



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS SURVIVING IN TERMS OF

Local Authorities Act 23 of 1992
section 95(5)

**Regulations for Courts of Native
Commissioners in Civil Proceedings**

Government Notice 59 of 1930

(OG 359)

came into force on date of publication: 15 March 1930

The Regulations for Courts of Native Commissioners in Civil Proceedings were originally made in terms of section 8 of the Native Administration Proclamation 15 of 1928, which was repealed by the Local Authorities Act 23 of 1992. Pursuant to section 95(5) of the Local Authorities Act 23 of 1992, the Regulations for Courts of Native Commissioners in Civil Proceedings are deemed to have been made under that Act. Please note that in terms of these regulations, 1 British Pound (£1) is equivalent to 2 Namibian Dollars (N\$2). Additionally, there are 20 shillings in a pound and there are also 240 pence in a pound of British currency. The abbreviation “s” refers to shillings and the abbreviation “d” refers to pence.

ARRANGEMENT OF REGULATIONS

[Most of individual regulations do not have headings.]

FIRST ANNEXURE

- Form No. 1
- Form No. 2: Summons
- Form No. 3: Subpoena
- Form No. 4: Inter pleader summons
- Form No. 5: Messenger’s register of process
- Form No. 6: Messenger’s warrant book

SECOND ANNEXURE

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

Table A: Fees of office to be paid by means of revenue stamps affixed to the process

Table B: Messenger of the courts' fees. Native messenger

Table C: Assessors

Table D: Fees payable to attorney

Table E: Fees for council

THIRD ANNEXURE
NATIVE ASSESSOR

Courts

1. The proceedings shall be conducted in open court subject to such exceptions as are hereinafter provided.

2. The court may, in the interests of good order, public health, public morals, or generally in the interests of justice, direct, in its discretion, that a trial shall be held in camera, or in some other place than the court-room,

3. All oral evidence shall be given after the witness has been duly sworn or admonished to speak the truth. Provided that if a witness deemed by the court to be material to the issue is unable to attend the court, for good cause shown, the evidence of such witness may be recorded at such time and place as may seem to the court most convenient or by means of interrogatories or before a Commissioner for which purpose the provisions of section *forty-nine* and *fifty* of Act No. 32 of 1917 of the Union of South Africa or any amendments thereof as applied to South West Africa, shall apply.

4. All evidence heard by a court shall be fully recorded and the record of every case shall contain all documents admitted as evidence and any judgment or order given by the court.

5. Every summons, subpoena, writ, warrant or other process issued out of the court shall be of force throughout the area over which the court has jurisdiction, and all such process when endorsed by a Native Commissioner having jurisdiction over any other area (and every Native Commissioner is hereby required on production to him of any such process to endorse the same) shall be of force throughout the area over which that Native Commissioner has jurisdiction, and may be served or executed therein through the messenger for that area.

6. (1) The records and proceedings of the court shall be accessible to the public, under supervision of the clerk, at convenient times and upon prepayment of the fees prescribed in Table A of the Second Annexure hereto.

(2) After the expiration of a period of thirty years from the date of judgment, the Administrator may order such records and proceedings to be removed to a central place for custody.

7. A civil record-book substantially in the form prescribed in the first Annexure hereto shall be kept in the office of the clerk of the court and it shall be open to inspection by the public at convenient times without charge.

Assessors

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

8. A native assessor shall, before taking his seat in court as such, take an oath substantially in the form prescribed in the Third Annexure hereto.

9. The fees and travelling allowances of native assessors shall be paid by the Administration in accordance with the scale prescribed in Table C of the Second Annexure hereto.

Clerks of the Court

10. Each native commissioner shall assign the duties of clerk of the court to a member of his staff, who shall exercise the functions, assigned to him in terms of these regulations.

11. The clerk of the court shall:

- (a) sign all process of court;
- (b) write out and prepare, upon the request of any party any process of court or notice of appeal, upon pre-payment of the fees prescribed in Table A of the Second Annexure hereto, which shall be paid by means of revenue stamps affixed to such process;
- (c) upon payment of the fees prescribed in Table A of the Second Annexure hereto, furnish copies of records to any person entitled thereto or such copies may be made free of charge by such person under the supervision of the clerk.

A refusal by the clerk of the court to do any act which he is empowered by these regulations to do shall be subject to review by the court.

12. All acts required to be done by the clerk of the court may be done by the native commissioner.

13. The clerk shall keep:

- (a) a cash-book and promptly record therein particulars of payment into and out of court,
- (b) a book wherein shall be recorded all payments by means of stamps.

Messengers of court

14. The Administrator may appoint for every court of native commissioner a messenger of the court upon such terms and conditions as he may determine.

15. The messenger may, with the prior approval of the native commissioner, appoint deputy-messengers, for whose actions as such he shall be responsible.

16. It shall be competent for the native commissioner to appoint an acting messenger for a specified period or occasion.

17. Whenever process of the court in a civil case is to be served and executed and no messenger or deputy-messenger has been appointed at the place where the court is held, a member of any police force shall, subject to the rules, be as qualified to serve and execute all such process and all other documents in such a case as if he had been duly appointed deputy

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

messenger. The fee payable in respect of or in connection with any such service to a messenger shall in any such case be chargeable, but shall be paid into the Territory Revenue Fund.

18. The messenger shall receive and lodge in the gaol all persons arrested by an order, writ or judgment of the court, or committed to his custody by the court.

19. All process delivered to the messenger shall be served and executed by him forthwith and thereafter he shall record his return on such process, and such return shall be *prima facie* evidence of the matters therein stated.

20. In any case in which the messenger is unable to pay over any moneys to the persons entitled thereto, he shall deposit the same with the clerk of the court within seven days from the receipt thereof.

21. The messenger shall maintain the following records substantially in the form prescribed in the first Annexure hereto:—

- (a) register of all process served;
- (b) register of all process executed.

22. It shall be competent for any native commissioner to suspend a messenger from his office for good cause, such suspension shall be reported forthwith to the Administrator who shall direct the further action to be taken.

23. No messenger may during the tenure of his office either practise as an attorney or be in the employ of any attorney; nor shall he carry on the business of a labour agent or runner of a labour agent.

Appearance

24. A party to a suit or application may appear in person to conduct his case or may be represented by his guardian or a duly authorised relative.

25. (1) An action shall be commenced by the issue of a summons substantially in the form prescribed in the first Annexure hereto, signed by the clerk of the court, setting forth in concise terms the nature of the claim and specifying the date upon which the defendant and his witnesses shall appear before the court to have the matter determined.

(2) Such summons may be served by the plaintiff himself, by delivery, in the presence of a witness, to the defendant personally, without cost for the service thereof, or, if the plaintiff so requests, it shall be served in the ordinary course by the messenger upon payment to the clerk of the court of the fees prescribed in Table B of the Second Annexure hereto.

(3) The date on which the defendant shall be required to appear shall be not less than seven days after the service of the summons if the distance from the court-house is not more than fifteen miles and not less than ten days if beyond that distance.

26. On the day fixed for the appearance of the parties, they shall be called upon and:

- (a) if they both appear, the court shall, before hearing, examine the witnesses, explain the summons to the defendant and call upon him to answer the claim therein and to prefer any counterclaim he may have, which the plaintiff shall be called upon to admit or

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

deny. Whereupon the court shall proceed with the hearing of her cause summarily and without further pleadings;

- (b) if the claimant or applicant or his representative appears and the defendant or respondent is in default, the court, if it is satisfied from evidence on oath that the summons was duly served on the defendant or respondent personally, may enter judgment or make an order in favour of the claimant consistent with such evidence as may be adduced, together with an order for costs; or the court may adjourn the hearing as it may deem fit; or
- (c) if the defendant or respondent or his representative should appear and the claimant or applicant be in default, the court may postpone the hearing or may dismiss the summons and may award to the defendant or respondent costs in accordance with tariff rates set forth in the Second Annexure hereto.

27. The court may at any stage of the proceedings postpone the hearing or amend any claim, application, or counterclaim or reply which is vague, embarrassing or inconsistent with the evidence adduced or for other reason appearing to the court to be sufficient, provided that the interests of justice are not prejudiced thereby.

28. The court may in any action:

- (a) give judgment for the plaintiff; or
- (b) give judgment for the defendant; or
- (c) give absolution from the instance if it appears to the court that the evidence does not justify the court in giving judgment for either party, and
- (d) make such order as to costs as may be just.

29. Any plaintiff or applicant whether in convention or reconvention may at any stage of the proceedings withdraw his claim or application, but the party so withdrawing shall be ordered to pay such costs as the court may direct, provided, however, that such withdrawal shall not be a defence to any subsequent action when the costs of the preceding action have been paid.

30. (1) The court may in the absence of the party against whom it was granted rescind or vary any judgment granted by it.

(2) The court may rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties.

(3) The court may correct patent errors in any judgment respect of which no appeal is pending.

(4) The court may rescind or vary any judgment in respect of which no appeal lies.

(5) Any judgment of the court may, on the application of any person affected thereby who was not a party to the action or matter, made within seven days after he has obtained knowledge of such judgment, be rescinded or varied by the court.

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

31. No appeal shall lie from the decision of a court in civil proceedings if, before the hearing thereof is commenced, the parties notify such court that an agreement has been come to between them that the decision of the said, court shall be final. Such agreement shall be noted by the court and shall in all respects be binding upon the parties.

Witnesses

32. Should any witnesses refuse or neglect to appear when required by any party, the court shall at the request of the party concerned and upon prepayment by him of the necessary witness allowance, order the issue of a subpoena substantially in the form prescribed in the first Annexure hereto, calling upon such witness to appear before the court at a fixed time and date and such subpoena shall be served by the messenger who shall, at the time of such service, tender witness allowances in accordance with the tariff obtaining in magistrates' court.

33. (a) If any person, being duly subpoenaed to give evidence or to produce any books, papers or things in his possession or under his control, which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger that such person has been duly subpoenaed, and that his reasonable expenses have been paid or offered to him, impose upon the said person, a fine, not exceeding twenty-five pounds, for his default, and in default of payment to imprisonment for a period not exceeding one month, whether or not such person is otherwise subject to the jurisdiction of the court.

(b) If any person so subpoenaed shall fail to appear or, unless duly excused, to remain in attendance throughout the trial, the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure shall seem to the court to exist, issue a war rant for his apprehension in order that he may be brought up to give his evidence and to be otherwise dealt with according to law, whether or not such person is otherwise subject to the jurisdiction of the court.

(c) The court may, on cause shown, remit the whole or any part of any fine or imprisonment which it may have imposed under this regulation.

(d) The court may order the costs of any postponement or adjournment occasioned by the default of a witness or any portion of such costs to be paid out of any fine imposed upon such witness.

34. (1) Whenever any person appearing either in obedience to a summons or subpoena as hereinbefore provided or by virtue of a warrant, or being present and being verbally required by the court to give evidence, refuses to be sworn or, having been sworn, refuses to answer well questions as are put to him, or refuses or fails to produce any document or thing which he is required to produce, without offering any just or lawful excuse for such refusal or failure, the court may adjourn proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing, to a gaol, unless he sooner consents to do what is required of him. If such person upon being brought up at the adjourned hearing again refuses to do what is required of him, the court if it sees fit, may again adjourn the proceedings and commit him for a like period and so on again until such person consents to do what is required of him.

(2) Notwithstanding the committal of any person under sub-regulation (1), the court may conclude or otherwise dispose of any case or matter wherein such person was required as a witness, but such court shall there upon order the release of such person.

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

Execution

35. At any time after judgment has been given the judgment creditor may demand from the judgment debtor satisfaction of the judgment and if the judgment debtor shall fail to comply forthwith with the demand, the judgment creditor may apply to the clerk of the court for the issue of process in execution. Thereupon the clerk of the, Court shall issue such process and the provisions of Chapter VIII of the Magistrates' Courts Act, 1917 of the Union of South Africa (Act No. 32 of 1911), as modified and applied to South West Africa, and the relative orders, together with the prescribed forms (with the exception of section *fifty-eight* and the orders relating thereto, and subject to the substitution of the word "ten" for the word "three" in subsection (1) of section *fifty-two* and the substitution of the word "three months" for the words "one month" in paragraph (c) of section *fifty-six*) shall apply *mutatis mutandis* in connection with such process.

36. If any property taken in execution is claimed by any person other than the execution debtor, such claimant shall lodge with the messenger of the court a statement of the grounds upon which it is claimed that such property is not executable in the suit in question. Thereupon the messenger shall forthwith inform the execution creditor of such claim, and transmit to him such statement or a copy thereof. If the execution creditor does not within seven days of the receipt of such information and statement admit such claim, such claimant may within ten days of the last day allowed for such admission take out an interpleader summons substantially in the form prescribed in the First Annexure hereto, from the court having jurisdiction over the area in which the property has been attached, calling upon such creditor to show cause why such property shall not be declared to be unexecutable for the said judgment.

37. Upon the issue of such interpleader summons any action which may have been brought in any court of Native Commissioner in respect of such property shall be stayed and the court in which such action has been brought or judicial officer thereof may, on proof of the issue of such summons, order the party bringing such action to pay the costs of all the proceedings in such action after the issue of the aforesaid summons, and such action shall abide the result of the proceedings taken upon such summons.

38. Upon the day appointed for the hearing of the claim set forth in such interpleader summons, the court shall summarily adjudicate thereon and may make all such orders as to additional expenses of execution occasioned by the claim as may be just.

39. Any person who:

- (1) obstructs a messenger in the execution of his duty or in any way, whether by escape or otherwise, prevents him from carrying out his duty;
- (2) being aware that goods are under arrest, interdict or attachment by the court, makes away with or disposes of those goods in any manner not authorised by law or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in any such manner;
- (3) being a judgment debtor and being required by a messenger to point out property to satisfy any warrant issued in execution of judgment against such person, either:
 - (a) falsely declares to that messenger that he possesses no property or not sufficient property to satisfy the warrant; or

REGULATIONS
Local Authorities Act 23 of 1992**Regulations for Courts of Native Commissioners in Civil Proceedings**

- (b) although owning such property neglects or refuses to point out the same; or
- (4) being a judgment debtor refuses or neglects to comply with any requirements of a messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be guilty of an offence and liable upon conviction to a fine not exceeding fifty pounds, or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine.

Civil imprisonment

40. At any time after seven days from the date of a judgment which has not been satisfied, the judgment creditor may take out a summons either in the court wherein the original judgment was given or in the court having jurisdiction over the area in which the judgment debtor resides to appear to show cause why a decree of civil imprisonment should not be made against him.

41. The court may, upon the return of the summons and whether the judgment debtor appears or not, make a decree of civil imprisonment against such debtor for a period not exceeding three months and upon such conditions as to the court may deem fit and issue a warrant for his arrest and detention in any gaol named in such warrant.

42. The provisions of the Magistrates' Courts Act, 1917 of the Union of South Africa (Act No. 32 of 1917) and the rules framed thereunder in respect of the maintenance and discharge of civil debtors shall apply *mutatis mutandis* to the maintenance and discharge of civil debtors committed to gaol under the provisions of the preceding section.

Costs and fees

43. (1) The stamps, fees costs and charges in connection with ally proceedings in a court, including all fees or charges of court or of the clerk of court, the messenger, or the legal practitioners, shall be payable in accordance with the scales prescribed in the Second Annexure hereto.

(2) Taxation by the clerk of the court shall be subject to review free of charge by the native commissioner.

Forms

44. The forms contained in the First Annexure hereto may, where applicable, be used with such variations as circumstances may require; but noncompliance with this rule shall not in itself invalidate the proceedings.

General

45. All process of the court for service or execution and all documents or copies to be filed of record shall be on foolscap paper.

46. Whenever, any practitioner has, in the opinion of any native commissioner, been guilty of misconduct, or dishonourable practice, he shall report the fact to the law Society of South West Africa.

REGULATIONS
Local Authorities Act 23 of 1992

Regulations for Courts of Native Commissioners in Civil Proceedings

Interpretation

47. In these regulations, unless inconsistent with the context —

“Proclamation” means Proclamation No. 15 of 1928;

“claimant” means the plaintiff or applicant for any order as provided in these regulations;

“clerk” means “clerk of the court” as provided for in these regulations;

“Court” means a court of native commissioner;

“judgment” includes a sentence, decree, rule or order of a court;

“Messenger” means “messenger of the court” as provided for in regulation *fourteen* of these regulations, and includes a deputy or acting messenger or a member of the Police acting in that capacity;

“officers of the court” shall include the native commissioner, the clerk of the court and the messengers of court;

“party” means any person who is a party to any proceedings or his representative as provided in these regulations;

“process” means any subpoena, writ, warrant, notice, interdict or the like.

REGULATIONS
Local Authorities Act 23 of 1992

Regulations for Courts of Native Commissioners in Civil Proceedings

FIRST ANNEXURE

Form No. 1

Civil Record-book of the Native Commissioner's

Court held at

No. of case	Plaintiff	Defendant	Date of Statement of Claim	Date of Hearing	Judgement or Order	Subsequent Proceedings or Remarks

**REGULATIONS
Local Authorities Act 23 of 1992**

Regulations for Courts of Native Commissioners in Civil Proceedings

Form No. 2

SUMMONS

In the court of the Native Commissioner at

To A.B.,
of

You are hereby required to appear before this court at on
the day of 19.....
at the hour of o'clock in the forenoon, together with your witnesses, if you have
any, to answer the claim of C.X.D. of as follows
.....

.....
Clerk of the Court

Place

Date

Set out clearly and concisely the nature of the claim so that the Defendant will know what case he
has to meet.

Form No. 3

SUBPOENA

In the Court of the Native Commissioner at

To A.B.,
of

You are hereby required to attend personally before this court at
on the day of 19.....
at o'clock in the forenoon as a
witness in this case of
versus
and to produce

.....
Clerk of the Court

Place

Date

And take notice that if you disregard this order you may be arrested and punished for contempt of
court.

Form No. 4

INTER PLEADER SUMMONS

In the Court of the Native Commissioner at

To A.B.,
of

Summon (describing the execution creditor),

**REGULATIONS
Local Authorities Act 23 of 1992**

Regulations for Courts of Native Commissioners in Civil Proceedings

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SECOND ANNEXURE

Table A

FEEs OF OFFICE TO BE PAID BY MEANS OF REVENUE STAMPS AFFIXED TO THE PROCESS

1. Summons	£0. 5.0
2. Summons—Interpleader	0. 5.0
3. Summons—civil imprisonment	0. 2.6
4. Subpoena	0. 1.0
5. Interrogatories	0. 5.0
6. Bill of Costs	0. 1.0
7. Any warrant of execution	0. 2.6
8. Security for restitution	0.10.0
9. Notice of Appeal	0.10.0
10. Copy of record by clerk of court	
1st 100 words	0. 0.6
for each additional 100 words or portion thereof	0. 0.3
11. Request to inspect record if the number and year is not given. For every year to be searched	0. 0.6

The fees for items Nos. 1, 2, 3, 4, 5, 6, 7, and 8 shall be reduced by one-half where the process is prepared by the party or his agent.

Table B

**MESSENGER OF THE COURTS' FEES
NATIVE MESSENGER**

Service at summons or subpoena, each person	£0. 2.6
Execution of any process	0. 2.6
Inventory and copy	0. 1.0
Inventory, extra copies for additional judgment Debtors	
Each such	0. 0.6
Driving stock. Actual cost not exceeding 2d. per mile for each ten head of stock.	
Herding stock. Actual reasonable cost.	
Moneys collected or the proceeds of sale in execution of movables or the value of such movables where the warrant of execution is withdrawn or the debtor's estate is sequestrated, 1 per cent.	
Execution against immovable property. When immovable property has been attached in execution and is not sold, either because the warrant is withdrawn or because the	

**REGULATIONS
Local Authorities Act 23 of 1992**

Regulations for Courts of Native Commissioners in Civil Proceedings

estate of the execution debtor is sequestrated, the sum of £2.2.0. When the immovable property is sold in execution 1 per cent of the proceeds of the sale.

Advertisement of sale in execution. In addition to the fees allowed in connection with executions against movable and immovable property, the messenger shall be paid the sum actually and reasonable paid by him for printing, advertising and giving publicity to any sale or intended sale in execution.

Travelling allowance, per mile 0. 0.4

EUROPEAN MESSENGER.

The fees prescribed for the time being for Magistrates' Courts.

Table C

ASSESSORS

Detention at court for each day or portion of a day during which a trial lasts £0.10.0

Travelling allowance. For each 36 miles or portion thereof of the combined journey necessarily travelled by the shortest route to the court from the usual place of residence and return thereto 0.10.0

Table D

FEES PAYABLE TO ATTORNEY

1. Instructions to sue or defend	£0. 5.0
2. Demand	0. 5.0
3. Any summons	0. 5.0
4. Subpoena (not more than one for each four witness called)	0. 2.6
5. Subpoena—each copy for service	0. 1.0
6. Interrogatories	0. 5.0
7. Any warrant	0. 5.0
8. Every notice given to opposite party	0. 2.6
9. Attending court (applying for costs on notice of discontinuance)	0. 5.0
10. Attending court when action in list for trial but adjourned	0. 5.0
11. Attending Court on trial defended action:	
First hearing	1. 1.0
	to
	2. 2.0
Subsequent hearings	1. 1.0
12. Attending court to hear reserved judgment	0. 5.0
13. Attending court to make any motion	0.10.0
	to
	1. 1.0
14. Attending court on application decree civil imprisonment	0.10.0
15. Bill of Costs: notice and taxation and service; attending taxation	0. 5.0
16. Notice of application for review of taxation and service	0. 3.0
17. Attending on review of taxation	0. 5.0
18. Agreement not to appeal	0. 5.0

Table E

REGULATIONS
Local Authorities Act 23 of 1992

Regulations for Courts of Native Commissioners in Civil Proceedings

FEES FOR COUNCIL

The same as for attorneys and additional thereto.

THIRD ANNEXURE

NATIVE ASSESSOR

I, A.B., do swear that I will truly and faithfully assist the court as an assessor and will to the best of my ability and without fear, favour or affection for any one, give my honest opinion upon my matter referred to me by the court.