

EXPLANATORY STATEMENT

Subordinate Law No.21 of 1992

Issued by the Authority of the Judges
of the Supreme Court

AMENDMENT OF THE RULES OF THE SUPREME COURT

These amendments provide a procedure for preliminary discovery, rationalise the appeals process in respect of appeals to the Court from the Magistrates Court and provide procedures for the exercise of the Court's jurisdiction conferred upon it by the Guardianship and Management of Property Act 1991.

Order 34A - Preliminary Discovery

Order 34A is a new Order which provides a procedure for preliminary discovery and discovery from a non-party. The Order is based substantially on the Federal Court Rules.

In summary, the Order enables an 'applicant' who is either a party to a proceeding, or, a person who proposes to commence proceedings, to seek an order for discovery to:

- (a) identify a prospective defendant; or
- (b) ascertain whether or not he or she has a cause of action against an identified prospective defendant.

The Order also provides for the procedure to be followed in an application seeking an order for discovery under the Order, conduct money to comply with an order and orders for inspection, preservation, etc. of the subject matter of the proceedings.

Order 60, Division 1 (Appeals other than by way of order to review)

Order 60, Division 1, which deals with appeals other than by way of order to review, is repealed and a new Division 1 is inserted in its place. The amendments rationalise the appeals process in respect of appeals to the Court from the Magistrates Court or a magistrate of the Magistrates Court by providing a uniform procedure in respect of such appeals. A significant change is that one form of notice of appeal is prescribed, Form 72 in the First Schedule, which replaces the previous five (5) forms. The amendments also provide for the settling of the appeal papers by the Registrar, the parties to the appeal, procedures for a cross-appeal and discontinuance of an appeal. The institution of an appeal does not automatically operate as a stay of proceedings.

Order 75B, Rule 39 (Sealing of winding up order and notice of appointment of liquidator)

Order 75B, paragraph 39(b) is amended to correct a typographical error.

Part 12 - Appeals from the Administrative Appeals Tribunal - Order 81

Rules 17, 18 and 19 which relate to setting down an appeal, the failure of an appellant to enter an appeal and failure to prosecute an appeal are repealed. The procedure for setting down an appeal is set out in new rule 17.

Part 13A - Appeals from the Guardianship and Management of Property Tribunal - Order 82A

The amendments introduce Order 82A to provide procedures for the exercise of the Court's jurisdiction in respect of appeals to the Court from the Guardianship and Management of Property Tribunal. Order 82A is in terms similar to the provisions of Order 81 (Appeals from the Administrative Appeals Tribunal), with appropriate modifications. Schedule 14 contains the relevant forms for such appeals.

General

In respect of appeals to the Court it will usually be the responsibility of the appellant to furnish a copy of the transcript from the Court or Tribunal below to the Supreme Court.

The general provisions of Order 33A which enable the Court to stay or dismiss proceedings for want of prosecution and the general provisions of Order 65 relating to costs will apply to the above appeals provisions.