

HIGH COURT ACT
(Cap. 04:02)

RULES OF THE HIGH COURT (AMENDMENT) RULES, 2021
(Published on 8th January, 2021)

ARRANGEMENT OF ORDER OF RULES

ORDER

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IN EXERCISE of the powers conferred on the Chief Justice by section 28 of the High Court Act, the following Rules are hereby made —

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| 1. These Rules may be cited as the Rules of the High Court (Amendment) Rules, 2020. | Citation |
| 2. The Rules of the High Court (herein referred to as “the Rules”) are amended in Order 1 rule 3 by — | Amendment of Order 1 of Cap. 04:02 (Sub. Leg.) |
| (a) inserting, in their correct alphabetical order, the following definitions — | |
| “code of conduct” means the standards of conduct for court-annexed mediators set out in the Code of Conduct as provided under Order 42A; | |
| “court-annexed mediation” means the mediation process conducted by court-annexed mediators under Order 42A; | |
| “mediation” means the process by which a mediator assists the parties in litigation to resolve the dispute between them by facilitating discussions between the parties, assisting them in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve their dispute; | |
| “mediation administrator” means the Mediation Administrator designated as such under Rule 42A; | |
| “mediation meeting” means the period that a mediator and the parties are engaged in mediation of the dispute; | |
| “mediator” means a person who has been enrolled as a court-annexed mediator under Rule 42A. | |

(b) substituting for the definitions of “advocate”, “delivery”, “Form”, “judicial division”, “Judgment” “Magistrate”, “Master”, “motion day”, “Registrar” and “Registry”, the following new definitions —

Cap. 61:01

“advocate” has the same meaning assigned to it under the Legal Practitioners Act;

“deliver” means to file the original with the Registrar and serve copies bearing the Registrar’s date stamp on all parties;

“judicial division” means a division of the High Court of Botswana as may be set out from from time to time;

“magistrate” means a person appointed as such under section 104 of the Constitution;

Cap. 31:01

“Master” means the Master of the High Court appointed as such under the Administration of Estates Act;

“motion day” means at least one day in every week, other than during vacation, on which a judge shall normally sit to hear and consider any matter required under these Rules to be heard on a motion day or any other matter directed by the judge to be so heard and the Registrar shall publish the dates of each judge’s motion days during the last term immediately preceding the next legal year;

“Registrar” means the Registrar of the High Court and includes Chief Registrar, a Deputy Registrar, a Senior Assistant Registrar, an Assistant Registrar and any person performing the duties of a Registrar under the authority of the High Court Act; and

“registry” includes the Registry at the High Court Gaborone and at any other seat of the division of the High Court as may be prescribed as such from time to time.

Amendment of
Order 2 of the
Rules

3. Order 2 of the Rules is amended by substituting for rule 6, the following new rule —

“6. No document in respect of which a fee is payable shall be accepted unless payment has been made under rule 5:

Provided that the Registrar may, in exceptional circumstances or urgent matters, permit payment of filing fees with unused postage stamps which shall be cancelled on presentation.

Amendment of
Order 3 of the
Rules

4. Order 3 of the Rules is amended by inserting immediately after rule 2 the following new rules —

“2A. The Registrar shall, at each registry, keep, maintain and update a register to be called the judgment record book, which shall be open to any party and any other interested person, in which the following particulars shall be recorded in respect of each matter —

(a) the date on which every judge, including the name of the particular judge, reserved the handing down of any ruling or judgment and the date adjourned to;

(b) whether the ruling or judgment in issue is still within, or has exceeded the period provided for the delivery thereof in terms of the judicial standards for delivery of rulings or judgments set out in Schedule 6;

(c) if in excess of the period referred to under paragraph (b), by what period such ruling or judgment has exceeded the period; and

(d) the date on which each ruling or judgment is handed down by a judge.

2B. (1) The Registrar in each division of the High Court shall avail a summary of each case to a judge in charge of such division for purposes of monitoring compliance with the judicial standards for delivery of rulings or judgments set out in Schedule 6.

(2) Where a judge in charge of any division of the High Court is of the opinion that any judge is persistently not complying with the judicial standards for delivery of rulings or judgments referred to under subrule (1) he shall, after notifying the judge concerned, report the matter to the Chief Justice in writing, with a copy to the judge concerned, and in the manner determined by the Chief Justice.

(3) The Chief Justice shall upon receipt of the report referred to under subrule (2), deal with the matter as he may deem necessary, including, but not limited to referral of the report to the Judicial Service Commission for appropriate remedial or other action.

2C. The Registrar shall, at each registry, keep, maintain and update a register to be called the civil processes record book, which shall be open to parties and other interested persons, in which the following particulars shall be recorded in respect of each matter —

- (a) the date on which any application for default judgment, issuance of a writ of execution or bill of costs is filed; and
- (b) whether the application for default judgment, issuance of a writ of execution or bill of costs in issue is still within, or has exceeded the period for processing and finalisation in terms of the judicial standards for delivery of rulings and judgments set out in Schedule 6;
- (c) if the period referred to under paragraph (b) above has been exceeded, by what period such application for default judgment, issuance of a writ of execution or bill of costs has exceeded the period; and
- (d) the date on which each application for default judgment, issuance of a writ of execution or bill of costs was processed to finality by his office.

2D. The provisions of this order shall apply *mutatis mutandis* to the proceedings for the assessment of damages by the Registrar in terms of Order 36 of these Rules.

2E. Save on the direction of a judge, the Registrar shall deal with every process that is filed with the Registry on a strictly first in, first out basis in a civil process record book.

5. The Rules are amended by inserting as Order 27, the following new Order —

Amendment of
Order 27 of the
Rules

“ORDER 27 INITIAL CASE MANAGEMENT REPORT

1. Within seven court days of the service of a plea upon the plaintiff, in compliance with rule 1 (2) of Order 25 or answering affidavit, such plaintiff shall consult with the defendant on a date and time for the parties to meet for purposes of jointly preparing an initial case management report pursuant to the provisions of Order 42.

2. Where the plaintiff has filed a replication or replying affidavit, the parties shall meet within 21 court days, but no later than 28 court days after the service of the plea or answering affidavit.

3. Where the plaintiff has not filed a replication or replying affidavit, the parties shall meet within 14 court days, but no later than 21 court days after the service of a plea or answering affidavit.

4. (1) At the meeting held in terms of rule 1, the parties shall jointly prepare a draft case management report covering their discussions, in any other matter except a matrimonial case, on the following issues —

- (a) the need for joining other parties and the dates for such joinder;
- (b) the filing of any pleadings, the need for any amendment to pleadings or filing of better statement or further particulars, and the date for such amendment, statement or particulars;
- (c) the need for interlocutory motion and the date for such motion;
- (d) a deadline for the close of pleadings under Order 21;
- (e) the admission of facts and other evidence by consent of the parties;
- (f) the control and scheduling of discovery, including but not limited to the —
 - (i) inspection and production of any document under Order 39,
 - (ii) admissions under Order 40,
 - (iii) inspection, examination, and expert testimony under Order 41, and
 - (iv) examination of a witness under Order 44;
- (g) narrowing the field of dispute between an expert witness, by the expert witness' participation at a pre-trial conference or in any other manner;
- (h) hearing and determination of an objection on a point of law;
- (i) any matter that might be raised in an application for directions under Order 28;
- (j) giving an order or direction for the separate hearing of a trial or plea in bar, a claim, counterclaim, set-off, or third party claim or of any particular issue in the action, including the assessment of damages under Order 36;
- (k) settlement of an issue, inquiry and account under Order 37;
- (l) securing statement of special case of law or fact under Order 35;
- (m) the date for any additional case management conference, if necessary, and for the final pretrial conference; or
- (n) the possibility of settlement talks or possible mediation of the dispute;
- (o) such other issues as may facilitate the just and speedy disposal of the action, which may include, where an issue is straightforward and a final pre-trial conference may be dispensed with, the agreement of an admission, fact and legal issue in dispute, witness to be called and the setting of trial date, in which case a witness summary and documentary exhibit shall be filed in terms of Rule 7 (d) and (g); and

(2) At the meeting held in terms of rule 1, the parties shall jointly prepare a draft case management report covering their discussions in a matrimonial case on the following issues —

- (a) a proposal shall be made in the initial case management report, where applicable, for the custody, access to and maintenance of a minor child, maintenance of either spouse, and for the division of matrimonial property, including, if necessary, the commissioning of a social welfare officer's report; and
- (b) in the event of dispute, each party shall file with the report, an affidavit with documentary annexures setting out his proposals on custody, access to and maintenance of a minor child, maintenance of a spouse, and the division of matrimonial property, including full disclosure of —

- (i) his income from every source, with documentary confirmation where available,
- (ii) his full list of the matrimonial assets and liabilities with formal or estimated valuations of each, and
- (iii) a list of the financial needs of the minor child for such minor child's education and welfare.

5. The plaintiff or applicant shall prepare the first draft, which draft shall be signed by both parties and filed by the plaintiff or applicant within seven court days of the date of the parties' meeting.

6. The court shall, within seven court days of the filing of an Initial Case Management Report, after consulting with counsel, a party, or parties, by means of a conference call, schedule an Initial Case Management Conference to be attended by counsel and the parties, or by a party or parties in person if unrepresented, pursuant to the provisions of Order 42 rule 3.

7. In the event that the court does not take steps to schedule an Initial Case Management Conference as provided in rule 6, the provisions of Order 43 rule 6 shall apply.

8. Where either party fails to comply with the provisions of this Order, the provisions of Order 24 rule 8 or Order 25 rule 11, shall apply, *mutatis mutandis*.

6. Order 29 of the Rules is amended by substituting for rule 3, the following new rule —

Amendment of
Order 29 of the
Rules

"3. The Registrar shall, upon delivery of a consent, place such matter before a judge in Chambers for entry of judgment by consent."

7. The Rules are amended by inserting as Order 31, the following new Order —

Amendment of
Order 31 of the
Rules

"ORDER 31 DEFAULT OF PLEADING

1. Any party who fails to comply with any time period for filing a process in terms of these Rules shall be barred from filing such process.

2. Any process that is filed in contravention of rule 1 shall be invalid, and of no force or effect.

3. A party in any proceedings where an automatic bar provided for under this Order has come into effect may —

- (a) apply, *ex parte*, for a dismissal under Order 24 rule 8; or
- (b) apply, *ex parte*, for judgment in an action or claim in reconvention, as the case may be, under Order 25 rule 11; or
- (c) set the matter down, without notice to the other party, for the grant of a default Order in the same manner as if in terms of Order 43 rule 4A of these Rules.

4. A party who has been automatically barred under this Order may apply to a judge for leave to file his process outside the time provided under these Rules, on notice of motion.

5. An application for leave under rule 4 shall not, except with the leave of a judge on good cause shown, be brought later than 30 court days after the automatic bar provided under this Order has come into effect.

6. Any costs that may be incurred by an application for leave, for the late filing thereof shall be borne by the applicant on the scale as between attorney and own client, unless the judge orders otherwise."

7. Order 34 of the Rules is amended —

- (a) in rule 2 by substituting for subrule (1), the following new subrule —
“(1) The plaintiff shall simultaneously with his declaration filed in terms of Order 24 of these Rules, deliver notice of such application, accompanied by an affidavit made by himself, or by any other person who can swear positively to the facts verifying the cause of action and the facts on which it is founded and the amount, if any, claimed, and stating that in his opinion there is no *bona fide* defence to the action and that entry of appearance to defend has been delivered solely for purpose of delay.”; and
- (b) by inserting immediately after rule 9, the following new rules —
 - (10) Judgment in a summary judgment application shall be handed down as soon as practicable after the hearing, but in any event no later than 20 court days after the date of hearing.
 - (11) Every summary judgment application shall be listed for hearing no later than 20 court days after the date of filing.

8. Order 42 of the Rules is amended —

- (a) by inserting immediately after rule 1, the following new rules —
 - “1A. Once a cause has been allocated to a judge under the provisions of rule 1, it shall remain with the judge and be managed by such judge in terms of this Order, regardless of whether or not the judge is transferred from one courtroom to another, or from one division of the High Court to another where such divisions share the same Registry:

Provided that where a judge leaves the service or is not available for any reason, the Chief Justice may instruct the Registrar to allocate a matter to another judge or judges.

1B. The Registrar administering each division of the High Court shall, where a case of exceptional public importance is presented for registration, inform the Chief Justice or any person for the time being acting on his stead, of this fact before allocation, to enable the Chief Justice to determine whether a judge or judges should be nominated or empanelled by the Chief Justice in terms of section 6 of the Act.

- (b) in rule 2 —

- (i) by substituting for rule 2 (1), the following new rule —
“2 (1). The Registrar shall, in the event of a judge being unable for any reason to manage or continue to manage a cause under this Order, immediately upon that inability being known allocate the cause to another judge and advise all parties in writing of such allocation, and a judge who has been allocated such cause shall be bound by every decision and ruling given by the previous judge.”; and

- (ii) by deleting subrule (6); and substituting it with the following new subrule:

42 (5) “The judge shall give consideration to mediators report in the event of mediation having taken place in terms of Order 42A or, in the event that mediation did not take place, to give consideration to the reasons given by any party in opposing referral of the case to court annexed mediation.”

- (c) in rule 7, by substituting for subrule (1), the following new subrule —
“(1) Prior to the trial of any matter, the judge shall hold a final pretrial conference in terms of these rules”; and

(d) in rule 14, by inserting immediately after paragraph (c) the following new paragraph —

“(d) direct that a case be referred to mediation under Order 42A of these rules.”.

10. The Rules are amended by inserting immediately after Order 42, the following new Order —

Insertion of
Order 42A in
the Rules

“ORDER 42A COURT-ANNEXED MEDIATION

1 (1) The establishment of court-annexed mediation, as part of the judicial case management system, is intended to facilitate an efficient, cost effective and speedy resolution of disputes.

(2) The Chief Justice shall designate a Mediation Administrator who shall be responsible for the administration of court-annexed mediation.

(3) Without prejudice to the generality of subrule (2), the Mediation Administrator shall be responsible for —

- (a) the management of court-annexed mediation;
- (b) compiling, maintaining and publishing an update Roll of approved mediators within designated categories;
- (c) the preparation of model forms for use under this Order and the provision of copies of such forms upon request;
- (d) the establishment of procedures for the review and evaluation of court-annexed mediation;
- (e) establishing a Code of Conduct for mediators on the court-annexed mediation Roll, and dealing with any breach thereof;
- (f) conducting public education and awareness programmes on court-annexed mediation;
- (g) compiling and publishing a tariff of fees chargeable by enrolled mediators for conducting court-annexed mediation meetings;
- (h) any other matter that, in the opinion of the Chief Justice, is necessary and desirable to facilitate court-annexed mediation.

(4) An approved mediator shall be such person as shall have successfully applied for enrollment as a court-annexed mediator, having been accredited as a mediator by a body approved by the Chief Justice in consultation with the Mediation Administrator, or such other person as shall have been approved for enrolment as a court-annexed mediator by the Chief Justice.

2 (1) For all cases registered after the commencement of this Order, an originating process shall be accompanied by a notice indicating whether the plaintiff or applicant, as the case may be, agrees to or opposes referral of the case to court-annexed mediation.

(2) The defendant or respondent shall, when entering a memorandum of appearance or notice of intention to oppose, as the case may be, deliver a notice indicating whether such defendant or respondent agrees to or opposes referral of the case to court-annexed mediation.

(3) The notices referred to in subrule (1) and (2) shall be substantially in accordance with Forms 1 and 2 in Schedule 5, and where any party opposes referral of the case to court-annexed mediation such party shall clearly and concisely indicate the reasons for such opposition.

(4) In the event of the parties agreeing to refer the matter to court-annexed mediation, the Mediation Administrator shall issue a mediation referral order substantially in accordance with Form 3 in Schedule 5.

3. Notwithstanding the provisions of subrules 2 (1) and 2 (2) of this Order, the parties may, at any stage before judgment, by consent, apply to the judge for their case to be referred to the Mediation Administrator for mediation under these Rules.

4. Where any party has expressed objection to the referral of a case to court-annexed mediation, the judge at the initial case management conference, after hearing from the parties, may make an order for the Mediation Administrator to issue a mediation referral order.

5. (1) Where a case is referred to court-annexed mediation, all litigation processes and time limits set out in these Rules shall cease to run from the date of the referral order until the mediator's report has been issued in terms of this Order.

(2) The Mediation Administrator shall, after a case has been referred to court-annexed mediation, assign an appropriate mediator from the Roll to conduct the mediation meeting(s), which shall be informal in nature and not subject to formal rules of evidence or procedure.

(3) Except as provided by law, or discoverable in terms of the Rules or otherwise agreed between the parties, all communications and disclosures, whether oral or written, made during court-annexed mediation meetings shall be confidential and inadmissible in evidence, and any offer or tender made without prejudice during the mediation process shall not be disclosed to the court at any time before judgment has been delivered.

6. (1) A natural person shall attend a mediation meeting in person, and where represented, with his or her substantive legal representative.

(2) A juristic person shall appoint a representative having authority to enter into a settlement agreement on its behalf to attend a mediation meeting and where represented shall be accompanied by its substantive legal representative.

(3) Where the Government or an entity of government is a party to a case referred to court-annexed mediation, a person who has authority to settle shall attend a mediation meeting together with Government's Attorney.

(4) A party may, on good cause shown, be excused by the mediator from attending any mediation meeting in person and instead participate by electronic means.

(5) Where any party fails to attend a mediation meeting the mediator may adjourn the mediation to another date, and in such event the mediator may, in the mediator's report, make a recommendation to the Judge for a costs order, or other order, to be issued against the defaulting party.

7. (1) The process for mediation shall be deemed to be completed within 30 days from the date of issuance of the mediation referral order, provided that the Mediation Administrator may, on good cause shown by the parties, extend such time period for completion of the mediation.

(2) The mediator shall, not later than 5 days after completion of the mediation meeting(s), submit a report to the Mediation Administrator and the parties stating —

(a) that full or partial settlement was reached, in which event the terms of the settlement shall be recorded; or

(b) that any issues were agreed and do not require hearing by the court, in which event details of the agreed issues shall be recorded; or

(c) that mediation was not successful.

8. (1) Unless the parties agree otherwise, or the court so orders, liability for the fees of a mediator shall be borne equally by the parties participating in the mediation.

(2) when an order for costs of an action is under consideration, the Judge may have regard to the mediator's report.

9. A Mediation Administrator, mediator or any other person acting under the direction of the Mediation Administrator shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act done or omitted to be done in good faith in the performance of his or her duties under this Order.

11. Order 43 of the Rules is amended by inserting immediately after rule 4 the following new rules —

Amendment of
Order 43 of the
Rules

"5. Notwithstanding the provisions of this Order, the Chief Justice may from time to time issue Practice Directives, or specific directions for the expedited management and set down by a judge, of a certain category of a case or of a particular case, which he regards as being of exceptional public importance".

"6. A party in a matter that qualifies to be heard in motion court may set the same down for hearing on the next court day set as a motion day by the judge by filing a notice of set down at least 14 court days before such date."

12. Order 45 of the Rules is amended —

Amendment of
Order 45 of the
Rules

(a) by substituting for rule 1, the following new rule —

"1. Unless the judge otherwise directs, where a trial is called and the plaintiff appears but the defendant does not, the plaintiff may be taken to have proved his claim in terms of the affidavit filed with his declaration and judgment may be given accordingly.";

(b) by substituting for rule 2, the following new rule —

"2. Unless the judge otherwise directs, where a trial is called and the defendant appears but the plaintiff does not, the defendant may be taken to have proved his defence or counter claim in terms of the affidavit filed with his plea or counter claim, and an order dismissing the claim in convention and granting judgment in reconvention may be given accordingly."; and

(c) in rule 4 by substituting for subrule (1), the following new subrule —

"(1) Where a trial is called and neither party appears, the judge shall, unless he sees good reason to the contrary, strike the cause out with no order as to costs."

13. Order 47 of the Rules is amended by substituting for rule 1 the following new rule —

Amendment of
Order 47 of the
Rules

"1. A person instituting any proceedings may at any time before the matter has been set down and thereafter by consent of the parties or leave of the judge, withdraw such proceedings, in any of which events he shall deliver a notice of withdrawal and embody in such notice a consent to pay costs; and the taxing master shall tax such costs on the request of the other party."

14. Order 51 of the Rules is amended by inserting immediately after rule 8 the following new rules —

Amendment of
Order 51 of the
Rules

"9. Unless a judge decides otherwise, the judge shall only be required to briefly summarise the issues and his principal findings of fact at the time that any ruling or judgment is handed down:

Provided that where an appeal or an application for leave to appeal is noted or filed, the judge shall provide a full written ruling or judgment within a period of 14 court days from the date of such appeal or application.

10. A judge who reserves his ruling or judgment at the close of any proceedings shall state a date and time on which such ruling or judgment shall be handed down:

Provided that judgments in urgent applications and summary judgment rulings shall, save in exceptional circumstances, be handed down as soon as practicable after the hearing, but in any event, not later than 20 court days after the hearing.

11. The Registrar shall —

- (a) process any application for default judgment within a period of 30 court days from the date of filing;
- (b) process any writ of execution within a period of 30 court days from the date of filing; and
- (c) tax any bill of costs within a period of 60 court days from the date of filing, subject to the availability of the parties.”.

15. Order 61 of the Rules is amended by —

- (a) inserting immediately after rule 8, the following new rules —

“9. Except where any law provides otherwise, all proceedings to bring under review the decision or proceedings of any subordinate court or a court martial in criminal proceedings shall be by way of notice of motion directed and delivered by the party seeking to review such decision to the clerk of court, or presiding officer of such court, and to all other parties affected thereby —

- (a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected, or set aside; and
- (b) calling upon the clerk of court to dispatch, within 14 court days of the receipt of the notice of motion, to the Registrar, either —
 - (i) the record of such criminal proceedings sought to be corrected or set aside, together with such reasons as the presiding magistrate or officer is by law required or he desires to give make, or
 - (ii) where no record of the criminal proceedings was kept or is available, a written explanation for the lack of the record, together with such reasons as he is by law required or he desires to give or make; and

- (c) notifying the applicant.

8B. The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which the applicant relies to have the decision or proceedings set aside or corrected.

8C. The Registrar shall make available to the applicant the record dispatched to him as aforesaid upon such terms as the Registrar thinks appropriate to ensure its safety, and cause copies of such portions of the record as may be necessary for the purposes of the review to be made and furnish each of the other parties with a copy thereof.

8D. The applicant may within seven court days after the Registrar has made the record available to him, by notice and accompanying affidavit, amend, add to or vary the terms of his notice of motion and supplement the supporting affidavit and shall deliver the said notice and affidavit to the Registrar and to any other party affected thereby.

8E. If any party affected desires to oppose the granting of the relief sought in the notice of motion, he shall —

- (a) within 14 court days of the receipt by him of the notice of motion or any amendment thereof deliver notice of his intention to oppose and shall in such notice appoint an address within Botswana at which he shall accept notice and service of all processes in such proceedings; and
- (b) within 21 court days of the expiry of the time referred to in rule 8D above, deliver any affidavits he may desire in answer to the allegations made by the applicant.

8F. The applicant shall have the right to file any replying affidavit.

8G. The provisions of Order 12 as to set down of applications shall mutatis mutandis apply to the set down of review proceedings under this Order.

8H. Except with the leave of the judge on good cause shown, no application for review under this Order shall be brought later than 120 court days after the handing down of the decision or conclusion of the criminal proceedings complained of.”;

- (a) substituting for rule 9, the following new rule —

“9. Except where any other law may otherwise provide, where a record of proceedings of any subordinate court or court martial comes before the High Court under this Order the judge may, after reviewing such record —

- (a) confirm, amend or set aside any judgment, decision or order of any such court contained therein;
- (b) order a new trial of any case heard or decided in any such court;
- (c) remit the case to the court of first instance for further hearing, with such instructions as to further proceedings as the judge may deem necessary; or
- (d) impose such punishment, whether a more or less severe than or of a different nature from the punishment imposed by the court of first instance, as in the opinion of the judge ought to have been imposed by that court:

Provided that a more severe punishment may not be imposed without the accused having been given an opportunity, or if represented by an attorney, of being heard in open court.”;

- (e) inserting immediately after rule 9, the following new rule —

“9A. No review proceedings under this Order shall be competent when the relief sought may properly be granted in a criminal appeal.”;

- (f) substituting for rule 11, the following new rule —

“11. If in any case on review a judge desires to have any question of law or fact in such case argued at the bar, he may direct the same to be argued by the Director of Public Prosecutions and by such other counsel as the judge may appoint, which counsel shall be reimbursed at the rates then payable to pro deo counsel in a criminal trial.”; and

- (g) substituting for rule 12, the following new rule —

“12. When a judge has reviewed any proceedings coming before him and has dealt with such proceedings, either in chambers or in open court, he shall endorse his certificate stating his opinion upon the record thereof and the said record shall then be returned to the court from which the same was transmitted or received, and the judge may, in addition, embody his opinion in the form of a judgment, if he so desires.”.

16. Order 74 of the Rules is amended by —

- (a) substituting for section "I" of the tariff, the following new section of the tariff —

"I – HOURLY RATE (PARTY AND PARTY SCALE)

Pupil Attorney	P500 per hour
0 – 2 years experience	P500 – P750 per hour
+2 – 5 years experience	P750 – P1050 per hour
+5 – 10 years experience	P1250 – P1750 per hour
+ 10 – 15 years experience	P1750 – P 2250 per hour
+ 15 years experience	P2250 – P2750 per hour

- (b) inserting immediately after —

- (i) rule 11, the following new rule —

"12. In taxing any costs that were awarded at an attorney and client or, attorney and own client scale, the Taxing Master shall be guided by any tariff on costs that the Law Society of Botswana may present to the Chief Justice for approval as set out under section "J" of the tariff.", and

- (ii) section "I" of the tariff, the following new sections of the tariff —

"J – ATTORNEY – CLIENT SCALE

Pupil Attorney	Up to a maximum of P 600 per hour
0 – 2 Years experience	Up to a maximum of P 950 per hour
+2 – 5 Years experience	Up to a maximum of P1600 per hour
+ 5 – 10 Years experience	Up to a maximum of P2250 per hour
+10 – 15 Years experience	Up to a maximum of P2950 per hour
+ 15 Years experience	Up to a maximum of P3600 per hour

K – PRO DEO TARIFF

In taxing a Pro Deo Bill in criminal cases the taxing master shall be guided by the following tariff:

<i>Consultation</i>	<i>Mention</i>	<i>Travel & Hotel Expenses</i>
P2500 (Once off payment for all attorneys)	At applicable daily rate	At government rate

DAILY RATE FOR PRO DEO SERVICES

<i>Years of Experience</i>	<i>Daily Rate</i>
Pupil Attorney	00 per day
1 – 3 years	P2000 per day
+3 – 5 years	P2350 per day
+5 – 10 years	P2700 per day
+10 – 15 years	P3050 per day
15 years and above	P3400 per day
Advocate	P 3400 per day

and in the case of advocates, fees shall be on a sliding scale, having regard experience.".

17. The Rules are amended by inserting immediately after Schedule 4, the following new Schedules —

**Insertion of
Schedules in
the Rules**

SCHEDULE 5
(Order 42A rule 5)

FORMS

Notice of agreement or opposition to referral to mediation by plaintiff/
applicant
Notice of agreement or opposition to referral to mediation by defendant/
respondent
Mediation Referral Order
Explanation of mediation process and rights
Agreement to mediate
Instructions to mediator
Postponement of mediation
Mediation time sheet
Mediator's Report
Settlement agreement

TARIFF OF COURT-ANNEXED MEDIATORS' FEES

APPROVED ACCREDITATION BODIES FOR COURT-ANNEXED MEDIATORS

CODE OF CONDUCT FOR COURT-ANNEXED MEDIATORS

SCHEDULE 6
(Order 3 rules 2A (b), 2B (1) and 2C (b))

**JUDICIAL STANDARDS FOR DELIVERY OF RULINGS AND
JUDGMENTS**

- | | | |
|------|--|--|
| 1. | Urgent Applications | |
| 1.1. | Where no interim relief is sought | 10 court days |
| 1.2. | Where interim relief is sought | At close of hearing or at any
time before the threatened
conduct |
| 2. | Opposed Civil Application | 60 court days |
| 3. | Opposed Interlocutory Applications
Including Summary Judgment
or Provisional Sentence Applications | 20 court days |
| 4. | Unopposed Application | Close of hearing |
| 5. | Contested Civil Trial | 90 court days |
| 6. | Criminal Trial | 90 court days |
| 7. | Collapsed Trial | Close of hearing |
| 8. | Civil and Criminal Appeals | 30 court days.”. |

MADE this 23rd day of December, 2020.

ABDENICO B. TAFA,
Acting Chief Justice.