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Statutory Instrument 59 of 2006.

[CAP. 28:01

Labour Court Rules, 2006

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IT is hereby notified that the Presidents of the Labour Court have, in terms of section 90(3) of the Labour Court Act [*Chapter 28:01*] and with the approval of the Chief Justice and the Minister of Justice, Legal and Parliamentary Affairs, made the following rules:—

PART I

PRELIMINARY

Title

1. These rules may be cited as the Labour Court Rules, 2006.

Application

2. These rules shall apply to all proceedings in the Labour Court, including, so far as is practicable, proceedings pending on the date of commencement of these rules.

Interpretation

3. In these rules—

“Court” means the Labour Court;

“form” means the appropriate form prescribed in the Schedule;

“party” means a person who is a party to a matter before the Court;

“President” means a President of the Court appointed in terms of section 84(2)(a) of the Act, and includes the Senior President;

“registrar” means the registrar of the Court;

“representative” means an official or employee of a registered trade union or employers organisation representing a party who is a member of that trade union or employers organisation;

“responsible individual”, in relation to the service of any document or summons under these rules, means an individual who appears reasonably likely, if he or she is given a document or summons that is required to be served in terms of these rules, either to deliver it to the person upon whom it is to be served, or otherwise to bring it to that person’s attention;

“Senior President” means the Senior President appointed as such in terms of section 84(2)(a) of the Act.

Computation of time and certain presumptions as to time

- 4.(1) Unless a contrary intention appears, where anything is required by these rules or in any order of the Court to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

- (2) A person shall be deemed to have received—

- (a) service of documents on the day indicated by the appropriate proof of service mentioned in any of the paragraphs (a) to (e) of rule 11(1);

- (b) for the purpose of rule 14(1)(a), a “certificate of no settlement” by the fourteenth day after the date indicated on that certificate as the date of issue thereof;

- (c) for the purpose of rule 15(1)—
 - (i) a determination or direction of the Minister in terms of section 25, 40, 51, 79 or 82 of the Act, or in terms of any regulations made pursuant to section 17 of the Act, by the fourteenth day after the date indicated on that determination or direction as the date of issue thereof;
 - (ii) a determination made under an employment code in terms of section 101 of the Act, by the fourteenth day after the date indicated on that determination as the date of issue thereof;
- (d) for the purpose of rule 16(1), notice of termination of—
 - (i) the investigation of a dispute or unfair labour practice by the fourteenth day after the date indicated on a “certificate of no settlement” as the date of issue thereof;
 - (ii) the conduct of any proceedings in terms of an employment code by the fourteenth day after the date indicated on a determination issued after those proceedings as the date of issue thereof;

and any person alleging otherwise shall bear the onus of proof to the contrary.

(3) The period of twenty-one days referred to in rules 14(1), 15(1) and 16(1) shall, in the case of—

- (a) an application in terms of rule 14(1)(a), 15(1), be calculated from the last deemed date of receipt of the certificate, determination, direction or notice referred to in subrule (2)(b), (c) or (d), as the case may be;
- (b) an application in terms of rule 14(1)(b) or (where no certificate, determination or direction was issued in relation to the proceedings sought to be reviewed) 16(1), be calculated from the thirtieth day after—
 - (i) the labour officer began to attempt to settle the dispute or unfair labour practice concerned in terms of section 93 of the Act; or
 - (ii) the applicant received notification that proceedings under an employment code were to be commenced against him or her in terms of section 101(3)(e) of the Act;

as the case may be.

Sittings and vacations of Labour Court

5.(1) In each year the registrar shall, in consultation with the Senior President, publish a calendar of the sittings and vacations of the Court for the ensuing year.

(2) The registrar shall, by notice in the *Gazette* and in any other media he or she deems fit, publish the calendar referred to in subrule (1).

PART II

SERVICE OF DOCUMENTS

Interpretation in Part II

6. In this Part—

“address for service” means the address nominated by a person where documents may be served on him or her in terms of rule 7(1);

“commercial courier service” and “postal licensee” shall have the meanings given to those terms by the Postal and Telecommunications Act [*Chapter 12:05*].

Address for service and change of address of service

7.(1) Every party shall, at the time when he or she notes an appeal or makes any application, give an address at which he or she will accept service in terms of these rules.

(2) Where a party is represented by a legal practitioner or representative, the party’s address for service shall be that of his or her legal practitioner or representative.

(3) Where a party changes his or her address for service, he or she shall notify, in writing, the registrar and the other parties to the proceedings of his or her new address for service, and if he or she fails to make such notification, his or her address for service shall be deemed to be the address given under subrule (1).

(4) Where a party fails to specify his or her address for service, his or her last known residential address or the address of his or her last known place of business or employment shall be deemed to be his or her address for service and service at any such address shall be valid:

Provided that where the person to be served is detained in custody, service shall be by delivery or registered post to the person in charge of the place where that person is detained.

Persons who may effect service of documents and manner and time of service

8.(1) All documents not required in terms of these rules to be served by the registrar himself or herself may be served upon a person by—

- (a) the party who issued the documents; or
- (b) a party’s legal practitioner, representative, agent, messenger or courier; or
- (c) the deputy sheriff;
- (d) the messenger of court;

in any of the following ways—

- (e) registered post; or
- (f) delivery through a commercial courier service; or
- (g) personal delivery to that person or to his or her duly appointed agent; or
- (h) delivery to a responsible individual at that person’s place of work or residential address; or
- (i) telegraph; or
- (j) telefacsimile.

(2) Service of documents in terms of these rules shall not be valid if served between 10 p.m. and 6 a.m.:

Provided that the service of documents by post, telegraph, facsimile or courier shall be valid whenever served.

Service where person to be served prevents service or cannot be found

9. Where documents are to be served, and—

- (a) the person upon whom they are to be served avoids or prevents service; or
- (b) the person seeking to effect service of the documents is unable, after a diligent search at the residence, place of business or employment or address for service of the person to be served, to find that person or a responsible individual;

it shall be sufficient service to leave a copy of the documents in a letter box, at or affixed to or near the counter or principal door or gate, or in some conspicuous place at the residence, place of business or employment or address for service, as the case may be.

Substituted service

10. Where service cannot be effected in the manner prescribed in rules 8 and 9, the Court may, upon evidence of that fact, make an order allowing service to be effected in any manner as may be stated in such order.

Proof of service

11.(1) Where service of documents has been effected by—

- (a) registered post, the advice slip, or some other acceptable proof of delivery provided by the postal licensee;
- (b) the registrar, the registrar's out-going mail register or extract therefrom certified by the registrar;
- (c) hand-delivery or courier delivery, a certificate of service or affidavit by the person effecting service, or delivery slip, or a copy of the document served duly signed by the recipient;
- (d) telefacsimile, the electronic record of such service;
- (e) telegraph, a return from the postal licensee;

shall constitute proof of service.

(2) Where any document has been served on a responsible individual, the name of that individual shall be stated in the proof of service.

PART III

DETERMINATION OF MATTERS BY LABOUR COURT

Informality of proceedings

12.(1) Subject to these rules, the Court shall conduct any hearing in such manner as it considers most suitable to the clarification of the issues, the fair resolution of the matters, and generally the just handling of the proceedings before it.

(2) The Court shall, so far as appear to it appropriate, avoid formality in its proceedings and may, where circumstances warrant it, depart from any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law generally.

Labour Court Record Book

13. The Registrar shall, in respect of every matter for hearing or determination by the Court, keep an index book to be called the Labour Court Record Book in which the following shall be recorded—

- (a) the number of the case; and
- (b) the names of the parties; and
- (c) the nature of the case; and
- (d) the date and place of the hearing or determination of the case; and
- (e) the judgement of the Court; and
- (f) any subsequent proceedings and remarks.

Applications

14.(1) A party to a dispute who wishes to apply to the Court for an order referred to in section 89(2)(b), (c) or (d) of the Act shall, within twenty-one days from the date—

- (a) when the party received a “certificate of no settlement” issued by a labour officer in relation to the dispute in terms of section 93(3) of the Act; or
- (b) of expiry of the maximum 30-day period allowed for a labour officer to settle the dispute, where no settlement is achieved and the labour officer did not, for any reason, issue a “certificate of no settlement” in relation to the dispute in terms of section 93(3) of the Act;

do the following—

- (c) complete in three copies a notice of application in Form LC 1; and
- (d) if any of the documents referred to in subparagraph (i) or (ii) below are in the possession of the applicant, make three copies of—
 - (i) the minutes or record of any conciliation proceedings undertaken by the labour officer in connection with the dispute, whether the dispute was a dispute of interest or of right; and
 - (ii) any supporting documentation produced in connection with conciliation proceedings referred to in subparagraph (i), if any;

and

- (e) serve one copy of the notice of application, together with a copy of the documents, if any, referred to in paragraph (d), on the other party to the dispute (hereinafter in this rule and rules 15 and 16 referred to as the “respondent”); and
- (f) file with the registrar one of the other copies of the notice of application, together with—
 - (i) a copy of the documents, if any, referred to in paragraph (d); and
 - (ii) proof (as required by rule 11) that the notice of application was served on the respondent;

and

- (e) retain a copy of the notice of application for himself or herself.

(2) The registrar shall, within thirty days of receiving a notice of application in terms of subrule (1)(f), give notice in Part I of Form LC 2 to the respondent—

- (a) to complete in three copies a notice of response to the application in Part II of Form **LC 2**; and
- (b) to do the following within fourteen days of the date when the registrar gives notice to the respondent under this subrule—
 - (i) serve one copy of the notice of response on the applicant; and
 - (ii) file with the registrar one of the other copies of the notice of response, together with proof (as required by rule 11) that the notice of response was served on the applicant; and
 - (iii) retain a copy of the notice of response for himself or herself;
 and

(c) if the notice of response indicates that the respondent wishes to contest the application, and if any of the documents referred to in subrule (1)(f) were not served on the respondent by the applicant and any such documents are in the possession of the respondent, to do the following within thirty days of the date when the registrar gives notice to the respondent under this subrule, or no later than five days before the date of the hearing set down in terms of rule 21, whichever is the earlier date—

- (i) make three copies of such documents; and
- (ii) serve a copy of the documents copied under subparagraph (i) on the applicant; and
- (iii) file with the registrar one copy of the documents copied under subparagraph (i), together with proof (as required by rule 11) that a copy of the documents was served on the applicant; and
- (iv) retain a copy of the documents for himself or herself.

(3) A party to a dispute making an application under this rule who also wishes to seek a review of the proceedings in respect of which he or she makes the application shall, at the same time, complete in three copies of a notice of review in Form **LC 4** and serve such notice and any other documentation referred to in rule 16 together with the notice of application under this rule.

Appeals

15.(1) A person wishing to appeal against any decision, determination or direction referred to in section 97(1)(a) or (b) of the Act, or on a question of law in connection with any arbitral award in terms of section 98(10) of the Act, shall, within twenty-one days from the date when the appellant receives the decision, determination or direction or award, do the following—

- (a) complete in three copies a notice of appeal in Form LC 3; and
- (b) make three copies of any of the documents referred to in subparagraphs (i) to (iv) below as are relevant to the appeal, if they are in the possession of the appellant—
 - (i) the record of any charge against or allegation of misconduct on the part of the appellant that was served on the appellant, if any;
 - (ii) the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the appellant;

- (iii) a minute or record of any decision, determination, direction or award made at the conclusion of any proceedings or hearing referred to in subparagraph (ii);
 - (iv) the letter of suspension or dismissal from employment, if any; and
- (c) serve one copy of the notice of appeal, together with a copy of the documents, if any, referred to in paragraph (b), on the respondent; and
- (d) file with the registrar one of the other copies of the notice of appeal, together with—
- (i) a copy of the documents, if any, referred to in paragraph (b); and
 - (ii) proof (as required by rule 11) that the notice of appeal was served on the respondent;
- (e) retain a copy of the notice of appeal, and of the documents, if any, referred to in paragraph (b), for himself or herself.
- (2) The registrar shall, within thirty days of receiving a notice of appeal in terms of subrule (1)(d), give notice in Part I of Form LC 2 to the respondent—
- (a) to complete in three copies a notice of response to the appeal in Part II of Form LC 2; and
 - (b) to do the following within fourteen days of the date when the registrar gives notice to the respondent under this subrule—
 - (i) serve one copy of the notice of response on the appellant; and
 - (ii) file with the registrar one of the other copies of the notice of response, together with proof (as required by rule 11) that the notice of response was served on the appellant; and
 - (iii) retain a copy of the notice of response for himself or herself; and
 - (c) if the notice of response indicates that the respondent wishes to contest the appeal, and if the documents referred to in subrule (1)(b) were not served on the respondent by the appellant and any such documents are in the possession of the respondent, to do the following within 30 days of the date when the registrar gives notice to the respondent under this subrule, or no later than five days before the date of the hearing set down in terms of rule 21, whichever is the earlier date—
 - (i) make three copies of such documents;
 - (ii) serve a copy of the documents copied under subparagraph (i) on the appellant;
 - (iii) file with the registrar one copy of the documents copied under subparagraph (i), together with proof (as required by Part II) that a copy of the documents was served on the appellant; and
 - (iv) retain a copy of the documents for himself or herself.
- (3) A person making an appeal under this rule who also wishes to seek a review of the proceedings in respect of which he or she makes the appeal shall, at the same time, complete in three copies of a notice of review in Form LC 4 and serve such notice together with the notice of appeal under this rule.

Reviews

16.(1) A person wishing to seek review of proceedings referred to in section 97(1)(c) or (d) of the Act shall, within twenty-one days from the date when the proceedings are concluded, do the following—

- (a) complete in three copies a notice of review in Form LC 4; and
- (b) make three copies of any of the documents referred to in subparagraphs (i) to (iv) below as are relevant to the review, if they are in the possession of the applicant—
 - (i) the record of any charge against or allegation of misconduct on the part of the applicant that was served on the applicant, if any;
 - (ii) the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the applicant;
 - (iii) a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in subparagraph (ii);
 - (iv) the letter of suspension or dismissal from employment, if any; and
- (c) serve one copy of the notice of review, together with a copy of the documents, if any, referred to in paragraph (b), on the respondent; and
- (d) file with the registrar one of the other copies of the notice of review, together with—
 - (i) a copy of the documents, if any, referred to in paragraph (b); and
 - (ii) proof (as required by rule 11) that the notice of review was served on the respondent;

and

- (e) retain a copy of the notice of review, and of the documents, if any, referred to in paragraph (b), for himself or herself.
- (2) The registrar shall, within 30 days of receiving a notice of review in terms of subrule (1)(d), give notice in Part I of Form LC 2 to the respondent—
- (a) to complete in three copies a notice of response to the application for review in Part II of Form LC 2; and
 - (b) to do the following within fourteen days of the date when the registrar gives notice to the respondent under this subrule—
 - (i) serve one copy of the notice of response on the applicant; and
 - (ii) file with the registrar one of the other copies of the notice of response, together with proof (as required by rule 11) that the notice of response was served on the applicant; and
 - (iii) retain a copy of the notice of response for himself or herself;
- and
- (c) if the notice of response indicates that the respondent wishes to contest the application for review, and if the documents referred to in subrule (1)(b) were not served on the respondent by the applicant and any such documents are in the possession of the respondent, to do the following within thirty days of the date when the registrar gives notice to the respondent under this subrule, or no later than five days before the date of the hearing set down in terms of rule 21, whichever is the earlier date—

- (i) make three copies of such documents;
- (ii) serve a copy of the documents copied under subparagraph (i) on the applicant;
- (iii) file with the registrar one copy of the documents copied under subparagraph (i), together with proof (as required by rule 11) that a copy of the documents was served on the applicant; and
- (v) retain a copy of the documents for himself or herself.

Interlocutory and other applications under these rules

17. Where a party to any matter pending before the Court wishes to make an application to the Court in respect of any matter for which an application may be made in terms of these rules, then, unless—

- (b) a President or the Court otherwise directs; or
- (b) such application is made in the course of a hearing at which the other party to the application is present;

the applicant shall give not less than fourteen days' written notice of the application to the registrar and the other party, specifying the nature of the application and the grounds upon which it is made.

Assumption and renunciation of agency where either party represented by legal practitioner

18.(1) If a party is represented by a legal practitioner, the legal practitioner shall file a written notice of assumption of agency in Form LC 5 with the registrar and serve copies of the notice to the other party or that party's legal practitioner or representative.

- (2) A legal practitioner may for good cause renounce his or her agency.
- (3) Where a legal practitioner renounces agency he or she shall give written notice of his or her renunciation to—
 - (a) his or her client; and
 - (b) the other party or the other party's legal practitioner or representative; and
 - (c) the registrar; and
 - (d) specify in that notice his or her client's last known address which shall be the address of service for his or her former client.

Heads of argument

19.(1) Where an applicant or appellant is to be represented by a legal practitioner at the hearing of the application, appeal or review, the legal practitioner shall—

- (a) within fourteen days of receiving a notice of response to the application, appeal or review, lodge with the registrar heads of argument clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite; and
 - (b) immediately afterwards deliver a copy of the heads of argument to the respondent and lodge with the registrar proof of such delivery as required by rule 11.
- (2) Where a respondent is to be represented by a legal practitioner at the hearing of the application, appeal or review, the legal practitioner shall—

- (a) lodge with the registrar heads of argument clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite—
 - (i) within fourteen days of after receiving a copy of the heads of argument in terms of subrule (1)(b); or
 - (ii) at the time when the notice of response is filed with the registrar in terms of rule 14(2)(b)(ii), 15(2)(b)(ii) or 16(2)(b)(ii), if the applicant or appellant is not represented by a legal practitioner;

and

- (b) immediately afterwards, deliver a copy of the heads of argument to the applicant or appellant and lodge with the registrar proof of such delivery.

(3) Where heads of argument that are required to be lodged in terms of subrule (1) or (2) are not lodged on behalf of the applicant, appellant or respondent, as the case may be, within the period or at the time specified in those provisions—

- (a) the registrar shall nevertheless set down the application, appeal or review for hearing in terms of rule 21 unless, at any time before the matter is set down, the party who is not in default applies to a President of the Court in chambers for the application, appeal or review to be dismissed or granted, as the case may be;
- (b) the defaulting party shall (if no application under paragraph (a) is made or granted) be barred and the Court may deal with the matter on the merits.

(4) An application against a defaulting party under subrule (3)(a) may be made without notice to the defaulting party.

(5) Where an applicant, appellant or respondent is not to be represented at the hearing by a legal practitioner, he or she or his or her representative may, if he or she wishes, lodge heads of argument with the registrar, in which event he or she shall comply with subrule (1) or (3), as the case may be.

(6) After the heads of argument have been lodged with the registrar, no further papers may be lodged without the leave of the Court.

Settlements and withdrawals

20.(1) Where the parties to a matter pending before the Court agree on an out of court settlement or a party withdraws the matter, the parties or party shall—

- (a) in the case of a settlement, notify the registrar in writing of such settlement and withdraw the matter;
- (b) in the case of a withdrawal, notify the registrar in writing of such withdrawal.

(2) Where the registrar has received notification of a settlement or withdrawal in terms of subrule (1), the registrar shall refer the matter to a President who shall issue an appropriate order with regard to the settlement or withdrawal, as the case may be.

Set-down of matters

21.(1) Save where a President or the Court has directed otherwise, the registrar shall as far as reasonably possible set down matters on a first come first served basis:

Provided that in urgent cases or for other good cause shown the registrar may, at the request of one or more of the parties and in consultation with the Senior President, allocate a fixed date for the hearing of a case, whether in or out of term.

(2) Once a date becomes available for the hearing of a case, the registrar shall allocate the date for the case to be heard and shall give the parties notice of the date in Form LC 6:

Provided that all the parties shall receive not less than five days' notice of the date, time and place of the hearing.

(3) The registrar may for good cause, or after consultation with the parties, alter the date of set-down allocated under subrule (2) and shall give the parties notice in Form LC 6 of any such alteration.

Where party fails to file notice of response

22. Where notice has been given to a party to file a notice of response within the period specified in rule 14, 15 or 16 and that party fails to comply, the matter shall nevertheless be set down in terms of rule 21 and if, on the day of hearing, the defaulting party—

(a) appears and shows good cause why he or she did not file a notice of response, the Court may according to the nature of the case, or as the justice of the case requires—

- (i) postpone the matter to enable the defaulting party to comply; or
- (ii) proceed to determine the matter;

or

(b) does not appear or show good cause why he or she did not file a response, the Court may, according to the nature of the case, or as the justice of the case requires —

- (i) enter a default judgement against the defaulting party; or
- (ii) proceed to determine the matter.

Witnesses

23.(1) Whenever it is required to obtain the attendance of any witnesses, the registrar shall issue a summons in Form LC 7.

(2) Part II applies to the service of a summons issued in terms of subrule (1).

(3) The service of any summons in terms of this rule may be effected by any person authorised to do so by the registrar.

Clarification of issues

24.(1) A President, through the registrar, may require a party who has lodged a notice of application, appeal or review, or a notice of response thereto, to submit to the registrar within fourteen days three copies of a written notice clarifying or amplifying any statement or contention contained in the notice lodged by the party.

(2) The registrar shall, upon receiving copies of the clarifying or amplifying notice submitted in terms of subrule (1), serve one copy upon the applicant, appellant or respondent, as the case may be.

(3) Where a party fails within the time specified to comply with a request in terms of subrule (1), the President may, according to the nature of the case, or as the justice of the case requires—

- (a) direct the registrar to refuse to set down for hearing the matter in respect of which clarification or amplification had been sought:

Provided that the registrar shall notify the parties concerned, in writing, of the President's decision in this regard; or

- (b) postpone the hearing of the matter in respect of which clarification or amplification has been sought until the party concerned complies with request; or
- (c) direct the registrar to proceed with the setting down of the matter for hearing; or
- (d) enter default judgment against the defaulting party.

Pre-hearing stage

25.(1) A President may, before the hearing commences, call the parties and their legal practitioners or representatives, if any, into his or her chambers with a view to securing—

- (a) agreement on any matters likely to curtail the duration of the hearing; or
- (b) subject to subrules (2) and (3), a settlement of the matter through conciliation and or mediation:

(2) A President may attempt to settle the matter by conciliation or mediation under subrule (1)(b) unless, before the such conciliation or mediation begins, the parties do not agree to such conciliation or mediation:

Provided that if the parties agree to such conciliation or mediation but conciliation or mediation fails to settle the matter, the President shall proceed to hear the matter unless either or both of the parties object to the President hearing the matter.

(3) If a President succeeds in settling a matter at the pre-hearing stage through conciliation or mediation, rule 20 shall apply to such settlement.

Departures from rules

26. At any time before or during the hearing of a matter a President or the Court may—

- (a) direct, authorise or condone a departure from any of these rules, including an extension of any period specified therein, where the President or Court is satisfied that the departure is required in the interests of justice, fairness and equity;
- (b) give such directions as to procedure in respect of any matter not expressly provided for in these rules as appear to the President of the Court to be just, expedient and equitable.

Joinder of parties and actions

27.(1) A President, prior to a hearing or in the course of a hearing may, at his or her own instance or upon application by a party, order that two or more applications, appeals or reviews be consolidated or heard together and may give directions on all other matters related thereto so as to give effect to the order.

(2) A person who has an interest in the determination of a matter by the Court may apply to be joined as a party to the proceedings.

(3) Where in any matter before the Court a party wishes to join a third party who is not a party to the proceedings, he or she may apply to the Court to join that third party to the action.

Hearings

28.(1) The registrar shall refer every application, appeal or review to a President sitting in chambers, who may—

- (a) if the application, appeal or review is unopposed or if the parties thereto so agree, deal with the application, appeal or review on the papers in chambers; or
- (b) direct that the application, appeal or review be heard in open court; or
- (c) direct that the application, appeal or review be heard in chambers.

(2) At any time after the matter has been set down under rule 21 or during a hearing a President may, with the approval of the Senior President, order that such matter be referred for hearing or decision by two or more Presidents, in which event any reference to a President in this rule shall be construed as a reference to the President presiding over the Court.

(3) If, after a hearing has begun, the Court as reconstituted under subrule (2), it shall be competent for the Court as reconstituted to direct that any witness be recalled and to order further argument.

(4) The President during any hearing may appraise the parties of their rights and the correct procedures where he or she considers it necessary or desirable to do so, and, in so doing the President shall have due regard to the interests of any party who is not being advised or represented by a legal practitioner or representative.

(5) If a party is represented by a legal practitioner at the hearing of a matter, the legal practitioner shall not be precluded from making a submission or citing an authority that was not outlined or set out in the heads of argument lodged in terms of rule 19, unless the President considers that—

- (a) the submission or authority was omitted from the heads of argument with the intention of misleading the other party; or
- (b) to permit the legal practitioner to make the submission or cite the authority would prejudice the other party in a manner that could not be remedied adequately by a postponement or an appropriate order of costs.

(6) At the hearing of any matter—

- (a) unless the President otherwise orders, the applicant or appellant shall be heard in argument in support of the application, appeal or review, and thereafter the respondent's argument against the application, appeal or review shall be heard and the applicant or appellant shall be heard in reply;

(b) the President may allow oral evidence:

Provided that if one of the parties has been barred the President shall deal with the application, appeal or review as though it were unopposed;

- (c) the President may require any witness to give evidence on oath or affirmation;
- (d) with the leave of the President, any party at a hearing may cross-examine witnesses called by the other party

Provided that the President may curtail the cross-examination if he or she considers the cross-examination to be repetitive, irrelevant or time-wasting;

- (e) with the leave of the President, the party calling a witness may re-examine the witness after cross-examination.

Adjournments and postponements

29. If for any reason it appears expedient to the Court that the hearing of any matter should be adjourned or postponed, the Court may make such orders as to adjournment as it considers necessary.

Default judgment entered where party or witness fails to appear

30. Where a party or witness fails to appear at a hearing, the Court may, according to the nature of the case, or as the justice of the case requires—

- (a) proceed with the hearing on the merits; or
- (b) postpone the matter; or
- (c) upon application by the party in attendance, enter default judgment.

Consent to judgment

31. A respondent may consent to judgment by delivery of a written memorandum to the Court to that effect stating—

- (a) that he or she so consents; and
 - (b) whether his or her consent is for the full claim or less.
- (2) If the consent is for less than the full claim—
- (a) he or she may continue his or her defence as to the balance of the claim; and
 - (b) notwithstanding a judgment upon such consent the action may proceed as to such balance and it shall in that event be in all subsequent respects an action for such balance.

Costs

32. The Court, in giving judgment or making any order, may make such order as to costs as it thinks just and equitable.

(2) The costs of any appeal, application or review by the parties may be—

- (a) awarded by the Court irrespective of the judgment in the cause; or
- (b) made costs in the cause; or
- (c) reserved to be dealt with at the conclusion of the action; or
- (d) that each party bears its own costs; or
- (e) denied.

(3) Where a judgment or order for costs is made against two or more persons, it shall, unless the contrary is stated, have effect against such persons jointly and severally.

(4) Where there is a dispute as to the bill of costs, either party may apply to the registrar for taxation and thereupon the registrar shall on notice to both parties set down the matter for taxation.

(5) On taxation the registrar—

- (a) shall allow all 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 the same, no costs shall be allowed which appear to the registrar to have been incurred or increased through overcaution, negligence or mistake;
- (b) may depart for good and sufficient reason from any of the prescribed tariffs where strict adherence to such provisions would be inequitable;
- (c) shall award a party who is not represented by a legal practitioner his or her disbursements in addition to necessary expenses.

(6) The registrar's assessment shall be reviewable by a President at the instance of the aggrieved party.

Applications for rescissions or alterations of judgments

33. An application for the rescission or alteration of a determination, order or judgment of the Court on any of the grounds specified in section 92C(1)(a), (b) or (c) of the Act shall be made within thirty days from date the applicant became aware of the determination, order or judgment.

Stay of execution

34. Where a decision, order or determination has been registered in terms of section 92B(3) of the Act, the Court or a President sitting in chambers may, upon application, order a stay of execution of the decision, order or determination.

(2) In granting a stay of execution, the Court or President may fix any such terms as to security for the due performance of the decision, order or determination or any variation thereof as the Court or the President deems fit.

PART IV

GENERAL

Precedents and binding nature of decisions

35.(1) Where a case similar or identical to the one being heard by the Court has been previously decided, any principle established by that case shall have persuasive authority.

(2) Decisions of the Court shall be binding on all labour officers, arbitrators, disciplinary authorities and other determining authorities acting in terms of the Act.

Leave to appeal against decisions of Court

36. An application terms of section 92E(2) of the Act seeking leave to appeal from any decision of the Court shall be made to the President of the Court who made the decision within 30 days from the date of that decision.

Forms

37.(1) Subject to this rule, a person required to complete any form prescribed in the Schedule may improvise it by making such alterations to it as circumstances require.

(2) The registrar may refuse to accept any improvised form and require the party improvising it to submit another form substantially compliant with that prescribed in the Schedule if the registrar is of the opinion that the improvised form is not so compliant.

(3) Where a dispute arises as to the discretion exercised by the registrar under subrule (2), the registrar shall refer the matter to a President in chambers who may thereupon—

- (a) direct the registrar to accept the improvised form; or
- (b) direct the party who improvised the form to submit another form substantially compliant with that prescribed in the Schedule; or
- (c) give such other directions as to the manner in which the parties may proceed as the President thinks fit in the circumstances.

(4) All forms in terms of these rules that are out of print or otherwise unavailable may be issued by the registrar, who may omit any explanatory notes or other irrelevant matter therefrom.

SCHEDULE (*Rule 3*)

FORMS

Arrangement of forms

- LC 1. Notice of Application to Labour Court
- LC 2. Notice by Registrar to Respondent
- LC 3. Notice of Appeal to Labour Court
- LC 4. Notice of Application for Review by Labour Court
- LC 5. Notice of Assumption of Agency
- LC 6. Notification to Party to Attend Proceedings
- LC 7. Summons to Witness

LABOUR ACT [CHAPTER 28:01]
NOTICE OF APPLICATION TO LABOUR COURT

Explanatory Notes

- (i) Three copies of this notice must be completed by the applicant, one of which the applicant must serve on the respondent (the other party to the labour dispute), and the other the applicant must send to the registrar.
- (ii) A person making an application on behalf of another person or body shall indicate on this form at which address process should be served.
- (iii) A copy of the following documents should be attached to each copy of this notice of application, **if they are available to the applicant:**
 - A. the minutes or record of any conciliation proceedings undertaken by the labour officer in connection with the dispute, whether the dispute was a dispute of interest or of right;
 - B. any supporting documentation produced in connection with the conciliation proceedings.
- (iv) An application must be served on the respondent and sent to the registrar within twenty-one (21) days:
 - A. of the date on which the applicant received a “certificate of no settlement” from a labour officer; or
 - B. of the thirtieth (30th) day after the labour officer tried to settle the dispute through conciliation, if the labour officer fails or refuses to issue a “certificate of no settlement”

DATE OF APPLICATION:.....

TO THE REGISTRAR OF THE LABOUR COURT

TO THE RESPONDENT

.....(Name)

.....

.....

.....(Address)

DETAILS OF APPLICATION

I

(Name of applicant)

of

(Address of applicant)

am engaged in a labour dispute with the respondent named above:

The dispute was being conciliated/mediated by:

.....
(Name of Labour Officer)

The date on which dispute began to be conciliated/mediated by the Labour Officer was:

.....
The following are the brief details of the labour dispute (If the space provided below is inadequate, not more than two pages containing details of the dispute may be attached to this form) :

.....
.....
.....
.....
.....

The Labour Officer has failed to settle the dispute:

- and has issued the “certificate of no settlement” attached hereto; or
- but has failed or refuses to issue a “certificate of no settlement” although thirty days have passed from the date on which s/he began to try to settle the dispute

(Tick the appropriate box)

Accordingly I wish to apply to the Labour Court for the following relief (Tick the appropriate box; if you seek more than one form of relief from the Court, add “and”, “or” or “and/or” at the end of the sentences opposite the boxes you have ticked)

- To remit the dispute to the same or a different Labour Officer with instructions directing that officer to attempt to resolve the dispute in accordance with such guidelines as the Court may specify
- An order for back pay from the time when the dispute arose
- (In the case of an unfair labour practice involving a failure or delay to pay or grant anything due to an employee) the payment by the respondent (the employer) to the applicant (the employee or someone acting on his or her behalf) of such amount, whether as a lump sum or by way of instalments, as will, in the opinion of the Labour Court, adequately compensate the applicant for any loss or prejudice suffered as a result of the unfair labour practice which gave rise to the dispute
- Reinstatement or employment in a job or an amount of damages as an alternative to reinstatement or employment
- Insertion into a seniority list at an appropriate point;
- Promotion or, if no promotion post exists, pay at a higher rate pending promotion

Payment of legal fees and costs connected with this application

Cessation of the unfair labour practice complained of in this application

Other relief (*specify*):
.....
.....
.....
.....
.....

Name and address of legal practitioner or employee/employee representative of the applicant, if any:
.....
.....
.....

I wish to have summoned to attend the following persons as witnesses:

Name	Address	Notes
.....
.....
.....
.....

Notice of this application was served on the Respondent on the by means of (*tick the mode of service used*):

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent
- delivery to a responsible individual at the Respondent’s place of work or residential address
- telegraph
- telefacsimile.

Proof of service is attached hereto.

Signature of person noting the application

.....

As Witness:

.....

FOR OFFICIAL USE ONLY

Received by the registrar on the

.....

.....

(Registrar)

LABOUR ACT [CHAPTER 28:01]

PART I

NOTICE BY REGISTRAR TO RESPONDENT

TO THE RESPONDENT:

..... (Name)

.....

.....

..... (Address)

You are hereby required to complete in Part II of this form the Notice of Response to the application/appeal by notice of which was served to you on

N.B. If, as a party, you fail to respond, the hearing of the application may proceed without you to the possible detriment of your interests.

Given under my hand at this day of (year)

.....

(Registrar)

PART II

NOTICE OF RESPONSE TO APPLICANT/APPELLANT

Explanatory Notes

- (i) Three copies of this notice must be completed by the respondent, one of which the respondent must serve on the applicant/appellant, and the other the respondent must send to the registrar.
- (ii) A person making a response on behalf of another person or body shall indicate on this form at which address process should be served.
- (iii) A copy of the following documents should be attached to each copy of this notice of response, **if they are available to the respondent and if they were not received from the applicant/appellant:**
 - A. the minutes or record of any conciliation proceedings undertaken by the labour officer in connection with the dispute, whether the dispute was a dispute of interest or of right;
 - B. any supporting documentation produced in connection with the conciliation proceedings.
- (iv) A Notice of Response must be served on the respondent and sent to the registrar within fourteen (14) days of the date when the registrar gives notice to the respondent under Part I of this form.

TO THE REGISTRAR OF THE LABOUR COURT

TO THE APPLICANT/APPELLANT:

..... (Name)

.....

.....

..... (Address)

DETAILS OF RESPONSE

I
(Name of the respondent)

of
(Address of respondent)

The following in brief is my response to the application/appeal :.....
.....
.....

Name and address of legal practitioner or employee/employee representative of the respondent, if any:
.....
.....
.....

I wish to have summoned to attend the following persons as witnesses:

Name	Address	Notes
.....
.....
.....
.....

Notice of this application was served on the Respondent on the
by means of (tick the mode of service used):

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent
- delivery to a responsible individual at the Respondent’s place of work or residential address
- telegraph
- telefacsimile.

Proof of service is attached hereto.

Signature of person noting the application

.....

As Witness:

.....

FOR OFFICIAL USE ONLY

Received by the registrar on the

.....

(Registrar)

LABOUR ACT [CHAPTER 28:01]
NOTICE OF APPEAL TO LABOUR COURT

Explanatory Notes

- (i) Three copies of this notice must be completed by the appellant, one of which the appellant must serve on the respondent (the other party to this appeal), and the other the applicant must send to the registrar.
- (ii) A person making an appeal on behalf of another person or body shall indicate on this form at which address process should be served.
- (iii) A copy of the following documents should be attached to each copy of this notice of application, **if they are available to the appellant:**
 - the record of any charge against or allegation of misconduct on the part of the appellant that was served on the appellant, if any
 - the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the appellant
 - a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in the second bullet
 - the letter of suspension or dismissal from employment, if any
- (iv) An appeal must be served on the respondent and sent to the registrar within twenty-one (21) days of the date on which the appellant received the determination or direction

TO THE REGISTRAR OF THE LABOUR COURT

TO THE RESPONDENT..... (Name)

.....
.....

..... (Address)

DETAILS OF APPEAL

I
(Name of the appellant)

of
(Address of appellant)

am aggrieved by (tick the appropriate box):

- a determination or direction of the Minister in terms of section 25 (“Effect of collective bargaining agreements negotiated by workers committees”) of the Act
- a determination or direction of the Minister in terms of section 40 (“Variation, suspension or rescission of registration or certification”) of the Act
- a determination or direction of the Minister in terms of section 51 (“Supervision of election of officers”) of the Act

a determination or direction of the Minister in terms of section 79 (“Submission of collective bargaining agreements for approval or registration”) of the Act

a determination or direction of the Minister in terms of section 82 (“Binding nature of registered collective bargaining agreements”) of the Act

a determination or direction of the Minister in terms of any regulations made pursuant to section 17 of the Act

a determination made under an employment code in terms of section 101 (“Employment codes of conduct”) of the Act

other (*specify*)
.....
.....
.....
.....

The date on which the determination/direction was issued was:
.....

The following in brief are facts and grounds on which this appeal is based (*If the space provided below is inadequate, not more than two pages containing details of the grounds of the appeal may be attached to this form*):

.....
.....
.....
.....
.....

Accordingly I wish to appeal to the Labour Court to do the following (*Tick the appropriate box; if you seek more than one form of relief from the Court, add “and”, “or” or “and/or” at the end of the sentences opposite the boxes you have ticked*):

Reverse or set aside the decision, order or action appealed against and, if appropriate, substitute its own decision or order

Refer the matter that is the subject of this appeal back to the body, person or authority concerned for further consideration.

Payment of legal fees and costs connected with this appeal

Other relief (*specify*):

.....
.....
.....
.....

Name and address of legal practitioner or employee/employee representative of the appellant, if any:

.....
.....
.....

I wish to have summoned to attend the following persons as witnesses:

Name	Address	Notes
.....
.....
.....
.....

Notice of this application was served on the Respondent on the by means of (*tick the mode of service used*):

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent
- delivery to a responsible individual at the Respondent’s place of work or residential address
- telegraph
- telefacsimile.

Proof of service is attached hereto.

Signature of person noting the appeal

.....

As Witness:

.....
.....

FOR OFFICIAL USE ONLY

Received by the registrar on the
.....

(Registrar)

LABOUR ACT [CHAPTER 28:01]

NOTICE OF APPLICATION FOR REVIEW BY LABOUR COURT

Explanatory Notes

- (i) Three copies of this notice must be completed by the applicant, one of which the applicant must serve on the respondent (the other party to this application), and the other the applicant must send to the registrar **after this notice has been served on the respondent.**
- (ii) A person making an application for review on behalf of another person or body shall indicate on this form at which address process should be served.
- (iii) A copy of the following documents should be attached to each copy of this notice of application, **if they are available to the applicant:**
 - the record of any charge against or allegation of misconduct on the part of the applicant that was served on the applicant, if any
 - the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the applicant
 - a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in the second bullet
 - the letter of suspension or dismissal from employment, if any
- (iv) An application for review must be served on the respondent and sent to the registrar within twenty-one (21) days of the date on which the applicant received the determination or direction

TO THE REGISTRAR

TO THE RESPONDENT..... (Name)

.....
.....

..... (Address)

DETAILS OF APPLICATION FOR REVIEW

I

(Name of the applicant)

of

(Address of applicant)

am aggrieved that (tick the appropriate box):

the labour officer or other authority concerned in the proceedings for which I seek review lacked jurisdiction to conduct them

the labour officer or other authority concerned in the proceedings for which I seek review was an interested party to the proceedings or was motivated by bias, malice or corruption

there was gross irregularity in the proceedings or the decision for which I seek review

The date(s) on which the proceedings were concluded and decision was made is/are:

.....

The following in brief are facts and grounds on which this application for review is based (*If the space provided below is inadequate, not more than two pages containing details of the grounds for review may be attached to this form*) :

.....
.....

Accordingly I wish the Labour Court to do the following (*Tick the appropriate box; if you seek more than one form of relief from the Court, add “and”, “or” or “and/or” at the end of the sentences opposite the boxes you have ticked*):

reverse or set aside the decision, order or action reviewed and, if appropriate, substitute its own decision or order

refer the matter that is the subject of this application back to the body, person or authority concerned for further consideration.

payment of legal fees and costs connected with this application

other relief (*specify*):
.....
.....
.....

Name and address of legal practitioner or employee/employee representative of the applicant, if any:

.....
.....
.....

I wish to have summoned to attend the following persons as witnesses:

Name	Address	Notes
.....
.....
.....
.....

Notice of this application was served on the Respondent on the by means of (*tick the mode of service used*):

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent

- delivery to a responsible individual at the Respondent's place of work or residential address
- telegraph
- telefacsimile.

Proof of service is attached hereto.

Signature of person noting the application

.....

As Witness:

.....

.....

FOR OFFICIAL USE ONLY

Received by the registrar on the

.....

(Registrar)

LABOUR ACT [CHAPTER 28:01]

ASSUMPTION OF AGENCY

TO THE APPLICANT/APPELLANT/RESPONDENT

..... (Name)

.....

.....

..... (Address)

COPY TO THE REGISTRAR OF THE LABOUR COURT

I

(Name of legal practitioner)

of

(Address for service of legal practitioner)

am engaged with effect from the subscribed date to represent the applicant/appellant/respondent in the application/appeal/matter concerning

.....
.....

(Subject of application/appeal/matter in respect of which a notice of application/appeal/review was made on the)

..... and to which you are party/to which you have been joined

Signature of legal practitioner:

.....

Date:

.....

FOR OFFICIAL USE ONLY

Received by the registrar on the

.....

(Registrar)

LABOUR ACT [CHAPTER 28:01]
NOTIFICATION TO PARTY TO ATTEND PROCEEDINGS

To:

(Name and address of Party)

You are hereby notified that the application/appeal/matter concerning

.....
(Subject of application/appeal/matter in respect of which a notice of application/appeal/review was made on the)

..... and to which you are party/to which you have been joined

as party **SHALL BE HEARD BEFORE THE LABOUR COURT AT**

.....
(Specify address and location of Court)

BY

.....
...
(Name of President of Labour Court)

on at the hour

N.B. If, as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interests.

Given under my hand at this day of(Year)

.....
Registrar of Labour Court

LABOUR ACT [CHAPTER 28:01]

SUMMONS TO WITNESS

TO
.....
.....

(Name of witness and address)

You are hereby required to appear in person before *LABOUR COURT onat
the hour and on any subsequent day to which the proceedings may be postponed
giving evidence respecting*

.....
.....

You are to bring with you and then produce to

.....

the several books, documents and or things to be produced—

- 1.
- 2.
- 3.

Given under my hand at this day of20...

.....
Registrar on behalf of Labour Court

* Specify in what connection witness is required to give evidence.