

Statutory Instrument No. 58 of 1989

HIGH COURT ACT

(Cap. 04:02)

RULES OF THE HIGH COURT (AMENDMENT) RULES, 1989

(Published on 26th June, 1989)

ARRANGEMENT OF RULES

RULE

1. Citation and Commencement

2. Amendment of the Rules of the High Court (Cap. 04:02 Sub. Leg.)

IN EXERCISE of the powers conferred on the Chief Justice by section 26 of the High Court Act, the following Rules are hereby made —

1. These Rules may be cited as the Rules of the High Court (Amendment) Rules, 1989, and shall come into operation on 1st July, 1989. Citation

2. The Rules of the High Court are hereby amended —

(a) in rule 3 of Order 1 —

(i) by substituting for the definition of the word “Action”, appearing therein, the following new definition, “ ‘action’ means a civil proceeding commenced by writ of summons or by writ in accordance with the provisions of Order 4, or in such other manner as may be prescribed, but does not include a criminal proceeding by the State;”

Amendment
of the Rules
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(ii) by inserting immediately after the definition of the word “advocate” the definition of the following new word, “ ‘cause’ includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding by the State, ”;

(iii) by substituting for the words, “non-business day” which appear in the definition of the word “Holiday” the words, “a public holiday under the Public Holidays Act”;

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(iv) by inserting immediately after the definition of the word “Holiday” the definition of the following new word, “ ‘judgment’ includes a decree;” and

(v) by inserting immediately after the definition of the word “Master” the definition of the following new words —

(aa) “ ‘matrimonial cause’ means any action for divorce, nullity of marriage or judicial separation;

(bb) “ ‘matter’ includes every proceeding in court not in a cause;” and

(vi) by adding at the end of the definition of the word “Party” the definitions of the following new words —

(aa) “ ‘Principal Registry’ means the Office of the Registrar at Lobatse;” and

(bb) “ ‘Registry’ includes the Principal Registry at the High Court at Francistown and a District Registry.” ”;

(b) by the insertion after Order 1, of the following new Order —

**“ORDER 1A
GENERAL FORMS OF PROCESS, FEES, ETC**

1. The Registrar or other officer empowered to do so shall sign every writ or other process and in addition seal it with the seal of the court.

2. The forms in the First Schedule, or forms as near as may be, may be used in all matters, causes and proceedings to which they are applicable, with such variations as circumstances may require.

3. In proceedings for which forms are not provided in the First Schedule or prescribed by any enactment, the Registrar may, subject to the approval of the Chief Justice, from time to time, frame such forms as may be appropriate in the circumstances.

4. (1) The fees specified in the Second Schedule shall be paid by the party at whose instance they are incurred, and may be afterwards recovered as costs of cause, if the court or a judge so orders.

(2) The court or a judge may, on account of the poverty of any party, although such party may not have been formally admitted to sue or defend as a pauper, or for other sufficient reasons, dispense, if it or he sees fit, with the payment of any fees.

(3) An application under this rule shall be made informally to the Registrar by a party at any time before or after the commencement of the proceedings stating the grounds on which he claims the payment of fees should be dispensed with.

(4) The Registrar shall put the application before a judge, as soon as possible, who, after considering the application and hearing the applicant (if he considers that necessary), shall make an order allowing or refusing the application.

(5) Before making an order under subrule (4), the judge may direct the Registrar or the District Officer of the place where the applicant resides to make any enquiries or investigations regarding the circumstances of the party and the grounds stated in the application.

(6) The judge may order that the dispensation shall extend to the whole or any part of the fees payable in the action.

5. (1) Unless otherwise expressly provided therein, the fees specified in the second column of the Second Schedule shall be taken in the court in respect of the items set out in the first column thereof by means of adhesive revenue stamps issued by the Government or with the authority of the Government:

Provided that the proper officer of the court may, in his discretion, upon application by the party presenting the same, setting out the grounds of the application, accept cash for the fees payable in respect of any item contained in the Second Schedule, in lieu of revenue stamps on his being satisfied that either by reason of the non-availability of the requisite revenue stamps at the time and in the area, or for other good cause shown to his satisfaction, undue delay or hardship may be incurred.

(2) In all such cases the reason for accepting cash in lieu of revenue stamps shall be noted on the document affected in addition to any other endorsement required by these Rules, and the officer shall forthwith issue an official receipt for the cash.

6. The document to be stamped with a revenue stamp shall be the original of the document; and the revenue stamp shall be affixed to such documents before presentation at the Registry or District Registry concerned, and unless so stamped, such document shall not, except as stated in rule 5, be accepted.

7. Upon receipt of any such document, the proper officer of the Registry or District Registry concerned shall forthwith cancel such revenue stamps by means of impressing with indelible ink partly upon each and every such stamp and partly upon the document to which they are affixed, the stamp of the Registry or District Registry concerned with the true date of such impression in such a manner that the stamps are clearly defaced.

8. No receipt shall be issued by the court or any officer thereof in respect of revenue stamps required to be affixed hereunder.

9. The proper officer of the court whose duty it is to receive any document required to be stamped hereunder shall ensure that each and every such document is sufficiently and properly stamped before accepting the same.

10. (1) When any document which is not to be stamped is inadvertently stamped or when stamps to a value in excess of those laid down in the Second Schedule are inadvertently affixed, or such document is not presented to or is not accepted for filing by the court, the document may at the instance of the party by whom it was so stamped, be cancelled and substituted by one bearing the correct value of stamps.

(2) Refunds to the value of the stamps affixed to any document cancelled under the provisions of subrule (1) may be made by the proper officer of the court to the party responsible for the stamping thereof:

Provided that —

- (i) application is made to the proper officer of the court within 30 days of the date of cancellation of such document, and
- (ii) the application is accompanied by the cancelled document which shall be attached by the proper officer of the court to the voucher in support of the refund and shall thenceforth be the property of the Government.

11. (1) The officer receiving any writ or other process or document for filing shall forthwith impress on the document the date stamp provided for that purpose indicating the date and time of receipt and shall then append his signature below the date and time.

(2) The officer shall then, if satisfied that the prescribed fees have been paid, file the same in the case file, and an entry of the filing thereof and the date of the filing shall be made in the Civil Record Book forthwith.

(3) No writ of summons, or other process or document which is required to be filed shall be filed unless the prescribed fees (if any) have been paid and the document duly date-stamped as provided in this rule and any other rule.

12. All writs or other process or document prepared by an attorney shall be backed with the name and place of business of the attorney stating the capacity in which he acts.

13. Except as otherwise provided, costs shall be allowed to parties and taxed in accordance with the scale of costs set forth in the Second Schedule.”;

(c) by substituting for Order 2, the following new Order —

**“ORDER 2
DUTIES OF REGISTRAR**

1. In addition to the duties referred to in any other Order or enactment, the Registrar shall carry out the duties specified in this Order.

2. The Registrar shall keep an index book to be called the Civil Record Book in which the following particulars shall be recorded —

- (a) the serial number of the action;
- (b) the names of the parties and their attorneys (if any);
- (c) the plaint or cause of action;
- (d) the date each document was filed and the party filing it;
- (e) the date and place of hearing the case;
- (f) the names of counsel (if any);
- (g) the name of the judge;
- (h) the judgment of the court;
- (i) the date the judgment was delivered; and
- (j) any subsequent proceedings and remarks.

3. (1) As soon as a writ of summons is issued, the Registrar shall prepare a cover in which all pleadings, applications, affidavits and other processes or proceedings relevant to the case shall be filed.

(2) Separate covers shall also be kept for all petitions, originating motions or other originating matters to be presented to court.

(3) The writ of summons and all other documents in an action, petition, motion or other originating matter shall be numbered by the Registrar before issue with a consecutive number for the year and the action, petition, motion or other matter shall, at the time of issue, be entered by him in the Civil Record Book under that number.

(3) Every document afterwards served, delivered or filed in such action, petition, motion or other matter shall be marked with such number by the party delivering it and shall not be received by the Registrar until so marked.

(4) The Registrar shall not accept and file any document or issue any writ of summons, subpoena or other process or order of court unless the prescribed revenue stamp has been attached and cancelled except where the party has been granted leave to proceed in *forma pauperis* or an order dispensing with the payment of fees has been made under rule 4 of Order 1A.

5. (1) For the purpose of issuing writs of summons, provisional sentences, petitions, applications or any writ of arrest under Order 9 in places other than Lobatse and Francistown, magistrates shall, within their respective places, be District Registrars of the High Court.

(2) A District Registrar shall, after issuing any writ of summons or other originating process or writ of arrest, forthwith transmit a copy of the writ of summons, other originating process or writ of arrest to the Registrar at Lobatse or Francistown as the case may be, depending on whether the place for entering appearance is Lobatse or Francistown, and shall, at the same time, forward the attorney's warrant and authority to sue.”;

(d) in rule 1 of Order 3, by substituting for the word “summons” which appears in the first line thereof, the words “writ of summons”;

(e) by substituting for Order 4, the following new Order —

**“ORDER 4
WRIT OF SUMMONS**

1. (1) Every action, other than process of arrest of the defendant, shall, where service is to be effected within the jurisdiction, be commenced by a writ of summons signed by the Registrar and sealed with the seal of the court.

(2) The writ of summons shall be issued by the Registrar or other official of the court empowered to issue writ of summons or other originating process.

2. Except where otherwise expressly provided by these Rules, a writ of summons or other originating process may be issued either out of the High Court Registry at Lobatse or the High Court Registry at Francistown or out of a District Registry.

3. (1) The writ of summons shall, where service is to be effected within the jurisdiction, command the defendant that he cause an appearance to be entered within the period prescribed in the writ to answer the plaintiff's claim.

(2) The writ of summons shall require the person serving it to serve on the defendant at the same time a copy of the writ and immediately thereafter to return to the High Court the original writ duly endorsed with whatsoever he has done concerning it.

(3) Any person may serve such a writ.

4. Before issue, every writ of summons shall contain the following particulars —

- (a) the full name of the defendant and his residence or place of business, and, where known, his occupation, and, if he is sued in a representative capacity, the capacity in which he is so sued;
- (b) the writ shall state the defendant's sex, and if a female, her marital status;
- (c) where the defendant's full name is unknown to the plaintiff and cannot be ascertained, that fact should be stated, and his name and such of his initials as are known, should be given;
- (d) the full name, occupation and residence or place of business of the plaintiff, and if he is suing in a representative capacity, the capacity in which he is suing;
- (e) the writ shall state the plaintiff's sex, and, if a female, her marital status;
- (f) a statement of the nature of the claim made and of the relief or remedy sought in the action; and
- (g) the date of issue of that writ.

5. The writ of summons shall be in Form 2A or 2B in the First Schedule with such variation as the circumstances may require.

6. (1) The plaintiff or his attorney or agent shall present at the Registry the original writ of summons and three copies thereof, or if there is more than one defendant, one extra copy for each additional defendant.

(2) Upon payment of the prescribed fee (or stamp duty) the Registrar shall sign the original and all the copies presented and seal the original with the seal of the court.

(3) The plaintiff or his attorney or agent shall then file the writ of summons at the Registry.

(4) The officer in the Registry or District Registry to whom a writ of summons or other process is presented for filing shall impress the date stamp provided for that purpose on the original writ of summons and every copy presented and shall also append his signature below the date and time impressed by the date stamp.

(5) The officer shall then retain two copies and return the original and the other copies duly impressed with the date stamp and signed to the person presenting the same.

(6) The officer in the Registry to whom the pleadings, applications, affidavits and all other processes, proceedings or other documents relevant to the case is presented for filing shall impress the date stamp provided for that purpose on the original document and every copy presented, and shall also append his signature below the date and time impressed by the date stamp.

(7) The officer shall then retain the original and one copy and return the other copies duly impressed with the date of the stamp and signed as aforesaid.

(8) For the purposes of compliance with subrules (6) and (7) the party or his attorney shall present to the officer in the Registry the original and one copy of the document for retention by the officer, and one copy for the party or his attorney, and as many other copies as are required for service.

7. In an action where the claim apart from costs is —

- (a) for a liquidated demand of money;
- (b) for the delivery of specified movable property;
- (c) for ejectment; or
- (d) for any two or more of such matters,

the writ may, at the option of the plaintiff, be endorsed with the particulars of the claim.

8. (1) Such particulars shall take the place of a declaration and shall state truly and concisely the nature and the grounds of the cause of action.

(2) A writ of summons, so endorsed, shall bear on the face of it a statement that it is issued under rule 7.

9. No writ of summons for service out of the jurisdiction of the court shall be issued without the leave of the court or a judge.

10. It shall not be essential to set forth in the writ of summons the precise remedy or relief to which the plaintiff considers himself entitled, but a concise statement of the nature of the claim made or the relief or remedy required shall suffice; and the statement shall be signed by the plaintiff or his attorney.

11. (1) Subject to the provisions of this Order, a writ of summons may, before service, be amended by the plaintiff as he thinks fit.

(2) Any alteration or amendment of a writ of summons, whether before or after issue, shall, before service thereof, be initialled by the Registrar, and until so initialled such alterations and amendments shall have no effect.

12. (1) Before a writ of summons is issued it must be endorsed —

- (a) where the plaintiff sues by an attorney, with the plaintiff's address and the attorney's name or firm and a business address of

his within the jurisdiction, and also (if the attorney is the agent of another) the name of the firm and business address of his principal; and

- (b) where the plaintiff sues in person, with —
 - (i) the address of his place of residence and, if his place of residence is not within the jurisdiction, or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and
 - (ii) his occupation.

(2) The address for service of a plaintiff shall be —

- (a) where he sues by an attorney, the business address of the attorney endorsed on the summons or, where there are two such addresses so endorsed, the business address of the attorney who is acting as agent for the other;
- (b) where he sues in person, the address within the jurisdiction endorsed on the writ.

13. In all cases where proceedings are commenced other than by writ of summons, rule 12 shall apply to the documents by which such proceedings are originated as if it were a writ of summons.

14. A writ of summons shall be prepared by the plaintiff or an attorney and shall be written or printed or partly written or partly printed on foolscap or similar paper of good quality.

15. The time within which a defendant shall be required to enter appearance to defend shall be reckoned as follows —

- (a) in the case of writs of summons and other originating processes issued at the High Court Registry at Lobatse, where the defendant's dwelling house or other place of residence or place of business or employment within jurisdiction, or in the case of a company or corporation its registered office or principal place of business within jurisdiction is within a radius of 100 kilometres from the High Court Registry at Lobatse, the time limited for entering appearance shall be 10 days after service of the writ of summons or other process (including the day of service);
- (b) in the case of writs of summons and other originating processes issued at the High Court Registry at Francistown, where the defendant's dwelling house or other place of residence or place of business or employment within jurisdiction, or in the case of a company or corporation its registered office or principal place of business within jurisdiction, is within a radius of 100 kilometres from the High Court Registry at Francistown, the time limited for entering appearance shall be 10 days after service of the writ of summons or other process (including the day of service);
- (c) in all other cases, whether the writ of summons or other originating process is issued at the High Court Registry at Lobatse or at the High Court Registry at Francistown or at any District Registry, where the defendant's dwelling house or other place of residence or place of business or employment within jurisdiction, or in the case of a company or corporation its registered office or principal place of business within jurisdiction

is outside the areas mentioned in paragraphs (a) and (b), the time limited for entering appearance shall be 21 days after service of the writ of summons or other process (including the day of service).

16. (1) Where a writ of summons or other originating process is issued out of the High Court Registry at Lobatse, the appropriate office for entering an appearance shall in all cases be the High Court Registry at Lobatse.

(2) Where a writ of summons or other originating process is issued out of the High Court Registry at Francistown, the appropriate office for entering an appearance shall in all cases be the High Court Registry at Francistown.

(3) Where a writ of summons or other originating process is issued out of a District Registry in the South East District, the Southern District, the Kweneng District, the Kgatleng District or the Kgalagadi District, the appropriate office for entering an appearance shall in all cases be the High Court Registry at Lobatse.

(4) When a writ of summons or other originating process is issued out of a District Registry in the Central District, the North West District, the North East District, the Chobe District or the Ghanzi District, the appropriate office for entering an appearance shall in all cases be the High Court Registry at Francistown.

17. A Sheriff or Deputy Sheriff who is party to an action may be served with a writ of summons in the manner in which any person is served and the fact of his holding such office shall be immaterial.

18. (1) Every writ of summons shall be made returnable to the High Court at the place of which appearance is required to be entered and the writ shall be endorsed and returned thereto by the person who served the writ after service thereof has been effected.

(2) The endorsement of service shall be made on the writ within three days of the service thereof and the writ so endorsed returned to the High Court as soon as possible thereafter.

19. In actions commenced in a District Registry all pleadings, applications, affidavits and other processes or proceedings subsequent to entry of appearance shall be filed at the place where appearance was entered (Lobatse or Francistown as the case may be):

Provided that the trial may be held at Lobatse or Francistown or other convenient place.”;

(f) in Order 4A —

- (i) by the insertion of the word “action” between the words “petition” and “summons” in rule 3 (2) (c) thereof,
- (ii) by substituting for the word “summons”, the words “writ of summons” in rule 5(1) (a) thereof,
- (iii) by substituting for the word “summons”, where it first appears the words “writ of summons” in rule 5(3) thereof,
- (iv) by the insertion of the word “action”, between the words “or” and “by summons” in rule 5(3) thereof,
- (v) by substituting for the word “summons”, the words “writ of summons” in rule 5(4) (c) and 10(4);

(g) by substituting for Order 5, the following new Order —

**“ORDER 5
SERVICE OF SUMMONS, WRITS, NOTICES AND OTHER
DOCUMENTS**

1. (1) Personal service of a petition, notice, summons, order, pleading or other document of which service is required, may be made by any person.

(2) Except in the case of arrest, writs of summons, petitions, notices, summonses, orders, pleadings and other documents shall not be served on a Sunday or between 7 p.m. and 7 a.m. on any other day and no such service shall be valid.

2. (1) Where the application to the court is for an order affecting the liberty of the respondent, the summons or writ shall be served by delivery of a copy thereof to the respondent personally, unless the court or a judge for good cause shown gives leave for such summons or writ to be served in some other specified manner.

(2) Service of any process of the court, including any document in any application proceedings, on the person to be served, shall be effected in one or other of the following manner —

(a) by delivering a copy thereof to the said person personally:

Provided that where such person is a minor or a person under legal disability service shall be effected upon the guardian, tutor, curator, or the like of such minor or person under disability;

(b) by leaving a copy thereof at the place of residence or business of the said person, guardian, tutor, curator or the like with the person apparently in charge of the premises at the time of delivery being a person apparently not less than 16 years of age.

(c) For the purposes of paragraph (b), when a building other than an hotel, boarding house hostel or similar residential building is occupied by more than one person or family, “residence” or “place of business” means that portion of the building occupied by the person upon whom service is to be effected;

(d) by delivering a copy thereof at the place of employment of the said person, guardian, tutor, curator or the like to some person apparently not less than 16 years of age and apparently in authority over him;

(e) if the persons so to be served have chosen a *domicilium citandi*, by delivering a copy thereof at the *domicilium* so chosen;

(f) in the case of a corporation or company, by delivering a copy to a responsible employee at its registered office or its principal place of business within jurisdiction, or, if there is no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner prescribed by law;

(g) by delivering a copy thereof to any agent who is duly authorized in writing to accept service on behalf of the person upon whom service is to be effected;

(h) where any partnership, firm or voluntary association is to be served, service shall be effected upon a partner, the proprietor, or

on the chairman or secretary of the committee, or other managing body of such association, as the case may be, in one of the manners set forth in this rule;

- (i) where a local authority or statutory body is to be served, service shall be effected by delivering a copy to the town clerk or assistant town clerk or mayor of such local authority, or to the secretary or member of the board or committee of such body, or in any manner provided by law; or
- (j) if two or more persons sued in their joint capacity as trustees, liquidators, executors, administrators, curators or guardians, or in any other joint representative capacity, service shall be effected upon each of them in any manner set forth in this rule.

(3) It shall be the duty of the Sheriff or the person serving a process or document to explain the nature and contents thereof to the person upon whom service is being effected, and to state in his return that he has done so.

3. (1) If the plaintiff (or a defendant in the case of proceedings involving a third party) experiences difficulty in effecting personal service on a defendant or other party to the proceedings, he may apply to the court or a judge in chambers for leave to effect substituted service of the process on such defendant.

(2) Such an application shall be supported by an affidavit deposing as to the efforts that have been made to effect personal service of the process and stating the last known residence or place of business of the defendant or other party within jurisdiction.

(3) Upon hearing such application the court or judge in chambers may order that substituted service be effected on the defendant or other party by sending the process by pre-paid registered post to the last known place of residence or place of business of the defendant or other party within jurisdiction or by advertisement in a local newspaper circulating in the area where the defendant or other party had his last place of residence or place of business.

(4) If the plaintiff (or defendant in the case of proceedings involving a third party) experiences difficulty in effecting service on a corporation or company under rule 2 (2) (f), he may apply under rule 3 for leave to effect substituted service.

4. (1) Service of any process of the court or of any document in a foreign country shall be effected —

(a) by any person who is, according to a certificate, of —

- (i) the head of any Botswana Diplomatic or Consular Mission, any person in the administrative or professional division of the public service serving at a Botswana Diplomatic, Consular or Trade office, any honorary Botswana Consul General, Consul, Vice-Consul or Trade Commissioner,
- (ii) any foreign diplomatic or consular officer attending to the service of process or documents on behalf of Botswana in such country,
- (iii) any diplomatic or consular officer of any such country serving in Botswana,
- (iv) any official signing as or on behalf of the department dealing with the administration of justice in that country,

authorized under the law of such country to serve such process or document.

(2) Any person referred to in subparagraphs (i) and (ii) of subrule (1) if the law of such country permits him to serve such process or document, or if there is no law in such country prohibiting such service and the authorities of that country have not interposed any objection thereto.

(3) Service of any process of the court or of any document in the United Kingdom of Great Britain and Northern Ireland, the Republic of South Africa, Zambia, Zimbabwe, Malawi, the Kingdoms of Lesotho or Swaziland may, notwithstanding the provisions of this rule, also be effected by a solicitor, attorney, notary public, or other legal practitioner in the country concerned who is under the law of that country authorized to serve any process of court or documents.

5. Service shall be proved in one of the following manners —

(a) where service has been effected by the Sheriff, by the return of service of such Sheriff;

(b) where service has not been effected by the Sheriff, nor in terms of rule 4(3) by an affidavit of the person who effected service, or in the case of service on an attorney or a member of his staff, the Government of Botswana, on any Minister, or any other officer of such Government in his capacity as such, by the production of a signed receipt therefor.

6. Service of any process of court or document in a foreign country shall be proved —

(a) by a certificate of the person effecting service in which he identifies himself, states that he is authorized under the law of the country to serve process of court or document therein, and that the process of court or document in question has been served as required by the law of that country, and sets forth the manner and the date of such service:

Provided that the certificate of a person referred to in rule 4(3) shall be duly authenticated; or

(b) by a certificate of the person effecting service in terms of rule 4(2) in which he states that the process of court or document in question has been served by him, setting forth the manner and the date of such service and affirming that the law of the country concerned permits him to serve process of court or documents or that there is no law of such country prohibiting such service and that the authorities of that country have not interposed any objection thereto.

7. Whenever the court is not satisfied as to the effectiveness of the service, it may order such steps to be taken as to it seem meet.

8. Any summons, writ, warrant, rule or notice, or other process, document or communication which by law, rule of court, or agreement of the parties is required or directed to be served or executed upon any person or left at the house or place of abode or a place of business or employment of any person in order that such person may be affected thereby may be transmitted by telegraph, and a telegraphic copy served or executed upon such person or left at his house or place of abode or business or employment shall be of the same force and effect as if the original had been shown to or a copy thereof served upon such person, or left as aforesaid, as the case may be.”;

- (h) by substituting for the word “summons” the words “writ of summons” wherever it appears in Order 5A;
- (i) by the insertion of the following new Order —

**“ORDER 6A
RENEWAL OF WRIT**

1. No original writ of summons shall be in force for more than 12 months from the day of the date thereof, including the day of such date; but if any defendant named therein has not been served therewith the plaintiff may, before the expiration of the 12 months, apply to the court for leave to renew the writ.

(2) Where the court is satisfied that reasonable efforts have been made to serve such defendant, or for other good reasons, it may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ.

(3) The writ shall in such case be renewed by being marked with the seal of the court and shall bear the date of the day, month and year of such renewal; such seal to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his attorney of a memorandum in Form 32 in the First Schedule with such variation as circumstances may require.

(4) A writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

(5) The production of a writ of summons purporting to be marked with the seal of the court, showing the same to have been renewed in the manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.”;

(j) in Order 7 —

(a) by substituting for rule 1, the following new rule —

“1. Except where proceedings by way of petition are prescribed by law, every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief, and the notice of motion shall be in Form 5 in the First Schedule with such variations as circumstances require.

1A. Subject to rule 1, an application to a judge in chambers shall be brought by Judge’s Summons supported by affidavit as to the facts upon which the applicant relies for relief.

1B. The Judge’s Summons shall be in Form 5A in the First Schedule with such variations as circumstances require.”;

(b) by adding the words “or Form 5A in the First Schedule as appropriate” at the end of rule 4(1); and

(c) by the insertion of the words “or judge” between the word “court” and the word “may” in rule 4(3) thereof;

(k) by the insertion of the following new Order —

**“ORDER 7A
AFFIDAVITS AND DEPOSITIONS**

1. Upon any motion, petition or other application evidence may be given by affidavit, but the court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit, and where after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence unless by the special leave of the court or a judge.

2. Every affidavit shall be entitled in the cause or matter in which it is sworn; but in every case in which there is more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be.

3. (1) Every affidavit shall contain only statements of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true stating the sources and grounds thereof.

(2) An affidavit shall not contain extraneous matters by way of objection, prayer, legal argument or conclusion.

4. Affidavits sworn in Botswana shall be sworn before a Commissioner of Oaths or other officer empowered to administer oaths under the Commissioner of Oaths Act.

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5. Every Commissioner administering oaths shall express the time and date when and the place where he shall take any affidavit, or the acknowledgement of any deed or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the court or a judge; and every such Commissioner shall express the time when, and the place where, he shall do any other act incidental to his office.

6. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject; and the affidavit shall be written or printed bookwise.

7. Every affidavit shall state the description, the place of abode, and the occupation of the deponent.

8. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the “abovementioned” deponents.

9. (1) Every affidavit to be used in any cause, matter or proceeding in the Principal Registry or in a Registry shall be filed in the Principal Registry or in the Registry, as the case may be.

(2) There shall be endorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be used without such note, unless the court or a judge otherwise directs.

10. The court or judge may order to be struck out from any affidavit any matter which is scandalous.

11. No affidavit having in the jurat or body thereof any interlineations, alterations, or erasure, shall without leave of the court or a judge be read or made use of in any matter pending in court unless the interlineations or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the officer taking it.

12. (1) Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the *jurat* that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature or mark in the presence of the officer.

(2) No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

13. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of the parties or otherwise in the title or *jurat*, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

14. (1) No affidavit shall be sufficient if sworn before the attorney acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such attorney, or before the party himself.

(2) Any affidavit which would be insufficient if sworn before the attorney himself shall be insufficient if sworn before his clerk, or partner.

15. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the court or a judge.

16. Except by leave of the court or a judge no order made *ex parte* in court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

17. Every certificate on an exhibit or annexure referred to in an affidavit shall be signed by the commissioner or officer before whom the affidavit is sworn and be marked and certified by him as the document referred to in the affidavit sworn by the deponent on the date it is sworn to.”;

- (l) in Order 9, by substituting for the word “summons”
the words “writ of summons” in rules 4 (1), (3) and 7 (1) thereof;
- (m) in Order 10, by substituting for the word “summons” the words “writ of summons” in rules 9 and 11 thereof;
- (n) in Order 12, by substituting for the word “summons”
the words “writ of summons” in rules 8 and 13 thereof;
- (o) in Order 14 by revoking rules 24,25 and 26, thereof;

(p) by the insertion, after Order 14, of the following new Order —

“ORDER 14A

CLOSE OF PLEADINGS

1. (1) Where a pleading subsequent to replication is not ordered, then, at the expiration of 14 days from the service of the plea or replication (if a replication has been filed) or, where a pleading subsequent to replication is ordered, and the party who has been ordered or given leave to file the same fails to do so within the period limited for that purpose, then, at the expiration of the period so limited, the pleadings shall be deemed to be closed and material statements of fact in the pleading last served shall be deemed to have been denied and put in issue:

Provided that this rule shall not apply to a plea in reconvention and that unless the plaintiff files a plea in reconvention the statements of facts contained in such claim in reconvention shall, at the expiration of 14 days from the service thereof, or of such time (if any) as may by order be allowed for filing of a plea thereto be deemed to be admitted, but the court or a judge may at any subsequent time give leave to the plaintiff to file a plea in reconvention.

(2) The pleadings shall also be considered closed —

(a) if one party is barred;

(b) if a written agreement signed by the attorneys of both parties that the pleadings shall be considered as closed has been filed at the Registry.

2. Either party, in case he conceives the record to be complete and that pleadings thereon ought to be closed, may apply to the court by motion for rule calling upon his opponent to show cause why the same shall not be adjudged by the court, whereupon the court may make such order as the justice of the case may require.”;

(q) by the insertion of the following new Order —

“ORDER 14B

ENTRY FOR TRIAL

1. The plaintiff shall, within 30 days of the close of pleadings, enter the case for trial and give notice thereof to the Registrar and all parties.

2. The entry for trial shall be in Form 33 in the First Schedule and shall state that the pleadings in the case have been completed, and the suggested place of trial.

3. If the plaintiff fails to enter the case for trial under rule 1, the defendant may, within 14 days after the expiration of the time limited for the plaintiff to enter the case for trial, enter the case for trial.

4. (1) If neither the plaintiff nor the defendant enters the case for trial under these Rules, the Registrar shall certify such fact to the court after the time limited under rules 1 and 3 for both parties to enter the case for trial:

(2) The court or judge upon receipt of the certificate of the Registrar shall cause such case to be listed for striking out and the parties to the action shall be so notified.

5. (1) Upon the case coming up for striking out, the court shall strike out the case unless good cause is shown why the case should proceed to hearing.

(2) A plaintiff who does not want his case to be struck out under subrule (1) shall file, within three days of the service upon him of the notice of striking out, an affidavit containing the reasons for his failure to comply with rule 1.

6. (1) The Registrar shall enter cases on the cause list in the order in which they were entered for trial.

(2) The Registrar shall maintain a separate cause list for each of the following matters —

- (a) matrimonial causes;
- (b) actions for debt or liquidated demand;
- (c) other actions.”;

(r) by the insertion of the following new Order —

“ORDER 14C

DISMISSAL FOR WANT OF PROSECUTION

(1) Where an action has not been entered for trial and no step has been taken by either party for a year or more the Registrar shall fix a date when the case shall be called in court and shall list it for dismissal for want of prosecution on that date and serve notice thereof on all parties thereto.

2. The case shall be called before the court on the date fixed by the Registrar and the judge shall dismiss the case with costs unless sufficient reason is shown to the contrary.

3. If the judge decides not to dismiss the case, he shall impose conditions for the future conduct of the proceedings and give directions for the expeditious disposal of the case”;

(s) in rules 4, 6 and 10 of Order 15, by the substitution for those rules, the following new rules respectively —

“4. In actions where a declaration is required, the declaration must be filed at the Registry either when the writ or notice of writ is served on the defendant or at any time after service of the writ or notice but before the expiration of 21 days after that defendant enters appearance.

6. Where the defendant has entered appearance to defend, and the plaintiff has failed to file his declaration within 21 days of the date of such entry, the defendant may give the plaintiff four days’ notice of intention to bar him from declaring, and, on the expiry of the notice and continued default, bar him from declaring.

10. In his declaration a plaintiff may alter, modify or extend his claim or claims as stated in the writ, and the writ shall thereupon be deemed to be amended in accordance with the claim or claims made in the declaration:

Provided that where the defendant shows that he is prejudiced by such amendment the court may make such order as to costs or otherwise as the justice of the case demands.”;

(t) by substituting for rules 3 and 4 of Order 16, the following rules respectively —

“3. (1) Subject to subrule (2), any defendant who enters an appearance and intends to defend an action must, unless the court gives leave to the contrary file and deliver his plea, exception or special plea at the Registry before the expiration of 14 days after the time limited for appearing or after the declaration is served on him, whichever is the later.

(2) If an application under Order 22, rule 1 is served on a defendant before he files his plea, or exception, subrule (1) shall not have effect in relation to him unless by the order made on the application he is given leave to defend the action and in that case shall have effect as if it required him to file his defence within 14 days after the making of the order or within such other period as may be specified therein.

(3) The defendant shall on the same day that he files his plea or exception, or soon thereafter as is practicable, deliver a copy of it to the plaintiff.

4. Where the defendant has failed to file his plea, exception or special plea within 14 days of the service of the plaintiff's declaration, or within 14 days of the time limited for appearance, whichever is the later, the plaintiff may give the defendant four days' notice of intention to bar him from pleading, excepting or making claim in reconvention, and, in continued default of plea, thereafter bar him.”;

(u) in Order 17, by substituting for rule 5, thereof, the following —

“5. (1) Further pleadings may, subject to the provisions of rule 2, be filed and delivered by the respective parties within 14 days of the previous pleadings delivered by the opposite party.

(2) Such pleadings shall be termed rejoinder, surrejoinder, rebutter and surrebutter, as the case may be.”;

(v) by the insertion of the following new Order —

“ORDER 17A

PROCEDURE FOR BARRING

1. Where a party is entitled to give notice of intention to bar, he shall do so in Form 12 in the First Schedule and deliver the notice at the address for service of the party in default.

2. On the expiry of the time limited by the notice, not being less than the time allowed in these Rules for the particular case, the party who has served the notice may bar the opposite party by filing a copy of the notice, duly completed, at the Registry.

3. A party who has barred his opponent may withdraw such bar by filing a notice to withdraw at the Registry.

4. Whilst a bar is in operation, the Registrar shall not accept for filing any pleading from the party barred and such party shall not be permitted to appear personally or by counsel in any subsequent proceedings in the action or suit, except only in an application for removal of the bar:

Provided, however, that in matrimonial cases the court may, in its discretion, permit a party who has been barred to appear in person, notwithstanding that the bar has not been removed.

5. The court may, upon an affidavit of merits, and other sufficient grounds, order the removal of a bar on such terms including costs as it deems just.

6. The removal of a bar either by the court or by consent shall not preclude a subsequent bar for subsequent default in respect of which the procedure set forth in this Order shall be followed.”;

(w) by substituting for Order 19 thereof, the following —

**“ORDER 19
JUDGEMENTS BY CONSENT**

1. (1) At any time after service of the writ of summons a defendant may consent to judgment without appearing in court.

(2) This rule does not apply to actions for divorce, judicial separation or nullity of marriage.

2. (1) Such consent shall be in writing and signed either by the defendant personally or by an attorney who has entered appearance on his behalf.

(2) The defendant's signature shall be verified by an affidavit made by someone other than himself, or by the signature of an attorney acting for him and not for the opposite party.

3. Upon filing such consent at the Registry, the plaintiff may without notice to the defendant set down the cause for judgment and thereupon judgment may be given or order made in accordance with such consent.”;

(x) by the insertion of the following new Order —

**“ORDER 19A
JUDGMENT IN DEFAULT OF APPEARANCE**

1. Where the writ of summons is endorsed for a debt or liquidated demand only and the defendant fails, or all the defendants, if more than one, fail to enter appearance thereto, the plaintiff may enter final judgment against that defendant for any sum not exceeding the sum endorsed on the writ, together with interest, at the rate specified, if any, and if no rate is specified, at the rate of 10 per cent per annum to the date of payment, and costs and proceed with the action against the other defendants, if any.

2. Where the writ is endorsed with a claim against a defendant for unliquidated damages, only then, if that defendant fails to enter appearance, the plaintiff may enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

3. Where the writ is endorsed with a claim against a defendant relating to the detention of goods only, then if that defendant fails to enter appearance thereto, the plaintiff may at his option enter either —

(a) interlocutory judgment against that defendant for the return of the goods or their value to be assessed and costs; or

(b) interlocutory judgment for the value of the goods to be assessed and costs,

and proceed with the action against the other defendants, if any.

4. (1) Where the writ is endorsed with a claim against a defendant for the recovery of land only, (not being a claim based on a mortgage transaction), then if that defendant —

- (a) fails to enter appearance; or
- (b) enters an appearance but includes in his notice of appearance a statement that he is defending the action with respect to a specified part only of the land, the plaintiff may in respect of that defendant remaining in default or in the case mentioned in this paragraph, after entry of appearance, enter judgment for possession of the land or, as the case may be, the part of the land not specified in the statement aforesaid, as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless judgment for possession of the land has been entered against all the defendants.

5. Where the writ issued against any defendant is endorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if the defendant remains in default, the plaintiff may enter against that defendant such judgment in respect of any such claim as he would be entitled to under those rules if that were the only claim endorsed on the writ, and proceed with the action against the other defendants, if any.

6. (1) No judgment shall be entered in default of appearance for any claim mentioned in rules 1 to 4 unless the plaintiff has filed his declaration.

(2) A declaration filed after default shall have endorsed thereon 'filed in default of appearance.'

(7) (1) In actions for divorce, judicial separation or nullity of marriage if the defendant fails to enter appearance, the plaintiff —

- (a) shall deliver to the defendant personally or send by registered post to his last known place of residence or last business address, a copy of the declaration, and a notice informing the defendant that the said declaration has been filed and that he must plead, answer or except thereto, or make claim in reconvention within eight days of the date of delivery or posting of the notice; and proof of such personal service or the receipt of the despatching post office for the registered letter, as the case may be, and a copy of the notice shall be filed at the Registry;
- (b) may after the expiry of the period of notice provided for in paragraph (a), set down the case for judgment on any court day without further notice to the defendant;
- (c) shall deliver to the defendant personally, or send by registered post to his last known place of residence, or last business address, a copy of the notice of set down, which notice shall be delivered or despatched not less than 10 days before the date of trial;
- (d) on the date on which the case is set down for trial or on any subsequent date fixed by the court, the court after hearing evidence may enter judgment against the defendant and for the plaintiff or make such order as upon the declaration it considers the plaintiff entitled to;

(e) if the case is not heard on the date on which it is set down for trial, notice of any subsequent date fixed for trial shall be sent by the Registrar by registered post to the defendant to his last known place of residence or last business address.

8. (1) Where a writ is endorsed with a claim of a description not mentioned in rules 1 to 4, and 7, then, if any defendant remains in default, the plaintiff may, upon filing an affidavit proving due service of the writ on that defendant, and, where the declaration was not served with the writ, upon serving a declaration on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is endorsed as aforesaid, but by reason of the defendant satisfying the claim or complying with the demands thereof or for any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, and remains in default, the plaintiff may, after the time limited for appearance, enter judgment with the leave of the court against that defendant for costs.

(3) An application for leave to enter judgment under subrule (2) shall be by motion which must, unless the court otherwise orders, be served on the defendant against whom it is sought to enter judgment.

9. (1) Judgment shall not be entered against a defendant under this Order, unless a return of service or an affidavit of service, as the case may be, is filed, by or on behalf of the plaintiff, proving due service of the writ or notice of the writ on the defendant, as the case may be.

(2) In cases where the return of service shows that the writ has not been served personally on the defendant, the plaintiff shall file at the Registry an affidavit sworn by himself or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, (if any) and stating that in his belief there is no defence to the action.

(3) Where, in an action begun by writ, an application is made to the court for an order affecting a party who has failed to enter an appearance, the court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.”;

(y) by the insertion of the following new Order —

“ORDER 19B

DEFAULT OF PLEADINGS

1. Where the plaintiff has been duly barred from declaring or making a claim, the defendant may, without notice to the plaintiff, apply to the court to dismiss the action for want of prosecution and on the hearing of such application the court may order the action to be dismissed with costs, or may make such other order on such terms as the court thinks just.

2. Where the plaintiff's claim is only for a debt or liquidated demand and the defendant has entered an appearance but has been duly barred for default of plea, the plaintiff may enter final judgment for a sum not exceeding that claimed in the writ together with interest at the rate specified (if any), or if no rate is specified, at the rate of 10 per cent per annum to the date of payment, and costs.

3. When in any action as mentioned in the last preceding rule there are several defendants, if one of them makes default, as mentioned in the last preceding rule and has been duly barred for default of plea, the plaintiff may enter final judgment against that defendant for a sum not exceeding that claimed in the writ together with interest at the rate specified (if any) or if no rate is specified, at the rate of 10 per cent per annum to the date of payment, and costs and proceed with the action against the other defendants, if any.

4. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to file a plea and he has been duly barred, the plaintiff may enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

5. Where the plaintiff's claim against a defendant relates to the detention of goods only and the defendant makes default as aforesaid and has been duly barred, the plaintiff may either enter —

- (a) interlocutory judgment against that defendant for the return of the goods or their value to be assessed and costs; or
- (b) interlocutory judgment for the value of the goods to be assessed and costs and proceed with the action against the other defendants, if any.

6. (1) In an action for the recovery of land, (excluding a claim based on a mortgage transaction) if the defendant remains in default and has been duly barred, the plaintiff may enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless judgment for possession of the land has been entered against all the defendants.

7. Where the plaintiff makes, against a defendant, two or more of the claims mentioned in rules 2 to 6 and no other claim, then if that defendant remains in default and has been duly barred, the plaintiff may enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendant, if any.

8. If the plaintiff's claim is for a debt or liquidated demand, or for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages or for any of such matters, or for the recovery of land, and the defendant files a plea which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the court enter judgment, final or interlocutory, as the case may be, for the part unanswered:

Provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand:

Provided also that, where there is a reconvention, execution on any such judgment as mentioned above in respect of the plaintiff's claim shall not issue without the leave of the court.

9. In probate actions if any defendant remains in default and has been

duly barred the action may proceed, notwithstanding such default.

10. In actions for divorce, judicial separation or nullity of marriage, if the defendant remains in default and has been duly barred, the action may proceed, notwithstanding such default.

11. In all actions other than those mentioned in the preceding rules of this Order, if the defendant makes default in filing a plea and has been duly barred the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the declaration the court or a judge shall consider the plaintiff to be entitled to.

(2) Where the plaintiff makes such a claim as is mentioned in subrule (1) against more than one defendant, then, if one of the defendants makes default as mentioned in the said subrule, the plaintiff may —

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that subrule for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under subrule (1) must be by motion.

12. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court for such judgment, if any, as upon the pleadings he may appear to be entitled to; and the court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

13. (1) In all cases where judgment has been given by consent or in default under Order 19A or Order 19B such judgment may be set aside by the court and leave given to the defendant to defend or to the plaintiff to prosecute his action.

(2) Such leave shall only be given on good and sufficient cause, and upon such terms as to costs and otherwise as the court deems just.”;

(z) in Order 22, by substituting for rule 8 thereof, the following —

“8. Leave to defend may be given unconditionally or subject to such terms as to security for costs, time for delivery of pleadings, or time or mode of trial or otherwise, as the court deems fit.”;

(aa) in Order 23, by substituting for the word “summons”, the words “writ of summons” in rule 1 thereof;

(bb) by the insertion of the following new Order —

“ORDER 23A

ASSESSMENT OF DAMAGES

1. Where judgment is given for damages, the damages shall be assessed by the court or the Registrar.

2. The court may at the time of giving judgment order that the damages be assessed by the court or by the Registrar.

3. (1) Where no provision is made by the judgment as to how the damages are to be assessed, the party entitled to the benefit of the judgment for assessment of damages may apply to the court at the time judgment is given or at any time thereafter for an order directing whether the damages shall be assessed by the court or by the Registrar.

(2) When making an order that the assessment shall be made by the court, the court may at the same time fix a time and place for making the assessment.

(3) Where no time for making the assessment is fixed by the court, the party entitled to the benefit of the judgment may at any time after judgment apply to the court for an appointment to assess the damages.

(4) Where the court orders that the assessment shall be made by the Registrar, the assessment may be made by the Registrar, a Deputy Registrar or an Assistant Registrar, as directed by the Registrar.

(5) The party entitled to the benefit of the judgment may apply to the Registrar for an appointment to assess the damages.

(6) The party entitled to the benefit of the judgment shall, at least seven days before the date of the appointment with the court or Registrar (as the case may be) serve notice of appointment on the party against whom the judgment was given and proceed accordingly.

(7) The attendance of witnesses and the production of documents before the Registrar may be compelled by subpoena and the provisions of Order 30 as to proceedings at a trial shall, with any necessary adaptations, apply.

4. (1) Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages to the court and file his certificate together with the whole proceedings taken by him at the Registry and shall forward copies of the certificate to all interested parties.

(2) At any time after the Registrar's certificate has been filed the party entitled to the benefit of the judgment may apply to the court by notice of motion for final judgment for the amount certified by the Registrar.

(3) The court hearing such application may confirm or vary the assessment and shall pass such final judgment or order as may appear to be right and proper in the circumstances of the case.

5. Where any judgment as is mentioned in rule 1 is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the court or a judge otherwise orders.

6. The preceding provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

7. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.'';

(cc) by the insertion of the following new Order —

“ORDER 23B

ENQUIRIES AND ACCOUNTS

1. In any civil cause or matter in which all parties interested who are under no disability consent thereto, and also, without such consent, in any civil cause or matter requiring any prolonged examination of documents or accounts or any scientific or local examination which cannot, in the opinion of the court, conveniently be made by the court in the usual manner, the court may, at any time, on such terms as it may think proper, order any question or issue of fact, or any question of account arising therein, to be investigated or tried before a referee, to be agreed on between the parties or appointed by the court.

2. (1) The plaintiff may at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order under rule 1.

(2) An application under this rule shall be made by notice of motion and be supported by affidavit.

3. (1) Where an order has been made under rule 1, the court shall furnish the referee with such part of the proceedings and such information and detailed instructions as may appear necessary for his guidance, and shall direct the parties, if necessary, to attend upon the referee during the enquiry.

(2) The instructions shall specify whether the referee is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation.

4. The court may, at any stage of the proceedings, direct any necessary enquiries or accounts described in rule 1 to be made or taken, notwithstanding that it may appear that there is some special or further relief sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

5. (1) The referee may, subject to the order of the court, hold the enquiry at or adjourn it to any place which he may deem most convenient, and have any inspection or view which he may deem expedient for the disposal of the controversy before him.

(2) He shall, so far as practicable, proceed with the enquiry *de die in diem*.

6. Subject to any order to be made by the court ordering the enquiry, evidence shall be taken at any enquiry before a referee, and the attendance of witnesses may be enforced by subpoena; and every such enquiry shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a judge, but not so as to make the tribunal of the referee a public court of justice.

7. Subject to any order as mentioned in the last preceding rule, the referee shall have the same authority in the conduct of any enquiry as a judge when presiding at any trial.

8. Nothing contained in these Rules shall authorize any referee to commit a person to prison or to enforce any order by attachment or otherwise; but the court may, in respect of matters before a referee, make any order of attachment or commitment it may consider necessary.

9. The referee may, before the conclusion of any enquiry before him, or by his report under the reference, submit any question arising therein for the decision of the court, or state any facts specially.

10. If it appears to the court, on the representation of the Registrar or a party, that there is any undue delay in the prosecution of any accounts or enquiries, or in any other proceedings under any judgment or order the court may require the party having conduct of the proceedings, or any other party, to explain the delay, and may thereafter make such order with regard to expediting the proceedings or conduct hereof or the stay thereof and as to the costs of the proceedings, as the circumstances of the case may require.

11. The proceedings and report in writing of the referee shall be received in evidence in the case, unless the court may have reason to be dissatisfied with them, and the court shall have power to draw such inferences from the proceedings or report as shall be just.

12. The court shall have power to require any explanations or reasons from the referee, and to remit the cause or matter, or any part thereof, for further enquiry or consideration to the same or any other referee, as often as may be necessary, and shall pass such ultimate judgment or order as may appear to be right and proper in the circumstances of the case.”;

(dd) by substituting for Order 28A thereof, the following —

“ORDER 28A

SET DOWN OF DEFENDED ACTIONS, MOTIONS AND PETITIONS

1. (1) Any party to a defended action which has been entered for trial, or (subject to the provisions of Order 7) to an opposed notice of motion or petition may, at any time, apply to the Registrar for a date or dates of hearing of the action, motion or petition, as the case may be.

(2) Every application under rule 1 shall contain an estimate of the duration of the proceedings, the date or dates required to be reserved for the hearing and a statement as to whether or not such date or dates is or are suitable to all other parties to the proceedings and a certificate to the effect that the provisions of Order 28 have been complied with or are not applicable.

(3) The application shall be served on the Registrar not less than 30 days before the date or the first date, as the case may be, required to be reserved for hearing.

(4) The applicant shall serve a copy of the application on all other parties to the proceedings.

2. (1) The Registrar, on receipt of an application under rule 1 and on being satisfied that all the requirements of these Rules have been observed and that the matter is ready for trial, shall not more than seven days after the receipt of the application assign a date or dates for trial.

(2) The Registrar may assign the date or dates mentioned in the application, if convenient to the court, or fix any date or dates convenient to the court.

(3) The Registrar shall, not later than 10 days after the receipt of the application, give notice to the applicant and all other parties to the proceedings of the date or dates so assigned or fixed, as the case may be, which date or first date, as the case may be, shall not be less than 20 days from the date of the notice.

(4) If the date fixed by the Registrar is not convenient to any of the parties to the proceedings, he shall within four days of the receipt of the Registrar's notice under subrule (3) inform in writing the Registrar and all other parties accordingly.

(5) The Registrar may at any time thereafter, in consultation with the parties, fix a convenient date or dates for hearing and give notice under subrule (3) accordingly.

(6) Subject to the provisions of subrules (4) and (5), upon the receipt of the Registrar's notice under subrule (3), the applicant shall give not less than 14 days' notice of set down for hearing to the Registrar and all other parties specifying in such notice the date or dates assigned or fixed, as the case may be, by the Registrar.

3. When a matter has been set down for hearing any party may apply to have the set down changed or set aside for good cause:

Provided that with the approval of the Registrar, a date or dates of hearing may be changed by consent of all parties.

4. (1) An application under rule 1 shall not be withdrawn except by the consent of the parties or by leave of the court.

(2) If a party served with a copy of an application under rule 1 objects to any statement contained in the said application, he shall inform the Registrar of his objection within five days of the receipt of the application.

(3) The Registrar may take the objections into consideration in deciding whether to assign or fix a date or dates of hearing.

5. (1) Unless the application has been withdrawn, or the set down changed or set aside, the Registrar shall give at least seven days' notice of changed or set aside, the Registrar shall give at least seven days' notice of date or first date of the trial and the place of the trial.

(2) The Registrar shall give notice of hearing whether or not the applicant has given notice of set down under rule 2 (5).

(3) Upon issuing a notice of hearing under subrule (1), the Registrar shall enter, or cause to be entered, the case on the roll for the date or the first date of the trial.

(4) The notice of hearing shall be in Form 35 in the First Schedule or as near thereto as circumstances may permit.

6. If the parties or any of them do not appear when the case is called on the date specified in the notice issued under rule 5 (1), the provisions of Order 30 shall apply.

7. If no application is made for a date of hearing of a case which has been entered for trial for over three months, the Registrar may fix a date of hearing and issue a notice to the plaintiff requiring him to take the necessary steps under Order 28 and to set down the case for hearing within 10 days of the receipt of the notice.

8. (1) If the plaintiff fails to set down the case for hearing, the Registrar shall list the case on the roll for the date fixed by him and send out a notice of hearing accordingly.

(2) If the parties or any of them are absent when the case is called on the date specified in the notice of hearing, the provisions of Order 30 shall apply.

9. Notwithstanding the provisions of this Order, any party to contested proceedings may, for good cause, apply on notice to all the

parties to a judge in chambers for a special date or dates for hearing and the judge may on such application, in consultation with the Registrar, fix a special date or dates of hearing during any term of court or during any vacation with the consent of all the parties and having regard to the convenience of the court.”;

(ee) in Order 30, by the insertion of the following new rule 4A immediately after rule 4 thereof —

“4A (1) If, when a trial is called on, neither party appears, the court shall, unless it sees good reason to the contrary, strike the cause out of the roll.

(2) Any judgment obtained against any party in the absence of such party may, on sufficient cause shown, be set aside by the court, upon such terms as may seem fit.

(3) Any civil cause struck out may, by leave of the court, be replaced on the roll, on such terms as to the court may seem fit.”;

(ff) in Order 31, by substituting for the words “P100” which appear in rule 2 thereof, the words “P500”;

(gg) by the insertion of the following new Orders —

“ORDER 34

MATRIMONIAL CAUSES

1. In any matrimonial matter, the judge may, if the parties agree, interview them privately in his chambers in the presence of their legal advisers for the purpose of discussing with them a settlement of the matter or any other matter affecting future conduct of the proceedings.

2. In any case affecting the custody of children, the judge may, if he thinks fit, interview such children privately in his chambers.

ORDER 35

ENTERING JUDGMENT IN DEFAULT

1. (1) Every judgment in default of appearance or of defence shall be drawn up and presented to the Registrar for signing, by the attorney for the party in whose favour the judgment is being entered.

(2) If the party is not represented by an attorney the judgment shall be drawn-up by the Registrar, and Forms 36A to 36J in the First Schedule shall be used, with such variations as circumstances may require.

2. The Registrar shall sign the judgment if he is satisfied that the party against whom it is proposed to enter judgment is in default and that all the relevant rules have been complied with.

3 The entry of judgment shall be dated as of the day on which it was signed by the Registrar, and the judgment shall take effect from that date.

4. After the judgment has been signed by the Registrar it shall be filed by the party or his attorney and the prescribed fees paid.

5. Every judgment shall be entered by the proper officer in the book to be kept for that purpose.

6. No judgment shall be enforceable unless it has been duly signed and filed and the prescribed fees paid.”;

(hh) by the insertion of the following new Order —

“ORDER 37A

DISCOVERY IN AID OF EXECUTION

1. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court for an order that the debtor liable under such judgment or order, or, in the case of a corporation, that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, or whether the debtor has any and what other property or means of satisfying the judgment or order, before the court; and the court may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

2. Upon the examination, the court shall record or cause to be recorded as nearly as may be the statements of the debtor, and then read it or cause it to be read to him and cause him to sign the same.

3. In case of any judgment or order other than for the recovery or payment of money, if any difficulty arises in or about the execution or enforcement thereof, any party interested may apply to the court, and the court may make such order thereon for the attendance and examination of any party or otherwise as may be just.”;

(ii) by the insertion of the following new Order —

“ORDER 37B

ATTACHMENT OF DEBTS

1. (1) The court may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his attorney stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called “the garnishee”) to such debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs aforesaid.

(2) At least seven days before the day of hearing, the order *nisi* shall be served on the garnishee and, unless otherwise ordered, on the judgment debtor, at least seven days before the day of hearing.

(3) The order *nisi* must be served personally on the garnishee.

2. Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the court shall direct, shall bind such debts in his hands.

3. If the garnishee does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon the motion, then

the court may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

4. If the garnishee disputes his liability, the court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

5. Whenever in any proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the court may order such third person to appear, and state the nature and particulars of his claim upon such debt.

6. After hearing the allegation of any third person under such order as mentioned in rule 5, or any other person who by the same or any subsequent order the court may order to appear, or in the case of such third person not appearing when ordered, the court may order execution to issue to levy the amount due from such garnishee, together with the costs of the garnishee proceedings or any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person, or make such other order as such court thinks fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court thinks just and reasonable.

7. Payment made by or execution levied upon the garnishee under any such proceeding shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reserved.

8. The costs of any application for an attachment of debts and of any proceedings arising from or incidental to such application of the judgment creditor shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order, and in priority to the amount of the judgment debt.”;

(jj) by substituting for Order 53 the following —

“ORDER 53

COMPUTATION OF TIME

1. The word “month” where it occurs in any judgment, order, direction or other document forming part of any proceedings in the High Court, means a calendar month unless the context otherwise requires.

2. Any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions —

- (a) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the day next following, that is not an excluded day;
- (b) where there is a reference to a number of clear days or “at least” a number of days between two events, in calculating the number of

- days there shall be excluded the days on which the events happen;
- (c) where there is a reference to a number of days not expressed to be clear days, between two events, in calculating the number of days, there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens;
 - (d) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the day next following that is not an excluded day;
 - (e) where any act or proceeding is directed or allowed to be done or taken within a number of clear days or "not more than" a number of days not exceeding six clear days, excluded days shall not be reckoned in the computation of such number;
 - (f) where a time is expressed to begin or end at, on, or with a specified day, or to continue to or until a specified day, the time shall include that day;
 - (g) where a time is expressed to begin after or to be from a specified day, the time shall not include that day;
 - (h) where anything is to be done within a time after, from or before a specified day, the time shall not include that day;
 - (i) where there is a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including —
 - (i) the day immediately after or before the specified day, according as the period follows or precedes the specified day, and
 - (ii) the day in the last month so counted having the same calendar number as the specified day, but if such last month has no day with the same calendar number, then the last day of the month.

2. For the purposes of this Order an "excluded day" means a Saturday, a Sunday or a public holiday.

3. (1) The court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these Rules, or by any judgment, order or direction, to do any act in any proceedings.

(2) The court may extend any such period as is referred to in subrule (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these Rules or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the court being made for that purpose.

4. Where a year or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than one month's notice of his intention to proceed.

5. Unless with the leave of the court or with the consent of all the parties to the action, the period of the court vacation commencing on 15th December shall be excluded in reckoning any period prescribed by these Rules or by any order or direction for serving, filing or amending any pleading.”;

(*kk*) in the Schedule by substituting for the word “Schedule”, the words “First Schedule” and by adding thereto the new matters specified therein and inserted in their correct numerical order; and

(*ll*) by adding a new Schedule headed the “Second Schedule” specified hereto —

**“FIRST SCHEDULE
FORM 2A**

(Order 4 rule 5)

**FORMS OF WRIT OF SUMMONS
(Ordinary Form)**

In the High Court
of the Republic of
Botswana

Civil Case No.....

In the matter between:

Plaintiff

and

Defendant

To: of
name, occupation and sex address

hereinafter called “the Defendant”

You are commanded that within days after the
service of this writ on you, inclusive of the day of such service, you do cause an
appearance to be entered for you in an action at the suit of:

..... of.....
name, occupation and sex address

hereinafter called “the Plaintiff” in which action the plaintiff claims the relief, and
on the grounds set out in the particulars in the Annexure hereto.

And take notice that in default of your so doing the plaintiff may proceed therein,
and judgment may be given in your absence.

.....
Registrar of the High Court.

MEMORANDUM TO BE SUBSCRIBED ON THE WRIT

You are informed that you should —

- (i) within..... days of the service upon you of this writ enter appearance to defend either personally or by an Attorney.

An appearance is entered by properly completing and delivering a memorandum of appearance to the Registrar and to the plaintiff. Delivery to the Plaintiff may be effected by sending by registered post to the Plaintiff if the Plaintiff sues in person, but otherwise to the Plaintiff's attorney at the Plaintiff Attorney's address for service, a copy of the memorandum of appearance on the day it is delivered to the Registrar. The memorandum of appearance shall state an address within the jurisdiction at or to which documents for you may be delivered or sent;

- (ii) A defendant entering appearance personally may, if he desires, enter his appearance by post and the appropriate forms may be obtained from the Principal Registrar or any Registry. The forms, when completed, should be sent in triplicate by registered post addressed to "The Registrar, Private Bag 1, Lobatse" or "The Registrar, Private Bag F13, Francistown" (if the writ was issued in Francistown), so as to reach him within the time stated above. The original copy of the memorandum of

appearance should be affixed with a revenue stamp. Further if you fail to enter appearance as aforesaid, judgment as claimed may be given against you without further notice to you.

ANNEXURE

**ENDORSEMENT TO BE MADE ON THE SUMMONS BEFORE ISSUE
THEREOF — PARTICULARS OF PLAINTIFF'S CLAIM**

The Plaintiff's claim is for

.....

.....

Plaintiff's Attorney.

This Summons was issued by

whose address for service is

..... whose postal address for service is at

..... Attorney for

the Plaintiff who resides at

ENDORSEMENT TO BE MADE WITHIN THREE DAYS AFTER SERVICE

This Summons was served by me at

... at a.m./p.m. on the ... day of 19.....

ENDORSED the day of 19.....

Signed:

Address:

Occupation:

FORM 2B

FORMS OF WRIT OF SUMMONS

(Order 4 rule 5)

(With particulars of claim
endorsed or delivered with
Declaration)

In the High Court of
the Republic of
Botswana

Civil Case No.

In the matter between:

Plaintiff

and

Defendant

To: of
name, occupation and sex address

hereinafter called "the Defendant"

You are commanded that within days after the service of this writ on
you, inclusive of the day of such service, you do cause an appearance to be entered for
you in an action at the suit of:

..... of
name, occupation and sex address

hereinafter called "the Plaintiff" in which action the Plaintiff claims the relief, and
on the grounds set out in the particulars in the Annexure hereto.

And take notice that in default of your so doing the Plaintiff may proceed therein,
and judgment may be given in your absence.

.....
Registrar of the High Court.

MOMORANDUM TO BE SUBSCRIBED ON THE WRIT

You are informed that you should —

- (i) Within days of the service upon you of this writ enter appearance to defend either personally or by an Attorney.
An appearance is entered by properly completing and delivering a memorandum of appearance to the Registrar and to the Plaintiff. Delivery to the Plaintiff may be effected by sending registered post to the Plaintiff if the Plaintiff sues in person, but otherwise to the Plaintiff's attorney at the Plaintiff Attorney's address for service, a copy of the memorandum of appearance on the day it is delivered to the Registrar. The memorandum of appearance shall state an address within the jurisdiction at or to which documents for you may be delivered or sent;
- (ii) A defendant entering appearance personally may, if he desires, enter his appearance by post and the appropriate forms may be obtained from the Principal Registrar or any Registry. The forms, when completed, should be sent in triplicate by registered post addressed to "The Registrar, Private Bag 1, Lobatse" or "The Registrar, Private F13, Francistown" (if the writ was issued in Francistown), so as to reach him within the time stated above. The original copy of the memorandum of appearance should be affixed with a revenue stamp,;
- (iii) Thereafter and within 14 days after entering appearance as aforesaid, file at the Registry and serve upon the Plaintiff or his Attorney a plea, exception, or notice to strike out, with or without a counter-claim.

Further, if you fail to file and serve notice as aforesaid judgement as claimed may be given against you without further notice to you, or if, having filed and served such memorandum of appearance you fail to plead, except, make application to strike out or counter-claim, judgment may be given against you.

ANNEXURE

ENDORSEMENT TO BE MADE ON THE SUMMONS BEFORE ISSUE THEREOF — PARTICULARS OF PLAINTIFF'S CLAIM

The Plaintiff's claim is for

.....

.....

Plaintiff's Attorney

This Summons was issued by
whose address for service is
..... whose postal address for service is at
..... Attorney for
the Plaintiff who resides at

ENDORSEMENT TO BE MADE WITHIN THREE DAYS AFTER SERVICE

This Summons was served by me at
..... at a.m./p.m. on the day of19.....
ENDORSED the day of 19.....

Signed:

Address:

Occupation:

FORM 5A

JUDGE'S SUMMONS

(Order 7 rule 1A)

In the High Court of
of the Republic of Botswana

.....

Plaintiff

and

.....

Respondent

LET ALL PARTIES concerned attend the Judge in Chambers at the High Court
Lobatse/Francistown on day of
19..... at o'clock in the noon,
on the hearing of an application on the part of
..... for an order
that

AND TAKE NOTICE that at the hearing of this application the applicant intends
to use the affidavit of sworn on
the day of 19..... and filed herein.

Dated the day of 19.....

This Summons was taken out by of
the Applicant or Attorney for the

Name

Address

Attorney for
or Applicant

To:

FORM 32

(Order 6A)

PRAECIPE OF RENEWED WRIT OF SUMMONS

(General Title)

SEAL in pursuance of order dated day of
.....19...., a renewed writ of summons in this action endorsed as
follows:*

DATED the day of19....

(Signed)

(Address)

(Attorney for the Plaintiff)

*Copy original writ and the endorsements

FORM 33

(Order 14B)

ENTRY FOR TRIAL

(General Title)

Enter the above action for trial at Lobatse/Francistown.
The pleadings have been completed.

DATED the day of 19.....

TO: The Registrar
High Court,
Lobatse/Francistown.

Name:

Address:.....

Attorney for the Plaintiff
(or Defendant)

AND

Name:

Address:
Defendant's Attorney

FORM 34

FORM OF NOTICE OF ENTRY FOR TRIAL (Order 14B)

FORM NO. 34

In the High Court of the
Republic of Botswana

No.....

In the matter between:

and

NOTICE OF ENTRY FOR TRIAL

TAKE NOTICE that the above action was entered for trial on
day of 19.....

DATED the day of 19.....

.....
Name
Address
Plaintiff's (or Defendant's)
Attorney

TO: (1) The Registrar,
High Court,
Lobatse.
(2) Name, Address, Defendant's Attorney.

FORM 35

FORM OF NOTICE OF HEARING (Order 28A rule 5 (4))

In the High Court of the
Republic of Botswana

No. _____

In the matter between:

and

NOTICE OF HEARING

TAKE NOTICE that the above cause will be heard and determined by the High Court at on the..... day of 19..... at o'clock in the forenoon.

DATED the day of 19.....

.....
Registrar of the High Court.

TO: Plaintiff's Attorney

..... Defendant's Attorney

FORM 36A

FORMS OF JUDGMENT (Order 19A)

Judgment in Default of Appearance in cases of liquidated demand

(General Title)

Dated at the day of.....19.....

The defendant not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the said defendant P and together with interest at per cent per annum to the date of payment and P costs (or costs to be taxed).

.....
Registrar of the High Court.

FORM 36B

FORMS OF JUDGMENT

(Order 19B)

Judgment in Default of Defence in cases of liquidated demand

(General Title)

Dated at the day of.....19.....

The defendant not having delivered any defence, it is this day adjudged that the plaintiff recover against the said defendant P and together with interest at per cent per annum to the date of payment and P..... costs (or costs to be taxed).

.....
Registrar of the High Court.

FORM 36C

FORMS OF JUDGMENT

(Order 19A)

Interlocutory Judgment in Default of appearance where demand unliquidated

(General Title)

The the day of.....19.....

No appearance having been entered to the writ of summons herein.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods or damages, or both (as the case may be) to be assessed.

.....
Registrar of the High Court.

FORM 36D

FORMS OF JUDGMENT

(Order 19B)

Interlocutory Judgment in Default of defence where demand unliquidated

(General Title)

The day of 19.....

The defendant not having delivered any defence.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods (or damages, or both, as the case may be) to be assessed.

.....
Registrar of the High Court.

FORM 36E

FORMS OF JUDGMENT

(Orders 19A and 19B)

Interlocutory and Final Judgment in Default where demand unliquidated

(General Title)

The day of 19.....

No appearance having been entered to the writ of summons (or, no defence having been delivered by the defendant) herein.

It is this day adjudged that the plaintiff recover against the defendant the value of the goods or damages, or both (as the case may be) to be assessed.

The amount found due to the plaintiff under this judgment having been assessed by the Court (or the Registrar or Referee as appears in the Registrar's or

Referee's Certificate filed on the day

of 19.....

It is adjudged that the plaintiff recover against the defendant P. together

with interest at per cent per annum to the date of payment and

P. costs (or costs to be taxed).

.....
Registrar of the High Court.

FORM 36F

FORMS OF JUDGMENT (Orders 19A and 19B)

Default Judgment in Detention of Goods

(General Title)

The defendant not having appeared to the writ of summons herein (or not having delivered any defence).

It is this day adjudged that the plaintiff do have a return of the chattels in the writ of summons (or Declaration) mentioned and described as (description of chattels) or recover against the defendant their value to be assessed, and damages for their detention to be also assessed.

The value of the having been assessed by the Court at the sum of P and the damages at the sum of P.....(or by the Registrar as appears in the Registrar's Certificate filed and dated the day of 19.....)

It is adjudged that the plaintiff recover from the defendant the sum of P together with interest at per cent per annum to the date of payment and costs to be taxed.

.....
Registrar of the High Court.

FORM 36G

FORMS OF JUDGMENT (Order 19A)

Interlocutory Judgment in Default of appearance in Action for Recovery of Land, Damages and Costs

(General Title)

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the endorsement on the writ described as

And it is further adjudged that the plaintiff recover against the defendant damages to be assessed.

.....
Registrar of the High Court.

FORM 36H

FORMS OF JUDGMENT

(Order 19A)

For Recovery of Land Only

(General Title)

The day of 19.....

No appearance having been entered (or, no defence having been delivered) herein, it is this day adjudged that the plaintiff recover possession of the land in the writ of summons (or, Declaration) mentioned and described as (describe the property), and costs to be taxed.

.....
Registrar of the High Court

FORM 36I

FORMS OF JUDGMENT

(Orders 19A and 19B)

Final Judgment after Assessment of Damages

(General Title)

The Plaintiff having on the day of 19..... obtained interlocutory judgment against the defendant for damages (or as the case may be) to be assessed, and the amount found due to the Plaintiff having been assessed by the Court at P.....(or having been certified at P as appears in the Registrar's or Referee's Certificate, dated the day of 19..... and confirmed by the Court).

Therefore it is adjudged that the Plaintiff recover against the Defendant P.....together with interest at per cent per annum to the date of payment and costs to be taxed.

.....
Registrar of the High Court.

FORM 37

APPLICATION FOR EXAMINATION OF JUDGMENT DEBTOR

(Order 37A)

In the High Court of
the Republic of Botswana

In the matter between:

..... Judgment Creditor

and

..... Judgment Debtor

TAKE NOTICE that application will be made on the
day of 19.... ato'clock

in the noon or so soon thereafter as
Counsel may be heard on the hearing of an application of the above-named
judgment creditor that the above-named judgment debtor attend and be orally
examined as to whether any and what debts are owing to him, and whether the
debtor has any other property or means of satisfying the judgment signed herein on

the day of , 19.....
and that the said judgment debtor produce any books or documents in his possession
or power relating to the same before the Court on the date and time fixed for the
examination and that the costs of this application and of the examination
thereunder await the result of the examination.

DATED the day of 19.....

.....
Applicant's Attorney.

TO: The Registrar of the High Court
Lobatse.

FORM 37A

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR

(Order 37A)

In the High Court of
the Republic of Botswana

In the matter between:

..... Judgment Creditor

and

..... Judgment Debtor

Upon Hearing and upon reading the
affidavit of filed herein IT IS ORDERED that the above-named
judgment debtor (name) attend and be

orally examined as to whether the said judgment debtor has any and what debts are
owing to him, and whether the debtor has any other property or means of

satisfying the judgment signed herein on the day of 19....
before a Judge at such time and place as the Court or Judge may appoint and that the
said judgment debtor produce any books or documents in his possession or power
relating to the same before the Judge at the time of the examination and that the costs
of this application and of the examination thereunder await the result of the
examination.

DATED the day of 19.....

.....
Registrar of the High Court.

FORM 38

APPLICATION FOR GARNISHEE ORDER NISI

(Order 37B rule 1)

In the High Court of the
Republic of Botswana

In the matter between:

..... Judgment Creditor

and

..... Judgment Debtor

..... Garnishee

TAKE NOTICE that application will be made on the
day of, 19..... at o'clock

in the noon or so soon thereafter
as Counsel may be heard on the hearing of an application of the above-named
judgment creditor for an order that all debts owing or accruing due from the
above-named Garnishee to the above-named judgment debtor (in the sum of

P.....) be attached to answer a judgment recovered against the said judgment
debtor by the above-named judgment creditor in the High Court on the

..... day of, 19.....for the sum of P.....debt and

interest at the rate of per cent per annum to date of

payment and P.....costs on which judgment the said sum of P..... remains
due and unpaid.

AND for a further order that the said Garnishee attend the Court before a Judge on
a date and time to be appointed to show cause why he should not pay to the
above-named judgment creditor the debt due from him to the above-named
judgment debtor, so much thereof as may be sufficient to satisfy the judgment or
order together with the costs of the Garnishee proceedings.

AND that the judgment debtor pay the costs of this application.

On the hearing of this application, the applicant intends to use the affidavit
of sworn on the day of 19.....and filed herein.

.....
Applicant's Attorney.

TO: The Registrar of the High Court,
Lobatse.

FORM 38A

GARNISHEE ORDER NISI (ATTACHING DEBT) Order 37B rule 1)

In the High Court of the
Republic of Botswana

In the matter between:

..... Judgment Creditor

and

..... Judgment Debtor

..... Garnishee

Upon reading the affidavit of filed the
day of 19.....and

It is ordered by the Hon that all debts owing or accruing due from
the above-named Garnishee to the above-named judgment debtor (in the sum of
P.....) be attached to answer a judgment recovered against the said judgment
debtor by the above-named judgment creditor in the High Court on the
..... day of
..... , 19....., for the sum of P..... debt, together with
interest at the rate of .. per cent per annum to date of payment and P..... costs
(together with the costs of the garnishee proceedings), on which judgment the
said sum of P..... remains due and unpaid.

And it is further ordered that the said garnishee attend at the High Court at
Lobatse/Francistown, on day the day of
....., 19....., at o'clock in the noon, on an
application by the said judgment creditor, that the said garnishee pay the debt due
from him to the said judgment debtor, or so much thereof as may be sufficient to
satisfy the judgment together with the costs of the garnishee proceedings.

DATED the day of, 19.....

.....
Registrar of the High Court.

FORM 38B

(Order 37B rule 3)

GARNISHEE ORDER (ABSOLUTE) WHERE GARNISHEE OWES
MORE THAN JUDGMENT DEBT

(Title as in Application)

Upon hearing Counsel for the judgment creditor and the garnishee, and upon reading the affidavit of , filed herein and the order *nisi* made herein, dated the day of , 19....., whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court at Lobatse/Francistown on the day of , 19....., for the sum of P..... together with interest at the rate of per cent per annum to date of payment and P..... costs (together with the costs of the garnishee proceedings), on which judgment the sum of P..... remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the sum of P..... being so much of the debt from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt, interest and costs, together with P....., the costs of the garnishee proceedings, and that in default thereof execution may issue for the same.

And that the said garnishee be at liberty to retain for his costs of this application out of the balance of the debt due from him to the judgment debtor.

DATED the day of 19.....

.....
Registrar of the High Court.

FORM 38C

(Order 37B rule 3)

GARNISHEE ORDER (ABSOLUTE) WHERE GARNISHEE OWES
LESS THAN JUDGMENT DEBT

(Title as in Application)

Upon hearing Counsel for the judgment creditor and the garnishee, and upon reading the affidavit of, filed herein and the order nisi made herein dated the day of, 19....., whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court on the day of, 19....., for the sum of P..... debt, together with interest and P..... costs (together with the costs of the garnishee proceedings), on which judgment the sum of P..... remained due and unpaid.

It is ordered that the said garnishee (after deducting therefrom P..... for his costs of this application), do forthwith pay to the said judgment creditor the sum of P..... the debt due from the said garnishee to the said judgment debtor, and that in default thereof execution may issue for the same.

And it is further ordered that the sum of P....., the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

DATED the day of 19.....

.....
Registrar of the High Court.

FORM 38D

(Order 37B rule 4)

ORDER FOR ISSUE BETWEEN JUDGMENT CREDITOR AND GARNISHEE

(Title as in Application)

Upon hearing Counsel for the judgment creditor, the garnishee and the judgment debtor and reading the affidavit of, and the order *nisi* herein, dated the day of, 19.....

It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether there was any debt due or accruing due in any and what amount from the judgment debtor to the said garnishee at the time the said order *nisi* was served.

And it is further ordered that the issue be tried at, and that the question of costs and all further questions be reserved to the judge trying the said issue.

DATED the day of 19.....

.....
Registrar of the High Court.

SECOND SCHEDULE (Order 1A rule 4(1))

<i>First Column</i>	<i>Second Column</i>
1. On filing a writ of summons, originating motion, petition or provisional sentence	P20
2. On filling a renewed writ of summons	P10
3. On filing an amended writ of summons or amended originating motion or other originating process	P5
4. On filing a power of attorney to sue or defend	P5
5. On filing resolution in support of power of attorney	P2
6. On filing notice of change of attorney	P2
7. On filing notice of renunciation of agency	P2
8. On filing any pleading	P5
9. On filing any amended pleading	P2
10. On filing a notice of motion or other application in a pending matter	P5
11. On filing founding affidavit in support of and originating motion or other originating application	P5
12. On filing any other affidavit	P2
13. On entering an appearance	P2
14. On filing a third party notice	P5
15. On filing notice of intention to bar	P4
16. On filing a request for particulars	P2
17. On filing answer to request for particulars	P2
18. On filing notice of withdrawal	P2
19. On filing a consent to judgment	P2
20. On filing entry for trial	P10
21. On filing notice of set down	P2
22. On filing notice to produce	P2
23. On filing minutes of pre-trial conference	P3
24. On filing notice for inspection, examinations and expert testimony	P5
25. On filing notice of objection to such notice	P2
26. On filing notice to admit facts or documents	P5
27. On filing notice of payment into court	P2
28. On filing a special case	P5
29. On filing a subpoena (for each witness)	P5
30. On filing a final judgment	P10
31. On filing an interlocutory judgment	P5
32. On filing a final order	P10
33. On filing order <i>nisi</i> or interlocutory order	P5
34. On filing any other order	P5
35. On filing any other notice	P2
36. On filing Registrar's Certificate of assessment	P5
37. On filing Referee's Certificate	P5
38. On filing any other certificate	P2

39. On filing any writ of execution	P10
40. Filing summons for imprisonment for debt	P10
41. For copying any document including a document lodged in the Master's office (per folio of 100 words)	P0,50t
42. For certifying copy of document (per folio of 100 words)	P1
43. For inspecting records (per record per occasion)	P1
44. For a typewritten or photo-copy of any document (per page).’ ”	P2

L2/7/136 (II)

MADE this 15th day of May, 1989.

E. LIVESEY LUKE.
Chief Justice.