

GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

R0,60 WINDHOEK– 8 October 1990 No.86

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Government Notice

MINISTRY OF JUSTICE

No.56 1990

RULES OF THE SUPREME COURT OF NAMIBIA

The Chief Justice has under section 37 of the Supreme Court Act, 1990 (Act 15 of 1990), with the approval of the President, made the rules for the conduct of the proceedings of the Supreme Court of Namibia as set out in the Schedule.

SCHEDULE

Definitions

1. In these rules, unless the context otherwise indicates -

“court day” means any day which is not a Saturday, Sunday or public holiday and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of the court;

“lodge with the registrar” means lodge with the registrar through an attorney practising at Windhoek or, if a party is not represented by an attorney, by registered post or by that party personally;

“registrar” means the registrar of the Supreme Court, and includes any assistant registrars of that court;

“typed” includes duplicated by the wax stencil method and all other modes of representing or reproducing words in a visible form, but does not include duplicated typing, handwriting or printing;

“the Act” means the Supreme Court Act, 1990 (Act 15 of 1990).

Sittings of court and vacations

2. (1) There shall be three terms in each year, namely-

1 March to 15 April inclusive;

1 June to 15 July inclusive;

1 October to 15 November inclusive:

Provided that the Chief Justice may extend or shorten the duration of any particular term, regard being had to exigencies.

(2) The rest of the year shall be vacation, but the Chief Justice may set down any hearings during the vacation if in his or her opinion such hearings are justified by virtue of their urgency or any other good and sufficient reason.

(3) If the day fixed for the commencement of a term is not a court day, the term shall commence on the next succeeding court day and, if the day fixed for the end of a term is not a court day the term shall end on the court day proceeding.

Application for leave to appeal

3. (1) (a) Whenever in terms of the Act any person is entitled to petition the Chief Justice for any leave to appeal, such petition shall, together with a verifying affidavit and two copies of such petition and affidavit, be delivered to the registrar.

(b) If the petition referred to in sub-paragraph (a) is referred by the Chief Justice or any other judge of the Supreme Court designated in terms of the Act, for consideration by the Supreme Court, the petitioner shall lodge with the Registrar within the time fixed by the Chief Justice or such other judge, two additional typed copies of the petition and if the Chief Justice or such other judge as the case may be, so directs also four typed copies of the record, one of which shall be certified by the registrar of the court *a quo*, and he or she shall serve a notice on the respondent or his or her attorney that the petition has been so referred.

(c) Unless the respondent or his or her attorney agrees to an extension of the time fixed under sub-paragraph (b), an application for condonation for the late lodging together with full reasons for the omission shall be lodged with the registrar.

(2) A copy of every petition and the verifying affidavit shall be served on the respondent or his or her attorney.

(3) (a) Every affidavit in answer to a petition shall be lodged in twofold with the registrar within 21 days of service of a copy of the petition on the respondent or his or her attorney, and a copy of every such affidavit shall be served on the petitioner or his or her attorney within the same period.

(b) In the case of a petition referred to in paragraph (b) of sub-rule (1), two copies of the affidavit shall be lodged with the registrar within 14 days of the service of the notice in terms of that paragraph.

(4) Every application for leave to appeal shall furnish succinctly and fairly all such information as may be necessary to enable the court to decide whether such leave ought to be granted, and shall be accompanied by a copy of the judgment delivered by the court *a quo*, and where leave to appeal has been refused by that court, also by a copy of the judgment refusing such leave.

(5) The petition shall not contain extraneous or irrelevant matter, and shall deal with the merits of the case only in so far as is necessary for the purpose of explaining and supporting the particular grounds upon which leave to appeal is sought.

(6) Whenever the Supreme Court grants leave to appeal it shall at the same time make an order fixing the time within which the record shall be lodged with the registrar, and where applicable, it may order the appellant to find security for the costs of appeal in such an amount as may be determined by the registrar and may fix the time within which such security shall be found.

(7) Whenever leave to appeal has been granted by the Supreme Court or the court *a quo*, as the case may be, the case shall not be set down for hearing in the Supreme Court until proof has been furnished to the registrar that any security ordered under sub-rule (6) or by the court *a quo*, has been furnished by the appellant within the period fixed by the court in question.

(8) The provisions of paragraph (b) of sub-rule (1), sub-rule (2), paragraph (a) of sub-rule (3) and sub-rules (4) and (5) of this rule shall *mutatis mutandis* apply in respect of any application for condonation.

(9) Any such application for condonation shall be accompanied by two typed copies thereof or such number as the Chief Justice or the judges considering the application direct.

(10) (a) In respect of any petition in connection with criminal matters addressed to the Chief Justice, the provisions of sub-rules (1)(a) and (c) and (4) of this rule shall apply *mutatis mutandis*.

(b) If the Chief Justice or the judge or judges considering the petition so direct, the applicant or the registrar, as the case may be, shall, within the period fixed by the Chief Justice or such judge or judges, as the case may be, lodge with the registrar two additional typed copies of the petition and if so directed, also four typed copies of the record, one of which shall be certified by the registrar of the court *a quo*.

In forma pauperis

4 (1) Any poor person may apply for leave to prosecute or defend an appeal *in forma pauperis*.

(2) Such application may be made orally from the Bar at the hearing of the appeal, if the opposite party consents to the applicant proceeding *in forma pauperis*.

(3) When the opposite party has not consented, the application shall be by means of a petition.

(4) No such petition shall be lodged with the registrar unless the opposite party has been asked for, and has refused, his or her consent to the petitioner proceeding *in forma pauperis*.

(5) Such petition shall set forth fully the financial position of the petitioner and in particular shall state that the petitioner is unable to provide sureties and that excepting household goods, wearing apparel, tools of trade and his or her interest in the subject matter of the appeal, the petitioner is not possessed of property to the amount of -

(a) R400 if he or she is the appellant; or

(b) R200 if he or she is the respondent.

(6) Such petition shall be supported by a verifying affidavit, and if the petition is for leave to prosecute an appeal *in forma pauperis* it shall also be accompanied by a certificate of two counsel that the petitioner has reasonable grounds of appeal.

(7) Subject to the provisions of sub-rule (8), the provisions of rule 3 shall *mutatis mutandis* apply to every petition under this rule:

Provided that –

(a) in cases where an appeal has already been noted, a petition to prosecute an appeal *in forma pauperis* shall be lodged with the registrar not later than 21 days after the appeal has been noted.

(b) a petition for leave to defend an appeal *in forma pauperis* shall be lodged with the registrar not later than six weeks after the petitioner has been served with the notice of appeal.

(8) Whenever a person obtains leave to prosecute or defend an appeal *in forma pauperis*, he or she shall not be required to lodge security for the costs of the opposite party or to pay any fees of court.

Procedure on appeal

5. (1) Every appellant in a civil case who has a right of appeal shall lodge notice of appeal with the registrar, the registrar of the court appealed from and the respondent or his or her attorney within 21 days, or such longer period as may on good cause be allowed, after –

(a) the judgment or order appealed against (including a judgment or order of the income Tax Special Court in terms of the Income Tax Act, 1981 (Act 24 of 1981)) has been pronounced; or

(b) in any case where leave to appeal is required, an order for leave to appeal has been granted; or

(c) a direction of the High Court has been set aside, and any order granting the leave referred to in paragraph (b) shall be lodged with the registrar simultaneously with the notice of appeal.

(2) The notice of appeal shall state whether the whole or part only of the judgment or order of court appealed from is appealed against and, if part only, then what part.

(3) Every respondent who wishes to cross-appeal shall within 21 days or such longer period as may on good cause be allowed, after receiving notice of appeal from the party appealing lodge notice of his or her cross-appeal with the registrar, the registrar of the court appealed from and the party appealing and the notice of the cross-appeal shall set forth fully the particulars in respect of which the variation of the judgment or order of the court appealed from is sought.

(4) (a) If the notice of appeal or of cross-appeal is lodged by an attorney, he or she shall within 21 days thereafter lodge with the registrar a power of attorney authorising him or her to prosecute the appeal or the cross-appeal.

(b) Where there is no cross-appeal, a power of attorney to oppose an appeal shall be lodged with the registrar by the respondent's attorney when copies of the respondent's main heads of argument are lodged under rule 11.

(c) No power of attorney shall be required to be filed by the Attorney-General, Government Attorney or any attorney instructed in writing or by telegram by or on behalf of Attorney-General or Government Attorney in any matter in which the Attorney-General or Government Attorney is acting in his or her capacity as such or on behalf of the Government of Namibia or any Minister, Deputy Minister or other officer or servant of the said Government.

(5) After an appeal has been noted in a civil case the appellant shall, subject to any special directions issued by the Chief Justice -

(a) in cases where the order appealed against was given on an exception or an application to strike out, within six weeks after the date of the said order or, in cases

where leave is required, within six weeks after the date of an order granting leave to appeal;

(b) in all other cases within three months of the date of the judgment or order appealed against or, in cases where leave to appeal is required, within three months after an order granting such leave;

(c) within such further period as may be agreed to in writing by the respondent,

lodge with the registrar four copies of the record of the proceedings in the court appealed from, and deliver such number of copies to the respondent as may be considered necessary: Provided that -

(i) whenever the decision of a matter on appeal is likely to turn exclusively on a question of law the parties or their attorneys may, by mutual consent, submit such question of law, to the court in the form of a special case in lieu of lodging copies of the record and type such parts of the record as may be necessary for the discussion of the same; and

(ii) the court, if it thinks fit, may order the full discussion of the whole case.

(6) (a) If an appellant who has withdrawn his or her appeal or has failed to lodge the record of the proceedings in the court appealed from, or, if an appellant is in terms of paragraph (b) deemed to have withdrawn his or her appeal, a respondent who has noted a cross-appeal may, within 21 days of the date of receipt by the respondent or his or her attorney of notice of withdrawal by the appellant or of the date upon which the appellant is so deemed to have withdrawn his or her appeal, as the case may be, notify the registrar in writing that he or she desires to prosecute the cross-appeal, and such respondent shall thereupon for the purposes of sub-rule (5) be deemed to be the appellant, and the periods prescribed in paragraphs (a) and (b) thereof shall be calculated as from the date on which the appellant withdrew his or her appeal or on which the appeal is so deemed to have been withdrawn.

(b) If an appellant has failed to lodge the record within the period prescribed and has not within that period applied to the respondent or his or her attorney for consent to an

extension thereof and given notice to the registrar that he or she has so applied, he or she shall be deemed to have withdrawn his or her appeal.

(7) After leave to appeal in terms of section 316 of the Criminal Procedure Act, 1977, has been granted in a criminal case, the appellant shall -

(a) within three months of the order granting leave to appeal; or

(b) within such further period as may be agreed upon in writing by the Prosecutor-General,

log with the registrar four copies of the record (one of which shall be certified), of the proceedings in the court appealed from and, furnish such number of copies to the Prosecutor-General as may be considered necessary: Provided that –

(i) with the consent of the accused and the Prosecutor-General, instead of the whole record, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed by the Prosecutor-General and the accused to be sufficient, unless the court otherwise directs; and

(ii) this sub-rule shall not apply to cases where the appellant is entitled to obtain under rule 16 copies of the record or extracts therefrom, from the registrar of the court from which he or she intends to appeal.

(8) One of the copies of the record lodged with the registrar shall be certified as correct by the registrar of the court appealed from.

(9) The copies of the record shall be clearly typed on stout foolscap or A4 standard paper double-spaced in black record ink and on one side of the paper only and at the top of each page containing evidence, the name of the witness giving such evidence shall appear, and the left side of each page shall be provided with a margin of at least 40 mm that shall be left clear, except in the case of exhibits that are duplicated by photoprinting, where it is impossible to obtain a margin with the said dimensions, and where the margin of the said exhibits is so small that part of the documents will be

obscured by binding, such documents shall be mounted on sheets of A4 paper and folded back to ensure that the prescribed margin is provided.

(10) Every tenth line of each page of the record shall be numbered.

(11) All records, applications, heads of argument and exhibits shall be securely bound in suitable covers disclosing clearly the names of the parties, the court appealed from and the names of the attorneys and counsel of the parties, and the covers in which records are to be bound shall be of the same size as the records.

(12) Bulky records shall be divided into separate conveniently sized volumes and may not exceed 16 mm in thickness, and no plastic covers with holes on the binding edge with spiral plastic rings or metal rings, which bind the contents, may be used under any circumstances.

(13) The copies of the record shall include the reasons given by the judges of the court appealed from and shall contain a correct and complete index of the evidence and of all the documents and exhibits in the case, the nature of the exhibits being briefly stated in the index.

(14) Merely formal documents shall be omitted and no documents shall be set forth more than once.

(15) The costs of preparing copies of records under this rule shall form part of the costs of appeal.

(16) The registrar may refuse to accept copies of records which do not in his or her opinion comply with the provisions of this rule.

Procedure where the Supreme Court acts as a court of first instance

6. (1) Where the Attorney-General is, in terms of the provisions of section 15 of the Act entitled to approach the Supreme Court directly (without first instituting proceedings in any other Court), for any relief or order as contemplated in that section, application to

the Chief Justice shall be made on petition and the provisions of rule 3(1), dealing with time limits and the number of copies required to be lodged shall *mutatis mutandis* apply in respect of such petition.

(2) A copy of every such petition and verifying affidavit shall be served on the respondent, if any, or his or her attorney, and the provisions of rule 3(3) shall *mutatis mutandis* apply in respect of such respondent.

(3) The petitioner shall comply with any procedural requirements of any law in terms of which he or she purports to exercise his or her right to approach the Supreme Court for relief, and shall further comply with any procedural directions made by the Chief Justice or a judge designated by him or her for that purpose, with regard to the further conduct of the case.

(4) A petition lodged with the registrar in terms of this rule shall be considered by the Chief Justice, or by any other judge of the Supreme Court designated for that purpose by him or her.

(5) If the Chief Justice or any other judge of the Supreme Court, as the case may be, decides that the application is, by virtue of its urgency or otherwise of a nature sufficient to justify the exercise of the Court's jurisdiction as contemplated in section 15 of the Act

–

(a) the petitioner or his or her attorney and the respondent, if any, or his or her attorney, shall be so informed by the registrar.

(b) the Chief Justice or such other judge, as the case may be, shall thereafter direct –

(i) what pleadings or affidavits or documents are required to be filed by the parties to the proceedings.

(ii) the period within which such pleadings or affidavits or documents shall be so lodged.

(iii) whether or not any special dossiers are required to be compiled in terms of section 23 of the Act and if so, the time within which such dossiers are required to be lodged.

(iv) the date on which the Supreme Court shall hear the matter, or any interlocutory proceedings pertaining thereto.

(6) The Chief Justice or such other judge, as the case may be, shall be entitled to call for or to hear argument from affected parties with regard to the matters referred to in sub-rule (5), and such a hearing or such argument may be considered by the Chief justice, or such other judge or judges of the Supreme Court as he or she may designate for that purpose. Procedure where the court exercises its review jurisdiction in terms of section 16 of the Act

7. Whenever it comes to the notice of the Chief Justice or any other judge of the Supreme Court that an irregularity has occurred in any cess contemplated in section 16 of the Act, and he or she decides to invoke cumstanthe review jurisdiction of the Supreme Court in terms of that section -

(a) the parties affected and the court or tribunal or authority referred to in the said section 16 shall be informed of that decision by the registrar; and

(b) the provisions of rule 6(5)(b) and (6) shall *mutatis mutandis* apply.

Security in the case of appeals

8. (1) If the judgment appealed from is carried into execution by direction of the court appealed from, the party requesting execution shall before such execution, enter into good and sufficient security *de restituendo*;

(Substituted by GN 119/2003/1 GG 2994)

(2) If the execution of a judgment is suspended pending appeal, the appellant shall, before lodging with the registrar copies of the record enter into good and sufficient security for the respondent's costs of appeal, unless-

(Substituted by GN 119/2003/2 GG 2994)

(a) the respondent waives the right to security within 15 days of receipt of the appellant's notice of appeal; or

(b) the court appealed from, upon application of the appellant delivered within 15 days after delivery of the appellant's notice of appeal, or such longer period as that court on good cause shown may allow, releases the appellant wholly or partially from that obligation."

(c) by the substitution for subrule (3) of the following subrule:

(3) If the execution of a judgment is suspended pending appeal, the appellant shall, when copies of the record are lodged with the registrar, inform the registrar in writing whether he or she -

(a) has entered into security in terms of this rule; or

(b) has been released from that obligation, either by virtue of waiver by the respondent or release by the court appealed from, as contemplated in subrule (2), and failure to inform the registrar accordingly within the period referred to in rule 5(5) shall be deemed to be failure to comply with the provisions of that rule.

(Substituted by GN 119/2003/3 GG 2994)

(4) The registrar of the court appealed from shall, whenever the parties are unable to agree as to the amount of any security to be entered into under this rule, determine and fix the said amount.

(5) No security shall be required under this rule from the Government of the Republic of Namibia.

(6) Notwithstanding anything contained in these rules, a person to whom legal aid is rendered by or under any law is not compelled to give security for the costs of the opposing party, unless the court directs otherwise.

Security where the court exercise its jurisdiction in terms of section 15 or 16 of the Act

9. Where the Supreme Court exercise its jurisdiction in terms of section 15 or 16 of the Act it shall be entitled to direct security, and the provisions of rule 8 shall *mutatis mutandis* apply where such a direction is made, as if the reference to the appellant in that rule is a reference to the petitioner in proceedings under the said section 15 of the Act, or as if the reference to the appellant is a reference to the party affected by the irregularity in proceedings under the said section 16 of the Act.

Date of hearing

10. (1) The registrar shall, after the provisions of rules 3, 5, 6 or 7 as the case may be, and rule 8 or 9, as the case may be, have been complied with and subject to the directions of the Chief Justice, notify the parties or their respective attorneys of the date of hearing, if any, in writing.

(2) Subject to the provisions of section 34(3) of the Act, if the petitioner or appellant or affected party as the case may be, fails to appear in person or by counsel at the date thus notified, the petition, or appeal or other proceedings, as the case may be, shall be dismissed for non-prosecution, unless the court otherwise directs.

Heads of argument in appeals

11. (1) In every matter relating to appeals the appellant or applicant, as the case may be, shall not later than 21 days before the hearing, or such earlier date as may be determined by the Chief Justice, lodge with the registrar four copies, and serve on the respondent or his or her attorney one copy, of the main heads of his or her argument, together with a list of the authorities to be quoted in support of each head.

(2) The respondent shall thereafter, as soon as possible, but not later than 10 days before the hearing, or such earlier date as may be determined by the Chief Justice, lodge with the registrar four copies, and serve on the appellant or applicant or his or her

attorney one copy, of the main heads of his or her argument, together with a list of the authorities to be quoted in support of each head.

(3) When, however, the lodging of the application or record on appeal does not allow the main heads of argument to be lodged and served in terms of sub-rule (1), the applicant or the appellant, as the case may be, shall file the same without delay and the respondent shall thereafter file the main heads of his or her argument in reply as soon as possible.

(4) Save where the court authorises fees consequent upon the employment of more than one advocate to be included in a party and party bill of costs, only such fees as are consequent upon the employment of one advocate shall be allowed as between party and party.

Heads of argument in proceedings under section 15 or 16 of the Act

12. The Chief Justice, or any judge designated by him or her for that purpose, shall be entitled to direct that the provisions of rule 11 shall *mutatis mutandis* (and subject to such additions or variations as he or she may determine) apply to any proceedings in terms of section 15 or 16 of the Act, and any such direction shall be effected through the registrar.

Taxation of costs

13. (1) The costs incurred in any appeal or application shall be taxed by the registrar, in his or her capacity as taxing master, on a scale as set out in the Annexure to these rules, but the taxation or the taxing master shall be subject to the review of the Supreme Court.

(2) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 21 days of the *allocatur*, require the taxing master to state a case for the decision of a

judge of the Supreme Court, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any relevant findings of facts by the taxing master.

(3) The taxing master shall supply a copy of the stated case to each of the parties, who may within 14 days of the receipt of the copy submit contentions in writing thereon including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.

(4) Thereafter the taxing master shall frame his or her report and shall supply a copy thereof to each of the parties and shall forthwith lay the case, together with the contentions of the parties thereon, and his or her report, before the Supreme Court.

(5) After the taxing master has so laid his or her report before a judge of the Supreme Court he or she shall, subject to the directions of the Chief Justice, notify the parties or their respective attorneys of the date of hearing.

Attorney's fees

14. The fees which shall be allowed to attorneys conducting appeals or other matters before the Supreme Court, are as set out in the Annexure hereto.

Fees of Court

15. The following shall be the fees of the court:

R

Lodging any petition, including verifying affidavits1,00

Lodging notice of appeal or cross-appeal1,00

Order of court granting leave to appeal1,00

Order of court determining appeal	1,00
Certified copy of any order	1,00
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Lodging any affidavit	0,50
Taxing fee in appeals	5,00
Taxing fee in petition	

Copies of records in criminal cases

16. (1) Any person convicted of any offence in any court in Namibia, who intends to appeal to the Supreme Court and has a right so to appeal or intends to make application to the Supreme Court for leave to appeal, (where such leave is required), shall be entitled, on request, to obtain from the registrar of the court from which he intends to appeal to the Supreme Court, such number of copies of the record of such extracts therefrom as may be necessary for his or her purpose, on payment of the fees prescribed for the making of such copies or extracts: Provided that –

(a) if such person is unable by reason of poverty to pay the prescribed fee; and

(b) the copies of the record or the extracts therefrom which he or she wishes to obtain from the said registrar are necessary for his or her purpose, he or she shall be entitled to obtain the same without payment of any fees.

(2) Any question arising as to such person's inability to pay the prescribed fees, or as to what number of copies of the record or as to what extracts therefrom are necessary for the purpose of his or her appeal or application, shall be decided by the registrar referred to in sub-rule (1), and if the registrar's decision is approved by a judge of the court from which such person intends to appeal, the said decision shall be final.

Service or execution of process of Supreme Court

17. The rules of the High Court, in so far as they relate to the practice and procedure in connection with the issue or service of any summons, pleading, subpoena or other document or in connection with the issue of interrogatories or the issue or execution of any writ or warrant, and the fees payable and tariff of costs and expenses which may be allowed in respect thereof, shall *mutatis mutandis* apply in respect of the Supreme Court as if they are rules made under the Act.

General

18. The Supreme Court may for sufficient cause shown, excuse the parties from compliance with any of the foregoing rules and may give such directions in matters of practice and procedure as it may consider just and expedient under the circumstances.

Repeal of Government Notices, and saving

19. Government Notice Nos. 1207 of 1961, R.980 of 1962, R.120 of 1969, R.1815 and R.2476 of 1976, R.248 and R.1120 of 1980 and R.644 and R.840 of 1983 are hereby repealed: Provided that any proceedings already commenced under the repealed rules may be continued thereunder, save in so far as the rules herein contained may apply thereto without injustice or increased costs to any of the parties.

(Substituted by GN 80/2003 GG 2949 dated 4/4/2003)

“ANNEXURE

A. – TAKING INSTRUCTIONS

N\$

- 1. (a) To note an appeal or cross-appeal when leave to appeal is not required.....56,00
- (b) To prosecute or defend an appeal, including continuation of a cross-appeal.....91,00 to 380,00
- (c) To make or oppose an application..... 84,00 to 280,00
- 2. To draft a petition or affidavit.....Half the charge allowed under item E1 for drafting

B. – PREPARATION OF RECORDS

- 1. Making for the purpose of preparing copies of the record on appeal (except where a charge is made under subparagraph 5 hereof), a copy of such particulars of the record as were not in the possession of the appellant or his or her legal practitioner at the time when the order appealed from was made, per folio1,50
- 2. Arranging record for printing or typing, excluding unnecessary documents therefrom, and preparing index and list of documents not included in record on appeal, per half-hour or part thereof.....70,00
- 3. Correcting printer’s proof or typed or renewed copy, per half-hour or part thereof.....70,00
- 4. Attending at the office of the registrar or office of the court appealed from to peruse or authenticate the record, per half-hour or part thereof.....40,00
- 5. (a) Making of copies of record on appeal and heads of arguments, per folio.....1,50

(b) Where copies are made other than by typewriter, the charge shall be for the first copy, N\$1,50 per page, and for further copies, per page.....1,00

(Note I. – In the calculation of the number of folios the total number of words of all necessary documents is to be divided by 100, i.e. the entire record is to be treated as one document).

(Note II. – In the calculation of the number of pages the total number of words of all necessary documents is to be divided by at least 250, i.e. the entire record is to be treated as one document:

(c) Provided that in the case of printed documents or forms, for example, publications, bonds, contracts, credit agreements and special procurations, each page thereof is to be treated as only one page).

C. – PERUSAL

1. (a) Perusing judgment of court *a quo* when taking instructions for the continuation of an appeal or cross-appeal, where leave to appeal is not required, per page.....20,00

(b) Perusing record on appeal, for each page or part thereof..... 1,00

(c) Perusing judgment of court *a quo* by which leave to appeal was denied, when instructions are taken to address a petition to the Chief Justice, per page.....17,00

(Note – The minimum fee under items (a) and (b) shall be N\$135,00).

2. Perusing any plan, diagram, photograph or other annexure to the record to which the remuneration hereinbefore set out cannot be applied.....10,00 to 150,000

3. (a) Attendance on and perusal of any petition or affidavit or any other document not elsewhere provided for, per page.....17,00

(b) Attendance on and perusal of any annexure to a petition and answering affidavit, per page.....0,75

(c) Attendance on and perusal of a petition or affidavit composed or corrected by counsel, per page.....2,00

(Note. 1 – minim fee under item (a) shall be as follows: For formal affidavits, N\$17,00; for affidavits other than formal affidavits, N\$35,00).

(Note. II – In the calculation of the number of pages the total number of words of all necessary annexures is to be divided by at least 250, i.e. the entire record is to be treated as one document).

4. Attendance on and perusal of heads of argument, excluding annexures, for example, unreported judgments of court or copies of publications attached as confirmation of heads of arguments, for every 10 pages or portion thereof..... 35,00

(Note. I – The minimum fee under this item shall be N\$70,00)

D. – ATTENDANCE

1. Any formal attendance on an acknowledgement, receipt, etc..... 7,00

2. Attendance of any letter, telegram, document or telephone call, or any other necessary attendance not otherwise provided for10,00

to

(Note. – A composite fee shall be charged for all letters received) 35,00

3. (a) Attendance at office of registrar to deliver a letter or document, or to uplift an order, etc.7,00

(b) Attendance on business other than formal business, per half-hour or part thereof.....70,00

4. (a) Attendance at any consultation with counsel or client, per half-hour or part thereof70,00 to 150,00

(b) A comprehensive fee for attendance, obtaining and payment of legal practitioner for noting of judgment35,00

5. Attendance at court to note judgment -

(a) by a legal practitioner70,00

(b) by a candidate legal practitioner.....27,00

Attendance at court on hearing or application, per half-hour or part thereof-

(a) by a legal practitioner..... 70,000 to 105,00

(b) by a candidate legal practitioner.....42,00

E. – DRAFTING OF DOCUMENTS

1. Any petition or affidavit, per folio.....21,00

(Note – In the calculation of the number of folios, the taxing master shall deduct, but treat as annexures, any relevant portion consisting of quotations from other documents).

2. Instructions to another counsel, whether written or verbal -

(a) on appeal..... 84,00 to 250,00

(b) on petition.....84,00 to 250,00

(c) in justifiable cases, for the drawing up or correcting of petition or affidavit for an application for leave to appeal or disputing thereof.....56,00 to 112,00

3. Drawing up notices of appeal or other necessary notices, per folio.....17,00

4. Letters and telegrams, per folio, including copy to keep.....11,00

(Note. – A composite fee shall be charged for all letters written).

- 5. Drawing up power of attorney, per folio..... 11,00
- 6. Drawing up short brief to another counsel.....11,00
- 7. Drawing up bond of security, per folio.....22,00

F. – COPYING

Other documents not specially provided for the:

- (a) First copy, per page.....1,50
- (b) Each further necessary copy, per page.....0,75

G. – BILLS OF COSTS

In connection with a bill of costs for work done or services rendered by a legal practitioner, such legal practitioner shall be entitled to charge the following:

- 1. For drawing up the bill of costs, making necessary copies and attending settlement.....30,00 per folio
- 2. For receiving, perusal and considering of the bill of costs, as submitted for taxation, including preparation for taxation..... 15,00 per folio
- 3. (a) For attending taxation in an opposed bill of costs per half-hour or part thereof.....100,00 to 150,00
- (b) For attending an unopposed bill of costs per half-hour or part thereof: 5 per cent on fees appearing in the bill of costs as submitted before taxation.

(Note. – The minimum fee under item 3(b) shall be N\$25,00).

4. Before the taxing master taxes the bill of costs, he or she shall be convinced that the party who has to pay the account, or his or her legal representative, was properly notified of the time and place of such taxation and of his or her right to be present: Provided that such notice is unnecessary where the person liable for payment of costs has consented, in writing, to taxation in his or her absence.

H. – GENERAL

1. An all-inclusive fee for making payments into our court by way of bank guaranteed cheques, cash or otherwise.....70,00 to 100,00

2. Any other fee not otherwise provided for..... 70,00 to 100,00

(Note I – With a view to affording the party who has been awarded an order for costs full indemnity for all costs reasonably incurred by him or her in relation to his or her claim or defence and to ensure that all such costs shall be borne by the party against whom such order has been made, the taxing master shall on every taxation allow such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but, save as against the party who incurred them, no costs shall be allowed which appear to the taxing master to have been incurred or increased through over caution, negligence or mistake, or by payment of a special fee to counsel or by other unusual expenses).

(Note II. – The taxing master shall be entitled in his or her discretion at any time to depart from any of the provisions of this tariff in extraordinary or exceptional circumstances where the strict execution thereof will be unjust, and in this regard shall take into account the time necessarily taken, the complexity of the matter, the nature of the subject-matter in dispute, the amount in dispute and any other factors he or she considers relevant.

(Note III. – In order to diminish as much as possible the costs arising from the copying of the record or of documents to accompany the briefs of counsel, the taxing master shall not allow the costs of any unnecessary duplication).

(Note IV. – Where in the opinion of the taxing master more than one instructing counsel has been necessarily engaged in the performance of any of the work covered by this tariff, each such counsel shall be entitled to be remunerated, on the basis set out in this tariff, for the work necessarily done by him or her and in each such instance the bills of costs shall be taxed jointly and at the same time).

(Note V. – A folio shall contain 100 words, four figures to be counted as a word, and any fraction of less than 25 words shall not be allowed as an additional folio).

(Note VI. – A page shall consist of at least 250 words and any fraction of less than 250 words shall have not be allowed as an additional page: Provided that this provision bears no relevance to a document which in totality consists of less than 250 words).

(Note VII. – When the services of a cost consultant are used to draft the bill of costs, a certificate from the instructing counsel shall accompany the bill of costs and shall indicate –

(a) that the bill was properly perused and found correct after receipt thereof;

(b) that each description therein with reference to work, time and numbers is in concurrence with what was necessarily done by him or her; and

(c) that the items and tariff are drafted and claimed strictly according to party-and-party practice rules, and the taxing master may, where it is evident from the bill of costs that the requirements of paragraph (a), (b) or (c), or parts thereof, are not complied with, refuse to tax such bill, and the taxing master may also, when her or she is convince that a party-and-party bill of costs is claimed for work not done, or for work which belongs in an attorney-and-client bill of costs or that excessive fees are being charged, deny the instructing counsel the remuneration mentioned in item G1 if more than 30 per cent of the number of items or the total of fees of the bill are taxed off).

I. – FACSIMILE AND COURIER COSTS

The taxing master may allow the following items in a Bill of Costs on a party and party basis:

- (i) The costs to send a facsimile..... N\$5,00
 - (ii) The costs in receiving a facsimile.....N\$2,00 per page
 - (iii) Upon proof, the full amount incurred in respect of courier charges.”
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