



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

2nd Floor, Centre Walk East Tower, 266 Pretorius Street, PRETORIA

11 December 2023

Our ref: 13/3/2/6 – Dec. 2023

F Njobe/Z Mbombo

Your ref:

Per: e-mail

Dear Sir/Madam,

PROPOSED MAGISTRATES' COURTS RULE 55(3)(b)(iii) AMENDMENTS – IN VIEW OF THE PROVISIONS OF THE PREVENTION OF ORGANISED CRIME ACT, 1998 (ACT 121 OF 1998) (POCA)

The Rules Board is continuing with the process of developing the rules contemplated in section 62 of POCA in the Magistrates' Courts.

The Board has decided to amend Magistrates' Courts rule 55(3)(b) wherein, amongst others, a rebuttable deeming provision is being inserted, which deems *ex parte* applications referred to in statutory provisions to be urgent. This is mainly aimed at covering those statutory provisions requiring or allowing certain applications to be made *ex parte* or urgent.

The specific amendments for consideration and comment are in the form of a proviso to sub-rule 55(3)(b)(iii) of the Magistrates' Courts Rules, and are boxed for ease of reference. The remainder of the draft amendments to sub-rule 55(3) pertain to e-justice rules which had been previously circulated for comment by the Board.

The proposed rule 55(3)(b)(iii) amendments are contained in the annexure hereto.

[Annexure A]

As part of its consultative process, the Rules Board hereby invites your comments on the proposed Magistrates' Courts rule 55(3)(b)(iii) amendments, for submission to the Secretariat by no later than **26 January 2024**.

Submissions can be sent via hand delivery, facsimile or email as follows:

PHYSICAL ADDRESS: 2nd Floor, Centre Walk East Tower, 266 Pretorius Street, Pretoria.

Board members appointed in terms of Section 3 of the Rules Board for Courts of Law Act 107 of 1985

Justice N Dambuza (Chairperson) | Justice N Mabindla-Boqwana (Vice-Chairperson) | Adv. S Jikela SC | RCP J Wessels | Ms. NS Khanyile | Mr. VP Maluleke | Mr. RR Titus | Professor T Broodryk | Adv. P Setati | Adv. K Kollapen | Mr M Maliwa | Mr OM Krieling |

FACSIMILE: (012) 326 8018.

EMAIL: Zintle Mbombo (ZMbombo@justice.gov.za).

Office telephone lines via switchboard are temporarily inoperative pending an upgrading process.

Yours sincerely,



F NJOBE

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Substitution of rule 55 of the Magistrates' Courts Rules (Rules)

GENERAL EXPLANATORY NOTE:

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

_____ Words or expressions underlined with a solid line indicate insertions into the existing rules.

Rule 55 of the Rules is hereby amended by the substitution for sub-rule (3) of the following sub-rule:

“(3)(a) No application in which relief is claimed against another party must be considered *ex parte* unless the court is satisfied that-

- (i) the giving of notice to the party against whom the order is claimed would defeat the purpose of the application; or
- (ii) the degree of urgency is so great that it justifies dispensing with notice.

(b) **[The notice of motion in every application brought *ex parte* must correspond substantially with Form 1 of Annexure 1.] Every application brought *ex parte* must:**

- (i) be upon notice of motion corresponding substantially with Form 1 of Annexure 1 supported by an affidavit, and addressed to the registrar or clerk of the court;
- (ii) be filed with the registrar or clerk of the court and set down, before noon on the court day but one preceding the day upon which it is to be heard;
- (iii) set forth the form of order sought, specify the affidavit filed in support thereof, and request the registrar or clerk of the court to place the matter on the roll for hearing[;] :

NOTE TO ROLE-PLAYERS:

Role-players are asked to comment on the these boxed amendments only:

Provided that where an *ex parte* application is brought as an urgent application—

(aa) the applicant shall indicate the basis on which the application is deemed to be urgent, including the provisions of any law upon which the applicant relies;

(bb) the application may be brought before a magistrate in chambers; and

(cc) the provisions of sub-rule (5) may be applied in so far as is necessary.

(iv) if brought by a legal practitioner, be made via the e-justice system; or

(v) if brought by a party who is not represented by a legal practitioner but who is registered on the e-justice system, be made via the e-justice system; or

(vi) if brought by a party who is not represented by a legal practitioner and who is not registered on the e-justice system, be made via the conventional method.

(bA)(i) Any person having an interest which may be affected by a decision on an application being brought *ex parte*, may deliver notice of an application for leave to oppose, supported by an affidavit setting forth the nature of such interest and the ground upon which such person desires to be heard, whereupon the registrar must set such application down for hearing at the same time as the initial application.

(ii) the provisions of subparagraphs (iv) to (vi) of paragraph (b) shall apply, with the necessary changes, to this paragraph.

(iii) The court hearing the matter may grant or dismiss either of or both such applications as the case may require, or may adjourn proceedings upon such terms as to the filing of further affidavits by either applicant or otherwise as it deems fit.

(c) Any order made against a party on an *ex parte* basis must be of an interim nature and must call upon the party against whom it is made to appear before the court on a specified return date to show cause why the order should not be confirmed.

(d) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than 24 hours' notice: Provided that the provisions of subparagraphs (iv) to (vi) of paragraph (b) shall apply, with the necessary changes, to this paragraph.

(e) A copy of any order made *ex parte* and of the notice of motion and affidavit [**, if any,**] on which it was made must be served on the respondent thereto.

(f) Where cause is shown against any order made *ex parte* against a party the court may order the applicant or respondent or the deponent to any affidavit on which it was made to attend court for examination or cross-examination.

(g) Any order made *ex parte* may be confirmed, discharged or varied by the court on cause shown by any person affected thereby and on such terms as to costs as the court may deem fit.

(h) *Ex parte* applications may be heard in chambers.”.