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G O E W E R M E N T S K E N N I S G E W I N G

DEPARTMENT OF JUSTICE

No. R. 757

29 May 1998

The President of the Constitutional Court in consultation with the Chief Justice has, under section 171 of the **Constitution** of the **Republic** of South Africa, 1996 (Act No. 108 of 1996), and section 16 of the Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995), as amended, prescribed the rules contained in the Annexure hereto regulating matters relating to the proceedings of and before the Constitutional Court with effect from 29 May 1998.

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## 1. Definitions

- (1) In these rules any word or expression to which a meaning has been assigned in the Constitution shall bear that meaning and, unless the context otherwise indicates -
- “affidavit” includes an affirmation or a declaration **contemplated** in section 7 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);
- “apply” means apply on notice of motion, and “application” has a corresponding meaning;
- “**Court**” means the Constitutional Court established by section 166(a) of the Constitution, read with item 16(2)(a) of Schedule 6 to the Constitution;
- “court day” means any day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by any order of the court;
- “directions” means directions given by the President with regard to the procedures to be followed in the conduct and disposition of cases;
- “judge” means a judge or acting judge of the Court appointed under section 174 or 175 of the Constitution, sitting **otherwise** than in open court;
- “**law clinic**” means a centre for the practical legal education of students in the faculty of law at a university in the Republic, and includes a law centre controlled by a non-profit organisation **which** provides the public with legal services free of charge and **certified** as contemplated in section 3(l)(f) of the Attorneys Act, 1979 (Act No. 53 of 1979);
- “**legal representative**” means an advocate admitted in terms of section 3 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or an attorney admitted in terms of section 15 of the Attorneys Act, 1979 (Act No. 53 of 1979);
- “party” or any other reference to a litigant in terms includes a legal representative appearing on behalf of a party, as the context may require;
- “President” means the President of the Court appointed under section 174(3) . read with item 16(2)(b) of Schedule 6 of the Constitution;
- “registrar” means the registrar of the Court, and includes any acting or assistant registrar of the Court;
- “sheriff” means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and includes a person appointed in terms of section 5 or section 6 of that Act as an acting or a deputy sheriff, respectively, and a sheriff, an acting or a deputy sheriff appointed in terms of any law not yet

repealed by a competent authority and, immediately before the commencement of the Constitution, **in** force in any area which forms part of the national territory; "Supreme Court of Appeal Rules" means the rules regulating the conduct of the proceedings of the Supreme **Court** of Appeal published under Government Gazette No. **R.1207** of 15 December 1961, as amended;

"the Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); and

"Uniform Rules" means the rules regulating the conduct of the proceedings of the several high courts published under Government Notice No. R.48 of 12 January 1965, as amended.

- (2) Any powers or authority vesting in the President in terms of these rules may be exercised by a judge or judges designated by the President for that purpose.
- (3) Any reference in these rules to a party having to sign documents shall be construed as including a reference to a legal representative representing such party, and a reference to lodging documents with the registrar as including prior service of such documents on other parties and the lodging of 25 copies of all relevant documents with the registrar.
- (4) Notices, directions or other communications in terms of these rules may be given or made by registered post or by facsimile or other electronic copy.
- (5) The President may extend any time limit prescribed in these rules.
- (6) Written arguments, responses and any other representations to the Court shall be clear and succinct.

#### PART I

#### Sessions of the Court

#### 2. **Court terms**

- (1) There shall be 4 terms in each year as follows:
  - 15 February to 31 March, inclusive;
  - 1 May to 31 May, inclusive;
  - 15 August to 30 September, inclusive;
  - 1 November to 30 November, inclusive.
- (2) A case may be heard out of term if the *President* so directs.
- (3) If the day fixed for the commencement of a term is not a *court* day, the term shall commence on the next succeeding court *day* and, if the day fixed for the end of a term is not a *court* day, the term shall end on the *court* day preceding.

#### PART II

#### Registrar

#### 3. **Registrar's office hours**

- (1) The **office** of the *registrar* shall be open from 08:30 to 13:00 and from 14:00 to 15:30 on *court* days.
- (2) The *registrar* may in exceptional circumstances accept documents at any time, and shall do so when directed by a *judge*.

4. General duties of the *registrar*

- (1) A notice of appeal, an order of court **referring** any matter to the Court by another court, or another document by which proceedings are initiated in the Court in terms of these rules shall be numbered by the *registrar* with a consecutive number for the year during which it is filed.
- (2) Every document afterwards lodged in such a case or in any subsequent case in continuation thereof shall be marked with that number by the *party* lodging it and shall not be received by the *registrar* until so marked.
- (3) All documents delivered to the *registrar* to be filed in a case shall be filed by the *registrar* in a case file under the number of such case.
- (4) All documents referred to in subrule (1) shall be subject to the payment of **R75,00** court fees in the form of a revenue stamp: Provided that if an indigent party is assisted or represented by an office or officer of the Human Rights Commission, the Public Protector, the Legal Aid Board, a *law clinic* or *pro Deo* counsel, or satisfies the *registrar* in terms of subrule (5) that he or she is indigent, the payment of court fees shall be waived by the *registrar* and he or she shall make a note to that effect on the first page of the document in question.
- (5) A party who desires to initiate or oppose proceedings in the *Court* and who is of the opinion that he or she is indigent, or anybody on behalf of such *party*, shall satisfy the *registrar* that, except for household goods, wearing apparel and tools of trade, such *party* is not possessed of property to the amount of R20 000 and will not be able within a reasonable time to provide such sum from his or her earnings.
- (6) Copies of a record maybe made by any person in the presence of the *registrar*: Provided that the *registrar* shall at the request of a party make a copy of a recorded order, settlement, judgment or order relating to costs on payment of court fees with revenue stamps of **R1,00** for every 100 typed words or part thereof, or on payment with revenue stamps of **R0,50** for every photocopy of an A4-size page or part thereof and shall certify that copy or photocopy to be a true copy of the original: Provided further that if an indigent *party* is assisted or represented by an office or **officer** of the Human Rights Commission, the Public Protector, the Legal **Aid** Board, a *law clinic* or *pro Deo* counsel, or satisfies the *registrar* that he or she is indigent in terms of subrule (5), the payment of court fees may be waived by the *registrar*.
- (7) The *registrar* shall sign (manually or by machining a facsimile of his or her signature), date and issue all process as sued out by a *party*.
- (8) Whenever the *Court* makes an order declaring or confirming any law or provision thereof to be inconsistent with *the Constitution* under section 172 of *the Constitution*, the *registrar* shall, **not later than 15 days** after such order has been made, cause such order to be published in the Gazette and in the provincial gazette concerned if the order relates to provincial legislation.

- (9) The *registrar* shall publish a hearing list which shall be affixed to the notice board at the *Court* building not less than 15 days before each term for the convenience of the *legal* representatives and the information of the public.
- (10) *Directions* with regard to any proceedings shall be furnished by the *registrar* to the parties concerned within five days of such *directions* having been given.
- (11) (a) The registrar shall maintain the Court's records and shall not permit any of them to be removed from the court building.
- (b) Any document lodged with the registrar and made part of the *Court's* records shall not thereafter be withdrawn permanently from the official court files.
- (c) After the conclusion of the proceedings in the *Court*, any original records and papers transmitted to the *Court* by any other court shall be returned to the court from which they were received.
- (12) (a) If it appears to the *registrar* that a *party* is unrepresented, he or she shall refer such *party* to the nearest *office* or *officer* of the Human Rights Commission, the Legal Aid *Board*, a *law clinic* or such other appropriate body or institution that may be willing and in a position to assist such *party*.
- (b) If no assistance is rendered by such Commission, Board, *law clinic* or other body or institution, the *registrar* shall assist such unrepresented *party* in preparing the papers required by these rules or, if directed to do so by the *President*, request an advocate or attorney to assist such *party*.
- (c) The State or the *registrar* shall not be liable for any damage or loss resulting from assistance given in good faith by that *registrar* to such *party* in proceedings before the *Court* or in the enforcement of an order in terms of these rules in the form of legal advice or in the compilation or preparation of any processor document.

### PART III

#### Service of process

#### 5. Sheriff

- (1) Unless the *Court* directs otherwise, all process of the Court, at the request of any *party*, shall be served or executed through a sheriff of the High Court: Provided that a sheriff shall be under an obligation to effect service only if the *party* who desires the service has remunerated him or her beforehand for the said service according to the tariff for sheriffs prescribed in rule 68 of the *Uniform Rules*.
- (2) **Service** or execution of judicial process shall, after payment of the remuneration, be effected by the *sheriff* concerned without delay, and the *sheriff* may, where resistance to the due service or execution of judicial process is experienced or is reasonably expected, call upon any member of the South African Police Service referred to in sections 199 and 205 of *the Constitution* for assistance.
- (3) A *sheriff who* is entrusted with the service or execution of judicial process shall -
- (a) in writing notify the *registrar* and the *party* concerned who sued out the process that service or execution has been duly effected, stating the



- identity of the person upon whom the process was served, the date and manner of service or the result of execution, and return that process to the *registrar*, or
- (b) in writing notify the *party who* sued out the judicial process concerned if he or she has been unable to effect **service** or execution, and of the reason for such inability, and return that process to the *party* concerned, and keep a record of any process so returned.
- (4) A *sheriff* shall after service or attempted service of any judicial process specify the total amount of his or her charges on the original of that document and each copy thereof, and the amount of each of his or her charges separately on the return of service.

#### 6. **Service of process**

- (1) Subject to subrule (2), the provisions of rule 4 of the *Uniform Rules* shall apply, with such modifications as may be necessary, to the **service** of any process of the *Court*.
- (2) In any matter, including any appeal, where there is a dispute over the constitutionality of any executive or administrative act or conduct or threatened executive or administrative act or conduct, or in any inquiry into the constitutionality of any **law**, including any Act of Parliament or that of a provincial legislature, and the authority responsible for the executive or administrative act or conduct or the threatening thereof or for the administration of any such law is not a *party* to the case, the *party* challenging the constitutionality of such act or conduct or law shall, within **five** days of lodging with the registrar a document in which such contention is raised for the first time in the proceedings before the *Court*, serve on the authority concerned a copy of such document and lodge proof of such service with the *registrar*, and no order declaring such act, conduct or law to be unconstitutional shall be made by the *Court* in such matter unless the provisions of this rule have been complied with.

### PART IV

#### Representation

#### 7. . . Representation of parties

- (1) Except where the *Court* or the *President* directs otherwise, no person shall be entitled to appear on behalf of any *party* at any proceedings of the *Court* unless he or she is entitled to appear in the high courts.
- (2) If a *party* dies or becomes incompetent to continue any proceedings, the proceedings shall thereby be stayed until such time as an executor, curator, trustee, guardian or other competent person has been appointed in his or her place, or until such incompetence ceases to exist.
- (3) Where an executor, curator, trustee, guardian or other competent person has been so appointed, the *Court may*, on application, order that he or she be substituted for the *party* who has so died or become incompetent.

#### 8. **Power of attorney or authorisation to act**

- (1) A power of attorney need not be filed, but the authority of a *legal practitioner* to act on behalf of any *party* may, within 21 days after it has come to the notice of any *party* that the *legal practitioner* is so acting, or with the leave of the court on

good cause shown at any **time** before judgment, be disputed by notice, **where-** after the **legal practitioner** may no longer so **act**, unless a power of attorney is lodged with the **registrar** within 21 days of such **notice**.

- (2) Every power of attorney or authorisation to act lodged shall be signed by or on behalf of the **party** giving it, and shall otherwise be duly executed according to law.
- (3) No power of attorney or authorisation to act **shall be** required to be lodged by an attorney-general, a **pro Deo** counsel appointed by the State or the State Attorney, any deputy state attorney **or any** professional assistant to the State Attorney or any attorney instructed, in writing or by telegram or by facsimile, by or on behalf of the State Attorney or a deputy state attorney in any matter in which the State Attorney or deputy state attorney is **acting** as such by virtue of any provision of the State Attorney Act, 1957 (Act No. 56 of 1957), or by virtue of any provision of any law not yet repealed by a competent authority and, immediately before the commencement of **the Constitution**, in force in any area which forms part of the national territory.

#### PART V

#### **Amicus curiae submissions**

#### **9. Submissions by an amicus curiae**

- (1) Subject **to** these rules, any person interested in any matter before the **Court** may, with the written consent of all the parties in the matter before the **Court**, given not later than the time specified in subrule (5), be admitted therein as an **amicus curiae** upon such terms and conditions and with such rights and privileges as maybe agreed upon in writing with all the parties before the **Court** or as may be directed by the **Resident** in terms of subrule (3).
- (2) The written consent referred to in subrule (1) shall, within five days of it having been obtained, be lodged with the **registrar** and the **amicus curiae** shall, in addition to any other provision, comply with the times agreed upon for the lodging of **written** argument.
- (3) The **President** may amend the terms, conditions, rights and privileges agreed upon as referred to in subrule (1). “
- (4) If the written consent referred to in subrule (1) has not been secured, any person who has an interest in any matter before the Court may **apply** to the **President** to be admitted therein as an **amicus curiae**, and the **President** may grant such **application** upon such terms and conditions and with such rights and privileges as he or she may determine.
- (5) An **application** pursuant to the provisions of subrule (4) shall be made -
  - (a) in the case of an **application** for leave to appeal to the **Court**, and in any case where the right of direct access to the **Court** has been invoked, within 10 days after such **application** has been lodged with the **registrar**;
  - (b) in any other matter, not later than 10 days after the lodging of the respondent's written submissions or after the time for lodging such submissions has expired.

- (6) An *application* to be admitted as an *amicus curiae* shall -
- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
  - (b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings;
  - (c) set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and his or her reasons for believing that the submissions will be useful to the *Court* and different from those of the other parties.
- (7) An *amicus curiae* shall have the right to lodge written argument, provided that such written argument does not repeat any matter set forth in the argument of the other parties and **raises** new contentions which may be useful to the *Court*.
- (8) Unless otherwise ordered by the *Court*, an *amicus curiae* shall be limited to the record on appeal or referral and the facts found proved in other proceedings and shall not add thereto and shall not present oral argument.
- (9) An order granting **leave** to be admitted as an *amicus curiae* shall specify the date of lodging the written argument of the *amicus curiae* or any other relevant matter.
- (10) An order of *Court* dealing with costs may make provision for the payment of costs incurred by or **as a** result of the intervention of an *amicus curiae*.
- (11) **The provisions of rule 1(3) shall be applicable**, with such modifications as may be necessary, to an *amicus curiae*.

## PART VI

### *Applications*

#### 10. **Application procedure**

- (i) **Save** where otherwise provided, in any matter in which an *application* is necessary for any purpose, including -
  - (a) in respect of a matter contemplated in section 167(4)(a) of *the Constitution*, and
  - (b) the obtaining of *directions* from the Court,
 such *application* shall be brought on notice of motion **supported** by an *affidavit* as to the facts upon which the applicant relies for relief and shall set out an address within 25 **kilometres** from the *office* of the *registrar* at which he or she will accept notice and service of all documents in the proceedings and shall set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant in writing whether he or she intends to oppose such *application* and shall further state that if no such notification is given, the *registrar will be* requested to place the matter before the *Resident* to be dealt within terms of subrule (4).
- (2) When relief is claimed against any person, authority, government, organ of state or body, or where it is necessary or proper to give any of the aforementioned notice of an application referred to in subrule (1), the notice of motion shall be addressed to both the *registrar* and the aforementioned, otherwise it shall be addressed to the *registrar* and **shall** be as near as may be in accordance with Form 1 or 2, **as the case may be**.

- (3) (a) Any person opposing the granting of an order sought in the notice of motion shall --
- (i) within the time stated in the said notice, notify the applicant and the registrar in writing of his or her intention to oppose the *application* and shall in such notice appoint an address within 25 **kilometres** of the office of the *registrar* at which he or she will accept notice and service of all documents in the proceedings;
  - (ii) within 15 days of notifying the applicant of his or her intention to oppose the application, lodge his or her answering *affidavit*, if any, together with any relevant documents which may include supporting affidavits.
- (b) The applicant may lodge a replying *affidavit* within 10 days of the service upon him or her of the *affidavit* and documents referred to in paragraph (a)(ii).
- (c) (i) Where no notice of opposition is given or where no answering affidavit in terms of paragraph (a)(ii) is lodged within the time referred to in paragraph (a)(ii), the applicant may within five days of the expiry thereof request the *registrar* to place the application before the *President*.
- (ii) Where an answering affidavit is lodged, the applicant may request the registrar to place the *application* before the *President* within five days of the lodging of his or her replying *affidavit* or, if no replying *affidavit* is lodged, within five days of the expiry of the time stated in paragraph (b).
- (iii) If the applicant fails so to request the *registrar* within the allotted period, the respondent may do so immediately upon the expiry thereof.
- (d) The *President* may, when giving *directions* under subrule (4), permit the lodging of further affidavits.
- (4) When an *application* is placed before the *President* in terms of subrule (3)(c), he or she shall give *directions* as to how the *application* shall be dealt with and, in particular, as to whether it shall be set down for hearing or whether it shall be dealt with on the basis of written argument or summarily on the basis of the information contained in the *affidavits*.

## 11. Urgent applications

- (1) In urgent applications, the *President* may dispense with the forms and service provided for in these rules and may give *directions* for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall as far as is practicable be in accordance with these rules, as may be appropriate.
- (2) An application in terms of subrule (1) shall be on notice of motion accompanied by an *affidavit* setting forth explicitly the circumstances which justify a departure from the ordinary procedures.

## 12. Argument

- (1) Written argument shall be filed **timeously**.
- (2) Oral argument shall not be allowed if directions to that effect are given by the *President*.

- (3) (a) Oral argument shall be relevant to the issues before the *Court* and its duration shall be subject to such time limits as the *President* may impose.
- (b) The parties shall assume that all the *judges* have read the written arguments and that there is no need to repeat what is set out therein.
- (4) (a) Argument may be addressed in the Court in any official language and the *party* concerned shall not be responsible for the provision of an interpreter.
- (b) Should a person *wish* to address the Court in an official language other than the language in which such person's written argument is couched, such person shall, at least seven days prior to the hearing of the matter in question, give written notice to the *registrar* of his or her intention to use another official language and shall indicate what that language is.
- (5) On the *Court's* own motion, or on the application of one or more parties, the Court may order that two or more cases, involving what appear to be the same or related questions, be argued together as one case or on such other terms as may be prescribed.

## PART VII

### Matters within the exclusive jurisdiction of the Court

#### 13. Referral of a Bill

- (1) The referral of a Bill in terms of section 79(4)(b) or 121(2)(b) of the *Constitution* by the President of the Republic or by the premier of a province, as the case may be, shall be in writing and shall be addressed to the *registrar* and to the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, or to the Speaker of the provincial legislature in question, as the case may be.
- (2) Such referral shall specify -
  - (a) the provision or provisions of the Bill in respect of which the President of the Republic or the premier of a province has reservations;
  - (b) the Constitutional provision or provisions relating to such reservations; and
  - (c) the grounds or reasons for such reservations.
- (3) Political parties represented in the national Parliament or the provincial legislature concerned, as the case may be, shall be entitled as of right to make written submissions relevant to the determination of the issue within the time specified in *directions* given under subrule (4).
- (4) Upon receipt of the referral, the matter shall be dealt with in accordance with *directions* given by the *President*, which may include a *direction* -
  - (a) requesting the relevant Speaker or the Chairperson of the National Council of Provinces, as the case maybe, for such additional information as the *President* may consider to be necessary or expedient to deal with the **matter**; and
  - (b) calling upon all interested political parties in the national Parliament or the provincial legislature concerned, as the case may be, who may wish to do so to make such written submissions as are relevant to the deter-

mination of the issue within a **period** to be specified in such direction.

14. Constitutionality of an Act

- (1) An **application** in terms of sections 80(1) and 122(1) of *the Constitution* by members of the National Assembly or a provincial legislature shall be brought on notice of motion supported by an **affidavit** as to the contentions upon which the applicants rely for relief and shall be lodged with the **registrar** and served on the Speaker of the National Assembly and, where applicable, the Chairperson of the National Council of Provinces, or on the Speaker of the provincial legislature concerned, as the case may be.
- (2) The notice shall request the Speaker and, if relevant, the Chairperson of the National Council of Provinces to bring the application to the attention of **all** political parties represented in the relevant house or legislature in writing within five days of the service upon her or him of such application.
- (3) The application referred to in subrule (1) shall be accompanied by a certificate by the Speaker of the legislature concerned that the requirements of section 80(2)(a) or section 122(2)(a) of *the Constitution*, as the case may be, have been complied with.
- (4) The application referred to in subrule (1) shall also specify -
  - (a) the provision or provisions of the Act being challenged;
  - (b) the relevant provision or provisions of *the Constitution* relied upon for such challenge;
  - (c) the grounds upon which the respective provisions are deemed to be in conflict; and
  - (d) the relief, including any interim relief, sought.
- (5)
  - (a) Any political party in the legislature concerned or any government that wishes to oppose the granting of an order sought in such an application shall notify the **registrar** in **writing** within 15 days of such application of such intention to oppose and shall, in such notification, appoint an address at which such party or government will accept notice and service of all documents in the proceedings.
  - (b) If such a notice is given, the application shall be disposed of in accordance with the provisions of rule 10.
- (6) If a notice to oppose is not lodged in terms of subrule (5), the matter shall be disposed of in accordance with *directions* given by the President, which may include a **direction** -
  - (a) calling for such additional information as the **President** may consider to be necessary or expedient to deal with the **matter**; and
  - (b) that all interested political parties in the national Parliament or the provincial legislature concerned, as the case may be, who wish to do so make such written submissions as are relevant to the determination of the issue within a period specified in such direction.

15. Confirmation of an order of constitutional invalidity

- (1) The registrar of a court which has made an order of constitutional invalidity as contemplated in section 172 of *the Constitution* shall, within 15 days of such order, lodge with the **registrar** of the *Court* a copy of such order.

- (2) A person or organ of state entitled to do so and desirous of appealing against such an order in terms of section 172(2)(d) of *the Constitution* shall, within 21 days of the making of such order, lodge a notice of **appeal** with the *registrar* and a copy thereof with the registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with *directions* given by the *President*.
- (3) The appellant shall in such notice of appeal set forth clearly the grounds on which the appeal is brought, indicating which findings of fact and/or law are appealed against and what order it is contended ought to have been made.
- (4) A person or organ of state entitled to do so and desirous of applying for the confirmation of an order in terms of section 172(2)(d) of *the Constitution* shall, within 21 days of the making of such order, lodge an application for such confirmation with the *registrar* and a copy thereof with the registrar of the court which made the order, whereupon the matter shall be disposed of in accordance with *directions* given by the *President*.
- (5) If no notice or application as contemplated in subrules (2) and (4), respectively, has been lodged within the time prescribed, the matter of the confirmation of the order of invalidity shall be disposed of in accordance with *directions* given by the *President*.

16. **Certification of a provincial constitution**

- (1) The Speaker of a provincial legislature which has passed or amended a constitution in terms of sections 142 and 144(2) of *the Constitution* and which wishes such constitution or constitutional amendment to be certified by the *Court* shall certify in writing the content of the constitution or amendment passed by the provincial legislature and submit such constitution or constitutional amendment to the *registrar* with a formal request to the *Court* to perform its functions in terms of section 144 of the *Constitution*.
- (2) The certificate contemplated in subrule (1) shall include a statement specifying that the constitution or the constitutional amendment was passed by the requisite majority.
- (3) Any political party represented in the provincial legislature shall be entitled as of right to present oral argument to the *Court* provided that such political party may be required to submit a written submission to the *Court* in advance of the oral argument.
- (4) Upon the receipt of the request referred to in subrule (1), the matter shall be disposed of in accordance with *directions* given by the *President*, which may include -
  - (a) referral to the Speaker for such additional information as is considered by the *President* to be necessary or expedient to deal with the matter;
  - (b) a *direction* specifying the time within which written submissions from interested political parties shall be made;
  - (c) a *direction* that any written submissions made in terms paragraph (b) should be brought to the attention of other political parties in the provincial legislature by such means as the *President* considers suitable.

- (5) . An order of the Court pursuant to section 144 of *the Constitution* may specify the provisions of the provincial constitution or of the constitutional amendment, if any, which comply **and** which do not comply with *the Constitution*.

## PART VIII

### Direct access and appeals

#### 17. Direct access in the interests of justice

- (1) An application for direct access as contemplated in section 167(6)(a) of *the Constitution* shall be brought on notice of motion which shall be supported by an affidavit which shall set forth the facts upon which the applicant relies for relief.
- (2) An application in terms of subrule (1) shall be lodged with the *registrar* and served on all *parties* with a direct or substantial interest in the relief claimed and shall set out -
- (a) the grounds on which it is contended that it is in the interests of justice that an order for direct access be granted;
  - (b) the nature of the relief sought and the grounds upon which such relief is based;
  - (c) whether the matter can be dealt with by the Court without the hearing of oral evidence and, if it cannot,
  - (d) how such evidence should be adduced and conflicts of fact resolved.
- (3) Any person or *party* wishing to oppose the *application* shall, within 10 days after the lodging of such *application*, notify the applicant and the *registrar* in writing of his or her intention to oppose.
- (4) After such notice of intention to oppose has been received by the *registrar* or where the time for the lodging of such notice has expired, the matter shall be disposed of in accordance with *directions* given by the *President*, which may include -
- (a) a *direction* calling upon the respondents to make written submissions to the *Court* within a specified time as to whether or not direct access should be granted; or
  - (b) a *direction* indicating that no written submissions or *affidavits* need be filed.
- (5) *Applications* for direct access maybe dealt with summarily, without hearing oral or written argument other than that contained in the application itself Provided that where the respondent has indicated his or her intention to oppose in terms of subrule (3), an application for direct access shall be granted only after the provisions of subrule (4)(a) have been complied with.

#### 18. Appeals from courts other than the Supreme **Court of Appeal**

- (1) The procedure set out in this rule shall be followed in an *application* for leave to appeal directly to the Constitutional Court where a decision on a constitutional matter, other than an order of constitutional invalidity under section 172(2)(a) of *the Constitution*, has been given by any court other than the Supreme Court of Appeal irrespective of whether the Chief Justice has refused leave or special leave to appeal.



- (2) A litigant who is aggrieved by the decision of a court and who wishes to appeal against it directly to the *Court* shall, within 15 days of the order against which the appeal is sought to be brought and after giving notice to the other *party* or parties concerned, *apply* to the court which gave the decision to certify that it is in the interests of justice for the matter to be brought directly to the Constitutional Court and that there is reason to believe that the *Court* may give leave to the appellant to note an appeal against the decision on such matter.
- (3) The application referred to in subrule (2) shall be in writing, signed by the appellant, and shall set out clearly and succinctly the constitutional matter raised in the case, the decision against which the appeal is made and the grounds on which such decision is disputed.
- (4) The respondent or respondents may, within 10 days from the date upon which such application is served upon him, her or them, respond thereto in writing.
- (5) The response shall be signed by the respondent or respondents.
- (6) (a) If it appears **to** the court hearing the application made in terms of subrule ( 2 ) t h a t -
- (i) the institutional matter is one of substance on which a ruling by the *Court is* desirable; and
  - (ii) the evidence in the proceedings is sufficient to enable the *Court* to deal with and dispose of the matter without having to refer the case back to the court concerned for further evidence; and
  - (iii) there is a reasonable prospect that the *Court* will reverse or materially alter the judgment if permission to bring the appeal is given,
- such court shall **certify** on the application that in its opinion, the requirements of subparagraphs (i), (ii) and (iii) have been satisfied or, failing which, which of such requirements have been satisfied and which have not been so satisfied.
- (b) The certificate shall also indicate whether, in the opinion of the court concerned, it is in the interests of justice for the appeal to be brought directly to the Constitutional Court.
- (7) **Within** 10 days of the date on which a positive or negative certificate is given in terms of subrule (6) an appellant wishing to appeal to the *Court* on a constitutional matter shall lodge with the *registrar* an application for leave to appeal.
- (8) An application referred to in subrule (7) shall be signed by the appellant and shall contain -
- (a) those portions of the judgment concerned that deal with the constitutional issue;
  - (b) the application for **the judge's** certificate brought in terms of subrule (2);
  - (c) the judge's certificate; and
  - (d) such supplementary information or argument that the appellant considers necessary to bring to the attention of the *Court*.

- (9) (a) Within 10 days from the date upon which an application referred to in subrule (7) is lodged, the respondent or respondents may respond thereto in writing, indicating whether or not the parties concerned consent to leave to appeal being given and, if the application is opposed, the grounds for such opposition.
- (b) The response shall be signed by the respondent or respondents.
- (10) (a) The *Court* shall decide whether or not to grant the appellant leave to appeal: Provided that in matters of urgency and when the *Court* is out of term, the *President* may grant but not refuse leave to appeal.
- (b) *Applications* for leave to appeal may be dealt with summarily, without hearing oral or written argument other than that contained in the application itself.

19. **Procedure on appeal**

- (1) If leave to appeal is given in terms of rule 18, the appellant shall note and prosecute the appeal as follows:
  - (a) The appellant shall prepare and lodge the appeal record with the *registrar* within such time as may be fixed by the *President* in *directions*.
  - (b) The appeal record shall consist of the judgment of the court from which the appeal is noted, together with all the documentation lodged by the parties in that court and all the evidence which may have been led in the proceedings and which may be relevant to the issues that are to be determined.
  - (c)
    - (i) The parties shall endeavour to reach agreement on what should be included in the record and, in the absence of such agreement, the appellant shall *apply* to the *President* for *directions* to be given in regard to the compilation of the record.
    - (ii) Such application shall be made in writing and shall set out the nature of the dispute between the parties in regard to the compilation of the record and the reasons for the appellant's contentions.
    - (iii) The respondent may respond to the application within 10 days of being served with the application and shall set out the reasons for the respondent's contentions.
    - (iv) The *President* may assign the application to one or more *judges*, who may deal with the matter on the papers or require the parties to appear before him or her or them on a specified day and at a specified time to debate the compilation of the record.
    - (v) The *judge or judges* concerned shall give *directions* in regard to the compilation of the record, the time within which the record is to be lodged with the *registrar* and any other matters which may be deemed by him or her or them to be necessary for the purpose of enabling the *Court* to deal with the appeal, which *directions* may include that the matter be referred back to the court *a quo* for the hearing of additional evidence specified in the *directions*, or that additional evidence be put before the *Court* by way of *affidavit* or *otherwise* for the purpose of the appeal.

- (2)
  - (a) One of the copies of the record lodged with the *registrar* shall be certified as correct by the registrar of the court appealed from.
  - (b) Copies of the record shall be clearly typed on stout A4 standard paper, double-spaced in black record ink, on one side of the paper only.
  - (c) Legible documents that were typed or printed in their original form such as **cheques** and the like shall not be retyped and clear photocopies shall be provided instead.
  - (d) All records shall be securely bound in suitable covers disclosing the names of the *parties*, the court appealed from and the names of the attorneys of the *parties*.
  - (e) Bulky records shall be divided into separate conveniently-sized volumes.
- (3) If a record has been lodged in accordance with the provisions of paragraphs (b) and (c) of subrule (1), the *registrar* shall cause a notice to be given to the parties to the appeal requiring -
  - (a) the appellant to lodge with the *registrar* written argument in support of the appeal within a period determined by the *President* and specified in such notice; and
  - (b) the respondent to lodge with the *registrar* written argument in reply to the appellant's argument by a specified date determined by the *President*, which shall be subsequent to the date on which the appellant's argument was served on the respondent.
- (4) The appellant may lodge with the *registrar* written argument in answer to the respondent's argument within 10 days from the date on which the respondent's argument was served on the appellant.
- (5) The *President* may decide whether the appeal shall be dealt with on the basis of written arguments only.
- (6) Subject to the provisions of subrule (5), the *President* shall determine the date on which oral argument will be heard, and the *registrar* shall within five days of such determination notify all parties to the appeal of the date of the hearing by registered post or facsimile.

20. **Appeal against a decision of the Supreme Court of Appeal**

- (1) An appeal to the *Court* on a constitutional matter against a judgment or order of the Supreme Court of Appeal shall be granted only with the special leave of the *Court* on *application* made to it.
- (2) A litigant who is aggrieved by the decision of the Supreme Court of Appeal on a constitutional matter and who wishes to appeal against it to the Court shall, within 15 days of the judgment against which the appeal is sought to be brought and after giving notice to the other *party* or parties concerned, lodge with the registrar of the Court an *application* for leave to appeal.
- (3)
  - (a) The application referred to in subrule (2) shall be in writing, signed by the appellant, and shall set out the constitutional matter raised in the case, the decision against which the appeal is made and the grounds on which such decision is disputed.

- (b) Such **application** shall contain -
- (i) 'the judgment of the Supreme Court of Appeal or, if such judgment is not yet available, the order issued by the Supreme Court of Appeal;
  - (ii) such supplementary information or argument that the appellant considers necessary to bring to the attention of the *Court*.
- (4) (a) Within 10 days from the date upon which the application referred to in subrule (2) is lodged, the respondent or respondents may respond thereto in writing, indicating whether or not the parties concerned consent to **leave** to appeal being given and, if the application is opposed, the grounds for such opposition.
- (b) The response shall be signed by the respondent or respondents.
- (5) The provisions of rule 18(1 O) shall be equally applicable.

**PART IX  
Fees and costs**

**21. Taxation of costs and attorneys' fees**

- (1) Rules 9 and 10 of the Supreme *Court of Appeal Rules* regarding taxation and attorneys' fees shall apply, with such modifications as may be necessary.
- (2) In the event of oral and written argument, a fee for written argument may in appropriate circumstances be allowed as a separate item.

**22. Fees of the Court**

- (1) In addition to the Court fees already prescribed in these rules the fees in Schedule 2 shall be the fees of the court payable with revenue stamps.
- (2) The proviso to rule 4(4) and the provisions of rule 4(5) of the *Supreme Court of Appeal Rules* shall apply, with such modifications as may be necessary.

**PART X  
Miscellaneous provisions**

**23. Library**

- (1) The Court's library shall be available for use by the judges, the staff of the *Court* and other persons who have permission from the librarian for the purposes of constitutional research.
- (2) The library shall be open during such times as the reasonable needs of the *Court* may require and its operation shall be governed by the rules made by the librarian in consultation with the *President*.

**24. Translations**

Where any record or other document lodged with the *registrar* contains material written in an official language which is not understood by all the judges, the *registrar* shall have the portions of such record or document concerned translated by a sworn translator of the High Court into a language or languages which will be understood by such judges, and shall supply the *parties* with a copy of such translations.

25. **Models, diagrams and exhibits**

- (1) Models, diagrams and exhibits of material forming part of the evidence taken in a case and brought to the *Court* for its **inspection** shall be placed in the custody of the registrar at least 10 days before the case is to be heard or submitted.
- (2) All models, diagrams and exhibits of material placed in the custody of the *registrar* shall be removed by the parties within 40 days after the case is decided.
- (3) When this is not done, the *registrar* shall notify the *party* concerned to remove the articles forthwith and if they are not removed within six months thereafter, the *registrar* shall destroy them or **otherwise** appropriately dispose of them.

26. **Withdrawal of cases**

Whenever all *parties*, at any stage of the proceedings, lodge with the *registrar* an agreement in writing that a case be withdrawn, specifying the terms relating to the payment of costs and payment to the *registrar* of any fees that maybe due, the *registrar* shall, if the *President* so directs, enter such withdrawal, whereupon the *Court* shall no longer be seized of the matter.

27. **Format of documents**

- (1) **Every** document which exceeds five pages shall, regardless of the method of duplication, contain a table of contents and a table of authorities with correct references to the pages in the document on which they are cited.
- (2) The body of every document at its close shall bear the name of the party or his or her attorney, if applicable, and the original document shall be signed by the *party* or his or her attorney.
- (3) (a) **The registrar** shall not accept for lodging any document presented in a form not in compliance with this rule, but shall return it to the defaulting party indicating the instance in which there has been a failure to comply: Provided that if new and proper copies of any such document are resubmitted within five days of receiving written notification, such lodging shall not be deemed late.  
 (b) If the Court finds that the provisions of this rule have not been complied with, it may impose, in its discretion, appropriate sanctions including but not limited to dismissal of the action or imposition of costs.

28. **Application of certain rules of the *Uniform Rules***

The following rules of the *Uniform Rules* shall, with such modifications as may be necessary, apply to the proceedings in the *Court*:

<i>Rule No.</i>	<i>Subject</i>
6(7) to 6(15)	Joinder of parties on application and related matters
28	Amendments to pleadings and documents
35(13)	Discovery, inspection and production of documents
38(3) to 38(8)	Procuring evidence for trial
42	Variation and rescission of orders
59	Sworn translators
61	Interpretation of evidence

62	-	Filing, preparation and inspection of documents
63		Authentication of documents executed outside the Republic for use within the Republic
64		Destruction of documents
65		Commissioners of the <i>Court</i>

29. **Application of certain sections of the Supreme Court Act, 1959 (Act No. 59 of 1 959)**

The following sections of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply, with such modifications as maybe **necessary**, to proceedings of and before the *Court*:

<i>Section</i>	<i>Subject</i>
19bis	<b>Reference</b> of particular matters for investigation by referee
22	Powers of Court on hearing of appeals
32	Examinations by interrogatories of persons whose evidence is required in civil <b>cases</b>
33	Manner of dealing with commissions <b>rogatoire</b> , letters of request and documents of service originating from foreign countries

30. **Documents lodged to canvass factual material**

- (1) Any *party* to any proceedings before the *Court* and an *amicus curiae* properly admitted by the *Court* in any proceedings shall be entitled, in documents lodged with the *registrar* in terms of these rules, to canvass factual material which is relevant to the determination of the issues before the *Court* and which do not specifically appear on the record: Provided that such facts -
- are common cause or **otherwise** incontrovertible; or
  - are of an official, scientific, technical or statistical nature capable of easy verification.
- (2) All other *parties* shall be entitled, within the time allowed by these rules for responding to such document, to admit, deny, controvert or elaborate upon such facts to the extent necessary and appropriate for a proper decision by the *Court*.

31. **General**

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

32. **Execution**

Costs orders of the Court shall be executed in the magistrate's court as follows:

- The costs order shall have the effect of a civil judgment of the magistrate's court and the *party* in whose favour a costs order was made shall be deemed the judgment creditor and the *party* against whom such order was made shall be deemed the judgment debtor.
- The *party* in whose favour a costs order was made shall, where a costs order has not been complied with, file with the *registrar* an **affidavit** setting out the details of the costs order and stating that the costs order has not been complied with or has not been complied with in full, as the case may be, and the amount outstanding, and shall request the *registrar* to furnish him or her with a certified copy of such costs order.

- (3) The registrar shall, after having inspected the *Court file* concerned to verify the contents of the *affidavit*, furnish the party referred to in subrule (2) with a certified copy of the costs order concerned and shall record such furnishing on the *Court file*.
- (4) **The party** referred to in subrule (2) shall file the said copy with the clerk of the civil court of the district in which he or she resides, carries on business or is employed.
- (5) Such order shall be executed in accordance with the provisions of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the Magistrates' Courts Rules published under Government Notice No. R.1 108 of 21 June 1968, as amended, regarding warrants of execution against movable and immovable property and the issuing of emolument attachment orders and garnishee orders only.

33. **Transitional provisions**

When a time is prescribed for any purpose in terms of these rules, and such time would otherwise have commenced to run prior to the commencement of these rules, such time shall begin to run only on the date on which these rules come into operation.

34. **Repeal of rules**

The Rules of the Constitutional Court published under Government Notice No. R.5 in Regulation **Gazette** 5450 of 6 January 1995 shall be repealed on the date on which these rules come into operation: Provided that any directions in writing in terms of rule 3 of such rules pertaining to the procedures to be followed in the determination of a dispute or an issue in cases already instituted shall remain in force, unless repealed in writing by the *President*.

35. **Short title**

These rules shall be called the **Constitutional Court Rules, 1998**.

**Schedule 1**  
**FORMS**

Form No.

- 1. Notice of motion (to *registrar*)
- 2. Notice of motion (to *registrar* and respondent)

**FORM 1**  
**NOTICE OF MOTION**  
**(to Registrar)**

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

Case No. ....

In the matter of

.....(Applicant)

Take notice that the above-named applicant applies to the *Court* for an order in the following terms:

- (a) .....
- (b) .....
- (c) .....

and that the *affidavit* of..... annexed hereto, will be used in support thereof.

Kindly place the **matter before the President to be dealt within** terms of rule 10(4).

Dated at ..... this ..... day of ..... 19.....

.....  
*Applicant or attorney*

To the *Registrar* of the above-named *Court*.

**FORM 2**  
**NOTICE OF MOTION**  
**(to Registrar and Respondent)**  
**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**  
Case No .....

In the matter between:

..... (Applicant)

and

..... (Respondent)

Take notice that ..... (hereinafter called the applicant) intends to make application to this Court for an order (a) ..... (b) ..... (c) ..... (here set forth the form of order prayed) and that the accompanying affidavit of ..... will be used in support thereof.

Take notice further that the applicant has appointed ..... (here set forth an address) as the address at which he or she will accept notice and service of all process in these proceedings.

Take notice further that if you intend opposing this application you are required (a) to notify applicant's attorney in writing on or before ..... (date) and (b) within 15 days after you have so given notice of your intention to oppose the application to file your answering affidavit, if any; and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the applicant will request the registrar to place the matter before the *President* to be dealt with in terms of rule 10(4).

Dated at ..... this ..... day of ..... 19.....

.....  
*Applicant or attorney*

To:

(1) .....

(Respondent)

.....

.....

.....

(Address)

(2) The Registrar of the above Court

.....



**Schedule 2**  
**FEES**

	R
Lodging of any petition (other than the first document) . . . . .	10,00
Lodging of an answering affidavit (each) . . . . .	10,00
Lodging of a notice of appeal or cross-appeal . . . . .	15,00
Order of the court granting leave to appeal . . . . .	15,00
<b>For the registrar's certificate on certified copies of documents (each) . . .</b>	<b>1,00</b>
Taxing fee in any matter . . . . .	25,00

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