and belief true and correct.

2. Arising from the Commissioner's statement I hereby amend, add or vary my notice of review and affidavit as follows *(if you are amending or varying the notice of review and affidavit then list below which paragraphs in the notice of review and affidavit you are amending and state the amended or varied paragraph. If you are adding, just state the information you wish to add)*:

WHEREFORE I pray that the Court grants the order/s in the Notice of Review.

APPLICANT

I certify that the deponent has acknowledged that he or she knows and understands the contents of this declaration, which was sworn to/affirmed (delete what is not applicable) and signed before me at _____ (place) on _____(date) under compliance with the rules promulgated in Government Notice R. 1258 dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS
NAME _____
CAPACITY _____
ADDRESS _____

The sections below must be completed by the party bringing the review, once completed the document must be lodged with the clerk of the court where the Small Claims Court proceedings were held. Make sure that you keep a copy of this document for safe-keeping and make sure that the clerk of the court stamps your copy

Applicant (party bringing the review (*name and surname if applicable*))
:
Your e-mail address (*if you have one*): _____
Your telephone or cellular No (*if you have one*): _____

To: The Clerk of the Small Claims Court _____(*insert area*)

By hand: Received by the Clerk of the Small Claims Court on this _____ day of _____ 20____.

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or

Per E-mail: _____

No. 15 – Affidavit in terms of rule 26(9)

IN THE HIGH COURT OF SOUTH AFRICA
(_____ DIVISION)

Case No _____ /20 ____

Small Claims Court Case: No _____ /20 ____

In the matter between

_____ Applicant

and

_____ Respondent

AFFIDAVIT

1. I the undersigned,

(*State full names and surname*), am the commissioner that presided over the matter / the respondent / _____ (*delete whichever is not applicable*) and hereby make oath and state or solemnly affirm that:

2. I intend to oppose the relief sought by the applicant and answer as follows to the allegations made by the applicant:

DEPONENT

I certify that the deponent has acknowledged that he or she knows and understands the contents of this declaration, which was sworn to/affirmed (*delete what is not applicable*) and signed before me at _____ (place) on _____ (date) under

compliance with the rules promulgated in Government Notice R. 1258 dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS
NAME _____
CAPACITY _____
ADDRESS _____

This affidavit must be lodged with the clerk of the court where the Small Claims Court proceedings were held.

To: The Clerk of the Small Claims Court

_____ (insert area)

By hand: Received by the Clerk of the Small Claims Court on this _____ day
of _____ 20_____.

or

Per E-mail: _____".

ANNEXURE 2

COSTS

PART I

Court fees

For a copy of a record made by the clerk of the court-
for every photocopy of an A4 size page or part thereof: R1,00.”.

“PART II

Fees and travelling expenses of sheriffs

1. (a) For the service of a summons, including the registration of the summons on receipt thereof for service, the journey to and from the place of service of the summons—

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R45,00;
- (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R51,00;
- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R70,00.

(b) For the attempted service of a summons, including the registration of the summons on receipt thereof for service, the journey to and from the place of attempted service of the summons—

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R37,50;
- (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R45,00;
- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R63,00

2. (a) For the execution of a warrant, including the registration of the warrant on receipt thereof for execution, the journey to and from the place of execution of the warrant—

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R63,00;
- (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R70,00;
- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R87,50.

(b) For the attempted execution of the warrant, including the registration of the warrant on receipt thereof for execution, the journey to and from the place of attempted execution of the warrant—

- (i) within a distance of 6 kilometres from the court-house of the district for which the sheriff is appointed: R52,00;
- (ii) within a distance of 12 kilometres but further than 6 kilometres from the court-house of the district for which the sheriff is appointed: R63,00;
- (iii) within a distance of 20 kilometres but further than 12 kilometres from the court-house of the district for which the sheriff is appointed: R79,50.

(c) Where the warrant is one for ejection, a further fee of R25,50 shall be paid after the execution thereof for each person over and above the person named or referred to in the warrant of ejection in fact ejected from separate premises: Provided that where service on any person other than the judgment debtor is necessary in order to complete the execution, the fees mentioned in item 1(a) may be charged for each such service.

3. (a) The sheriff shall, in addition to the fees mentioned in items 1(a), 1(b), 2(a) and 2(b) but subject to paragraph (b) and (c), be allowed a travelling allowance of R6,00 per kilometre, or part thereof, for the shortest possible forward and return journey from the office of the sheriff to the place of service or execution and back.

(b) The travelling allowance mentioned in items 3 and 4 shall be calculated on the distance reckoned from the office of the sheriff if—

- (i) the sheriff's office is situated within the area of jurisdiction allocated to the sheriff by the Minister; and
- (ii) the distance from the sheriff's office is less than the distance reckoned from the court-house closest to the address for service.

(c) If the requirement in item 3(b) is not met, then the travelling allowance mentioned in items 3(a) and 4(a) shall be calculated on the distance reckoned from the court-house closest to the address for service.

4. (a) In respect of the discharge of any official duty other than those mentioned in items 1 and 2, but subject to item 3(b) and (c), a travelling allowance of R6,00 per kilometre, or part thereof, shall be payable to the sheriff for going and returning.

(b) A travelling allowance shall include all the expenses incurred in travelling, including train fares.

(c) A travelling allowance shall be calculated in respect of each separate service, except that—

- (i) where more services than one can be done on the same journey, the distance from the sheriff's office to the first place of service may be taken into account only once, and shall be apportioned equally to the respective services, and the distance from the first place of service to the remaining places of service shall similarly be apportioned equally to the remaining services; and
- (ii) where service of the same process has to be effected by a sheriff on more than one person at the same service address, only one charge for travelling shall be allowed.

5. For the ejectment of a defendant from the premises mentioned in the warrant of ejectment: R22,50 for the first 30 minutes and thereafter R67,50 per hour or part thereof.

6. In addition to the fees prescribed, the sheriff shall be entitled to charge the amount paid by him or her for telephone calls.

7. For the writing of a necessary letter, facsimile or electronic mail, excluding formal letters accompanying process or returns to an interested party in the matter: R11,00.

8. For the copying of the necessary documents relevant to a process handled by the sheriff: R5,00 per A4 size copy.

9. If it is necessary for the sheriff to return to the mandator a process received by him or her for service or execution because—

- (a) the address of service which appears on the process does not fall within his or her jurisdiction;
- (b) the mandator requests, before an attempted service or execution of the process, that it be returned to him or her: an amount of R11,00.

10. (a) Sending and receiving of each necessary facsimile or electronic mail: R6,50.

(b) In addition to the fees prescribed, the sheriff shall be entitled to the amount actually disbursed for postage, transmission of facsimiles and sending of electronic communications.”