

No. R. 517

8 May 2009

MAGISTRATES' COURTS: AMENDMENT OF THE RULES OF COURT

The Rules Board for Courts of Law has under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

[] Expressions in bold type in square brackets indicate omissions from existing rules.

____ Expressions underlined with a solid line indicate insertions into existing rules.

Definitions

1. In this schedule "the Rules" means the rules published under Government Notice No. R. 1108 of 21 June 1968, as amended by Government Notices Nos. R. 3002 of 25 July 1969, R. 490 of 26 March 1970, R. 947 of 2 June 1972, R. 1115 of 28 June 1974, R. 1285 of 19 July 1974, R. 689 of 23 April 1976, R. 261 of 25 February 1977, R. 2221 of 28 October 1977, R. 327 of 24 February 1978, R. 2222 of 10 November 1978, R. 1449 of 29 June 1979, R. 1314 of 27 June 1980, R. 1800 of 28 August 1981, R. 1139 of 11 June 1982, R. 1689 of 29 July 1983, R. 1946 of 9 September 1983, R. 1338 of 29 June 1984, R. 1994 of 7 September 1984, R. 2083 of 21 September 1984, R. 391 of 7 March 1986, R. 2165 of 2 October 1987, R. 1451 of 22 July 1988, R. 1765 of 26 August 1988, R. 211 of 10 February 1989, R. 607 of 31 March 1989, R. 2629 of 1 December 1989, R. 186 of 2 February 1990, R. 1887 of 8 August 1990, R. 1928 of 10 August 1990, R. 1990 of 17 August 1990, R. 1261 of 30 May 1991, R. 2407 of 27 September 1991, R. 2409 of 30 September 1991, R. 405 of 7 February 1992, R. 1510 of 29 May 1992, R. 1882 of 3 July 1992, R. 871 of 21 May 1993, R. 959 of 28 May 1993, R. 1134 of 25 June 1993, R. 1355 of 30 July 1993, R. 1844 of 1 October

1993, R. 2530 of 31 December 1993, R. 150 of 28 January 1994, R. 180 of 28 January 1994, R. 498 of 11 March 1994, R. 625 of 28 March 1994, R. 710 of 12 April 1994, R. 1062 of 28 June 1996, R. 1130 of 5 July 1996, R. 419 of 14 March 1997, R. 492 of 27 March 1997, R. 570 of 18 April 1997, R. 790 of 6 June 1997, R. 797 of 13 June 1997, R. 784 of 5 June 1998, R. 910 of 3 July 1998, R. 1025 of 7 August 1998, R. 1126 of 4 September 1998, R. 569 of 30 April 1999, R. 501 of 19 May 2000, R. 1087 of 26 October 2001, R. 37 of 18 January 2002, R. 38 of 18 January 2002, R. 1299 of 18 October 2002, R. 228 of 20 February 2004, R. 295 of 5 March 2004, R. 880 of 23 July 2004, R. 1294 of 5 December 2008, R. 1341 of 12 December 2008, R. 1342 of 12 December 2008 and R. 1344 of 12 December 2008.

Substitution of rule 67 of the Rules

2. Rule 67 of the Magistrates' Courts Rules is hereby amended as follows:

“Criminal appeals

67. (1) (a) An [accused] appellant, other than a person who applies orally for leave to appeal immediately after the passing of the sentence or order as contemplated in section 309B(3)(b) of the Criminal Procedure Act 51 of 1977, who wishes to apply for leave to appeal in terms of section 309B (1) of [the Criminal Procedure Act 51 of 1977] that Act, shall do so in writing to the clerk of the court and shall also send a copy of the application to the [attorney-general] director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(b) An appellant who wishes to apply for condonation as contemplated in section 309B(1)(b)(ii) of the Criminal Procedure Act 51 of 1977, or an appellant who wishes to apply for leave to adduce further evidence as contemplated in section 309B(5)(a) of that Act, shall do so in writing to the clerk of the court and shall also send a copy of the application to the director of public prosecutions concerned, or, in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(2) (a) Where an application for leave to appeal is made in writing, [N]notice in terms of section 309B(2) [(b)] (d) of the Criminal Procedure Act 51 of 1977, shall be given by the clerk of the court at least 10 days before the date fixed for the hearing of the application for leave to appeal, unless the [accused] appellant or his or her [attorney] legal representative and the [attorney-general] director of public prosecutions or a person designated by him or her or in a case in which the prosecution was not at the public instance, the other prosecutor concerned have agreed to a shorter period, and shall correspond substantially to Form 60.

(b) The notice referred to in paragraph (a) shall –

- (i) be handed to the **[accused]** appellant or his or her **[attorney]** legal representative and the **[attorney-general]** director of public prosecutions or a person designated by him or her or other prosecutor concerned and proof of receipt of such notice shall be indicated on a copy of the notice, which shall be kept by the clerk of the court; or
- (ii) be sent by registered post.

(3)(a) **[An attorney]** A legal representative appearing on behalf of an **[accused]** appellant, shall simultaneously with the lodging of the application for leave to appeal lodge a power of attorney authorising him or her to act on behalf of the **[accused]** appellant, or if **[an attorney]** a legal representative is employed after an application for leave to appeal has been lodged, forthwith after such appointment.

(b) An **[accused]** appellant shall state in the application for leave to appeal referred to in subrule (1) a postal address where any notice may be served on him or her by registered post if he or she is not represented by **[an attorney]** a legal representative or if he or she ceases to be represented by **[an attorney]** a legal representative.

(4) If the **[accused]** appellant is unable, owing to illiteracy or physical defect, to write out an application for leave to appeal or [such] notice of appeal, the clerk of the court shall, upon his or her request, do so.

(5) Upon an application for leave to appeal being granted the clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place such copy before the judicial officer who shall within 15 days thereafter furnish to the clerk of the court a statement in writing showing -

- (a) the facts he or she found to be proved;
- (b) his or her reasons for any finding of fact specified in the **[accused's]** appellant's statement of grounds of appeal; and
- (c) his or her reasons for any ruling on any question of law or as to the admission or rejection of evidence so specified as appealed against.

(5A) (a) A person contemplated in the first proviso of section 309(1)(a) of the Criminal Procedure Act 51 of 1977, who wishes to appeal against his or her conviction or sentence or order, shall do so in writing to the clerk of the court and shall also send a copy of such notice of appeal to the director of public prosecutions concerned or in a case in which the prosecution was not at the public instance, to the prosecutor concerned.

(b) The notice of appeal shall set forth clearly and specifically the grounds upon which such person wishes to appeal.

(c) The provisions of subrules (3) to (8) and (14) and (15) shall apply further with any changes required by the context.

(6) The clerk of the court shall upon receipt of the judicial officer's statement forthwith inform the **[accused]** appellant that the statement has been furnished.

(7) Within 15 days after the **[accused]** appellant has been so informed, he or she may by notice to the clerk of the court amend his or her statement of grounds of appeal and the judicial officer may, in his or her discretion, within 10 days thereafter furnish to the clerk of the court a further or amended statement of his or her findings of fact and reasons for judgment.

(8) When an appeal is noted in a case in which the prosecution was not at the public instance any amended statement provided for in subrule (7) shall be served by the **[accused]** appellant also upon the prosecutor.

(9) **[An attorney-general]** A director of public prosecutions or other prosecutor desiring to appeal under section 310 of the Criminal Procedure Act[,], 51 of 1977 **[(Act No. 51 of 1977)]**, against the dismissal of a summons or charge shall, within 20 days after such dismissal, deliver a notice of appeal.

(10) Upon an appeal being noted as provided in subrule (9) the clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place the record before the judicial officer who shall within 15 days thereafter furnish to the clerk of the court a statement in writing of his or her reasons for dismissing the summons or charge.

(11) **[An attorney-general]** A director of public prosecutions or other prosecutor who contemplates an appeal under section 310 of the Criminal Procedure Act[, 51 of 1977 **[(Act No. 51 of 1977)]**], shall, within 20 days after the conclusion of the criminal proceedings, in writing request the judicial officer to state a case.

(12)(a) Upon receipt of the request referred to in subrule (11), the clerk of the court shall prepare a copy of the record of the case, including a transcript thereof if it was recorded in accordance with the provisions of rule 66(1), and then place the record before the judicial officer who shall within 15 days thereafter furnish a stated case to the clerk of the court who shall forthwith transmit a copy thereof to the **[attorney-general]** director of public prosecutions or other prosecutor, as the case may be.

(b) The stated case shall be divided into paragraphs numbered consecutively and shall be arranged in the following order:

- (i) The judicial officer's findings of fact in so far as they are material to the questions of law on which decision in favour of the **[accused]** appellant was given;
- (ii) questions of law;
- (iii) the judicial officer's decision on such questions and his or her reasons therefor.

(13) The **[attorney-general]** director of public prosecutions or other prosecutor may, within 15 days after the receipt by him or her of the stated case, deliver notice of appeal against the decision on questions of law.

(14) Every notice of appeal, statement of grounds of appeal, judicial officer's statement and stated case filed of record with or furnished to the clerk of the court under the provisions of this rule shall become part of the record.

(15)(a) The clerk of the court shall within 10 days after receipt by him or her of the statement referred to in subrule (7) or (10) or of the notice of appeal delivered in terms of subrule (13), as the case may be, transmit to the registrar of the court of appeal the record of the criminal proceedings or the stated case, together with 3 copies thereof.

(b) When the prosecution is at the public instance he or she shall also transmit one such copy to the **[attorney-general]** director of public prosecutions: Provided that if the appellant has not amended his or her statement of grounds of appeal as provided in

subrule (7), the clerk of the court shall so transmit the record without delay after the period allowed for an amendment of the statement of grounds of appeal has lapsed.”.

Amendment of the Numerical List of Forms in Annexure 1 to the Rules

3. The Numerical List of Forms in Annexure 1 to the Rules is hereby amended by the amendment of the reference to Form 60 as follows:

“60. Notice in terms of section 309B(2) [(b)] (d) of the Criminal Procedure Act[, 51 of 1977 [(Act No. 51 of 1977)].”

Amendment of the Alphabetical List of Forms in Annexure 1 to the Rules

4. The Alphabetical List of Forms in Annexure 1 to the Rules is hereby amended by the amendment of the reference to Form 60 as follows:

“60. Notice in terms of section 309B(2) [(b)] (d) of the Criminal Procedure Act[, 51 of 1977 [(Act No. 51 of 1977)].”

Substitution for Form 60 of Annexure 1 to the Rules

5. Form 60 of Annexure 1 to the Rules is hereby amended as follows:

“60 – Notice in terms of section 309B (2)[b](d) of Criminal Procedure Act 51 of 1977

In the district/regional court..... held at.....

Case No.....

THE STATE

VS.....

TO THE [ATTORNEY-GENERAL] DIRECTOR OF PUBLIC PROSECUTIONS OR
PERSON DESIGNATED BY HIM OR HER (OR OTHER
PROSECUTOR*).....

AND TO THE [ACCUSED] APPELLANT,

TAKE NOTICE THAT the application by the [accused] appellant for leave to appeal in terms of section 309B of the Criminal Procedure Act, 1977 (Act 51 of 1977), has been

set down for hearing on (date), at(time) or so soon thereafter as the matter may be heard, in Court No.

....., Magistrate's Office

.....
CLERK OF THE COURT,

TO THE **[ATTORNEY-GENERAL]** DIRECTOR OF PUBLIC PROSECUTIONS OR PERSON DESIGNATED BY HIM OR HER,.....

.....

.....

(Address)

TO THE PROSECUTOR*,

.....

.....

(Address)

TO THE **[ACCUSED]** APPELLANT,

.....

.....

(Address)

OR TO,

.....

.....

(Address of **[accused's]** appellant's **[attorney]** legal representative, if any)

ACKNOWLEDGEMENT OF RECEIPT OF NOTICE IN TERMS OF SECTION 309B (2)[(b)] (d) OF THE CRIMINAL PROCEDURE ACT, 1977

Receipt of the above-mentioned notice is hereby acknowledged.

FOR **[ATTORNEY-GENERAL]** DIRECTOR OF PUBLIC PROSECUTIONS OR PERSON DESIGNATED BY HIM OR HER.....(Signature)

.....(Name in print)

FOR OTHER PROSECUTOR (Signature)*

.....(Name in print)

FOR **[ACCUSED]** APPELLANT.....(Signature)

.....(Name in print)

* Only to be completed in a case in which the prosecution was not at the public instance.”.

Commencement

6. These rules shall come into operation on **15 June 2009**.