



**WELCOME EASTERN CAPE
ATTORNEYS**

**CAPE LAW SOCIETY
Magistrates' Court Committee**



2011/06/23



COMMERCIAL BREAK

PLEASE SUPPORT THE ADR STRUCTURES OF YOUR REGION:
ALTERNATE DISPUTE RESOLUTION COMMITTEE OF THE CLS
&
**SOUTH EASTERN DISPUTE RESOLUTION ASSOCIATION
(SEDRA)**
CONTACT
DARYL BURNMAN, BURNMAN KATZ
daryl@burmankatz.law.za
OR
TRACY BANNISTER, KAPLAN BLUMBERG
law@e-lex.co.za

2011/06/23




**MAGISTRATES' COURT
NEW RULES**

AN INTRODUCTION

**CAPE LAW SOCIETY
Magistrates' Court Committee**



2011/06/23



Slides by
**Ettienne Barnard, Sonja
Labuschagne**
of
Ettienne Barnard Attorneys
and
Elzanne Jonker
of
Minde Schapiro & Smith

**MAGISTRATES' COURT
NEW RULES**


2011/06/23



www.barnards.co.za

<http://newmcrules.blogspot.com>

2011/06/23



OTHER RESOURCES

- JUTA Statutes Editors, The Supreme Court Act & the Magistrates' Court Act and Rules, 2010 Edition
- <http://www.northernlaw.co.za/>
- <http://www.lawsoc.co.za/>
- <http://www.justice.gov.za/legislation/rules/rules.htm>
- Michael de Broglio's Legal Blog at <http://www.lawblog.co.za/blog/item/?itemID=499>
- <http://webtechlaw.com/posts/big-changes-for-magistrates-courts-in-south-africa.html>


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Rules to facilitate court &
not other way around

INTRODUCTORY REMARKS


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Useful Transitional Rules

- RULES PROMOTE ADMINISTRATION OF JUSTICE
 - 1(1)-(3)
 - Also see *Ncoweni v Bezuidenhout* 1927 CPD 130
 - Purpose is “administering justice & not hampering it”
 - *Brown Bros Ltd v Doise* 1955(1) SA 75 (W)
 - “practical justice”
- PRESCRIBED FORMS INDULGENCE
 - 1(4)(a) Many forms may be adapted as circumstances require
 - 69(b) 12 Month use of old forms


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Useful Transitional Rules

- For Serious challenges: Apply ito r55(4)(b) for
 - Authority to Institute Proceedings
 - DIRECTIONS AS TO PROCEDURE
 - Directions as to Service of Documents


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APPLICATION OF RULES

- Adv Danie Van Loggerenberg opinion:
 - Based on Sec 12(2) of the Interpretation Act 33 of 1957
 - If **first document issued** before 15 of October 2010, **old rules apply** until the matter is finalised.

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APPLICATION OF RULES
INTERPRETATION ACT

Sections 12(2)(c) and (e):

- “(2) **Where a law repeals any other law, then unless the contrary intention appears, the repeal shall not –**
- (c) **affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or**
- (e) **affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as in this subsection mentioned,**
- **and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.”**

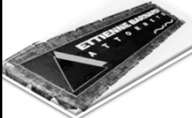
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CASE LAW

- *TRANSNET LTD v NGCEZULA* 1995 (3) SA 538 (A)
- *Curtis v Johannesburg Municipality* 1906 TS 308
- **“Every law regulating legal procedure must, in the absence of express provision to the contrary, necessarily govern, so far as it is applicable, the procedure in every suit which comes to trial after the date of its promulgation”.**

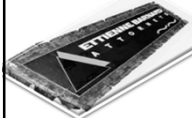
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APPLICATION OF RULES

- “...but it is a convenient way of stating the fact that **every alteration in procedure applies to every case subsequently tried**, no matter when such case began or when the cause of action arose.”
- So if rules are procedural and the legislator did not expressly provide to the contrary, then the **new rules apply to all matters from 15 October 2010.**

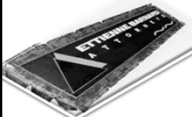
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APPLICATION OF RULES CASE LAW (3)

- Also see Constitutional Court matters of
 - **Fredericks and Others v MEC For Education and Training**, Eastern Cape, and Others 2002 (2) SA 693(CC)
 - **Veldman v Director of Public Prosecutions**, Witwatersrand Local Division 2007 (3)SA 210 (CC)
 Which quoted from Curtis with approval.

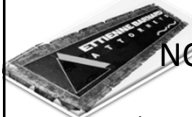
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APPLICATION OF RULES

- Rule 1(2): rules must be applied to
 - facilitate expeditious handling and
 - minimize costs.
- Rule 55(4)(b): Ask Court for directions on procedure.
- Rule 1(3): Court may dispense with rules and direct procedure (at a s54 conference.)
- These rules should be used to counteract any unfairness that may result in the application of the new rules

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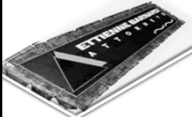


NOTICE OF APPEAL


- In die Hof Verdaag, Judge Kees van Dijkhorst quotes the following grounds of appeal in a 1988 Californian case:

“Prosecuting attorney farted about 100 times during defence attorney’s argument”

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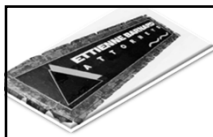
APPLICATIONS

General

On Notice of Motion & on Notice

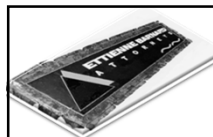
Ex Parte

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GENERAL

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Applications taken away

- Rule 27(5) to dismiss action of plaintiff
- Rule 15(3) to dismiss action (no docs furnished as fp)
- Rule 60(2)&(3) to compel further particulars to plead

Applications added

- Edictal Citation
- Maintenance Pendente Lite...
- Irregular Proceedings


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Form of Notice (4 categories)

- 1 **Long Form** (Generally compulsory)
- 2 **Short Form** (Ex Parte)
- 3 **Specific Applications**
- 4 **Interlocutory Applications** (Hybrid form)

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Applications Rule 55/56

Out: Old Rule 55 (shorter, without affidavit, no specific time period for opposing papers & no separate set down)
 Old Rule 56 (Ex parte applications)
 Now see HC Rule 6 & 6(12) on urgency

- Must
 - Be on **notice** of motion
 - Have supporting facts in an **affidavit** 55(1)(a)
- Ex Parte Applications only if 55(3)(a)
 - notice would **defeat purpose** of application; or
 - **urgency** justifies dispensing with notice.
- Dispensing rule 55(5)(5)
- Court may on good cause shorten notice period Rule 9(12) [old 9(14)]

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NOTICE OF MOTION HEADINGS

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Headings in DISTRICT court

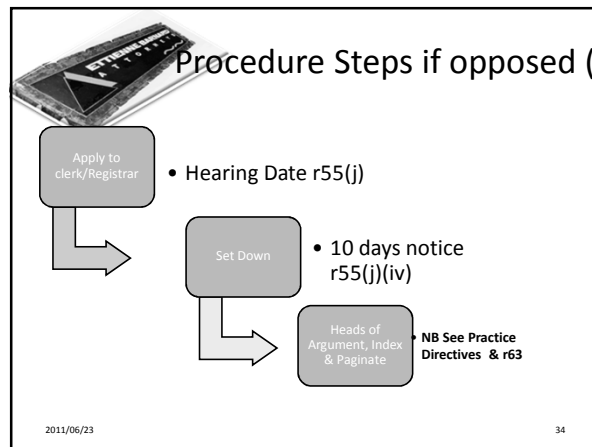
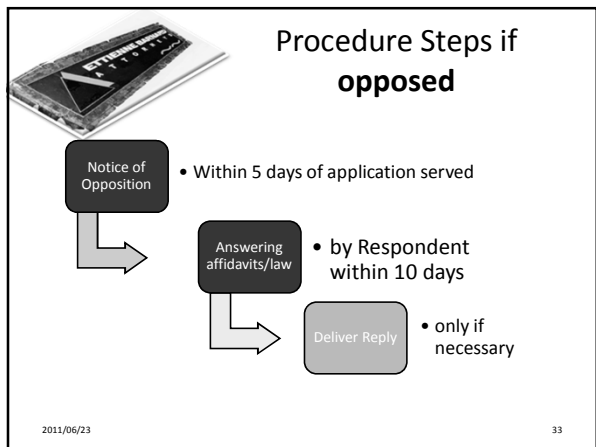
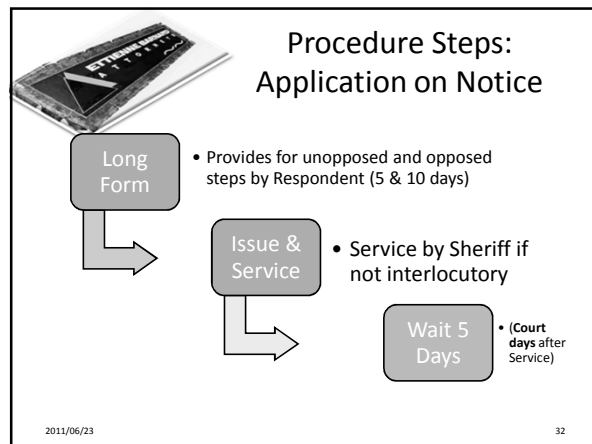
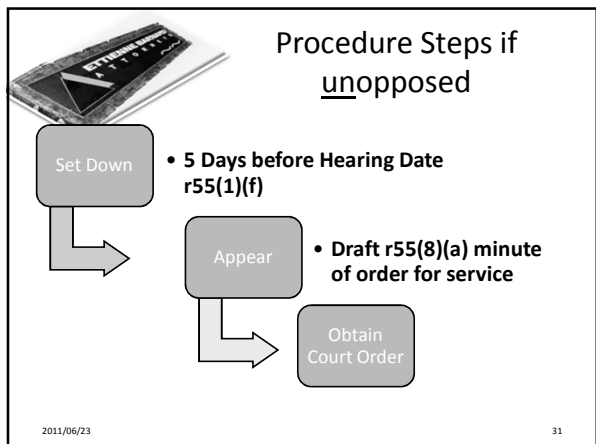
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF THE CAPE
 HELD AT CAPE TOWN

CASE NO:

In the matter between:

Mr X	Applicant
and	
Mr Y	Respondent

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Application on Notice: Time Period Checklist

• Founding docs	• When Complete	• Rule 55 (1)
• Notice of Opp.	• Within 5 Days	• 55(1)(e)(iii)-(g)(i)
• No Opposition	• 10 Days after Fdoc	• 55(1)(e)(iii)
• Set-Down	• 5 Days notice to R	• 55(1)(f)
• Answ. Affidavit	• Within 10 Days	• 55(1)(g)(ii)
• Reply. Affidavit	• Within 10 Days	• 55(1)(h)
• Set-Down	• No answ aff -w5d	• 55(1)(j)(i)
	• Answ aff -w5d from reply/expiry	• 55(1)(j)(ii)
	• Resp if Appl did not	• 55(1)(j)(iii)

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Residential Eviction
ON NOTICE OF MOTION

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PIE


Out: Old form of application (Where applicant chose the court date)

Theart and Another v Minnaar NO, Senekal v Winskor 174 (Pty) Ltd 2010 (3) SA 327 (SCA);

NOW SEE:
Cf HC Rule 6

Cape Killarney Property Investments (Pty) Ltd v Mahamba 2001(4)SA1222 (SCA)


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Cape Killarney

- [12] Brand AJA: “...It is clear, in my view, that this notice in terms of the Rules of Court is required in addition to the s 4(2) notice...”
- [14] Brand AJA: “In High Court applications the hearing date is determined only after all the papers on both sides have been served. It follows...that it is only at that stage that the section 4(2) notice can be authorised & directed by the court


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Cape Killarney (2)

- [15] NB “Applicant can approach ...court for ... [the s4(2) notice] directions by ...ex parte application
- **NB The mistake on the facts was**
 - Attempt to evict via a rule nisi ex parte order
 - & did not prove urgency

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Cape Killarney Impact toned down:

O D Thiam v Magee Investments CC t/a Magee Property Investments, Case no A516/2007 WCHC Full Bench (19 March 2008)

- Oosthuizen AJ indicated that the dictum of Killarney **does not impose a requirement of substantive law** in all eviction proceedings

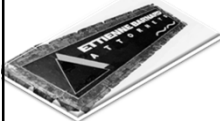
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Cape Killarney Impact toned down:

- “As long as proper notice of intention to seek eviction...served on occupiers, and they ...given a fair opportunity of drawing all relevant circumstances to the attention of the court...Section 26(3) of the Bill of Rights and...PIE Act have been respected”

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Cape Killarney Impact toned down:

Ansie Senekal v Winskor 174 (Pty) Ltd, case no A516/2007 WCHC Full Bench (23 July 2008)

Veldhuizen J indicated that the SCA in Cape Killarney did not decide that the s4(2) notice could not be contained in the notice of motion issued in terms of rule 6 of the Uniform Rules of Court.

- Ansie Senekal was confirmed by the SCA but with reservations that Killarney still applied for HC rules.

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Cape Killarney Impact toned down:

Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199 (SCA)

Brand JA "Where formalities required by statute are peremptory it is not every deviation from the literal prescription that is fatal..."

"...whether ...deficient s4(2) notice achieved its purpose, cannot be considered in... abstract"

Facts (what respondent knew) relevant.

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Cape Killarney Impact toned down:

Moela v Shoniwe 2005 (4) SA 357 (SCA)

"The object of s 4(2) may be achieved even though the service of the notice required by s4(2) had not been authorised by the court."

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Safe PIE Procedure Steps

1. Long Form Notice to Rule 55(1)(d)
 1. NB Leave enough time for
 1. bringing the ex parte application;
 2. serving it;
 3. plus 14 open days [PIE ACT]
2. Issued & served
3. If no opposition delivered, apply ex parte for consent to serve s4(2) notice & directions for service
4. If opposed, go through opposed process until date for hearing has been determined and then apply for consent to serve s4(2) notice & directions for service
5. Comply with directions
6. Appear

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PIE Procedure Steps

Long Form

- Leave enough time [22 COURT DAYS] for
 - Ex Parte Application [about 3 days]
 - Service of it by Sheriff[about 5 days]
 - 14 days into PIE Act to pass[14 days]

Issue & Service

- Service by Sheriff

Wait 5 Days

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PIE Procedure Steps if unopposed

Apply ex parte

- to serve s4(2) & Directions for service

Comply

- Service by Sheriff...

Appear

- Seek Relief

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PIE Procedure Steps

Long Form

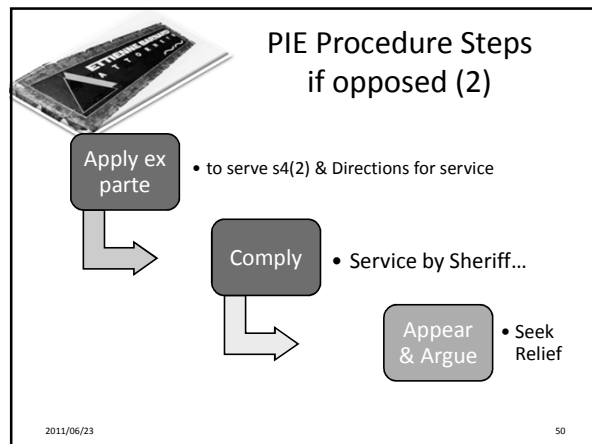
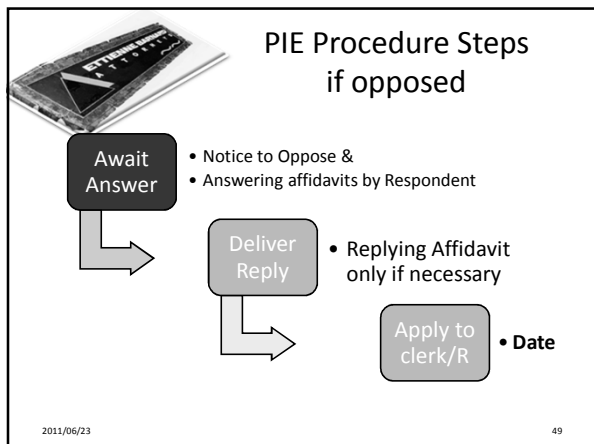
- Leave enough time [22 COURT DAYS] for
 - Ex Parte Application [about 3 days]
 - Service of it by Sheriff[about 5 days]
 - 14 days into PIE Act to pass[14 days]

Issue & Service

- Service by Sheriff

Wait 5 Days

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PIE Notice (1)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF BELLVILLE HELD AT BELLVILLE

In the matter between:

MRS PASSIVE INCOME

and

STICKY TENANT

CASE NO:

Applicant

Respondent

NOTICE OF MOTION FOR EVICTION IN TERMS OF ACT 19, 1998

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PIE Notice (2)

TAKE NOTICE that MRS PASSIVE INCOME (hereinafter called the applicant) intends to make application to this Court for an order:

- Evicting the Respondent and any person occupying through the Respondent, from 3 North Street, Bellville ("the property");
- Determining a **just and equitable date** on which the Respondent must vacate the property;
- Determining a **date on which the Sheriff may evict** the Respondent if he and all persons under him have not vacated the property;
- Directing the Respondent to pay the **costs** of the Applicant (on an attorney and client scale)
- Further and/or Alternative Relief.

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PIE Notice (3)

FURTHER TAKE NOTICE that you are hereby informed of the relevant provisions of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19, 1998, namely that:

- The Application is brought in terms of its **section 4**;
- The **grounds** for the proposed eviction are as set out in the affidavit attached to the application. They **are summarised as**:
 - You have **failed to pay your rent** for the last two months;
 - As a result of such failure, the **lease** agreement by which you obtained occupation, has been **cancelled** by the applicant;
 - Your **right** to occupy has thus **terminated**;
 - You are an **unlawful occupier** as defined in terms of the said act;
- You have the **right to oppose** this application on the above date;
- You have the right to apply for legal aid to oppose it.


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PIE Notice (4)

The accompanying affidavit of PASSIVE INCOME will be used in support thereof.

TAKE NOTICE FURTHER that the applicant has appointed Barnard Labuschagne Inc t/a Etienne Barnard Attorneys, Ebrose Chambers, 5 Audas Street, Somerset West at which applicant will accept notice and service of all process in these proceedings.

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PIE Notice (5)


TAKE NOTICE FURTHER that if you intend opposing this application you are required:

- (a) to notify applicant's attorney in writing on or before the 25th November 2010;
- (b) and within 10 days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any;

and further that you are required to appoint in such notification an address referred to in rule 55(1)(g) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the 14th of December 2010 at 09:00.

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PIE Notice (6)

DATED at Somerset West this 18th day of November 2010
(signed) E Barnard.....


Attorneys for the Applicant
BARNARD LABUSCHAGNE INC
t/a Etienne Barnard Attorneys
Ebrose Chambers,5 Audas Street,Audas Estate,Somerset West,Tel: 021 – 852 7780;
Fax: 021 – 852 4194; Ref: EB/kb/X21

To: THE CLERK OF THE COURT
MAGISTRATE'S COURT
SOMERSET WEST

And to: STICKY TENANT
(full physical address)

And to: THE CITY OF CAPE TOWN
(full physical address)


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Cape Killarney says:

- The long form notice must first be vented by the exchange of pleadings (if it is to be opposed).
- “In High Court applications the hearing date is determined only after all the papers on both sides have been served. It follows...that it is only at that stage that the section 4(2)notice can be authorised & directed by the court”
- If this has taken place or if no opposition filed, do the application into s 4(2)

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PIE Ex Parte Notice (1)

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF BELLVILLE
HELD AT BELLVILLE

CASE NO:

In the matter between:


MRS PASSIVE INCOME Applicant

and

STICKY TENANT Respondent

**EX PARTE NOTICE OF MOTION FOR SERVICE DIRECTIONS
IN TERMS OF SECTION 4(2) ACT 19, 1998**

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PIE Ex Parte Notice (2)

TAKE NOTICE that application will be made on behalf of the above- named applicant on 14 December 2010 At 09:00 or as soon thereafter as the legal representative may be heard for an order in the following terms:

1. That the Court give written directions as to notice and service of the date of the hearing of an application to be brought by the Applicant for the eviction of the Respondent in terms of section 4(2) of Act 19, 1998
2. That the Respondent be informed that the date on which the said application will be heard will be the 4th of February 2011 at 09:00


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PIE Ex Parte Notice (3)

3. That the Respondent be notified that the Applicant will on that date apply for an order:
 1. **Evicting** the Respondent and any person occupying through the Respondent , from 3 North Street, Bellville (“the property”);
 2. Determining a **just and equitable date** on which the Respondent must vacate the property;
 3. Determining a **date on which the Sheriff** may evict the Respondent if he and all persons under him have not vacated the property;
 4. Directing the Respondent to pay the **costs** of the Applicant (on an attorney and client scale)
 5. Further and/or Alternative Relief.

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PIE Ex Parte Notice (4)

4. That the Respondent be informed of the relevant provisions of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19, 1998, namely that:

- The Application is brought in terms of its **section 4**;
- The **grounds** for the proposed eviction are as set out in the affidavit attached to the application. They **are** summarised as:
- The Respondent has failed to pay his rent for September and October 2010;
- As a result of such failure, the lease agreement by which the Respondent obtained occupation, has been cancelled by the Applicant;
- The right of the Respondent to occupy has thus terminated;
- The Respondent is an unlawful occupier as defined in terms of the said act;


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PIE Ex Parte Notice (5)

- The Respondent has the right to oppose this application on the above date;
- The Respondent has the right to apply for legal aid to oppose it.
- This application, together with the order made in this application must be served by the Sheriff on the Respondent at 3 North Street, Bellville as well as on the City of Cape Town before ??????????

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PIE Ex Parte Notice (6)


DATED at Somerset West this 18th day of November 2010
 (signed) E Barnard.....
 Attorneys for the Applicant
 BARNARD LABUSCHAGNE INC
 t/a Etienne Barnard Attorneys
 Ebrose Chambers,5 Audas Street,Audas Estate,Somerset West,Tel: 021 – 852 7780;
 Fax: 021 – 852 4194; Ref: EB/kb/X21

To: THE CLERK OF THE COURT
 MAGISTRATE'S COURT
 SOMERSET WEST


And to: STICKY TENANT
 (full physical address)

And to: THE CITY OF CAPE TOWN
 (full physical address)

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Debt Review ON NOTICE OF MOTION


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All Creditors to be notified

- McLAREN v BADENHORST ANORS 2011 (1) SA 214 (ECG)
 - Debtor as consumer/1st Respondent cannot consent to jurisdiction alone
 - All Creditors should be notified

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Debt Review: Notice of Motion (1)

**IN THE MAGISTRATES COURT FOR THE DISTRICT OF MITCHELL'S PLAIN
HELD AT MITCHELL'S PLAIN** Case no.:

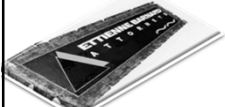
In the matter between:
ALMAL UITHHELP N.O. Debt Counsellor/Applicant
Reg. no. NCRDC55532555

and
JOSEPH NEEDABREAK Consumer/1st Respondent
(Identity no : 8????? 50?? 087)

ABSA BANK LIMITED Credit Provider/2nd Respondent
STANDARD BANK LIMITED Credit Provider/3rd Respondent
NEDBANK LIMITED Credit Provider/4th Respondent

Application in terms of s86(7)(c) & 86(8)(b) read with s87 of the
National Credit Act 34, 2005 and rule 55, rule 9 and rule 33 of the Magistrates Court
Act 32 OF 1944
(as amended)

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Debt Review: Notice of Motion (2)

KINDLY TAKE NOTICE THAT Almal Uithelp N.O. (hereinafter called the Applicant) intends to make application to this court for an order :

1. That the state of the First Respondent/Consumer be declared **over-indebted**;
2. Granting a **Debt Re-Arrangement Order** in accordance with Annexure "I" or such other Debt Re-Arrangement Order as the court deems fit under Section 86(7)(c)(ii) and 87(1) of the National Credit Act 2005; alternatively
2. An order in terms of Section 86(11) of the National Credit Act that any **Respondents** who have given notice to terminate the debt review process, be **ordered to resume the debt review** in accordance with Section 86(11).
3. That any Respondent who opposes this application pays the **costs** arising from such opposition;
4. Further and/or alternative relief.

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Debt Review: Notice of Motion (3)

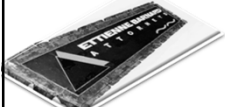
TAKE FURTHER NOTICE that the accompanying affidavit of the Applicant attached hereto will be used in support of this application

TAKE NOTICE FURTHER that the Applicant has appointed Yusria Cornelius Inc. Attorneys 43 Hugo Street, Goodwood, 7460, Re/HH0379, Tel : 021 592 4912, Fax : 021 592 4910, Fax to email : 086 614 9871, Email: yusria@corneliusattorneys.co.za **c/o [Correspondent address]** at which Applicant will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required :

To notify the Applicant or Applicant's Attorney, in writing on or before
01 NOVEMBER 2010.

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Debt Review: Notice of Motion (4)

and within 10 days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appear in such notification an address referred to in Rule 55(1)(g) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on **24 NOVEMBER 2010**

DATED AT GOODWOOD ON THIS 15TH DAY OF OCTOBER 2010.

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Debt Review: Notice of Motion (5)

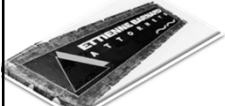
Yusria Cornelius Inc. Attorneys
Attorneys for Applicants
43 Hugo Street, Goodwood, 7460, Re/HH0379, Tel : 021 592 4912, Fax : 021 592 4910, Fax to email : 086 614 9871, Email: yusria@corneliusattorneys.co.za **c/o [Correspondent address]**

To: The Clerk of the Civil Court, Magistrates Court,
MITCHELL'S PLAIN

And to:

ABSA... service per email as agreed to between the parties
STANDARD... service per email as agreed to between the parties
NEDBANK... service per email as agreed to between the parties

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The Short(er) Form **URGENCY & EX PARTE**

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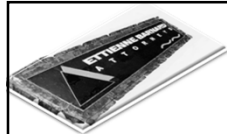


Short Form Application examples

- Edictal Citation/Substituted service
- Giving notice will defeat the purposes of the application eg. The Respondent might
 - Remove/destroy the goods
 - Disappear with the minor child
- Urgent matters if the degree of urgency allows

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Documents in Urgent Matters:

- Notice of motion requesting
 - Annexure 1 Form 1
- Affidavit
- Draft “Court Order”(If Ex Parte use Rule Nisi)
 - R55(8) minute for service

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Degree of Urgency

- Republikeinse Publikasies v Afrikaanse Pers 1972(1)SA773(A)
 - Applicant creates own rules but must justify in evidence
 - May even include going to court without issuing
- Luna Meubel Vervaardigers v Makin...1977 (4) 135 (W)
 - There should be a correlation between urgency & relaxing of rules
- Bundle Investments v Registrar of Deeds 2001(2) SA 203 (E)
 - Commercial interests may justify urgency

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Liquidation of CC **URGENT BUT NOT EX PARTE**

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Liquidation of Close Corpora

- Rynders v Bankorp Ltd 1995 (2) SA 494 (W)
 - Mag Court Liquidation cannot be ex parte
- Adonis v Add.Magistrate, Bellville Anors 2007(2)SA 147 (C) approved the Rynders Case.
- Naidoo v Absa Bank Ltd 2010 (4) SA 597 (SCA)
 - No notice ito s129 NCA required
- (OLD) Rule 55 (1) (10 days notice to CC) compulsory
 - [Rule 9(14) now r9(12) was not applied
 - - shorter notice on good cause]
 - R55(5)(a)

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Close Corporation Notice (1)


IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF GOODWOOD
HELD AT GOODWOOD

CASE NO:
In the matter between
JOHN GELDSKIET Applicant
and
KRYSWAAR CC Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the above-named Applicant intends to make application to the above Honourable Court on MONDAY the 23RD day of NOVEMBER 2010 AT 09:00 or as soon thereafter as the matter may be heard for an Order in the following terms:

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Close Corporation Notice (2)

1 **Dispensing with** the forms and service provided for in the **Rules** of the above Honourable Court and entertaining this matter as one of urgency in terms of Rule 55(5)(a) as read with rule 9(12).

2 That the Respondent be placed under a **provisional order of liquidation** in the hands of the Master of the above Honourable Court.

3 That a **rule nisi** be issued calling upon Respondent and all persons interested to show cause, if any, on MONDAY 17th JANUARY 2011, by the above Honourable Court, why Respondent should not be finally liquidated;

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Close Corporation Notice (3)

4 That **service** of this Order be effected as the court directs and by the Sheriff:

4.1 At the registered office of the **Respondent**.

4.2 On all registered **trade unions** representing the employees of the Respondent


4.4 On the **employees** of the respondent

4.5 the **South African Revenue Services** as prescribed in the Close Corporations Act (s66) as read with the Companies Act (s346A)

5 That the costs of this application be costs in the liquidation.

6 Such further and/or alternative relief as the Honourable Court may deem fit.

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Close Corporation Notice (4)

TAKE FURTHER NOTICE that the attached affidavit of JOHN GELDSKIET will be used to support this application.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY.

DATED AT CAPE TOWN this 18TH day of NOVEMBER 2010.

Applicant's attorneys

Per: (& Address)

TO: THE CLERK OF THE COURT, GOODWOOD

AND TO RESPONDENT: Registered Office at


AND TO : THE MASTER, HIGH COURT, CAPE TOWN

AND TO : THE EMPLOYEES OF THE RESPONDENT

AND TO : ALL REGISTERED TRADE UNIONS OF THE THE EMPLOYEES OF THE RESPONDENT

AND TO : THE SOUTH AFRICAN REVENUE SERVICES

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Close Corporation Notice (5)

The rules may be compromised in relation to the degree of urgency:

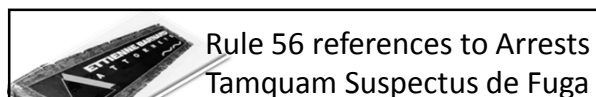
– Less Urgent matters
(Alternative)]

TAKE NOTICE FURTHER that the applicant has appointed Etienne Barnard Attorneys [address] at which applicant will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required (a) to notify applicant or applicant's attorney in writing on or before the 30th November 2010 (b) and within 10 days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in rule 55(1) (g) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the 10th DECEMBER 2010 at 09:00

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Rule 56 references to Arrests Tamquam Suspectus de Fuga

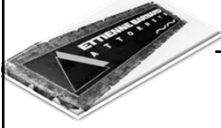
- MALACHI v CAPE DANCE ACADEMY INTERNATIONAL (PTY) LTD AND OTHERS 2010 (6) SA 1 (CC)
- “ ...The order of constitutional invalidity made by the Western Cape High Court, Cape Town, is confirmed to the following extent:
 - (i) The words 'arrest *tanquam suspectus de fuga* ' as contained in A s 30(1) of the Magistrates' Courts Act 32 of 1944 are declared **unconstitutional and invalid**.
 - (ii) The whole of s 30(3) of the Magistrates' Courts Act 32 of 1944 is declared to be inconsistent with the Constitution and invalid...”

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SPECIFIC APPLICATIONS


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APPLICATIONS IN THE FORMS TO THE RULES

- Summary Judgment [form 7]
- Application for Trial With Assessors [form 21]
- Administration Order [form 44]
- Maintenance *pendente lite*, contribution towards costs, interim custody and access to children [form 42]


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SUMMARY JUDGMENT (2)

- Plaintiff time to deliver application for SJ lengthened
 - in 15 days after delivery of notice of intention to defend [r14(2)]
- If based on a liquid document
 - Previously 14(2)(b) required a copy of any liquid document to accompany the notice
 - Now the liquid document must be annexed to the Founding Affidavit. [r14(2)]
- Changes re Defendant's options in opposition
 - answering affidavit has to be delivered one day earlier
 - ie. before noon on the day but one before the hearing day [r14(3)(b)]
 - The option of paying into Court [old rule 14(3)(a)], has been deleted
 - Now security to satisfaction of Registrar/Clerk of the Court [14(3)(a)]

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SUMMARY JUDGMENT (3)

- Can Counter Claim still ward off SJ?
 - This old rule [14(3)(b)] option has been removed, But
 - Soil Fumigation Services Lowveld CC v Chemfit Technical Products (Pty) Ltd 2004 (6) SA 29 (SCA) stated

"I can see no reason why a court considering an application for summary judgment should not, in the exercise of its overriding discretion under rule 32(5), have regard to the different considerations that arise when the defence put forward is by way of a counterclaim as opposed to a plea"

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SUMMARY JUDGMENT (4) Special Cost Awards

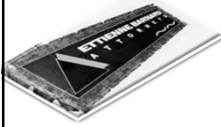
TO DEFENDANT

- If Plaintiff knew of defence costs may be ordered (taxable at an attorney & client scale) [r14(10)(a)]


TO PLAINTIFF

- If SJ was refused & Court after judgment finds defence was unreasonable it may grant the Plaintiff attorney and client costs [r14(10)(b)]

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SECURITY FOR COSTS

- Old Rule quoted types where security could be requested
- FirstRand Bank Ltd v Pather 2005 (4) SA 429 (N)
- Notice setting forth grounds upon which claimed & amount [r62(1)]
- If amount contested R/Clerk of the Court determines [r62(2)]
- If liability contested or party fails to deliver, then Application to Court and proceedings stayed. [r62(3)]
- Shall be given in the form, amount and manner directed by R/Clerk unless Court directs otherwise/parties agree otherwise [r62(5)]

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SECURITY FOR COSTS

Application must set out


- Usual requirements for interlocutory affidavits/appls.
- NB GROUND must be alleged e.g.
 - s13 Company/s8 CC act
 - New Company Act 2008 from 1 May or Common Law?
- Plaintiff is a
 - Perigrinus
 - Unrehabilitated insolvent
 - Under administration
 - Receiving statutory financial assistance (Agricultural Credit act 28, 1966 ito old rules)
 - Under debt review? Over indebted means Plaintiff might not be able to pay costs
- Plaintiff has no interest in the outcome of the action

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INTERLOCUTORY APPLICATIONS

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Notice of Motion v Notice

- Rule 55(1)(a)
- Every appl. shall be brought on
- Notice of Motion
- Supported by affidavit as to facts
- Rule 55(1)(f)&(j)(iv) requires separate notice of set down
- Formalities:
 - Appointing attorneys
 - Giving service addresses

- Rule 55(4)(a)
- Interloc & incidental appl. must be brought
- Notice
- Affidavit **only if** facts need to be placed before court
- Rule 55(4)(a) "and set down with appropriate notice"
- **No Formalities** such as
 - Appointing attorneys
 - Giving service addresses

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Shire Insurance Co Ltd v Reuben

1967 (2) SA 263 (E) [1]

"a substantial difference between an application being brought on notice...and...on notice of motion.

...never...intended, when parties are engaged in litigation and have complied with such formalities as appointing attorneys and giving addresses for the service of documents in the proceedings, that, in further applications incidental to such proceedings, the parties would be required to go through all the same formalities again with all the concomitant and unnecessary expense."

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Yorkshire Insurance Co Ltd v Reuben

1967 (2) SA 263 (E) [2]

...the use of the word 'notice' in sub-rule (11) as opposed to the 'notice of motion' in the other sub-rules to Rule 6 indicates clearly that interlocutory and other applications incidental to pending proceedings were not intended to be brought by...formal notice of motion in the same way as applications initiating proceedings. [It]...was not enacted solely for the purpose of prescribing a different procedure as regards set down as has been suggested ..."

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Yorkshire Insurance Co Ltd v Reuben
1967 (2) SA 263 (E) [3]

“...all that is required ...is a notice advising the other party that an application will be brought on a date assigned by the Registrar.

*It follows, therefore, that **the applicant unnecessarily adopted the procedure applicable to notices of motion** when initiating the application to compel particulars and its costs must be limited to the costs of a simple notice to respondent's attorneys as is given in other matters connected with litigation, e.g. the notice to deliver particulars”*

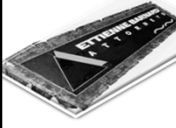
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Notice of Motion v Notice

- SUBSTANTIVE
- NO HEARING DATE IN NOTICE FOR OPPOSED MOTIONS
- RESPONDENT:
 - NOTICE OF OPP. 5 DAYS
 - OPPOSING AFFIDAVIT 10 DAYS
- DATE INSERTED ONLY APPLIES TO UNOPPOSED
- FURTHER NOTICE OF SET DOWN REQUIRED
- INTERLOCUTORY OR INCIDENTAL
- HEARING DATE INSERTED IN NOTICE FOR OPPOSED MOTIONS
- RESPONDENT:
 - NO NOTICE OF OPPOSITION
 - OPPOSING AFFIDAVIT ANY TIME BEFORE
 - MUST GET REASONABLE TIME
- DATE INSERTED APPLIES TO UNOPPOSED & OPPOSED
- NO FURTHER SET DOWN REQUIRED

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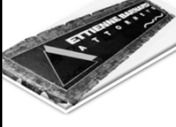
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**EXCEPTIONS/
STRIKE OUT (RULE 19)**

- Identical to HC Rule 23
- 2 Grounds:
 - ① Vague and embarrassing
 - ② lacks averments necessary to sustain a cause of action/defence
- In ① - Notice to remove cause of complaint in 15 days
- In ② - Exception

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**INTERVENTION, JOINDER AND
CONSOLIDATION OF ACTIONS
(RULE 28)**

- R28(3): Plaintiff may join several causes of action
- R28(4): Application that separate trials be held
- R28(5): Consolidation of actions
 - Upon Application (long form)
 - On Notice
 - Convenient to do so
 - Proceed as one action
 - directions as to further procedure
 - May give one judgment


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Joinder v Third Party Notice

- Khumalo v Wilkins 1972 (4) SA 470 (N)
 - W (owner) claimed from K ito MVA
 - C was driver
 - K wanted to join C & C as (negligent driver) & get judgment against C
 - MC had refused joinder
 - On appeal court allowed joinder but said no judgment could be given against C


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THIRD PARTY PROCEDURE (RULE 28A)

- Equivalent to HC Rule 13 but better
- **Extra Rule 28A(10):** Where Court makes decision regarding liability of Defendant/Third party and either Defendant discharges the obligation to the Plaintiff or pays more than his fair share, then Defendant who discharged the obligation may execute for that amount which Defendant is liable.
- Third Party Notice = Form 43
 - 1 Contribution/Indemnification from 3rd party
 - 2 Substantially same question/issue
 - 3 Nature and grounds of claim and relief set out
 - 4 Copies of all pleadings to 3rd party only, Notice to other
 - 5 After close of pleadings – with leave from the Court


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THIRD PARTY PROCEDURE (RULE 28A)

- Third party:
 - 1 NID
 - 2 Plea/Exception
 - 3 Counterclaim against party issuing notice
 - 4 Counterclaim against other party – with leave of Court (Rule 20)
 - 5 May apply for separation of trials / Separate hearing of any issue

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ACTION PROCEEDINGS


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PHASES OF ACTIONS

1. Before Summons
2. Summons
3. Exchange of Pleadings
4. Preparation for Trial
5. Trial
6. Execution
7. Appeals & Reviews (Remain unchanged)


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Before Summons

- **CONSULTATION**
 - Remember duties ito FICA
 - Registration & Accountability
- **DEMAND**


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Letters of Demand


- Rule 4(1)(a): The SS 57 & 58 LoD must state
 - the nature and
 - the amount of the claim
- Rule 4(1)(b): For NCA credit agreements, S58 LoD referred must
 - deal with SS 129 & 130, and
 - allege compliance with both

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summons

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PREVIOUSLY

4 summonses

- Ordinary
- Rent Interdict
- Provisional Sentence
- Interpleader

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NOW

4 summonses

- Ordinary
 - Simple
 - Compound
- Rent Interdict
- Provisional Sentence
- Interpleader
 - Sheriff
 - Stakeholder

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SUMMONS


(Rule 5)

- **SIMPLE SUMMONS**
 - Debt / liquidated amount
 - Form 2

Rule 5(2)(b) - "may", party can choose to use Simple Summons

Uniform Rules - "shall"
- **COMBINED SUMMONS**
 - All others
 - Form 2B


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“liquidated demand” r5(2)(a)

- Fatti’s Engineering v Vendick Spares 1962 (1) SA 736 @ 739
 - LD=> **A claim for reasonable payment for services**
 - Usually easy to determine quick
 - Unless something prevented court from doing so
- Neves Builders & Decorators v De la Cour 1985 (1) SA 540 (C)
 - If the exercise becomes too intricate or time consuming, it might not be regarded as an LD


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“liquidated demand” r5(2)(a)

- Pick ’n Pay Retailers v Dednam 1984 (4) SOUTH AFRICA 673 (O)
 - Claim for **damages** due to Breach of Contract was held to be liquidated **because it amounted to the purchase price** into the agreement.


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CAUSE OF ACTION IN A SIMPLE SUMMONS

- Content may be brief
 - SA Permanent Building Soc. V Gomitzka 1939 TPD 285
 - Court refused to set aside summons which did not aver “due & payable” and held
 - “Particularization of the claimis a matter for the declaration”
 - Also not a pleading therefor not expiable
 - Susan v Kikillus 1955 (2) SA 137 (W)


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CAUSE OF ACTION IN A SIMPLE SUMMONS

- Brief content could however prevent summary judgment
 - Eg. leaving out the “due & payable” averment
 - Landman Implimente v Leliehoek Motors 1975 (3) SA 347 (O)
 - However it might be implied
 - Globe Engineering Works v De Orneleas Fishing 1983 (2) SA 95 (C)

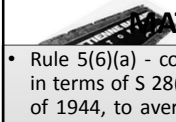
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MATERIAL CHANGES

- **15 km** service address
- Rule 5(3)(b) to (d) provides for service by **facsimile** or mail under certain conditions.
- If defended – written request by Plaintiff whether consent to fax/e-mail – if no response – Application for such consent (just and appropriate)
- Rule 5(9) and 6(12) – Plaintiff = Cessionary – details
→ Name, address, description of cedent, date
- Rule 5(10) - actions where an order is sought to declare immovable property which is the home of a defendant, executable (and also probably in actions where an eviction of a lessee is sought), defendant’s attention must be drawn to section 26 of the Constitution which accords everyone the right to access to adequate housing


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MATERIAL CHANGES


- Rule 5(6)(a) - compulsory when relying on jurisdiction in terms of S 28(1)(d) of the Magistrates’ Courts Act 32 of 1944, to aver that the whole cause of action arose within the district or region, **and** to set out the particulars in support of such averment.
- In the past, only necessary to make the averment that the whole cause of action arose within the Courts district.
- Rule 5(6)(b) – when relying on jurisdiction into S28(1)(g), summons must contain averment that property situates within the district or region.

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Undefended actions

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SS 57 & 58

- Rule 4(2): Affidavit containing evidence;
- Rule 4(3): 2 witnesses, full names, tel. numbers
- Rule 4(4): Rule 12 (6) (original)
 - Rule 12(6A) (evidence re statutory compliance)
 - Rule 12(7) (power of Clerk/Registrar to refer to Court)

applies to S57 and S58


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S57 & 58 Case Law Developments

- AFRICAN BANK LTD v MYAMBO NO AND OTHERS 2010 (6) SA 298 (GNP)
 - that fair and effective collection procedures promoted the purpose of the NCA.
 - Provided that the provisions of s 58 and those of the NCA were applied properly and with due regard to the parties' rights, it was in the interests of credit providers, consumers and of justice that the effective C debt-collection procedure afforded by s 58 was utilised.
 - The magistrate's finding that s 58 was contrary to the purposes of the NCA could therefore not be upheld.


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FAULT JUDGMENT (RULE 12)


- Rule 6A: If claim is founded on any cause of action arising out of or regulated by legislation, then the Plaintiff **SHALL** together with RDJ file evidence confirming compliance with the provisions of such legislation to the satisfaction of the court.
- Example: NCA – compliance: In as far as the registered slip was not annexed to PoC, this will be filed with RDJ.

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Provisional sentence


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PROVISIONAL SENTENCE (RULE 14A)

- Twee Jonge Gezellen (Pty) Ltd v The Land Bank CCT 68/10 [2011] ZACC2 Concourt decision delivered on 22 February 2011
- declared unConstitution and invalid to the extent that it does not give to courts a discretion to refuse provisional sentence where:
 - the nature of the defence raised does not allow the defendant to show a balance of success in his or her favour without the benefit of oral evidence;
 - the defendant is unable to satisfy the judgment debt; and
 - outside “special circumstances”, the court has no discretion to refuse provisional sentence.


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PROVISIONAL SENTENCE (RULE 14A)

- The common law is developed so that courts will in future have a discretion to refuse provisional sentence only in circumstances where the defendant demonstrates:
 - an inability to satisfy the judgment debt;
 - an even balance of prospects of success in the main case on the papers; and
 - a reasonable prospect that oral evidence may tip the balance of prospective success in his or her favour.


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PROVISIONAL SENTENCE (RULE 14A)

- NB Though Court recognized the need for Provisional Sentence Procedure in our society.

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JURISDICTION

- Regional Civil Courts in the Eastern Cape
- National Credit act Matters
- Matrimonial

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Eastern Cape Seats of the Civil Regional Courts

• East London	East London, Komgha, Mdantsane
• Grahamstown	Albany, Adelaide, Alexandria, Bathurst, Bedford, Somerset East
• Graaff-Reinet	Graaff-Reinet, Aberdeen, Cradock, Hofmeyr, Jansenville, Middelburg, Pearston, Willowmore
• King William's Town	King William's Town, Cathcart, Fort Beaufort, Keiskammahoek, Middelrift, Peddie, Stutterheim, Victoria East, Zwelitsha



Eastern Cape Seats of the Civil Regional Courts

• Mtahtha	Umtata, Bizana, Butterworths, Elliot, Elliotdale, Engcobo, Flagstaff, Idatywa, Kentani, Lidobe, Lusikiski, Maclear, Matatiele, Mount Ayliff, Mount Fletcher, Mount Frere, Mqanduli, Nqamakwe, Ngqeleni, Port St Johns, Qumba, Tabankulu, Tsolo, Tsomo, Willowvale.
• Port Elizabeth	Port Elizabeth, Kirkwood, Motherwell, Uitenhage



Eastern Cape Seats of the Civil Regional Courts

- Queenstown Queenstown, Albert, Aliwal North, Barkley East, Glen Grey, Lady Frere, Herschel, Hewu, Indwe, Lady Grey, Molteno, Mpofu, Ntabethemba, Sterkstroom, Steynsburg, St Marks, Tanka, Venterstad, Wodehouse, Xalanga
- Humansdorp Humansdorp, Hankey, Joubertina, Stetlerville



Northern Cape Seats of the Civil Regional Courts


- De Aar De Aar, Britstown, Carnarvon, Colesberg, Hanover, Noupoot, Philipstown, Richmond, Victoria West
- Kimberly Kimberley, Barkley West, Harswater, Douglas, Hopetown, Jan Kempdorp, Warrenten
- Springbok Namaqualand, Calvinia, Fraserburg, Garies, Port Nolloth, Sutherland, Williston
- Upington Gordonia, Groblershoop, Hay, Kakamas, Kathu, Keimoes, Kenhardt, Kuruman, Olifantshoek, Pofadder, Postmasburg, Prieska



Western Cape Seats of the Civil Regional Courts

- Atlantis (Atlantis, Clanwilliam, Hopefield, Malmesbury, Moorreesburg, Piketberg (Piquetberg) Van Rhynsdorp, Vredenburg and Vredendal.)
- Bellville (Bellville, Bluedowns and Kuils River.)
- Cape Town (Cape and Goodwood.)
- George (George, Heidelberg, Knysna, Mossel Bay, Riversdale, Thembaletu and Uniondale.)
- Mitchells Plain (Mitchells Plain and Khayelitsha.)
- Oudtshoorn (Oudtshoorn, Beaufort West, Calitzdorp, Ladismith, Murraysburg and Prince Albert.)
- Somerset West (Somerset West, Bredasdorp, Caledon, Grabouw, Hermanus, Paarl, Stellenbosch, Strand, Tulbagh, Wellington and Wolseley.)
- Worcester (Worcester, Bonnievale, Ceres, Laingsburg, Montagu, Robertson and Swellendam.)
- Wynberg (Wynberg, Athlone, Phillipi and Simon's Town.)


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Jurisdiction in NCA Debt Recovery

- S29 (1)(e)
- District courts have unlimited jurisdiction
 - (No provision for Minister to determine)
 - Absa Bank Ltd v Myburgh 2009 (3) SA 340 (T)
 - “[40] ...especially decreed to be instituted in the lower court, regardless of any jurisdictional limitation regarding the sum C involved.”
- S29(1A)
 - The Minister may determine different amounts contemplated in subsection ... (e) districts and courts for regional divisions.
 - Minister has determined Regional courts at R300 000.
- ???Anomaly: District courts higher jurisdiction than Regional courts???


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Jurisdiction in NCA Debt Recovery

- It has been held that the debtor as Consumer or First Respondent cannot consent to jurisdiction alone. The consent of all the creditors is needed.
- McLaren v Badenhorst and Others 2011 (1) SA 214 (ECG)


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Matrimonial Matters

- Sec 29(1B)(a)
 - Nullity of a Marriage / Civil Union / Customary Marriage
 - Divorce
 - Questions arising therefrom
 - Any matter with regard to the Recognition of Customary Marriages Act
- Sec 29(1B)(b)
 - Same jurisdiction as High Court

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Divorces - Jurisdiction

- Jurisdiction of Regional Courts Amendment Act 31 of 2008 – came into operation on 9 August 2010
- Jurisdiction over either party who lived in jurisdiction of court for Divorces
Sec 28(1A)



Divorces - Jurisdiction

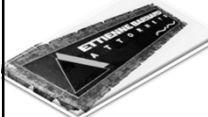
- Regional Court has same jurisdiction as High Court with regard to Divorce matters
Sec 29(1B)(b)
- Transitional Provision – any proceedings instituted in Divorce Courts not concluded before commencement of regional courts – must proceed in Divorce Courts
Sec 9(1)



Divorces - Summons


Out: All of Divorce Court Rules (since 15/10/10)

- Must be combined summons R 5(2)(b)
- Notice of defence now 10 days R 13(1)
- Summons must adhere to all requirements of Rules 5 and 6
- Claim for division, transfer or forfeiture must give details why entitled to in summons R 6(8)
- Must serve personally R 9(3)




Divorces - undefended

- Can set down (request registrar in writing) if NOT:
 - Defended
 - Plead
 - Written notice that not defend R 22(5)
- Notice of setdown is necessary no notice
- Practice note: 6 months after service, must give notice
- Defendant can not consent to judgement R 11 (1) or (4)
- Undefended divorce action postpone, may continue before another magistrate R 22(6)



Divorces Defended


- Follows the same path as any other defended matter
- Practice note: Require original marriage certificate, but certified copy will be accepted on good grounds



Divorce Interim Relief

Out Rule 32 Divorce Court Rules
New Rule 58
High Court Rule 43

- The same as old Rule 32
- Form 42 – only difference is reference to R 55(1)(g)(i) – service address within 15 km for defendant - rule 58 silent on 15 km but HCR say 8 km
- Can apply again if material change in either party's circumstances R 58(6)




Edictal Citation/ Substituted Service

Out: Rule 10 (summons lapsed after 12 months)
Cf HC Rule 5

- EC def/resp **Outside** S A 10(1)(a)
- SS d/r **inside** S A **but** unknown **where** 10(1)(b)
- Documents not initiating proceedings 10(3)


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EC/SS Procedure

- Ex Parte Application
- No respondent is cited
- Application for authority to institute proceedings or directions as to procedure or service of documents may be done ex parte where service is not appropriate or not necessary R55(4)(b)
- Application may be heard in chambers

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EC/SS Affidavit Content

Rule 10(2)(a)

- Nature and extent of claim
- Grounds of claim
- Grounds for jurisdiction in main claim
- Suggested manner of service
- Info on def/resp whereabouts if known
- If not known:
 - Last known whereabouts
 - Enquiries made to establish current whereabouts

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ES/SS COURT ORDER

R10(2)(b)

- Court may order as to manner of service as it deems fit
- Must also order the time within which notice of intention to defend is to be given
- Or any other step that is to be taken by the person to be served.

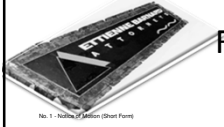
166



ES/SS

- Where service by publication is ordered,
- it may be in a form similar to Form 4 of Annexure,
- approved and signed by the registrar or clerk of the court.

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Form 1- Short Notice (1)

No. 1 - Notice of Motion (Short Form)

IN THE REGIONAL COURT FOR THE REGIONAL
DIVISION OF NORTHERN CAPE
HELD AT SPRINGBOK CASE NO:
101/2011
In the matter of:
MALULEKA POWEL Applicant

TAKE NOTICE that application will be made on behalf of the above-named applicant on the 18th day of November 2010

168

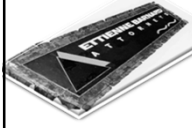


Form 1- Short Notice (2)

at 9:00 or as soon thereafter as counsel may be heard for an order in the following terms:

(a) That leave be given to institute action against the Defendant by way of Edictal Citation claiming a decree of divorce

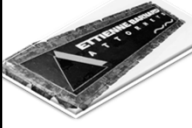
169



Form 1- Short Notice (3)

(b) That service of the Edictal Citation and/or necessary processes of this Honourable Court be affected by service upon the Defendant by notice (complying substantially with Form 4 of this court) in The Evening Standard Newspaper before 30 March 2011

(c) That the Defendant be given leave to defend the said action within one (1) month of date of this service.



Form 1- Short Notice (4)

and that the affidavit of MALULEKA POWEL annexed hereto will be used in support thereof.


Kindly place the matter on the roll for hearing accordingly.

DATED at SOMERSET WEST on 15 November 2010

 Applicant/Applicant's Attorney

 To the Registrar Court of the abovementioned

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Edictal Citation Form (1)

No. 4 - Edictal citation/substituted service: short form of process


IN THE REGIONAL COURT FOR THE REGIONAL DIVISION OF NORTHERN CAPE
 HELD AT SPRINGBOK

CASE NO: 101/2011

In the matter between:
 MALULEKA POWEL
 and
 BLUE MC DOWELL

Plaintiff
 Defendant

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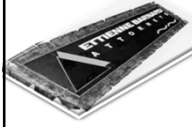


Edictal Citation Form (2)

To:
 BLUE MC DOWELL, an adult female housewife formerly residing at 56 Fitzroy Street, Observatory, but whose present whereabouts are unknown:

TAKE NOTICE that by summons sued out of this court, you have been called upon to give notice, within 30 days after publication hereof, to the registrar/clerk of this court and to the plaintiff/plaintiff's attorney of your intention to defend (if any) in an action wherein

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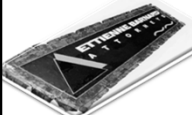


Edictal Citation Form (3)

MALULEKA POWEL, an adult male Data Capturer claims:

(a) A decree of divorce
 (b) Division of the joint estate
 (c) Costs
 (d) Further and/or alternative relief

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Edictal Citation Form (4)

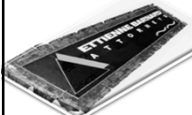
TAKE NOTICE FURTHER that if you fail to give such notice, judgment may be granted against you without further reference to you.

DATED at Upington this 18 March 2011
Plaintiff/Plaintiff's Attorney

Address for service:
Etienne Barnard Attorneys
Ebrose Chambers
5 Audas Street
Somerset West
Tel 021... & ref.....

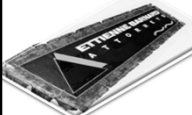
.....
Registrar/Clerk of the Court

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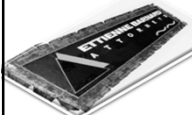
PRACTICE NOTE SERVICE

- If service is to be by way of publication in a newspaper or other publication it must be published in the language of the newspaper or publication unless otherwise ordered.
- As proof of such publication the whole page showing the name and the date of the newspaper should be filed.



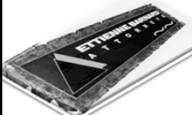
PRACTICE NOTE APPLICATION

- Draft orders in triplicate are to be submitted in all matters not later than closing of the roll.
- Prior to the hearing of the application, the applicant must deliver a complete index of all documentation before the court for the determination of the application.
- The index should describe each affidavit and annexure as a separate item. This practice applicable to ALL motions (opposed and unopposed).



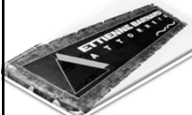
PRACTICE NOTE

- Binding of Documents: Documents shall be bound in such a way that allows easy and unhindered turning of pages and each bundle shall not consist of more than 100 pages each.
- All handwritten documents are to be copied and typed versions prepared and inserted immediately thereafter in the record as far as practically possible. Exceptions may be considered for indigent litigants.



PRACTICE NOTE

- All the documents should be properly paginated. Applicant must ensure that all the documents including the Notice of motion, founding affidavit and annexures and any replying affidavit are properly paginated before service on the Respondent.
- The respondent must also ensure that the answering affidavit and annexures are properly paginated prior to serving on the applicant.



PRACTICE NOTE

- The legal representative for each party in a motion which appears on the opposed roll, is to file a practice note with the registrar, on closing of the roll
- The practice note shall set out -
 - the name of the parties, the case number and its number on the roll;
 - the names and telephone numbers of all legal representatives in the motion;
 - the nature of the motion;
 - an indication of the issues to be determined in the application;
 - the relief sought at the hearing by the party on whose behalf the legal representative is completing the practice note;
 - an estimate of the probable duration of the motion;
 - if the matter is urgent, and if so, motivate the urgency;
 - whether or not the papers need to be read and, if so, which portions thereof.



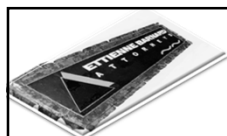
PRACTICE NOTE

- In the absence of a practice note from the applicant, a motion appearing on the opposed roll will be removed from the roll, unless the presiding officer directs differently.
- A practice note must be filed as set out above on each occasion the motion appears on the opposed roll.
- Concise heads of argument are to be attached to the practice note at the time of filing thereof.
- In the event that the day on which the practice note and concise heads are to be filed falls on a public holiday, such documents shall be filed on the preceding court day.



PRACTICE NOTE

- **Settlement Agreements And Draft Orders**
- Where the parties to a civil trial have entered into a settlement agreement, a presiding officer will make a settlement agreement an order of court only if –
 - The legal representatives of all the parties to the trial are present in court and confirm the signatures of their respective clients to the settlement agreement and that their clients want the settlement agreement made an order of court, or
 - Proof to the satisfaction of the presiding officer is provided as to the identity of the person who signed the settlement agreement and that the parties thereto want the settlement made an order of court.



PLEADING IN GENERAL (RULE 6)

- 6(5): when denying allegation – not evasively – answer the point of substance
- 6(6): reliance on contract must allege
 - Written or oral
 - When, where and by whom it was concluded
 - Copy annexed if in writing
- 6(9): Damages – details to assess the quantum



PLEADING IN GENERAL (RULE 6)

- If suing for damages for personal injury must specify:
 - Date of birth
 - Nature and extent of the injuries
 - Nature, effects and duration of the disability
 - Separate amounts for;
 - Medical costs and hospital and other similar expenses
 - Pain and suffering
 - Disability in respect of:
 - Earnings of income
 - Enjoyment of amenities of live
 - disfigurement




PLEADING IN GENERAL (RULE 6)

- 6(10) damages from death of another must state date of birth of deceased
- 6(11) **Agreement governed by legislation** – nature and extent of compliance
- 6(12) If sues cessionary:
 - indicate name, address and description of cession as at date of cession and
 - date of cession



Defence – Rule 13


- 10 days to defend [r13(1)]
- 16 December to 15 January = DIES NON
- Address within 15 km
- Must indicate how will accept service
- May require plaintiff to consent to serve doc via email or fax
- If plaintiff refuses or fails – can apply to court



Declaration – Rule 15

- Must be delivered within 15 days of notice of defend to simple summons
- Must disclose complete cause of action
- If not done, then defendant can deliver notice to compel
- If Plaintiff not reply – then barred
- Defendant can set matter down with notice to Plaintiff
- Can apply for absolution


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Further Particulars

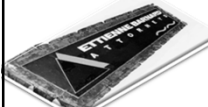
- Rule 15 and 16 no more
- Rule 23(15)
 - After notice to defend
 - For purposes of pleading
 - Documents and other electronic recordings
 - Clearly specified
 - In party's possession
 - Relevant to issue in action
- Test: Essential and not useful (Cullinan Holdings Ltd v Stadsraad 1992(1) SA654 (T) at 647 F
- If not comply then Application R60(2) and (3)

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FURTHER PARTICULARS (RULE 16)


- Pleadings should contain sufficient detail
- If not → Exception / Irregular proceedings
- After close of pleadings, not less than 20 days before trial further particulars necessary for trial
- Compliance 10 days after receipt thereof
- Non-compliance: Compel/Dismissal/Striking out of defence
- After trial court will *mero motu* decide whether FP was necessary and allow costs accordingly



PLEA - Rule 17

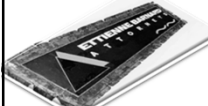
- Defendant must set out Defence in a plea within 20 after:
 - Notice of intention to defend
 - Receiving Declaration
 - Dismissal of Summary Judgement Application
 - Court Granting Leave to Defend
 - After Dismissal of Exception or Application to Strike out
 - After amendment of Summons
- R12(1)(b)

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PLEA (RULE 17)


- If not comply to requirements – Rule 60A – Irregular Step
- Admit, deny, confess and avoid
- If not denied / admitted – deemed to be admitted (17(3)(a))
- Rules 17(5)(a) to (c) relates to tenders being pleaded - Tender as part of amount claimed, plea shall specify items to which tender relates – same as old rule
- Payment if amount tendered to be secured to satisfaction of Plaintiff, **no longer payment into court**
- Implied that will pay the costs up until tender unless otherwise indicated



Counterclaim – Rule 20

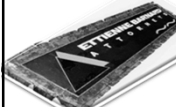
- Same as R 24 High Court
- Together with plea
- R 20 (4) – Conditional Counterclaim
- Can add further “plaintiff’s” with leave of court.

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COUNTERCLAIM (RULE 20)

- Exception: Rule 20(5) An action may be stayed where the claim in reconvension exceeds the jurisdiction of the Magistrates' Court.
- If defendant makes no application to stay matter then court can dismiss claim in reconvension.
- Defendant can abandon
- Non-compliance with Rule → R 60A (Irreg)



REPLICATION AND PLEA IN RECONVENTION (RULE 21)

- All periods have been amended to comply with High Court.
- 15 days after receipt of plea/claim in reconvension
- Rule 21(5): Introduces the concept of further pleadings following a plaintiff's replication in the Magistrates' Court.



OFFER TO SETTLE (RULE 18)


- Drastically amended
- In essence a copy of the HC Rule 34.
- Offer for money
- Tender for performance
 - Personally or
 - execute an irrevocable power of attorney that must be delivered to the clerk/registrar
- All offers must be in writing
- Offer must be unconditional or without prejudice
- No payment into court



OFFER TO SETTLE (RULE 18)

- R 18(1) Defendant offer to plaintiff
- R 18 (3) any party to any party (including 3rd parties)
 - Specific sum
 - Specific Proportion
- R 18 (4) One of several defendants to plaintiff or other defendants

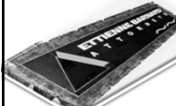
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OFFER TO SETTLE (RULE 18)

- Notice of tender
 - to all parties
 - And must state if unconditional or without prejudice
 - All or part of the costs
 - Both claim and costs or only costs
 - Disclaims liability for costs and reasons therefore
- Action may be set down for costs alone


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OFFER TO SETTLE (RULE 18)

- Acceptance of offer within 15 days, thereafter by way of written consent/order of court
- The clerk will hand over the power of attorney
- Failure to pay/perform within 10 days, then 5 days notice, apply for judgment
- If offer without prejudice then no record in court file
- After judgement can bring offer to notice of court for purposes of costs order
- If not can bring to court's attention within 5 days and question of costs will be reconsidered.


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OFFER TO SETTLE (RULE 18)


- Rule 18(13): Any party who discloses a without prejudice offer/tender to Magistrate/Court shall be liable for costs given against him even if successful in the action.
- Can also be used in motions and claims reconvention

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INTERIM PAYMENTS (RULE 18A)


- New Rule
- Identical to HC 34A
- Actions for damages claims for
 - personal injuries
 - death
- Only for
 - Medical costs
 - Loss of income
- R 55 application and affidavit must contain
 - Amount of damages
 - Grounds for applications
 - Documentary proof attached



INTERIM PAYMENTS (RULE 18A)

- This will only be granted
 - if defendant admitted liability or
 - plaintiff has judgment
- Defendant must have insurance for claim or able to afford it
- Interim order shall not be pleaded or disclosed to court
- If granted/refused, further Applications upon good cause shown
- Provisions apply to any claim in reconvention.


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INTERIM PAYMENTS (RULE 18A)

- If order made, court can in making final order:
 - Plaintiff repays all or part of initial
 - Payment varied
 - Payment made by other defendant
- Provisions apply to any claim in reconvention.


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INTERIM PAYMENTS (RULE 18A)

- Harmse v RAF (63149/09) [2010] SAGPPHC 11 (24 February 2010)
- Notice of motion
- Defendant tendered costs,
- Later urgent application
- matter dismissed as defendant did not admit liability.


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Rule 21A PLEADINGS CLOSE

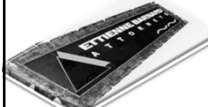
- parties have joined issue without adding further pleading
- last day for replication/subsequent pleading has lapsed and it has not been filed
- parties agree in writing & file with Clerk/Registrar
- parties unable to agree, court on application declares pleading closed

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SET DOWN (RULE 22)


- Rules 22(4) - (6) have been added.
- Rule 22(4): Registrar / Clerk of the Court shall draw file, take to Magistrate, who then decides whether pre-trial in terms of S54 is necessary – enabling sub rule – does not compel Magistrate.
- Trial date shall be allocated within **10 days!**
- R22(5) and (6): Divorce matters – Registrar, at written request by Plaintiff set matter down on a date to be fixed by the Registrar.



DISCOVERY (RULE 23)

- Drastically amended
- Copy of the HC Rules
- HC Rule 35 makes mention of documents and tape recordings,
- Rule 23 mentions documents and tape, electronic, digital or other forms of recordings including sound track, film, magnetic tape, record, or any other material on which visual images, sound or other information can be recorded.
- Old:

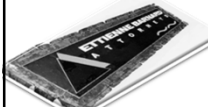
	New
• 23 (1) – request,	23(1)
• 23 (3) – inspect	23(6)
• 23 (4) – produce at trial	23(11)



DISCOVERY (RULE 23)


- After close of pleadings
- R23(1) Notice to Discover within 20 days
- Reply must be by affidavit and according to form 13
- R23(3) Notice for specific documents
 - Which party believes is in other's possession but not discovered
 - Make available for inspection
 - If not in possession, affidavit where if know within 10 days

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DISCOVERY (RULE 23)

- R23(4) party failing to discover after receiving notice may not use document.
- R23(5) RAF, state, cessionary – discovery against driver / owner / cedent – Form 14



DISCOVERY (RULE 23)

- Rule 23(8) – If not discover then can apply to compel and if not then dismiss claim
- Rule 23(9) – Notice to specify particulars of **dates/parties** to any document within 15 days
- Rule 23(10) – Notice to admit within 10 days
 - That document properly executed and what it purports to be
 - If no objection – admitted without proof
 - if not admitted – to be proved but party could be ordered to pay the costs of proof



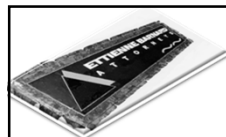
DISCOVERY (RULE 23)

- Rule 23(11) – Notice to produce at trial
 - original
 - no witness necessary
 - Notice given 5 days before trial
- Rule 23(12) – Court may order to produce
- Rule 23(13(a)): Any party may deliver notice (Form 15B) to any party whose **pleadings/affidavits make reference** to any document/tape for inspection and making of a copy.
- Non compliance to notice – may not use document.
- Rule 23(14) provisions apply to Applications in so far as Court directs



Medical examinations and experts (Rule 24)

- Only amendment:
- Rule 24(5A): If any party claims damages resulting from death of another person, he or she shall undergo a medical examination as prescribed in this Rule if it is requested and it is alleged that his or her own state of health is relevant in determining damages.



PRE-TRIAL (RULE 25)

- Rule 1(3):
 - In order to **promote access to courts** or in the **interest of justice**, a court may, at a S54 conference dispense with any provisions of the Rules and give directions as to the procedure to be followed so as to **dispose of the action** in the most **expeditious** and **least costly** manner.



PRACTICE DIRECTIVE – PRE TRIAL CONFERENCE

- When a trial date is applied the **presiding officer** may direct that a pre-trial conference be held. **Either party** may request a pre-trial conference in terms of section 54 in writing as provided for in Rule 25.
- The conference in terms of section 54 should be regarded as an **ongoing procedure** which, having been convened, can stand adjourned on the directive of the presiding officer, to be reconvened from time to time on reasonable notice to the registrar by either party.
- In the event of any party **failing** or refusing or neglecting to **attend a pre-trial** conference after due notice thereof has been given, it must be reflected in the minutes and the **presiding officer may make such order** as it considers equitable.

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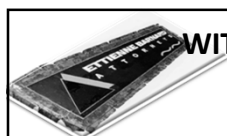


PRACTICE DIRECTIVE – PRE TRIAL CONFERENCE

- In accordance with the spirit of Magistrates' Court Rule 1(3), directives may be given **to the parties to hold a party and party pre-trial conference**, in particular where a **settlement** may be possible, in which case the parties must inform the registrar no later than **ten court days** before the trial date, if already allocated, whether the matter will proceed or be settled.
- If the trial will **not proceed** after a trial date has been allocated, the parties must **as soon as they become aware of this**, but no later than **ten court days** before the allocated trial date, inform the registrar in writing that the matter will not proceed and/or that one or more parties will request a postponement.
- Where possible, the **same presiding officer** that chairs the pre-trial should preside over the trial.

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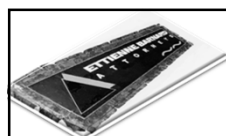


WITHDRAWAL, DISMISSAL AND SETTLEMENT (RULE 27)

- Rule 27(5) – Application to dismiss where Plaintiff fails to set down matter timeously has been deleted
- Substituted with positive obligation to inform registrar/Clerk of the Court/other parties of settlement, agreement to postpone or withdrawal by way of Notice
- Rule 27 (6) and (7): When making **settlement agreement** an Order of Court, **other party must be present** or written waiver (in agreement)
- Rule 27(9): breach of settlement agreement then judgment
- Application in terms of R27(9) has to be on notice to all parties. It is no longer possible to waive Notice of this Application.

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TRIAL

Rule 29, 30 and 31 stayed the same



NON APPEARANCE OF PARTY WITHDRAWAL & DISMISSAL (RULE 32)

- Rule 32(2): Is a Defendant/Respondent does not appear, a judgment (not exceeding the relief claimed) may be given against him or her with costs, **AFTER** consideration of such evidence, either oral or by Affidavit, as the Court deems necessary.
- Preparation will therefore be necessary.

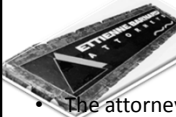


Practice Directive – Withdrawal Of Attorneys

- An attorney, ceasing to act for a party, shall give **written notice** to the registrar and to all other interested parties of this fact or file the notice of withdrawal as attorney **at least (14)** fourteen days before the date of trial if the matter has been set down for trial.
- **Unless good cause** is shown an attorney who withdraws late, may be ordered to pay wasted costs de bonis propriis.

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Practice Directive – Withdrawal Of Attorneys

- The attorney should state in writing **which steps** he/her has taken to advise his/her client of the fact that he intends to withdraw, and that his client has **received such notification** and is aware of his/her **rights and obligations** and of the possible **consequences** of the attorney's withdrawal.
- Where a **date of hearing** has already been allocated at the time the attorney withdraws, the **notice of withdrawal** should state whether and in what manner the client has been **informed of the date of the hearing**.

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FILING, PREPARATION AND INSPECTION OF DOCUMENTS (R 63)

- Plaintiff / Applicant shall no later than **10 days** prior to the hearing collate and number consecutively, and suitable secure all pages and shall prepare and deliver complete index;
- Every Affidavit filed, if party is represented, shall bear **name and address** of attorney filing it on **first page**.
- Rule 63(5): Registrar/Clerk may reject document that does not comply
- Rule 63(6): Any person, with leave of Registrar/Clerk, and **on good cause shown**, may examine and make copies of all documents in court file




CIVIL PRACTICE DIRECTIVES FOR THE REGIONAL COURTS

- Civil trials
 - Only trials ready for hearing will be allocated;
 - Allocation register to be kept
 - RC President/representative will allocate
 - due regard to be given to justifiable claims for precedence
 - At time of allocation - joint expert minute required
 - After allocation – no joint minute – compliance with practice required will not proceed with trial.



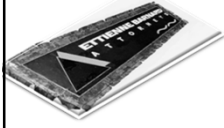
PRACTICE NOTES

- Bundles of Documents
 - Collated, numbered and suitably bound
 - Indexed
 - Joint bundle by parties
 - If not, the parties must decide which party's bundle is dominant / subservient
 - Subservient bundles must not contain documents of dominant bundles
 - Documents not bound in volumes of more than 100 pages, unless in lever arch file
 - Bound in manner not necessary to be held open but stays open



PRACTICE NOTES


- Parties must agree prior to trial of evidential status of documents
 - This agreement must be contained in a pre-trial minute
 - Agreement must also state which document will be part of the record, should the matter proceed to appeal.
- Unnecessary documents – punitive cost order
- Expert witnesses
 - Where practically possible – joint minute (agreements and disagreements and signed minute by experts)
 - If not, may result in removal from roll



Service of documents


Old: Rule 9
New: Rule 9
Cf HC Rule 4

- Small changes through out rule
- Service by fax or email if not a process of court
R9(9)(a)



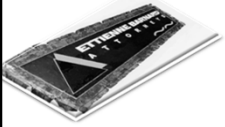
Service

- Old Rule 9(6) – if not able to serve documents on
 - Residence or employment;
 - Domicilium citandi; or
 - Body Corporate.
- Then can affix process to outer or principle door or leave copy at domicilium
- No Rule 9(6) in new rules
- But




Service

- R 9(3)(c) – can serve on somebody else at place of employment
- R9(3)(d) – can leave copy at domicilium
- R9(3)(e) – company - copy at main door
- So only problem is with service on person at residence
- If person keeps residence or place of business closed and prevents sheriff from serving process then may affix to door
R9(5)




Service of documents

- Domicilium Citandi service R 9(3)(d)
- But proviso that court may, if there is reason to doubt whether process served has come to the actual knowledge of person served, treat such service as invalid.
- Court not satisfied as to effectiveness of service, might order such further steps as it deems fit R 9(20)
- R 9(14)-(18) deals with service of docs outside RSA
- R 9(21)-(25) deal with service in SA of foreign process



Service of documents

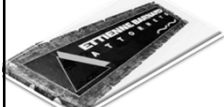
- **FIRSTRAND BANK LTD v GAZU 2011 (1) SA 45 (KZP)**
- The court has a discretion with regard to service, even chosen *domicilium citandi et executandi*.
- Placing the summons under a rock
- Financial Intelligence Centre Act 38 of 2001 have a **great deal of personal information** concerning the defendant, such as a residential address, a home and cell telephone numbers and even probably the e-mail address
- The court held that it **seemed unfair** that the bank made no further effort whatsoever to contact the defendant and notify her that it was taking such drastic action against her.



Service address of the State Attorney

- Formerly Rule 9(1)(g) provided for service on the State Attorney ("SA") via the local Clerk of the Magistrates' Court
- New Rules: service on the SA at the Clerk of the Court has fallen away
- If it is a document that the **Sheriff** must serve, it is to be done on
 - The Office of the SA in Pretoria
 - Or a branch office of the SA serving the area of jurisdiction of the court
[new rule9(1)(g)]


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Service address of the State Attorney

- In an opposed matter, the SA must appoint a local service address within 15km of the court, see
 - rule 5(3)(a)(i) if SA is the Plaintiff
 - rule 13(3)(a) if SA is the Defendant
 - rule 55(1)(e)(i) if SA is the Applicant
 - rule 55(1)(g)(i) if SA is the Respondent

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PRACTICE DIRECTIVE – PROOF OF SERVICE BY REGISTERED POST

When service of any document by registered post is prescribed or authorized in any action or application, such service shall be proven by:

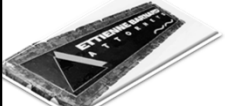
- the production of documentary proof of such posting
- as well as an affidavit by the person who procured the dispatch of such document, in which he/she
 - confirms the date of dispatch together with the name and address of the addressee;
 - describes the document so dispatched;
 - confirms, if that be the case, that the registered item in question has not been returned to the sender by the Post Office as unclaimed.
- Rule 9 (13) - Sheriff

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Costs

- Still R 33
- Costs that have been reasonably incurred and in respect of which there is no specific provision for in the rules, the court may on request award but court must give direction as to how this must be taxed
R33(8)(d)
- Costs in convention and reconvention – clerk of the court will award successful parties a proportionate amount of their costs in accordance with the award given by court
R33(13)



Costs

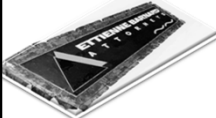
- When party makes a written offer for costs to be taxed and such offer refused, then party refusing offer shall not be allowed any costs of taxation if the bill is taxed in an amount smaller than the offer
R33(17)



Costs


- Magistrate Court

– Undefended 15/10/10	28/1/11
• R0 - R 7 000	R0 - R 12 000
• R 7 001 - R 50 000	R 12 001 - R 50 000
• Over R 50 000	Over R 50 000
– Defended 15/10/10	28/1/11
• Scale A: R 0 – R 7 000	R 0 – R 12 000
• Scale B : R 7 001 – R 50 000	R 12 001 – R 50 000
• Scale C: over R 50 000	over R 50 000



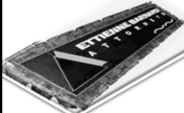
Costs

- Regional Court
 - Scale C of Table A of Annexure 2
 - If amount lower than regional Court jurisdiction then must costs must be the same as district court regardless if sued out of regional court



Execution

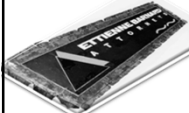
- Rule 39 - Provisions are made for more than one sheriff in an area
- Rule 40 – the same
- Rule 41 – interpleader suspends period of 4 months for release of attachment, until final adjudication of the interpleader claim R41(7)(f)(iii)
- Goods exceed R 5000-00 must advertise – R 41(8)(c)
- Form 32 – warrant of execution still the same
- Rule 42 – the same



Interpleader claims – R 44

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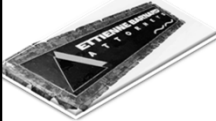
    graph TD
      A["R 44 (2)  
Person other than execution debtor claims property"] -- "Within 10 days of claim" --> B["Claimant must lodge affidavit in triplicate with sheriff"]
      B --> C["Affidavit must contain:  
•Claimant's full names, id and occupation  
•Residential and employment address  
•Nature and ground claim"]
    
```



Interpleader claims


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    graph TD
      A["15 days of claim"] --> B["Sheriff notify the execution creditor and debtor of claim and give affidavit"]
      B -- "Within 10 days" --> C["Execution creditor must inform sheriff if accepts claim"]
      C -- "Within 10 days" --> D["If accepts sheriff withdraws from process"]
      C -- "Within 10 days" --> E["If not - sheriff must issue summons"]
    
```




Interpleader

- Form 36 still the same
- Sheriff shall inform other sheriff's in the area of date
- Rest of provisions are the same as the old rule




Execution - immovable

- JAPHTA v SCHOEMAN & OTHERS 2005 (2) SA 140 (CC)
- Standard Bank v Saunderson 2006 (2) SA 264 (SCA)
- Elsie Gundwana v Steko Development CC and others [2011] SACC 14
- Mkhize v Umvoti Municipality and others 2010 (4) SA 509 (KZP) - Judicial oversight only required when property is a debtor's home




Execution - immovable

- Rule 5(10) – a summons where plaintiff applies to declare executable immovable property which is the home of the defendant must contain the following notice
 - “The defendant’s attention is drawn to section 26(1) of the Constitution of the Republic of South Africa which accords to everyone the right to have access to adequate housing. Should the defendant claim that the order for eviction will infringe that right it is incumbent on the defendant to place information supporting that claim before the Court”.




Execution - immovable

- Rule 43 – still the same
- R43(6)(c) – newspaper registered with the Audit Bureau of Circulations of South Africa
- R 43(11) – sale be held at place deemed fit by the sheriff – old rule – in front of court house




Section 65 enquiries

- Rule 45 minor changes with reference to Credit Act
- Form 40 – still the same
- Form 40A – warrant of arrest – still the same
- Form 40B – Notice to appear ito Sec 65A(8)(b) still the same




Emolument Attachment

- R 46 – still the same
- Form 38 – changed
- IMPORTANT NOTICE:
- Service must be by sheriff. If not it is a criminal offence
- After deduction, if debtor does not have means to support himself or his dependants than court may amend the order



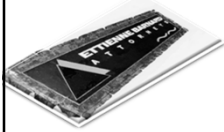
Garnishee order

- R 47 – small changes re Credit Act
- Form 39 – still the same



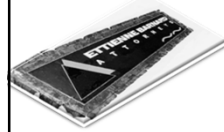
Administration

- R48 – the same
- R 600-00 to be kept for costs R48(4)
- Form 44 – the same
- Form 45 – the same



Definitions

- Deliver – where ordered by court or agreed to between parties by fax or email (chapter III part 2 of Electronic Communications and Transactions Act, 2002 will apply)
- Transitional Provision R 69(b)
 - Forms can still be used for a period of 12 months after 15 October 2010 with necessary changes as is required



•THANK YOU!

