

## No. 2B – Combined Summons

IN THE REGIONAL COURT FOR THE REGION WESTERN CAPE  
HELD AT SOMERSET WEST

CASE NO:

In the matter between

**MRS A**

**PLAINTIFF**

and

**MR A**

**DEFENDANT**

To the Sheriff or his deputy:

INFORM **MR A** an adult male banker residing at King Road, Cape Town, whose full and further particulars are unknown to the Plaintiff (hereinafter called the Defendant) that :

**MRS A** an adult female baker ordinarily resident at 2 Kloof Street, Stellenbosch (hereinafter called the Plaintiff(s)), hereby institutes action against Defendant in which action the Plaintiff(s) claim the relief on the grounds set out in the particulars annexed hereto.

1. INFORM the Defendant(s) further that if Defendant(s) disputes/dispute the claim and wishes/wish to defend the action, the Defendant(s) shall \_
- 2 (i) within **10** days of the service upon him or her of this summons file with the registrar or clerk of this court at Somerset West Magistrates' Court Caledon Street, Somerset West (set out the address of the registrar or clerk) notice of his or her intention to defend and serve a copy thereof on the plaintiff or plaintiff's attorney, which notice shall give an address 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 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 or plaintiff's attorney a plea, exception, notice to strike out, with or without a counter-claim..

**INFORM** the defendant further that if defendant fails to file and serve notice as aforesaid judgment as claimed may be given against him or her without further notice to him or her, or if, having filed and served such notice, defendant fails to plead, except, make application to strike out or counter-claim, judgment may be given against him or her. And immediately thereafter serve on the defendant 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 CAPE TOWN THIS

DAY OF

2010

**REGISTRAR OF THE HIGH COURT**

**BARNARD LABUSCHAGNE INC T/A  
ETTIENNE BARNARD ATTORNEYS**  
ATTORNEY FOR PLAINTIFF

Ebrose House  
5 Audas Street  
Somerset West  
7129

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**PREFERRED ADRES FOR SERVICE OF DOCUMENTS: ebattorneys@barnards.co.za  
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16<sup>th</sup> Floor  
Main Tower  
Standard Bank Centre  
Heerengracht  
Cape Town

Costs if the action is undefended will be as follows:

Summons	R
Judgment	R
Attorney's charges	R
Sheriff's fees	R
Sheriff's fees on re-issue	R
<b>Total</b>	R

**AND TAKE NOTICE THAT -**

- (a) in default of your paying the amount of the claim and costs within the said period or of your delivering a notice of intention to defend you will be held to have admitted the said claim and the plaintiff may proceed therein and judgment may be given against you in your absence;
- (b) if you pay the said claim and costs within the said period judgment will not be given against you herein and you will save judgment charges. You will also save judgment charges if, within the said period, you lodge with the clerk of the aforesaid court a consent to judgment;
- (c) if you admit the claim and wish to consent to judgment or wish to undertake to pay the claim in instalments or otherwise, you may approach the plaintiff or his attorney.

**NOTICE:**

- (i) Any person against whom a court has, in a civil case, given any judgment or made any order, and 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 enquire 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-
  - (aa) 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/she has failed to appear before the Court on the date and at the time specified in the Notice; or
  - (bb) 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
  - (cc) 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, authorise 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 inquiry. (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) of (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 wilfully fails to appear for the Court on the date and 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, wilfully fails to appear before the court on that date and at that time; or
- (cc) wilfully fails to remain in attendance at the relevant proceedings or at the proceedings so postponed, shall be guilty of an offence and liable on a conviction to a fine or to imprisonment for a period not exceeding three (3) months. (Section 65(9) of the Act)
- (iv) On appearing before the Court on the date determined 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 judgment or order notify the clerk of the court who gave such judgment or made such order and the judgment creditor or his or her attorney fully and correctly in writing of his or her new place of residence, business or employment, and by his or her failure to do so such judgment debtor shall be guilty of an offence and liable upon conviction, to a fine or to imprisonment for a period not exceeding three months (Section 109 of the Act)

(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 at ..... this .....day of.....

.....  
*Witness*

*(Must be witnessed by Defendant's attorney or otherwise verified by affidavit)*

.....  
*Defendant*

\* (3) **Notice of Intention to Defend:**

To the Clerk of the Court.

Kindly take notice that the defendant hereby notified his intention to defend this action.

Dated at .....this.....day of .....

.....  
*Defendant/Defendant's Attorney*

Address.....  
 .....

Postal address.....  
 .....

Faxcimile (fax) number.....

Electronic Mail (e-mail) address.....

(Give full address for acceptance of service of process or documents within 15 kilometres from the Court-house and also the postal address.)

\*Note: The original notice must be filed of record with the Clerk of the Court and a copy thereof served on the plaintiff or his attorney.

## PARTICULARS OF CLAIM

1.

**MRS A** an adult female baker ordinarily resident at 2 Kloof Street, Stellenbosch

2.

**MR A** an adult male banker residing at King Road, Cape Town, whose full and further particulars are unknown to the Plaintiff

3.

The parties hereto are domiciled within the area of jurisdiction of the above Honourable Court.

4.

On 29 January 1994 the parties hereto were in community of property and this marriage still subsists.

5.

From the marriage between the parties 2 children were born, namely Jade, 10 years old and Robyn, 7 years old.

6.

The marriage relationship between the parties has reached such a state of disintegration, that there exists no reasonable prospect of the restoration of a normal marriage relationship between them, for the following reasons:

- 6.1 There is no communication between the parties, and the parties can no longer get along with each other.
- 6.2 The plaintiff and defendant do not cohabit as husband and wife anymore;
- 6.3 There is no meaningful communication between the parties, and they quarrel regularly;
- 6.4 The Plaintiff has lost his love, respect and affection for the Defendant.
- 6.5 The parties are no longer interested in the continuation of the marriage relationship.

WHEREFORE the Plaintiff claims:

- 1 A degree of divorce;
- 2 Division of the communal property, including division of the defendant's pension and policies;
3. That the care of the minor children be awarded to the plaintiff with the right of reasonable access of the Defendant set out in the parent plan attached
8. Cost of the suit, only if defended;
9. Further and/ or alternative relief.

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