

Rules of Court (Amendment) Rules 2010

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No. S 32

SUPREME COURT OF JUDICATURE ACT (CHAPTER 322)

RULES OF COURT (AMENDMENT) RULES 2010

In exercise of the powers conferred on us by section 80 of the Supreme Court of Judicature Act and all other powers enabling us under any written law, we, the Rules Committee, hereby make the following Rules:

Citation and commencement

- 1.—(1) These Rules may be cited as the Rules of Court (Amendment) Rules 2010.
- (2) Rule 8 shall come into operation on 9th February 2010.
- (3) Rules 2 to 7, 9, 10 and 11 shall come into operation on 1st March 2010.

Amendment of Order 1

2. Order 1, Rule 2 of the Rules of Court (R 5) (referred to in these Rules as the principal Rules) is amended by deleting item 4 of the Table under paragraph (2).

Amendment of Order 52

3. Order 52, Rule 5(1) of the principal Rules is amended by deleting the words “suffering or appearing to be suffering from mental disorder within the meaning of the Mental Disorders and Treatment Act (Chapter 178)” in sub-paragraph (b) and substituting the words “who lacks capacity within the meaning of the Mental Capacity Act 2008 (Act 22 of 2008) in relation to matters concerning his property and affairs”.

Amendment of Order 59

4. Order 59 of the principal Rules is amended —

- (a) by deleting sub-paragraph (a) of Rule 28(3) and substituting the following sub-paragraph:

“(a) if the client at the material time lacked capacity within the meaning of the Mental Capacity Act 2008 (Act 22 of 2008) in relation to matters concerning his property and affairs and was represented by a person acting as litigation representative³, as references to that person acting, where necessary, with the authority of the Court; and”;

- (b) by deleting the words “or incapable by reason of unsoundness of mind within the meaning of the Mental Disorders and Treatment Act (Chapter 178) of managing and administering his property and affairs” in Rule 29(1)(a) and substituting the words “, or who lacks capacity within

the meaning of the Mental Capacity Act 2008 (Act 22 of 2008) in relation to matters concerning his property and affairs,”;

- (c) by deleting the words “or incapable, by reason of unsoundness of mind within the meaning of the Mental Disorders and Treatment Act (Chapter 178) of managing and administering his property and affairs of” in Rule 29(3)(b) and substituting the words “, who lacks capacity within the meaning of the Mental Capacity Act 2008 (Act 22 of 2008) in relation to matters concerning his property and affairs, or who is”;
- (d) by deleting the words “or incapable by reason of unsoundness of mind within the meaning of the Mental Disorders and Treatment Act of managing and administering his property and affairs” in Rule 29(6)(a) and substituting the words “, or who lacks capacity within the meaning of the Mental Capacity Act 2008 (Act 22 of 2008) in relation to matters concerning his property and affairs,”; and
- (e) by deleting the word “incapable” in Rule 29(6)(b) and substituting the words “who lacks capacity”.

Amendment of Order 71

5. Order 71, Rule 29 of the principal Rules is amended —

- (a) by deleting paragraph (1) and substituting the following paragraph:

“(1) Where the Registrar is satisfied that a person entitled to a grant (referred to in this Rule as the relevant person) is, by reason of lack of capacity (within the meaning of the Mental Capacity Act 2008 (Act 22 of 2008)) or physical incapacity, incapable of managing himself or his affairs, administration for his use and benefit, limited during the period of such lack of capacity or physical incapacity or in such other way as the Registrar may direct, may be granted —

- (a) in the case of lack of capacity, to the person authorised by the Court; or
- (b) where there is no person so authorised, or in the case of physical incapacity —
 - (i) if the relevant person is entitled as executor, to the person entitled to the residuary estate of the deceased;
 - (ii) if the relevant person is entitled otherwise

than as an executor, to the person who would be entitled to a grant in respect of his estate if he had died intestate; or

(iii) to such other person as the Registrar may by order direct.”;

- (b) by deleting the words “person incapable” in paragraph (2) and substituting the words “relevant person”;
- (c) by deleting the words “person alleged to be so incapable” in paragraph (3) and substituting the words “relevant person”; and
- (d) by deleting the words “mental or” in the Rule heading and substituting the words “lack of mental capacity or of”.

Amendment of Order 76

6. Order 76 of the principal Rules is amended —

(a) by deleting Rule 1 and substituting the following Rule:

“Interpretation (O. 76, r. 1)

1. In this Order, unless the context otherwise requires —

“Act” means the Mental Capacity Act 2008 (Act 22 of 2008);

“person lacking capacity” means a person who lacks capacity within the meaning of the Mental Capacity Act 2008 in relation to matters concerning his property and affairs;

“person under disability” means, subject to Order 1, Rule 4(3) —

(a) a person who is a minor; or

(b) a person lacking capacity.”;

(b) by deleting paragraph (1) of Rule 1A and substituting the following paragraph:

“(1) The jurisdiction of the Court to grant leave under section 25(2) of the Mental Health (Care and Treatment) Act 2008 (Act 21 of 2008) to bring proceedings against a person may be exercised only by a Judge in person.”; and

- (c) by deleting the word “patient” wherever it appears in Rules 3(3), (5) and (7)(b) and (c), 4(2), (3), (4) and (5), 5(2) and (3) and 14(2)(a) and (b) and substituting in each case the words “person lacking capacity”.

Amendment of Order 90A

7. Order 90A, Rule 3 of the principal Rules is amended by deleting sub-paragraph (v) of paragraph (b) and substituting the following sub-paragraphs:

- “(v) Mental Capacity Act 2008 (Act 22 of 2008);
(va) Mental Health (Care and Treatment) Act 2008 (Act 21 of 2008); and”.

New Order 98

8. The principal Rules are amended by inserting, immediately after Order 97, the following Order:

“ORDER 98

INCOME TAX ACT

Interpretation and application (O. 98, r. 1)

1.—(1) In this Order, “Act” means the Income Tax Act (Chapter 134), and any reference to a section shall be construed as a reference to a section in the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

(3) Subject to rule 3(1), an application to which this Order applies must be made —

- (a) where an action is pending, by summons in the action; and
(b) in any other case, by originating summons.

Orders under section 105J (O. 98, r. 2)

2.—(1) An application for an order under section 105J must be supported by an affidavit and may be made ex parte.

(2) The affidavit must —