

LEGAL NOTICE NO. 194 OF 2000

Constitutional Litigation Rules

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LEGAL NOTICE NO. 194 OF 2000

Constitutional Litigation Rules

In exercise of the powers conferred on me by sections 22 (6) and 69 (5) of the Constitution', I,

JOSEPH LEBONA KHEOLA

Chief Justice of the High Court of Lesotho, make the following Rules -

PART I  
PRELIMINARY

Short title and commencement

1. These rules may be cited as the Constitutional Litigation Rules 2000 and shall come into operation on the date of their publication in the Gazette.

Interpretation

2. (1) In these rules, unless the context otherwise requires -

"apply" means apply on notice of motion under rule 11 and

"application" has a corresponding meaning;

"Constitution" means the Constitution of Lesotho;

"Court" means the High Court established by section 119 of the Constitution and exercising its jurisdiction under section 22 of the Constitution;

"court day" means any day other than a Saturday, Sunday or public holiday, and only court days shall be included in the computation of any time expressed in days prescribed by these rules or fixed by an order of Court;

"legal representative" means an advocate or attorney admitted under the Legal Practitioners Act, 1983;

"person" means a natural or juristic person;

"Registrar" means the registrar of the Court, and includes any acting or assistant registrar of the Court.

(2) Any powers or authority vesting in the Chief Justice under these rules may be exercised by a judge designated by the Chief Justice for that purpose.

(3) Notices, directions or other communications in terms of these rules may

be given or made by registered post or by facsimile or other electronic mail.

(4) The Chief Justice may extend any time limit prescribed in these rules.

(5) Written arguments, responses and any other representation to the Court shall be clear and succinct.

## PART II SESSIONS OF THE COURT

### Court terms

3. (1) There shall be four court terms in each year divided in the following manner, from -

(a) 1<sup>st</sup>February to the last Wednesday before Easter;

(b) Thursday following second Wednesday after Easter to the 15<sup>th</sup> June;

(c) 1<sup>st</sup> August to the last Wednesday preceding 4<sup>th</sup> October;

(d) Second Wednesday after 4<sup>th</sup> October to 15<sup>th</sup> December;

(2) A case may be heard out of term if the Chief Justice so directs or it is urgent.

(3) **If** the day fixed for the commencement of a term is not a working day, the term shall commence on the following working day and, if the day fixed for the end of a term is not a working day, the term shall end on the working day preceding.

## PARTm REGISTRAR'S DUTIES

### Registrar's office hours

4. (1) The office of the Registrar shall be open from 08.00 to 12.45 and from 14.00 to 16.30 on court days.

(2) The Registrar may, in exceptional circumstances, accept documents at any time, and shall do so when directed by a judge.

### General duties of the Registrar

5. (1) The Registrar shall number -

(a) a notice of appeal;

(b) an order of court referring any matter to the Court by another court;  
or;

(c) a document by which proceedings are initiated in the Court under these rules,

with a consecutive number for the year during which it is filed.

(2) The Registrar shall not receive any document lodged in a case or in a subsequent case in continuation of the case unless the document is marked with a number referred to under sub-rule (1) by the party lodging it.

(3) The registrar shall file all documents delivered in a case file under the number of such case.

(4) Any document referred to under sub-rule (1) shall be subject to the payment of Court fees in a form of a revenue stamp.

(5) The Registrar shall waive the payment of Court fees referred to under sub-rule (4) and make a note to that effect on the first page of the document, if satisfied that a party to the case -

(a) is indigent; or

(b) is represented by -

(i) the Human Rights Commission;

(ii) the Legal Aid Department;

(iii) a law clinic; or

(iv) a pro Deo counsel.

(6) A party who -

(a) desires to initiate or oppose proceedings in the Court; and

(b) is of the opinion that he is indigent; or

(c) is acting on behalf of such party,

shall satisfy the Registrar that, except for household goods, wearing apparel and tools of trade, the party does not possess property to the amount of MIO 000 and will not be able, within a reasonable time, to provide such sum from his earnings.

(7) A person may make copies of a record in the presence of the Registrar.

(8) The Registrar shall, at a request of a party, make a copy and certify that that copy of a court order, settlement, judgement or order relating to costs on payment of court fees with revenue stamps of M1.00 for every 100 typed words or part of a court order, settlement, judgement or order relating to costs on payment of court fees.

(9) The Registrar shall sign, (manually or by machining a facsimile of his signature) date and issue all process as sued out by a party.

(10) The Registrar shall, after the Court has made an order declaring or confirming any law to be inconsistent with the Constitution, cause the order to be published in the Gazette not later than 15 days of the making of the order.

(11) The Registrar shall publish and affix to the notice board at the Court building a hearing list (court roll) not less than 15 days before each term for the convenience of the legal representatives and the information of the public.

(12) The Registrar shall furnish directions to the parties to the proceedings within five days after the directions have been given by the Court.

(13) The Registrar shall maintain the Court's record and shall not permit any of them to be removed from the Court building.

(14) The Registrar shall ensure that any document lodged and made part of the Court records is not withdrawn permanently from the Court files.

(15) The Registrar shall, after the conclusion of the proceedings in the Court, return any original records and papers transmitted to the Court from which they were received.

(16) If it appears to the Registrar that a party is unrepresented, the Registrar shall refer such party to the nearest office of the Legal Aid Department, a law clinic or such other appropriate body or institution that may be willing and in a position to assist the party.

(17) If no assistance is rendered by the Legal Aid Department, a law clinic or other appropriate body or institution, the Registrar shall assist the unrepresented party in preparing the papers required by these rules or, if so directed by the Chief Justice, request an advocate or attorney to assist the unrepresented party.

(18) The Crown or the Registrar shall not be liable for any damage or loss resulting from -

- (a) assistance given in good faith by the Registrar to the unrepresented party in the proceedings before the Court; or
- (b) in the enforcement of an order under these rules in the form of -
  - (i) legal advice; or
  - (ii) in the compilation or preparation of any process or document.

## PART IV SERVICES OF PROCESS

### **Sheriff**

6. (1) Unless the Court directs otherwise, all process of the Court, at the request of any party, shall be served or executed through a sheriff of the Court.

(2) The sheriff shall not be under an obligation to effect service if the party who desires the service has not remunerated the sheriff for the service referred to under sub-rule (1) in accordance with the tariff for sheriffs set out in the Third Schedule to the High Court Rules 1980<sub>3</sub>.

(3) The sheriff shall, after payment of the remuneration, effect service or execution of judicial process without delay.

(4) The sheriff may, where resistance to the due service or execution of judicial process is experienced or is reasonably expected, call upon any member of the Lesotho Police Service for assistance.

(5) A sheriff who is entrusted with the service or execution of judicial process shall, in writing, notify -

- (a) the Registrar and the party who sued out the process that service or execution has been duly effected, stating the identity of the person upon whom the process was served, the date and manner of service or the result of execution, and return that process to the Registrar; or
- (b) the party who sued out the judicial process **if** the sheriff has been unable to effect service or execution, and of the reason for the inability, and return that process to the party, and keep a record of any process so returned.

(6) A sheriff shall, after service or attempted service of any judicial process, specify the total amount of service charges on the original of the document and a copy of that document on the return of service.

### Service of process

7. (1) Subject to sub-rules (2) and (3), the provisions of rule 4 of the High Court Rules, 1980 shall apply, with such modifications as may be necessary, to the service of any process of the Court.

(2) In any matter where there is a dispute -

- (a) over the constitutionality of any executive or administrative act or conduct;
- (b) threaten executive or administrative act or conduct; or
- (c) in any inquiry into the constitutionality of any law where the authority responsible for the executive or administrative act or conduct or the threatening executive or administrative act or conduct or responsible for the administrative of the impugned law is not a party to the case, the party challenging the constitutionality of the act, conduct or law shall, within five days of lodging with the registrar a document in which such contention is raised for the first time in the proceedings before the Court, serve on the authority a copy of the document and lodge proof of service with the Registrar.

(3) The Court in a matter referred to under sub-rule (2) shall not make an order declaring the act, conduct or law to be unconstitutional unless the provisions of these rules have been complied with.

## PART V REPRESENTATION

### Representation of parties

8. (1) Except where the Court directs otherwise, no legal practitioner shall be

entitled to appear on behalf of any party at any proceedings of the Court unless the legal practitioner is admitted to practise in the court of Lesotho.

(2) If a party dies or becomes incompetent to continue any proceedings, the proceedings shall be stayed until such time as an executor, curator, trustee, guardian or other competent person is appointed in the party's place, or until such incompetence ceases to exist.

(3) Where an executor, curator, trustee, guardian or other competent person is appointed, the Court may, on application, order that the appointed person be substituted for the party who has so died or become incompetent.

### **Power of attorney or authorisation to act**

9. (1) The authority of legal practitioner to act on behalf of any party may be disputed by notice within 21 days after it has come to the notice of any party that the legal practitioner is so acting, or with the leave of the court on good cause shown at any time before judgment.

(2) A power of attorney giving authority under sub-rule (1) need not be filed.

(3) If the power of attorney is disputed, the legal practitioner may no longer act on behalf of the party, unless a power of attorney is lodged with the Registrar within 21 days of the notice under sub-rule (1).

(4) A power of attorney or authorisation to act lodged under sub-rule (3) shall be signed by or on behalf of the party giving it and duly executed in accordance with the law.

(5) No power of attorney or authorisation to act shall be required to be lodged by an advocate or attorney instructed in writing, the Attorney-General, the Director of Public Prosecutions or a pro Deo counsel appointed by the Court.

## **PART VI**

### **AMICUS CURIAE SUBMISSIONS**

#### **Submissions by an *amicus curiae***

10. (1) Subject to these rules, any person interested in any matter before the Court may, with the written consent of all the parties in the matter before the Court and given not later than the time specified in sub-rule (5), be admitted in court as an *amicus curiae* upon such terms and conditions and with such rights and privileges as may be agreed upon, in writing, with all the parties before the Court or as may be directed by the presiding judge.

(2) The written consent referred to under sub-rule (1) shall, within five days of it having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision, comply with the time agreed upon for the lodging of a written argument.



(3) The presiding judge may amend the terms, conditions, rights and privileges agreed upon under sub-rule (1).

(4) If the written consent referred to under sub-rule (1) is not secured, any person or body who has an interest in any matter before the Court may apply to the presiding judge to be admitted therein as an *amicus curiae*, and the presiding judge may grant such application upon the terms and conditions and with such rights and privileges as he may determine.

(5) The application made under sub-rule (4) shall be made -

- (a) in the case of an application to the Court, and in any case where a referral from a subordinate court or tribunal is involved, within 10 days after the application or referral is lodged with the Registrar;
- (b) in any other matter, not later than 10 days after the lodging of the respondent's written submissions or after the time of lodging the submissions has expired.

(6) An application to be admitted as an *amicus curiae* shall -

- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
- (b) briefly identify the position to be adopted by the *amicus curiae* in the proceedings;
- (c) set out the submissions to be advanced by the *amicus curiae*, their relevance to the proceedings and *amicus curiae*'s reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

(7) An *amicus curiae* shall have the right to lodge written argument, if the written argument raises new contentions which may be useful to the Court and does not repeat any matter set forth in the argument of the other parties.

(8) Unless otherwise ordered by the Court, an *amicus curiae* shall be limited to the record of the application or the facts found proved in the referral proceedings and shall not present oral argument.

(9) An order granting leave to be admitted as an *amicus curiae* shall specify the date of lodging the written argument of the *amicus curiae* or any other relevant matter.

(10) An order of Court dealing with costs may make provision for the payment of costs incurred by or as a result of the intervention of an *amicus curiae*.

(11) The provisions of sub-rule (3) shall be applicable, with such modifications as may be necessary, to an *amicus curiae*.

## PART VI APPLICATIONS

### Application procedure

11. (1) Unless otherwise provided, in any matter in which an application is necessary for any purpose, including -

- (a) in respect of matters referred to under sections 22 and 69 of the Constitution; and;
- (b) the obtaining of directions from the Court,

the application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief and shall-

- (i) state an address within 25 kilometres from the office of the Registrar at which the applicant will accept notice and service of all documents in the proceedings;
- (ii) set forth a day, not less than five days or not more than 30 days after service of the application on the respondent, on or before which the respondent is required to notify the applicant in writing whether the respondent intends to oppose the application;
- (iii) state that, if no such notification is given, the Registrar will be requested to place the matter before the Court to be dealt with under sub-rule (5).

(2) The notice of motion shall be in such form as specified in Form 1 and Form 2 of the Second Schedule respectively.

(3) When relief is claimed against any person, authority or organ of government, and where it is necessary or proper to give any person, authority or government notice of an application referred to under sub-rule (1), the notice of motion shall be addressed to the Registrar, person, authority or organ of government in accordance with Form 2, otherwise the notice shall be addressed to the Registrar and shall be as near as may be in accordance with Form 1.

(4) A person opposing the granting of an order sought in the notice of motion shall-

- (a) within the time specified in the notice of motion, notify the applicant and the Registrar, in writing, of his intention to oppose the application;
- (b) state an address within 25 kilometres of the office of the Registrar at which the respondent will accept notice and service of all documents in the proceedings;
- (c) within 10 days of notifying the applicant of his intention to oppose the application, lodge an answering affidavit, **if** any, together with any relevant documents which may include supporting affidavits.

(5) The applicant may lodge a replying affidavit within 10 days of the service upon him of the affidavit and documents referred to under sub-rule (4) (c).

(6) Where notice of opposition is not given or where an answering affidavit under sub-rule (3) (c) is not lodged within the time referred to, the applicant may, within five days of the expiry time for the notice or answering affidavit, request the Registrar to place the application before the presiding judge.

(7) Where an answering affidavit is lodged, the applicant may request the

Registrar to place the application before the judge within five days of the lodging of the applicant's replying affidavit or, if a replying affidavit is not lodged, within five days of the expiry of the time specified under sub-rule (5).

(8) **if** the applicant fails to request the Registrar to submit the application before the presiding judge, within the time specified under sub-rule (7), the respondent may do so immediately upon the expiry of the time specified.

(9) The presiding judge may, when giving directions under sub-rule (9), permit the lodging of further affidavit.

(10) When an application is placed before the presiding judge, under sub-rules (6), (7) and (8), the presiding judge shall give directions in dealing with the application and state whether the application can be set down for hearing or whether the application shall be dealt with on the basis of written argument or summarily on the basis of the information contained in the affidavit.

### **Urgent applications**

12. (1) In urgent applications, the presiding judge may -

- (a) dispense with the forms and service provided for in these rules; and
- (b) give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall as far as is practicable be in accordance with these rules.

(2) An application made under sub-rule (1) shall be on notice of motion accompanied by an affidavit stating explicitly the circumstances which justify a departure from the ordinary procedures.

### **Argument**

13. (1) A written argument shall be filed timeously.

(2) An oral argument shall not be allowed if directions to that effect are given by the presiding judge.

(3) An oral argument shall be relevant to the issues before the Court and its duration shall be subject to such time limits as the presiding judge impose.

(4) the parties shall assume that a presiding judge has read the written arguments and that there is no need to repeat what is stated in the written argument.

(5) An argument may be addressed to the Court in any official language and the party to a case shall not be responsible for the provision of an interpreter.

(6) Where a person wishes to address the Court in an official language other than the language in which the person's written argument is couched, the person shall, within seven days prior to the hearing of the matter, give written notice to the Registrar of that person's intention to use another official language.

(7) The Court may, on its own motion or on the application of one or more parties, order that two or more cases, involving the same or related question, be argued together as one case or on such other terms as may be prescribed.

## PART VIII

### QUESTIONS AS TO MEMBERSHIP OF PARLIAMENT

#### Questions as to membership of Parliament

14. (1) An application under section 69 of the Constitution by members of Parliament, the Attorney-General or registered electors shall be brought on notice of motion supported by an affidavit as to the contentions upon which the applicant relies for relief.

(2) An application under sub-rule (1) shall be lodged with the Registrar and served on -

- (a) in the case of the National Assembly, the Speaker of the National Assembly; and
- (b) in the case of the Senate, the President of the Senate.

(3) The notice shall request the Speaker of the National Assembly and the President of the Senate to bring the application to the attention of all members in the relevant houses, in writing, within five days of the service on the Speaker of the National Assembly and the President of the Senate.

(4) Any member of the National Assembly or Senate, the Attorney-General or any registered elector who wishes to oppose the granting of an order sought in an application made under sub-rule (1) shall notify the Registrar, in writing and, within 10 days of the making of the application, of an intention to oppose.

(5) A notice under sub-rule (4) shall state the address, within 25 kilometres from the office of the Registrar, at which a member of the National Assembly or the Senate, Attorney-General or registered elector will accept notice and service of all documents in the proceedings.

(6) If a notice under sub-rule (4) is given, the application shall be dealt with in accordance with the provisions of rule 11.

(7) If a notice to oppose is not lodged under sub-rule (4), the matter shall be disposed of in accordance with directions given by the presiding judge, which may include a direction -

- (a) calling for an additional information as the presiding judge may consider to be necessary or expedient to deal with the matter; and
- (b) that interested members of Parliament, who wish to call for additional information make written submissions relevant to the determination of the issue within a period specified in the direction.

PART IX  
FEES AND COSTS

Taxation of costs and attorneys' fees

15. (1) Rule 56 of the High Court Rules, 1980 shall apply regarding taxation and attorneys' fees.

(2) In the event of an oral and written argument, a fee for written arguments may in appropriate circumstances be allowed as a separate item.

PART X  
MISCELLANEOUS

Models, diagrams and exhibits

16. (1) Models, diagrams and exhibits of material forming part of the evidence in a case referred to the Court shall be kept in the custody of the registrar at least 10 days before the case is heard.

(2) Exhibits of material kept in the custody of the Registrar shall be removed by the parties within 40 days after the case is decided.

(3) Where the parties have not removed exhibits under sub-rule (2), the registrar shall notify the party concerned to remove the exhibits within six months of the notification and if they are not removed, dispose them in an appropriate manner.

Withdrawal of cases

17. Where the parties to a case, at any stage of the proceedings, lodge with the Registrar an agreement in writing that case be withdrawn, specifying the terms relating to the payment of costs and payment to the Registrar of any fees that may be due, the Registrar shall, if the presiding judge so directs, enter such withdrawal.

Format of documents

18. (1) A document which exceeds five pages shall, regardless of the method of duplication, contain a table of contents and a table of authorities with correct references to the pages in the document on which they are cited.

(2) A body of a document at its close shall bear the name of the party or the party's attorney, if applicable, and the original document shall be signed by the party or the party's attorney.

(3) The Registrar shall not accept, for lodging, any document presented in a form not in compliance with this rule.

(4) The Registrar shall return the document referred to under sub-rule (3) to the defaulting party indicating the instance where the document failed to comply.

(5) Where a new and proper copy of the document referred to under sub-rule (3) is resubmitted within five days of receiving written notification, such lodging shall not be deemed late.

(6) If the Court finds that the provisions of this rule have not been complied with, it may impose, in its discretion, appropriate sanctions.

#### Matters for investigation by referee

19. The Court may, with the consent of the parties, refer for enquiry and report to a referee -

- (a) any matter that requires extensive examination of documents or scientific, technical or local investigation which in its opinion cannot conveniently be conducted by it;
- (b) any matter that relates wholly or in part to accounts;
- (c) any other matter arising in the proceedings.

#### Examination by interrogatories

20. (1) The Court may order that evidence of a witness who -

- (a) resides within the jurisdiction of the Court but for the time being resides outside its jurisdiction; or
- (b) is unable to attend proceedings,

upon application made by a party to a case, be taken by means of interrogatories.

(2) The party referred to under sub-rule (1) shall prepare and lodge with the Court a copy of the interrogatories and cross-interrogatories to be put to the witness.

(3) A copy of the interrogatories and cross-interrogatories document lodged under sub-rule (2) shall be accompanied by a translation of the official language of the country in which the examination by an interrogatory is taken.

(4) Evidence elicited by means of interrogatories shall be certified in accordance with the Authentication of Documents Proclamation, 1964.

#### Documents lodged to canvass factual material

21. A party to any proceedings before the Court and an *amicus curiae* shall be entitled to documents lodged with the Registrar under these rules and to canvass factual material which is relevant to the determination of the issues before the Court and which do not specifically appear on the record if such facts -

- (a) are common cause or otherwise incontrovertible; or
- (b) are of an official, scientific, technical or statistical nature capable of easy verification.

### **Exceptions**

22. The Court may, on sufficient cause shown -

- (a) excuse the parties from compliance with any of the provisions of these rules; and
- (b) give such directions in matters of practice and procedure as it may consider just and expedient.

### **Transitional provisions**

23. Where a time is prescribed for any purpose under these rules, and such time would otherwise have commenced prior to the commencement of these rules, such time shall begin on the commencement date of these rules.

### **~~'---~~Application of certain rules of the High Court**

24. The rules of the High Court Rules, 1980 as specified in the First Schedule shall apply, with such modifications as may be necessary, to the proceedings in the Court.

**Dated:**

**J. L. Kheola,  
Chief Justice.**