

CAPE LAW SOCIETY
Magistrates' Court Committee



New Magistrates' Court Rules An Introduction



Etienne Barnard Attorneys

www.barnards.co.za



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GENERAL PROVISIONS

Rules to facilitate court & not other way around



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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 the 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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JURISDICTION

Regional Civil Courts in the Western Cape

Matrimonial

National Credit act Matters



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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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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
and
Mr Y

Applicant

Respondent



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Headings in REGIONAL court

IN THE MAGISTRATE'S COURT FOR THE REGION OF THE **WESTERN CAPE**
HELD AT **ATLANTIS**

(or Cape Town/Somerset West/Bellville/Worcester/Wynberg)

CASE NO:

In the matter between:

Mr X
and
Mr Y

Applicant

Respondent



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APPLICATIONS

General

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 (3 categories)

- 1 **Long Form** (Generally compulsory)
- 2 **Short Form** (Ex Parte)
- 3 **Specific Applications**
 - 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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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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On Notice

The Long Form



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Long Form Applications examples

If they are Non-Urgent

- Application to Appoint Curator ad Litem [section 33]
- PIE & ESTA type
- Debt Review
- Application for separation of trials [r28A]
- Rescission of Judgment [r49]
- Application to compel [r60]
- Irregular proceedings [r60A]
- Application to strike out [r55(9)]
- Liquidation of CC



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Content of Notice

OLD

- Applicant chose court date (some courts set aside certain days for applications)

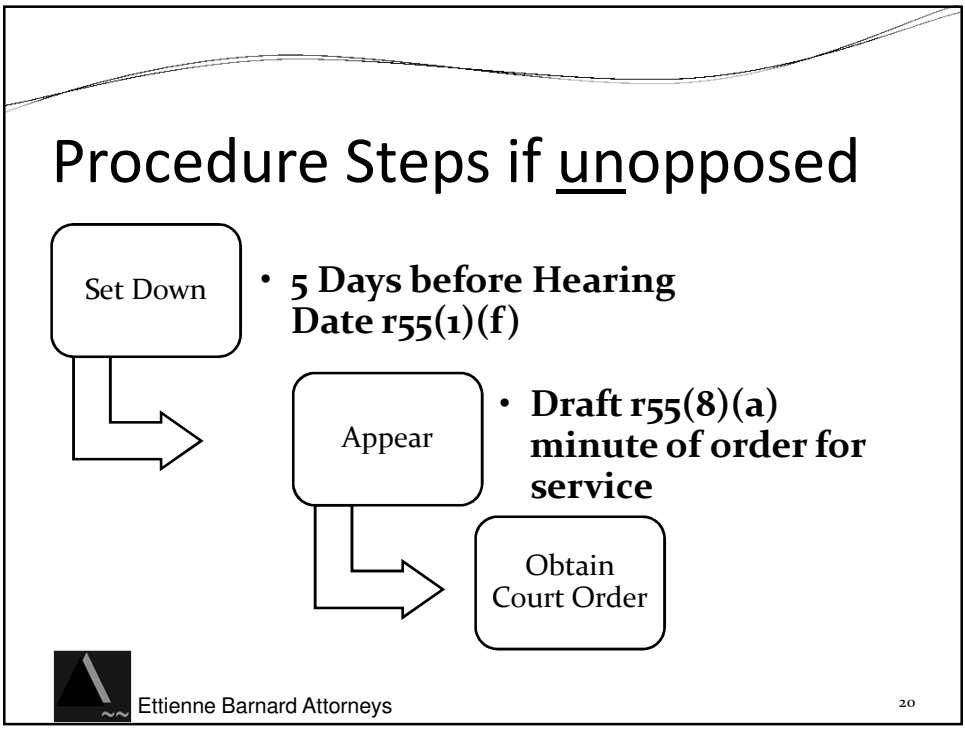
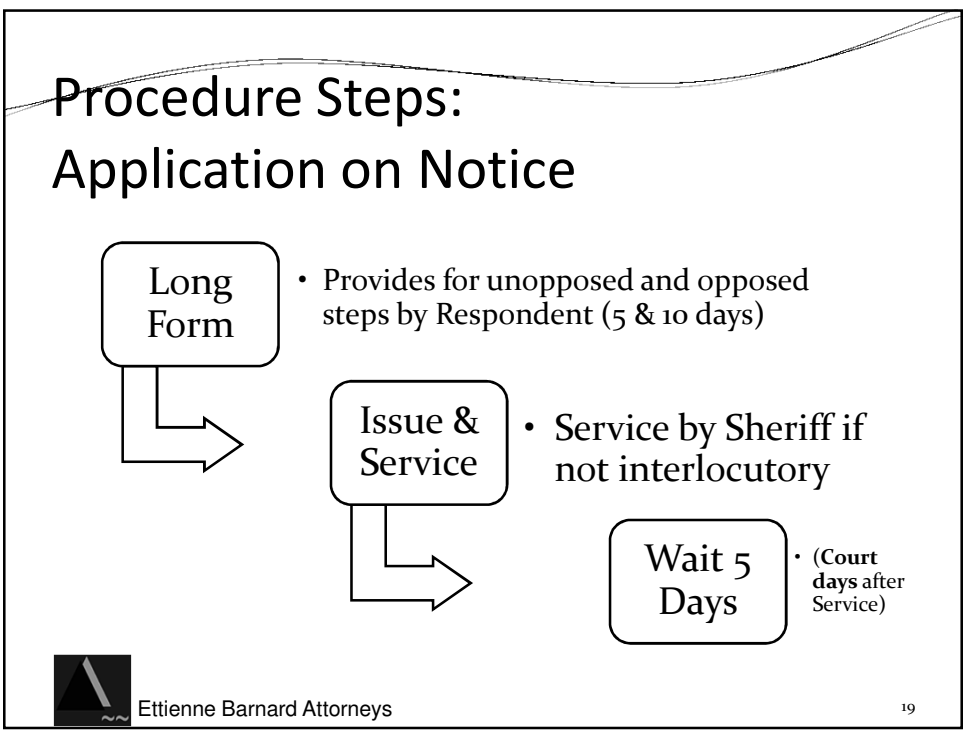
NEW LONG FORM

- Applicant only chooses if unopposed (ie no notice of opposition)
- Notice of appointed attorney & address
- Respondent told to deliver Notice of Opp. in 5 days
- Respondent told to deliver answering affidavit in 10 days
- Respondent told to provide service address (in 15 km)

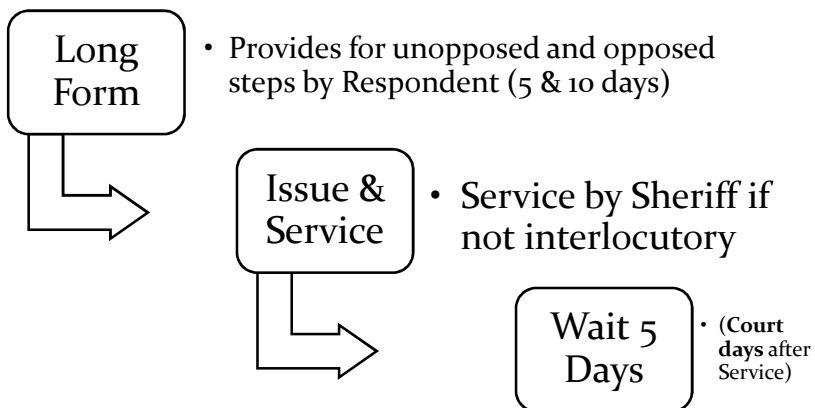


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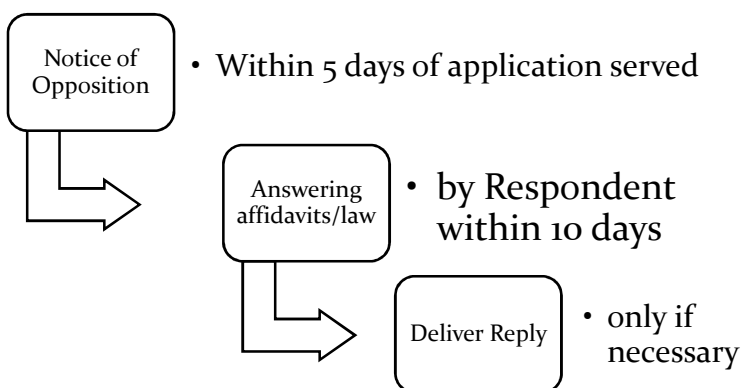
Procedure Steps: Application on Notice



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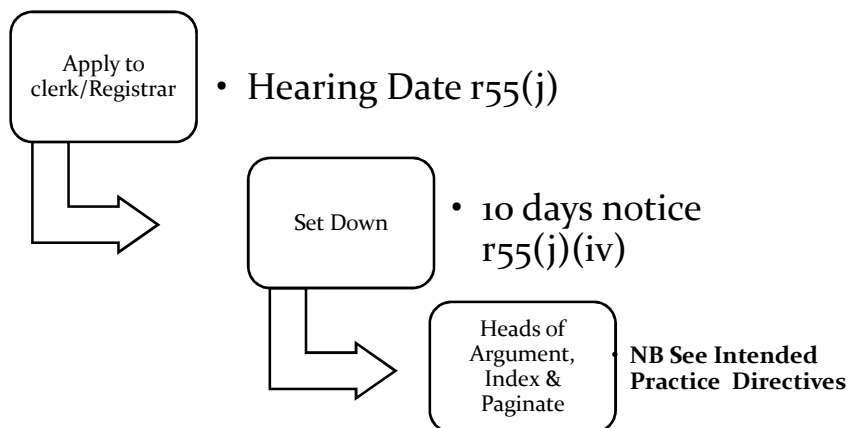
Procedure Steps: Application on Notice if **opposed**



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Procedure Steps if opposed (2)



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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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On Notice

Residential Eviction



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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);

Cf HC Rule 6

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



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Cape Kilarney

- [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 Kilarney (2)

- [15] NB”Applicant can approach ...court for ... [the s4(2) notice] directions by ...ex parte application
- NB The mistake on the facts was they attempted to obtain eviction via rule nisi ex parte order & also 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.



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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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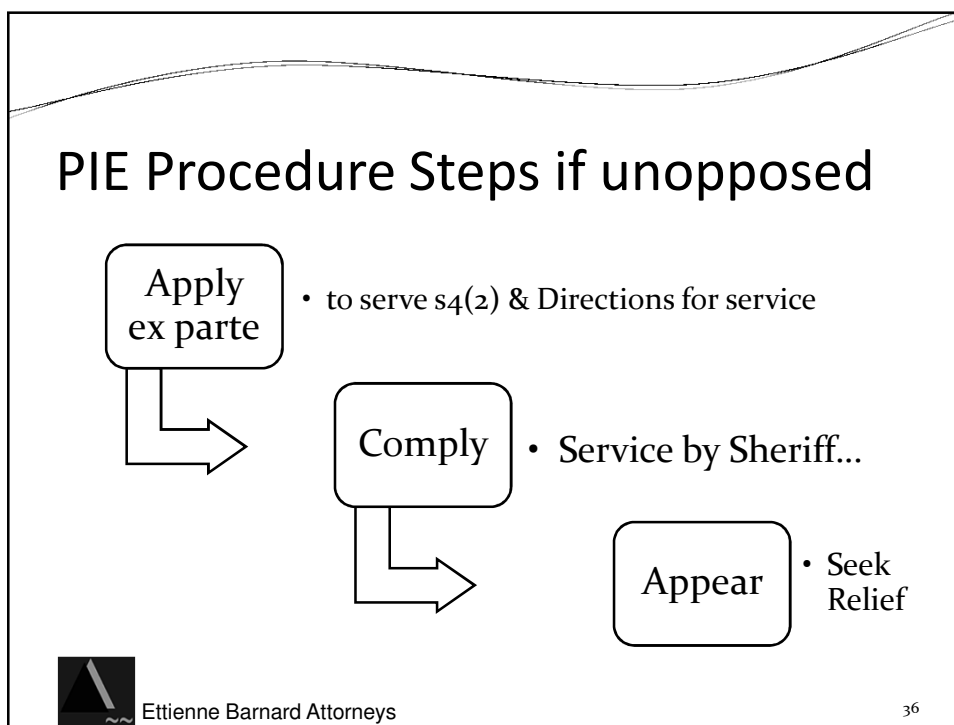
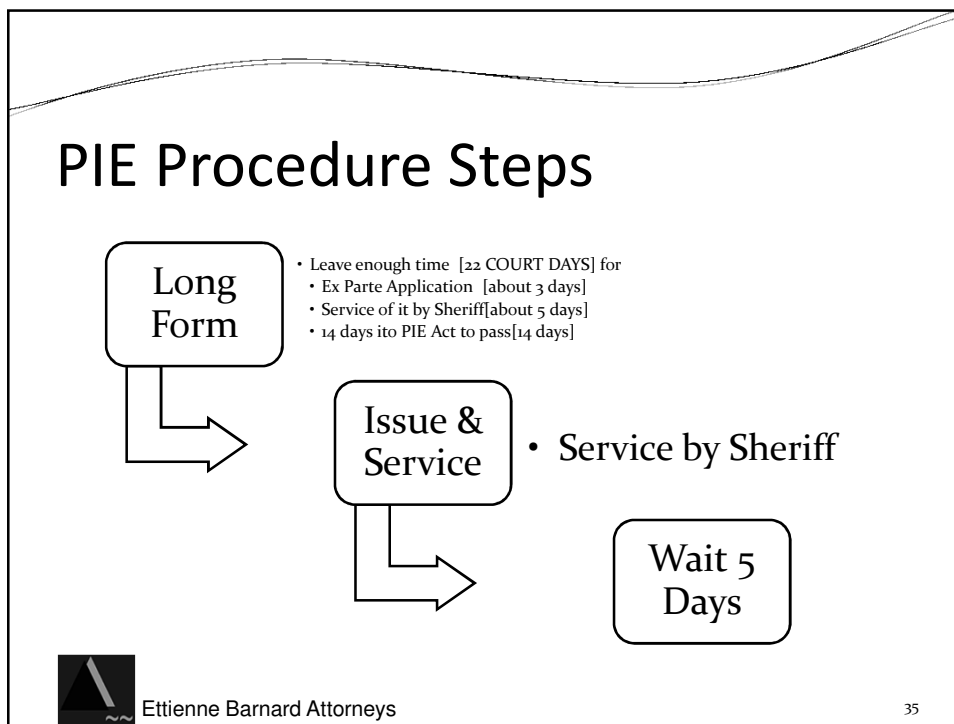
PIE Procedure Steps

1. Long Form Notice ito 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

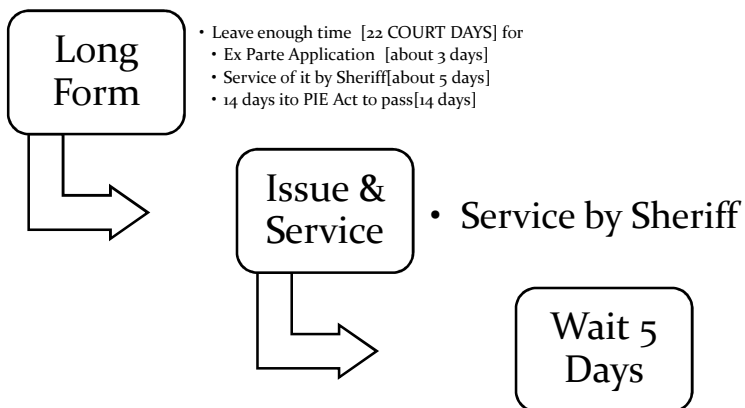


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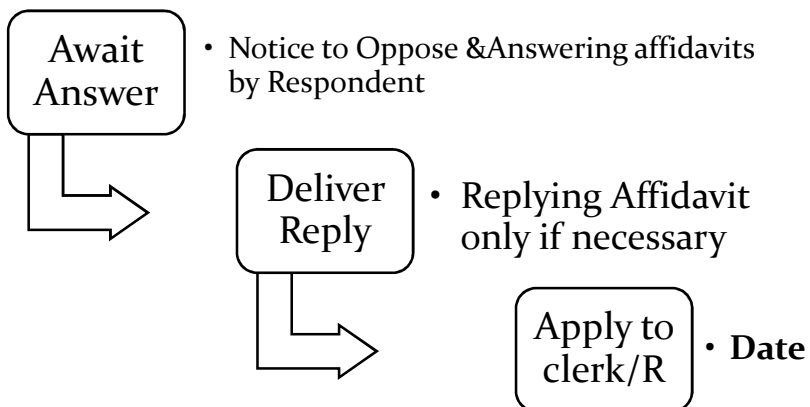
PIE Procedure Steps



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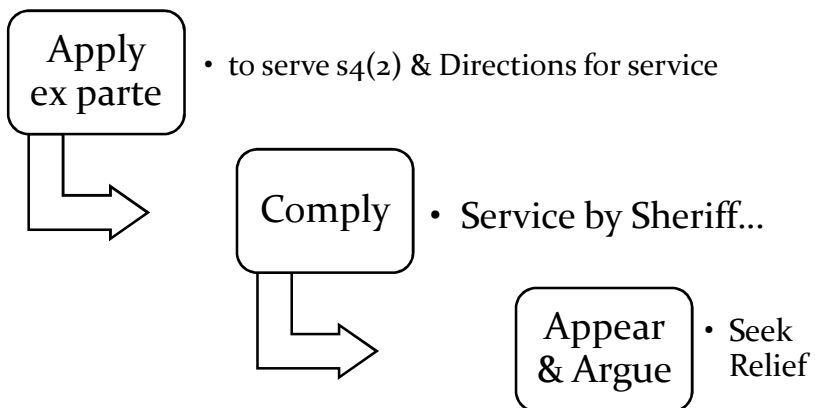
PIE Procedure Steps if opposed



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PIE Procedure Steps if opposed (2)



PIE Notice (1)

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

In the matter between:

CASE NO:

MRS PASSIVE INCOME

Applicant

and

STICKY TENANT

Respondent

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



PIE Notice (2)

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

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

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

In the matter between:

MRS PASSIVE INCOME

and

STICKY TENANT

CASE NO:

Applicant

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



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



PIE Ex Parte Notice (5)

5. The Respondent has the right to oppose this application on the above date;
6. The Respondent has the right to apply for legal aid to oppose it.
7. 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

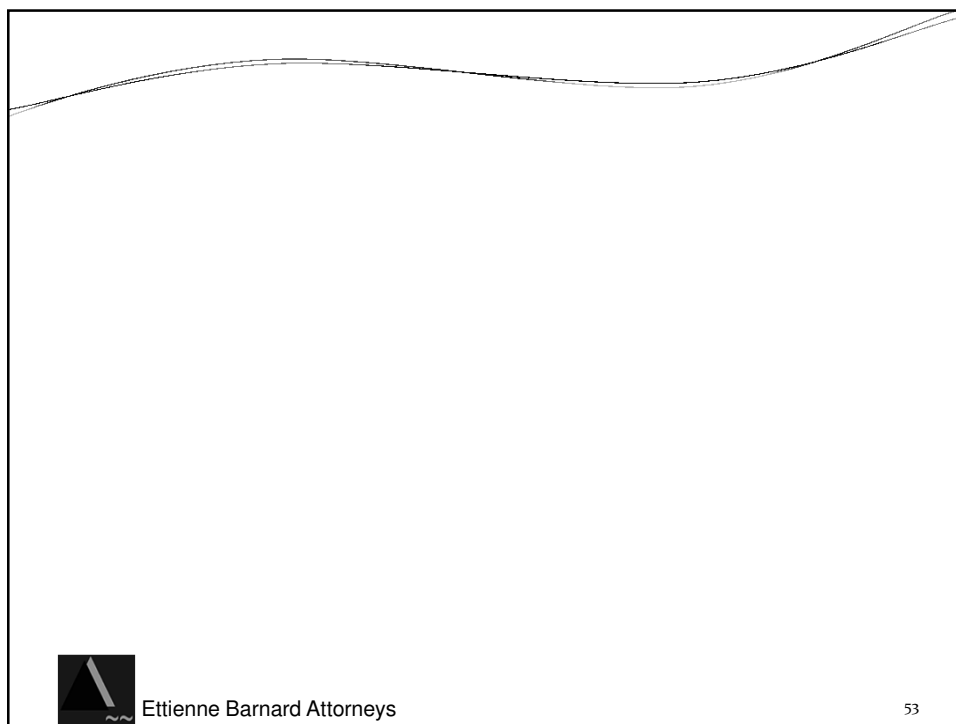
And to: STICKY TENANT
(full physical address)

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



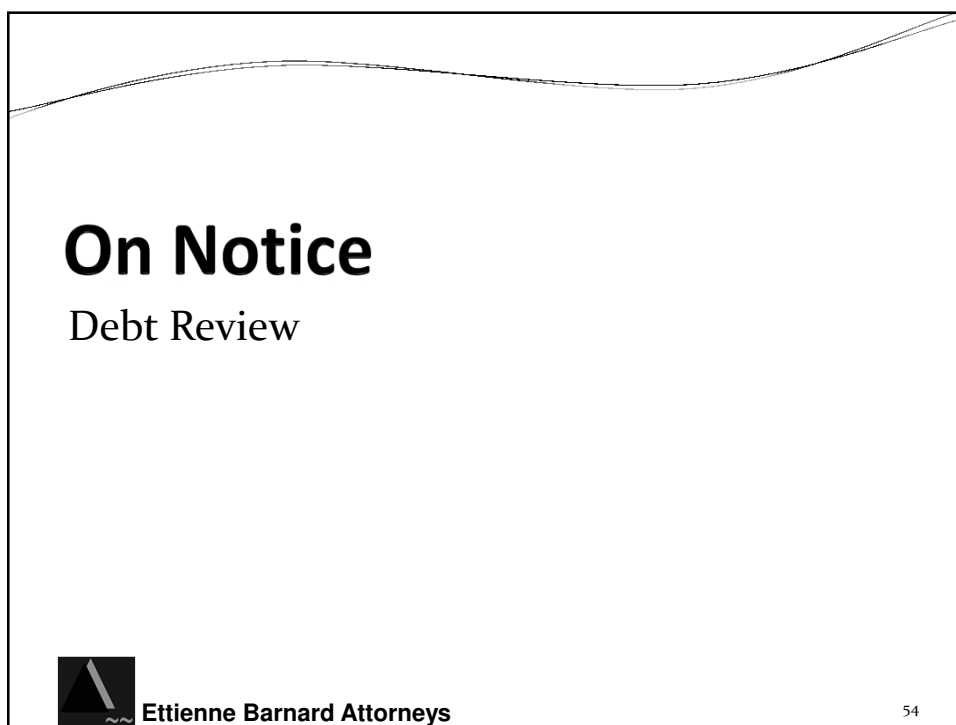
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On Notice

Debt Review



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 UITHELP N.O.

Debt Counsellor/Applicant

Reg. no. NCRDC55532555

and

JOSEPH NEEDABREAK

Consumer/1st Respondent

(Identity no : 8????? 5o?? o87)

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 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 **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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Urgency & Ex Parte

The Short(er) Form



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Short Form Applications 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”
 - 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 relationship of urgency & relaxing of rules
- Bandle Investments v Registrar of Deeds 2001(2) SA 203 (E)
 - Commercial interests may justify urgency



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Ex Parte

Liquidation of CC



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Liquidation of Close Corporation

- Rynders v Bankorp Ltd 1995 (2) SA 494 (W)
 - Magistrate's Court Liquidation cannot be ex parte
 - (OLD) Rule 55 (1) (10 days notice to CC) compulsory
 - [Rule 9(14) now r9(12) was not applied
 - - shorter notice on good cause]
- 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



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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).

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.

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



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Close Corporation Notice (4)

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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Less Urgent matters (Alternative 4)

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

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



Etienne Barnard Attorneys

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Etienne Barnard Attorneys

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ACTION PROCEEDINGS



Etienne Barnard Attorneys

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ACTIONS AND THE AMENDED RULES

**A BRIEF OVERVIEW
Prepared by E Jonker
MINDE SCHAPIRO & SMITH**

Letters of Demand

- Rule 4(1)(a): The LoD referred to in SS 57 & 58 **shall** contain particulars of the nature and the amount of the claim
- Rule 4(1)(b): where the original cause of action is a credit agreement under the NCA, the LoD referred to in S58 must deal with the relevant provisions of SS 129 & 130, and allege that each one has been complied with

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

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

- 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.

- Simple Summons

Rule 5(7) – a claim regulated by legislation, may contain a bare allegation of compliance with the legislation, but a declaration (and a combined summons) must allege full particulars of such compliance.

If RDJ filed, evidence of compliance with the provisions of the legislation must be filed to the satisfaction of the court(Rule 12(6A)).

- Cause of action within NCA? – compliance with Section 129 & 130 needs to be pleaded – Combined summons suggested

NB: Non compliance with Rule 5

Rule 5(11)



deemed to be an
IRREGULAR STEP
RULE 60A

- Rule 5(5) :
 - Consent to judgment
 - Appearance to defend
 - S109
 - S57, 58, 65A

- Form 2B oversight - recommendation

SIMPLE SUMMONS

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF SOMERSET WEST

HELD AT SOMERSET WEST

CASE NUMBER:1/11

In the matter between:

A N ATTORNEY (PTY) LTD

Plaintiff

and

D DEBTOR

Defendant

SUMMONS

TO: The Sheriff or his/her Deputy:
SOMERSET WEST

INFORM: **D DEBTOR**, an adult male teacher whose full and further particulars are to the Plaintiff unknown residing at **18 Seminar Road, SomersetWest**, which address is the Defendant's chosen *domicilium citandi et executandi*; (hereinafter called "the Defendant")

THAT: **A N ATTORNEY (PTY) LTD**, a Company with limited liability, duly registered in accordance with the Company laws of the Republic of South Africa, of **Shop 5, Tygervalley Centre, Bellville** (hereinafter called "the Plaintiff")

hereby institutes action against him in which action the Plaintiff claim/s:

1. Payment of the sum of R3 135.00 (THREE THOUSAND ONE HUNDRED AND THIRTY FIVE RANDS), being the amount which is due, owing and payable by the Defendant to the Plaintiff for Goods sold and delivered by Plaintiff to Defendant at the latter's special instance and request in and during June 2010, which amount despite demand defendant fails and/or neglects to pay and which said sum, despite demand, remains unpaid;
2. Interest thereon at the rate of 15.50% from a tempore morae;
3. Costs of suit;
4. further and/or alternative relief.

INFORM the Defendant that if it disputes the claim and wish to defend the action, it shall:

(i) within **10 (ten)** days of the service upon them of this Summons file with the Registrar or Clerk of the Court at Somerset West, 33 Caledon Street, Somerset West, notice of its intention to defend and serve a copy thereof on the Plaintiff's Attorneys, which said notice shall give an address (not being a post office box or a post restante) referred to in Rule 13(3) for the service upon the Defendant of all notices and documents in the action;

(ii) thereafter, and within **20 (twenty)** days after filing and serving notice of intention to defend as aforesaid, file with the Registrar or Clerk of the Court and serve upon the Plaintiff a plea, exception, notice to strike out, with or without a counterclaim.

INFORM the Defendant further that if it fails to file and serve notice as aforesaid, judgment as claimed may be given against Defendant without further notice to, or if, having filed and served such notice, they fail to plead, except, make application to strike out or counterclaim, judgment may be given against them. And immediately serve on the Defendants a copy of this Summons and return the same to the Registrar or Clerk of the Court with whatsoever you have done thereupon.

Dated at **BELLVILLE** this **28th** day of **OCTOBER 2010**.

Registrar / Clerk of the Court

ATTORNEYS INC
5 ADDERLEY STREET
CAPE TOWN
TEL:
FAX:
E-MAIL:
Service Address: SOMERSET WEST LAW FIRM
ADDRESS
SOMERSET WEST, 7130

(2) **CONSENT TO JUDGMENT**
I admit that I am liable to the plaintiff as claimed in this summons (or in the amount of R..... and costs to date) and I consent to judgment accordingly.
Dated atthisday of20.....

Defendant

*(3) **NOTICE OF INTENTION TO DEFEND**
To the Registrar/Clerk of the Court:
Kindly take notice that the defendant hereby notifies his or her intention to defend this action.
Dated at this day of20.....

Defendant/Defendant's attorney

Address: _____
Postal address: _____
Facsimile (fax) number (where available): _____
Electronic mail (e-mail) address (where available): _____
(Give full address for acceptance of service of process or documents within 15 kilometers from the Court-house and also the postal address.)

*The original notice must be filed with the Registrar or Clerk of the Court and a copy thereof served on the plaintiff or plaintiff's attorney.

Costs if the action is undefended will be as follows:-

Costs :	Amount	VAT
Attorney's Charges:		
Summons	R485.00	R67.90
Attending Court	(Item 7 of Part II of Table A)	
Judgment fees	(Item 3 of Part II of Table A)	
	R408.00	R57.12
Court Fees		
Sheriff's Fees		
Re-issue		
Sheriff's Fees on re-issue of summons		
TOTAL	R	R

Defendant must take notice that-

- (a) in default of defendant paying the amount of the claim and costs within the said period or of defendant delivering a notice of intention to defend he or she will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against defendant in his or her absence;
- (b) if defendant pays the said claim and costs within the said period judgment will not be given against defendant herein and he or she will save judgment charges. Defendant will also save judgment charges if, within the said period, he or she lodges with the clerk of the aforesaid Court a consent to judgment;
- (c) if defendant admits the claim and wish to consent to judgment or wish to undertake to pay the claim in installments or otherwise, defendant may approach the plaintiff or plaintiff's attorney.

Notice:

- (i) Any person against whom a court has, in a civil case, given judgment or made any order who has not, within 10 days, satisfied in full such judgment or order may be called upon by notice in terms of section 65A(1) of the Act to appear on a specified date before the court in chambers to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.
- (ii) If the court is satisfied that-
the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person has knowledge of the abovementioned notice and that he or she has failed to appear before the court on the date and at the time specified in the notice; or
the judgment debtor, director or officer, where the proceedings were postponed in his or her presence to a date and time determined by the court, has failed to appear before the court on that date and at that time; or
the judgment debtor, director or officer has failed to remain in attendance at the proceedings or at the proceedings so postponed,
the court may, at the request of the judgment creditor or his or her attorney, authorize the issue of a warrant directing a sheriff to arrest the said judgment debtor, director or officer and to bring him or her before a competent court to enable that court to conduct a financial enquiry. [Section 65A(6) of the Act]
- (iii) Any person who-
(aa) is called upon to appear before a court under a notice in terms of section 65A(1) or 65A(8)(b) of the Act (where the sheriff, in lieu of arresting a person, hands to that person a notice to appear in court) and who willfully fails to appear before the court on the date and at the time specified in the notice; or
(bb) where the proceedings were postponed in his or her presence to a date and time determined by the court, willfully fails to appear before the court on that date and at that time; or
(cc) willfully fails to remain in attendance at the relevant proceedings or at the proceedings so postponed, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months. [Section 65A(9) of the Act]
- (iv) On appearing before the court on the date determined in the notice in terms of section 65A(1) or (8)(b) of the Act in pursuance of the arrest of the judgment debtor, director or officer under a warrant referred to in section 65A(6) of the Act or on any date to which the proceedings have been postponed, such judgment debtor, director or officer shall be called upon to give evidence on his or her financial position or that of the juristic person and his or her or its ability to pay the judgment debt. [Section 65D of the Act]
- (v) Any person against whom a court has, in a civil case, given any judgment or made any order who has not satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith shall, if he or she has changed his or her place of residence, business or employment, within 14 days from the date of every such change notify the clerk or registrar of the court who gave such judgment or made such order and the judgment creditor or his or her attorney full and correctly in writing of his or her new place of residence, business or employment, and by his or her failure to a fine or imprisonment for a period not exceeding three months. [Section 109 of the Act]

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF SOMERSET WEST

HELD AT SOMERSET WEST

CASE NUMBER:1/11

In the matter between:

A N ATTORNEY (PTY) LTD

Plaintiff

and

D DEBTOR

Defendant

COMBINED SUMMONS

TO: The Sheriff or his/her Deputy:
SOMERSET WEST

INFORM: **D DEBTOR**, an adult male teacher whose full and further particulars are to the Plaintiff unknown residing at 18 Seminar Road, Somerset West, which address is the Defendant's chosen *domicilium citandi et executandi*;
(hereinafter called "**the Defendant**")

THAT: **A N ATTORNEY (PTY) LTD**, a Company with limited liability, duly registered in accordance with the Company laws of the Republic of South Africa, of **Shop 5, Tygervalley Centre, Bellville** (hereinafter called "**the Plaintiff**") hereby institutes action against them in which action the Plaintiff claims the relief and on the grounds set forth in the Particulars of Claim annexed hereto marked Annexure "A".

INFORM the Defendant that if it disputes the claim and wish to defend the action, it shall:

(i) within **10 (ten)** days of the service upon them of this Summons file with the Registrar or Clerk of the Court at Somerset West, 33 Caledon Street, Somerset West, notice of its intention to defend and serve a copy thereof on the Plaintiff's Attorneys, which said notice shall give an address (not being a post office box or a post restante) referred to in Rule 13(3) for the service upon the Defendant of all notices and documents in the action;

(ii) thereafter, and within **20 (twenty)** days after filing and serving notice of intention to defend as aforesaid, file with the Registrar or Clerk of the Court and serve upon the Plaintiff a plea, exception, notice to strike out, with or without a counterclaim.

INFORM the Defendant further that if it fails to file and serve notice as aforesaid, judgment as claimed may be given against Defendant without further notice to , or if, having filed and served such notice, they fail to plead, except, make application to strike out or counterclaim, judgment may be given against them. And immediately serve on the Defendants a copy of this Summons and return the same to the Registrar or Clerk of the Court with whatsoever you have done thereupon.

Dated at **BELLVILLE** this **28th** day of **OCTOBER 2010**.

Registrar / Clerk of the Court

MINDE SCHAPIRO & SMITH
TYGERVALLEY OFFICE PARK II
CNR OLD OAK & WILLIE VAN SCHOOR
BELLVILLE, 7530; PO BOX 4040, TYGERVALLEY 7536
Tel No.: **021-918 9000**; Fax No.: **021-918 9090**
Service Address: LEON FRANK & PARTNERS
UNIT B6, THE BEACHHEAD OFFICE PARK
10 NIBLICK WAY, SOMERSET WEST, 7130

(2) **CONSENT TO JUDGMENT**
I admit that I am liable to the plaintiff as claimed in this summons (or in the amount of R..... and costs to date) and I consent to judgment accordingly.
Dated atthisday of20....

Defendant

*(3) **NOTICE OF INTENTION TO DEFEND**
To the Registrar/Clerk of the Court:
Kindly take notice that the defendant hereby notifies his or her intention to defend this action.
Dated at this day of20....

Defendant/Defendant's attorney

Address: _____
Postal address: _____
Facsimile (fax) number (where available): _____
Electronic mail (e-mail) address (where available): _____
(Give full address for acceptance of service of process or documents within 15 kilometers from the Court-house and also the postal address.)
*The original notice must be filed with the Registrar or Clerk of the Court and a copy thereof served on the plaintiff or plaintiff's attorney.
Costs if the action is undefended will be as follows:-

Costs :	Amount	VAT
Attorney's Charges:		
Summons	R485.00	R67.90
Attending Court		(Item 7 of Part II of Table A)
Judgment fees	(Item 3 of Part II of Table A)	
	R408.00	R57.12

Court Fees
Sheriff's Fees
Re-issue
Sheriff's Fees on re-issue of summons

TOTAL R R


Defendant must take notice that-

- (a) in default of defendant paying the amount of the claim and costs within the said period or of defendant delivering a notice of intention to defend he or she will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against defendant in his or her absence;
- (b) if defendant pays the said claim and costs within the said period judgment will not be given against defendant herein and he or she will save judgment charges. Defendant will also save judgment charges if, within the said period, he or she lodges with the clerk of the aforesaid Court a consent to judgment;
- (c) if defendant admits the claim and wish to consent to judgment or wish to undertake to pay the claim in installments or otherwise, defendant may approach the plaintiff or plaintiff's attorney.

Notice:

- (i) Any person against whom a court has, in a civil case, given judgment or made any order who has not, within 10 days, satisfied in full such judgment or order may be called upon by notice in terms of section 65A(1) of the Act to appear on a specified date before the court in chambers to enable the court to inquire into the financial position of the judgment debtor and to make such order as the court may deem just and equitable.
- (ii) If the court is satisfied that-
the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person has knowledge of the abovementioned notice and that he or she has failed to appear before the court on the date and at the time specified in the notice; or
the judgment debtor, director or officer, where the proceedings were postponed in his or her presence to a date and time determined by the court, has failed to appear before the court on that date and at that time; or
the judgment debtor, director or officer has failed to remain in attendance at the proceedings or at the proceedings so postponed,
the court may, at the request of the judgment creditor or his or her attorney, authorize the issue of a warrant directing a sheriff to arrest the said judgment debtor, director or officer and to bring him or her before a competent court to enable that court to conduct a financial enquiry. [Section 65A(6) of the Act]
- (iii) Any person who-
(aa) is called upon to appear before a court under a notice in terms of section 65A(1) or 65A(8)(b) of the Act (where the sheriff, in lieu of arresting a person, hands to that person a notice to appear in court) and who willfully fails to appear before the court on the date and at the time specified in the notice; or
(bb) where the proceedings were postponed in his or her presence to a date and time determined by the court, willfully fails to appear before the court on that date and at that time; or
(cc) willfully fails to remain in attendance at the relevant proceedings or at the proceedings so postponed, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months. [Section 65A(9) of the Act]
- (iv) On appearing before the court on the date determined in the notice in terms of section 65A(1) or (8)(b) of the Act in pursuance of the arrest of the judgment debtor, director or officer under a warrant referred to in section 65A(6) of the Act or on any date to which the proceedings have been postponed, such judgment debtor, director or officer shall be called upon to give evidence on his or her financial position or that of the juristic person and his or her or its ability to pay the judgment debt. [Section 65D of the Act]
- (v) Any person against whom a court has, in a civil case, given any judgment or made any order who has not satisfied in full such judgment or order and paid all costs for which he or she is liable in connection therewith shall, if he or she has changed his or her place of residence, business or employment, within 14 days from the date of every such change notify the clerk or registrar of the court who gave such judgment or made such order and the judgment creditor or his or her attorney full and correctly in writing of his or her new place of residence, business or employment, and of his or her failure to a fine or imprisonment for a period not exceeding three months. [Section 109 of the Act]

PLEADING IN GENERAL (RULE6)

- 6(4): pleadings shall contain a clear and concise statement of the material facts and answers with sufficient particularity
- 6(5): when denying allegation – not evasively – answer the point of substance
- 6(6): reliance on contract – details
- 6(8): forfeiture of benefits – grounds upon which claim is based
- 6(9): Damages – details
- 6(11): Agreement governed by legislation – nature and extent of compliance
- 6(13): Failure to comply  R60A

JUDGMENT BY CONSENT (RULE 11)

- 2 Witnesses
- Full names
- Addresses
- Telephone numbers

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 compliance)
 - Rule 12(7) (powers of CoC/ Registrar to refer to Court)applies to S57 and S58

DEFAULT 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.

NOTICE OF INTENTION TO DEFEND (RULE 13)

- Rule 13(1): Dies non; 16 December -15 January, both dates inclusive.
 - Rule 13(3)(a): - The physical address provided within 15 kilometers of the Court.
 - where available fax/e-mail
 - indicate preferred address of service
- Eg:
“KINDLY TAKE NOTICE THAT Defendant is prepared to accept service of prefers service of all subsequent documents and notices in the suit by way of e-mail/fax at the address reflected hereunder.”
- Service by facsimile or electronic mail under certain conditions:
 - 13(3)(b): Defendant shall indicate
 - 13(3)(c): Plaintiff may deliver written consent
 - 13(3)(c): Plaintiff refuses/fails, Application
 - If No Notice received = DJ

SECURITY FOR COSTS (RULE 62)

- Rule 62(1): Notice setting forth grounds upon which claimed & amount.
- Rule 62(2): If amount contested – Registrar/Clerk of the Court.
- Rule 62(3): If liability is contested or party fails to deliver, then Application to Court and proceedings stayed.
- Rule 62(5): Shall be given in the form, amount and manner directed by Registrar/Clerk unless Court directs otherwise/parties agree otherwise

SUMMARY JUDGMENT (RULE 14)

- Plaintiff has **15** days from date of delivery of notice of intention to defend to deliver application for summary judgment.
- Affidavit in addition to a copy of the Liquid document.
- Defendant's answering affidavit has to be delivered before noon on the day but one preceding the day on which the application is to be heard.
- The option a defendant had of paying into Court, previously rule 14(3)(a), has been deleted. – NOW Rule 14(3)(a): Security to satisfaction of Registrar/Clerk of the Court
- Rule 14(10)(a) – Plaintiff had knowledge of defence = costs (taxable immediately and may order attorney/client)
- Rule 14(10)(b) – where SJ was refused and Court after judgment finds defence unreasonable and that SJ should have been granted = attorney and client costs

PROVISIONAL SENTENCE (RULE 14A)

- No change

- The previous rule 15, request for documents or accounts upon which plaintiff's action is based, has been deleted.
- Rule 23(15), the equivalent of Uniform Rule 35(14), provides for discovery for purposes of pleading.
- What if FP filed before amended Rules?
- District Court's Civil Case flow meeting
- In light of R1(3) old Rule would apply and right has occurred prior to amendment.
- Rule 55(4)(a) = Interlocutory/Other applications incidental to pending proceedings
- Rule 55(4)(b) = Applications to Court for directions as to procedure or service of documents may be made ex parte where giving of notice is not necessary.

DECLARATION (RULE 15)

- 15 days after Notice of Intention to Defend
- Set forth: Nature of claim
Conclusion of Law
Prayers
- Rule 15(4) and (5) Notice of bar and a subsequent default judgment by the defendant.
- High Court: at least 5 days' notice to plaintiff of application for default judgment,
- Rule 15(5): at least 10 days notice of set down

FURTHER PARTICULARS (RULE 16)

- Old rule deleted
- Pleadings should contain sufficient detail
- If not → Exception / Rule 60A
- After close of pleadings, not less than 20 days before trial
- Compliance 10 days after receipt thereof
- Non-compliance: Compel/Dismissal/Striking out of defence

PLEA (RULE 17)

- 20 days to deliver
- Admit, deny, confess and avoid (Rule 60A)
- 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

OFFER TO SETTLE (RULE 18)

- Drastically amended
- In essence a copy of the HC Rule 34.
- Tender = writing
- Unconditional/without prejudice
- No payment into court
- Tender by 3rd parties too
- Notice of tender – to all parties
- Acceptance within 15 days, thereafter by way of written consent/order of court
- Failure to pay/perform, 5 days notice, then apply for judgment
- Rule 18(13): Any party who discloses an offer/tender to Magistrate/Court shall be liable for costs given against him even if successful in the action.

INTERIM PAYMENTS (RULE 18A)

- New Rule
- Identical to HC 34A
- Actions for damages claims for personal injuries/death
- Medical costs/Loss of income
- If granted/refused, further Applications upon good cause shown

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

CLAIMS IN RECONVENTION (RULE 20)

- Drastically amended
- In essence a copy of the HC Rules
- Exception: Rule 20(5) An action may be stayed in the where the claim in reconvention exceeds the jurisdiction of the Magistrates' Court.
- Non-compliance with Rule \implies Rule 60A

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 reconvention
- Rule 21(5): Introduces the concept of further pleadings following a plaintiff's replication in the Magistrates' Court.

CLOSE OF PLEADINGS (RULE 21A)

- (a): parties have joined issue
- (b): last day for filing replication/subsequent pleading has lapsed or not been filed
- (c): parties agree in writing
- (d): parties unable to agree, court on application declares pleading closed

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 subrule – 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, whilst Rule 23 mentions documents and tape, electronic, digital or other forms of recordings.
- Discovery requires a request from the opposite party - No automatic discovery in Magistrates' Courts.
- R23(1) Notice to Discover
- R23(3) Notice for additional documents
 - Which party believes is in other's possession but not discovered;
 - Make available for inspection
 - If not in possession – under oath and state whereabouts
- 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
- Rule 23(6) – Notice to produce for inspection (Request = Form 15)
- Rule 23(7) - (Response = Form 15A)
- Rule 23(9) – Notice to specify particulars of dates/parties to any document/tape
- Rule 23(10) – Notice to admit
 - That document/tape or recording 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
- Rule 23(11) – Notice to produce at trial – original – no witness necessary
- 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(15): After NID, any party may, for purpose of pleading, require other party to make available for inspection, within 5 days, a **clearly specified** document/tape/electronic/digital in his or her possession which is relevant to a reasonable anticipated issue and allow a copy thereof.
- Test: Essential and not useful (Cullinan Holdings Ltd v Stadsraad 1992(1) SA654 (T) at 647 F
- R23(8) - Non compliance = compliance/dismissal of claim/striking of defence.
- Rule 23(14) = applicable to Applications in so far as Court directs

NO. 15B NOTICE – RULE 23(13)

IN THE MAGISTRATE’S COURT FOR THE DISTRICT/REGION OF **BELLVILLE**
HELD AT **BELLVILLE**

CASE NUMBER: **12345/10**

In the matter between:

A ATTORNEY Plaintiff

And

D DEBTOR Defendant

NOTICE IN TERMS OF RULE 23(13)(A)

TAKE NOTICE THAT the Plaintiff requires Defendant to produce for Plaintiff’s inspection the following documents or recordings referred to in Defendant’s plea:

1. Agreement referred to in paragraph 3 thereof;
2. Invoice referred to in paragraph 6 thereof.

Dated at **BELLVILLE** on this **18th** day of **NOVEMBER 2010**

E JONKER
Plaintiffs attorneys
Address

TO: Defendant’s attorneys

**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.
 - Mediation especially in Divorce matters

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(9): breach = judgment

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

THIRD PARTY PROCEDURE (RULE 28A)

- Equivalent to HC Rule 13
- 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
- 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

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.

IRREGULAR PROCEEDINGS (RULE 60A)

- Rule 60A(1) – irregular step, party may apply to have same set aside
- Rule 60A(2) – On notice, specifying particulars of the irregularity/impropriety alleged:

Only if:

 - (a) Applicant has **not** taken further step in the cause with knowledge of irregularity;
 - (b) Applicant has, within 10 days of becoming aware, by written Notice afforded his opponent an opportunity of removing the cause of complaint within 10 days; and
 - (c) Application is delivered within 15 days after expiry of the second period in (b).
- Rule 60A(3) = If Court is of opinion that step is irregular/improper, it may be set aside in whole or in part, grant leave to amend or make order as it deems fit.
- Rule 60A(4) = If party does not comply, he cannot take a further step save for applying for an extension of time.

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF BELLVILLE	
HELD AT BELLVILLE	Case Number: 44/10
In the matter between:	
A ATTORNEY	Plaintiff
and	
E EXCEPTIO	Defendant

NOTICE IN TERMS OF RULE 60A

KINDLY TAKE NOTICE THAT Plaintiff is of the intention to apply that the defendant's Plea be set aside as an irregular step in terms of Rule 60(A) on the following grounds:

1. Defendant's Plea delivered on 1 November 2010 fails to comply with Rule 6(1) in that same was not signed by an attorney or Defendant himself.

PLEASE TAKE FURTHER NOTICE THAT should the aforesaid irregularity and complaint not be removed within 10 days of service of this notice, application shall be made for setting aside the Plea as an irregular step in terms of Rule 60(A).

DATED AT BELLVILLE THIS 18TH DAY OF NOVEMBER 2010.

	<hr style="width: 100%;"/> MINDE SCHAPIRO & SMITH PER: E JONKER Attorneys for Plaintiff Tyger Valley Office Park II Cnr Old Oak/Willie van Schoor, BELLVILLE (Ref: E JONKER)
TO:	THE CLERK OF THE COURT MAGISTRATE'S COURT BELLVILLE
AND TO:	DEFENDANT'S ATTORNEYS

FILING, PREPARATION AND INSPECTION OF DOCUMENTS (RULE 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 IN SA

- 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.

- Bundles of Documents
 - Collated, numbered and suitably bound
 - Indexed
 - Joint bundle
 - If not, dominant / subservient
 - Bound in manner not necessary to be held open but stays open
 - Evidential status of documents
 - Unnecessary documents – punitive cost order

- Expert witnesses

- Where practically possible – joint minute (agreements and disagreements and signed minute by experts)
- If not, could entail removal from roll

- Withdrawal of attorneys

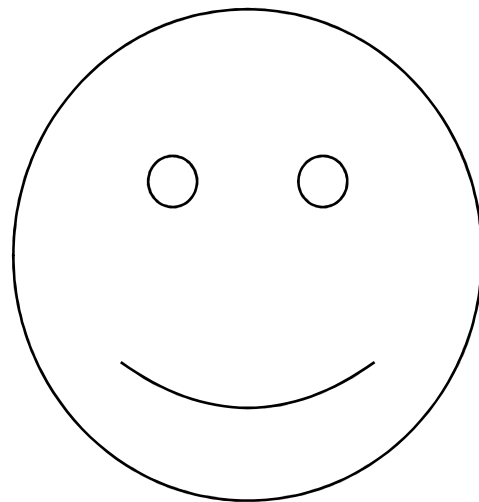
- at least 14 days prior to the trial
- unless good cause shown if late, may be ordered to pay wasted costs de boniis propriis;
- in writing what steps to advise client and that client is aware of consequences

- Suggested heading by Regional Court:

IN THE REGIONAL COURT FOR THE REGIONAL
DIVISION OF HELD AT ...

Vs


Forms





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)



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- 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)



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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)



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Divorces - undefended

- Can set down (request registrar in writing) if NOT:
 - Defended
 - Plead
 - Written notice that not defend R 22(5)
- No notice of setdown is necessary
- 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 court R22(6)



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Divorces Defended

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



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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)



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Rule 58 – Flow Chart

- a) Maintenance *pendente lite*
- b) Contribution towards costs of a pending matrimonial action
- c) Interim custody of any child
- d) Interim access to child



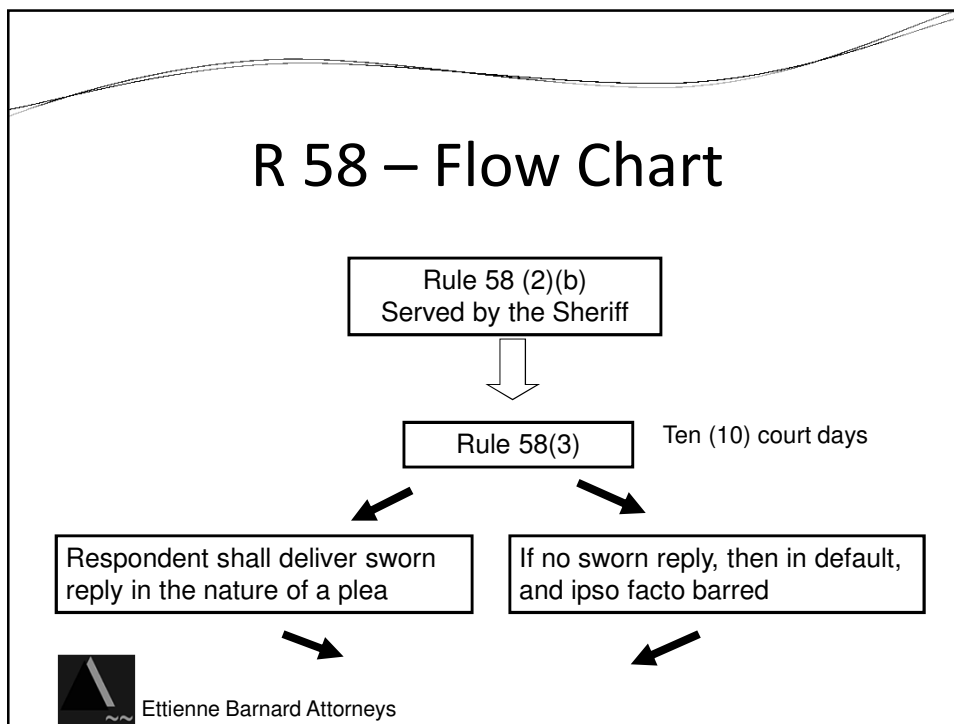
Rule 58(2)(a)

- Sworn statement setting out relief claimed
- Notice – Form 42

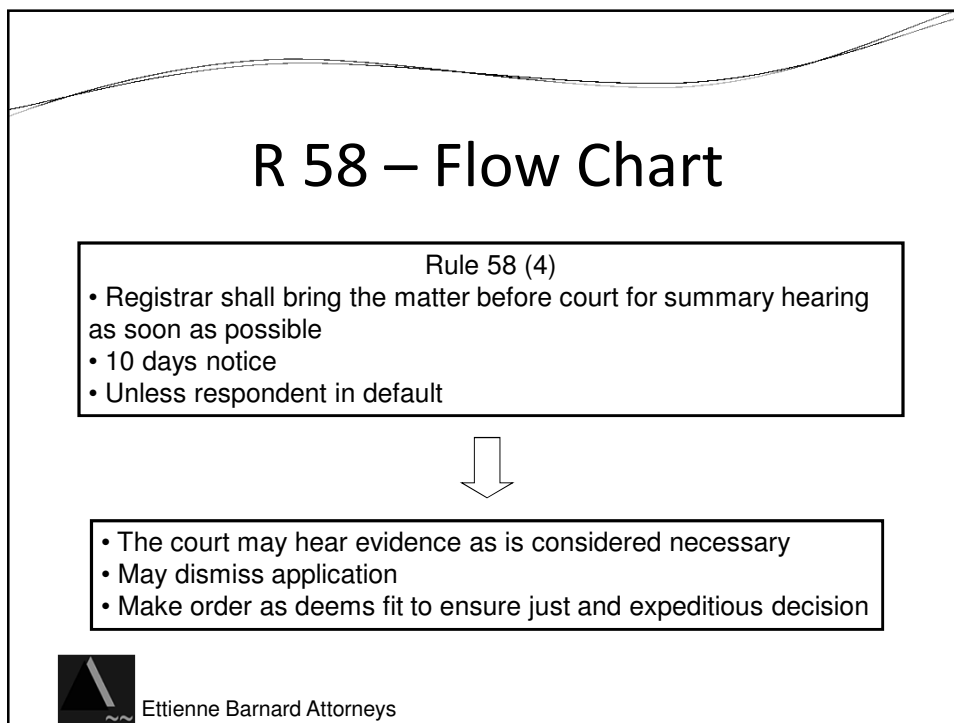


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R 58 – Flow Chart



R 58 – Flow Chart



Form 42

No. 42 – Notice in terms of Rule 58(2)(a)

IN THE REGIONAL MAGISTRATE'S COURT FOR THE WESTERN CAPE
HELD AT BELLVILLE. CASE NO:123/10

In the matter between

MRS WANT A LOT

Applicant

and

MR WILLIE GEENNIE

Respondent

To the above-mentioned respondent:

TAKE NOTICE that if you intend to defend this claim you must within 10 court days file a reply with the registrar of this court, giving an address for service referred to in Rule 55(1)(g)(i) and serve a copy thereof on the applicant or his or her legal practitioner. Should you not comply with the above, you will then be automatically barred from defending and judgment may be given against you as claimed. Your reply must indicate what allegations in the applicant's statement you admit or deny, and must concisely set out your defence.

DATED at BELLVILLE this 18 day of November 2010

GRAB A LOT ATTORNEYS
Applicant/Applicant's legal practitioner
Address for service:
12 VOORTREKKER ROAD
BELLVILLE



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Divorce - Costs

- Costs are scale C of Table A of Annexure 2
- Rule 58 costs:
 - Advocate max R 175-00 - undefended
 - Advocate max R 250-00 - defended
 - Attorney max – R 250-00 – undefended
 - Attorney max – R 375-00 – defended
 - Unless court directs otherwise



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Divorces

- Variation of care and contact orders
 - Old Divorce Court R 39
 - Rule 49 and Sec 36
 - Absence
 - Fraud or common mistake
 - Patent errors
 - Not one of these have common law right to vary as has same jurisdiction as High Court in Divorce matters
 - Sec 29(1B)(b)



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Edictal Citation/Substituted Service

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

- EC def/resp **out**side S A 10(1)(a)
- SS d/r **in**side 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.



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Docs not initiating Proceedings

Rule 10(3)

- Apply ito 10(2) or
- Request leave at any hearing for service of documents outside RSA
 - No papers needed
 - Can do by oral request
 - court may act upon such information as may be given:
 - from the bar or
 - in such other manner as court requires



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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 MAGISTRATE'S COURT FOR THE REGION OF
WESTERN CAPE
HELD AT SOMERSET WEST

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



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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



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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 November 2010

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



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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 MAGISTRATE'S COURT FOR THE REGION OF WESTERN
CAPE

HELD AT SOMERSET WEST

CASE NO: 101/2011

In the matter between:

MALULEKA POWEL

Plaintiff

and

BLUE MC DOWELL

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 Somerset West this 15 November 2010

Plaintiff/Plaintiff's Attorney

Address for service:

Ettienne Barnard Attorneys
Ebrose Chambers
5 Audas Street
Somerset West
Tel 021..& ref.....

.....
Registrar/Clerk of the Court



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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)



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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



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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)



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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



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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)



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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)



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Costs

- Magistrate Court
 - Undefended
 - R0 to R 7 000
 - R 7 001 to R 50 000
 - Over R 50 000
 - Defended
 - Scale A: R 0 – R 7 000
 - Scale B : R 7 001 – R 50 000
 - Scale C: over R 50 000



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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



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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



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Interpleader claims – R 44

R 44 (2)
Person other than execution debtor claims property



Within 10 days of claim

Claimant must lodge affidavit in triplicate with sheriff



Affidavit must contain:
•Claimant's full names, id and occupation
•Residential and employment address
•Nature and ground claim



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Interpleader claims



15 days of claim

Sheriff notify the execution creditor and debtor of claim and give affidavit



Within 10 days

Execution creditor must inform sheriff if accepts claim



If accepts sheriff withdraws from process



Within 10 days

If not - sheriff must issue summons



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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



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Execution - immovable

- Standard Bank v Sanderson 2006 (2) SA 264 (SCA)
- Mkhize v Umvoti Municipality and others 2010 (4) SA 509 (KZP)
 - Judicial oversight only required when property is a debtor's home



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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”.



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Execution - immovable

- Rule 43 – still the same rule
- 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



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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 into Sec 65A(8)(b) still the same



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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



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Garnishee order

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



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Administration

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



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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

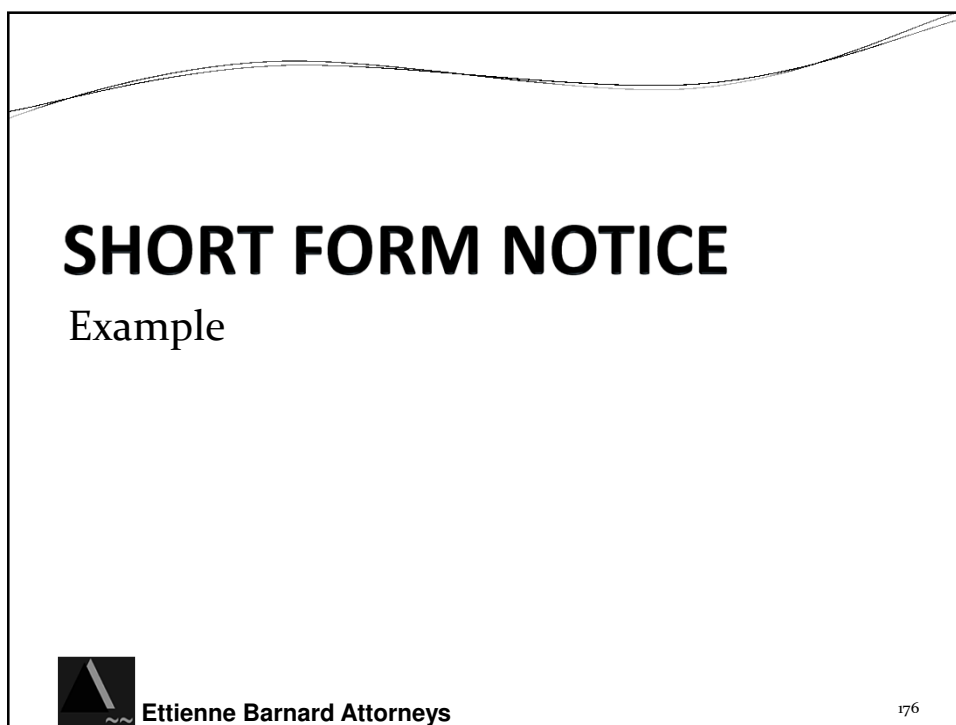
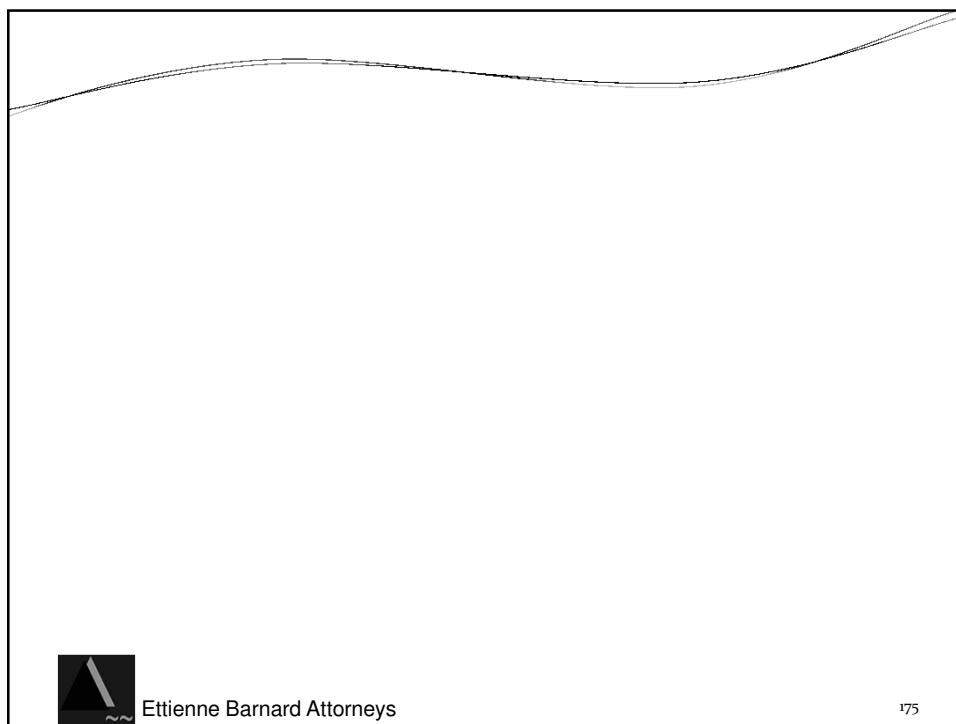


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• **THANK YOU!**



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Form 1- Short Notice (1)

No. 1 - Notice of Motion (Short Form)

IN THE MAGISTRATE'S COURT FOR THE
DISTRICT/REGION OF SOMERSET WEST
HELD AT SOMERSET WEST

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



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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)The Applicant is granted leave to sue by edict
??(Attachment to found/confirm Jurisdiction
leave)??**

**??(b)The service must be by notice (complying
substantially with Form 4 of this court) in the
??London Times?? Newspaper before 30 November
2010**

**??(c) Should the defendant wish to defend the
matter, notice of defence must be given to the
Plaintiff by 16 January 2011**



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Form 1- Short Notice (3)

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 11MARCH 2011

.....

Applicant/Applicant's Attorney

.....

To the Registrar/Clerk of the above-named Court.



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