



HIGH COURT OF NAMIBIA

JUDGMENT DRAFTING STYLE GUIDE

We have noticed a variety of judgment styles from the different courts, and also from individual Judges. The High Court of Namibia has adopted this style guide, provided by Juta, in working towards a more uniform style. In the age of internet access to judgments, a more consistent style and layout would improve accessibility of the data on electronic resources, and make reading and research of judgments easier for the public, as well as law professionals.

Website managers prefer to be emailed judgments in Word files, as soon as possible after handing down, either in batches or in single files, whichever is convenient.

The email address for new judgments are the following:

Juta : lawreports@juta.co.za

SAFLII : data@saflii.org

All judgments, whether marked reportable or not are to be provided to the various website managers.

E E SCHICKERLING

CHIEF REGISTRAR OF THE HIGH & SUPREME COURT

Endorsed by:

THE HON. MR. JUSTICE DAMASEB

JUDGE PRESIDENT OF THE HIGH COURT OF NAMIBIA

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TYPING

1 Formatting

The standard format that comes with a new Word document is normally sufficient. There is no need to format the document, and doing so can sometimes introduce codes that interfere with the conversion of the text to electronic products such as CD disks and internet websites.

2 Font

(a) Arial, regular.

(b) Text: Arial 12 pt;

(c) Quotations: Arial 11 pt;

(d) Footnotes: 10pt.

(e) Short quotations forming part of a sentence: same as text. Where emphasis is added to a quotation this should be noted as 'emphasis added' or 'my emphasis' in the same font as the quotation and on the same line as the quotation ends.

(f) The text, quotations and footnotes should all be in the same font type.

3 Line spacing

(a) Line spacing should be 1.5, including quotations.

(b) A line space should be used between paragraphs.

4 Indents

(a) The second line of a paragraph should not be indented; this happens if the paragraph numbers are formatted.

(b) Do not indent quotations or parts of paragraphs. They should have the same justification as does the text, save that where a quotation starts with a new paragraph in the original, use a tab before the opening quotation mark.

(c) WORD makes individual forms of indentation difficult: it reformats your documents and creates rules of its own. Again, that is a good reason to use as few general formatting instructions as possible.

(d) When numbering within a paragraph, use the tab key to indent the first and next spaces. Do not use numerals for points within a paragraph: rather use (a) (b), (c) etc.

5 Justification

Set at 'full'.

6 Pagination

- (a) Page numbering should be inserted at the start of a judgment, save that the covering page should not be numbered.
- (b) WORD can be set to start with page number 2 on the first page of the text.
- (c) Page numbers should be on the right-hand side at the top of the page.

7 Spacing between words and numerals

- (a) Only one space should be left between words, or the end of a set of numbers where appropriate, even after a full stop.
- (b) In citing law reports or journals a single space should be left between each set of numbers and words: eg (we are using the hash sign, #, to indicate a single space; it is for illustration purposes only):

Nhlapo#v#Smith#2003#(3)#SA#197#(SCA)#at#203A-D

Nhlapo v Smith 2003 (3) SA 197 (SCA) at 203A-D

X#v#Y#2003#(1)#SA#210#(SCA)#at#220B-221B.

- (c) The use of 'at' is necessary when referring to page numbers of a judgment. But do not use 'at' if the reference is to a paragraph number.

Smith v Jones 1988 (1) SA 123 (A) para 13

Smith v Jones 1988 (1) SA 123 (A) at 131C

- (d) A single dash is used between the marginal letters and the next number.
- (e) There is no space between the page number and the marginal letters.
- (f) Do not use a stop after the 'v' nor use 'versus' instead of 'v'.
- (g) A space must be left between initials (M M Corbett) but not between the abbreviations for titles (Corbett CJ).
- (h) When referring to a paragraph of another judgment, no square brackets are used:
 - See *Smith* para 34.
- (i) Where one refers to a paragraph of one's own judgment, or a concurring or dissenting judgment, then use square brackets:

I now turn to the second defendant's allegations, as described in paras [34] and [35] above.

STYLE

8 Spelling

The Shorter or Concise Oxford dictionary is recommended, and it is not advisable to use American spelling. The spell checker should be set to 'English (South African)'. One of the most debatable spellings relates to 'ize' or 'ise' at the end of certain words (eg realize, verbalize, fantasise - the only word that should never have a z is 'analyse'). Juta prefers 's'. 'Moneys' is preferable to 'monies'. And 'email' (as one word) is now used by Juta.

9 Quotation marks

- (a) The opening and closing quotation mark must be single: ' . . . '.
- (b) Use double quotation marks for quotes within a quote (" . . . ").
- (c) Where a quotation is part of a sentence only, the full stop should be placed outside the last quotation mark. Eg,

Smith J said that it was his 'duty to apply the law'.

Contrast:

Smith J said: 'It is my duty to apply the law.'

- (d) Where a passage from a quotation is omitted indicate this with the use of ellipses, that is, stops separated by spaces (using # to indicate a space the ellipses should look like this.#.#.# . Do not simply type It should be
- (e) Where words within a sentence are omitted use three stops: (. . .).
- (f) Where the end of a sentence is omitted use four stops: eg 'The cases of interest include . . . and X v Y'. 'These cases include'
- (g) Refrain from using (sic!) to draw attention to mistakes in material quoted. If the error is a typographical one, correct it without mentioning it. It is only if you believe that someone will think that the error is yours that you should use the exclamation.

10 Paragraphs

- (a) Judgments should be written with numbered paragraphs. This makes it much easier for later reference to sections of the text.
- (b) The paragraph number is inserted between brackets [*].
- (c) For ease of reference, there should not be more than one paragraph after each number.
- (d) All paragraphs should commence on a new line, with a space before it.

(e) The abbreviation for 'paragraph' is 'para' (plural: paras), except where the word starts a sentence, in which case it is in full.

(f) If there is more than one judgment in a case, the second judgment's paragraph numbers should begin where the first ended, ie they should not start again at [1], and similarly for third or more judgments. Generally, dissents should follow the majority judgment/s: but if a dissent sets out the facts more fully than the majority judgment does then it makes sense to put it first, provided that it indicates at the outset that it is a dissent (see the form of judgment set out below).

11 Italics

(a) These should be used only for emphasis, case names, book names, the names of law journals, the names of ships and for foreign words. The title of an article within a publication is not in italics but is enclosed in single quotation marks.

(b) Italics are no longer used for Latin terms that have become part of common parlance: eg, onus, quantum, a quo, prima facie, bona fides, male fides.

(c) Latin abbreviations are not italicised. Thus 'ie', not '*ie*'. Terms referring to the location of references are also not italicised: Id, supra, infra, op cit.

(d) Do not put quotations (wholly or in part) in italic or bold font or underline them unless they so appear in the original or unless a part requires emphasis.

(e) Use italics for emphasis sparingly and do not use bold font or underlining for this purpose.

(f) If something is emphasised in a quotation, and the quotation already contains italics, use underlining for your own emphasis.

(g) If emphasis has been added, this should be stated at the end of the quotation as set out above in para 2(e).

(h) If something is interposed in a quotation, place it between square brackets [*].

(i) Paragraphs in statutes that use lower case letters should be italicised, along with their enclosing brackets:

See s 4(1)(b) and s 11(2)(e)(ii).

12 Numerals

(a) Numbers under and including ten should be typed in full: eg, 'there were eight appellants.'

(b) Numbers over ten should be in numerical form: eg, 'there were 21 appellants'.

(c) When typing page numbers for citations insert one dash between the numbers to indicate more than one page: 7-10; 21-23; 17-19; 200-201; 11-12 and so on.

Page numbers for law reports are referred to in full: *Smith* at 234-235.

(d) Where a sentence starts with a number, the number must be typed in full in all cases.

(e) When referring to an amount of money, commas should not be used to indicate thousands. Juta's convention is not to use spaces for up to 4 figures, but to use spaces from 5 figures and higher:

1000	10 000	100 000
N\$4239	N\$23 567,01	N\$329 200

Do not refer to cents when there are none: N\$5, N\$100, but N\$5,36 or N\$100,45.

'N\$3 million' should be used instead of N\$3m or N\$3 m: 'm' is for metre.

(f) Words should be matched with words: eight kilograms.

Figures should be matched with symbols or abbreviations:

34 kg 12 mm 100 m. A space is used before the number and the unit.

40 l ('l' for litres in italics) 40 ml ('ml' not italicised).

(g) Commas are used to indicate decimal fractions: eg, 10,5 per cent.

(h) When numbering points, or within a paragraph, do not use a stop after the number.

(i) Since paragraphs are numbered [1]-[*], the numbering within the text should be different, preferably '(a)-(z)' and, for sub-points, '(i)-(x)'. Do not use [*] within a paragraph.

(j) Avoid two numbered lists within the same paragraph. And if a second list is not subject to the first, it should have the same type of numbering and not a different kind. Thus:

'The plaintiff suffered the following injuries: (a) . . . ; (b) . . . ;' etc.

'The damages suffered by the plaintiff were (a) . . . ; (b) . . . ' and not (i) . . . ; (ii) . . . ' etc.

(k) Time is better written as 13h20 (not 13:20). The colon between numerals can be used to represent ratios: eg 'An apportionment of 70:30.'

13 Punctuation

(a) If a dash is used between words instead of commas or parentheses, it must be a long (en) dash, created by two dashes and a space before and after: 'he said – in all seriousness – that . . . '.

(b) Hyphens should be one (short) dash only.

(c) Use a comma to separate words of the same kind, to separate clauses from sub-clauses, or when the natural rhythm of a sentence requires it. Test the need for a comma by reading a sentence aloud and determining when you pause (take a breath) to make sense of the meaning.

(d) Semi-colon: this is used to separate clauses of similar importance and construction and in long lists of case names or other things.

(e) A full sentence between parentheses (brackets) ends with a stop between the parentheses. For example, (The court below overruled this decision.)

(f) Introducing lists: use a colon.

(g) At the end of each listed item use a semicolon. For example, The plaintiff suffered the following injuries:

- (i) a head injury;
- (ii) a broken leg; and
- (iii) a broken arm.

Note the position of the 'and'.

(h) Introducing a quotation: use a colon: The judge said (at 253B): 'He was a fool.'

(i) But if the quotation forms a continuation of your own sentence, do not use a colon: The judge said (at 253B) that he '. . . was a fool'.

(j) A colon within a sentence is not followed by a capital letter. It is different if the colon precedes a list or a quotation.

14 Abbreviations

(a) Never start a sentence with an abbreviation (subject to what is said in relation to footnotes, below). For example, 'Section 6 of the Act . . . '.

(b) For 'section' in an Act, the abbreviation is simply 's', not in capitals. For a regulation use 'reg'.

(c) Subsections are sometimes abbreviated as 'ss' but this may be confused with 'sections' for which it is also the abbreviation. It is best to type 'subsec', or 'subsecs'. Juta uses 'ss' for sections.

(d) Do not italicise abbreviations even if they are Latin: eg, ie, op cit.

(e) Do not use stops when using abbreviations: *not* e.g., i.e, or after numbers.

(f) When referring to a percentage in a sentence use 'per cent' and not %. The symbol belongs to tables of figures and arithmetical calculations.

(g) The standard abbreviations for the courts are set out below.

15 Apostrophes

The modern practice is not to use an apostrophe in abbreviated plurals (eg MPs, CVs) or with dates (eg 1990s instead of 1990's).

16 Capital letters

(a) **Names:** The names of people and of institutions should be capitalized: eg, the Supreme Court of Appeal; Ms Mary Nhlapo; the Minister of Labour; the Supreme Court (UK).. But if simply referring to a minister, or a judge or a magistrate, use lower case: the judge said; the minister refused; the registrar etc. 'The Meat Board' but 'the board'.

(b) **Courts:** It is preferable to use lower case wherever possible: so, the court of first instance; the trial court; *this court*; that court; the regional court; the high court. But when referring to a court by name, use capitals: the Constitutional Court; the North Gauteng High Court; the Supreme Court of Appeal.

(c) **In headings and titles:** When using headings, either put all but the first letter of the first word in lower case, or use capitals for all words except prepositions and conjunctions. When referring to book or article titles, the modern style is to use lower case throughout.

(d) **Emphasis:** do *not* use upper case for the sake of emphasis.

(e) **Names of judges or lawyers:** do *not* use upper case. As a rule, use such names sparingly.

(f) **Afrikaans names in English text:** Where the full name or a title is given, do not use a capital for the 'van' or the 'du'. But where only the surname is used, use a capital: eg – 'Mr van der Merwe gave evidence . . . '.; but, 'when Van der Merwe gave evidence . . . '.; 'Ms du Plessis said . . . '.; but 'Du Plessis stated . . . '.; C G van der Merwe wrote that . . . '.; but 'See Van der Merwe op cit.' (In UK English the convention is different and the 'van' etc is always in the lower case, except at the beginning of a sentence.)

17 Case references

(a) The case annotations are an important research tool. The value of the annotations is diluted when multiple cases are referred to in support of trite points. If authority is required, it is suggested that only the leading or most cogent authority is used.

- (b) Do not write ‘in the case of *X v Y*’. This is tautologous. Rather use ‘In *X v Y*’ or ‘*X v Y* decided that . . .’.
- (c) The name of a case should be exactly as it appears in the law report the first time it is cited, with the addition of the neutral citation. Where there are several parties the reference in the reports will be to ‘others’ or ‘another’. The preferred citation is ‘*Smith & others v Nhlapo & another*’. In subsequent references to a case omit ‘other’ and ‘another’ unless either is necessary to make sense of what is being written.
- (d) The first time the case is mentioned, the full case name and citation should appear in the judgment text. If the writer prefers to use only the case name, and to put the citation (eg 2010 (3) SA 232 (GNP)) in a footnote, then we ask that the full case name and citation be used in the footnote. When the case name and citation are split between judgment text and footnotes it makes the compilation of annotations and the conversion to electronic databases more difficult.
- (e) Subsequent references may also be abbreviated: in *Smith*; in the *Nhlapo* case; in *Smith v Nhlapo*.
- (f) It is not necessary to use ‘above’ or ‘supra’ unless there is some distance between the original reference and this one. ‘Above’ for ‘supra’; ‘below’ for ‘infra’, etc, are quite acceptable, and also clearer. Similarly use ‘in this case’ or ‘in this matter’ rather than ‘in casu’.
- (g) If references to the same case are far apart, the full reference should be given again (not in the text, but in a footnote) including the citation, obviating the use of ‘above’.

18 References to foreign judgments

The convention in Commonwealth countries in citing cases differs from ours. It can best be illustrated by reference to some citations:

Canadian Shredded Wheat Co Ltd v Kellogg Co of Canada Ltd (1938) 55
RPC 125 (PC).

Canadian Shredded Wheat Co Ltd v Kellogg Co of Canada Ltd 55 RPC 125
(PC).

DRISTAN Trade Mark [1986] RPC 161(SC)

Major v Franklin [1908] 1 KB 712

Shell Co of Australia Ltd v Standard Oil (Australia) Ltd (1963) 109 CLR 407

The rule is this: if the date of the report is essential, it is in square [#] brackets; if it is optional, it is in round brackets. For instance, if the yearly numbered volume is given, the year is in round (#) brackets. If there is more than one volume per year, the year is again in [#].

19 Footnotes

(a) These should be used for references and citations only and not for any discussion. They are otherwise distracting. Quotes from legislation should only be included where essential for interpretation. A summary is preferable, or a rendition in non-legislative language. Another alternative is to quote the part essential for the judgment in the text, and give the full text in the footnote. It makes for easier reading.

(b) The text of each footnote must start with a capital – even if it is an abbreviation (Eg, See, Cf) – and end with a stop.

(c) There is a difference in meaning between these abbreviations and they should be used carefully and not interchangeably. Eg = for example; see = have regard to; cf = compare. Cf is often used to mean ‘see also’: this is confusing. Cf means compare: that may mean see similarly or contrast. Use cf, thus, to mean contrast, and see to mean see similarly.

(d) If using footnotes for case or statute citations do not keep repeating the full citation unless it is more than a page away from the other reference. Rather use ‘X v Y above’, or ‘X v Y at 47’ or ‘X v Y para 15’.

(e) Do not use a stop after the footnote number.

20 Names of courts

The names of the high courts were changed in 2012.

Name of court
High Court of Namibia, Main Division
High Court of Namibia, Northern Local Division

21 Citation of law reports

(a) The conventional citations for the SALR is *Jones v Mpati* 2003 (6) SA 1027 (SCA). Note use of parentheses, and absence of stops after abbreviations. The All South African reports are referred to differently: [2003] 4 All SA 255 (SCA).

(b) When referring to judgments give the paragraph number rather than the page number. This will enable a reader to find the text in any of the law reports series or on the internet databases such as Safflii. Also use the neutral citation where provided: this facilitates access on the internet. All Constitutional Court and Supreme Court of Appeal judgments contain the neutral citation. The correct reference is to be found at www.safflii.org.za.

(c) Do not write 'at para' but simply 'para': *J v M* para 22. Do not use brackets for the para number. If referring to a page number the use of 'at' is required. Also use marginal letters when not referring to a para number. Note that unless a citation or quotation is one line only there should always be two marginal letters: '*S v J* at 123A-B; or '123J-124B'. Rather use '123-124' instead of '123-4'.

(d) Where there is more than one report of a case the writer should choose whether to include all citations. Since the SALR are still the most commonly used and comprehensive reports, they should be referred to first.

(e) If both are used, give the court name followed by the SALR citation, with the additional citations following, without repeating the court abbreviation:

Smith v Jones 2003 (1) SA 123 (SCA); 2003 (2) BCLR 234; [2003] 4 All SA 345.

(f) In referring to a judgment and identifying the judge, do not use 'Corbett J, as he then was'; instead simply use 'Corbett J'.

(g) The Industrial Law Journal is a journal, not only a law reports series, therefore must always be italics, ie: *NUMSA v XYZ* (2011) 32 *ILJ* 320 (LC).

22 Citation of statutes

(a) The first time a statute is referred to the short title should be set out in full: 'The Prevention of Organised Crime Act 29 of 2004'. (Do not use 'Act **No** 29 of 2004.) Thereafter use 'the Act' or where more than one Act is discussed in the judgment give it a specific name: 'POCA'. However, be careful of contrived acronyms. It is unhelpful to refer to 'Act 29 of 2004'.

(b) Do not define a statute by the use of an acronym if it is the only one referred to in the judgment or unless it is necessary for an understanding of the judgment. ‘The Act’ suffices.

(c) It is not necessary to give the full reference for the Constitution, ‘the Namibian Constitution’ will suffice, but if it is appropriate to do so it should be ‘The Namibia Constitution Act 1 of 1990’.

23 Citation of court rules

(a) Magistrates’ courts rule 33(2).

(b) High Court Rule 30(1)

(c) Supreme Court Rule 5(3)

24 Citation of regulations

Rules made under the Competition Act, 2003, GN 41, GG 4004, 3 March 2008.

25 Citation of textbooks

(a) When referring to a book for the first time, give the full name of the book in italics, preceded by the author/s’ names as set out on the cover page of the book. It may seem cumbersome, especially where there are several authors who use their titles (Professor, Dr) on the cover page or who use first names rather than initials, but it is a simple matter of accuracy and courtesy.

(b) Subsequent references may be abbreviated: ‘Van der Merwe et al *Servitudes* p 135’.

(c) If the book is in a second or subsequent edition that should be indicated by ‘2 ed’ or ‘5 ed’ etc. It is sometimes useful to indicate the year of publication. Do so after the name of the book, in parentheses. Examples: R H Christie *The Law of Contract* 5 ed p 255; D T Zeffertt and A P Paizes *The South African Law of Evidence* 5 ed (2009) at 93.

(d) It has been a common practice to use ‘p’ before the page number: *Workplace Law* p 78; however, it would be more consistent and easier to use ‘at’:

Workplace Law at 78.

(e) *Lawsa* should be referred to as follows: 5 *Lawsa* 2 ed para 45. The name is not in capitals and the reference to the first editor, Joubert, is unnecessary unless the writer prefers to give the full name of the work, in which event it should be rendered as Joubert (ed) *The Law of South Africa* (2 ed) vol 5 para 45. Note that the latest *Lawsa* publications are referred to as second editions (and not ‘reissues’).

(f) Be kind to contributors to *Lawsa* and attribute the work to them: eg ‘In the title on ‘Cession’, 2 *Lawsa* (reissue or 2 ed, as the case may be) para 45, P M Nienaber stated ‘. . .’.

(g) Works updated by writers other than the original author can be problematic: use the title page to see how the work should be cited. The first author’s name often becomes part of the title: T A Blanco White *Kerly’s Law of Trade Marks and Trade Names* 9 ed (1966) p 20.

26 Citation of articles

(a) Cite the name of the author as it appears in the journal, the title of the article in quotation marks, and then the reference to the journal, the name of which must be in italics.

(b) There are certain commonly accepted abbreviations for the journals: eg *SALJ*, *THRHR*, *SAJHR*, *TSAR*, *Modern LR*, *LQR*, *Stellenbosch LR*.

(c) If the journal is not well known, its full name should be given, eg, *European Intellectual Property Review* instead of *EIPR*, unless both are given.

(d) Adopt the convention of the journal when referring to volume numbers and years of publication. The first page number should follow and then specific references: A J Bloggs ‘The art of waffling’ (2000) 117 *SALJ* 206 at 244. Note that the article name is not in italics and is in quotation marks.

(e) Subsequent references may be abbreviated: ‘Bloggs op cit at 233’ or simply ‘Bloggs at 233’.

27 Headings in judgments

(a) These have become increasingly common. Use them if you wish to make the structure of a judgment plain to the reader, but keep them as simple as possible and use subheadings sparingly.

(b) The heading precedes the paragraph numbers.

(c) A main heading is underlined, with normal font, lower case except for the first letter, and no full stops are needed at the end of the heading.

Subheadings are not underlined, but italicised:

The respondent’s defence

That the applicant’s claim has prescribed

[34] The respondent has . . .

. . . .

That causation is too remote

[42] Turning now to the . . .

28 Referring to parties, witnesses and counsel

(a) When readers engage with the case for the first time it can be confusing when the parties are referred to as first applicant, second respondent etc. The easiest, and least likely to lead to confusion, both in writing and reading, is to refer to parties by name:

‘Mr X, the plaintiff in the High Court and the present respondent, X alleged that’ And then to refer to the parties by name. Descriptive names can also make understanding easier for the reader, eg: the bank, the purchaser, the estate agent.

Where the matter requires it (eg an issue of practice turning on the rules of court) then it may be necessary to refer to the parties as the appellant or the applicant and the respondent, or the plaintiff and the defendant.

(b) It is not necessary to repeat the title (Mr, Ms, or whatever) provided that, as a matter of courtesy, it is used when the person concerned is referred to for the first time.

(c) The use of first names should be avoided unless required for the sake of clarity.

(d) Reference to the names of counsel is a matter of personal style. The identity of counsel should not, however, obtrude, hence the preference for referring simply to ‘counsel’ and not to their names. And counsel should not be referred to as ‘Advocate’ or as ‘Dr’. Although there is an increasing trend to use the word ‘advocate’ as a title, this is unacceptable. We do not refer to ‘Attorney X’ or ‘Plumber Y’ or ‘Engineer Z’. The use of the title is an affectation and we must avoid it.

29 Gender

(a) This is a matter of personal style. Lord Hoffman recently wrote this:

‘In the case of a patent specification, the notional addressee is the person skilled in the art. He (or, I say once and for all, she) comes to a reading of the specification with common general knowledge of the art.’

However, if you wish to be inclusive use ‘he or she’ consistently throughout. ‘He/she’ using a slash should be avoided and ‘she or he’ sounds contrived.

(b) Do *not* use the style adopted in new legislation – inappropriate use of the plural (eg ‘If any person is affected *they* may . . . ’). The plural may sometimes be useful (‘Persons affected may . . .’).

(c) Sentence reconstruction may assist in this regard. Instead of ‘If a person breaches a contract, he or she may be liable . . . ’ write ‘A person who breaches a contract is liable . . . ’. (It is surprising how many sentences begin with ‘if’.)

30 Neutral citation system

(a) A neutral citation is a court-approved system of citation, is independent of the series of law reports or other publication, and unique to each judgment. Each written judgment from a court is assigned a sequential number, starting from 1 at the beginning of each calendar year. This system of citation is in line with increasingly accepted international practice, and renders such citation more amenable to electronic resources.

(b) At the same time we propose that we also provide for a simplified method of citation, ie, simplifying the case name for the sake of publication and search. This does not mean that the cover page of the judgment should not reflect the full name of the case as it appears from the record.

(c) The following principles in respect of the neutral citation to be applied to judgments of the High Court of Namibia apply:

- (i) citation of parties:
 - Only the name of the 1st party is to be used with no further reference to “and others” or “another;
 - In the event of a natural person, only the surname is to be used
 - parties citation is to be printed in italics
- (ii) the correct case number, including the acronym is to appear in round brackets ()
- (iii) the year during which judgment is delivered should appear between square brackets []
- (iv) From 16 September 2012 the following acronyms in upper case will apply:
 - Main Division: NAHCMD
 - Northern Local Division: NAHCNLD
- (v) sequential number:
 - Each of the divisions of the High Court will keep a separate register containing it’s own sequential numbers starting each year at 1

- The sequential number allocated to each judgment should be obtained on the court day before delivery of the judgment, by inserting the neutral citation of the judgment to be delivered next to the next available sequential number
 - The neutral citation appearing on the judgment should be updated, before delivery of same
- (vi) Date of delivery of judgment
- The date of delivery of the judgment should be inserted between round brackets ()
 - The date format to be used is the following: 14 February 2012
 - Abbreviations for the month are not allowed

(d) An example of the neutral citation to be followed is set out in the example of a cover page below.

(e) With the exception of any forward slash which is to be substituted with a hyphen, the name given to the electronic document containing a judgment should correspond with the neutral citation, i.e. Kersey v Wildey Instruments (Pty) Ltd (I 456-2009) [2012] NAHCMD 34 (14 February 2012)

31 Neutral citation and Ex Tempore Judgments

- (a) Judgment delivered *Ex Tempore*, must be transcribed immediately after delivery
- (b) Both a hard copy and an electronic copy of the transcribed *Ex Tempore* judgment must be handed to the judge, for corrections
- (c) The judgment so transcribed should not contain the usual line numbering unique to transcribed court records
- (d) The format of the *Ex Tempore* judgment should comply with the provisions of this document
- (e) Once the corrections and formatting of the *Ex Tempore* judgment has been done, a sequential number corresponding with the year of delivery should be obtained and the relevant entry is to be made in the applicable register
- (f) The provisions of 31 hereinbefore and 32, 33 and 34 hereinafter, in particular should be adhered to
- (f) Upon completion of the judgment, it should be printed signed and processed as is the case with all written judgments

32 Issues arising from publication on the internet

(a) Divorce and sexual assault judgments, and those involving minors need to be edited before being released to Juta, LexisNexis and Saflii. The convention is now to reduce the parties' names to the first letter of the first name and the first letter of the surname: John Smith v Mary Van der Merwe JS v MV.

The old practice of using only two letters can lead to confusion between cases e g with a criminal case of S v

(b) Within the judgment text the names of complainants in sexual assault cases, and the names of minors (whether complainants, witnesses or children of the parties) should be reduced to one or two initials. Care must be taken not to leave in addresses, names of schools or similar details that could identify the minor.

(c) However, in the judgments handed down to the parties, the full information should be set out so that parties, accused and complainants do not see themselves referred to as initials.

33 The form of judgments and cover pages

(a) These days judgments are widely distributed by email and are also easily accessible on the internet. They should thus contain complete details and be set out in a way that facilitates access for reading and research.

(b) All judgments, reportable and not reportable must contain, in cryptic form, the law and main issues decided on, in a flynote. The flynote is necessary for website publication, enhancing search abilities.

(c) All judgments, reportable and not reportable must in addition to the flynote contain a brief summary of the main issues and the law on the first page. This is most helpful to the general public and to the law reports editors.

(d) The High Court of Namibia has adopted the SCA format by setting out the order before the judgment/s (and again at the end). This makes reading for the public easier, and allows the reader to concentrate on the effective part of the judgment.

(e) The judgment follows immediately on the order and should indicate the concurrence or dissent at the beginning of a judgment and not at the end.

(f) The headings of the other judgments must indicate whether they are concurring, dissenting or concurring in part.

(g) The hearing and judgments dates should appear on the first page.

- (h) All judgments must reflect whether it is reportable or not reportable. If the judgment is considered of special interest, it must be marked reportable.
- (i) No judgment may be handed to any party or any other person or entity unless it complies fully with the provisions of paragraph 33

34 Counsel, Instructed Counsel and Legal Practitioners firms

- (a) Counsels' details and the instructing Legal Practitioner should appear at the end of the judgment, stating clearly who appeared for whom and whether such appearance is on instructions of or not.
- (b) Counsel should be cited without any titles provided that SC will appear after the name of Senior Counsel appearing.
- (c) Details of Counsel are to be reflected according to the circumstances of each particular appearance.

- Counsel appearing without instructed Counsel:
M BÖTTGER
Of LorentzAngula Inc, Windhoek

- One instructed Counsel:
E SCHIMMING-CHASE
Instructed by LorentzAngula Inc, Windhoek

- More than one instructed Counsel:
T FRANK SC (with him J Schickerling)
Instructed by LorentzAngula Inc, Windhoek

- More than two instructed Counsel:
T FRANK SC (with him J Schickerling and G Narib)
Instructed by LorentzAngula Inc, Windhoek

35 Example

On the next page is a proposed layout for a cover page, as well as the counsel and the appearance details at the end.



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: I 456/2009

In the matter between:

PAUL KERSEY**PLAINTIFF**

and

WILDEY INSTRUMENTS (PTY) LTD**FIRST DEFENDANT****BANK OF ATHENS****SECOND DEFENDANT****CYPRLOT SHIPPING CC****THIRD DEFENDANT**

Neutral citation: *Kersey v Wildey Instruments (Pty) Ltd* (I 456/2009) [2012]
NAHCMD 34 (14 February 2012)

Coram: DAMASEB JP, HOFF J and PARKER J

Heard: 28 January 2012

Delivered: 14 February 2012

Flynote: Bank — Letter of credit — Essentially no difference between a standby letter of credit, a performance bond and a performance guarantee

Summary: Bank — Letter of credit — Essentially no difference between a standby letter of credit, a performance bond and a performance guarantee — All three expressions describe an instrument which is intended to protect the beneficiary in the event of the applicant's default in performance — When one is dealing with

documentary credits one is dealing with documents, not the underlying contract — No basis for changing the wording from the requirements that the beneficiary has to state that there has been failure to one that it has to prove that there has been.

ORDER

Judgment is granted in favour of the plaintiff with costs. The costs include the allowable expenses incurred by Adam Jones of travelling from Cape Town to give evidence, and the qualifying fees of Johan Smit.

JUDGMENT

DAMASEB JP (PARKER J concurring):

[1]

.....

P T Damaseb
Judge President

C PARKER
Judge

HOFF J (dissenting):

[44]

.....

E P HOFF
Judge

APPEARANCES

PLAINTIFF : T Frank SC (with him J Schickerling)
Instructed by LorentzAngula Inc, Windhoek.

FIRST DEFENDANT: A SLABBERT
Of Dr Weder Kauta Hoveka, Oshakati.

SECOND and THIRD
DEFENDANTS: G Hinda (with him B van der Merwe)
Instructed by Sisa Namandje & Co. Inc,
Windhoek