

**HIGH COURT (AMENDMENT) RULES 2000**  
**ARRANGEMENT OF RULES**

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LEGAL NOTICE NO. 24 OF 2000

**High Court (Amendment) Rules 2000**

In exercise of the powers conferred on me by section 16 of the High Court Act 1978<sup>1</sup>, I,

**JOSEPH LEBONA KHEOLA**

The Chief Justice, make the following rules -

**Citation and commencement**

1. These rules may be cited as the High Court (Amendment) Rules, 2000 and shall come into operation on 4 May 2000.

**Interpretation**

2. Rule 1 of the High Court Rules 1980<sup>2</sup>, (in this Rules referred to as the principal Rules) is amended by inserting the following definitions in their appropriate alphabetical positions -

“Chief Justice” means the Chief Justice of Lesotho or any judge of the High Court to whom he may have delegated any of his functions in terms of commercial actions;

“commercial action” means any trial action of a commercial nature designated as such by the Chief Justice;

“designated judge” means a judge appointed by the Chief Justice to hear a matter designated as a commercial action;

“register” means a register of commercial actions;

“Register of commercial actions” means a register of the High Court designated as a registrar of commercial actions by the Chief Justice.

**General application**

3. The principal Rules are amended by inserting after Rule 1 the following new

rule -

- “1A. These rules shall apply to commercial actions except in as far as a departure is indicated by them or an order made pursuant to them.”

### **Insertion of rules 31A, 31B and 31C**

4. The principal Rules are amended by inserting after rule 31 the following new rules -

#### **“Application for directions**

- 31A. (1) The plaintiff shall, within ten days of compliance with sub-rule (3), file with the Registrar of commercial actions and service on the defendant a request for directions setting out the plaintiff’s proposals for the future times for compliance with the pre-trial procedures of the rules and items listed in the standard preliminary hearing agenda referred to in rule 31B.
- (2) The defendant shall, within ten days after the service for the request for directions in terms of sub-rule (1), file with the Registrar of commercial actions a reply to such a request in which the defendant’s proposals in regard to times of compliance with pre-trial procedures and items listed in the agenda shall be set out. The defendant’s proposals shall follow the order of the plaintiff’s proposals unless such order is inappropriate.
- (3) The Registrar of commercial actions shall, in consultation with the designated judge, determine the date of the hearing and notify the parties accordingly.
- (4) Unless otherwise directed by the designated judge, the hearing shall be held in open court.
- (5) The parties shall be represented by counsel or an attorney retained for the trial.
- (6) The designated judge shall, after hearing the parties, make any ruling in regard to the further conduct of the action and, in particular, rule what preliminary requirements have to be complied with before the matter may be set down for the trial.

- (7) Any ruling given in terms of sub-rule (6) may be varied by the designated judge on good cause shown at any subsequent hearing.
- (8) Where a party fails, within ten days to comply with an order in terms of this rule, any party requiring compliance may notify the defaulting party that he intends, after the lapse of 10 days, to apply to court for an order that such order be complied with, or that the claim or defence be struck out and the court may make any appropriate order.

### **Standard preliminary hearing agenda**

- 31B. (1) An application for directions made pursuant to rule 31A and the agenda for a hearing for directions under this rule shall make provision for the following -
- (a) directions as to any matter affecting the state of the pleadings such as amendments; the adjudication on a special plea; the joinder of parties or the consolidation of actions, and any orders directing a separation of issues in terms of rule 32 (7);
  - (b) proposals as to the dates by which the parties respectively will comply with any requirements as to amendments and with the pre-trial procedures of the rules such as the making of discovery or further and better discovery, requests for and the delivery of particulars for trial;
  - (c) requests for interlocutory applications, if any, arising out of paragraph (a) and (b) and dates for the sequence of the preparation of bundles;
  - (d) the compilation of lists of witnesses of the parties and dates for the exchange of witness statements;
  - (e) meetings of experts for the purpose of tabulating points of agreement, points of disagreement and reasons for differences of opinion;
  - (f) the proposed date for and the duration of the trial.

**Statement of witnesses**

- 31C. (1) Legal representative shall compile and exchange statements of witnesses in accordance with this rule.
- (2) A statement of a witness shall -
- (a) represent the complete and oral evidence of the witness and not contain irrelevant or inadmissible evidence;
  - (b) be expressed in words of the witness, and not those of the legal representative; and
  - (c) be signed by the witness.”

**Insertion of rules 34A and 34B**

5. The principal Rules are amended by inserting after rule 34 the following new rules-

**“Preparation of expert summaries**

- 34A.(1) A party to a commercial action involving expert evidence shall prepare expert summaries which shall be included in a court file of summaries of expert witnesses.
- (2) The summaries shall -
- (a) contain only those portions of experts reports that reflect the opinions and reasons for such opinions; and
  - (b) be paginated and each bundle of summaries shall contain an index.

**Preparation of bundles**

- 34B.(1) Without derogating from rule 34, in all commercial actions the following procedure shall be adopted with regard to the preparation of court bundles.

- (2) The plaintiff shall, in consultation with the defendant's attorney, prepare court bundles.
- (3) All documents included in a bundle shall be fully legible and complete.
- (4) A bundle shall contain only documents strictly relevant to the issues to be dealt with in evidence and shall be separately indexed and paginated according to the issues.
- (5) The bundle shall be arranged with the documents in chronological order.
- (6) Each bundle shall contain an index which shall indicate the status of the documents and whether the documents have been admitted or are subject to proof.
- (7) The status of the documents in the bundle shall be agreed upon by the parties at the pre-trial conference."

### **Pre-trial conference**

6. Rule 36 of the principal Rules is amended by inserting after sub-rule (7) the following new sub-rules -

- "(8) In all actions designated as commercial actions, a pre-trial conference shall be held in accordance with this rule and the directions given by the designated judge in rule 37A;
- (9) At the conference the parties shall -
  - (a) deal with all matters required to be dealt with in terms of rule 36, not already provided for in the order for directions; and
  - (b) certify that the provisions of the order for directions have been complied with or record any provisions in the order for directions which any party alleges have not been complied with.
- (10) The plaintiff shall file minutes of the pre-trial conference with

the Registrar of commercial actions.

- (11) If an order for directions is not complied with or there is a preliminary dispute between the parties at the pre-trial conference, the Registrar of commercial actions shall, in consultation with the designated judge, determine the date for the continuation of the pre-trial conference before the designated judge.
- (12) Unless otherwise directed by the designated judge, the pre-trial conference shall be held in open court.
- (13) The parties shall be represented by counsel or the attorney retained for the trial.
- (14) The designated judge, after hearing the parties, shall make any ruling in regard to the further conduct of the case and shall in particular rule what preliminary requirements have to be complied with before the matter may be set down for trial.
- (15) Any ruling given in terms of sub-rule (6) may be varied by the designated judge, on good cause shown, at a subsequent hearing.
- (16) Where a party fails to comply, within the ten days with an order in terms of this rule, any party requiring compliance may notify the defaulting party that he intends, after the lapse of ten days, to apply to court for an order that the order be complied with or that the claim or defence be struck-out and the court may make any appropriate order.

#### **Insertion of rules 37A and 37B**

7. The principal Rules are amended by inserting after rule 37 the following new rules-

#### **“Designation of actions as commercial actions**

- 37A.(1) A party to an action may, after the close of pleadings, request the Chief Justice to designate the action as a commercial action.
- (2) The party making the request shall notify other parties to the

action of the request.

- (3) The request shall be in writing and need not be supported by an affidavit.
- (4) If the request is opposed, the Chief Justice shall hear the parties in chambers before giving a direction.
- (5) If the request is successful, the Chief Justice shall allocate the action to a designated judge.
- (6) The Chief Justice may *mero motu* give notice to the parties to an action in which the pleadings have closed to the effect that he is *prima facie* of the view that the action should be designated a commercial action.
- (7) The notice shall be in writing and need not be supported by an affidavit.
- (8) If a party to an action opposes the designation of an action as a commercial action, the Chief Justice shall hear the parties in chambers before giving a direction.
- (9) If the Chief Justice decides to designate an action as a commercial action he shall allocate the action to a judge nominated by him.
- (10) If the Chief Justice thinks it is necessary or convenient to do so, he may nominate another judge to replace, or for a limited period or purpose, to act as the judge to whom a commercial action has been allocated.
- (11) Where the Chief Justice has designated an action as a commercial action the Registrar of commercial actions shall, in writing, notify the plaintiff who shall in turn notify every party to the action, of the designation and the name of the designated judge.
- (12) Unless the Chief Justice or the designated judge directs otherwise -
  - (a) any application ancillary or incidental to a commercial

action, shall be brought before the designated judge who shall bear and determine it when and in such a manner as he thinks appropriate; and

- (b) the designated judge shall preside at the trial of a commercial action.”

### **Registration of commercial actions**

37B.(1) Upon the designation of an action as a commercial action, the plaintiff shall cause the court file to be delivered to the Registrar of commercial actions and to be entered into the register and shall further ensure that the court file is indexed and paginated in accordance with directions as to the preparation and pagination of bundles.

(2) A case entered into the register shall be allocated a commercial case number and that number shall appear on all subsequent documents concerning the case lodged with the Registrar of commercial actions and the designated judge.

(3) After the entry of the action as a commercial action in the register the plaintiff shall deliver to the designated judge a separate set of indexed and paginated pleadings and serve a copy of the index on the defendant. Only the pleadings in the final form without any amending notices and old pages of only historic significance or formal notices shall be included.”

### **Setting down of commercial cases**

8. The principal rules are amended by inserting after rule 39 the following new rule -

39A.(1) Notwithstanding rule 39, in cases designated as commercial actions, the procedure for setting down an action for trial shall be in accordance with this rule.

(2) Within ten days after compliance with the preliminary requirements stipulated by the designated judge in terms of rule 31A(7) or rule 36(14) the plaintiff, or failing plaintiff, the defendant may apply to the Registrar of commercial actions for a date of set down for the trial.



- (3) The application for a date of set down shall be accompanied by a check-list in which the attorney for the party applying for the trial date certifies that all directions and items on the standard agenda have been or will be complied with by all parties.
- (4) A trial date shall not be allocated unless the parties have complied with sub-rule (3) and the preliminary requirements in terms of the designated judge's direction in terms of rule 31(6) or 36(14).
- (5) The Registrar of commercial actions, shall upon receipt of an application for a date of set down of the trial and in consultation with the designated judge and the Chief Justice, allocate a trial date and notify the parties accordingly.
- (6) Where a check-list refers to future compliance with a direction, failure to comply with the undertaking given in the check-list may result in forfeiture of the trial date which has been allocated.

## **Trial**

9. Rule 41 of the principal Rules is amended by inserting before sub-rule (1) the following new sub-rules

- “(1A) At the commencement of trial in a commercial action, the designated judge may make an appropriate order in regard to any preliminary order to which there has been no compliance.
- (1B) At the commencement of the leading of evidence before the designated judge, the judge shall rule whether a statement by a witness shall stand as evidence in chief of the witness or whether the witness must give evidence in the usual way.”

**DATED:**

**J.K. KHEOLA  
CHIEF JUSTICE**

NOTE

1. Act No. 5 of 1978
2. L.N. No. 9 of 1980