



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 28 November 2019

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Government Notice

MINISTRY OF JUSTICE

No. 362

2019

AMENDMENT OF HIGH COURT PRACTICE DIRECTIONS: RULES OF THE HIGH COURT OF NAMIBIA, 2014

In terms of schedule (4) of rule 3 of the Rules of the High Court of Namibia I give notice that, under subrule (3) of that rule I have -

- (a) amended the High Court Practice Directions published under Government Notice No. 67 of 9 May 2014, as set out in the Schedule; and
- (b) determined that the amendments made to the Practice Directions come into operation on 1 February 2020.

P. T. DAMASEB
JUDGE-PRESIDENT
HIGH COURT OF NAMIBIA

Windhoek, 13 November 2019

SCHEDULE

Definitions

1. In this Schedule, the “High Court Practice Directions” means the High Court Practice Directions published under Government Notice No. 67 of 9 May 2014 as amended by Government Notice No. 10 of 1 February 2017.

Amendment of PD 1 of High Court Practice Directions

2. PD 1 of the High Court Practice Directions is amended -

- (a) by the insertion of the following definition before the definition of “Form”:
“commercial disputes” has the meaning assigned to it in PD 35B; and
- (b) by the insertion of the following definitions after the definition of “rule” or “rules of court”:

“summary assessment” means the procedure by which the court, when making an order on costs, orders payment of an amount of money as costs as contemplated in PD 35H and which, but for the summary assessment, is subject to taxation under Part 14 of the rules of court;

“Voluntary Fast-Track Procedure” means the process in terms of which certain commercial disputes are adjudicated on in the High Court in order to promote and facilitate speedy, cost effective and fair resolution of such disputes.”.

Insertion of Part 12A in High Court Practice Directions

3. The following part is inserted after Part 12 of the High Court Practice Directions:

“PART 12A COMMERCIAL DISPUTES PRACTICE DIRECTIONS

Purpose and application

35A. (1) The purpose of the practice directions contained in this Part is to create a Voluntary Fast-Track Procedure for the resolution of commercial disputes filed at the High Court.

(2) The practice directions contained in this Part only apply to civil proceedings, relating to commercial disputes, instituted by way of a combined summons.

(3) The practice directions contained in this Part apply to only the Main Division of the High Court, but the Judge-President may by way of amendment to the practice directions make the directions contained in this Part applicable to a specified division of the High Court.

Commercial disputes

35B. For the purpose of this Part, “commercial disputes” means all actions arising out of or concerned with any transaction or dispute of a commercial nature, whether contractual or not, including but not limited to -

- (a) export or import of goods or services;
- (b) transactions or disputes relating to aircrafts, aircraft engines or aircraft equipment; or the sale, leasing or financing of aircrafts, aircraft engines or aircraft equipment;

- (c) building contracts;
- (d) intellectual property rights;
- (e) exploration of oil, gas and other natural resources by any means including the use of electromagnetic spectrum;
- (f) exploitation of oil, gas and other natural resources;
- (g) transportation of goods;
- (h) agreements relating to immovable property;
- (i) insurance and reinsurance; or
- (j) civil disputes in which the amount exceeds N\$2 000 000.00 and arising out of any other activity or concern or transaction not specified in subparagraphs (a) to (i).

Essential features of Voluntary Fast-Track Procedure

35C. The essential features of the Voluntary Fast-Track Procedure are that -

- (a) it is a voluntary procedure;
- (b) the parties waive certain procedural rights by agreeing to participate in the Voluntary Fast-Track Procedure;
- (c) the parties agree to have the commercial dispute resolved through adjudication within six months of filing of the agreement referred to in PD 35D(1);
- (d) the Judge-President undertakes that the court will treat the matter subject to Voluntary Fast-Track Procedure as urgent and that the matter will be adjudicated upon and judgment will be given within six months of filing of the agreement referred to in PD 35D(1);
- (e) the Judge-President undertakes to assign at least two judges to deal with matters falling under the Voluntary Fast-Track Procedure;
- (f) the parties participating in the Voluntary Fast-Track Procedure accept that there will be no tolerance for dilatory conduct and that indulgences will only be granted in exceptional circumstances established by cogent and satisfactory proof;
- (g) the legal practitioners representing the parties participating in the Voluntary Fast-Track Procedure do make a commitment to the court that the essential features of the procedure have been explained sufficiently to the clients they are representing, and that the clients do agree to participate in the procedure with full knowledge and appreciation of the consequences; and
- (h) the parties representing themselves in matters subject to the Voluntary Fast-Track Procedure do make a commitment to the court that they understand the essential features of the procedure and that they agree to participate in the procedure with full knowledge and appreciation of the consequences.

Agreement to make use of Voluntary Fast-Track Procedure

35D. (1) After a combined summons has been issued in terms of rule 7 and the notice of appearance to defend is filed in terms of rule 14, the parties who wish to make use of the Voluntary Fast-Track Procedure must meet to agree to participate in the Voluntary Fast-Track Procedure and record their agreement in writing, incorporating the following -

- (a) that they seek the court's leave to participate in the Voluntary Fast-Track Procedure in terms of the practice directions contained in this Part;
- (b) that the plaintiff has already filed witness statements as contemplated in rule 92;
- (c) that the plaintiff has already made discovery as contemplated in rule 28;
- (d) that the defendant has already filed a plea as contemplated in rule 46 and made discovery as contemplated in rule 28;
- (e) that the defendant has already filed a counterclaim, if applicable, as contemplated in terms of rule 48 and that the plaintiff has already pleaded to the counterclaim;
- (f) that there is no further pleading anticipated and that no third party is to be joined as contemplated in rule 50;
- (g) that the plaintiff waives his or her or its rights in respect of summary judgment in terms of rule 60;
- (h) that the parties waive their rights in respect of rules 24, 25, 27, 32, 28(8) and (10), 52, 57, 58, 59 and 61;
- (i) that if expert testimony is anticipated there will be only one expert agreed by the parties and appointed by the court as a court expert as contemplated in rule 30, and in that case the parties are jointly and severally liable to pay the amount the court determines as that expert's fees;
- (j) that soon after conclusion of a pre-trial conference, the parties will subject themselves to court-connected mediation referred to in rules 38 and 39 by a mediator assigned by the Judge-President;
- (k) that any matter in the commercial dispute will be subject to summary assessment of costs in terms of PD 35H; and
- (l) that the agreement be made an order of court.

(2) The agreement referred to in paragraph (1) must be submitted to the managing judge on e-justice in terms of the rules and the registrar must re-allocate the case to a managing judge specially designated by the Judge-President.

(3) The managing judge must issue a case plan order in terms of in rule 23(2), only if satisfied that the agreement filed by the parties complies with the requirements of paragraph (1).

(4) The managing judge must set a date for a pre-trial conference and the pre-trial conference must take place not later than 30 court days from the date of issuing of a case plan order in terms of paragraph (3).

(5) Each party participating in the Voluntary Fast-Track Procedure must issue a notice in terms of subrule (1) of rule 94 not later than 10 court days prior to the pre-trial conference and the party who, in terms of subrule (2) of that rule, wishes to make an admission in response to the notice must do so not later than five court days before the pre-trial conference.

(6) A party who wishes to serve a notice in terms of subrule (1) of rule 95 must do so within the time limits provided for on subrule (2) of that rule, except that the date mentioned in subrule (2) must not be later than 10 court days prior to the pre-trial conference.

Special case

35E. (1) The parties whose commercial dispute is subject to a Voluntary Fast-Track Procedure may ask the court to determine the dispute between them by way of special case, if -

- (a) the proper construction of a document constituting the agreement between the parties is the only issue in dispute between the parties; and
- (b) there is no dispute between the parties as to the existence or validity of the agreement,

and in that case rule 63 applies with changes required by the context.

(2) In addition to complying with rule 63, the parties to the special case contemplated in this practice direction must -

- (a) file on the electronic court file, an electronic copy of the document contemplated in paragraph (1)(a) and have either the original or a certified copy available for inspection on the day of the hearing;
- (b) clearly set out in the special case, the clause or clauses in the document contemplated in paragraph (1)(a) that require the court's construction; and
- (c) set out separately and distinctly the construction each party contends in respect of the document contemplated in paragraph(1)(a).

(3) In matters subject to a special case in terms of this practice direction, it is not necessary for the parties to lead evidence.

Set down

35F. (1) The managing judge must set down the matter subject to the Voluntary Fast-Track Procedure for trial within 60 court days after the date of the pre-trial conference referred to in PD 35D(4).

(2) The requirement in paragraph (1) may only be deviated from with the written approval of the Judge-President regardless of whether the parties consent to such deviation.

Delivery of judgment

35G. Judgment in a matter subject to the Voluntary Fast-Track Procedure must be handed down within 60 court days after the completion of the trial.

Summary assessment of costs

35H. (1) In matters subject to the Voluntary Fast-Track Procedure, summary assessment of costs must be done within 15 court days after delivery of the judgment.

(2) When carrying out a summary assessment of costs in terms of these practice directions, the managing judge must consider whether the amounts claimed are fair and reasonable having regard to -

- (a) the value of the claim;
- (b) any reasonable steps either party could have taken to curtail costs, having regard to the overriding objectives set out in rule 1(3) of the rules of court;
- (c) the complexity or otherwise of the matter; and
- (d) the time it took to have the matter finalised.

(3) When carrying out a summary assessment of costs for purposes of a matter subject to a Voluntary Fast-Track Procedure, the judge is not required to go into granular details as is expected of a taxing officer.

(4) It is the duty of the parties or the legal practitioners, if they are represented, to assist the court in making a summary assessment of costs in every case filed in terms of the practice directions contained in this Part, and in particular, a party who intends to claim costs must prepare a written statement of the costs the party intends to claim, showing clearly and separately -

- (a) the identity of instructing and instructed counsel, where retained, and the fees of each;
- (b) the nature and amount of any disbursements claimed;
- (c) the value added tax registration number, if registered for value added tax; and
- (d) value added tax to be claimed on the amounts to be claimed.

(5) The statement of costs referred to in paragraph (4) must be as near as possible to Annexure “12” and must be signed by the party or the legal practitioner representing the party.

(6) During the summary assessment of costs the parties must have proof of disbursements including instructed legal counsel’s fees, and must provide such proof to the court, if the judge wishes to see such proof.

(7) Both parties to matters subject to Voluntary Fast-Track Procedure must deliver their respective statements of costs not less than two court days prior to the hearing of the matter.

(8) Determination of the amount of costs is in the sole discretion of the court, based on the process filed of record and any supplementary proof requested by the court, including proof of disbursements.

(9) The amount of costs fixed by the court during summary assessment of costs is not subject to review in terms of rules 75, 76 or 125.

(10) If the court makes a summary assessment of costs at the finalisation of matters subject to the Voluntary Fast-Track Procedure, the court must specify separately the fees allowed as instructing counsel’s charges, instructed counsel’s fees, other disbursements and value added tax, if applicable.

(11) The court awarding costs must not make an order for assessment of costs by a taxing officer.

(12) If summary assessment of costs is appropriate, but the court awarding costs is unable to do so on the day, the court must give directions as to a further hearing before the same judge.

(13) Where a court makes a summary assessment of costs, all statements of costs and costs estimates to be placed before the judge must be filed on the court file.

(14) When the amount of costs to be paid has been agreed between the parties, the order for costs must state that the order is by consent.

(15) Where a judge is to make an order, which is not by consent, he or she must, so far as is practical, ensure that the final amount is not disproportionate and unreasonable, having regard to the overriding objectives set out in rule 1(3), read with PD 35C and PD 34D, notwithstanding the absence of a challenge to individual items constituting the amount claimed.

(16) The court may refuse to confirm the amount of costs, if, in the opinion of the court, it is disproportionate and unreasonable, even if the parties have agreed to such amount.

(17) When considering whether an amount is disproportionate and unreasonable, the court must take into account any relevant factors, including the fact that the paying party is not disputing the amount of costs.

(18) Annexures B-E of the rules of court apply with changes required by the context to any fees, tariffs and costs charged in terms of this practice direction.

Forms

35I. Annexure “12” is provided as a guide to litigants representing themselves and legal practitioners representing litigants and must be used, with changes required by the context, as near as possible to the requirements of the particular practice direction to which the Annexure relates.

Insertion of Annexure “12” in High Court Practice Directions

4. The following Annexure is inserted after “Annexure “11” of the High Court Practice Directions:

“Annexure “12”

SUMMARY ASSESSMENT OF COSTS

**IN THE HIGH COURT OF NAMIBIA
(Main/Northern Local Division)**

In the dispute between:	Case No:	
		Plaintiff
		And
		Defendant

Summary assessment of costs before the Hon. Justice	
In the application for <i>(delete if not applicable)</i>	
Heard on (specify hearing date(s))	
Account prepared for costs, due and payable to <i>(if so awarded)</i>	Name of Law firm
VAT registration number of Law Firm	

Costs Award:

Costs is awarded in favour of the	Plaintiff(s)	Defendant(s)
On a scale as between Party and Party	Attorney (Legal Practitioner) and Client	Attorney (Legal Practitioner) and own client

1. Instructing Counsel:

1.1	Full names		
	Capacity		
	Date of admission as legal practitioner		
	Law firm name		
	Name of entity registered for VAT		
	VAT Registration number		
		Amount Charged	Amount Allowed
1.2.	Pre-litigation attendances (itemise)		
	Other attendances (itemise)		
	Preparation of any pleading (itemise)		
	Court attendances (itemise)		
	Research, preparation of legal argument	Total Hours	
	Total Fees allowed excluding VAT and disbursements:		
	Disbursements, including VAT on disbursement item, where applicable, excluding instructed counsel (itemise)		
	Total Disbursements allowed		

2. Instructed Counsel:

2.1	Full names	
	Capacity	

	Date of admission as legal practitioner			
	Law firm name			
	Name of entity registered for VAT			
	VAT Registration number			
			Amount Charged	Amount Allowed
2.2.	Attendances and consultation(s) upon accepting brief (itemise)			
	Drafting and or settling pleadings, including opinion witness statements and expert witness statements (itemise)			
	Research and Preparation of legal argument	Total Hours		
	Court attendances (itemise)			
	Total Fees allowed excluding VAT and disbursements:			
	Disbursements, including VAT on disbursement item, where applicable, excluding instructed counsel (itemise)			
	Total Disbursements allowed			

NOTE WELL

1. Each party must complete and file on the court file the bill of costs prior to commencement of the final hearing date;
2. Parties must complete the blank areas;
3. Grey areas will be completed by the court upon taxation; and
4. The Judges' Chambers will be responsible for filing the taxed bill of costs on the court file.

Signed at on this day of 20

Name:

Legal Practitioner on behalf of the

3. Allocator:

	Amount Allowed
Instructing Counsel: Total Fees allowed excluding VAT and disbursements:	
Instructed Counsel: Total Fees allowed excluding VAT and disbursements:	
Subtotal of Fees Allowed in respect of Instructing and Instructed Counsel (excl VAT)	
VAT on Subtotal of Fees Allowed in respect of Instructing and Instructed Counsel	
Instructing Counsel: Total Disbursement Allowed	
Instructed Counsel: Total Disbursement Allowed	
TOTAL AMOUNT TAXED AND ALLOWED	

Taxed in the amount of N\$ (..... Namibia
Dollars Cents) on this day of
20

The Hon. Justice
