

Civil Procedure

1. Initiating Civil Proceedings

1.1 Appropriate Forum

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.1.1 High court forum			South African Courts Hierarchy
1.1.2 Magistrates' court forum			South African Courts Hierarchy

1.2 Appropriate Procedure

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.2.1 Appropriate procedure: Summons and applications			
1.2.2 When summons is issued			
1.2.3 When an application is launched	Magistrates Court notice of motion [Form 1] Magistrates Court notice of motion [Form 1 A] High Court notice of motion [Form 2 (a)] High Court notice of motion [Form 2]		Form 1 in terms of MCR 55 Form 1A in terms of MCR 55 Form 2 (a) in terms of HCR 6 Form 2 in terms of HCR 6
1.2.4. Dispute of facts			

1.3 Jurisdiction

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.3.1 Jurisdiction in general			
1.3.2 High court jurisdiction and Magistrate court rules			

1.4 Parties to the Proceedings

Guidance Note	Forms & Precedents	Checklists	Other Resources
1.4.1 Who is a party			
1.4.2 locus standi in iudicio	Application for an appointment as a curator	ad litem	

2. Actions

2.1 Instituting Action

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.1.1 Simple summons and declarations	Summons in respect of debt or liquidated demand [Form 9] Notice of intention to defend Summons (in which is included an automatic rent interdict)[Form 3] Declaration Simple summons [Form 2] Absolution from the instance draft order Simple summons clauses for claim on a liquid document (cheque payment stopped) Simple summons clauses for claims on a mortgage bond Simple summons clauses for claims on acknowledgement of debt	Letter of demand	
2.1.2 Combined summons and particulars of claim	High Court combined summons Magistrates Court combined summons [Form 2B] Particulars of claim	Declaration	Form 10 Schedule 1 Form 2B Annexure 1
2.1.3 Service	Return of service		Bhp Billiton Energy Energy Coal SA Ltd v Minister of Mineral Resources 2011
2.1.4. When is personal service required			Finishing Touch 163 (PTY) LTD v BHP Billiton Energy Coal South Africa Limited
2.1.5. High court rules regarding service	Notice of incorporation [CoR 14.1]		
2.1.6. Magistrates' court rules regarding service			

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2. Actions

2.1 Instituting Action

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.1.7. Alternative forms of service	High Court notice of motion for substituted service High Court notice of motion for edictal citation [Form 1] Magistrates Court edictal citation or substituted service [Form 4]		Form 1 in terms of HCR 5 Form 4 in terms of MCR10

2.2 Process After Service of Summons

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.2.1 Introduction to process after service of summons			
2.2.2 Notice to defend			
2.2.3 Irregular or defective notice of intention to defend			
2.2.4 Failure to enter an appearance	Letter of demand in terms of section 129 (1) Of the NCA Notice in terms of rule 31(3) Notice in terms of rule 31(5) Request for default judgment [Form 5]		Form 5 in terms of MCR12

2.3 Judgment Obtained Before the Trial

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.3.1 Consent to judgment	Magistrates Court notice of motion [Form 1] High Court notice of motion [Form 2] Consent to judgment Verifying affidavit Letter of demand		Form 2 in terms of HCR 6 Form 1 in terms of MCR 55
2.3.2. Summary judgment			

2. Actions

2.3 Judgment Obtained Before the Trial

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.3.3 Application for summary judgment	Affidavit in support of application for Summary Judgment Notice of application of summary judgment		Flowchart on Summary Judgment Application Summary Judgment: A practical guide, Form 18 Summary Judgment: A practical guide, Form 19 Summary Judgment: A practical guide, Form 20
2.3.4 The defendant's opposing affidavit	Verifying affidavit in terms of Rule 32(2). Notice of application of summary judgment	Opposing affidavit requirements	
2.3.5 Outcomes of summary judgment application			Summary judgment granted Summary judgment: A Practical Guide, chapter 13
2.3.6. Stay of proceedings	Magistrates' court interpleader summons [Form 35]		Form 35 in terms of MCR 44

2.4 Sui Generis Actions

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.4.1 Provisional sentence requirements			
2.4.2. Procedure regarding provisional sentence	High Court provisional sentence summons [Form 3] Magistrates' Court Provisional sentence summons [Form 2A]		Form 3 in terms of HCR 8 Form 2A in terms of MCR 14A
2.4.3. Granting or refusal of provisional sentence	Draft order for provisional sentence Notice of intention to enter a principal case in High Court Notice of intention to enter a principal case in Magistrates' Court		

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2. Actions

2.5 Other Pleadings

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.5.1 General principles regarding plea	Plea		
2.5.2 Special plea			
2.5.3. Grounds for raising special plea	Special plea of jurisdiction Precedent of special plea clauses for arbitration Precedent of special plea clauses for lis pendens Precedent of clauses of the defendant's special plea of prescription Precedent of special plea clauses for res judicata		
2.5.4. Dealing with a special plea	Application for separation of issues	Prerequisites of separation of issues	
2.5.5 Counterclaim	Counterclaim		
2.5.6 Replication			Becks Theory
2.5.7 Plea to counterclaim	Plea to counterclaim		
2.5.8 Request for further particulars for purpose trial	Notice of request of further particulars for trial		
2.5.9 Failure to comply with request for further particulars			
2.5.10. Amendments	Notice in terms of Rule 28(1)		

2.6 Defensive Pleadings and Non-Compliance with the Rules

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.6.1 Exception	Exception draft order Notice of exception and removal of cause of complaint Notice of exception in terms of rule 19(1)	Drafting a notice to remove a cause of complaint Drafting relief sought in notice of exception Drafting a notice of exception	
2.6.2 Application to strike out			

2. Actions

2.6 Defensive Pleadings and Non-Compliance with the Rules

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.6.3 Irregular step taken			
2.6.4 Notice of Bar and removal of bar	Notice of bar High Court notice of bar	Notice of bar and extension of time	
2.6.5 Non-compliance with Rules and condonation			
2.6.6 Condonation	Application for condonation Draft order exception and extension of time		

2.7 Discovery

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.7.1 Discovery in general	High Court discovery affidavit [Form 11] Magistrates Court discovery affidavit [Form 13]		Form 11 in terms of HCR 35 Form 13 in terms of MCR 23
2.7.2 Request for discovery of documents necessary to plead	Notice in terms of Rule 35(1) Notice of intention to defend in High Court High Court notice to produce documents in pleadings [Form 15] Magistrate Court notice to produce documents [Form 15] High Court notice to inspect documents [Form 14] Magistrates' Court notice to inspect documents [Form 15 A] Notice objecting to inspection in High Court Notice objecting to inspection in Magistrates Court		Form 15 in terms of HCR 35

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2. Actions

2.7 Discovery

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.7.3. Discovery for purposes of trial	<p>Notice in terms of rule 35(1)</p> <p>Notice in terms of rule 23(1)</p> <p>High Court notice to produce [Form 13]</p> <p>High Court notice to inspect [Form 14]</p> <p>High Court discovery affidavit [Form 11]</p> <p>High Court notice in terms of rule 35(8)</p> <p>High Court notice in terms of rule 35(5)[Form 12]</p> <p>High Court notice in terms of rule 35(10)</p>		<p>Form 13 in terms of HCR 35</p> <p>Form 14 in terms of HCR 35</p> <p>Form 11 in terms of HCR 35</p>
2.7.4. Further and better discovery	<p>Precedent of clauses for further and better discovery</p> <p>Precedent of clauses for application to compel further and better discovery</p> <p>Precedent of clauses for application to strike out defence or claim</p>		
2.7.5. Medical inspection and discovery			
2.7.6 Expert witnesses			
2.7.7. Discovery of photographs, models, plans and diagrams			
2.7.8. Failure to discover	<p>Application to compel discovery</p> <p>Notice in terms of Rule 35 (1)</p> <p>Notice in terms of Rule 23 (1)</p> <p>Precedent of clauses for application to compel discovery affidavit</p>	Application to compel checklist	

2. Actions

2.8 Procedures Following Close of Pleadings to Trial

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.8.1 Close of pleadings			Harms Civil Procedure Becks theory
2.8.2 Application for trial date	<p>Notice of set down for High Court</p> <p>Notice of set down in Magistrates' Court</p> <p>Notice to place matter on awaiting trial list</p>		
2.8.3 Pre-trial conference	<p>Notice in terms of rule 37 (2)(a)</p> <p>Plaintiff's notice in terms of rule 37(4)</p> <p>Direction to attend pre-trial conference [Form 19]</p> <p>Order-Pre-trial Conference [Form 20]</p>		<p>Form 19 in terms of MCR 25</p> <p>Form 20 in terms of MCR 25</p>
2.8.4 Settlement offer	<p>Plaintiff's notice of acceptance of offer in terms of MCR 18</p> <p>Plaintiff's notice of acceptance of offer in terms of HCR 34</p> <p>Defendant's notice of offer of settlement in terms of HCR 34</p> <p>Defendant's notice of offer of settlement in terms of MCR 18</p>		
2.8.5. High court and Magistrates' court rules	<p>High Court notice of motion [Form 2]</p> <p>Magistrates Court notice of motion [Form 1]</p>		
2.8.6. During what stage of proceedings	<p>Defendant's notice of offer of settlement in terms of HCR 34</p> <p>Defendant's notice of offer of settlement in terms of MCR 18</p>		

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2. Actions

2.8 Procedures Following Close of Pleadings to Trial

Guidance Note	Forms & Precedents	Checklists	Other Resources
2.8.7 Security of costs			
2.8.8 Securing evidence	High Court subpoena [Form 16] Magistrates Court subpoena [Form 24]		Form 16 in terms of HCR 38 Form 24 in terms of MCR 26
2.8.9 Draft orders	Draft order precedent Rule nisi application		

3. Application

3.1 General

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.1.1 Application proceedings			

3.2 Deciding What Application to Launch

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.2.1 Substantive applications	Magistrates Court notice of motion [Form 1] High Court notice of motion [Form 2 (a)] Magistrates Court notice of motion [Form 1 A] High Court notice of motion [Form 2]		Form 1 in terms of MCR 55 Form 1A in terms of MCR 55 Form 2 (a) in terms of HCR 6 Form 2 in terms of HCR 6
3.2.2 Interlocutory or interim applications	High Court notice of motion [Form 2] Notice in terms of rule 43 [Form 17] Precedent for Rule 43 prayers Notice in terms of rule 58 (2) (A)[Form 42] Precedent of clauses regarding care and contact of minor children in notice of motion		Form 2 in terms of HCR 6 Form 17 in terms of HCR 43 Form 42 in terms of MCR 58

3. Application

3.2 Deciding What Application to Launch

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.2.3 Without prior notice - ex parte	High Court notice of motion [Form 2] Magistrate Court notice of motion [Form 1]		Form 2 in terms of HCR 6 Form 1 in terms of MCR 55
3.2.4 Urgent	Magistrates Court notice of motion [Form 1 A] High Court notice of motion [Form 2 (a)]		Form 1A in terms of MCR 55 Form 2 (a) in terms of HCR 6

3.3 Service

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.3.1 Service of documents	Notice of Motion for edictal citation Notice of incorporation [CoR 14.1 form] Notice of motion for substituted service		
3.3.2 Specific service	High Court notice of motion [Form 2] Application for substituted service Application for edictal citation	Requirements for a founding affidavit in terms of substituted service Requirements of a founding affidavit in terms of edictal citation service	Form 2 Form 2 in terms of HCR 6

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3. Application

3.4. Notice of Motion and Founding Affidavit

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.4.1 Principles of notice of motion and founding affidavit	<p>High Court notice of motion [Form 2]</p> <p>High Court notice of motion [Form 2(a)]</p> <p>Application for administration order [Form 44]</p> <p>Magistrate Court notice of motion [Form 1]</p> <p>Magistrates Court notice of motion [Form 1 A]</p> <p>Application for edictal citation or substituted service [Form 4]</p> <p>Magistrates Court notice of application for Summary Judgment [Form 7]</p> <p>Affidavit in support of Application for Summary Judgment [Form 8]</p> <p>Application for trial with assessors [Form 21]</p> <p>Notice in terms of rule 58 (2) (A)[Form 42]</p>	Drafting a founding affidavit	<p>Form 2 in terms of HCR 6</p> <p>Form 2 (a) in terms of HCR 6</p> <p>Form 44 in terms of MCA section 74(1)</p> <p>Form 1 in terms of MCR 55</p> <p>Form 1 A in terms of MCR 55</p>

3.5. Opposing the Application

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.5.1 Notice of intention to oppose and answering affidavits	<p>Answering Affidavit</p> <p>Notice of intention to oppose an application</p>		

3.6 Replying Affidavit

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.6.1 Principles of replying affidavit			

3. Application

3.7 Further Affidavits

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.7.1 Aspects of further affidavits			

3.8 Unopposed Applications

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.8.1 Process for unopposed applications			

3.9 Opposed Applications

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.9.1 Process for opposed applications			

3.10 Non-Compliance with the Rules

Guidance Note	Forms & Precedents	Checklists	Other Resources
3.10.1 Condonation and non-compliance with rules	<p>High Court notice of motion [Form 2 (a)]</p> <p>Application for condonation</p> <p>Application for condonation and extension of time</p>		
3.10.2 Striking out scandalous, vexatious or irrelevant allegations			

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4. Specific Applications

4.1 In Terms of the Rules

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.1.1 Urgent applications	High Court notice of motion [Form 2 (a)] Notice of motion for an urgent application High Court notice of motion [Form 2]		Form 2 (a) in terms of HCR 6 Form 2 in terms of HCR 6
4.1.2 Ex parte applications			
4.1.3 Substituted service	Application for substituted service		
4.1.4 Edictal Citation	Application for edictal citation		
4.1.5 Provisional sentence	Provisional sentence application High Court provisional sentence summons [Form 3] Magistrates Court provisional sentence summons [Form 2A]		
4.1.6 Application for joinder	Joinder Notice of Motion Supporting affidavit	Drafting a joinder application	Joinder application flowchart
4.1.7 Consolidation			
4.1.8 Applications to compel			
4.1.9 Exceptions and applications to strike out	Absolution from the instance draft order		
4.1.10 Condonation and removal of bar			
4.1.11 Revival of rule nisi	Rule nisi application		
4.1.12 Irregular proceedings			
4.1.13 Summary judgment in terms of the rules	Summary judgment application Affidavit in support of Application for summary judgment [Form 8]		
4.1.14 Default judgment	Application for default judgment Notice in terms of rule 31(5)		

4. Specific Applications

4.1 In Terms of the Rules

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.1.15 Rescission of judgment			
4.1.16 Application to compel discovery	Notice of motion for discovery High Court notice to produce documents in pleadings [Form 15] Magistrates Court discovery affidavit [Form 13] Notice in terms of Rule 23(1) Precedent of clauses for application to compel discovery affidavit		
4.1.17 Settlement and variation of settlement agreement	Settlement agreement application in High Court Settlement agreement in High Court Settlement agreement for Magistrates' Court		Van der Merwe v First Rand Bank Ltd (Westbank) and Barloworld Equipment Finance 2012
4.1.18. Matrimonial matters pending a divorce action	Notice in terms of Rule 43 Notice of bar Rule 43 application		
4.1.19. Persons under disability	Application for an appointment as a curator ad litem	Drafting an application for an appointment curator ad litem	

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4. Specific Applications

4.2 Other Applications

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.2.1. Compulsory sequestration	High Court notice of motion [Form 2 (a)] Final sequestration order		Filgro (Pty) Ltd v Kamfer and another 2010 Form 2(a) in terms of HCR 6
4.2.2. Voluntary Surrender	Notice of surrender of a debtors estate High Court notice of motion [Form 2] Application for voluntary surrender		Form 2 in terms of HCR 6
4.2.3. Administration orders	Statement of affairs of a debtor in an application for administration order [Form 45]		Fortuin v various creditors (2004)
4.2.4. Liquidation	High Court notice of motion [Form 2] High Court notice of motion [Form 2 (a)] Provisional Liquidation draft order Provisional liquidation application Final liquidation application		
4.2.5. Business rescue	Application for business rescue High Court notice of motion [Form 2(a)]		Form 2(a) in terms of HCR 6
4.2.6. Interdicts	Interdict application Interim interdict notice of motion		
4.2.7. Rehabilitation	Application for rehabilitation		
4.2.8 Evictions	Application for evictions High Court notice of motion [Form 2(a)]		Form 2(a) in terms of HCR 6

4. Specific Applications

4.2 Other Applications

Guidance Note	Forms & Precedents	Checklists	Other Resources
4.2.9 Requirements of a mandament van spolie	Spoliation application		
4.2.10 Contempt of court	Contempt of court application		
4.2.11 Admissions of advocates	Admission of advocate application		
4.2.12 Admission of attorneys	Admission as an attorney application		
4.2.13 Admission of Notaries, Conveyancers and Sworn Translators	Admission of a translator application		

5. Appeals and Reviews

5.1 General

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.1.1 Introduction to appeals and reviews			

5.2 Application for Leave to Appeal

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.2.1 Application for leave to appeal procedure	Application for leave to appeal Notice of appeal		

5.3 Appeals

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.3.1 Appeal process			

5.4 Reviews

Guidance Note	Forms & Precedents	Checklists	Other Resources
5.4.1 Review procedure	Application for review		
5.4.2.Promotion of Administrative Justice Act	Application for review		

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6. Execution

6.1 Process

Guidance Note	Forms & Precedents	Checklists	Other Resources
6.1.1. Execution process	<p>Letter of demand in terms of section 129 (1) Of the NCA read with section 130 of the National Credit Act NO.34 OF2005</p> <p>High Court notice of motion [Form 2(a)]</p> <p>Warrant for execution against property [Form 32]</p> <p>Writ of execution [Form 18]</p> <p>Writ of attachment {Form 20]</p>		

6.2. What Can be Attached and Executed Against

Guidance Note	Forms & Precedents	Checklists	Other Resources
6.2.1 Execution against moveables	Writ of execution [Form 18]		
6.2.2. Execution against incorporeals			
6.2.3. Execution against immoveables	<p>Writ of attachment {Form 20]</p> <p>Conditions of sale in execution of immovable [Form 21]</p>		<p>First Rand Bank Limited v Folscher & Another, and similar matters</p> <p>Form 20 in terms of HCR 46</p>

6.3. Other Forms of Execution

Guidance Note	Forms & Precedents	Checklists	Other Resources
6.3.1 Garnishee orders	<p>Garnishee order</p> <p>Ex parte application</p>		
6.3.2. Emoluments attachment orders	<p>Emoluments attachment order [Form 38]</p> <p>Request for judgment where defendant has consented [Form 5B]</p>		Form 38 in terms of MCR 46