

## **Rules of Court (Amendment No. 2) Rules 2002**

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### **No. S 150**

#### **SUPREME COURT OF JUDICATURE ACT CHAPTER 322**

#### **RULES OF COURT (AMENDMENT NO. 2) RULES 2002**

In exercise of the powers conferred on us by section 80 of the Supreme Court of Judicature Act, section 55 of the Arbitration Act 2001 (Act 37 of 2001) and section 35 of the International Arbitration Act (Cap. 143A), we, the Rules Committee, hereby make the following Rules:

#### **Citation and commencement**

1. These Rules may be cited as the Rules of Court (Amendment No. 2) Rules 2002 and shall come into operation on 15th April 2002.

#### **Amendment of Order 59**

2. Order 59 of the Rules of Court (R 5) (referred to in these Rules as the principal Rules) is amended by deleting Rules 34, 35 and 36 and substituting the following Rules:

**“Application to Judge for review (O. 59, r. 34)**

34.—(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by the Registrar in respect of any item, may apply to a Judge to review the taxation as to that item or part of an item, as the case may be.

(2) An application under this Rule for review of the Registrar’s decision may be made at any time within 14 days after that decision, or such longer time as the Registrar or the Court at any time may allow.

(3) An application under this Rule shall be made by summons and shall, except where the Judge thinks fit to adjourn into Court, be heard in Chambers.

(4) An application under this Rule for review of the Registrar’s decision in respect of any item shall not prejudice the power of the Registrar under Rule 15 to issue an interim certificate in respect of the items of his decision which are not the subject of the review.

(5) In this Rule and Rule 35, “Judge” means a Judge of the High Court or a District Judge in person.

(6) This Rule and Rule 35 shall apply to taxation proceedings in which the bills of costs are filed on or after the date of commencement of the Rules of Court (Amendment No. 2) Rules 2002.

**Review of Registrar’s decision by Judge (O. 59, r. 35)**

35.—(1) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of the review of the Registrar’s decision by the Judge, but except as aforesaid, on the hearing of the review, the Judge may exercise all such powers and discretion as are vested in the Registrar in relation to the subject-matter of the application.

(2) At the conclusion of the review, the Judge may make such order as the circumstances require, and in particular may order the Registrars certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Registrar for taxation.”.

**Deletion and substitution of Order 69**

3. Order 69 of the principal Rules is deleted and the following Order substituted therefor:

“ORDER 69

ARBITRATION PROCEEDINGS

**Interpretation (O. 69, r. 1)**

1. In this Order, “Act” means the Arbitration Act 2001 (Act 37 of 2001).

**Matters for Judge in Court (O. 69, r. 2)**

- 2.—(1) Every application to the Court —

- (a) to challenge an arbitrator under section 15(4) of the Act;
- (b) to remove an arbitrator under section 16 of the Act;
- (c) to decide on the arbitral tribunal’s ruling on jurisdiction under section 21(9) of the Act;
- (d) to determine, under section 45 of the Act, any question of law arising in the course of the arbitration proceedings;
- (e) to set aside an award under section 48 of the Act; or
- (f) for leave to appeal under section 49(3)(b) of the Act,

must be made by originating motion.

(2) An appeal with the agreement of all the other parties to the arbitration proceedings under section 49(3)(a) of the Act shall be made by originating motion.

(3) Notwithstanding paragraphs (1) and (2), the Court shall on the application of a party under section 56 of the Act hear the matter otherwise than in open Court.

**Matters for Judge in Chambers or Registrar (O. 69, r. 3)**

- 3.—(1) An application —

- (a) to reinstate discontinued proceedings under section 6(4) of the Act;
- (b) for leave to enforce interlocutory orders or directions of an arbitral tribunal under section 28(4) of the Act;
- (c) for an order in support of arbitration proceedings under section 31 of

the Act;

- (d) for an extension of time under section 10 or 36 of the Act;
- (e) for an order under section 41(2) of the Act where the arbitral tribunal withholds its award for non-payment of fees and expenses;
- (f) for leave to enforce an award under section 37 or 46 of the Act;
- (g) to hear an application otherwise than in open Court under section 56 of the Act; or
- (h) to give directions on whether and to what extent information relating to an application heard otherwise than in open Court may be published under section 57 of the Act,

shall be made to a Judge in Chambers or the Registrar.

(2) Any application to which this Rule applies must, where an action is pending, be made by summons in the action, and in any other case by originating summons.

(3) Where the case is one of urgency, such application may be made *ex parte* on such terms as the Court thinks fit.

#### **Preliminary question of law (O. 69, r. 4)**

4.—(1) An application under section 45 of the Act to determine any question of law arising in the course of the arbitral proceedings must be made and notice thereof served, within 14 days after —

- (a) the agreement of all the parties to the arbitral proceedings; or
- (b) the permission of the arbitral tribunal has been obtained.

(2) For the purpose of paragraph (1), the agreement or permission must be made or given in writing.

(3) Where an application under section 45 of the Act is made without the agreement in writing of all the other parties to the arbitral proceedings but with the permission of the arbitral tribunal, the affidavits filed by the parties shall set out any evidence relied on by the parties in support of their contention that the Court should, or should not, allow the application.

#### **Application to set aside an award (O. 69, r. 5)**

**5.**—(1) The notice of motion for setting aside an award under section 48 of the Act must state the grounds on which it is contended that the award should be set aside.

(2) The affidavit in support of the application must —

- (a) have exhibited to it a copy of the arbitration agreement, the award or any other document relied on by the applicant;
- (b) set out any evidence relied on by the applicant; and

be served with the notice of motion.

(3) Within 14 days after being served with the notice of motion, the respondent, if he wishes to oppose the application, must file an affidavit stating the grounds on which the respondent opposes the application.

#### **Appeals on a question of law arising out of an award (O. 69, r. 6)**

**6.**—(1) The notice of motion by way of an appeal under section 49(3)(a) of the Act brought with the agreement of all the other parties to the arbitration proceedings on a question of law arising out of an award shall —

- (a) state that the appeal is being brought with such agreement;
- (b) identify the award; and
- (c) state as briefly as possible the questions of law which will be raised in the appeal.

(2) The hearing date of the notice of motion shall not be earlier than 3 months from the date of the filing of the notice of motion.

(3) Within 28 days after the notice of motion is filed, the appellant shall serve on the respondent —

- (a) the Appellant's Case in the form as provided in paragraph (4); and
- (b) a core bundle of documents in the form as provided in paragraph (8).

(4) The Appellant's Case shall —

- (a) contain a statement in numbered paragraphs of each ground on which it is sought to contend that the tribunal erred in law; and
- (b) make references to the paragraph or passage of the award where each alleged error is to be found.