



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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WINDHOEK - 17 January 2014

No. 5392

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Government Notice

MINISTRY OF JUSTICE

No. 4

2014

RULES OF THE HIGH COURT OF NAMIBIA: HIGH COURT ACT, 1990

Under section 39 of the High Court Act, 1990 (Act No. 16 of 1990), with the approval of the President of the Republic of Namibia, I have -

- (a) made the rules for the conduct of the proceedings of the High Court of Namibia as set out in the Schedule;
- (b) repealed Government Notices No. 59 of 10 October 1990, No. 60 of 10 October 1999, No. 187 of 12 December 1992, No. 148 of 9 December 1993, No. 81 of 16 April 1996, No. 221 of 14 November 1997, No. 69 of 1 April 1998, No. 189 of 1 August 2000, No. 221 of 16 December 2002, No. 141 of 5 September 2006, No. 6 of 1 February 2008, No. 253 of 22 November 2010 and No. 57 of 13 May 2011; and
- (c) determined that the said rules come into operation on 16 April 2014.

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

Windhoek, 24 December 2013

Procuring evidence for trial by subpoena

37. (1) A party who requires the attendance of a person to give evidence at a trial may as of right, without any prior proceeding, sue out of the office of the registrar one or more subpoenas for that purpose and each of the subpoenas must contain the names of not more than four persons.

(2) Service of a subpoena on a person named in the subpoena must be effected by the deputy-sheriff in the manner set out in rules 8 and 11 and the process of subpoenaing witnesses must be on Form 14.

(3) If a witness has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence the subpoena must specify that deed, document, writing or thing and require the person subpoenaed to produce it to the court at the trial.

Referral to alternative dispute resolution (ADR)

38. (1) The managing judge may, at any time in terms of practice directions issued by the Judge-President, either of his or her own initiative or at the request of a party refer any part of the proceeding or any issue to an alternative dispute resolution (ADR) process or in an attempt to resolve that part of the proceeding or issue by way of alternative dispute resolution and towards that end the managing judge must, after hearing the parties -

(a) give directions concerning terms of reference, where and how, and if not agreed by the parties, by whom such ADR is to be conducted; and

(b) stipulate the time when it is to be conducted, as well as the time when or within which a report by the conciliator or mediator concerned is to be submitted to court.

(2) The costs of any ADR procedure referred to in subrule (1) are costs in the cause, unless the parties agree otherwise.

(3) No further proceedings must take place until an order by the managing judge is made in respect of such ADR procedure based on the report of the conciliator or mediator.

(4) If the ADR procedure fails to produce a settlement the report referred to in subrule (1)(b) must only state the fact that the settlement discussions have failed, without stating the reason for such failure, except where it is necessary to inform the court for the possible imposition of sanctions contemplated in rule 39(8).

(5) The managing judge is not obliged to follow the recommendation or conclusion of the conciliator or mediator and he or she may make any order as he or she considers appropriate.

Obligations of parties where matter referred for ADR

39. (1) Where a matter has been referred for ADR in terms of rule 38, the parties must exchange their settlement proposals in writing as follows -

(a) the letter of the plaintiff or of his or her legal practitioner, if represented, must set out the following information -

(i) a brief summary of the evidence and legal principles that the plaintiff relies on to establish his or her claim;

(ii) a brief explanation of why, in the opinion of the plaintiff, the relief claimed would succeed at the trial;

- (iii) an itemisation of the damages and other relief the plaintiff believes can be established at the trial and a brief summary of the evidence and legal principles supporting the damages or other relief; and
 - (iv) a concise settlement proposal; and
 - (b) the letter of the defendant or of his or her legal practitioner, if represented, in response to the plaintiff's letter must set out the following information -
 - (i) any points in the plaintiff's letter with which the defendant agrees;
 - (ii) any points in the plaintiff's letter with which the defendant disagrees; and
 - (iii) a concise settlement offer.
- (2) Copies of the letters referred to in subrule (1) must not under any circumstances be brought to the attention of the managing judge or the court.
- (3) The parties or the legal practitioners of the parties, if represented, must within seven days after the exchange of letters referred to in subrule (1) hold a settlement conference before the conciliator or mediator.
- (4) The legal practitioners of the parties must provide their respective clients with the opposing party's letter referred to in subrule (1) before the holding of a settlement conference.
- (5) Only a person with full settlement authority must attend a settlement conference convened by the parties within a time limit as directed by the managing judge or the court, but this subrule does not apply where the Government is a party or where the managing judge or the court issues a contrary order.
 - (6) For the purposes of subrule (5), a party that is -
 - (a) a natural person, must be represented by that natural person or if that natural person is under a disability by his or her legal representative;
 - (b) a juristic person, must be represented by a person duly authorised in writing by that juristic person, other than the legal practitioner of record;
 - (c) a regional or local authority council, must be represented by the chief executive officer of that council or his or her duly authorised representative who is not the legal practitioner of record;
 - (d) insured and will in the cause or matter claim immunity from an insurer under an insurance policy, must be represented by a duly authorised representative of the insurer with settlement authority, together with the person representing the insured party.
- (7) A person referred to in subrule (5) must, without reference to any other person not present at the settlement conference, have the necessary authority to make a final and binding settlement regarding any offer or demand.
- (8) If the person referred to in subrule (5) has no such authority which results in the settlement conference being adjourned to enable him or her to obtain additional authority, he or she may have an order for costs made against him or her if the ADR procedure fails and the matter proceeds to trial.

(9) The letters referred to in subrule (1) and anything discussed during a settlement conference are without prejudice and may not be used by any party in the proceedings to which the letters and the conference relate or in any other proceedings.

PART 4
PROCEDURAL STEPS IN RESPECT OF CAUSES

Joinder of parties and causes of action

40. (1) Any number of persons, each of whom has a claim whether jointly, jointly and severally, separately or in the alternative may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of those persons proposing to join as plaintiffs would, if he or she brought a separate action, be entitled to bring that action -

(a) so long as the right to relief of the persons proposing to join as plaintiff depends on whether the court is to determine substantially the same question of law or fact which, if separate actions were instituted, would arise in such action; and

(b) joinder may be allowed by the court on condition that failure of the claim of one plaintiff does not on that very fact extinguish the claims of the other plaintiffs.

(2) A plaintiff may join several causes of action in the same action.

(3) A plaintiff may sue several defendants in one action either jointly, jointly and severally, separately or in the alternative whenever the dispute arising between them or any of them on the one hand and the plaintiff or any of the plaintiffs depends on the determination of substantially the same question of law or fact which, if such defendants were sued separately, would arise in each separate action.

(4) Where there has been a joinder of causes of action or of parties, the court may on the application of any party at any time order that separate trials be held either in respect of some or all of the causes of action or some or all of the parties and the court may on such application make such order as it considers suitable or appropriate.

(5) Any party who seeks a joinder of parties or causes must apply for such joinder to the managing judge for directions in terms of rule 32(4).

(6) If under this rule the managing judge orders the joinder to be effected he or she must simultaneously give directions as regards the time within which it should be done, service of it and further pleadings or amendment of pleadings.

Consolidation of actions and intervention of persons as plaintiffs or defendants

41. (1) Where separate actions have been instituted the managing judge may on the application of any party to any action after notice to all interested parties and if it appears to the managing judge convenient to do so, make an order consolidating the actions, after which -

(a) the actions proceed as one action;

(b) rule 40 applies with necessary modifications required by the context to the action so consolidated; and

(c) the court may make any order it considers suitable or appropriate with regard to the further conduct of the matter and may give one judgment disposing of all matters in dispute in the actions.