

No. R. 215

28 March 2014

**RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)****AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS  
OF THE MAGISTRATES' COURTS OF SOUTH AFRICA**

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 of Justice and Constitutional Development, made the rules in the Schedule.

**SCHEDULE****GENERAL EXPLANATORY NOTE:**

[ ] Words or expressions in bold typed in square brackets indicate omissions from existing rules.

\_\_\_\_ Words or expressions underlined with a solid line indicate insertions in existing rules.

## Definition

1. In these rules “the Rules” means the Rules Regulating the Conduct of the Proceedings of the Magistrates’ Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R.1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, and R. 183 of 18 March 2014.

## Amendment of rule 20 of the Rules

2. Rule 20 of the Rules is hereby amended by the substitution for the rule of the following rule:

### “Claims in reconvention

**20.** (1)(a) The provisions of these rules shall apply equally to claims in reconvention except that it shall not be necessary to deliver a notice of intention to defend and that all times which, in the case of a claim in convention, run from the date of delivery of a notice of intention to defend, shall, in the case of a claim in reconvention, run from the date of delivery of such claim in reconvention.

(b) A defendant who counterclaims shall, together with such defendant’s plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 6 and 15 unless the plaintiff agrees, or if plaintiff refuses, the court allows it to be delivered at a later stage.

(c) A claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed “Claim in Reconvention”, and it shall not be necessary to repeat therein the names or descriptions of the parties to the proceedings in convention.

(2) If the defendant is entitled to take action against any other person and the plaintiff, whether jointly, jointly and severally, separately or in the alternative, the defendant may with the leave of the court proceed in such action by way of a claim in

reconvention against the plaintiff and such other persons, in such manner and on such terms as the court may direct.

(3) A defendant who has been given leave to counterclaim as provided for in subrule (2), shall add to the title of such defendant's plea a further title corresponding with what would be the title of any action instituted against the parties against whom such defendant makes claim in reconvention, and all further pleadings in the action shall bear such title, subject to the proviso to rule 6(2).

(4) A defendant may counterclaim conditionally upon the claim or defence in convention failing.

(5) A defendant delivering a claim in reconvention may by notice delivered therewith or within 5 days thereafter apply to the court to pronounce that the claim in reconvention exceeds its jurisdiction and to stay the action under section 47 of the Act.

(6) Where a court finds that the claim in reconvention exceeds its jurisdiction, the defendant may forthwith or by notice delivered within 5 days after such finding apply for stay of the action.

(7) If no application for stay is made or, having been made, has been dismissed, the court shall on the application of the plaintiff or otherwise of its own motion dismiss a claim in reconvention pronounced to exceed its jurisdiction, unless the defendant shall forthwith abandon under section 38 of the Act sufficient of such claim to bring it within the jurisdiction of the court.

(8) Where both the claim in convention and the claim in reconvention proceed to trial under rule 29 each action may be tried separately but judgment shall be given on both concurrently.

(9) A claim in reconvention may not be made by a defendant in reconvention.

(10) Where an action is withdrawn, stayed, discontinued or dismissed it shall nevertheless be competent to proceed separately with the claim in reconvention.

(11) If the defendant fails to comply with any of the provisions of this rule, the claim in reconvention shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 60A".

### **Commencement**

**3. These rules come into operation on 2 May 2014.**